

**DATED 12 January, 2001**

**CITY OF TALLINN**

**- and -**

**TALLINNA VESI**

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**SERVICES AGREEMENT**

for (a) ensuring the functioning and the maintenance of the public water supply and sewerage system of Tallinn, (b) extraction of fire fighting water from fire hydrants in the public water supply system and extraction of water from public water extraction points and (c) conduct of rain water, drainage water and other soil and surface water from public roads, streets and squares to the public sewerage system and treatment thereof.

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THIS SERVICES AGREEMENT for (a) ensuring the functioning and maintenance of the public water supply and sewerage system of Tallinn, (b) extraction of fire fighting water from fire hydrants in the public water supply system and extraction of water from public water extraction points and (c) conduct of rain water, drainage water and other soil and surface water from public roads, streets and squares to the public sewerage system and treatment thereof (in Estonian: *Teenuste leping (a) Tallinna ühisveevärgi ja ühiskanalisatsiooni toimimise ja korrashoiu tagamiseks, (b) tulekustutusvee võtmiseks ühisveevärgil asuvatest tuletõrjehüdrantidest ning avalikest veevõtukohtadest vee võtmiseks ning (c) avalikelt teedelt, tänavatelt ja väljakutelt sademete- ja drenaaživee ning muu pinnase- ja pinnavee ühiskanalisatsiooni juhtimiseks ja puhastamiseks*) is entered into on 12 January, 2001.

BETWEEN:

- (1) TALLINNA LINN (the "**City**"), as represented by Tallinna Linnavalitsus (*in English: Tallinn City Government*), address Vabaduse väljak 7, Tallinn 10141, the Republic of Estonia, represented by the mayor of the City of Tallinn Mr. Jüri Mõis; and
- (2) AS TALLINNA VESI (the "**Company**"), registry code: 1025267326, address: Ädala 10, Tallinn 10614, represented by a member of the management board Mr. Kalle Tiiter.

WHEREAS:

- (A) The City is the authority in terms of the Public Water Supply and Sewerage Act dated 10th February, 1999 ("**PWSSA**") (*Ühisveevärgi ja -kanalisatsiooniseadus – ÜVVKS*).
- (B) Pursuant to the PWSSA, the Tallinn City Council (*Tallinna Linnavolikogu*) has issued on 26th August, 1999 Rules and Regulations on Use of the Public Water Supply and Sewerage Facilities of Tallinn ("**Council Rules and Regulations**").
- (C) The City wishes to permit and the Company has agreed to perform services to its Clients and as ordered by the City in relation to water, waste water (*heitvesi*) and storm water (*sadevesi*) services.
- (D) The City has passed Resolution Number 396 dated 30 November, 2000 authorising entry into this Agreement, and granting to the Company the exclusive right and obligation to provide the Services pursuant to the provisions of this Agreement during the Mandate Period.

NOW IT IS AGREED as follows:

## 1. INTERPRETATION

- (1) In this agreement in addition to the terms defined elsewhere in this agreement:

**"Abstraction and Discharge Permits"** (*vee erikasutusluba*) means the permits required by the Company from time to time to abstract water from watercourses and to discharge treated water and/or effluent into watercourses currently including Authorisation of Water Usage TKA - 19 as listed in Schedule B);

**"Additional Areas"** means areas connected to the public water supply or sewerage system of the Services Area which do not form part of the Services Area but in relation to which the Company supplies waste water or potable water services;

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**"Affiliate"** means, in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and **"holding company"** (*emaettevõtja*) and **"subsidiary"** (*tütarettevõtja*) shall have the meaning given to them by the Estonian Commercial Code (*Äriseadustik*) and other applicable Estonian legal acts;

**"Agreed Form"** means in relation to any document the form of that document initialled for the purposes of identification by, or on behalf of, the parties;

**"Agreement"** means this agreement and its schedules and any and all amendments thereto;

**"Arbitral Panel"** means the panel of arbitrators appointed pursuant to the provision of Clause 37;

**"Capital Works"** means the capital works which the Company undertakes in order to comply with its obligations under this Agreement;

**"Capital Works Phase"** means a part of the Capital Works to be undertaken by the Company in accordance with the Capital Investment Requirements which requires to be completed at the same time as provided in Schedule D Part II;

**"Capital Investment Performance Penalties"** means the penalties payable by the Company in the event that the Practical Completion Certificate any Capital Works Phase has not been issued on or before the relevant Date for Completion set out in the Capital Investment Requirements;

**"Capital Investment Requirements"** means any capital investment requirements set out in any part of Schedule D but in particular Schedule D Part II;

**"Change of Law"** means the introduction, amendment, modification or repeal in whole or in part of any Statutory Requirement or Required Consent having effect in Tallinn and/or the Republic of Estonia and which is binding upon either of the parties but for the avoidance of doubt does not include:

- (i) the entry into force after the date of this Agreement of any Statutory Requirement or Required Consent in existence but not in force at the date of this Agreement; or
- (ii) failure to obtain any Required Consent except where the Company has complied with all obligations and requirements relating to, and has used its best endeavours to obtain, the relevant Required Consent; or
- (iii) any Change of Law that arises as a result of breach by the Company of any of its obligations under this Agreement;

**"City's Representative"** means the person from time to time appointed by the City to act as City's Representative under this Agreement;

**"City Variation"** means any change to the scope of the Services whether by addition, modification, omission or otherwise proposed by the City under Clause 16(2);

**"Client"** means a customer or a group of customers of the Company invoiced as one person in relation to the Waste Water Collection, Treatment and Disposal Services or the Potable Water Services (as the case may be) or in the case of the Fire Hydrant Services and the Storm Water Services, the relevant department within the City;

**"Commercially Sensitive Information"** means any information which is of a confidential nature which is not publicly available and which if published or made available would or might have an adverse effect on the Company;

**"Company's Representative"** means the person appointed by the Company in accordance with the provisions of Clause 27;

**"Company Variation"** means any change to the scope of the Services whether by addition, modification, omission or otherwise made in accordance with this Agreement proposed by the Company under Clause 16(1) and which shall be carried out entirely at the Company's cost and risk and shall not give rise to any compensation by the City or except to the extent that the change to the scope of the Services is taken into account in determining the Rates of Tariffs pursuant to Clause 7(4)(e) to a right to increase the Tariffs;

**"Competent Authority"** includes any court of competent jurisdiction and any local, national or supranational agency, inspectorate, department, local city, minister, ministry, official or public or statutory person (whether autonomous or not) acting within their competence and authority in or of the Government and includes (without limitation) the Regulator, the Tallinn Environmental Agency and the Tallinn Health Protection Authority;

**"Competition Act"** means the Competition Act of Estonia (*Konkurentsiseadus*) as amended from time to time;

**"Connection"** means a new connection for a Client to the systems for Waste Water Collection, Treatment and Cleaning and Disposal Services and Potable Water Services to enable the Client to receive the relevant Services;

**"Connection Charge"** means the charge or charges (*liitumistasu ja/või ühendustasu*) which the Company is permitted to require a Client to pay for a Connection in relation to the Potable Water Services and the Waste Water Collection, Treatment and Disposal Services in accordance with the Statutory Requirements;

**"Connection Requirements"** means the Requirements in relation to Connections set out in Schedule D Part II and as required by the Statutory Requirements;

**"Corporate Tariff"** (*juriidilise isiku veevarustuse ja heitvee ärajuhtimise teenuse hind*) means the tariff which the Company is permitted under the Statutory Requirements to charge corporate Clients for the provision of the Services comprising a subscription fee, a fixed charge, a tariff for the provision of Potable Water Services and a tariff for the provision of the Waste Water Services;

**"Council Rules and Regulations"** means the Rules and Regulations on Use of the Public Water Supply and Sewerage Facilities of Tallinn (*Tallinna ühisveevärgi ja -kanalisatsiooni kasutamise eeskiri*) approved by the Tallinn City Council by Resolution Number 27 as of 26th August 1999, as amended from time to time);

**"Date for Completion"** means a date for the completion (as evidenced by the issue of a Practical Completion Certificate) of a Capital Works Phase as set out in the Capital Investment Requirements as the same may be extended pursuant to Clause 12(2)(b);

**"Default Interest Rate"** (*viivis*) means the rate which is five (5) per cent. per annum above the [one year EURIBOR or equivalent] rate from time to time;

**"Directive"** includes any present or future directive, requirement, instruction, condition of or limitation in any necessary consent, licence, authorisation, permission, approval, permit, direction, code of practice or rule of any Competent Authority including any modification, extension or replacement thereof then in force in each case, having the force of law or contract;

**"Dispute"** shall have the meaning given in Clause 37(1);

**"Domestic Tariff"** (*elanikkonna veevarustuse ja heitvee ärakuhtimise teenuse hind*) means the tariff which the Company is permitted by law to charge domestic Clients for the provision of the Services comprising a fixed charge, a tariff for the provision of Potable Water Services and a tariff for the provision of Waste Water Collection Treatment and Disposal Services;

**"Effective Date"** means the date that the City notifies the Company that all of the conditions precedent set out in Clause 2 are either satisfied or waived;

**"Employees"** means, as at the termination of this Agreement those employees employed by the Company who are engaged by the Company in the performance of its obligations under this Agreement;

**"Estimated Capital Cost"** of a Change of Law means the amount agreed by the Parties (acting reasonably) or determined to be the value of the estimated increase and/or decrease in capital costs attributable to the Change of Law;

**"Fast Track Disputes Resolution Procedure"** means the procedure set out in Clause 36;

**"Fast Track Disputes Panel"** shall have the meaning given in Clause 37(2);

**"Fire Hydrant Services"** (*tuletõrjehüdrantidest tulekustutusvee võtmisega ja avalikest veevõtukohtadest vee võtmisega seotud teenused*) means the fire hydrant and fire water supply services and services related to extraction of water from public points to be provided by the Company to the City as set out in Schedule D and as required by the Statutory Requirements;

**"Force Majeure Event"** (*vääramatu jõud*) means the occurrence of:

- (a) an act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder;
- (b) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device;

- (d) a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis the industry related to the affected Services and which is not attributable to any unreasonable action or inaction on the part of the Company or any of its Subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons;
- (e) specific incidents of exceptional adverse weather conditions in excess of those required to be designed for in this Agreement which are materially worse than those encountered in the relevant places at the relevant time of year during the twenty (20) years prior to the Effective Date but excluding the incidence or effect of any general climate changes or;
- (f) tempest, earthquake or any other natural disaster of overwhelming proportions;
- (g) pollution of water sources resulting from any plane crashing into Lake Ülemiste;
- (h) discontinuation of electricity supply, not covered by the agreement concluded with AS Eesti Energia or a successor utility company;
- (i) other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts,

which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement;

**"Good Industry and Operating Practices"** means the standards, practices, methods and procedures conforming to all applicable laws and that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced water services utility company, contractor, engineer or operator, as the case may be, engaged in providing services similar to the Services or undertaking capital works under the same or similar circumstances;

**"Government"** means the Government of Estonia (*Eesti Vabariigi Valitsus*);

**"Initial Period"** means the period of the first five Operating Years;

**"Insolvency Event"** means in relation to the Company the event of bankruptcy (*pankrot*) as defined in the Estonian Bankruptcy Act (*Pankrotiseadus*);

**"Intellectual Property Rights"** (*Intellektuaalne omand*) means all rights in inventions, patents, copyrights, design rights, trade marks and trade names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

**"Justified Profitability"** shall be determined in accordance with the provisions of Schedule E Part I;

**"K coefficient"** shall have the meaning given in Schedule E;

**"Levels of Service"** means the Levels of Service for Potable Water and/or the Levels of Service for Waste Water Collection, Treatment and Disposal and/or the Levels of Services for Fire Hydrant Services and/or the Levels of Service for Other Services (as the context may require);

**"Levels of Service for Fire Hydrant Services"** means the levels of service for the Fire Hydrant Services set out in Schedule D.

