

THE REVISED CONCESSION AGREEMENT

THIS REVISED CONCESSION AGREEMENT, dated MAY 18 2021, ("Agreement") is made between the Metropolitan Waterworks and Sewerage System ("MWSS"), a government corporation organized and existing pursuant to Republic Act No. 6234, as amended, (the "Charter"), and Maynilad Water Services, Inc. ("MWSI"), a corporation organized and existing under the laws of the Philippines (the "Concessionaire").

WHEREAS, under its Charter, MWSS has jurisdiction, supervision and control over all waterworks and sewerage system within Metropolitan Manila, the entire province of Rizal and a portion of the province of Cavite;

WHEREAS, Republic Act No. 8041 (the "National Water Crisis Act of 1995"), as implemented by Executive Order No. 286 (December 6, 1995) and Executive Order No. 311 (March 20, 1996), mandates the MWSS to enter into arrangements that will result in the involvement or participation of the private sector in any or all of the segments of its operations and/or facilities;

WHEREAS, under Article 3(j) of the MWSS Charter, MWSS is authorized, among other things, to dispose of real and personal property, including rights and franchises, consistent with the purpose for which MWSS was created and reasonably required for the transaction of the lawful business of the same;

WHEREAS, MWSS has determined to grant concessions to private sector corporations, with at least sixty percent (60%) of the outstanding capital stock thereof is owned and controlled by Philippine nationals, which shall be deemed and considered herein as public utilities and to perform, as such, certain functions for the exercise of certain rights and powers of the MWSS, including and consistent with the right to operate the system of waterworks and sewerage services referred to in the MWSS Charter;

WHEREAS, pursuant to a process of selection through open and competitive public bidding, the Concessionaire has been awarded the right to enter into this Agreement with respect to the Service Area West, as identified in Schedule 1 hereto (the "Service Area"); and

WHEREAS, in a Concession Agreement dated February 21, 1997, MWSS and the Concessionaire mutually agreed to record the terms on which the Concessionaire is being granted the right to operate the waterworks and sewerage services in the Service Area for the period specified herein;

WHEREAS, MWSS and the Concessionaire have agreed, subject to the conditions hereinafter set forth, to amend the Concession Agreement dated February 21, 1997 in certain respects as set forth below;

NOW, THEREFORE, in consideration of the mutual promises and undertakings described herein, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

When used herein, the following terms shall have the meanings ascribed to those terms below:

"ADR" means Appropriate Discount Rate.

"Appraiser" means an independent third-party appraiser selected by the MWSS and the Concessionaire as approved by the Regulatory Office.

"Appropriate Discount Rate" means (i) for the periods prior to [effective date of this agreement], the approved rates by the MWSS; and (ii) from [effective date of this agreement date], is equal to nominal twelve percent (12%).

"Asset Condition Report" has the meaning given to that term in Section 6.5.2 hereof.

"Bulk Water" means any water supplied in bulk.

"Breakage Cost" means the aggregate of all reasonable and documented break costs incurred as a result of early termination by the Concessionaire, including costs incurred from the suspension, the breach and/or early termination or prepayment by the Concessionaire of its financing arrangements, subject in each case to the Concessionaire mitigating all such costs to the extent reasonably possible and provided that there shall be no double counting of such costs or expenses. The Breakage Cost shall not exceed 4% of the book value of Concessionaire Loans incurred by the Concessionaire, if any, in accordance with this Agreement and based on the Concessionaire's latest reported audited financial statements for the Service Area West.

"C" means two-thirds (2/3) of the percentage change in the Consumer Price Index for the Philippines as published by the Philippine Statistics Authority between the month immediately preceding the current Charging Year and the month preceding the start of the following Charging Year.

"Cash Flows" means (i) in the context of historical cash flows, both Receipts and Expenditures efficiently and prudently incurred by the Concessionaire in the course of carrying out its obligations under this Agreement, and (ii) in the context of future cash flows, (A) both anticipated Receipts and Expenditures efficiently and prudently incurred by the Concessionaire in the course of carrying out its obligations under this Agreement and (B) from and after the second Rate Rebasing Date, any Expiration Payment agreed to be paid by MWSS to the Concessionaire on the Expiration Date pursuant to Section 9.5; it being understood that Expenditures "efficiently and prudently incurred" does not include, among other things, payments for (X) Disapproved Assets or (Y) fees for management or consulting services required by the Concessionaire in order to carry out its obligations under this Agreement payable to any shareholder or affiliate of the Concessionaire to the extent, in the judgment of the Regulatory Office, that such fees do not represent the best value available in the market for such services.

"Change in Law" means any of the following events occurring as a result of an executive action of the Government:

- (a) change, amendment, modification of, addition to, or deletion from a law, rule or regulation of national application; or
- (b) an enactment or making of a new law, rule or regulation of national application; or
- (c) repeal of any law, rule or regulation of national application; or
- (d) change in the manner in which a law, rule or regulation of national application is applied, enforced or interpreted;

in any of the above cases which:

- (i) occurs after the Commencement Date;
- (ii) the Concessionaire had no knowledge of, or could not reasonably be expected to have had knowledge of, prior to the Commencement Date;
- (iii) specifically discriminates against the Concessionaire or the Project; and
- (iv) the Concessionaire is legally obliged to comply with.

"Charging Year" means any year beginning on January 1 following the first anniversary of the Commencement Date.

"Charter" means the Charter of the MWSS set out in Republic Act No. 6234 (as amended), as the same may be further amended or supplemented from time to time.

"Closing Date" means May 6, 1997, or such later date (not to exceed September 30, 1997) on which the conditions set out in Article 16 hereof have been satisfied.

"Commencement Date" means the day immediately following the Closing Date.

"Common Purpose Facilities" means the Facilities upstream of Angat dam established under the UATP project and the Facilities downstream of the auxiliary hydropower plant of Norzagaray, Bulacan, including the Ipo reservoir facilities, the Ipo-Bicti tunnels Bicti basins and Bicti-Novaliches aqueducts, up to and including the Novaliches portal interconnection Facilities.

"Concession" has the meaning given to that term in Section 2.1 hereof.

"Concessionaire Event of Default" has the meaning given to that term in Section 11.2.

"Concession Fee" has the meaning given to that term in Section 6.4 hereof.

"Concessionaire" means Maynilad Water Services, Inc.

"Concessionaire Loans" means any indebtedness incurred by the Concessionaire to finance or refinance the construction or refurbishment of the Facilities, or employee severance costs or other transitional costs incurred by the Concessionaire following the Commencement Date related to the Concession.

"Connection" has the meaning given to that term in Section 9.6 hereof.

"Connection Charge" has the meaning given to that term in Section 9.6 hereof.

"Consumer Price Index" or "CPI" means, for any year, the Consumer Price Index for the Philippines for that year published by the Philippine Statistics Authority.

"Cost Overruns" means any amount paid by the Concessionaire related to an Existing Project or UATP which is neither covered by an MWSS Loan or identified as Local Component costs in Schedule 2.

"Customer" means (i) as of the date hereof, any customer of MWSS or (ii) thereafter, any customer of the Concessionaire, in each case for the supply of water and/or sewerage services in the Service Area.

"Disapproved Assets" means any assets acquired by the Concessionaire following the Commencement Date which are not, in the reasonable opinion of the Regulatory Office, needed for the efficient and prudent performance by the Concessionaire of its obligations under this Agreement and are so identified in writing sent to the Concessionaire by the Regulatory Office.

"Dispute" means any disagreement, controversy or claim arising out of or in connection with this Agreement, including any question regarding the existence, validity or termination of this Agreement; provided, however, that the composition of the Regulatory Office and the actions and decisions of the Regulatory Office in the exercise of its mandate are not arbitrable.

"E" means any Extraordinary Price Adjustment determined in accordance with Section 9.3.

"Early Termination Amount" has the meaning given to that term in Section 11.3.2.

"Early Termination Date" refers to the effective date specified in the written notice of termination in the event of an early termination under Section 11.3.

"Effective Date" means the day on which the revision to the original Concession Agreement brought by this Agreement takes effect upon compliance with all conditions

precedent. In no case shall the Effective Date exceed six months from signing of this Agreement.

"Event of Force Majeure" has the meaning given to that term in Section 17.10.1.

"Existing Projects" means the projects (or any separable component or project, including the non-revenue water component of the Umiray Angat Transbasin Project, the New Centennial Water Source/Kaliwa Dam Project and the Angat Water Transmission Improvement Project) in the Service Area identified in Schedule 3, which have been funded by MWSS from bilateral or multilateral sources prior to execution of this Agreement.

"Expenditures" includes pre-operating and operating expenditures, capital maintenance and investments expenditures, working capital requirements, business taxes, and concession fees; but excludes: penalties, interest charges on late payments, financing costs, bad debt provisions, depreciation provisions and tax on income. Expenditures "efficiently and prudently incurred" does not include, among other things, payments for (X) Disapproved Assets or (Y) fees for management or consulting services required by the Concessionaire in order to carry out its obligations under this Agreement payable to any shareholder or affiliate of the Concessionaire to the extent, in the judgment of the Regulatory Office, that such fees do not represent the best value available in the market for such services.

"Expiration Date" means July 31, 2037.

"Expiration Payment" has the meaning given to that term in Section 9.5.

"Extraordinary Inflation" means a decrease or increase in the purchasing power of the Peso which is unusual or beyond the common value of said currency, as officially declared by the Bangko Sentral ng Pilipinas.

"Facilities" means all fixed and movable assets, including Movable Property, required to provide water delivery services and sewerage services in the Service Area but excluding the Retained Assets. For purposes of this definition, It is understood that the Magallanes Sewerage Treatment Plant, Balara Treatment Plants, and related infrastructure shall be a Facility of Service Area East, and the Central Collecting System and related infrastructure shall be a Facility of Service Area West.

"Future Cash Flows" means, for any Rate Rebasing Date, Cash Flows of the Concessionaire expected to arise after such Rebasing Date in the course of carrying out its obligations under the Concession Agreement as at such Rebasing Date, excluding any revision to those obligations that has been the subject of an Extraordinary Price Adjustment determination due to come into effect on such Rebasing Date.

"Government Authority" means the MWSS, any national or local agency, instrumentality, body, unit, official, employee or agent exercising executive, legislative, judicial, quasi-judicial or administrative powers and having jurisdiction or authority over a person, or any of its respective properties, assets or representatives, or the matter in question.

"Interconnection Agreement" has the meaning to that term given in Section 6.3.

"Inventory" means the spare parts, pipes and accessories, pumps, meters and other similar items owned by MWSS just prior to the Commencement Date related to the Service Area, and any other items allocated to the Concessionaire by MWSS prior to bidding on the Concession from the shared facilities with the Other Operator, as set forth in the document captioned "Summary of Construction Materials/Office Supplies", undated, distributed December 2, 1996.

"Liquidated Damages" shall be equal to one-tenth of one percent (equivalent to 0.1%) of the cost of the unperformed portion for every day of delay of the work or satisfaction of obligation, from the date of notice by the MWSS Regulatory Office.

"Local Component" means the scheduled costs associated with an Existing Project of the UATP project which is not covered by an MWSS Loan.

"Low-income Customers" means Customers with an annual household income of Fifty Thousand Pesos (Php50,000.00) or less, which amount shall automatically be adjusted on January 1st of each year by the percentage change in the Consumer Price Index for the preceding year.

"Long-term Projects" are those not included in the mid-term raw water sources that are contained in the Concessionaire's spending plan.

"Movable Property" refers to vehicles, furniture, maintenance equipment, computers and other similar items which are either (i) owned by MWSS prior to Commencement Date or (ii) owned and acquired by the Concessionaire during the concession period related to the Service Area and whose cost of acquisition and maintenance were included as a recoverable expenditure.

"MWSS Event of Default" has the meaning given to that term in Section 11.1.

"MWSS Loans" means the indebtedness listed in Schedule 4 hereto for which MWSS is the primary obligor.

"National Building Standards" means the building standards promulgated or issued pursuant to the National Building Code (Presidential Decree No. 1096, as amended) and related laws, rules and regulations.

"Net Debt" means the book value of outstanding Concessionaire Loans incurred by the Concessionaire, if any, in accordance with this Agreement and based on the Concessionaire's latest reported audited financial statements for the Service Area West, less the book value of Assets retained by the Concessionaire, in accordance with Section 17.12, based on the Concessionaire's latest reported audited financial statements for the Service Area West.

"Net Present Value" means the net present value calculated at a specified date by discounting Cash Flows expected to occur at and subsequent to that date, and Cash Flows occurring prior to the Rate Rebasing Date at a fixed twelve percent (12%) nominal discount rate, using the same twelve percent (12%) fixed nominal discount rate for Cash Flows occurring at any point during any calendar year.

"NWRB" means the National Water Resources Board.

"Opening Cash Position" means (i) with respect to the first to fourth Rate Rebasing Dates and up to the date of execution of this Agreement, the Net Present Value as at June 30 following such Rate Rebasing Date of the real Cash Flows occurring between the Commencement Date and such Rate Rebasing Date in connection with the Concessionaire's carrying out its obligations under this Concession Agreement using the Appropriate Discount Rate determined and approved by the MWSS and Regulatory Office and (ii) following the execution of this Agreement, the Net Present Value as at June 30 following such Rate Rebasing Date of Cash Flows occurring since the last Rate Rebasing Date together with the Opening Cash Position determined with respect to the last Rate Rebasing Date in connection with the Concessionaire's carrying out its obligations under this Concession Agreement, using a fixed twelve percent (12%) nominal discount rate.

"Other Operator" means Manila Water Company, Inc., in its capacity as the Concessionaire appointed pursuant to that certain agreement captioned "Concession Agreement (Service Area East)," between MWSS and Manila Water Company, Inc., dated as of the date.

"Other Service Area" means the area in which the Other Operator shall provide water and sewerage services in its capacity as the concessionaire pursuant to that certain agreement captioned "Concession Agreement (Service Area East)" between MWSS and Manila Water Company, Inc., dated as of the date hereof.

"Pesos" or "P" refers to the lawful currency of the Republic of the Philippines.

"Peso Equivalent" has the meaning given to that term in Section 6.4.

"Prior Year" means the year beginning on the first day of January of the year prior to the commencement of each Charging Year.

"Qualified Replacement Operator" means a corporation, or a consortium of corporations, (i) that has the technical and financial capacity to perform all of the obligations of the Concessionaire under this Agreement and (ii) that meets the requirements of Philippine law concerning foreign ownership and management of a public utility.

"R" means any Rebasing Convergence Adjustment determined in accordance with Section 9.4.2.

"Rates Adjustment Limit" means the percentage, either positive or negative, equal to the sum of C, E and R.

"Rate Rebasing Date" means each of January 1, 2003, January 1, 2008, January 1, 2013, January 1, 2018, January 1, 2023, January 1, 2028, and January 1, 2033.

"Rate Rebasing Period" means, in the case of the first Rate Rebasing Period, the period commencing on the Commencement Date and ending on December 31, 2002, and, in the case of subsequent Rate Rebasing Periods, the period commencing on the last Rate Rebasing Date and ending on December 31 of the fifth year thereafter; provided, however, that the last Rate Rebasing Period shall end on the Expiration Date.

"Raw Water" means any untreated water.

"Rebasing Adjustment" has the meaning given to that term in Section 9.4.2.

"Rebasing Convergence Adjustment" has the meaning given to that term in Section 9.4.2.

"Receipts" means all cash receipts from Customers and grants from third parties (including from the Republic) to the Concessionaire, excluding any interest and dividends received by the Concessionaire.

"Recovered Asset" means a fixed asset contributed to the MWSS system in the Service Area by the Concessionaire, the cost of which has been approved by the Regulatory Office as an Expenditure and has been recovered by the Concessionaire through tariff as at the relevant date and the value of which has been fully depreciated or amortized in the Concessionaire's audited financial statements. The depreciation of the Fixed Assets shall be in accordance with the rules and regulations set by the Bureau of Internal Revenue on depreciation schedule of the relevant assets.

"Regulatory Office" has the meaning given to that term in Section 12.1 hereof.

"Republic" means the Republic of the Philippines.

"Retained Assets" means those assets that are retained by MWSS following the Closing Date, which are set forth in the document captioned "Allocation of Fixed Assets," dated December 6, 1996.

"Service Area" means the area identified as Service Area West on the map attached to Schedule 1 hereto, and "Service Area East" and "Service Area West" means the areas identified as such on the map attached to Schedule 5 hereto.

"Service Concession Asset" is an asset used to provide public service in a service concession arrangement that:

- (a) is provided by the Concessionaire which:
 - (i) the Concessionaire constructs, develops, or acquires from a third party; or
 - (ii) is an existing asset of the Concessionaire; or
- (b) is provided by the MWSS which:
 - (i) is an existing asset of the MWSS; or
 - (ii) is an upgrade to an existing asset of the MWSS.

MWSS shall recognize an asset provided by the Concessionaire and an upgrade to an existing asset of the MWSS as a Service Concession Asset if:

- (a) MWSS controls or regulates what services the Concessionaire must provide with the asset, to whom it must provide them, and at what price;
- (b) MWSS controls-through ownership, beneficial entitlement or otherwise-any significant residual interest in the asset at the end of the term of the Concession Agreement.

"Service Obligations" means the obligations of the Concessionaire of the kind referred to in Article 5 hereof.

"Standard Rates" mean the rates set out in Schedule 6 hereto for the supply of water and sewerage services in the Service Area from the Commencement Date, as amended from time to time in accordance with the provisions of Article 9.

"Technical Submission" means the Concessionaire's technical submission submitted to MWSS on January 6, 1997 in connection with the bidding for the Concession.

"Termination Date" means the Expiration Date or the Early Termination Date, as the case may be.

"UATP" means the Raw Water conveyance component of the Umiray Angat Transbasin Project, as described in Schedule 7.

"Weighted Average Rates Increase" means the percentage difference, either positive or negative, between (i) the revenue that would have accrued to the Concessionaire in the Weighting Year had the Standard Rates to be applied in the Charging Year been applied in the Weighting Year and (ii) the revenue that would have accrued to the Concessionaire in the Weighting Year had the Standard Rates applied by the Concessionaire or, as the case may be, MWSS in the Prior Year been applied in the Weighting Year.

"Weighting Year" means the year beginning on the first day of January two years prior to the commencement of each Charging Year.

ARTICLE 2. APPOINTMENT

2.1 Grant of Concession

On the terms and subject to the conditions set forth herein, MWSS hereby grants to the Concessionaire, as a public utility to perform certain functions and as a public utility for the exercise of certain rights and powers under the Charter, the right to manage, operate, repair, decommission and refurbish the Facilities in the Service Area,

including the right to bill and collect for water and sewerage services supplied in the Service Area (the "Concession"). The Concessionaire shall perform its functions and exercise its rights under this Agreement directly or, in respect of functions and rights delegated to the Common Purpose Facilities Agreement. The rights and benefits of the Concessionaire under this Agreement shall be deemed to apply with equal force to the Common Purpose Facilities Agreement to the extent that the Common Purpose Facilities Agreement is performing functions delegated to it under this Agreement.

2.1.1 Scope of Grant

The MWSS, subject to its authority under its Charter, hereby assigns to the Concessionaire, the following rights and obligations solely in relation to the Service Area:

- (a) Finance, design and construct the Facilities, except as otherwise provided in this Agreement;
- (b) Undertake the operation and maintenance of the Facilities in the Service Area;
- (c) Treat Raw Water and wastewater in the Service Area;
- (d) Provide and manage the services to the Customers;
- (e) Bill and collect payment from the Customers for the services;
- (f) Source Raw Water from catchment areas, watersheds, springs, wells and reservoirs in the Service Area, subject to the applicable Authorizations from the relevant Government Authorities; and
- (g) Provide connections to public sewer and septic and sanitation cleaning as sewerage services.

2.2 Acceptance of Appointment

On the terms and subject to the conditions set forth herein, the Concessionaire hereby accepts the Concession and its appointment as the Concessionaire hereunder.

2.3 Term of Appointment

The Concession shall take effect on the Commencement Date and, subject to the provisions of Article 11 hereof, shall continue in effect until the Termination Date ("Concession Period").

2.4 Consumer Price Index Adjustments

In the event that the Concessionaire and the Regulatory Office determine that the CPI is for any period not an accurate reflection of the rate of inflation in the Philippines as it relates to this Agreement, the Concessionaire and the Regulatory Office may select an alternative index.

The parties agree that the inflation and CPI reports issued by the Philippine Statistics Authority (PSA) shall be used as it relates to this Agreement.

ARTICLE 3. TRANSITIONAL ARRANGEMENTS

3.1 Return of Guarantee Deposits to MWSS

All Guarantee Deposits turned over to the Concessionaire during the August 1, 1997 privatization shall be returned to MWSS.

3.2 Accounts Receivable

MWSS shall have the exclusive right to collect debts from Customers prior to August 1, 1997.

The Concessionaire acknowledges that the Guarantee Deposits turned over to it on August 1, 1997 are due to MWSS:

3.3 Inventory

The Concessionaire acknowledges that beginning August 1, 1997, it used inventory booked by MWSS for pipelaying, water service connections and other purposes in carrying out its responsibilities under this Agreement. The inventory also includes chemical used in the water treatment plants. It further acknowledges that the items of inventory used, including any consumables, will be returned to MWSS in its quantity or value at the Termination Date.

3.4 Movable Property

Legal title to all Movable Property in existence at the Commencement Date shall be retained by MWSS. The Concessionaire is hereby granted the right to operate, maintain in good working order, repair, decommission and refurbish the Movable Property required to provide the water and sewage services under this Agreement; provided, however, that upon expiration of the useful life of any such Movable Property as may be determined by the MWSS, such Movable Property shall be returned to MWSS in its then-current condition at no charge to MWSS or the Concessionaire;

Movable property acquired by the Concessionaire during the Concession Period and the cost of acquisition of which was included as a recoverable expenditure shall also be owned by the Concessionaire throughout the Concession Period provided that such Movable Property shall be partially returned to MWSS, even prior to Expiration Date, when the costs for such Movable Property have already been fully recovered by Concessionaire through tariff. For this purpose, the Concessionaire should provide documents to confirm which Movable Property have been recovered.

The Concessionaire, with MWSS approval and subject to applicable Commission on Audit Rules on disposal of public property, may dispose such Movable Property if the useful life of such Movable Property has expired as determined above. Any proceeds of disposal shall redound and be remitted to MWSS without need of demand.

3.5 Common Purpose Facilities Agreement

The Common Purpose Facilities ("CPF") Agreement dated July 31, 1997, which contains the terms of the operation and maintenance of the CPF, shall be reviewed and amended, within six months from the signing of this Agreement, to reflect the MWSS BOT Resolution No. 196-96 on allocation of the MWSS fixed assets, equipment and inventory of construction materials, the Protocol for Raw Water Sharing During Emergencies executed on February 27, 2009 and any amendment thereto. Further, the CPF Agreement shall be amended to include MWSS as a Party. The CPF Agreement shall include the following matters:

- (i) Operate, maintain, renew and, as appropriate, decommission the CPF in a manner consistent with the National Building Standards and best industrial practices so that, at all times, the water and sewerage system in the Service Area is capable of meeting the Service Obligations (as such

obligations may be revised from time to time by the Regulatory Office following consultation with the Concessionaire); and

- (ii) Perform such other functions and matters relating to the CPF Agreement as MWSS may deem proper.

3.6 Raw Water Supplies

- (i) Arrangements with respect to the terms and conditions of the supply of Raw Water to the Concessionaire and the Other Operator are set forth in the letter from MWSS to NWRB dated November 27, 1996, which letter was acknowledged and approved by the MWSS Board of Trustees on December 2, 1996.
- (ii) Whenever the MWSS receives notice of a meeting with NWRB at which an issue affecting the Concessionaire is scheduled to be discussed, MWSS shall promptly give the Concessionaire notice of that meeting and shall make all reasonable efforts to permit a representative of the Concessionaire to attend such meeting and to express views on behalf of MWSS. On any issue put to a vote at any such meeting which affects only the Concessionaire and not the Other Operator, MWSS shall vote in a manner consistent with the Concessionaire's interest. On any issue which affects both the Concessionaire and Other Operator, MWSS shall vote in such manner as is consistent with the interests of the Concessionaire and the Other Operator.
- (iii) MWSS shall be in charge of the development of Long-Term Projects and new Raw Water source projects, which are not for the account of or part of the obligations of the Concessionaire under this Agreement. Approval of all new water source projects shall be subject to applicable laws, rules and regulations.
- (iv) Subject to existing rights and as may reviewed and technically evaluated periodically by MWSS, La Mesa Dam shall be used as water reserve and buffer supply and sourcing of raw water from it can only be made during emergency with prior approval of MWSS.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of MWSS

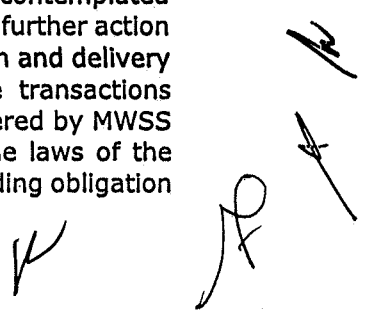
MWSS hereby represents and warrants to the Concessionaire as follows:

4.1.1 Corporate Organization

MWSS is a government instrumentality vested with corporate powers duly organized, validly existing and in good standing under the laws of the Republic.

4.1.2 Authorization

MWSS has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by MWSS and the consummation by MWSS of the transactions contemplated hereby have been duly authorized by all necessary action of MWSS and no further action or proceeding on the part of MWSS is necessary to authorize the execution and delivery by MWSS of this Agreement or the consummation by MWSS of the transactions contemplated hereby. This Agreement has been duly executed and delivered by MWSS and has been approved by the President of the Republic and, under the laws of the Republic in effect as of the date of this Agreement, is a legal, valid and binding obligation of MWSS, enforceable against MWSS in accordance with its terms.



4.1.3 No violations: No Consents or Approvals Required

- (i) Neither the execution and delivery of this Agreement nor the transactions contemplated hereby will (a) conflict with or violate any provision of the Charter, (b) conflict with or violate any law, rule, regulation, ordinance, order, writ, injunction, judgment or decree applicable to MWSS or by which any of MWSS properties or assets are bound or affected or (c) conflict with or result in any breach or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, cancellation or acceleration of, or result in the creation of any lien, charge or encumbrance on any of its assets or properties pursuant to any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, agreement or other instrument or obligation to which MWSS is a party or by which MWSS or any of its properties or assets is bound or affected.
- (ii) Except for the approval of the President of the Republic referred to in Sections 4.1.2 above, 11.2(i), 11.3.2(ii)(B)(2), 11.3.2(iii)(D)(2) and 11.3.2(iv)(C)(2), no notice, declaration, report or other filing or registration with, and no waiver, consent, approval or authorization of, any governmental or regulatory authority or instrumentality is required to be submitted, made or obtained by MWSS in connection with the execution, delivery or performance of this Agreement by MWSS and the consummation of the transactions contemplated hereby.

4.1.4 Non-Corrupt Practices

Pursuant to prevailing and applicable Philippine laws, rules and regulations and MWSS' Code of Ethics, the MWSS acknowledges that any gift, fee, commission or benefit in favor of any of its officers and/or employees and/or any other persons to be given as a condition to, or as an additional consideration for the execution of this Agreement is prohibited. MWSS further acknowledges that under MWSS' Code of Ethics and other prevailing rules and regulations, MWSS' personnel have the duty to report to superior officers any possible violation of the policy. Furthermore, the Concessionaire commits itself to conduct its business professionally and ethically by equally abiding by the provisions of MWSS' Code of Ethics, particularly, the norms of conduct and the rules on conflict of interest, insofar as applicable to the Concessionaire's nature of business and for the duration of its business relationship with MWSS.

MWSS is a government instrumentality and the receipt by any of its officers and/or employees and/or other persons, as well as the giving by the Concessionaire, of any gift, fee or commission, are crimes punishable under the provisions of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Title VI of the Revised Penal Code on Crimes Committed by Public Officers, the Code of Conduct and Ethical Standards for Public Officers and Employees (R.A. No. 6713), the Plunder Law (R.A. No. 7080), as well as under other applicable laws and governing presidential decrees.

4.1.5 No other representations or warranties

Except for the representations and warranties contained in this Article 4, neither MWSS nor any person acting for MWSS makes any other representation or warranty, express or implied, and MWSS hereby disclaims any such representation or warranty whether by MWSS or any of its officials, employees, agents or representatives or any other person, with respect to the execution, delivery or performance by MWSS of this Agreement or with respect to the transactions contemplated hereby, notwithstanding the deliver or disclosure to the Concessionaire or any of its officers, directors, employees, agents or representatives or any other person of any documentation or other information (financial or otherwise) by MWSS or any of its officials, employees,

agents or representatives or any other person with respect to any one or more of the foregoing.

4.2 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to MWSS as follows:

4.2.1 Corporate Organization

The Concessionaire is a corporation duly organized, validly existing and in good standing under the laws of the Republic of the Philippines. The Concessionaire has full corporate power and authority to carry on its business as required under the terms of this Agreement and is duly qualified to do business in all jurisdictions where the ownership of its assets or the conduct of its business requires such qualification.

The Concessionaire, with a single concession contract, shall exert all efforts to list within five years from the Effective Date, subject to the requirements of the Securities and Exchange Commission and make a public offering of the shares representing at least twenty per centum (20%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law. Failure of the Concessionaire to comply with the obligations of this paragraph through no fault attributable to the Concessionaire shall not be deemed a breach of this Agreement.