**"Levels of Service for Potable Water"** means the levels of service for the Potable Water Services set out in Schedule D;

**"Levels of Service for Waste Water Collection, Treatment and Disposal"** means the levels of service for the Waste Water Collection, Treatment and Disposal Services set out in Schedule D;

**"Levels of Service for Other Services"** means levels of service for the Other Services set out in Schedule D.

**"Mandate"** means the exclusive rights and obligations acquired and assumed by the Company under this Agreement and under the Resolution of Tallinn City Council Number 396 dated 30 November, 2000 including, without limitation, the obligation of the Company to perform the Services and the right to charge the Tariffs pursuant to the Statutory Requirements and this Agreement and the appointment of the Company as the provider of the Services pursuant to the PWSSA (*ainuõigus vee-ettevõtjana tegutsemiseks Tallinna ühisveevarustuse ja-kanalijatsiooni põhitegevuspiirkonnas*);

**"Mandate Monitoring Unit"** means the monitoring unit established pursuant to Clause 5(3);

**"Mandate Period"** means the period commencing on the Effective Date and expiring on the earlier of the date fifteen (15) years from the date of the Resolution of Tallinn City Council Number 396 dated 30 November, 2000 or the end of the period of any subsequent Resolution permitting the Company to provide the Services and the termination of this Agreement;

**"Material Subcontract"** means a subcontract entered, or to be entered, into by the Company, the value of which exceeds 1% of the Company's revenues for the previous Operating Year;

**"Maximum Connection Charge"** (*liitumistasu ülempiir*) has the meaning defined in Tallinn City Council Decree 24 of June 15, 2000;

**"Operating Year"** means the part of the year from the Effective Date to 31st December 2001 and thereafter the period from 1st January to the end of the calendar year, or the termination of this Agreement or the expiry of the Mandate Period, whichever occurs first;

**"Other Services"** means the following services to be provided by the Company under this Agreement as set out in Schedule D:

- (i) modelling;
- (ii) customer services and handling of complaints;
- (iii) reporting requirements in relation to the financial performance of the Company; and



- (iv) ISO accreditation;

**"Party"** or **"Parties"** means the Company or the City or both, as the context permits;

**"Penalties"** (*Leppetrahvid*) means the penalties which the Company shall pay for any failure to fulfil any of the Requirements in relation to the Waste Water Collection, Treatment and Disposal Services, the Potable Water Services, the Fire Hydrant Services, the Other Services and the Connections Requirements together with the Capital Investment Performance Penalties payable in respect of failures to comply with the Capital Investment Requirements all as set out in Schedule D Part III;

**"Potable Water Services"** means the potable water services including without limitation the operation and maintenance of raw water extraction facilities and systems, water treatment plants and distribution systems to be provided by the Company pursuant to this Agreement and the Statutory Requirements, but excluding any services within Other Services and all as set out in Schedule D or required pursuant to the Requirements;

**"Practical Completion Certificate"** shall have the meaning given in Clause 13 (9);

**"Prohibited Act"** means:

- (a) offering, giving or agreeing to give to any servant of the City any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this agreement or any other contract with the City; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with the City;
- (b) entering into this Agreement or any other contract with the City in connection with which commission has been paid or has been agreed to be paid by the Company or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the City;
- (c) committing any offence under any Statutory Requirement creating offences or at law:
  - (i) in respect of fraudulent acts which have a material adverse effect on the Company's financial status or the provision of the Services by the Company; or
  - (ii) in respect of fraudulent acts in relation to this Agreement or any other contract with the City;
- (d) committing any offence under the Estonia Anti-Corruption Act (*Korruptsioonivastane seadus*); or
- (e) defrauding or attempting to defraud or conspiring to defraud the City;

**"Project Agreements"** means the agreements entered into between the Company and the Investor or any of its Affiliates as at the date hereof for the performance of the Company's obligations under this Agreement, listed in Schedule C;

**"Project Review"** means the Project Review conducted pursuant to Clause 8;

**"PWSSA"** means the Public Water Supply and Sewerage Act (*Ühisveevärgi ja -kanalisatsiooni seadus*) dated 10th February, 1999, as amended from time to time;

**"Rate"** means the rate or level of any Tariff;

**"Recommendation"** means a recommendation of the Fast Track Disputes Panel as referred to in Clause 37(3);

**"Regulator"** means the independent water utilities regulator appointed pursuant to the regulatory framework referred to in Clause 5(3);

**"Required Consents"** means all consents, licences, authorisations, permissions, approvals and permits of any Competent Authority which are necessary for the operation of the System or for the performance of any of the Company's obligations under this Agreement including the Abstraction and Discharge Permit;

**"Requirements"** means in relation to each of the Waste Water Collection, Treatment and Disposal Services (including the Storm Water Services), the Potable Water Services, the Fire Hydrant Services and the Other Services, the relevant Levels of Service, together with the Capital Investment Requirements, and the Connections Requirements and, in relation to the relevant matters, all requirements of the Statutory Requirements in relation to the foregoing;

**"Schedule"** means any one of the schedules annexed to this Agreement;

**"Services"** means the Waste Water Collection, Treatment and Disposal Services (including the Storm Water Services), the Potable Water Services, the Fire Hydrant Services and the Other Services;

**"Services Area"** means the area as specified in drawings in Schedule A;

**"Shareholders' Agreement"** means the shareholders' agreement of even date herewith entered into by the City, and the Company and the Investor (as therein defined);

**"Share Sale and Subscription Agreement"** means the share sale and subscription agreement of even date herewith entered into between the City, the Company and the Investor (as therein defined);

**"Sites"** means the sites on which parts of the System or related structures or facilities are located;

**"Statutory Penalties"** shall have the meaning given in Clause 12(4);

**"Statutory Requirements"** means all applicable laws, regulations and legal requirements and Directives having the force of law from time to time during the Mandate Period and the

requirements of all Required Consents including, without limitation but subject to Clause 4(1)(b), European Union Directives:

75/440/EC  
79/869/EC  
86/278/EC  
90/656/EC  
91/692/EC  
98/83/EC;

as if those European Union Directives were in full force and effect and incorporated into the laws of Estonia as at the date hereof;

**"Storm Water Services"** means the storm water drainage (*ärakuhtimine*) services to be provided by the Company to the City pursuant to this Agreement and the Statutory Requirements;

**"Subcontractors"** means all subcontractors and suppliers contracting with the Company;

**"Subcontracts"** means any contract or arrangement entered into by the Company with a Subcontractor;

**"System"** (*Ühisveerärk ja -kanalisatsioon*) means the water and sewerage system and all related assets and undertakings owned by the Company or which the Company is legally entitled to use from time to time and used in the performance of the Services or in relation to the Services;

**"Tallinn Development Plan for Water and Sewerage"** means such plan as the City has or will produce relating to the development of the public water and sewerage facilities;

**"Tariff"** means the Domestic Tariff and/or the Corporate Tariff and/or the Connection Charge as the context may require;

**"Tariff Criteria"** means the criteria for determining the Rates of Tariffs as set out in Part I of Schedule E as the same may be amended or supplemented from time to time in accordance with the Statutory Requirements;

**"Tax"** means any kind of tax, duty, levy, charge, contribution, impost or any similar charge, whether or not similar to any in force at the date of this Agreement and whether imposed by a local, municipal, governmental, state, federal or other body or authority in Estonia or elsewhere;

**"VAT"** means value added tax (*Käibemaks*) or similar indirect tax as provided for under Estonian law;

**"Waste Water Collection, Treatment and Disposal Services"** means the waste water collection, treatment and disposal services provided to Clients and the provision of the Storm Water Services to the City including (without limitation) the operation and maintenance of sewerage systems and water treatment plants to be provided pursuant to this Agreement and the Statutory Requirements but excluding any services within the Other Services and all as set out in Schedule D or required pursuant to the Requirements;

**"Works Performance Tests"** means any tests required to ensure that any Capital Works Phase is complete and fit for its purpose as required by Good Industry and Operating Practices.

- (2) Where the context requires words importing the singular shall include the plural and vice versa.
- (3) Where the context requires words importing persons shall include firms and corporations.
- (4) A reference in this Agreement to any Clause, paragraph, schedule, part, section or annex is, except where it is expressly stated to the contrary, a reference to such Clause, paragraph, schedule, part, section or annex of this Agreement.
- (5) Headings are for convenience of reference only.
- (6) Each reference to this Agreement or to any other document, contract or agreement shall include a reference to each permitted variation of, or supplement to, this Agreement and such document, contract or Agreement as amended, varied or supplemented from time to time.
- (7) Each reference to this Agreement refers to this Agreement together with the Schedule hereto.
- (8) References to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute.
- (9) A person includes its successors and permitted assignees or transferees.
- (10) In the event of any conflict between any provision of this Agreement (other than the Schedules) and the Schedules, the provisions of this Agreement (other than the Schedules) shall prevail over the Schedules.
- (11) For the purposes of this Agreement a day shall be a period of twenty four hours beginning at 0000 hours local time in Estonia.
- (12) For the purposes of this Agreement, a month shall mean a calendar month.
- (13) Any reference in this Agreement to the **"termination"** of this Agreement shall, where the context so permits, include the expiry of this Agreement pursuant to Clause 22 and the verb **"terminate"** shall be construed accordingly.

## **2. CONDITIONS PRECEDENT**

- (1) With the exception of Clauses 1, 2, 26, 27, 28, 29, 30, 31, 37, 38 and 39 which shall be immediately enforceable on signature of this Agreement, the provisions of this Agreement are, subject to waiver by the City under paragraph (2), conditional upon the following occurring:
  - (a) the Share Sale and Subscription Agreement having been entered into and the Closing Date under such agreement having taken place;

- (b) the Shareholders' Agreement having been entered into and such agreement being or becoming fully unconditional and binding in accordance with its terms (save for any condition relating to the unconditionality of this Agreement);
  - (c) the representations and warranties of the Company in this Agreement being true and correct in all material respects as if those representations and warranties were made on the Commencement Date provided that (for the avoidance of doubt) this paragraph (d) shall be of no effect once the Effective Date has taken place;
  - (d) save to the extent that the receipt has been waived in writing by the City, the City has received a certified true copy of the resolution of the Supervisory Board (*Nōukogu*) of the Company authorising the execution, delivery and performance of this Agreement.
  - (e) the Company has received a certified copy of Resolution Number 396 dated 30 November, 2000 authorising entry into this Agreement and as provided in Recital (D).
- (2) The City may waive all or any of the conditions precedent in Clause 2(1)(c) and (d) and the Company may waive the condition precedent in Clause 2(1)(e) and the Effective Date shall not occur until the City notifies the Company that the Effective Date has occurred, provided that the City shall notify the Company as soon as reasonably practicable after the Effective Date has occurred.
  - (3) To the extent such matters are within their respective power and control, the City and the Company undertake to use all reasonable endeavours to fulfil the conditions precedent in Clause 2(1) on or before February 12, 2001.
  - (4) In the event that any of the conditions precedent above have not been satisfied or, in the case of the conditions in Clause 2(2)(c) and (d) waived by the City or in the case of the condition in Clause 2(1)(e) waived by the Company on or before February 12, 2001 or such later date as the Parties may agree, this Agreement shall automatically terminate and subject to the rights and remedies of the City in the event that the Company is in breach of Clause 2(3), each Party shall have no further liability to the other whatsoever.

### 3. MANDATE

- (1)
  - (a) In accordance with Statutory Requirements, the Company is permitted to and agrees to provide the Services in the Services Area on the terms of the Mandate.
  - (b) Accordingly, the City Council has passed Resolution Number 396 dated 30 November, 2000 appointing the Company as provider of the Services pursuant to the PWSSA (the "**Mandate Resolution**").
- (2) The Mandate shall be valid for the Mandate Period.
- (3) With effect from the expiry of the Mandate Period, a new Permit may be issued to the Company, extending the term of the Mandate to the Company. Alternatively, the rights and obligations under the Mandate may be vested in a third party by the City further to a competition conducted under the procedures required by the PWSSA and the Competition Act, subject to any Statutory Requirements in force at the time of the expiry of the Mandate Period.

- (4) The City shall use all reasonable endeavours to ensure that, if no event has occurred during the Mandate Period which would entitle the City to terminate this Agreement, the mandate contained in the Mandate Resolution shall on its expiry be replaced by a new mandate and the Mandate shall be extended on the terms of this Agreement for the duration of any subsequent new mandate in accordance with the Statutory Requirements. Accordingly, the City shall use its reasonable endeavours to procure that the terms of the competition referred to in paragraph (3) include criteria for bidders, which reflect the competence of the bidders. Such terms shall provide that a qualification for success in the competition shall be the ability of the bidder, through the ownership or control of relevant assets to provide the relevant services.
- (5) It is acknowledged that permit to provide the Services as contained in the Mandate Resolution is a necessary condition of the Mandate but that this Agreement could be terminated and that permit might nevertheless continue.

#### **4. OBLIGATIONS OF THE COMPANY**

- (1) (a) The Company shall during the Mandate Period in relation to the Services Area provide the Waste Water Collection, Treatment and Disposal Services (including the Storm Water Services), the Potable Water Services, including the Fire Hydrant Services and the Other Services in accordance with the relevant Requirements.
- (b) Notwithstanding the inclusion of the same within the definition of "Statutory Requirements" the relevant Requirements in relation to 98/83/EC and 86/278/EC shall be as set out in the Schedule D.
- (2) (a) The Company shall during the Mandate Period in relation to the Additional Areas :
- (i) receive and treat Waste Water from the Additional Areas and provide the Waste Water Collection and Treatment and Disposal Services; and
- (ii) provide the Additional Areas with Potable Water, the Potable Water Services and Fire Hydrant Services,

on terms in accordance with any relevant Statutory Requirements or any relevant agreements concluded between the City, any water operator in the Additional Areas or the City and any local municipalities. If there are no such agreements, the Company shall provide the relevant Services on the terms applicable as at the date hereof.

- (b) The Company has the right to charge the operators of the Additional Areas a Connection Charge to cover the costs of building and improvement of water and sewerage network facilities and purchases of necessary facilities in the Services Area and the profit margin determined by Tallinn City in the Regulation regarding Connection to Public Water and Sewerage Networks.

The price for services of water supply and discharge of waste water to Water Undertakings of Additional Areas connected to the Services Area, regardless of the location of the Additional Area, is determined by the Tallinn City Council Decree no 47 of December 22, 1999 regarding the Regulation of Prices of Service of Water Supply and Discharge of Waste Water through Public Water and Sewerage Network.

The service prices will be determined separately for each Water Undertaking in Additional Areas based on the costs carried by the Company in relation to providing services to the area and justified profitability.

- (3) The Company shall comply with the Capital Investment Requirements.
- (4) The Company shall provide the Connections as set out in the Connections Requirements.
- (5) In the provision of the Services the Company shall comply with all Statutory Requirements including all Required Consents, notwithstanding that they may impose requirements additional to the Requirements under this Agreement.
- (6) The Company shall provide the Services in accordance with Good Industry and Operating Practices.
- (7) The Company shall provide the Services (including those relating to the Additional Areas) in accordance with the Tallinn Development Plan for Water and Sewerage.
- (8) The Company shall perform its obligations under this Agreement at its own risk and without recourse to the City or the Government or other public funds or guarantees now or in the future, save as expressly provided in this Agreement or in any applicable Statutory Requirements.