The total aggregate period of the grant of Concession shall not exceed fifty (50) years. Also, the Concessionaire shall be subject to twelve percent (12%) cap on returns, as well as other requirements and limitations applicable to public utilities as provided under the Constitution and other prevailing laws, rules and regulations.

At all times, the Concessionaire's: (i) total number of outstanding shares of stock entitled to vote in the election of directors; and (ii) total number of outstanding shares of stock, whether or not entitled to vote in the election of directors, shall be at least sixty percent (60%) owned by citizens of the Philippines or by corporations that are themselves at least sixty percent (60%) owned by citizens of the Philippines.

The financial transactions of this Agreement shall be maintained separately and not commingled with those of the other businesses, including non-regulated businesses, of the Concessionaire. In the event of commingling, the Concessionaire shall be required to make a full public disclosure of the financial records of its businesses and it shall be granted a period of three years from the Effective Date of this Agreement to comply with this provision.

4.2.2 Authorization

The Concessionaire has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Concessionaire and the consummation by the Concessionaire of the transactions contemplated hereby have been duly authorized by all necessary action of the Concessionaire and no further action or proceeding on the part of the Concessionaire is necessary to authorize the execution and delivery by the Concessionaire of this Agreement or the consummation by the Concessionaire of the transactions contemplated hereby.

This Agreement has been duly executed and delivered by the Concessionaire and is a legal, valid and binding obligation of the Concessionaire, enforceable against the Concessionaire in accordance with its terms.

4.2.3 No Violations; No Consents or Approvals Required

- (i) Neither the execution and delivery of this Agreement nor the transactions contemplated hereby will (a) conflict with or violate any provisions of the Articles of Incorporation or By-Laws of the Concessionaire, (b) conflict with or violate any law, rule, regulation, ordinance, order, writ, injunction, judgment or decree applicable to the Concessionaire or by which any of the Concessionaire properties or assets are bound or affected or (c) conflict with or result in any breach or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give others any rights of termination, cancellation or acceleration of, or result in the creation of any lien, charge or encumbrance on any of its assets or properties to any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, agreement or other instrument or obligation to which the Concessionaire is a party or by which the Concessionaire or any of its properties or assets is bound or affected.
- (ii) No notice, declaration, report or other filing or registration with, and no waiver, approval or authorization of, any governmental or regulatory authority or instrumentality is required to be submitted, made or obtained by the Concessionaire in connection with the execution, delivery or performance of this Agreement by the Concessionaire and the consummation of the transactions contemplated hereby, other than those which have already been obtained and are in full force and effect.

4.2.4 Non-Corrupt Practices

Pursuant to applicable Philippine laws, rules and regulations and MWSS' Code of Ethics, the Concessionaire acknowledges that any gift, fee, commission or benefit in favor of any of MWSS's officers and/or employees and/or any other persons to be given as a condition to, or as an additional consideration for the execution of this Agreement is prohibited. The Concessionaire further acknowledges that under MWSS' Code of Ethics and other prevailing rules and regulations, MWSS' personnel have the duty to report to superior officers any possible violation of the policy. Furthermore, the Concessionaire commits itself to conduct its business professionally and ethically by equally abiding by the provisions of MWSS' Code of Ethics, particularly, the norms of conduct and the rules on conflict of interest, insofar as applicable to the Concessionaire's nature of business and for the duration of its business relationship with MWSS.

The Concessionaire is aware that MWSS is a government instrumentality and the receipt by any of its officers and/or employees and/or other persons, as well as the giving by the Concessionaire of gift, fee or commission, are crimes punishable under the provisions of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Title VI of the Revised Penal Code on Crimes Committed by Public Officers, the Code of Conduct and Ethical Standards for Public Officers and Employees (R.A. No. 6713), the Plunder Law (R.A. No. 7080), as well as under other applicable laws and governing presidential decrees.

The Concessionaire further acknowledges MWSS' policy to refer any such violation to the proper government agency for criminal prosecution.

ARTICLE 5. SERVICE OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations Regarding the Provision of Water Services

The Concessionaire shall have the obligations set forth in this Article 5 with respect of the provision of water services in the Service Area.

Further, all water services pertaining to this Agreement, which will be rendered by the Concessionaire, shall at all times conform with the Clean Water Act of 2004 and all other relevant environmental laws.

The Concessionaire shall include and deliver the targets contained in the Rate Rebasing 2018 Approved Business Plan to be submitted by MWSI, subject to the review and recommendation of the Regulatory Office and approval by the MWSS Board of Trustees. This Plan is included in Schedule 8 of this Agreement.

5.1.1 Water Supply; New Connections

The Concessionaire shall offer water supply services to all existing Customers in the Service Area on the Commencement Date and, in addition, the Concessionaire shall make at least sufficient connections (net of any disconnections) to meet the coverage target percentages of the population in the designated municipality at the time of the target (excluding users who obtain water from a legal source other than the MWSS system) set out in Schedule 9 hereto by the dates specified in that Schedule. In determining compliance with such coverage targets, along with the method by which such compliance was calculated, prior to each Rebasing Date in accordance with Section 9.4.1, the Regulatory Office shall require the submission of data and supporting evidence by the Concessionaire. Data provided by the Concessionaires shall be validated by the Regulatory Office through independent audits, public consultations, and other methods it may determine appropriate.

5.1.2 Continuity of Supply

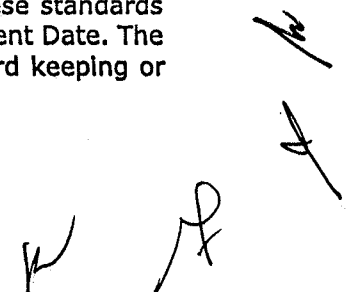
The Concessionaire shall ensure the availability of an uninterrupted twenty-four-hour (24-hour) supply of water to all connected Customers in the Service Area, subject to interruptions resulting from the temporary failure of items of the Facilities (where the Concessionaire acts promptly to remedy such failure) or required for the repair or construction of the Facilities where such repairs or construction cannot be performed without interruption to the supply of water. At all times, such water shall be supplied at a level of positive pressure sufficient to secure the system against the ingress of untreated water or other contaminants; provided, however, that such pressure shall be at a minimum of eleven (11) meters (sixteen (16) psi) for all pipelines throughout the Service Area provided that the existing water sources make it technically and equitably feasible to supply water at such pressure and the Concessionaire's full raw water allocation as stated in Section 3.6(i) shall have become available. Water pressure shall be determined by measuring service pressure on the Customer's side of the water meter inside of the water meter box.

5.1.3 Obligation to Make Connections to a Water Main

Upon request from the owner or occupant of premises located in the Service Area for a connection to a water main, the Concessionaire shall make such a connection as soon as reasonably practicable. For such connection to a water main located less than twenty-five (25) meters from the connection point for such main, the Customer shall pay the connection fee set out in Section 9.6(i). For all other connections, the Customer shall pay a fee determined in accordance with Section 9.6(ii).

5.1.4 Drinking Water Quality Standards

The Concessionaire shall ensure at all times that the water supplied to Customers in the Service Area complies with current Philippine National Drinking Water Standards as published by the Department of Health of the Republic (or successor entity responsible for such standards) and prevailing at such time; provided, however, that the Regulatory Office, after consultation with any appropriate governmental authorities, shall have the discretion to consent to a phase-in of compliance with these standards over a period of not more than twelve (12) months from the Commencement Date. The Concessionaire shall observe any requirements regarding sampling, record keeping or reporting as may be specified by law or regulation in the Philippines.



5.1.5 Obligation to Supply Water for Public Purposes

The Concessionaire shall make available an adequate supply of water for public purposes, as determined by the Regulatory Office, within the Service Area. The Concessionaire shall not assess a charge for such water used for public purposes.

5.1.6 Provision of Water Other Than Through a Water Main

The Concessionaire shall make a supply of water available to Customers other than through a water main in circumstances where (i) supplies through a water main have been or will be interrupted for more than twenty-four (24) hours, or (ii) supplies through a water main have been or will be subject to contamination. The charges for these services shall not exceed the Standard Rates for piped water supplies. In circumstances where no connection to a water main exists, the Concessionaire may make a supply of water available to Customers other than through a water main at a fee equal to the costs reasonably and efficiently incurred by the Concessionaire in supplying such water.

5.1.7 Reduction of Non-Revenue Water

The Non-Revenue Water of the Concessionaire shall be maintained at the acceptable industry standard.

To meet such standard, the Concessionaire shall include in the submitted business plan its Non-Revenue Water Reduction Program (NRWRP), subject to the review and recommendation of the Regulatory Office and approval by the MWSS Board of Trustees. Once approved, the timelines or spending indicated therein should be strictly implemented and complied with.

The Regulatory Office shall check, at least once a year, the Concessionaire's compliance with the NRWRP included in the Approved Business Plan. The MWSS and the Concessionaire shall be notified of any non-compliance for the determination and imposition of the appropriate penalty.

5.2 General Obligations Regarding the Provisions of Sewerage Services

The Concessionaire shall have the following obligations in respect of the provision of sewerage services in the Service Area:

5.2.1 Supply of Sewerage Service; New Connections

The Concessionaire shall offer to supply sewerage services to all Customers in the Service Area who have sewerage connections on the date hereof for domestic sewage and industrial effluents compatible with available treatment processes and, in addition, the Concessionaire shall meet the coverage target percentages of the total population in the designated municipality connected to the Concessionaire's water system at the time of the targets set out in Schedule 10 below by the dates specified in that Schedule.

5.2.2 Obligation to Make Connections to a Public Sewer

Upon request from the owner or occupant of premises located in the Service Area for a connection to a public sewer, the Concessionaire shall make such a connection as soon as reasonably practicable. For such connection to a public sewer located less than twenty-five (25) meters from the connection point, the Customer shall pay the connection fee set out in Section 9.6(i). For all other connections, the Customer shall pay a fee determined in accordance with Section 9.6(ii).

5.2.3 Wastewater Standards

The Concessionaire shall comply with all national and local environmental laws and standards relating to treated wastewater in the Service Area and in accordance with a schedule of compliance provided by the Regulatory Office as the same may be modified or supplemented from time to time in consultation with the Concessionaire, and the Concessionaire shall have the sole liability for any charges or fines that may be assessed in connection with violations thereof.

5.2.4 Septic and Sanitation Cleaning

The Concessionaire shall offer septic and sanitation cleaning services in the Service Area, and, in addition, the Concessionaire shall meet the coverage target percentages of the total population in the designated municipality at the time of the target for such services set out in Schedule 11 below by the dates specified in that Schedule; provided, however, that Customers who requests such services of the Concessionaire shall have first priority over those who do not request them. Septic and sanitation cleaning services are defined as the emptying of domestic septic tanks and subsequent sludge disposal at regular intervals of five (5) to seven (7) years.

5.3 Exclusivity

The Concessionaire shall have the exclusive right to provide water and sewerage services in the Service Area, Provided that: any license granted by the NWRB with the consent of MWSS to a third-party provider of water and sewerage services in effect on the Commencement Date shall remain in effect in accordance with its terms.

To the extent feasible, MWSS shall authorize and facilitate direct communication between NWRB and the Concessionaire with respect to the matters referred to in this Section 5.3.

The Concessionaire's breach of its Service Obligations in this Article 5 shall be an exception to the exclusive right laid out in this Section 5.3 such that the MWSS may perform such Service Obligations itself or through a third party without prejudice to its exercise of its legal rights against the Concessionaire as provided in this Agreement and the previous agreement.

5.4 Other Customer Service Standards

At all times, the Concessionaire shall provide the highest quality services to its Customers that are practically achievable subject to guidelines issued by the Regulatory Office, including, but not limited to:

- (i) giving prompt responses to Customer inquiries and complaints;
- (ii) giving notices to Customers at least forty-eight (48) hours in advance of any planned interruptions in water supply;
- (iii) making alternative water supplies available for planned interruptions in service to schools, hospitals and key public buildings, and to all Customers for interruptions in service of more than twelve (12) hours, subject to penalty as may be determined by MWSS if the period exceeds twelve (12) hours;
- (iv) effecting urgent restoration, within six (6) hours from notice of interruption and subject to extension granted by the Regulatory Office for justifiable reasons, of potable water supplies for any unplanned interruptions in service and informing Customers on progress in making necessary repairs and treatment of potentially contaminated supplies;
- (v) taking measures to prevent sewage flooding from the sewerage network; and

- (vi) providing invoices to Customers which clearly identify services, charges, period covered, forms of payment and penalties for late or non-payment.

ARTICLE 6. OTHER OBLIGATIONS OF THE CONCESSIONAIRE

6.1 Access to Information

Upon written notice or demand from the MWSS or other supervising agencies, the Concessionaire hereby undertakes to:

- (a) promptly provide to the MWSS all accounts, invoices, statements, demands, notices, insurance demands and other correspondence that may come into its possession concerning the Service Area;
- (b) provide the MWSS the information, advice and assistance which the MWSS shall reasonably require in relation to the application for the grant of all Authorizations in the Service Area; and
- (c) provide such information, documents and records relating to or connected with the Service Area that the Concessionaire has in its possession and which the MWSS may reasonably require in order to meet its obligations under this Agreement and its obligations pursuant to freedom of information as required by law and the Constitution.

6.2 Taxes

The Concessionaire shall be responsible for all income and withholding taxes and other forms of taxes arising from payments by Customers for services rendered on and after the Commencement Date and from any other income associated with the Concession arising on or after the Commencement Date. The Concessionaire shall be responsible for the payment of all documentary stamp taxes payable in connection with the execution of this Agreement and any related agreements or instruments; all customs, import duties and other taxes or assessments relating to the importation into the Philippines of plant and equipment to be used in connection with the Concession; and all local transfer taxes on property acquired through the exercise of rights pursuant to Section 7.2. In addition, the Concessionaire shall pay, for and on behalf of MWSS, or shall reimburse MWSS within ten (10) days of the demand therefor, any real property taxes and other taxes or assessments payable by MWSS on MWSS property or assets in the Service Area used for the supply of water and sewerage services.

6.3 Interconnection

Within thirty (30) days following the date hereof, the Concessionaire shall enter into an interconnection agreement with the Other Operator, in form and substance satisfactory to MWSS (the "Interconnection Agreement"). The Interconnection Agreement shall address the matters summarized in Schedule 12 in a manner consistent with that Schedule.