(9)

## **5. OBLIGATIONS OF THE CITY**

- (1)
  - (a) The City shall during the Mandate Period continue to give subsidies in relation to the Connection Charges as provided in Resolution No. 214 of the Tallinn City Council and Decree No. 25 of the Tallinn City Council, both dated 15th June, 2000 provided that the only remedy of the Company in relation to a breach of this obligation shall be as provided in Clause 13(12).
  - (b) The City shall during the Mandate Period make payments to the Company for the use of fire water and water taken from public water sources according to the Domestic Tariff.
- (2) The City shall during the Mandate Period continue to provide the subsidy to the Company in connection with the Storm Water Services as provided by the Statutory Requirements, including providing the cost of construction of storm water facilities and paying the costs of discharging and treating storm water, in each case to the extent that such costs are not covered by the Tariffs provided that the only remedy of the Company in relation to a breach of this obligation shall be as provided in Clause 13(12).
- (3)
  - (a) The City and the Company shall within six (6) months of the Effective Date establish a Mandate Monitoring Unit which shall be constituted as provided in Schedule H.
  - (b) Once established, unless the City notifies the Company in writing that it intends to exercise any such functions itself to the exclusion of the Mandate Monitoring Unit, the Mandate Monitoring Unit shall, subject to any limitations in any relevant Statutory Requirements, and to the exclusion of the City, exercise all or any of the following functions under this Agreement together with those set out in Schedule H:

- (i) receiving information from the Company in relation to the operation of the Mandate;
  - (ii) monitoring the carrying out of any testing of the Services or Works under this Agreement and the carrying out the functions of the City under Clause 11 (Service Level Tests and Auditing) and Clause 13 (Capital Investment Requirements) and Clause 28 (Information and Reporting);
  - (iii) assessing any Penalties due from the Company to the City under this Agreement and making recommendations to the City in relation to them;
  - (iv) performing the functions in relation to the Project Review as provided in Clause 8 and performing the functions of the City in relation to the capital investment review referred to in Clause 13(12); and
  - (v) assessing the Rates of the Tariffs pursuant to Clause 7(4) and Clause 9 and making recommendations to the City in relation to them.
- (c)
  - (i) In addition to the functions in paragraph (b), the Parties shall each use their reasonable endeavours to ensure that the Mandate Monitoring Unit carries out the functions required to be performed by it as set out in Schedule H and that it carries out all functions carried out by it impartially.
  - (ii) The City and the Company shall each fulfil the obligations in relation to the Mandate Monitoring Unit to be performed by them respectively as set out in Schedule H.
- (d) On the establishment of the Mandate Monitoring Unit, the Parties shall procure that the members of the Mandate Monitoring Unit shall provide two members to the Fast Track Disputes Resolution Panel as provided in Clause 36(2).
- (4)
  - (a) It is acknowledged by the parties that under Statutory Requirements to be enacted in the future, certain of the functions of the Mandate Monitoring Unit may be transferred to an independent water utilities regulator (the "**Regulator**") pursuant to a regulatory framework to be established in accordance with Statutory Requirements. To the extent that such functions are so transferred, the Mandate Monitoring Unit shall cease to exercise such functions.
  - (b) The City shall take all action with its powers to ensure that the Regulator exercises his functions impartially.
  - (c) Either party may refer a matter arising from the exercise of functions by the Regulator to the disputes resolution procedures under Clauses 36 and 37 in the same way that it may refer a matter arising from the exercise of the functions of the Mandate Monitoring Unit.
  - (d) In addition to exercising the functions of the Mandate Monitoring Unit, the Regulator may also be the person responsible under the Statutory Requirements for setting the Tariffs and the provisions of Clause 7(4) and Clause 9 shall apply accordingly.



- (5) Each of the Parties shall provide any necessary facilities and the services of personnel free of charge to the Mandate Monitoring Unit. Any other costs and expenses of the Mandate Monitoring Unit and all costs and expenses of the Regulator in relation to the Mandate shall be borne by the Company and the amounts payable by the Company shall be recovered by the Company through the Tariff. The Parties shall use their reasonable endeavours to ensure that the costs and expenses of the Mandate Monitoring Unit and of the Regulator are reasonable.
- (6) The City undertakes that the Tallinn Development Plan for Water and Sewerage shall be consistent with the Levels of Service in Schedule D.
- (7) The City will not prevent the Company from expanding the area covered by or connected to public water and sewerage networks outside the administrative territory of Tallinn provided that the conditions of water supply and discharge of waste water to the Clients located in the Service Area will not deteriorate and/or the City does not have reasonable grounds for believing that there will be any such deterioration due to such expansion.

## **6. WARRANTIES**

- (1) The Company represents, warrants and undertakes as at the signature hereof and at the Effective Date that:
  - (a) it is a corporation duly established under the laws of Estonia;
  - (b) it has full power and authority to enter into this Agreement;
  - (c) it has taken all necessary action for the authorisation of its entry into this Agreement and the performance of its obligations under this Agreement;
  - (d) in entering into this Agreement it has not committed any Prohibited Act.
- (2) The City represents, warrants and undertakes that it has full power and authority to enter into this Agreement and that it has taken all necessary action for the authorisation of its entry into this Agreement and the performance of its obligations under the Agreement.

## **7. TARIFFS**

- (1)
  - (a) The Tariffs which the Company may charge to Clients shall be determined in accordance with the provisions of this Agreement and Statutory Requirements and as provided in this Clause 7.
  - (b) Where the reasonable cost of connection exceeds the Maximum Connection Charge the Company shall be entitled to request an increase in the Rates of Tariff on the same basis as if it was entitled to such increase as a result of a Change of Law and the Parties shall proceed in accordance with the provisions of Clause 17.
- (2) The Company may make the following other charges in connection with water supply, sewerage and related services in accordance with the Statutory Requirements including but not limited to:

- (a) disposal of septic tank contents;
  - (b) treatment of commercial and industrial effluent or waste for industrial customers; and
  - (c) services provided to persons in the Additional Areas or in other areas outside the Services Area as provided in Clause 4(2);
- (3) Except as provided in this Clause, the Company shall make no other charges to Clients in respect of Waste Water Collection, Treatment and Disposal Services, the Potable Water Services, the Fire Hydrant Services or Connections.
- (4) (a) The City undertakes that:
- (i) the City, the Regulator or other person responsible for setting the Rates of the Tariffs in accordance with the Statutory Requirements (the "**Tariff Authority**"); and
  - (ii) the Mandate Monitoring Unit in making recommendations in relation to the Rates of the Tariffs,
- shall determine or recommend (as applicable) the Rates of Tariffs in accordance with the provisions of this Clause 7.
- (b) The Rates of Tariffs shall be determined in accordance with the Tariff Criteria and to the extent consistent with the Tariff Criteria shall reflect:
- (i) the K coefficient as provided in paragraph (c); and
  - (ii) any changes in the Retail Prices Index referred to in Clause 12(3) as provided in the Tariff Criteria.

It is acknowledged that operation of the Tariff Criteria may result in it not being possible to increase the Rates to reflect fully increases which would otherwise be required pursuant to Clause 16 (Variations) or Clause 17 (Changes in Law). In this event the Company shall not under this Agreement, to the extent that the Rates have not been increased, be obliged to carry out the Capital Works or make the changes to the Services as required by the operation of Clauses 16 and 17, and shall not be required to comply with the additional requirements comprised in the Change of Law, and to such extent any failure to comply with such obligations shall be deemed to be due to a Force Majeure Event. This relief of liability shall not affect the operation of the Statutory Requirements but the City shall take all action within its powers to procure that the Company is relieved of its liability under the Statutory Requirements in the same manner as it is relieved of liability under this Agreement.

- (c) (i) In respect of the period during the First Operating Year from 1st April 2001 to 31st December, 2001 and the four Operating Years commencing 1st January, 2002, 1st January, 2003, 1st January, 2004 and 1st January, 2005, the City shall, undertake in determining the Rates of Tariffs in accordance with the Tariff Criteria, to use the K coefficient for the relevant Operating Year as set out in Schedule E Part II.

(ii) The K coefficient for the Operating Periods following the Initial Period shall be determined in accordance with the criteria set out in Clauses 7(4)(a) and (b) and the provisions of Clause 8.

- (d) In respect of each Operating Year following the first Operating Year (a "**Tariff Period**") in which Clause 7(4)(e) applies, the Rates of Tariffs shall be assessed and determined in accordance with the criteria set out in Clauses 7(4)(a), (b) and (c) and procedure set out in Clause 9 (Review Procedure).
- (e) The Rates of Tariff shall only be adjusted under Clause 7(4)(d) to reflect any change in necessary expenses incurred by the Company in the previous Operating Year as a result of:
  - (i) Clause 16 (Variations);
  - (ii) Clause 17 (Change of Law);
  - (iii) Clause 20 (Force Majeure);
  - (iv) any costs of the Mandate Monitoring Unit or the Regulator as provided in Clause 5(5);
  - (v) any losses sustained by the Company as a result of an incorrect representation or warranty having been given under the Share Sale and Subscription Agreement provided that the Company shall have used all reasonable endeavours to mitigate such losses and the Company's ability to recover such losses shall be subject to any restrictions or limitations on recovery contained in the Share Sale and Subscription Agreement; and/or
  - (vi) any increase or decrease in the cost of raw water abstraction,

and which, in the case only of items (i) to (iii) above, shall include an amount equivalent to the Justified Profitability the Company is entitled to for the relevant Operating Year.

- (h) With effect on and from the Effective Date, the Company shall be responsible for the collection of the Tariffs from Clients and any inability to recover the same shall not result in any compensation from the City or any increase in the Rates.

## **8. PROJECT REVIEW**

- (1) Within six months prior to the end of each period of five Operating Years the first such period being the Initial Period (each an "**Operating Period**"), the City and the Company or,

following the establishment of the Mandate Monitoring Unit, the Mandate Monitoring Unit shall review the performance of the Company during the current Operating Period and the programme for the next Operating Period (the "**Project Review**") in accordance with the procedure set out in Clause 9 (Review Procedure). The Project Review shall cover the following matters:

- (a) in relation to the current Operating Period:
  - (i) compliance with the Requirements;
  - (ii) Penalties;
  - (iii) levels of sales of the Services;
  - (iv) costs of the provision of the Services;
  - (v) capital investment;
  - (vi) sources for capital investment;
- (b) in relation to the period of the next Operating Period (being the period of the next five Operating Years):
  - (i) measures to be taken to comply with the Requirements applicable to the period;
  - (ii) the matters listed in paragraphs (a)(iii), (iv), (v) and (vi); and
  - (iii) the K coefficient.

Once the functions of the City in relation to the Project Review are taken over by the Mandate Monitoring Unit, the Mandate Monitoring Unit shall present its conclusions and recommendations to the City and the Company.

The Parties shall in good faith use all reasonable endeavours to agree all issues arising in relation to such matters and actions to be taken arising out of such matters.

- (2) In addition to the Project Review at the end of an Operating Period as set out above, the City and the Company (or the Mandate Monitoring Unit once established) shall also, if required by the City, carry out a Project Review at the end of each Operating Year (an "**Annual Review**"). The provisions of the Clause shall apply to such review on the basis that the current Operating Period (as referred to in paragraph (1)(a)) shall be the period following the period covered by the last Project Review up to and including the current Operating Year and the next Operating Period (as referred to in paragraph (1)(b)) shall be the period of the next five Operating Years.

For the avoidance of doubt, the K coefficient shall not be changed following an Annual Review but shall only be changed if the Parties so agree following a Project Review, but, if and to the extent that any of the matters in Clause 7(d)(e) apply, the provisions of Clause 7(4)(d) shall apply.

## **9. REVIEW PROCEDURE**

- (1) The procedure for determining any adjustments to the Rates of Tariffs under Clause 7(4)(d) shall be as follows:
  - (a) six months before the commencement of a Tariff Period , the Mandate Monitoring Unit (or, if the Mandate Monitoring Unit has not been established, representatives of the City and the Company) shall convene and shall endeavour to agree a recommendation as to the Rates of Tariff for the next Tariff Period which it shall give to the City and the Company as soon as agreed;
  - (b) four months before the commencement of a Tariff Period, the Tariff Authority and the Company shall meet to discuss the Rates for the next Tariff Period and shall endeavour to reach agreement on the Rates in the light of any recommendation of the Mandate Monitoring Unit;
  - (c) if the Rates are not agreed at least three months before the commencement of the Tariff Period, the Tariffs shall be referred to the Fast Track Disputes Resolution Procedure to be assessed by the Fast Track Disputes Panel so that it can make a Recommendation as provided in Clause 36. If necessary the Dispute in relation to the Rates of Tariffs shall be finally determined pursuant to Clause 9(3) below and Clause 37.
- (2) The City shall set, or shall procure that the Tariff Authority sets, the Rates of the Tariffs in accordance with the Recommendation of the Fast Track Disputes Resolution Panel. The Rates of Tariffs shall be set on an interim basis.
- (3) Should there be a Dispute in relation to the Rates of Tariffs which is referred to arbitration in accordance with Clause 37 and should the Arbitral Panel determine in accordance with Clause 37 that the Recommendation was not correct, the award shall as far as practicable reflect the following criteria:
  - (i) if the Recommendation was for Rates lower than those determined by the Arbitral Panel, the award shall be a direction to the City to increase the Rates applicable during any remaining period of the relevant Operating Year and in relation to future periods so as to compensate the Company for any shortfall during the relevant Operating Year;
  - (ii) if the Recommendation was for Rates higher than those determined by the Arbitral Panel, the award shall be a direction to the City to decrease Rates applicable during any remaining period of the relevant Operating Year and in relation to future periods to compensate Clients for any overcharging of Tariffs during the relevant Operating Year; and
- (4) The direction in relation to Tariffs shall be applicable in relation to such periods and may in the case of paragraph (i) above reflect such reasonable financing charges as the Arbitral Panel shall determine.
- (5) If the Fast Track Dispute Panel, in considering a Dispute in relation to the Rates of Tariff, cannot determine the Justified Profitability, it shall appoint one or more International Financial and Technical Advisors to determine the Justified Profitability, in which event the following provisions shall apply:

- (a) the Independent Financial and Technical Advisors shall be representatives of internationally recognised, reputable firms of financial and technical advisors;
  - (b) the time period referred to in Clause 37(4) shall be extended from 45 to 60 days;
  - (c) the Independent Financial and Technical Advisors shall determine Justified Profitability within 45 days of their appointment in accordance with the criteria set out in Schedule E; and
  - (d) the Fast Track Disputes Panel shall apply the Justified Profitability determined by the Independent Financial and Technical Advisors in its Recommendation.
- (6)) The procedure set out in Clauses 9(1), (2), (3) and (4) shall apply to the fixing of the K coefficient under Clause 8 (Project Review) with the following amendments:
- (a) replace “Tariff Period” with “Operating Period”,
  - (b) replace “Rates of Tariff” and “Rates” with “K coefficient”.