6.4 Concession Fee

By January 15 of each calendar year, MWSS shall provide the Concessionaire with a schedule of all anticipated amounts due in connection with the Concession Fee payable during that year, as described in paragraphs (a) and (b) below:

- (a) Not later than fourteen (14) days prior to the date on which any scheduled payment of principal, interest, fees or other amount is due under a MWSS Loan, MWSS shall notify the Concessionaire in writing of the total amount due on that payment date and of the Peso equivalent thereof (the "Peso

Equivalent") calculated at the then prevailing exchange rate. Not later than one (1) business day prior to each such payment date, the Concessionaire shall remit to such account as MWSS shall instruct an amount, in Pesos, exclusive of any penalties or default interest charges not attributable to a late payment of the Concession Fee by the Concessionaire (each such payment being referred to herein as a "Concession Fee"), equal to the sum of:

- (i) The percentage of the aggregate Peso Equivalent due under any MWSS Loan which has been disbursed during the Concession Period (including MWSS Loans for Existing Projects and the UATP project) on the relevant payment date set forth in Schedule 13, shall be agreed with MWSS on a case by case basis.
- (b) In addition, the Concessionaire shall pay to MWSS on the first business day of January 1998 and the succeeding years thereafter an amount equal to one-half (1/2) of the annual budget for MWSS for that year, provided that such annual budget shall not, for any year, exceed Two Hundred Million Pesos (Php 200,000,000.00), subject to annual CPI adjustments.

As of January 2021, the fee set under this paragraph is Five Hundred Seventy-Six Million, Six Hundred Fifty-five Thousand, Six Hundred Twenty-three Pesos (Php576,655,623.00.)

Each Concession Fee shall be treated as an Expenditure of the Concession and the Concessionaire's payment obligation in respect thereof shall rank at least pari passu with its unsecured payment obligations under all other debt instruments that may be executed by the Concessionaire. In the event the Concessionaire does not make a timely payment of a Concession Fee, the U.S. dollar equivalent of such unpaid amount may be drawable under the Performance Bond in accordance with Section 6.10 below.

6.5 Asset Management Obligations

The Concessionaire shall have the following obligations concerning the management of the Facilities:

6.5.1 General

During the term of the Concession, the Concessionaire shall:

- (i) operate, maintain, renew and, as appropriate, decommission Facilities in a manner consistent with the National Building Standards and best industrial practices so that, at all times, the water and sewerage system in the Service Area is capable of meeting the Service Obligations;
- (ii) repair and correct, on a priority basis, any defect in the Facilities that could adversely affect public health or welfare, or cause damage to persons or third-party property; and
- (iii) ensure that at all times the Concessionaire has sufficient financial, material and personnel resources available to it to meet its obligations under this Agreement.

Failure of the Concessionaire to meet any of its obligations under this Section shall be subject to the imposition of a penalty under Section 11.4 hereof.

6.5.2 Asset Condition Disclosure

Not later than the second anniversary of this Agreement, the Concessionaire shall provide a report (the "Asset Condition Report") to the Regulatory Office, in form and

substance satisfactory to the Regulatory Office, classifying (on a graded scale) the condition of infrastructure Facilities in the Service Area. This Report shall cover:

- (i) Facilities related to the provision of water supply services, distinguishing among dams, Bulk Water transfer, water treatment plants, pumping stations, trunk potable water systems, service reservoirs and distribution mains; and
- (ii) Facilities related to the provision of sewerage services, distinguishing among interceptor sewers, other sewers, rising mains, pumping stations, sewage treatment and disposal of assets.

The Concessionaire shall update the Asset Condition Report as often as may be reasonably required by the Regulatory Office, but not more frequently than once a year. If the Regulatory Office determines that any asset or improvement is a Disapproved Asset, the Regulatory Office shall promptly notify the Concessionaire of such determination.

6.5.3 Audit

Commencing five (5) years subsequent to the Commencement Date, if, based on an audit report commissioned pursuant to Section 6.5.2 above and any other information coming to the attention of the Regulatory Office, the Regulatory Office reasonably concludes that the Concessionaire is not meeting its obligations under Section 6.5.1 above, then the Regulatory Office shall give the Concessionaire written notice of this conclusion and the Concessionaire shall have sixty (60) days (or such longer period as the Regulatory Office may provide) thereafter to commence appropriate action to correct the problem to the satisfaction of the Regulatory Office. Failing such correction, the Regulatory Office shall have the authority to commission appropriate remedial works by third parties. The costs of such remedial works shall be borne by the Concessionaire. In the event the Concessionaire does not make a payment within thirty (30) days of written notice pursuant to this Section 6.5.4 of the cost of such remedial works, the U.S. dollar equivalent of such unpaid amount shall be drawable under the Performance Bond in accordance with Section 6.10 below.

6.5.4 Remedial Works

If based on an audit report pursuant to Section 14.2 and any other information coming to the attention of the Regulatory Office, the Regulatory Office reasonably concludes that the Concessionaire is not meeting its obligations under Section 6.5.1 above, then the Regulatory Office shall give the Concessionaire written notice of this conclusion and the Concessionaire shall have thirty (30) days (or such longer period as the Regulatory Office may provide) thereafter to commence appropriate action to correct the problem to the satisfaction of the Regulatory Office. Failing such correction, the Regulatory Office shall have the option to commission appropriate remedial works by third parties and to impose applicable penalties under Section 11.4. The costs of such remedial works shall be borne by the Concessionaire. In the event the Concessionaire does not make a payment within fifteen (15) days of written notice pursuant to this Section of the cost of such remedial works, the value of such unpaid amount shall be drawable under the Performance Bond in accordance with Section 6.10 below.

6.6 Disconnections

The Concessionaire may disconnect any Connection for the supply of water services or sewerage services in the Service Area if charges billed to the Customer therefor remain unpaid for a period of sixty (60) days after their due date. The Concessionaire shall provide the Customer with not less than seven (7) days prior written notice of any such disconnection. Upon the payment in full of all outstanding charges (including late payment penalties and reconnection charges), the Concessionaire shall reconnect any Customer whose services have previously been disconnected within five (5) days following receipt of a request for reconnection.



6.7 Insurance

The Concessionaire shall at its own expense effect and maintain, or require to be effected and maintained throughout the term of the Concession insurance coverage in such amounts as are reasonable and customary throughout the industry internationally; provided however, that the Concessionaire shall at all times comply with Administrative Order No. 141 regarding Insurance of Government properties by the General Insurance Funds of the Government Service Insurance System.

6.8 Compliance with Laws

The Concessionaire shall comply with all Philippine laws, statutes, rules, regulations, orders and directives of any governmental authority that may affect the Concession from time to time.

6.9 Procurement

During the course of the Concession, other than with respect to Existing Projects, the Concessionaire shall make available for public tender any contract involving the procurement of goods or services, in one or more installments, having a value in excess of Two Hundred Fifty Million Pesos (Php 250,000,000.00) which amount shall be adjusted on January 1st of each year, beginning 1 February 1997, by the percentage change in the Consumer Price Index for the preceding year. The Concessionaire, at its sole discretion, shall determine the specifications upon which contractors will bid and the criteria, including price and quality, by which the winning bid is selected.

As of 1 January 2021, the threshold for the procurement of goods and services is Seven Hundred Twenty Million Eight Hundred Twenty Thousand Pesos (Php720,820,000.00).

6.10 Performance Bond

The Concessionaire shall post and maintain, throughout the Concession Period, a bond, bank guarantee or other security acceptable to MWSS (a "Performance Bond") in favor of MWSS to secure the Concessionaire's performance of its obligations under this Agreement during the Rate Rebasing Period commencing on that date. The Performance Bond shall be in the following form and in the amount (the "Performance Bond Amount") equal to the following:

<u>Form of Performance Bond</u>	<u>Amount of Performance Bond (not less than the Percentage of the Total Project Cost)</u>
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank	Two Percent (2%)
(b) Bank draft/guarantee or irrevocable on demand letter of credit (using the form set out in Exhibit A [Form of Irrevocable Letter of Credit]) issued by a Universal or Commercial Bank which MWSS, in its sole discretion, deems acceptable	Five Percent (5%)
(c) Surety bond callable on demand issued by the Government Service Insurance System or a	Ten Percent (10%)

surety or insurance company duly accredited by the Insurance Commission and acceptable to MWSS	
---	--

For this purpose, Total Project Cost means the total amount of Expenditure contained in the Concessionaire's spending plan for a given Rate Rebasing Period.

The Concessionaire shall ensure that the Performance Bond is maintained in the amount equal to at least the Performance Bond Amount at all times during the Performance Bond validity period. In the event that MWSS draws against the Performance Bond, the Concessionaire shall replenish the same to restore the value of the Performance Bond to its original amount within fifteen (15) days from the date MWSS shall have drawn thereon without need of demand.

If the Performance Bond is subject to an expiration date, the Concessionaire shall deliver to MWSS a replacement Performance Bond at least thirty (30) days prior to the said expiration date, which shall be effective no later than the date of expiration of the original Performance Bond without need of demand.

If at any time, in MWSS' opinion, the financial institution providing the Performance Bond is no longer acceptable to MWSS, the Concessionaire shall, on or before the date which is twenty (20) days after MWSS first gave the Concessionaire notice, provide a replacement Performance Bond in the same form as the original Performance Bond provided by the Concessionaire or such other form prescribed in paragraph 1 of this Article.

If the Concessionaire fails to provide the additional or replacement Performance Bond in accordance with the two immediately preceding paragraphs of this Article, then:

- i MWSS may claim the full and undrawn value of the Performance Bond unless and until the Concessionaire provides the Performance Bond acceptable to MWSS;
- ii any cash held during such period may be applied by MWSS in the same manner as for the Performance Bond; and
- iii at such time as an additional or replacement Performance Bond is provided, MWSS will return the cash withheld that has not been applied by MWSS in satisfaction of remedies, without interest.

Without prejudice to MWSS's other rights, such failure by the Concessionaire to provide additional or replacement Performance Bond shall:

- i be deemed to be a material breach of this Agreement by the Concessionaire; and
- ii notwithstanding any other provisions of this Agreement including any cure periods, entitle, but not oblige, MWSS to terminate this Agreement in accordance with Section 11.3.

6.11 Concessionaire Debt

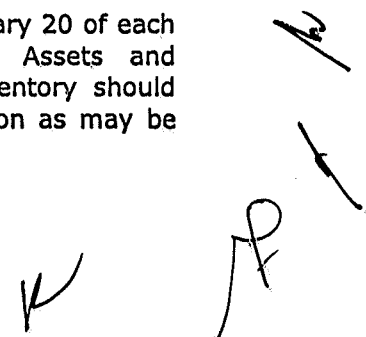
The Concessionaire shall disclose to the Regulatory Office all debt incurred for and during the term of the Concession. The Concessionaire's borrowing plans and service improvement plans, as well as all changes and deviations to such plans, shall be approved by the Regulatory Office at each Rate Rebasing exercise. Any debt applied and to be incurred for and during the Concession, including those which results in a material change from the conditions of the approved borrowing plans, changes in debt amount, debt term, interest rates, debt covenants or debts security, shall be subject to approval by the Regulatory Office. No debt or liability that would mature after the Expiration Date shall be allowed. Likewise, as part of the Concessionaire's reportorial obligation, it shall submit annually to the Regulatory Office a financial report on its existing debts and liabilities.

The Government shall not assume Concessionaire Loans upon termination, subject to the payment of the Early Termination Amount as determined under Section 11.3.2 of this Agreement. Any Early Termination Amount shall not be guaranteed by the Government Republic of the Philippines.

6.12 Fixed Service Targets

Failure to meet the fixed service targets and deliverables contained in Schedule 8, and any subsequent amendment thereto, without justifiable reasons to be determined solely by the Regulatory Office, constitutes as a material breach of this Agreement and shall subject the Concessionaire to penalty equivalent to the amount collected as part of the rate plus legal interest from the time of collection or penalty under Section 11.4, whichever is higher. All service targets and deliverables shall, subject to the threshold in Section 6.9, be subject to public tender or bidding in accordance with existing laws, rules and regulations, as well as relevant NEDA Issuances..

6.13 New Assets

- a. No later than six (6) months before the end of the original twenty-five-year (25-year) term of the Concession, the Concessionaire shall submit to the Regulatory Office a list of all Recovered Assets, including supporting documents. The Concessionaire shall cause the transfer of all rights, interest, and title to such Recovered Assets to MWSS on or before the end of the original twenty-five (25-year) term of the Concession. All costs, expenses, and taxes arising from or in relation to such transfer shall be for the account of the MWSS.
 - b. The Concessionaire shall, at each Rate Rebasing Date, submit to the Regulatory Office a list of all Recovered Assets, including all supporting documents. Legal title as well as all rights, title, and interest to all such Recovered Assets shall be transferred to the MWSS on or before such Rate Rebasing Date. All costs, expenses, and taxes arising from or in relation to such transfer shall be for the account of the MWSS.
 - c. Legal title to all fixed assets contributed to the MWSS system in the Service Area by the Concessionaire during the term of the Concession other than those mentioned under Sections 6.13(a) and 6.13(b) shall remain with the Concessionaire until the Expiration Date (or the Early Termination Date) at which time all right, title, and interest in such assets shall automatically vest in MWSS. The Concessionaire may mortgage or create security interest over such assets solely for the purpose of financing (or refinancing) the acquisition or construction thereof; provided, however, that no such mortgage or security interest shall extend beyond the Expiration Date. The Concessionaire shall not, without the prior recommendation from the Regulatory Office and the approval of MWSS, create a security interest of any kind over all or any part of the Facilities to which MWSS has legal title. Legal title to all facilities (including any fixed assets resulting from the exercise of rights and powers referred to in Section 7.2 below) other than new assets contributed by the Concessionaire shall remain with MWSS.
 - d. The Concessionaire shall submit to MWSS, on or before January 20 of each year an inventory of its acquired Service Concession Assets and improvements in the Service Concession Assets. Such inventory should include the location, cost of acquisition and other information as may be required by MWSS.
- 

ARTICLE 7. OBLIGATIONS OF MWSS

7.1 Cooperation with Concessionaire

Subject to the requirements of the Charter, MWSS shall, upon request of the Concessionaire, cooperate in all reasonable ways to facilitate the Concessionaire's carrying out of its responsibilities under the Concession. Pursuant to the authority given to MWSS by Section 3(h) of the Charter, and subject to the restrictions contained in Section 12 of the Charter, this cooperation shall include, but not be limited to, cooperation with actions undertaken by the Concessionaire to implement changes to the Standard Rates for water and sewerage services as instructed by the Regulatory Office.

The cooperation to be rendered by MWSS to the Concessionaire shall not require MWSS or any of its affiliates to finance (or guarantee the financing of) any expenditure required in connection with the Concession, or to undertake any liability in favor of a third party other than those expressly provided for in this Agreement.

7.2 Easements, Eminent Domain, Right of Way and Similar Powers

For purposes of easements, eminent domain, right of way, the MWSS upon the request of and assisted by the Concessionaire, shall apply for and exercise its easement, eminent domain, right of way and similar rights and powers under its Charter in connection with infrastructure projects and works undertaken relating to the Concession by the Concessionaire in the Service Area pursuant to this Agreement. The Concessionaire shall be solely responsible for the payment of any compensation to third parties occasioned by the exercise of such rights and powers.