#### **10. STATUTORY REQUIREMENTS AND REQUIRED CONSENTS**

- (1) (a) Notwithstanding any other provision of this Agreement, the Company shall at its own cost carry out its obligations under this Agreement and shall comply at all times with all Statutory Requirements and Required Consents (including those introduced after the date of this Agreement).
- (b) The Company shall comply with any decree, declaration, order, judgement, direction, stipulation or requirement given, made or issued by any Competent Authority in relation to the Company of any Statutory Requirement or Required Consent.
- (2) (a) The Company shall indemnify the City on demand against any and all penalties, claims, costs, demands, liabilities and expenses (including legal expenses on an indemnity basis) of any kind arising from any breach by the Company of any notice, licence, approval, Statutory Requirement or Required Consent arising during the Mandate Period or from any failure by the Company to give a notice or obtain a Required Consent which is its responsibility under this Agreement.
- (3) (a) The Company shall be deemed to have satisfied itself, as at the date of signature of this Agreement, as to the adequacy of the System, the Sites and the Required Consents for the purpose of discharging its obligations under this Agreement.
- (b) The Company shall be responsible for obtaining and maintaining, at its own cost, all Required Consents.
- (4) The Company shall notify the City immediately in the event that:
  - (a) the Company proposes to apply to a Competent Authority for the amendment or replacement of an existing, or the issue of a new, Required Consent; or

- (b) to the extent it has not already been notified under sub-paragraph (a) above, a Competent Authority proposes to amend or replace an existing, or issue a new, Required Consent,

and shall from time to time, at its own cost, provide to the City such other information in relation to the progress of such amendment, replacement or issue as the City may reasonably require.

- (5) The Company shall provide the City with all information reasonably requested by it in relation to the Required Consents (including, if so requested, copies of applications and copies of Required Consents).
- (6) To the extent that the same are within its power and control to grant or to procure, the City shall if required by notice in writing given by the Company use its reasonable endeavours to ensure that any Required Consents required by the Company for the performance of the Services are granted to the Company.

## **11. SERVICE LEVEL TESTS AND AUDITING**

- (1) It is acknowledged that a number of Competent Authorities are and shall during the Mandate Period be entitled to conduct tests (the "**Statutory Tests**") in relation to the Services under the relevant Statutory Requirements.
- (2)
  - (a) In addition to the Statutory Tests, the City shall be entitled to require tests to be carried out which it reasonably believes are necessary to establish that the Levels of Service are being met (the "**Service Level Tests**").
  - (b) On the establishment of the Mandate Monitoring Unit the functions of the City under this Clause shall be assumed by the Mandate Monitoring Unit.
- (3)
  - (a) The City may give seven (7) working days' prior notice to the Company that it requires Service Level Tests to be carried out as designated in the notice.
  - (b) The Service Level Tests shall be conducted by the Company to assess whether the Company is complying with the Levels of Service and shall be subject to monitoring by the City.
- (4) The Company shall issue a test report to the City containing full details of the results of the relevant Service Level Test within seven (7) days of a Service Level Test.
- (5) The Company shall provide all reasonable equipment, facilities and personnel required for the Service Level Tests whether the tests are conducted by the Company or by another person as provided in paragraph (6).
- (6) If the City is with good reason dissatisfied with the manner in which a Service Level Test is conducted or with the reporting of the results of such Service Level Test, the City shall advise the Company in writing of the grounds for such dissatisfaction (in sufficient and reasonable detail). In this event, the City may instruct the Company to repeat the Test at the Company's expense or may instruct another suitably qualified person to carry out the Test on behalf of the City at the cost of the Company.

- (7) The Company shall provide all reasonable access and facilities required for the City or another person acting on behalf of the City as provided in paragraph (6) to witness Service Level Tests.
- (8) The Company shall keep full records of all Statutory Tests and Service Level Tests and shall provide all information required by the City from time to time in relation to the Statutory Tests and the Service Level Tests.
- (9)
  - (a) The City or another person acting on behalf of the City shall have the right to audit the accuracy of any information provided by the Company under this Clause and the Company shall provide to the City all access and facilities required for it to do so.
  - (b) The Company shall comply with the provisions for auditing in Schedule F.

## 12. PENALTIES

- (1) If the Company fails to fulfil any of the Requirements in relation to the Services or the Connection Requirements it shall, subject to paragraphs (3), (4) and (5), pay to the City the relevant Penalties as provided in Schedule D.
- (2)
  - (a) If, in relation to any Capital Works Phase, the Company fails to complete the Capital Works Phase such that a Practical Completion Certificate is not issued before any Date for Completion specified in the Capital Investment Requirements, it shall subject to paragraphs (3), (4) (5) and Clause 7(4)(b), pay the relevant Capital Investment Performance Penalties. Such Penalties shall be payable on the Date for Completion.
  - (b) The relevant Date for Completion in relation to a Capital Works Phase shall be extended only by the following events and the new Date for Completion shall be certified on a reasonable basis taking into account the effect of the relevant event by the City:
    - (i) Force Majeure Events;
    - (ii) a City Variation;
    - (iii) the unavoidable effect of Change of law;
    - (iv) breaches of this Agreement by the City.
  - (c) Where Schedule D contains a date by which Levels of Service are to be achieved (a "**Level of Service Date**") and Capital Works are required to achieve the Levels of Service and such Capital Works are delayed due to the occurrence of the events set out in paragraph (b), the Level of Service Date shall be extended as provided in paragraph (b).
- (3) The Penalties shall, subject to paragraphs (4), (5) and Clause 7(4)(b), be calculated as set out in Schedule D and shall in relation to each Operating Year be adjusted as at the commencement of the second Operating Year and each subsequent Operating Year by reference to changes in the Retail Price Index (*Tarbijahinnaindeks*) as published by the Statistical Office (*Statistikaamet*) of Estonia during the period from the Effective Date to the commencement of the second Operating Year (in the case of the first Operating Year) and



from the date of the commencement of the Operating Year in question to the end of that Operating Year (in the case of subsequent Operating Years).

- (4) (a) It is acknowledged that fines, charges and other penalties (including, without limitation, any pollution charge levied under the Pollution Charge Act) ("**Statutory Penalties**") may be imposed by Competent Authorities which relate to the provision of the Services pursuant to the Statutory Requirements, in particular but without limitation, in relation to drinking water quality compliance and effluent quality compliance levels. Where Statutory Penalties are paid by the Company, then to the extent they relate to the matters in respect of which the Penalties are due under this Agreement, the Penalties shall be reduced by the amount of the Statutory Penalties.
- (b) The relevant Competent Authorities may authorise the City to collect Statutory Penalties on their behalf.
- (5) Penalties may be assessed at any time by the City or, following its establishment, the Mandate Monitoring Unit, but in any event shall be assessed, if not already assessed, as part of any Project Review.
- (6) All amounts due in respect of the Penalties shall be paid within two (2) months of the end of the month in which the Penalty is assessed together with interest at the Default Interest Rate calculated from the date two months after the month in relation to which the Penalties are assessed which interest shall be payable whatever period elapses before the Penalties are agreed or determined.
- (7) With the exception of the rights and remedies of the City under Clauses 18, 21 and 29, the Penalties shall be the sole remedy of the City in respect of the particular breaches of this Agreement to which they relate and the Company's liability for the Penalties shall not exceed 6,000,000 (six million Euros) in any one Operating Year or 10,000,000 (ten million Euros) in any two consecutive Operating Years.

### **13. CAPITAL INVESTMENT REQUIREMENTS**

- (1) The Company shall carry out Capital Works in order to comply with the Capital Investment Requirements (including, without limitation, the achievement of the issue of a Practical Completion Certificate on or before any Dates for Completion in relation to a Capital Works Phase set out therein) and the Connection Requirements and comply with all Statutory Requirements and Required Consents from time to time. The Company shall at its own cost and expense (subject to any applicable Statutory Requirements) carry out or procure the carrying out of all design, engineering, procurement, financing, testing, construction, installation and operation and maintenance necessary in connection with Capital Works.
- (2) The Company shall not make any Connection in relation to the Waste Water Collection, Treatment and Disposal Services or Potable Water Services which would result in the System being overloaded.
- (3) In the performance of the Capital Works the Company shall:
  - (a) comply with and ensure that the Capital Works comply with all Statutory Requirements and Required Consents and Good Industry and Operating Practices;

- (b) give priority to safety in its construction methods and activities in order to protect life, health, property and the environment;
  - (c) take all reasonable measures to minimise disruption and other inconvenience to the residents and businesses during construction;
  - (d) provide all necessary and qualified personnel for the performance of the Capital Works and, for all personnel actively involved in the execution of the Capital Works, provide to the City upon request copies of the qualifications of any personnel so provided;
  - (e) apply for and obtain in a timely manner and thereafter maintain the Required Consents in relation to the Capital Works.
- (4) If required by the City, the Company shall submit to the City a monthly report in a format to be reasonably agreed between the Parties of the progress of the Capital Works which report shall describe in reasonable detail:
  - (a) the items of Capital Works completed;
  - (b) the items of Capital Works in progress;
  - (c) the estimated time remaining to completion; and
  - (d) such other matters as the City may reasonably request.
- (5)
  - (a) The City shall be entitled to monitor the Capital Works and to carry out reasonable inspections of the Capital Works in the presence of a representative of the Company. The City shall ensure that such monitoring and inspections do not interfere with the progress of construction.
  - (b) All costs of such monitoring and inspection shall be borne by the City.
  - (c) The Company shall be advised by reasonable prior notice of any inspection to be carried out by the City.
  - (d) If required by the City, the Company shall make available and shall cause the relevant construction contractor to make available for inspection by the City or its duly authorised representatives and agents copies of all plans, designs, documents and information relevant to the Capital Works. Any inspection of confidential or proprietary information shall be subject to the confidentiality provisions of Clause 32 (Confidentiality).
- (6)
  - (a) The Company shall give the City not less than 7 days' prior written notice (each a "**Practical Completion Notice**") of the date on which the Company considers a Capital Works Phase has been completed.
  - (b) The Company and the City may at its discretion by notice in writing given before the expiry of the notice period following delivery of the Practical Completion Notice, require the Company to conduct within the first 20 days of the notice period:

- (i) any Works Performance Tests which are required by the City to confirm that the relevant works, materials and equipment are able to meet the design standards and specifications required by this Agreement; and/or
  - (ii) an inspection jointly with the City, to confirm that the Capital Works for that Capital Works Phase have been completed in accordance with this Agreement.
- (7) Immediately upon the completion of any Works Performance Tests and/or the inspection relating to a Capital Works Phase as provided in paragraph (6), the Company shall deliver to the City a certificate setting forth in reasonable detail all test procedures and results together with a report of any inspection (the "**Company's Certificate**"). Within 7 days of the receipt of the Company's Certificate, the City shall be entitled to advise the Company by notice in writing that it does not agree with the Company's Certificate (an "**Objection Notice**").
- (8) If the City issues an Objection Notice, the Company shall take all necessary corrective action and shall then repeat the procedures in paragraphs (6)(b) and (7) upon at least five days' prior written notice to the City.
- (9) If on the expiry of the period of 7 days after the issue of the Company's Certificate, the City has not issued an Objection Notice, the Company may issue a practical certificate of completion (the "**Practical Completion Certificate**") for that Capital Works Phase.
- (10) Any monitoring or inspection or requirement to correct work or substitute proper equipment and materials or any failure to do so shall not be constructed as a waiver of any of the rights of the City hereunder and shall not release the Company from any of its obligations under this Agreement.
- (11) The functions of the City under paragraphs (4), (5), (6), (7), (8) and (9) shall be carried out by the Mandate Monitoring Unit, once it is established.
- (12) In addition to the Project Reviews, the Company shall submit to the City at least six months before the commencement of each Operating Year its detailed proposals for compliance with the Capital Investment Requirements. The City shall notify the Company whether it has agreed to subsidise the Connection Charges and/or the Storm Water Services as soon as possible, but in any event within 1 month of the City's annual budget being approved. To the extent that the City fails to commit to provide the subsidy in relation to Connection Charges as set out in Clause 5(1)(a), or fails to commit to provide the subsidy in relation to the Storm Water Services as provided in Clause 5(2) or, having committed to do so, fails to provide the subsidies, the Capital Investment Requirements shall be adjusted accordingly to reflect such failure of the City, and/or any failure of the Company to comply with the Capital Investment Requirements shall to the extent caused by such failure of the City be deemed to be due to a Force Majeure Event.

#### 14. OPERATION AND MAINTENANCE

- (1) The Company shall be obliged at its own expense (subject to any applicable Statutory Requirements) to maintain and operate the System in accordance with Good Industry and Operating Practices.

- (2) Without prejudice to the obligations of the Company under this Agreement the Company shall ensure on a continuing basis that, at all times during the Mandate Period, its maintenance and operating procedures are sufficient to ensure that:
- (a) the Requirements are continuously met; and
  - (b) subject to Clause 4(1)(b) the System operates in accordance with all Statutory Requirements and Required Consents.

## **15. SUBCONTRACTORS**

- (1) The Company shall be entitled to engage Subcontractors in complying with its obligations under this Agreement. If required by the City, the Company shall give the City notice of any Material Subcontracts that it wishes to enter into at least 14 days before such Material Subcontract is entered into, together with (if required by the City) evidence reasonably satisfactory to the City that the requirements of paragraph (3) below have been complied with. The Company shall be wholly responsible for the acts, omissions and negligence of such suppliers and subcontractors, as if they were its own.
- (2) The Company warrants that the Project Agreements are the only Sub-contracts or other arrangements entered into in connection with the subject matter of this Agreement as at the date hereof and that the copies thereof delivered to the City are true copies of the originals.
- (3) The Company shall enter into all Subcontracts in accordance with any Statutory Requirements in relation to procurement, tendering and subcontracting which may be applicable to it including (without limitation) the Public Procurement Act (*Riigihangete Seadus*).

## **16. VARIATIONS**

- (1) The Company may from time to time propose Company Variations which shall require the consent of the City. Such consent shall not be unreasonably withheld in the case of a Company Variation which is required in order for the Company to fulfil its obligations under this Agreement or any requirement arising by virtue of a Statutory Requirement, a Required Consent or imposed by a Competent Authority. The City shall as soon as practicable and in any event within sixty (60) days after receipt of a proposal for a Company Variation notify the Company whether or not the City consents to the proposed Company Variation.
- (2) The City shall, subject to and in accordance with this Clause, have the power by notice to the Company from time to time during the Mandate Period to propose City Variations.
- (3) As soon as practicable and in any event within sixty (60) days after receipt of a notice under sub-Clause (2), the Company shall notify the City (together with full supporting details):
- (a) whether, in the Company's opinion any adjustments to the provisions of this Agreement would be necessary as a result of the proposed City Variation to enable the Company to perform its obligations under this Agreement;
  - (b) the estimated increase or reduction in the annual operating costs for each year remaining in the Mandate Period which would result if the proposed City Variation were carried out and the estimated capital cost of carrying out the proposed City

Variation (but not including any cost which is or would be incurred prior to the date on which the City Variation is confirmed under sub-Clause (6));

- (c)
  - (i) the Company's proposals for the funding of the capital costs of the City Variation;
  - (ii) the increases in the Tariffs during the relevant periods of the term of the financing required to cover the increases in the operating costs and the financing costs of the capital costs, which shall be taken into account in the next adjustment to the Rates of Tariffs pursuant to Clause 7;
- (d) subject to paragraph (e) below, the steps which the Company proposes to take to implement the proposed City Variation and the proposed timetable for taking those steps; and
- (e) if the Company objects to the proposed City Variation on any one or more of the following grounds, reasonable and appropriate evidence:
  - (i) that implementation of the proposed City Variation is impossible or not technically feasible, would be unsafe for the Company's personnel or would be contrary to Good Industry and Operating Practices;
  - (ii) that implementation of the proposed City Variation would infringe any Statutory Requirements; or
  - (iii) that the Company is unable to procure the necessary rights of access and/or use of such areas of land as it reasonably requires to implement the proposed City Variation,

provided that the Company shall not be entitled to object where the ground of objection in question can be adequately mitigated or overcome by amendments to the proposed City Variation, this Agreement or by the exercise of Good Industry and Operating Practices.

- (4)
  - (a) The Company shall use all reasonable endeavours to raise the necessary funding at reasonable commercial rates and shall put forward detailed proposals to the City for such funding. When the City accepts the funding proposals the financing costs (including capital repayments and interest) shall be funded by means of an increase in the Rates of Tariffs as provided in paragraph (8) below.
  - (b) If the Company is unable to raise the necessary funding despite having used reasonable endeavours as provided in paragraph (a) or if the City believes that the terms of the funding are not acceptable for any reason, then the Company shall not be obliged to carry out the City Variation unless the City agrees to provide funding and provides such funding as and when reasonably required on the basis of reasonable stage payments.
- (5) As soon as practicable after the City receives the Company's notice under paragraph (3), the parties shall discuss and agree the matters referred to in paragraphs (3) and (4). During the course of these discussions the City may propose modifications of the proposed City Variation, in which event the Company shall, as soon as practicable and in any event within thirty (30) days after receipt of the proposed modifications, notify the City of any

modifications to its notice under paragraph (3) (including, without limitation, as to whether the Company's opinion on the matters in paragraph (3)(a) is correct and as to whether the Company is reasonably entitled to object to the City Variation on one of the grounds specified in paragraph (3)(e)). If the Parties cannot agree on the matters referred to in paragraphs (3), (4) or (5) the dispute shall be determined by Fast Track Disputes Resolution Procedure in accordance with Clause 36. Any determination of any matter by the Fast Track Disputes Resolution Procedure shall entitle the City to confirm a City Variation and the Company shall carry out the City Variation, but a Party which is dissatisfied with such determination shall be entitled to refer the dispute to arbitration as provided in Clause 37(4).

- (6) As soon as practicable after the matters referred to in paragraph (3) are agreed, or have been determined by the Fast Track Disputes Resolution Procedure pursuant to paragraph (5), the City shall either confirm the Variation (as modified under paragraph (5), if applicable) or withdraw it. If the City does not confirm the City Variation within thirty (30) days after agreement or determination it shall be deemed to have been withdrawn. The City may not confirm a City Variation if it is agreed, or determined by the Fast Track Disputes Resolution Procedure, that the Company was reasonably entitled to object to the City Variation on one of the grounds specified in sub-Clause (3)(e).
- (7) The Company shall, subject to the provisions of this Clause, carry out with all diligence and complete within a reasonable period all work necessary to comply with a City Variation and, as from completion of such work or (if earlier) expiry of such reasonable period, be bound by this Agreement as though the City Variation were provided for in this Agreement.
- (8) The City undertakes that, in the event that there is an increase in the operating costs and financing costs (repayment of principal and interest), arising from a City Variation shall be compensated by means of an increase in the Rates of Tariffs in accordance with the provisions of Clause 7.

## **17. CHANGE OF LAW**

- (1) Where a Change of Law occurs or is due to occur, either party may by written notice to the other advise that party's opinion of the following matters:
  - (a) whether any adjustments to the provisions of this Agreement are necessary to enable the Company or the City to comply with the Change of Law.
  - (b) without prejudice to the operation of Clause 17(3) Change of Law the estimated increase or reduction in the annual operating costs for each year remaining in the Mandate Period and the Estimated Capital Cost required to comply with the Change of Law,

and shall give full supporting details of its opinion.

- (2) Save as is otherwise agreed by the Parties or provided in this Clause 17, any changes to the scope of Services under this Agreement which are necessary as a result of a Change of Law shall be carried out by the Company so as to comply with the Change of Law and shall be treated as Company Variations (with the effect that the provisions of this Agreement relating to Company Variations shall apply) and the resulting obligations or cost of any such adjustment shall be carried out entirely at the Company's cost and risk.

- (3) If any Changes of Law occur during an Operating Year which shall require the Company to comply with requirements in relation to Waste Water Collection, Treatment and Disposal Services, Potable Water Services or Connections different from: (x) those required by the Statutory Requirements at the commencement of the Operating Year; and also from (y) the Requirements and any other requirements under this Agreement and the aggregate effect of all such Changes of Law results in an increase or decrease in operating costs of more than 5% in a single Operating Year or 7.5% over any two consecutive Operating Years, then:
- (a) any necessary increases or decreases in operating costs shall be adjusted in the same manner as if the increases or decreases arose as a result of a City Variation provided that, where the Company is claiming an increase in operating costs it shall be required to demonstrate as a condition precedent to any increase in the Rates of Tariff that it used all reasonable endeavours to mitigate the effects of the Change of Law resulting in such increase;
  - (b) any requirements for the expenditure of capital costs shall be treated as if the City had issued a notice requiring a City Variation in relation to the capital works required and the relevant provisions of Clause 16 shall apply, provided that:
    - (i) Clause 16(4)(b) shall not apply so that if the Company is unable to raise the necessary funding despite having used reasonable endeavours as provided in paragraph 16(4)(a) or if the City believes that the terms of the funding are not acceptable for any reason or if pursuant to the Shareholders Agreement the City has the right, and exercises that right, to veto any necessary capital expenditure, the failure to carry out any Capital Works required to be carried out to comply with a Change of Law shall be deemed to be due to a Force Majeure Event (this provision being without prejudice to the operation of any Statutory Penalties); and
    - (ii) the City shall be deemed to have confirmed the City Variation on the determination of any dispute in relation to it by the Fast Track Dispute Resolution Procedure unless it notifies the Company within 31 days of any such determination that it does not wish to proceed with the City Variation in which case the provisions of Clause 18(3)(b)(i) shall apply.
- (4) In the event of any dispute or difference between the City and Company in relation to any matter arising in connection with a Change of Law the matters shall be referred to the Fast Track Disputes Resolution Procedure in accordance with Clause 36.

## 18. STEP-IN RIGHTS

- (1) If the City becomes aware that the Company has failed or is failing to, comply in some material respect with the requirements of this Agreement, the City may issue a notice to the Company giving details of the failure to comply (a "**Notified Default**") and requiring the Company to remedy the Notified Default within a reasonable period fixed by the City by reference to the nature and consequences of the default and the remedial action required.
- (2) If the Company fails to remedy a Notified Default within the period fixed by the City under paragraph (1) then, without prejudice to the City's rights under Clause 12 (Penalties) and Clause 21 (Termination by the City), the City may arrange for the Notified Default to be remedied and shall be entitled to recover the actual costs of such work from the Company.

- (3) Notwithstanding any other provision of this Agreement the City may (following notice given by the City to the Company, if practicable and reasonable) at any time take such action as it reasonably considers necessary in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety or the environment to ensure the proper discharge of its statutory functions where such functions are not being properly discharged through the Company under this Agreement (including, without prejudice to the generality of this provision, the suspension of the Company's rights under this Agreement, the removal, repair or replacement of any part of the System and the carrying out of any other work). The City may for this purpose enter upon any of the Sites and, for such period as is necessary for the purposes referred to above, take over all or part of the operation of the System and may, to the extent allowed by the Statutory Requirements, recover Tariffs from Clients. Operation of the System will revert to the Company on receipt of a notice from the City that it is satisfied that the matters referred to in this Clause have been remedied and that the Company is capable of performing the Services in accordance with its obligations under this Agreement.
- (4) (a) The Company shall co-operate fully with whatever action the City deems it appropriate to take for the purposes of paragraph (3) and shall provide all reasonable assistance to the City for that purpose and for the avoidance of doubt the Company shall not be obliged to perform and discharge obligations under this Agreement for so long as those obligations are being performed and discharged by the City pursuant to paragraph (3).
- (b) The City shall use reasonable endeavours to ensure that, to the extent reasonable and practicable in the circumstances, the action it takes pursuant to paragraph (3) shall be comply with Good Industry and Operating Practices.
- (5) For each day on which the City takes over the operation of or continues to operate a part or all of the System for reasons which do not arise from any breach by the Company of its obligations under this Agreement, the Company shall be entitled to receive from the date the City so takes-over such Company obligations:
- (a) the amount of fixed operation cost (which the Company is not reasonably able to mitigate); and
- (b) the margin of profit which the Company would otherwise have recovered from the consumers for such obligations.
- (6) For each day on which the City takes over or continues to operate part or all of the System for reasons which do arise from a breach by the Company, the Company shall:
- (a) pay the City all the City's reasonable costs of such operation which are not otherwise compensated by the Tariffs recovered by the City;
- (b) be entitled to receive from the date the City so takes over such Company obligations, the amount of fixed operation costs (which the Company is not reasonably able to mitigate),

and otherwise shall receive no payment from amounts recovered from Clients for Services provided during that period. The balance of the Rate so recovered shall be paid to the City as a debt due.



- (7) Any dispute about the amounts due to the Company under paragraphs (5) and (6) shall be subject to determination by the Fast Track Disputes Resolution Procedure in accordance with Clause 36 if only the amount of compensation is in dispute, or otherwise in accordance with Clause 37.

## **19. PAYMENTS**

- (1) The Parties will pay interest on any principal sums payable under this Agreement not paid on the date provided for payment under this Agreement, over the period from that date until the date of actual payment at the Default Interest Rate.
- (2) Each Party shall be entitled to set off of any amount due to it by the other Party against any amounts due to the other Party provided that such amounts have been assessed as being due and payable by the Mandate Monitoring Unit or by a determination of the Fast Track Disputes Resolution Procedure or arbitration under Clause 37.

## **20. FORCE MAJEURE**

- (1) Neither Party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Clause 20 shall not apply to that extent).
- (2) As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.
- (3) The Company shall, and shall procure that its Subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with Good Operating Practices (but without incurring unreasonable additional costs) to:
- (a) prevent Force Majeure Events affecting the performance of the Company's obligations under this Agreement;
  - (b) mitigate the effect of any Force Majeure Event; and
  - (c) comply with its obligations under this Agreement.

The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.

- (4) Should paragraph (1) apply as a result of a single Force Majeure Event for a continuous period of more than 180 days then the parties shall endeavour to agree any modifications to this Agreement (including, without limitation, determination of new tariffs (if appropriate) in

accordance with the provisions of Clause 7(4)(e)) which may be equitable having regard to the nature of the Force Majeure Event and which is consistent with the Statutory Requirements.

- (5) If the Company does not comply with any of its obligations under paragraph (3) above, paragraph (1) shall cease to apply on and as from the first date as of which the Company would not have needed to rely on that paragraph (1) if it had fully complied with its obligations under that paragraph (3).