ARTICLE 8. RETAINED FUNCTIONS OF MWSS

8.1 Retained Functions

MWSS shall retain, among others, the following operational responsibilities during the period of the Concession (other than the responsibilities assigned to the Regulatory Office):

- (i) facilitating the exercise by the Concessionaire of its agency powers, upon appropriate notification to MWSS by the Concessionaire as provided in Sections 7.1 and 7.2 above;
- (ii) carrying out accounting and notification functions;
- (iii) monitoring, reporting and administering the MWSS Loans, and performing related functions in connection with the Existing Projects;
- (iv) providing such other services or functions as are assigned by this Agreement, or by the Regulatory Office following the Commencement Date, to MWSS;
- (v) managing and/or disposing of the Retained Assets;
- (vi) managing and operating UATP with funding from the Common Purpose Facility Group; and
- (vii) development of new water sources.

ARTICLE 9. RATES AND CONNECTION CHARGES

9.1 Standard Rates

Subject to the limitation of Section 12 of the Charter and the ADR, Standard Rates may be adjusted from time to time in accordance with the rate adjustment provisions set forth in Sections 9.2, 9.3 and 9.4 below.

There shall be no increase in Standard Rates for water and sewerage services until December 31, 2022.

For avoidance of doubt, approved Expenditures not recoverable during the tariff freeze period shall be, in part or in its entirety, considered as recoverable Expenditures in subsequent Rate Rebasing exercises as determined and approved by the Regulatory Office. The Regulatory Office shall determine and approve such Expenditure and its reasonable return based on the ADR in a manner consistent with Section 12.1 of this Agreement.

Such Expenditure is deemed to have been incurred on the next Rate Rebasing Date, the recovery of which is subject to the preceding paragraph. The determination and approval by the Regulatory Office, if any, of such Expenditures and the non-recovery of such Expenditures shall not result (i) in the amendment of the Service Obligations of the Concessionaire; or (ii) the amendment of the Capital Expenditures Plan; or (iii) the extension of the Expiration Date of this Agreement.

9.2 Rate Adjustments

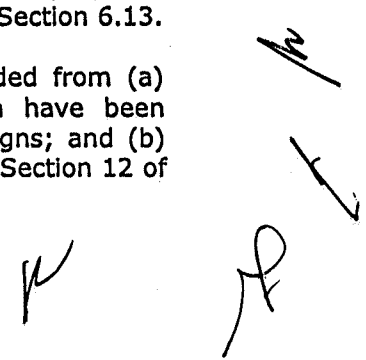
The Standard Rates for water and sewerage services shall be adjusted each year effective January 1 of each Charging Year, in accordance with (i) the Rates Adjustment Limit forth in Section 9.2.1, and (ii) the procedures set forth in Section 9.2.2. The Regulatory Office shall require justification for any increase in the Standard Rates for water and sewerage services.

The Regulatory Office shall conduct a detailed review of the Concessionaire's operational performance and historical cash flows subject to applicable COA rules and regulations to:

- A. determine whether agreed Service Obligation standards and targets have been met and whether the necessary penalties should be imposed if standards and targets have not been met;
- B. verify and confirm the accuracy of declared revenues, and the accuracy, reasonableness, prudence and efficiency of declared Expenditures; and
- C. determine necessary adjustments to the projections used in the prior period and Concessionaire's Opening Cash Position.

Not later than March 31 preceding each Rate Rebasing Date, the Concessionaire shall also supply the Regulatory Office with information on its Expenditures, Receipts, Cash Flows, Opening Cash Position and Future Cash Flows in a form and manner, and covering such time periods, as the Regulatory Office may determine. In addition, the Concessionaire shall also supply the Regulatory Office with information on all assets contributed to the MWSS System in the Service Area, the cost of which has already been recovered by the Concessionaire, including all supporting documents, for purposes of transferring to the MWSS legal title to such assets, in accordance with Section 6.13.

For the avoidance of doubt, the Concessionaire shall be precluded from (a) claiming compensation for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (b) claiming compensation and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR.



9.2.1 Rate Adjustment Limit and Rate Cap

Standard Rates, subject to the applicable Rate Cap, shall be adjusted from time to time pursuant to the provisions of Section 9. The Weighted Average Rates Increase implied by the Standard Rates as determined and approved by the Regulatory Office, in respect of any Charging Year may not exceed the Rate Adjustment Limit.

If in any Charging Year the Weighted Average Rates Increase is less than the Rate Adjustment Limit, that shortfall shall not be recoverable in any way by the Concessionaire in a future Charging Year.

For the avoidance of doubt, there shall be no increase in the Standard Rates for water and sewerage services from the execution of this Agreement until December 31, 2022. The Standard Rates shall be subject to the final determination of the Regulatory Office.

Rate Cap means:

- a. For Water Rates, a cap of one point three times (1.3x) the Standard Rate for water services in effect in the last Charging Year of the immediately preceding Rate Rebasing Period.
- b. For Sewerage Rates, a cap of one point five times (1.5x) the Standard Rate for sewerage services in effect in the last Charging Year of the immediately preceding Rate Rebasing Period.

In each case, adjusted annually on the first day of each Charging Year for CPI pursuant to Section 9.2.2 below.

9.2.2 Rate Adjustment Procedures

There shall be a percentage adjustment in the Standard Rates equal to the sum of:

- (i) "C", equal to two-thirds (2/3) of the percentage change in the Consumer Price Index between the month immediately preceding the current Charging Year and the month immediately preceding the start of the following Charging Year;
- (ii) the Rebasing Convergence Adjustment ("R") as determined under Section 9.4.2 below; and
- (iii) and any Extraordinary Price Adjustment "E", as determined under Section 9.3 below,

provided, that such sum shall not exceed the limitations in Section 12 of the Charter. There shall be no adjustment due to foreign currency differential adjustment.

The Concessionaire shall submit to the Regulatory Office such percentage adjustment and its calculations no later than fifteen (15) days prior to the publication of such adjustment in accordance with Section 9.5. The proposal is subject to the final determination of the MWSS, with prior recommendation from the Regulatory Office. The determination by the MWSS shall be subject to the relevant provisions of the Executive Order to be issued on Water Regulation.

It shall be understood that the two-thirds (2/3) CPI Adjustment will not be applied to the cost of debt of the Concessionaire.

9.3 Extraordinary Price Adjustment

It is the intention of the Parties that should certain events occur during the term of the Concession, rates may be adjusted to account for the financial consequences of such events.

In the event the Ground for Extraordinary Price Adjustment, as defined in Section 9.3.1 below, has occurred or is expected to occur, the Regulatory Office shall determine, in accordance with Section 9.3.2 below, an Extraordinary Price Adjustment ("E") for purposes of calculating the Standard Rates due to come into effect in the earliest applicable Charging Year.

For the avoidance of doubt, the Concessionaire shall be precluded from (a) claiming compensation for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (b) claiming compensation and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR.

9.3.1. Ground for Extraordinary Price Adjustment

A Ground for Extraordinary Price Adjustment ("GEA") refers to a situation when the Concessionaire has incurred significant additional costs as a result of an Event of Force Majeure which are not covered by insurance.

9.3.2. Determination of Extraordinary Price Adjustment

Upon determination by the Regulatory Office that one or more GEAs have occurred, the Regulatory Office shall, by taking into account all information available at the time, and by making reasonable projections of all factors relevant to the Future Cash Flows of the Concessionaire *[calculated in accordance with the formula set out in Schedule [14]]*:

- (i) the Cash Flows which would be caused by the GEA or GEAs;
- (ii) the Net Present Value of those Cash Flows as at June 30 of the following Charging Year; and
- (iii) the Extraordinary Price Adjustment, positive or negative, which if made to the Rates Adjustment Limit for the following Charging Year would cause the Net Present Value as at June 30 of the Charging Year of the expected Receipts of the concessionaire for the period beginning January 1 of that Charging Year until the Expiration Date to change by an amount equal but opposite in sign to the Net Present Value of Cash Flows referred to in (ii) above.

In the event that such calculation indicates that the appropriate Extraordinary Price Adjustment is between zero (0) and plus one percent (1%) then the Regulatory Office shall determine that the Extraordinary Price Adjustment is zero (0).

Within thirty (30) days after the MWSS approval of the Regulatory Office's determination of an Extraordinary Price Adjustment ("E") of the Standard Rate, the Concessionaire shall immediately adjust the Standard Rate.

The determination of the Extraordinary Price Adjustment shall not include foreign currency differential adjustment.

For the purposes of determining the Extraordinary Price Adjustment relating to a Force Majeure due to an Extraordinary Inflation, only Cash Flows relating to the variance from the previously approved Expenditures which are related to water and sewerage services and directly impacted by the Extraordinary Inflation shall be considered for the determination and approval of the Regulatory Office. Such Expenditure shall be supported by official receipts. For avoidance of doubt, Cash Flows relating to lost revenue, if any, due to such a Force Majeure shall not be considered.

9.4 General Rates Setting Policy/Rate Rebasing Determination

The maximum rates chargeable by the Concessionaire for water and sewage services hereunder applicable to the period through the Second Rate Rebasing Date (subject to interim adjustment's as described in this Article 9) are set out in Schedule 6 to this Agreement.

It is the intention of the parties that, from and after the Second Rate Rebasing Date, the rates for water and sewerage services provided by the Concessionaire shall be set at level that will permit the Concessionaire to recover over the term of the Concession (net of any grants from third parties and any possible Expiration Payment) Expenditures efficiently and prudently incurred and to earn a reasonable rate of return (referred to herein as the "Appropriate Discount Rate").

The Expenditures are those connected with the provision of water and wastewater being provided by the Concessionaire.

The parties further agree that the maximum rates chargeable for such water and sewerage services shall be subject to general adjustment at five-year (5-year) intervals commencing on the second Rate Rebasing Date; provided that the MWSS, with prior recommendation from the Regulatory Office may exercise its discretion to make a general adjustment of such rates on the First Rate Rebasing Date. The MWSS, with prior recommendation from the Regulatory Office shall determine the Rebasing Adjustment to be used for the purposes of calculating the Rates Adjustment Limit for each of the five (5) Charging Years of each Rebasing Period, in accordance with the provisions set forth below.

The Rate Rebasing Period provided herein shall be final.

At the end of every Rate Rebasing Period, the Concessionaire shall submit to the MWSS an accounting of assets which costs had already been recovered through tariffs and titles to such assets has been passed on to MWSS.

For the avoidance of doubt, the Concessionaire shall be precluded from (a) claiming compensation for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (b) claiming compensation and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR.

9.4.1 Concessionaire's Information

Not later than March 31 preceding each Rate Rebasing Date, the Concessionaire shall supply the Regulatory Office with information on its Expenditures, Receipts, Cash Flows, Opening Cash Position and Future Cash Flows in a form and manner, and covering such time periods, as the Regulatory Office may determine. In addition, the Concessionaire shall also supply the Regulatory Office with information on all assets contributed to the MWSS System in the Service Area, the cost of which has already been recovered by the Concessionaire, including all supporting documents, for purposes of transferring to the MWSS legal title to such assets, in accordance with Section 6.13.

The Concessionaire shall also provide such other information as the Regulatory Office may reasonably request or as the Concessionaire may wish to provide.

Failure to provide necessary information shall result in the automatic disallowance of the relevant expenditure.

9.4.2 Rebasing Adjustment

For the purpose of determining the Rates Adjustment Limit to apply to Standard Rates to come into effect on a Rate Rebasing Date commencing with the second Rate Rebasing Date, and the Rates Adjustment Limits for the following four (4) Charging Years, the Regulatory Office shall, by taking into account all information available at the time, and by making reasonable projections of all factors relevant to the Future Cash

Flows of the Concessionaire, and in accordance with the formula set out in Schedule 15, determine:

- (i) the Net Present Value, which may be either positive or negative, of the Opening Cash Position, as at June 30 following that Rate Rebasing Date;
- (ii) the amount, either positive or negative, which if made to the Rate Adjustment Limit for each of the five (5) Charging Years of the Rebasing Period would cause the Net Present Value of the Future Cash Flows, as at June 30 following that Rate Rebasing Date, to be equal but opposite in sign to the Net Present Value of the Opening Cash Position as determined in (i) above (the "Rebasing Convergence Adjustment").

Notwithstanding the foregoing, the Regulatory Office, with approval from the MWSS, may, implement a general rate rebasing consistent with this Section 9.4.2 on the first Rate Rebasing Date if the Regulatory Office determines that circumstances warrant such an action. For avoidance of doubt, there shall be no increase in Standard Rates for water and sewerage services, including through Rebasing Adjustment, until December 31, 2022 as provided for in Section 9.

9.5. Expiration Payment

In the event that the Regulatory Office determines, at any time from and after the second Rate Rebasing Date, that the Concessionaire shall incur significant capital expenditures in carrying out the Concessionaire's responsibilities under this Agreement which (in the judgment of the Regulatory Office) should not be recovered through immediate rate adjustments, the Regulatory Office may propose to the Concessionaire that this Agreement be amended to provide for the payment to the Concessionaire on the Expiration Date of a lump-sum amount designed to reimburse the Concessionaire for all or a portion of such unforeseen capital expenditure (the "Expiration Payment"). Any Expiration Payment shall be treated by the Regulatory Office as an anticipated Receipt for purposes of making rate adjustment calculations under this Article 9. Any Expiration Payment may be discharged through the delivery to the Concessionaire of a Philippine Peso-denominated debt instrument issued by MWSS or by another public-sector entity owned by the Republic but, in either case, ranking at least *pari passu* with all other unsecured and unsubordinated external debt obligations of the Republic, having a cash value to such Expiration Payment; provided, that any representation by the MWSS relating to any obligation or guarantee to be assumed by the Republic shall only be valid upon the issuance of an Undertaking signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President.

The Concessionaire, however, shall be precluded from recovering the aforementioned unforeseen capital expenditure both as Expiration Payment and as part of the Early Termination Amount. In other words, for the avoidance of doubt, the Concessionaire shall be precluded from (a) being compensated twice for the same amount of incurred capital expenditures; (b) being compensated for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (c) being compensated and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR.

For this purpose, the Concessionaire is required to submit to MWSS at every Rebasing Period a list of all assets which costs have already been recovered through tariff. Such assets cannot be used as security for any indebtedness by Concessionaire.

9.6 Connection Charges

- (i) For connections or reconnections to a water main or a public sewer (each a "Connection") that are both located less than twenty-five (25) meters from the connection point and are to residential Customers the Concessionaire shall have the right to charge each Customer requesting such a Connection a fee not to exceed Three Thousand Pesos (Php 3,000.00) which amount shall automatically be adjusted on January 1st of each year by the

percentage change in the Consumer Price Index for the preceding year (each a "Connection Charge"). Within three (3) months after the Commencement Date, the Concessionaire shall with the approval of the Regulatory Office promulgate rules that permit payment of Connection Charges in installments over a five-year (5-year) period by Low-Income Customers.

- (ii) For Connections to a water main or a public sewer located more than twenty-five (25) meters from the connection point or for Connections to non-residential Customers, the Concessionaire shall have the right to charge each Customer requesting such a Connection a fee equal to the costs reasonably and efficiently incurred by the Concessionaire in making that Connection, including the costs of upgrading or restoring existing connections or metering facilities to acceptable technical standards.

Notwithstanding anything to the contrary in this Section 9.6, there shall be no connection charge for public standpipes.

9.6.1 Notification to Customer

Within five (5) days after receiving a request from a customer for a Connection, the Concessionaire shall notify the Customer in writing of the proposed charge for making that Connection. Subject to Section 5.1.3 and Section 5.2.2, Connections shall be carried out by the Concessionaire as promptly as may be practicable following the Customer's written acceptance of the related charge. A Customer shall have the right to notify the Regulatory Office if it objects to the charge proposed by the Concessionaire and the Regulatory Office shall determine in its sole opinion whether such Charge is reasonable and notify the Concessionaire whether an adjustment is required.

9.6.2 Authority to Prescribe Maximum Connection Charges

If the Regulatory Office determines at any time that the Concessionaire is setting charges for connections that are inconsistent with the standards set out in Section 9.6(ii) above, the Regulatory Office, upon not less than thirty (30) days' prior written notice to the Concessionaire, shall have the authority to prescribe a schedule of maximum charges consistent with those standards.

9.7 Publication

Any adjustment to Standard Rates, shall become effective fifteen (15) days after publication in a newspaper of general circulation. The Concessionaire shall undertake such publication promptly upon notice of approval from the Regulatory Office.

ARTICLE 10. MATERIAL ADVERSE GOVERNMENT ACTION

10.1 General

A material adverse government action ("MAGA") means any act or omission of the executive branch of the Government other than those committed by any regulatory authority or approving body of the Government as provided in this Agreement or pursuant to various laws, rules and regulations (excluding, for this purpose, the exercise by the Regulatory Office of any of its rights under this Agreement), which has a material and adverse effect on any of the rights and privileges of, or on the enjoyment and/or exercise thereof by the Concessionaire under this Agreement, or which has a material and adverse effect on the Concessionaire's ability to comply with its financial and/or other contractual obligations under this Agreement, provided that MAGA shall not include:

- (a) the renegotiation of the terms and amendment of the Concession Agreement between MWSS and the Concessionaire dated as of February 21, 1997, as implemented by this Agreement;

- (b) any reorganization of MWSS;
- (c) any reorganization or creation of the relevant regulatory agencies by the President;
- (d) any act or decision rendered by the Regulatory Office under this Agreement;
- (e) amendment of existing rules, regulations, and other issuances resulting from an act of the legislative and the judicial branches of Government;
- (f) any act or decision of government agencies pursuant to implementing laws, rules, and regulations from an act of legislative or judicial branches of Government; any act or decision of local government units (LGUs) pursuant to their powers as provided by the Constitution or other laws;
- (g) any claim or action initiated by the government in the exercise of its rights or remedies against the Concessionaire under this Agreement, any law, rules, or regulations;
- (h) any claim or action initiated by the government in relation to a purported breach on the part of the Concessionaire. For the avoidance of doubt, a judgment, ruling, or resolution in favor of the Concessionaire shall not render such government claim or action as MAGA;
- (i) change in incentives available to ecozone enterprises;
- (j) the imposition of any new local or national tax, or an increase in the rate of any local or national tax;
- (k) an increase in the annual income tax for persons in the Philippines;
- (l) introduction or adjustment of value added tax of general application to persons doing business in the Philippines;
- (m) delay or inaction by the Regulatory Authority in respect of applications relating to adjustment of rates filed by the Concessionaire;
- (n) improvements in technology or operational practices relating to the water industry undertaken by the Concessionaire in the regular course of its operations;
- (o) adjustments in minimum wage scales and rates in the Philippines;
- (p) an event, the adverse effect of which can be insured against in accordance with prudent industry practice; and
- (q) revocation, withdrawal or failure to grant, maintain, renew or accept any relevant consent due to the fault or negligence of the Concessionaire.

Subject to the foregoing requirements, MAGA may include Change in Law only when the act constituting MAGA:

- (i) occurs after the Commencement Date;
- (ii) the Concessionaire had no knowledge of, or could not reasonably be expected to have had knowledge of, prior to the Commencement Date;
- (iii) specifically discriminates against the Concessionaire or the Project; and
- (iv) the Concessionaire is legally obliged to comply with.

10.2 Duties of the Concessionaire in Invoking a MAGA

Upon occurrence of a MAGA, the Concessionaire shall provide written notice to the Regulatory Office thereof no later than forty-five (45) days after becoming aware of the same with supporting evidence. The Concessionaire shall have the burden of proving both the existence of any MAGA and the effect, both as to nature and extent, which any such MAGA has on its performance, and its costs or losses arising therefrom.

10.3 Consequences of the MAGA

If the Concessionaire is rendered, wholly or partly, unable to perform its obligations under this Agreement directly as a result of such MAGA, it shall be excused from performance of such obligations to the extent that it is unable to perform on account of MAGA, provided that:

- (i) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the MAGA;
- (ii) the Concessionaire shall exert all reasonable efforts to mitigate or limit the effects of the MAGA on its performance of this Agreement; and
- (iii) when the Concessionaire is able to resume performance of its obligations under this Agreement, it shall give to the Regulatory Office written notice to that effect and shall promptly resume performance of such obligations.

10.4 MAGA Threshold and Cap

If the MAGA or combination thereof in the aggregate causes the Concessionaire to incur actual capital expenditures in excess of five percent (5%) of the approved capital expenditures from the effectivity of this Agreement until Expiration Date (calculated at the time the Concessionaire claims such financial threshold to have been met), provided that the Concessionaire shall not be entitled to: (a) receiving double compensation for costs incurred, which means that the compensation referred to in this Section shall be understood to preclude all other forms of compensation to the Concessionaire due to the MAGA, such as but not limited to, treating the expenditure as an expenditure under any rate rebasing, or including the expenditure in the Early Termination Amounts or Expiration Payment, (b) being compensated for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (c) being compensated and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR then the Concessionaire shall notify the Regulatory Office in writing of the total of costs or losses suffered by it due to that MAGA or combination thereof; provided further that the Concessionaire has demonstrated to the satisfaction of the Regulatory Office that it has used and is continuing to use all reasonable efforts to overcome or mitigate or minimize the financial effects of the MAGA, then the Concessionaire shall be entitled to:

- (i) Compensation for costs, expenses, and losses caused by the MAGA, including (and not just the excess over) the amounts described in the Immediately succeeding paragraph, capped at fifty percent (50%) of the approved capital expenditures for the effectivity of this Agreement until Expiration Date; or
- (ii) Such other mode as may be agreed by the Parties.

The inability of the Parties to agree on the appropriate mode of compensation within forty-five (45) days from notification of the total costs incurred by the Concessionaire shall result in the termination of this Agreement, and the effects of such termination shall be the same as if this Agreement were terminated by mutual agreement of the Parties under Section 11.5(i) of this Agreement.

If the effects of the MAGA persist for a continuous period of more than ninety (90) days, the Concessionaire shall have an additional right to terminate this Agreement, and the effects of such termination shall be the same as if this Agreement were terminated by mutual agreement of the Parties under Section 11.5(i) of this Agreement.

ARTICLE 11. EVENTS OF EARLY TERMINATION; PENALTIES

11.1 MWSS Event of Default

Each of the following events shall constitute an "MWSS Event of Default," which are grounds for terminating this Concession Agreement:

- (i) MWSS is dissolved, reconstituted or abolished and the Concession Agreement ceases to be enforceable against it, unless the obligations of MWSS are assumed by the Government or by an entity owned by the Government;

- (ii) The whole or any material part of the assets of or shares in the Concessionaire are expropriated, nationalized, or confiscated or steps are taken by any Government Authority that deprive the shareholders of the ability to direct the management of the Concessionaire;
- (iii) The necessary governmental authorization or approval to enable MWSS perform any of its material obligations under this Agreement, shall be revoked, withdrawn or withheld or shall otherwise fail to be issued or to remain in full force and effect; and which shall remain unremedied for a period of sixty (60) days;
- (iv) MWSS shall fail, without cause, to perform an obligation under this Agreement of a kind or to a degree that such failure materially prevents the Concessionaire from carrying out its responsibilities under this Agreement and such failure continues for a period of not less than forty-five (45) days after written notice from the Concessionaire to MWSS;
- (v) MWSS, acting on its own behalf or at the direction of any Government Authority, shall make an assignment for the benefit of creditors, petition or apply to any tribunal for a receiver or a trustee for itself or for any substantial part of its property, commence any judicial or other legal proceedings by reason of its financial difficulties under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or there shall be commenced against MWSS any such proceeding which shall remain undismissed for a period of forty-five (45) days, or MWSS shall by any act indicate its consent to, approval of, or acquiescence, in any such proceeding or the appointment of any receiver of, or trustee for, it or any substantial part of its property, or shall suffer any such receivership or trusteeship to continue undischarged for a period of forty-five (45) days; or there shall be any reorganization, arrangement, readjustment of debt, dissolution, or liquidation with respect to MWSS which does not involve a judicial proceeding and the occurrence of any or all of the above events shall materially impair the rights of the Concessionaire under this Agreement;
- (vi) MWSS is in material breach of any of its representations or warranties under this Agreement of a kind or to a degree that such failure materially prevents it from carrying out its responsibilities under this Agreement, and MWSS fails to remedy the same (or establish plans to remedy the same) within sixty (60) days of notice to do so being given by the Concessionaire; and
- (vii) Any MAGA which causes actual capital costs to the Concessionaire at an agreed threshold or a MAGA which lasts for more than ninety (90) days and materially prevents Concessionaire from performing obligations.

11.2 Concessionaire Event of Default

Each of the following events shall constitute a "Concessionaire Event of Default", which are grounds for terminating this Agreement:

- (i) The Concessionaire shall fail to provide twenty-four-hour (24-hour) water supply at the required pressure under the Concession Agreement and such failure continues for a continuous period of fifteen (15) days;
- (ii) The Concessionaire shall fail to perform a service obligation under Article 5 of this Agreement, other than that subject of Art. 11.2(i), of a kind or to a degree such that (a) in the reasonable opinion of the Regulatory Office, such failure amounts to an effective abandonment of this Agreement because it jeopardizes the provision of essential water and sewerage supply services in all or any significant part in the Service Area and (b) such failure continues for a period of not less than seven (7) days after written notice from the Regulatory Office to the Concessionaire.

The Regulatory Office's finding or determination of effective abandonment is subject to the final determination or approval of the MWSS Board or the Office of the President;

- (iii) The Concessionaire shall, in the reasonable opinion of the Regulatory Office, fail to perform any other obligation of the Concessionaire set out in this Agreement for which the Regulatory Office shall have determined that a financial penalty pursuant to Section 11.4 would be inappropriate or ineffective, if such failure shall continue for a period of not less than one hundred and eighty (180) days after written notice from the Regulatory Office to the Concessionaire;
- (iv) The Concessionaire shall make an assignment for the benefit of creditors, petition or apply to any tribunal for a receiver or a trustee for itself or of any substantial part of its property, commence judicial or other legal proceedings by reason of its financial difficulties under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or there shall be commenced against such party any such proceeding which shall remain undismissed for a period of sixty (60) days, or such party shall by any act indicate its consent to, approval of, or acquiescence in, any such proceeding or the appointment of any receiver of, or trustee for, it or any substantial part of its property, or shall suffer any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or there shall be any reorganization, arrangement, readjustment of debt, dissolution, or liquidation with respect to such party which does not involve a judicial proceeding;
- (v) The Concessionaire charges more than the prescribed fees, as determined by the Regulatory Office;
- (vi) The Concessionaire becomes subject to any bankruptcy, insolvency, liquidation, judicial management, winding up, reorganization, restructuring, or corporate rehabilitation proceedings which are not discharged within ninety (90) days from commencement;
- (vii) If the Concessionaire assigns, novates or otherwise transfers this Agreement, or any part hereof, to any third party, other than in accordance with Section 17.1;
- (viii) The Concessionaire ceases to carry on the whole of its business, or threatens to cease substantial part of its business or disposes of all or substantially all of its assets as will result in its incapacity to observe or perform its obligations under this Agreement;
- (ix) If the Concessionaire engages a contractor or subcontractor for the design and construction or operation and maintenance other than in accordance with Section 6.9 (as applicable);
- (x) If the Concessionaire is in material breach of any representations or warranties under this Agreement, and it fails to remedy the same within forty-five (45) days of written notice by MWSS;
- (xi) There is a Material Change of Control of the Concessionaire within the Commencement Date and Expiration Date which, in the reasonable opinion of the Regulatory Office, amounts to an effective abandonment of the Concession Agreement; and
- (xii) Failure by the Concessionaire to maintain, or require to be effected and maintained throughout the term of the Concession, insurance coverage in such amounts as are reasonable and customary throughout the industry internationally.

11.3 Early Termination Procedures

11.3.1 (a) Termination by MWSS for Concessionaire Event of Default

If a Concessionaire Event of Default shall have occurred and be continuing, the MWSS shall serve a written Notice of Violation to the Concessionaire and copy furnished to the Regulatory Office, stating (a) the nature of the Concessionaire Event of Default, (b) whether the same is capable of remedy, and (c) if the same is capable of remedy, requiring the Concessionaire to remedy the Concessionaire Event of Default within a cure period of one hundred twenty (120) days from its receipt of such Notice of Violation or such longer period as the MWSS may specify.

To expedite the curing process, the MWSS and the Concessionaire shall promptly meet, on or before the date that is seven (7) days after receipt of the Notice of Violation, to negotiate in good faith for the purpose of reaching an agreement.

The Concessionaire, upon the termination of this Agreement, shall ensure the transfer of the Concession assets to the Government subject to the provisions under Section 11.3.2; provided, that the Concession assets cannot be the subject of any security interests in favor of the Concessionaire or of any Concessionaire Lender; provided further, that the tax for such transfer shall be borne by the Concessionaire.

ADDITIONAL TERMINATION RIGHT

MWSS shall be entitled to terminate this Agreement when the common good so requires at any time upon one (1) month's written notice to the Concessionaire. In this case, the Early Termination Amount shall be computed in the same manner as termination upon mutual agreement of the Parties under Section 11.3.2(iv).

For this purpose, common good means those actions for the promotion of health and safety, enhance the right of the people to a balanced ecology, and preserve the comfort and convenience of those within the Service Concession Area.

11.3.1 (b) Termination by Concessionaire for MWSS Event of Default

If an MWSS Event of Default shall occur and be continuing, the Concessionaire may give written Notice of Violation of this Agreement to MWSS (with a copy to the Regulatory Office), stating therein (a) the nature of the MWSS Event of Default, (b) whether the same is capable of remedy, and (c) if the same is capable of remedy, requiring the MWSS to remedy the MWSS Event of Default within at least one hundred and twenty (120) days from its receipt of the Notice of Violation.

To expedite the curing process, the MWSS and the Concessionaire shall promptly meet, on or before the date that is seven (7) days after receipt of the Notice of Violation, to negotiate in good faith for the purpose of reaching an agreement as to the means, period, and other terms and conditions for the curing of the MWSS Event of Default.