## **21. TERMINATION BY THE CITY**

- (1) If, subject as provided in Clauses 21(4) and 22(2):

- (a) the Company is not permitted pursuant to the Statutory Requirements to undertake a substantial part or all of its operations and activities required to be undertaken under this Agreement provided that the City shall use its reasonable endeavours to ensure that the Company is not so prevented from undertaking its operations and services;
- (b) the aggregate amount of Penalties and Statutory Penalties incurred in any one Operating Year exceeds €3,000,000 (three million Euros) or in any two consecutive Operating Years exceeds €5,000,000 (five million Euros) such amounts to be changed in the same proportion that the Rates of Tariffs are changed pursuant to Clause 7(4)(d);
- (c) the Company fails to achieve the issue of a Practical Completion Certificate in relation to any Capital Works Phase by the date which is eighteen months after the Date for Completion applicable to the Capital Works Phase provided that the City has complied with its obligations under Clause 13;
- (d) the Company fails to pay any amount in excess of €1,000,000 (one million Euros) agreed or determined pursuant to the disputes resolution procedures under this Agreement within one hundred and twenty (120) days of the amount being or becoming due and payable;
- (e) a Prohibited Act is committed:
  - (i) by the Company or by an employee not acting independently of the Company; or
  - (ii) by an employee of the Company acting independently of the Company; or
  - (iii) by a Subcontractor or by an employee of that Subcontractor not acting independently of that Subcontractor; or
  - (iv) by an employee of a Subcontractor acting independently of that Subcontractor;
- (f) the Company is in material breach of any of its obligations under this Agreement:

- (i) in a manner or to an extent that is material in the context of the Company's obligations, and/or the City's rights, under this Agreement and/or the City's statutory and other duties and functions; or
- (ii) where the breach is:
  - (x) deliberate or wilful; or
  - (y) is repeated or persistent to such an extent as is, in the City's reasonable opinion, material,

then the City may give:

- (A) in relation to sub-paragraphs (a) and (f) not less than six months' notice in writing to the Company; and
- (B) in relation to sub-paragraphs (b), (d) and (e)(ii) to (iv) not less than 60 days' notice in writing to the Company;
- (C) in relation to sub-paragraphs (c) and (e)(i), not less than 30 days' notice in writing to the Company,

such notice being notice to terminate this Agreement (each a "**City Termination Notice**") and/or notice that the City is entitled to require the Investor (as defined in the Shareholders Agreement) to sell its shares in the Company pursuant to Clause 5.6 of the Shareholders Agreement (a "**Share Sale Notice**").

- (2) In the City Termination Notice or the Share Sale Notice (as the case may be) the City shall specify the ground or grounds of termination and details of the breach or breaches concerned. If the ground or grounds are any of those mentioned under sub-paragraph (1)(e)(ii) to (iv) the City Termination Notice or the Share Sale Notice (as the case may be) shall specify:
  - (a) the nature of the Prohibited Act; and
  - (b) the identity of the party whom the City believes has committed the Prohibited Act;
- (3) Upon the expiry of the period of notice (if any) comprised in a City Termination Notice or a Share Sale Notice the City may, without prejudice to any other remedy under this Agreement, by notice to the Company, terminate this Agreement (in the case of a City Termination Notice) or require the sale of the Investor's Shares in the Company pursuant to Clause 5.6 of the Shareholders Agreement (in the case of a Share Sale Notice), without affecting the rights and powers conferred by this Agreement on the City, unless in the case only of a termination notice issued pursuant to Clauses 21(1)(a), 21(1)(e)(ii), 21(1)(e)(iii), 21(1)(e)(iv), Clauses 21(1)(f)(i) or 21(1)(f)(ii)(y):
  - (a) the ground or grounds for termination specified in the notice has or have been remedied; or
  - (b) the City is satisfied that the Company is using its best endeavours to remedy such grounds and the grounds are remedied within such further period notified by the City;

- (c) in respect of the grounds mentioned under paragraphs (1)(e)(ii) and (iv) the Company has terminated the employee's employment and (if necessary) procures the performance of the relevant obligations by another person; or
- (d) in respect of the ground mentioned under paragraph (1)(e)(iii), the Company has terminated the relevant agreement which created the Subcontractor's obligations and procures the performance of those obligations by another person; or
- (e) in respect of the ground mentioned under paragraph (1)(f)(i) or paragraph (1)(f)(ii)(y), remedial action has commenced and is being pursued with all diligence and is completed to the reasonable satisfaction of the City within a reasonable period,

provided always that in the case of a termination notice issued pursuant to Clause 21(1)(a) the City shall, during the notice period, comply with its obligations under Clause 10(6) and consider in good faith any amendments to this Agreement proposed by the Company to remedy the ground for termination.

- (7) To the extent permitted by law the rights of the City to terminate this Agreement shall be limited to those provided in this Clause 21 and clause 22 and the rights on the part of the City set out in this Clause 21 arising as a result of a breach of Clause 21(1)(e) or (f) shall not be exercised during the Initial Period except where the circumstances giving rise to the exercise of such rights results from gross negligence or wilful misconduct of the Company.

## 22. BANKRUPTCY, INSOLVENCY AND THIRD PARTIES

- (1) Subject to paragraph (3), if an Insolvency Event occurs in relation to the Company, the City shall, subject to paragraph (3), be entitled to issue a City Termination Notice and/or a Share Sale Notice with immediate effect and the provisions of Clause 21(3) shall apply so that the City shall be entitled to exercise its rights under Clause 5.6 of the Shareholders Agreement.
- (2)
  - (a) The Company may from time to time by notice in writing to the City nominate up to five persons (each a "**Third Party**") as persons to whom the City shall give notices under this paragraph. For the avoidance of doubt, the Company may nominate its Designated Parent as a Third Party.
  - (b) The City shall give notice to each Third Party in the following circumstances:
    - (i) where it estimates that the aggregate of the Penalties and Statutory Penalties referred to in Clause 21(1)(b) has exceeded half the amounts stated in that Clause;
    - (ii) where it estimates that half the period of eighteen months referred to in Clause 21(1)(c) has been exceeded;
    - (iii) on the expiry of the sixty (60) days of the one hundred and twenty days referred to in Clause 21(1)(d);
    - (iv) on the expiry of three months of the six months notice given pursuant to Clause 21(1)(A) on the grounds set out in Clause 21(1)(a) or Clause 21(1)(f)

- (v) on the expiry of thirty (30) of the sixty days notice given pursuant to Clause 21(1)(B) on the grounds set out in Clause 21(1)(e)(ii) to (iv), and
- (vi) on the expiry of fifteen (15) of the thirty days notice given pursuant to Clause 21(1)(C) on the grounds set out in Clause 21(1)(b), (c), (d) and (e)(i).
- (c) On the receipt of a notice given to a Third Party under paragraph (b), the Third Party may exercise any rights it may have to exercise security over the undertaking or assets of the Company or the Investor under agreements entered into with the Company or the Investor, subject to such agreements having been entered into in accordance with the terms of the Shareholders Agreement.
- (3) The provisions of Clause 22(1) shall not apply, and there shall not be an Insolvency Event, by reason only of the appointment of a receiver or manager appointed to act on behalf of a Third Party.

## **23. EMPLOYEE INFORMATION**

### **(1) The Company shall:**

- (a) 12 months prior to the end of the Mandate Period;
- (b) at any time directed by the City; or
- (c) after the City or the Company has given notice to terminate the Agreement,

fully and accurately disclose to the City the information listed in Schedule G relating to the Employees, as the City may request. The City shall be authorised to use the information for informing any tenderer for the services provided pursuant to this Agreement and shall enable and assist the City and such other persons as the City may nominate to communicate with and meet the Employees as, when and where the City decides (in its absolute discretion).

## **24. RIGHTS OF ACCESS**

- (1) The City or a member of the Mandate Monitoring Unit may upon reasonable notice given to the Company at all times enter upon the Sites and inspect the operation and maintenance of the System to ensure the Company's obligations under this Agreement are being performed.
- (2) The City or a member of the Mandate Monitoring Unit shall at all times upon reasonable notice given to the Company have access to the System and shall be entitled to conduct tests and take samples and shall upon reasonable notice given to the Company be entitled to have access to test results and samples taken by or on behalf of the Company.
- (3) The City and members of the Mandate Monitoring Unit (except a member employed or nominated by the Company) shall, without prejudice to paragraph (1), in exercising their rights of access to the Sites, comply at all times with any relevant health and safety requirements at the Sites and in carrying activities under this Clause shall use all reasonable endeavours to ensure that such activities do not adversely affect the operations of the Company.

- (4) Where the City or a member of the Mandate Monitoring Unit (except a member employed or nominated by the Company) causes material damage to the fabric of the System in the exercise of its rights under this Clause, the City shall be liable to the Company for the reasonable cost of repairing the damage so caused.

## **25. ASSIGNMENT AND SECURITY**

Without prejudice to any assignment or other transfer of the rights or obligations of either party under this Agreement required or effected by or under Statutory Requirements, and save as permitted by this Clause or with the prior written consent of the other Party, neither Party may assign this Agreement or the rights or obligations arising under this Agreement nor create any security over this Agreement or such rights or over any property or rights forming part of the System, save that

- (a) the City may transfer its rights under this Agreement to an Affiliate but may not transfer any obligations under this Agreement except with consent as set out above; and
- (b) the Company may assign its rights under this Agreement to an Affiliate or to a party providing finance in connection with its business but may not transfer any obligations except with consent as set out above.

## **26. CITY'S REPRESENTATIVE**

- (1) The City's Representative has authority to act on behalf of the City under this Agreement only where, and to the extent that, this Agreement so provides expressly. In the absence of such express provision, except as provided in the Statutory Requirements the City's Representative shall have no authority to give instructions to the Company, derogate from or amend this Agreement, relieve the Company of any duty or obligation under this Agreement or otherwise to act on behalf of the City under this Agreement.
- (2) The City may from time to time in writing delegate to the City's Representative any of the powers and authorities vested in the City pursuant to this Agreement and shall furnish the Company with a copy of all such written delegations of powers and authorities.
- (3) Any notice or consent given by the City's Representative to the Company under this Agreement or within the terms of such delegation, but not otherwise, shall bind the Company and the City (for whom the City's Representative shall be deemed to act as agent) as though it had been given by the City.
- (4) Subject to any mandatory requirements of Estonian law and without prejudice to the responsibility of the City for the activities of the City's Representative, in the discharge of his functions under this Agreement the City's Representative shall not owe any duty to the Company and shall incur no liability to it.
- (5) The City may remove and replace the City's Representative at any time without the consent of the Company but shall give the Company immediate notice of any removal or replacement and provided always that no such removal or replacement of any person as the City's Representative shall invalidate or otherwise affect any actions or decisions of such person in

his capacity as the City's Representative prior to such removal or replacement. In the event that the City removes the City's Representative, then, until it appoints a replacement, any notification to be made by the Company to the City's Representative shall be made to the City.

- (6) It is acknowledged that certain functions of the City's Representative shall be fulfilled by the Mandate Monitoring Unit once it is established.

## **27. COMPANY'S REPRESENTATIVE**

- (1) The Company shall appoint a competent representative, who shall have been approved previously by the City, to superintend the carrying out of the Company's obligations and to act as the Company's agent in connection with this Agreement.
- (2) The Company's Representative shall, together with such of the Company's staff as may be appropriate, attend all meetings with the City at times and at frequencies reasonably required by the City.
- (3) The Company's Representative shall be deemed to have full power and authority to act on behalf of the Company except to the extent that the Company shall have notified to the City in writing any limitations in that power and authority.
- (4) The Company may, and if so required by the City on reasonable grounds stated in a notice given by the City to the Company shall, remove or replace the Company's Representative at any time provided always that no such removal or replacement of any person as the Company's Representative shall invalidate or otherwise affect any actions or decisions of such person in his capacity as the Company's Representative prior to such removal or replacement.
- (5) The Company shall remove, or procure the removal, from the Sites of any person whose behaviour or activities are likely, in the opinion of the City, to bring the City into disrepute.

## **28. INFORMATION AND REPORTING**

- (1) The Company shall maintain its books and records for the Mandate Period and shall at reasonable times and on reasonable notice permit the City or the Mandate Monitoring Unit (once established) to have access to all such books and records and all other information in its possession as may be required in the reasonable opinion of the City or the Mandate Monitoring Unit (once established) to enable it to monitor the performance by the Company of its obligations under this Agreement, or to exercise the City's rights thereunder, or to verify amounts due from one Party to the other under this Agreement, to audit the same and to take copies of all or part thereof.
- (2) In the event that a matter has been referred to the Fast Track Disputes Resolution Procedure for determination, the Company shall also permit the panel appointed pursuant to the Fast Track Disputes Resolution Procedure to have access to its books and records and all other information in its possession as the panel appointed pursuant to the Fast Track Disputes Resolution Procedure may require in order to determine the matter in question, and to take copies of all or part thereof for such purpose, and the Company agrees and acknowledges that the City is entitled to disclose copies of the same in its possession to the panel appointed pursuant to the Fast Track Disputes Resolution Procedure.

- (3) The provisions of paragraphs (1) and (2) are subject to the provisions of Clause 32 (Confidentiality).
- (4) During the Mandate Period the Company shall supply the City with such information as may be reasonably required by the City or the Mandate Monitoring Unit (once established) having regard to the City's statutory duties or the obligations to be performed by the Company under this Agreement.

## 29. INDEMNITIES

- (1) The Company shall, subject to paragraph (6), be responsible for, and shall release and indemnify the City, its employees, agents and contractors on demand from and against, all liability for death or personal injury, loss of or damage to property (including property belonging to the City or for which it is responsible), actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) which may arise out of, or in consequence of the performance or non-performance by the Company of its obligations under this Agreement. This paragraph (1) shall not apply to the extent such non-performance is due to any breach by the City of its obligations under this Agreement.
- (2)
  - (a) The City shall be responsible for, and shall release and indemnify the Company, its employees, agents and contractors on demand from and against all liability for death or personal injury and loss of or damage to the property of third parties, and any claims, costs, demands and expenses arising in relation to such liability (including legal expenses on an indemnity basis) to the extent resulting from any breach by the City of its obligations under this Agreement, except to the extent that any such liability arises from the exercise by the City of its step-in-rights under Clause 18 as a result of a breach by the Company of its obligations under this Agreement, in which case the City shall only be responsible for loss of or damage to property to the extent resulting from any wilful act or omission of the City, its employees, agents or contractors.
  - (b) For the purposes of paragraph (a) above third party shall not include:
    - (i) the Company or any Affiliate of the Company;
    - (ii) any Sub-contractor or supplier of any tier of the Company or of any Affiliate of the Company;
    - (iii) any person providing funding in connection with Capital Works undertaken pursuant to this Agreement; and
    - (iv) any project managers, consultants, professional or other advisers to any of the persons referred to in paragraphs (i) to (iii) above.
- (3)
  - (a) The Company:
    - (i) undertakes to defend the City from and against any claim or action that the operation of the System or the activities of the Company in the performance of this Agreement infringes the Intellectual Property Rights of a third party ("**IPR Claim**"); and



- (ii) shall indemnify the City from and against any losses, damages, and costs (including legal fees) and expenses incurred by or awarded against the City as a result of, or in connection with, that IPR Claim.
- (4) If one Party to this Agreement (the "**Beneficiary**") becomes aware of any matter which might give rise to a claim for an indemnity under this Agreement from the other Party to this Agreement (the "**Undertaker**"), the following provisions shall apply:
  - (a) the Beneficiary shall immediately give written notice to the Undertaker of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Undertaker with respect to the matter (and if the matter has become the subject of any proceedings the Beneficiary shall give the notice within sufficient time to enable the Undertaker time to contest the proceedings before any first instance judgement in respect of such proceedings is given);
  - (b) the Beneficiary shall take such action and institute such proceedings, and give such information and assistance, as the Undertaker or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Undertaker) the rights of the Beneficiary or its insurers in relation to the matter;
  - (c) in connection with any proceedings related to the matter (other than against the Undertaker) the Beneficiary shall use professional advisers nominated by the Undertaker or its insurers and approved by the Beneficiary (such approval not to be unreasonably withheld or delayed) and if the Undertaker or its insurers so requests and the Beneficiary consents (such consent not to be unreasonably withheld or delayed), allow the Undertaker or its insurers the exclusive conduct of the proceedings in each case;
  - (d) the Undertaker shall fully indemnify the Beneficiary for all costs incurred as a result of any request or nomination by the Undertaker or its insurers pursuant to paragraph (b) or paragraph (c);
  - (e) the Beneficiary shall not admit liability in respect of or settle the matter without the prior written consent of the Undertaker (such consent not to be unreasonably withheld or delayed);
  - (f) if the Undertaker has conduct of any litigation and negotiations in connection with a claim, the Undertaker shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Beneficiary to be in breach of its obligations to its current or past employees or to cause the Beneficiary's business interests to be materially prejudiced.
- (5) The indemnities contained in this Clause shall, for the avoidance of doubt, extend to include all costs and expenses suffered or reasonably incurred by the Beneficiary in connection with enforcing its rights under this Clause.
- (6) Neither Party shall have any liability to the other for loss of revenue or loss of profit, loss of business or indirect or consequential or economic loss ("**Consequential Loss**") arising from or in connection with the performance or non-performance of its obligations under this

Agreement or any act or omission committed in relation to the subject matter of this Agreement, provided that this paragraph (6) shall not apply and Consequential Loss shall be recoverable in relation to any claim under or arising out of the operation of Clauses 12, 16,17,29 and 31.

- (7) The liability of a Party to the other Party arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to that other Party under the relevant Statutory Requirements or otherwise provided that any amounts recovered in respect of any matter pursuant to Statutory Requirements shall be taken into account in assessing loss for the purposes of the operation of any indemnity under this Clause 29.
- (8) The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of this Agreement.

### **30. OWN ENQUIRIES**

- (1) Without prejudice to any warranties given by the City in the Share Sale and Subscription Agreement and notwithstanding any reports, data or opinions made available to it, or used to obtain Required Consents, the Company shall be deemed to have satisfied itself as to the suitability of its property and facilities and the nature and extent of the risk assumed by it in relation to the Mandate and shall be deemed to have gathered all information necessary to perform its obligations under this Agreement including, without limitation, information as to the nature, location and condition of the Sites and the System (including hydrological, geological, geotechnical and sub-surface conditions), archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities, flow and load estimates and characteristics, the quality of existing structures, sources of raw water and catchment areas and obligations assumed as a result of Required Consents and Statutory Requirements.
- (2) The Company shall not in any way be relieved from any obligation under this Agreement, nor shall it be entitled to claim against the City, on grounds that any information whether obtained from the City or otherwise (including information made available by the City) is incorrect or insufficient (whether or not contained in the Levels of Service or any other part of the Requirements) and shall make its own enquiries as to the accuracy and adequacy of such information.

### **31. INSURANCE**

- (1) (a) The Company shall with effect from the Effective Date take out and maintain the insurances referred to in paragraph (b) and any other insurances as may be required by law.
- (b) (i) The insurances shall be those in relation to physical loss and damage and property damage, business interruption, third party liability and any other matters as would be maintained by a prudent company undertaking all the business operations and activities similar to that of the Company and as required under this Agreement.
- (ii) The insurances shall be taken out with insurers of substance and repute.

- (iii) The terms of the insurances shall be no less favourable than reasonable arm's length terms.
- (2) No Party to this Agreement shall take or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which such Party is a co-insured or additional insured person.
- (3) The insurances referred to in paragraph (1) shall:
  - (a) where the insurance is maintained by a party other than the Company, name the Company as co-insured for its separate interest with any other party maintaining the insurance so that non-disclosure by one co-insured shall not affect the ability of the other to recover;
  - (b) contain appropriate provisions waiving the insurers' subrogation rights against the City, its employees, agents and Sub-contractors of any tier; and
  - (c) provide for 30 days' prior written notice of their cancellation, non-renewal or amendment to be given to the City.
- (4)
  - (a) If required by the City, the Company shall ensure that the City is named, and shall procure that any other party maintaining the insurances names the City, on each policy as a co-insured for its separate interest.
  - (b) Where the City is named as co-insured in relation to a policy relating to physical damage to the property of the Company and recovers under such policy, it shall release the money recovered to the Company on reasonable terms for the purposes of reinstatement.
- (5) The Company shall furnish copies of all insurance policies relating to the above to the City on request and the City shall be entitled to inspect during ordinary business hours such original policies of insurance taken out and maintained pursuant to paragraphs (1) which are or should be in the custody of the Company, together with evidence that the premiums payable thereunder have been paid and that the insurances are in full force and effect.
- (6) Renewal certificates in relation to such insurances shall be obtained as and when necessary and copies thereof (certified in a manner acceptable to the City) shall be forwarded to the City as soon as possible but in any event at least 10 days before the renewal date.
- (7) If the Company fails to maintain or procure the maintenance of such insurances, the City may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover the amounts thereof on written demand from the Company.
- (8) The Company shall give the City notification within 30 days after any claim with respect to any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to such claim.
- (9) Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Company of its liabilities and obligations under this Agreement.

- (10) The insurances referred to in this Clause shall be effected with insurers of substance and repute approved by the City, such approval not to be unreasonably withheld or delayed.

## **32. CONFIDENTIALITY**

- (1) Subject to paragraph (2), the Parties to this Agreement shall keep confidential all matters relating to this Agreement and shall not make any disclosure, and shall use their best endeavours to prevent their employees, sub-contractors agents and servants from making any disclosure, to any person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to this Agreement.
- (2) The confidentiality obligation of the Parties shall not apply to the following:
- (a) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause;
  - (b) any disclosure which may reasonably be required for the performance of that Party's obligations under this Agreement or to enable the Panel appointed pursuant to the Fast Track Disputes Resolution Procedure to make a determination where a matter has been referred to it;
  - (c) disclosure of information which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto);
  - (d) disclosure of any information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing Party;
  - (e) the provision of information to shareholders, suppliers or subcontractors of the Company for purposes connected with the Mandate;
  - (f) disclosure of information to enable the Company to comply with its insurance obligations;
  - (g) disclosure of information by the City to any other department, office or agency of the Government;
  - (h) any disclosure by the City of any part of the Agreement or any document related to the Agreement to which it is a party and which in each case contains no Commercially Sensitive Information; and
  - (i) any disclosure for the purpose of the examination and certification of the City's accounts;
  - (j) any disclosure reasonably required for the provision of finance to the Company.

- (3) Where disclosure is permitted under paragraph (2), other than paragraphs (c), (h) and (i) the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Agreement.
- (4) The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of this Agreement.

### **33. MISCELLANEOUS**

- (1) Save as required by law or regulation the Parties to this Agreement shall not make any announcements in connection with this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.
- (2) None of the terms, provisions or conditions of this Agreement shall be considered waived by any Party to this Agreement unless a waiver is given in writing by that Party or its duly authorised representative.
- (3) No waiver under paragraph (2) above shall be a waiver of any past or future default or breach nor shall it create any amendment or addition to or deletion from any of the terms, provisions or conditions of this Agreement unless (and then only to the extent) expressly stipulated in the waiver.
- (4) In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other Party before the signature of this Agreement and each of the Parties waives all rights and remedies which, but for this paragraph, might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance; provided that nothing in this paragraph shall limit or exclude any liability for fraud.
- (5) This Agreement and the relevant documents referred to in it contain the whole Agreement between the Parties relating to the subject matter of this Agreement and supersede all previous agreements between the parties relating to that subject matter.
- (6) The various agreements, exhibits and schedules which together make up this Agreement are to be taken as mutually explanatory of one another and, in the event that the Company or the City discovers any ambiguities or discrepancies between any of such documents, the same shall be explained and adjusted by mutual agreement between the City and the Company.
- (7) Each Party agrees, upon the request of the other, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.
- (8) The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of this Agreement.
- (9) Notwithstanding any rule of law to the contrary, and save as otherwise provided in this Agreement, this Agreement shall not be terminated or suspended on account of destruction of,

or damage to, the System for whatever reason but shall continue in full force and effect in every respect.

- (11) Save as specifically provided in this Agreement, nothing herein shall prejudice the exercise of the rights of or the fulfilment of any obligation of the City acting pursuant to any Statutory Requirement.
- (12) This Agreement may be executed in any number of counterparts and by different Parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument.

#### **34. WAIVER OF SOVEREIGN IMMUNITY**

- (1) To the extent that the City may be entitled in any state or jurisdiction to claim or benefit from any immunity (whether characterised as state immunity, sovereign immunity, act of state or otherwise) now or hereafter for itself or any of its property or assets (which it now has or may hereafter acquire) in respect of its obligations under this Agreement from service of process or other documents relating to proceedings, jurisdiction, suit, judgement, execution, attachment (whether before awarded or judgement, in aid or execution or otherwise) or legal process or to the extent that in any such jurisdiction there may be attributed to it or any of its property or assets such immunity (whether or not claimed), the City expressly, unconditionally and irrevocably agrees not to claim, invoke or permit to be invoked on it or its property or assets' behalf or for it or its property or assets' benefit and hereby expressly, unconditionally and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- (2) Subject to any applicable appellate rights, the City consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with the proceedings including, without limitation, the making enforcement or execution against any property or assets whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in the proceedings; and
- (3) The City irrevocably and unconditionally acknowledges that the execution, delivery and performance of this Agreement constitute private and commercial (and not public) acts of the City.

#### **35. NOTICES**

- (1) All notices or other communications under this Agreement to any Party to this Agreement shall be deemed to be duly given or made when given in writing and:
  - (a) when delivered in the case of personal delivery or post; or
  - (b) when despatched in the case of telex (provided the relevant answer back is received); or
  - (c) when received in the case of facsimile,

in each case to such Party addressed to it at the address given below or at such address as such Party may after the date of this Agreement specify in writing for such purpose to the other Parties to this Agreement by notice in writing.

City: the Enterprise Board of the City of Tallinn  
Address: Vabaduse väljak 7  
15199 Tallinn, Estonia  
For the attention of: Ms. Kairi Teniste  
Fax Number: +372 6 404 208  
City's Representative: Mr. Jüri Mõis

Company: AS Tallinna Vesi  
Address: Ädala 10  
10614 Tallinn, Estonia  
For the attention of: Mr. Kalle Tiiter  
Fax number: +372 6 262 302  
Company Representative: Mr. Kalle Tiiter

- (2) A written notice includes a notice by facsimile provided that a copy by way of confirmation is also delivered by personal delivery or post.
- (3) For the avoidance of doubt, communication by electronic mail shall not, unless otherwise agreed in writing by the Parties, be an acceptable method for the communication of notices.
- (4) A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

### **36. FAST TRACK DISPUTES RESOLUTION PROCEDURE**

- (1)
  - (a) The provisions of this Clause shall apply where this Agreement expressly provides that a matter is to be determined pursuant to the Fast Track Disputes Resolution Procedure or where one Party elects to refer a Dispute to the Fast Track Disputes Resolution Procedure .
  - (b) In all cases the Recommendation of the Fast Track Disputes Panel shall not be binding upon the Parties but the Parties shall consider in good faith whether it is reasonable for them to agree the matter in dispute upon the basis of any Recommendation.
  - (c) Notwithstanding any other provisions of this Agreement, following a Recommendation of the Fast Track Disputes Panel, either party may refer a Dispute to arbitration as provided in Clause 40.
- (2)
  - (a) In the event that a Dispute is referred to the Fast Track Disputes Resolution Procedure under this Clause 36, a panel shall be established (the "**Fast Track Disputes Panel**") which shall be made up of 3 members.
  - (b) Until the establishment of the Mandate Monitoring Unit and the provision of two members of the Mandate Monitoring Unit to the Fast Track Disputes Panel, all the members of Fast Track Disputes Panel shall be provided as set out in paragraph (d).