If the MWSS Event of Default is not capable of remedy, or the MWSS fails to cure an MWSS Event of Default within one hundred and twenty (120) days (or such longer period as the Parties may agree), the Concessionaire may serve a written notice of termination to the MWSS terminating this Agreement.

11.3.1 (c) Termination Due to A Prolonged Event of Force Majeure

If an Event of Force Majeure prevents a Party from performing any of its material obligations under this Agreement for a continuous period of one hundred and eighty (180) days, such Party may upon written notice, require the other Party to meet as soon as practicable to reasonably discuss any modification, change or amendment of this Agreement to the extent necessary to resolve the issues arising from the Event of Force Majeure and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement. If the Parties do not reach such satisfactory solution within thirty (30) days from the end of the one hundred and eighty (180) day period,

or such other period as may be agreed upon by the Parties, either Party may terminate this Agreement by serving a written notice to the other Party (with a copy to the Regulatory Office), and whereupon this Agreement shall terminate on the date specified in the written notice, which shall not be earlier than sixty (60) days from the date of receipt of the written notice by the other Party.

11.3.2 Early Termination

(i) Within 30 days after the giving of any notice terminating this Agreement pursuant to Section 11.3.1, the Regulatory Office shall determine the amount (the "Early Termination Amount") payable in accordance with clause (ii) of this Section 11.3.2 following an MWSS Event of Default, or payable in accordance with clause (iii) of this Section 11.3.2 following a Concessionaire Event of Default, or payable in accordance with clause (iv) of this Section 11.3.2 following a prolonged Force Majeure Event or upon mutual agreement of the Parties to terminate this Agreement. The Regulatory Office shall promptly give notice to each of MWSS and the Concessionaire of the Early Termination Amount and shall furnish a copy of all supporting calculations.

For the avoidance of doubt, the Concessionaire shall be precluded from (a) claiming compensation for all capital and other expenditures which have been disallowed by the Regulatory Office or the latter's successors and assigns; and (b) claiming compensation and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR.

(ii) Following an MWSS Event of Default:

(A) The Concession (including all fixed assets existing as of the Early Termination Date but excluding all current assets and current liabilities) shall revert to MWSS for a payment to the Concessionaire (the "Early Termination Amount") equal to the amount of (1) the value of assets left behind which have not been transferred to the MWSS pursuant to Section 6.13, as determined by an Appraiser, capped at Net Debt plus Breakage Cost for Concessionaire Loans, plus (2) the shareholder's equity as determined by an Appraiser based on the Concessionaire's latest reported audited financial statements for the Service Area West, adjusted for the net book value of fixed assets contributed to the MWSS system in the Service Area by the Concessionaire, the cost of which has been approved by the Regulatory Office as an Expenditure and has been recovered by the Concessionaire through tariff as at the relevant date; provided, that the Early Termination Amount shall be applied by the Concessionaire to repay the Outstanding Concessionaire Loans; provided further, that the value of the assets that have already been fully paid by MWSS are not included in the Early Termination Amount; and provided, finally, that the payment of the Early Termination Amount to the Concessionaire shall be without prejudice to MWSS demanding the payment for penalties and liquidated damages which the Concessionaire is liable for, and the Concessionaire's obligations, including those which may be secured by the Concessionaire's Performance Bonds.

(B) The Early Termination Amount payable by MWSS under this Section 11.3.2(ii) may either:

- (1) be paid by MWSS in a lump sum payment not later than forty-five (45) days after the Early Termination Date or
- (2) at the option of MWSS, be discharged through the delivery to the Concessionaire of a Philippine Peso-denominated debt instrument issued by MWSS, having a cash value equivalent to the Early Termination Amount; provided, that any representation by the MWSS relating to any obligation or guarantee to be assumed by the Republic shall only be valid upon the issuance of an Undertaking

signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President.

(C) MWSS shall return the Performance Bond net of amounts drawn.

(iii) Following a Concessionaire Event of Default:

- (A) The Concessionaire shall forfeit the full amount of the Performance Bond in favor of MWSS; provided, that any Qualified Replacement Operator shall be bound by the terms of this Agreement and all agreements between the Concessionaire and the Qualified Replacement Operator shall be disclosed to the Regulatory Office.
- (B) All of the Concessionaire's right, title and interest in the Concession shall be assigned by the Concessionaire to a Qualified Replacement Operator (acceptable to the Regulatory Office) nominated by the Concessionaire Lenders; provided, however, that if the Concessionaire Lenders do not nominate such a Qualified Replacement Operator within six (6) months from notice terminating the Concession pursuant to Section 11.3.1, MWSS shall pay to the Concessionaire the Early Termination Amount (set forth in sub-clause (C) below) and the Concession (including all fixed assets existing as of the Early Termination Date but excluding all current assets and current liabilities) shall thereupon automatically terminate and revert to MWSS with no further liability or obligations on the part of MWSS to the Concessionaire or to the Concessionaire Lenders. In either case, MWSS may recover from the Concessionaire an amount equal to the out-of-pocket costs and expenses incurred by MWSS as a result of such Concessionaire Event of Default in excess of the Performance Bond forfeited. Any Qualified Replacement Operator shall be bound by the terms of this Agreement and all agreements between the Concessionaire and the Qualified Replacement Operator shall be disclosed to the Regulatory Office.
- (C) In the event that the Concessionaire Lenders do not nominate a Qualified Replacement Operator pursuant to sub-clause (B) above, the Concessionaire and MWSS agree that it would not be feasible to determine the total amount of losses, costs and expenses that MWSS would incur as a result of a Concessionaire Event of Default. Accordingly, MWSS and the Concessionaire agree that, as a reasonable pre-estimate of such losses, costs and expenses, following a Concessionaire Event of Default, the Concession (including fixed assets existing as of the Early Termination Date but excluding all current assets and current liabilities) shall revert to MWSS for a discounted payment, (the "Early Termination Amount") which shall equal (1) Seventy-five percent (75%) of the value of assets left behind which have not been transferred to the MWSS pursuant to Section 6.13, as determined by an Appraiser, capped at Net Debt, plus (2) 75% of book value of the shareholder's equity as determined by an Appraiser based on the Concessionaire's latest reported audited financial statements for the Service Area West, adjusted for the net book value of fixed assets contributed to the MWSS system in the Service Area by the Concessionaire, the cost of which has been approved by the Regulatory Office as an Expenditure and has been recovered by the Concessionaire through tariff as at the relevant date; provided, further, that the Early Termination Amount shall be applied by the Concessionaire to repay the Outstanding Concessionaire Loans; provided, further, that the value of the assets that have already been transferred to the MWSS are not included in the Early Termination Amount; and, provided, finally, that the payment of the Early Termination Amount to the Concessionaire shall be without prejudice to the MWSS demanding the payment for penalties and liquidated damages which the Concessionaire is liable for, and the Concessionaire's obligations, including those which may be secured by the Concessionaire's performance bonds.

(D) The Early Termination Amount payable to the Concessionaire by MWSS under sub-clause (B) of this Section 11.3.2(iii) may either:

- (1) be paid by MWSS in a lump sum payment not later than forty-five (45) days after the Early Termination Date; or
- (2) at the option of MWSS, be discharged through the delivery to the Concessionaire of a Philippine Peso-denominated debt instrument issued by MWSS, having a cash value equal to the Early Termination Amount; provided, that any representation by the MWSS relating to any obligation or guarantee to be assumed by the Republic shall only be valid upon the issuance of an Undertaking signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President.

(iv) Following a Prolonged Event of Force Majeure or Upon Mutual Agreement of the Parties

(A) The MWSS shall return Performance Bond net of the amounts drawn;

(B) The Concession (including all fixed assets existing as of the Early Termination Date but excluding all current assets and current liabilities) shall revert to MWSS for a payment to the Concessionaire (the "Early Termination Amount") equal to (1) the value of assets left behind which have not been transferred to the MWSS pursuant to Section 6.13, as determined by an Appraiser, capped at Net Debt plus Fifty percent (50%) of Breakage Cost for Concessionaire Loans, plus (2) the shareholder's equity as determined by an Appraiser based on the Concessionaire's latest reported audited financial statements for the Service Area West, adjusted for the net book value of fixed assets contributed to the MWSS system in the Service Area by the Concessionaire, the cost of which has been approved by the Regulatory Office as an Expenditure and has been recovered by the Concessionaire through tariff as at the relevant date; provided, further, that the Early Termination Amount shall be applied by the Concessionaire to repay the Outstanding Concessionaire Loans; provided, further, that the value of the assets that have already been transferred to the MWSS are not included in the Early Termination Amount; and, provided, finally, that the payment of the Early Termination Amount to the Concessionaire shall be without prejudice to the MWSS demanding the payment for penalties and liquidated damages which the Concessionaire is liable for, and the Concessionaire's obligations, including those which may be secured by the Concessionaire's Performance Bonds.

(C) The Early Termination Amount payable to the Concessionaire by MWSS under sub-clause (B) of this Section 11.3.2(iv) may either:

- (1) be paid by MWSS in a lump sum payment not later than forty-five (45) days after the Early Termination Date; or
- (2) at the option of MWSS, be discharged through the delivery to the Concessionaire of a Philippine Peso-denominated debt instrument issued by MWSS, having a cash value equal to the Early Termination Amount; provided, that any representation by the MWSS relating to any obligation or guarantee to be assumed by the Republic shall only be valid upon the issuance of an Undertaking signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President.

(D) the Concessionaire shall forfeit the full amount of the insurance proceeds received from the Force Majeure event in favor of MWSS.

11.4 Penalties for Failure to Meet Service Obligations

A failure by the Concessionaire to meet any Service Obligation which continues for more than fifteen (15) days (or three (3) days in cases where the failure could adversely affect public health or welfare) from written notice thereof from the Regulatory Office to the Concessionaire shall constitute a basis for the Regulatory Office to assess financial penalties against the Concessionaire. The amount of any such penalty shall be equal to the highest of:

- a. twenty-five percent (25%) of the costs that, in the reasonable opinion of the Regulatory Office, the Concessionaire will incur in order to meet the Service Obligation in question;
- b. or in respect of each of the following obligations:
 - i. Water availability – Average water tariff x Two cubic meters (2m³)/day for each affected connection x number of days;
 - ii. Water quality – Fifty percent (50%) of average water tariff x volume of water discharged by the affected water distribution center;
 - iii. Water pressure – Twenty percent (20%) of average water tariff x volume of water discharged by the affected water distribution center;
 - iv. Effluent quality – Fifty percent (50%) of average sewerage tariff x volume of wastewater received by the affected plant;
 - v. Non-Revenue Water – Fifty percent (50%) of average water tariff x volume of water computed to be lost due to leakages;
- c. Or Liquidated Damages as defined and determined in Article I. For this purpose, the approved expenditure for the project not completed or implemented as contained in the spending plan shall be the basis in computing the liquidated damages.

The Concessionaire shall pay any penalties assessed in connection with this Section to the Regulatory Office within ten (10) days after receipt of a demand thereof. Such penalties shall not be regarded as an Expenditure of the Concession. In the event the Concessionaire fails to make timely payment of an assessment pursuant to this Section, the Regulatory Office may draw equivalent of such unpaid amount under the Performance Bond in accordance with Section 6.10 or may treat such non-payment as a basis for downward adjustment in the rates.

Such amount may be collected from the insurance or other securities posted by the Concession. The amount of performance security forfeited, net of out of pocket expenses incurred by MWSS as a result of a Concessionaire event of default shall be deducted from the penalties that the Concessionaire shall pay the government under the provision of this clause.

All penalties received by the Regulatory Office pursuant to this Section shall be rebated to Customers affected by the Concessionaire's failure to meet Service Obligations in such manner as the Regulatory Office deems appropriate.

When the Concessionaire refuses or fails to satisfactorily complete the work or perform its obligation within the specified time, the MWSS, upon recommendation of the Regulatory Office, shall impose Liquidated Damages.

11.5 Termination Events

This Agreement shall terminate:

- (i) Upon mutual agreement of the Parties for any reason at any time, provided that no MWSS Event of Default or Concessionaire Event of Default is subsisting;

- (ii) By either Party in the event of a prolonged Event of Force Majeure;
- (iii) By MWSS in case of occurrence of a Concessionaire Event of Default;
- (iv) By the Concessionaire in case of occurrence of MWSS Event of Default; or
- (v) On the Expiration Date.

ARTICLE 12. REGULATORY OFFICE

12.1 Organization

The Regulatory Office (the "Regulatory Office") is established, organized and operated in a manner consistent with the prescription contained in Executive Order No. subject to such changes thereto that the Office of the President may make from time to time, and shall have the functions and powers described in that Executive Order.

Decisions of the Regulatory Office requiring action by the MWSS Board of Trustees, including decisions affecting the level of the Standard Rates, shall be promptly submitted to the Board in accordance with Section 7.1 hereof.

The Concessionaires shall comply with all the rules and regulations to be promulgated by the Regulatory Office from time to time.

Throughout the period of the Concession, the Regulatory Office shall be allowed to monitor, inspect, evaluate and check the progress and quality of the activities and works undertaken by the Concessionaire to ensure that the Facilities in the Service Area are maintained and operated in accordance with the National Building Standards, best industrial practices and other requirements of this Agreement; provided, that the Regulatory Office shall provide reasonable prior notice to the Concessionaire and shall observe the Concessionaire's reasonable site access rules and procedure.

The Regulatory Office shall also exercise the following functions:

- monitoring of the awarded Concession Agreements;
- reviewing and monitoring of water supply and sewerage rates;
- implementing Extraordinary Price Adjustment provisions;
- implementing Rate Rebasing provisions;
- monitoring contracts between the Concessionaire and Customers for the provision of water and sewerage services;
- arranging for the regular, independent, technical, and financial audit of the activities of the Concessionaire, and the public dissemination of such information;
- monitoring and enforcing standards of service to Customers, and any agreed improvement in these standards;
- monitoring the production of audited financial information, ruling on cost allocation and other accounting practices appropriate for the rate-setting methodology;
- monitoring the reported, audited condition of water and sewerage service infrastructure assets, and enforcement of this Agreement with respect to these;
- reporting on the Regulatory Office's activities and communicating the Office's decision, and responding to complaints or representations received from Customers and other interested groups;
- responding to complaints or representations received from Customers and other interested groups;
- investigate any matter concerning the services subject of the contracts, and require the Concessionaires to submit in writing any undertaking for immediate remedial measures;
- conduct inquiries on matters relating to water supply, sewerage and sanitation services;

- implement refunds/credit to Customers, upon finding that excess collections were made by the Concessionaires;
- approve bilateral supply contracts, upon prior hearing/public consultations, provided that such approval will not result in an automatic increase and rates and should undergo the usual rate rebasing process; and
- monitor and enforce the adoption of transfer pricing and arm's length trading policies in transactions involving cross-ownership with the Concessionaire, provided that, in order to ensure compliance with the arm's length pricing or standard, the Regulatory Office shall determine the prudent and efficient cost of services in the applicable transaction involving a related party to the Concessionaire; provided further, that related party shall include but is not limited to an affiliate or subsidiary of or party related to the Concessionaire.