- (c) On the establishment of the Mandate Monitoring Unit, the Mandate Monitoring Unit shall provide two members to the Fast Track Disputes Panel. One of the members shall be a member which has been nominated by the City and one of the members shall be a member which has been nominated by the Company. . The third member shall be provided as set out in paragraph (d) and shall be the chairman of the Fast Track Disputes Panel.
  - (d) Where this paragraph applies, the member or members shall be nominated by a firm, company institute or similar body (the "**Appointing Body**") agreed between the Parties, or if they have not agreed on the Appointing Body within 14 days, the Appointing Body shall be decided by the Stockholm Arbitration Institute of the Stockholm Chamber of Commerce on the application of either Party.
- (3) The Fast Track Disputes Panel shall act as an expert and not as an arbiter. The Parties shall each have the right to make representations to the Fast Track Disputes Panel. If the Fast Track Disputes Panel so decides, there may be hearings, but such hearings shall be informal and shall not be bound to proceed in accordance with any specified procedure or with any rules of due process or natural justice or other rules. The Fast Track Disputes Panel shall regulate procedure as it sees fit. The Fast Track Disputes Panel shall have the power to open up, review, and revise any certificate, opinion, requisition or notice including any decision of the City or the City's Representative and to consider all matters in relation to the Dispute so as to make a recommendation (a "**Recommendation**") to the City and to the Company for the resolution of the Dispute. The Fast Track Disputes Panel may take such advice and assistance from expert consultants, professional advisers or other third parties as it reasonably considers appropriate to enable it to make a Recommendation in relation to the Dispute and the costs of such shall be borne by the Parties as the chairman of the Fast Track Disputes Panel shall direct.
  - (4) The Fast Track Disputes Panel shall use all reasonable endeavours to make a Recommendation on the basis of a majority vote within 45 days of it being established to determine the relevant Dispute.
  - (5) It is acknowledged that there may be circumstances where it is impossible for the Fast Track Disputes Panel to make a Recommendation and if the Fast Track Disputes Panel decides that it is unable to do so it shall inform the Parties as soon as practicable.

### **37. DISPUTES**

- (1) Subject to the provisions of Clause 36, all disputes, claims and controversies arising out of or in connection with this Agreement during, or after the termination of, the **Mandate Period** (a "**Dispute**") shall be determined in accordance with this Clause.
- (2) Where any Dispute arises, the Party intending to claim relief shall issue a Dispute Notice to the other Party as soon as practicable after the date upon which it became aware of the Dispute.
- (3) Except where this Agreement expressly provides that a matter is to be determined pursuant to the Fast Track Disputes Resolution Procedure, the Parties shall, on receiving a Dispute Notice, prior to referring a matter for resolution under the Fast Track Disputes Resolution Procedure under Clause 36 or referring a dispute to arbitration under this Clause, attempt in good faith to resolve the Dispute through negotiations between the respective senior



executives of the Parties who have authority to settle the same. If the Parties fail to resolve the Dispute within 15 days of the Dispute Notice, the Dispute shall be referred to the Fast Track Disputes Resolution Procedure Panel, according to Clause 39 above.

- (4) Subject to paragraph (3) and compliance with its provisions, all Disputes which have not been resolved pursuant to paragraph (3) or through the Fast Track Disputes Resolution Procedure pursuant to Clause 39 shall, on the request of either Party, be referred to and finally resolved by arbitration in accordance with the following procedure:
- (a) The Dispute shall upon the application of either Party, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules as from time to time in force and to the extent consistent with such Rules in accordance with the following provisions.
  - (b)
    - (i) The place of arbitration shall be Tallinn Estonia.
    - (ii) The number of arbitrators shall be three. Both Parties to the Dispute shall appoint one arbitrator and the third arbitrator, who shall be the chairman of the arbitration tribunal, shall not be either Estonian or American or British shall be appointed by the two appointed arbitrators.
    - (iii) Should one of the appointed arbitrators be unable to act, the appointing Party will appoint a substitute arbitrator in this place.
    - (iv) In the event that either of the Parties does not appoint an arbitrator within 10 Business Days from the date on which a Party requested that the Dispute be referred to arbitration in accordance with this paragraph (4) or if the two appointed arbitrators fail to appoint the third arbitrator within 10 Business Days from their appointment, such third arbitrator shall be appointed by the Arbitration Institute of the Stockholm Chamber of Commerce.
    - (v) the language to be used in the arbitration proceedings (whether in written or oral submission or communication) shall be English;
    - (vi) the Parties shall make equal contributions towards any advance costs incurred or requested by the arbitrators in order to facilitate the arbitration;
    - (vii) the costs of arbitration shall be borne by the Parties in such proportions as may be determined by the arbitrators.
  - (c) The award of the Arbitral Panel shall be final and binding upon the Parties and each Party agrees to comply with the award without unreasonable delay and within the period specified by the arbitrators. Neither Party shall invoke any laws or circumstances that would provide such Party with immunity from arbitration or enforcement of the arbitration award.
- (5) (a) The Arbitral Panel while determining any dispute shall, without prejudice to the generality of its powers, have power to open up, review and revise any certificate, opinion or notice and any decision of the City's Representative; have access to and take into consideration the Fast Track Disputes Panel's Recommendation; subject to paragraph (b) below, award compensation, assess and award damages and award expenses to or against any parties in the arbitration; make interim or partial awards; and award interest at such rate and on such basis, simple or compound, as it thinks fit

on any sum awarded by it (whether interim or final) for any period, whether before or after the date of its award.

- (b) Without prejudice to the foregoing, the Arbitral Panel shall:
  - (i) give effect to the provisions of Clause 9(2);
  - (ii) where it has determined that the City or other Tariff Authority should have set the Rates of Tariffs at rates different from those set by the City or other Tariff Authority, direct that the Company be compensated not by the payment of money by the City but by a direction that the City increase or reduce (as the case may be) the Rates of Tariffs applicable in relation to any period, or a direction that the City procure that the relevant Tariff Authority does so. If the City fails to comply with such direction, the Arbitral Panel may award compensation to the Company against the City but, for the avoidance of doubt, shall not in relation to a Dispute concerning the Rates of Tariffs award compensation to the Company against the City in any other circumstances.
- (c) The award of the Arbitral Panel shall be binding on the parties.
- (6) Performance of this Agreement shall continue during determination of a dispute under the Fast Track Disputes Resolution Procedure or arbitration unless:
  - (i) the Parties agree to a suspension; or
  - (ii) if such continuation is impossible due to the nature of the Dispute.

### **38. COSTS AND EXPENSES**

The Company shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation and completion of this Agreement.

### **39. GOVERNING LAW AND LANGUAGE**

- (1) This Agreement shall be governed by, and construed in accordance with, the laws of Estonia.
- (2) The governing language of this Agreement shall be English but a translation into Estonian shall be made and agreed by the Parties. In the event of any conflict between the provisions of the English and Estonian language versions of this Agreement the English language version shall prevail.

IN WITNESS WHEREOF these presents consisting of this and the preceding 48 pages are, together with the Schedules executed as follows:

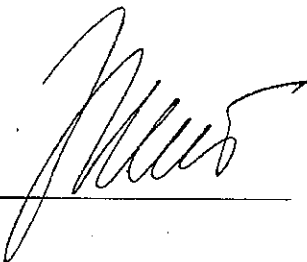
They are subscribed for and on behalf of the said

**TALLINNA LINN (THE CITY OF TALLINN)**

on this 12<sup>th</sup> day of January, 2001

by the Mayor of the City of Tallinn

Mr. Jüri Mõis:



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They are subscribed for and on behalf of the said

**AS TALLINNA VESI**

on this 12<sup>th</sup> day of January, 2001

by the Chairman of the Management Board of AS Tallinna Vesi

Mr. Kalle Tiiter:



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**SCHEDULE E: PART I**  
**RATE OF TARIFF CRITERIA**

The price of services of water supply and drainage of wastewater (*Veevarustuse ja heitvee ärajuhtimise teenuse hind*) ("Rate of Tariff") is set in accordance with the PWSSA and Principles of Adjustment of the Price of Service of Water Supply and Drainage of Wastewater in the Public Water Supply and Sewerage System of Tallinn, as approved by Tallinn Town Council on 22nd December, 1999.

The Rate of Tariff shall comprise

- i) Fixed charge,
- ii) Charge for water extracted
- iii) Charge for drainage of wastewater

The Rate of Tariff shall be established such, that the Company can

- i) cover production costs;
- ii) comply with quality and safety requirements;
- iii) comply with environmental protection requirements;
- iv) operate with justified profitability;

The Rate of Tariff shall not be discriminatory with regard to different clients or groups of clients. The Rate of Tariff shall be presented excluding VAT.

The Rate of Tariff will be fixed by the City Government. The Company may propose amendments to the Rate of Tariff, explaining the need to change the Rate of Tariff and presenting supporting information as requested by the City.

The Rate of Tariff shall be determined based on the following formula:

$$T_1 = T_0 * (1 + \Delta TH I + K)$$

Where

$T_1$  – Rate of Tariff for the next period

$T_0$  – Rate of Tariff for the current period

$\Delta TH I$  – Change in CPI (per cent)

$K$  – coefficient, reflecting additional change in the Rate of Tariff (per cent)

The accounting period for the change shall be 12 months to the end of a quarter, which ends less than 6 months prior to the fixing of the new Rate of Tariff by the City.

The K-Coefficient reflects additional change in the Rate of Tariff, which shall be agreed between the Parties in negotiations. The K-coefficient reflects the change in necessary expenses to be made by the Company to achieve the set Levels of Service, , and justified profitability, but does not include the changes in costs that are included in the change of CPI.

The Rate of Tariff is the weighted average price of services of water supply and drainage of wastewater, charged to the Clients by the Company. The weighted average price of services accounts for use of water and wastewater service by different client groups, and fixed charge. Rate of Tariff for the previous period ( $T_0$ ) will be calculated according to the following formula base on

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actual data. The accounting period will be 12 months to the end of a quarter, which ends less than 6 months prior to the fixing of the new Rate of Tariff by the City.

Determining the applicable price of services for supply of water and discharge of waste water will be based on end users. i.e. Domestic Tariff will be applied to owners or tenants of a living space as defined in the Dwelling Act (*Elamuseadus*), unless the Company and the City have agreed upon expanding the Domestic Tariff to other groups of Clients.

*Weighted average Rate of Tariff (T) = weighted average charge for water extracted + weighted average charge for drainage of wastewater + weighted average fixed charge*

$$T = \frac{V_j \times J_v + V_e \times E_v}{(J_v + E_v)} + \frac{K_j \times J_k + K_e \times E_k}{(J_k + E_k)} + \left( \frac{BV_j \times Fv_j}{J_v} \right) + \left( \frac{BV_e \times Fv_e}{E_v} \right) + \left( \frac{BK_j \times Fk_j}{J_k} \right) + \left( \frac{BK_e \times Fk_e}{E_k} \right)$$

Where

$V_j$  – Corporate price of services of water supply (EEK/m<sup>3</sup>)

$V_e$  – Domestic price of services of water supply (EEK/m<sup>3</sup>)

$K_j$  – Corporate price of services of drainage of wastewater (EEK/m<sup>3</sup>)

$K_e$  – Domestic price of services of drainage of wastewater (EEK/m<sup>3</sup>)

$Fv_j$  – Corporate fixed charge for water supply (EEK/m<sup>3</sup>)

$Fv_e$  – Domestic fixed charge for water supply (EEK/m<sup>3</sup>)

$Fk_j$  – Corporate fixed charge for drainage of waste water (EEK/m<sup>3</sup>)

$Fk_e$  – Domestic fixed charge for drainage of waste water (EEK/m<sup>3</sup>)

$J_v$  – volume of water supply services used by Corporate Clients (m<sup>3</sup>)

$E_v$  – volume of water supply services used by Domestic Clients (m<sup>3</sup>)

$J_k$  – volume of drainage of wastewater services used by Corporate Clients (m<sup>3</sup>)

$E_k$  – volume of drainage of wastewater services used by Domestic Clients (m<sup>3</sup>)

$BV_j$  – number of Corporate clients subject to fixed charge for water supply

$BV_e$  – number of Domestic clients subject to fixed charge for water supply

$BK_j$  – number of Corporate clients subject to fixed charge for drainage of wastewater

$BK_e$  – number of Domestic clients subject to fixed charge for drainage of wastewater

## PROCESS OF DETERMINING THE RATE OF TARIFF

K- coefficient will be presented for five years in advance, the yearly coefficients may be different. The Company will submit a proposal on the value of the K-coefficients, justifying the need to change the Rate of Tariff and submitting the following:

- (i) calculation method use for the K-coefficients
- (ii) Detailed business plan for the period to be regulated, including yearly:

- a. Estimate of revenues and expenses for the period in current and projected level of Rate of Tariff
- b. Investments planned to meet the required levels of service and sources of financing;
- (iii) Other information, as may be requested by the City

The Rate of Tariff is reviewed once each year according to the changes in the CPI and as set forth under this Agreement. The new Rate of Tariff will be determined and published three months before the changes are due to come into effect. It is intended to determine the new Rates of Tariff at the end of the third quarter of each year, using data as of the end of June, and to become effective starting from the beginning of the following Calendar Year .

The Company may also propose changes in the structure of the Rate of Tariff, including without limitation:

- (i) Changing the balance of the Rate of Tariffs applied to legal entities and population
- (ii) Changing the level of the Fixed Charge
- (iii) Changing the balance of price of service of water supply and price of service of discharge of wastewater.

The structure of the Rate of Tariff shall be agreed by the Parties, however, the weighted average Rate of Tariff must not exceed the level calculated based on the abovementioned formula.

#### **Criteria of Justified Profitability**

The Parties proposing Justified Profitability shall select 5 suitable market comparables and establish an appropriate level of Justified Profitability and further taking into account

- (i) generally accepted commercial principles for water and wastewater utilities
  - (ii) the specific economic situation in Tallinn and Estonia and
  - (iii) the Business Plan.
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