12.2 Funding

The funding of the Regulatory Office shall be governed by an Executive Order to be issued by the President of the Republic of the Philippines.

12.3 Composition

The Regulatory Office shall be composed of a Director and four (4) Members to be appointed by the President. No Director or Member of the Regulatory Office shall have present or prior affiliation with MWSS or the Concessionaire or Other Operator (or any affiliate of the Concessionaire or Other Operator). The appointment of a Director or Member shall not be a MAGA, or be an arbitrable matter.

12.4 Transitory Provision

The incumbent Director and Members of the Regulatory Office shall perform the functions of the Director and Members on holdover capacity until such time when the new Director and Members shall have been appointed by the President.

ARTICLE 13. DISPUTE RESOLUTION.

13.1 Consultation

The parties hereto agree to use reasonable efforts to resolve any disagreements or disputes concerning the interpretation or implementation of this Agreement through mutual consultation and negotiation.

13.2 Arbitration

The parties agree to use best efforts to amicably resolve any disagreements, disputes, controversies or claims arising out of or relating to this Agreement or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof. Any dispute that cannot be resolved amicably shall be referred to and settled by final binding arbitration in accordance with the Arbitration Rules embodied in Republic Act No. 9285 and its Implementing Rules and Regulations, or the existing Philippine law and regulations on arbitration at the time of dispute, except insofar as the Rules conflict with the provisions of this Agreement; provided, however, that the composition of the Regulatory Office and the actions and decisions of the Regulatory Office in the exercise of its mandate are not arbitrable.

The seat for arbitration will be the Philippines, and the venue shall be in Metro Manila. Only Filipino citizens may be appointed as arbitrators.

This Agreement and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in any arbitration proceedings, which award shall determine whether and when termination of this Agreement may become effective.

ARTICLE 14. INFORMATION AND REPORTING REQUIREMENTS

14.1 General Requirements

The Concessionaire shall have a general duty to provide to the Regulatory Office and other approving agencies under this Agreement all information in order to permit the Regulatory Office and other approving agencies to monitor the Performance of the Concessionaire in relation to its obligations under this Agreement. Such information shall include, and not limited to:

14.1.1 Service Performance Information

The Concessionaire shall provide to the Regulatory Office not more than thirty (30) days following the end of each calendar quarter a report of its performance with respect to the provision of water and sewerage services in the Service Area which shall contain the information specified in Schedule 16 hereto, as such Schedule may be revised by the Regulatory Office from time to time.

14.1.2 Financial Information

The Concessionaire shall provide to the Regulatory Office not later than sixty (60) days following the end of each calendar year a report of the financial performance of the Concession. Such report shall include (i) an analysis of revenue by source and revenue from other sources, (ii) an analysis of operating costs which distinguishes between water supply, sewerage and other services, (iii) an analysis of capital expenditures and investments which distinguishes between water supply, sewerage and other services, and (iv) the other information specified in Schedule 17 hereto, as such Schedule may be revised by the Regulatory Office from time to time.

14.2 Audits

Subject to existing laws, rules and regulations, the Concessionaire's books and records shall be audited by the Commission on Audit and the Regulatory Office or its appointed independent auditor. In addition, the Regulatory Office may, upon giving not less than fifteen (15) days' prior written notice to the Concessionaire, require that the Concessionaire's books and records relating to the Concession to be audited on an interim basis. The Concessionaire shall cooperate fully with such audits. All costs and expenses of such audits shall be borne by the Concessionaire and shall be treated as an Expenditure.

ARTICLE 15. INDEMNITIES

15.1 Concessionaire Indemnity

The Concessionaire shall indemnify and hold MWSS and its employees, servants and agents harmless from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses (including reasonable attorney's fees) payable to third persons resulting from the operation and maintenance of the Facilities by the Concessionaire, and the performance by the Concessionaire of its obligations under the Concession, on or after the Commencement Date, except to the extent of any foregoing results from the gross negligence or willful misconduct of MWSS.

15.2 MWSS Indemnity

MWSS shall indemnify and hold the Concessionaire and its respective employees, servants and agents harmless from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses (including reasonable attorney's fees) payable to third persons arising out of the operation and maintenance of the Facilities by MWSS prior to the Commencement Date.

15.3 Procedures for Indemnification

Each of MWSS and the Concessionaire shall promptly notify the other of any claim for indemnification pursuant to any of the above Sections in this Article 15 and shall include sufficient information to enable the other party to assess the circumstances relating to such claim or potential claim. Each of MWSS and the Concessionaire shall cooperate fully with the other party in defense of any such claims. The indemnifying party shall have the right to assume the defense, appeal or settlement of such claims with respect to which indemnity has been invoked within twenty (20) days after receipt of notice thereof from such indemnified party.

ARTICLE 16. CONDITIONS PRECEDENT

16.1 General Conditions

The obligation of each party hereto to effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Effective Date of the following general conditions:

- (i) No order, statute, rule, regulation, executive order, injunction, stay, decree or restraining order shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or governmental or regulatory authority or instrumentality having jurisdiction over the matter that restrains, prohibits or declares illegal the consummation of the transactions contemplated hereby, and no action, suit, injury or proceeding shall have been instituted or threatened by any governmental or regulatory authority or instrumentality having jurisdiction over the matter that seeks to restrain, prohibit or declare illegal the consummation of the transaction contemplated hereby.
- (ii) All waivers, consents, approvals or authorizations required to be obtained from, and all notices, declarations, reports or filings required to be made with, any governmental or regulatory authority or instrumentality in connection with the consummation of the transactions contemplated hereby, shall have been made or obtained.

16.2 Conditions to Obligations of MWSS

The obligations of MWSS to effect the changes to the original concession agreement contemplated by this Agreement shall be subject to the satisfaction at or prior to the Effective Date of the following additional conditions, unless such conditions are waived by MWSS:

- (i) the Concessionaire shall have performed in all material respects the obligations required under this Agreement to be performed by it at or prior to the Effective Date;
 - (ii) the representations and warranties of the Concessionaire contained herein be true and correct in all material respects at and as of the date of execution of this Agreement as if made at and as of such date except to the extent that a different time is specifically stated in any such representation and warranty; and
 - (iii) on the date of signing of this Agreement, MWSS shall have received the documents and instruments set out below:
- 
- 

- (a) an opinion from a Philippine counsel to the Concessionaire, acceptable to the Office of the Government Corporate Counsel substantially in the form attached hereto as Exhibit B;
 - (b) a certificate from a duly authorized officer of the Concessionaire to the effect that the representations and warranties of the Concessionaire contained in this Agreement are true and correct in all material respects as of the date of its execution;
 - (c) document evidencing waiver by the Concessionaire of the arbitral award issued against the Republic and MWSS, in the following cases:
 - i *Arbitration Case No. UNC 141/CYK, entitled Maynilad Water Services, Inc. v. Metropolitan Waterworks and Sewerage System and Regulatory Office; and*
 - ii *Maynilad Water Services, Inc. (Philippines) v. Republic of the Philippines, PCA Case No. 2015-37.*
 - (d) all other documents, instruments, writings and other items required to be delivered by the Concessionaire pursuant to this Agreement or otherwise reasonably requested by MWSS in connection herewith;
 - (e) certified true copies of resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement;
- (iv) and the Concessionaire and the Other Operator shall have entered into the Common Purpose Facilities Agreement subject to Section 3.5.

16.3 Conditions to Obligations of the Concessionaire

The obligations of the Concessionaire to effect the changes to the original concession agreement contemplated by this Agreement shall be subject to the satisfaction at or prior to the Effective Date of the following additional conditions, unless such conditions are waived by the Concessionaire:

- (i) MWSS shall have performed in all material respects the obligations required under this Agreement to be performed by it at or prior to the Effective Date;
- (ii) the representations and warranties of MWSS contained herein shall be true and correct in all material respects at and as of the date of execution of this Agreement as if made at and as of such date except to the extent that a different date is specifically stated in any such representation and warranty;
- (iii) the Concessionaire shall have received the documents and instruments set out below:
 - (a) an opinion from the Office of the Government Corporate counsel substantially in the form attached hereto as Exhibit C;
 - (b) a certificate from a duly authorized officer of MWSS to the effect that the representations and warranties of MWSS contained in this Agreement are true and correct in all material respects as of the date of its execution;
 - (c) an Undertaking Letter from the Republic signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President in connection with Sections 9.5, 11.3.2(ii)(B)(2), 11.3.2(iii)(D)(2), and 11.3.2(iv)(C)(2) in the form of Exhibit D hereto;
 - (d) a copy of the letter setting forth Raw Water supply arrangements as described in Section 3.6 above; and

- (e) certified true copies of resolutions adopted by the MWSS Board of Trustees authorizing the execution, delivery and performance of this Agreement.

For the avoidance of doubt, other than the Undertaking referred to in Sections 9.5, 11.3.2(ii)(B)(2), 11.3.2(iii)(D)(2), and 11.3.2(iv)(C)(2), the Republic shall not issue any Undertaking in relation to this Agreement. Any Undertaking so issued under Sections 9.5, 11.3.2(ii)(B)(2), 11.3.2(iii)(D)(2), and 11.3.2(iv)(C)(2) is understood to apply exclusively to the obligations arising from contracts or loans existing at the signing of this Agreement and shall not cover or apply to prospective obligations; provided, that the Undertaking shall be limited to the outstanding amount of the original loan at the time of execution of this Agreement, including the undrawn amount from the 7 June 2017 Credit Agreement (JICA Loan Agreement) as certified by JICA, net of any repayments; provided further, that the issuance of the Undertaking reflects the mutual recognition and agreement of the parties that the 1997 Undertaking Letter previously issued pursuant to the original Concession Agreement dated February 21, 1997 shall cease to have effect, and any and all claims that have or may have arisen, or may arise pursuant to the 1997 Undertaking Letter and its subsequent extension are deemed waived, abandoned and to have no legal basis; provided further, that the Undertaking issued pursuant to this Revised Concession Agreement shall supersede all aspects of the 1997 Undertaking Letter and its subsequent extension; provided, finally, that any change in service obligations or capital expenditures, when approved by the Regulatory Office, shall not be a justification to increase the existing loans guaranteed by the Undertaking.

ARTICLE 17. MISCELLANEOUS

17.1 Assignment

This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither this Agreement nor any rights hereunder shall be assigned by either Party hereto, nor shall any Party delegate any of its obligations hereunder, without the prior written consent of the other Party, and any purported assignment or delegation absent such consent shall be void; provided, however, that the Concessionaire may assign its right to receive any payments or other consideration hereunder (including the right to receive any Early Termination Amount) as security for Concessionaire Loans.

17.2 Amendments

Any amendment of any provision of this Agreement shall be in a writing signed by the Parties and acknowledged by the Republic acting through the Secretary of Finance.

17.3 Governing Law

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

17.4 Notices

Any notices or other communications required or permitted hereunder or otherwise in connection herewith shall be in writing and shall be delivered personally (including by courier), telexed, sent by facsimile transmission or through email, or sent by certified mail or delivered personally, or if telexed or sent by facsimile transmission, when so transmitted or mailed, upon receipt, as follows:

If to MWSS to:

Metropolitan Waterworks and Sewerage System
4th Floor, Administration Building, MWSS Complex,
Katipunan Road, Balara,
Quezon City 1105, Philippines

Email:

Attn: MWSS Administrator

(with a copy to the Regulatory Office)

Attn: MWSS Administrator

Facsimile: 8921-2887

Trunk Line: 8920-55-21 local Nos. 102 & 103

Direct Line: (02) 3433-39-87

If to the Concessionaire to:

Manilad Water Services, Inc.
MWSS Compound
Katipunan Road, Balara
Quezon City 1105, Philippines,

Email:

If to the Regulatory Office to:

Regulatory Office
c/o Metropolitan Waterworks and Sewerage System
3rd Floor, Engineering Building, MWSS Complex
489 Katipunan Road, Balara,
Quezon City 1105, Philippines

Attn: MWSS Administrator

Facsimile: 8921-2887

or such other address as the person to whom notice is to be given has furnished in writing to the other parties. A notice of change in address shall not be deemed to have been given until received by the addressee.

17.5 Counterparts

This Agreement may be executed in three counterparts or more, each of which when so executed shall be deemed an original, and all of which together shall constitute one and the same instrument.

17.6 Entire Agreement

This Agreement (including any Exhibits, Schedules, documents and instruments referred to herein) constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties. Each of the parties undertakes to execute such documents and perform such acts as may reasonably be necessary to give effect to this Agreement.

17.7 Rules of Interpretation

Unless the context otherwise requires:

- (a) In case of ambiguities or discrepancies within this Agreement, the following rules of interpretation shall apply:
 - (i) between two or more Sections of this Agreement, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;

- (ii) between the Sections of this Agreement and the Schedules, the Sections shall prevail;
- (iii) between any two Schedules, the Schedules relevant to the issue shall prevail; and
- (iv) between any value written in numerals and that in words, the latter shall prevail.

The rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof shall not apply.

- (b) "Include", "Includes", and "Including" are deemed to be followed by "without limitation" or "but not limited to", whether or not actually followed by such words or words of like import.
- (c) References to any document or agreement shall be deemed to include references to such document or agreement as amended, supplemented, novated, varied or replaced from time to time.
- (d) References to any gender include all genders, and references to the singular include the plural, and vice versa.
- (e) References to Sections are references to Sections of this Agreement, unless expressly provided otherwise.
- (f) References to Schedules, which do not specify which document they are annexed to, are references to Schedules to this Agreement.
- (g) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this Agreement.
- (h) Reference to a "day" refers to a calendar day, unless expressly provided otherwise; reference to a "month" refers to a calendar month, and a "year" as a period of time commencing on a particular date and ending on the day before the anniversary of such date.
- (i) For the avoidance of doubt, where a specific time period is identified in this Agreement, such period may be modified to include other periods as may be mutually agreed upon in writing by the Parties.
- (j) Reference to a "person" shall be construed as a reference to any individual, firm, company, corporation, society, or trust, as well as his/her/its successors-in-interest and permitted assigns.
- (k) Where there is any conflict or inconsistency between the provisions of the body of this Agreement and any Schedule thereto, the former shall prevail.
- (l) Where any Party is required under this Agreement to give consent, approval, or acceptance, make a determination or be satisfied or find a matter acceptable or satisfactory, then, unless the words "in its absolute discretion" or words of similar import appear in reference to the relevant consent, approval, acceptance, determination, or expression of satisfaction, the relevant consent, approval, acceptance, determination, or expression of satisfaction shall not be unreasonably withheld or delayed.

17.8 Expenses

Each party hereto shall bear its own expenses in connection with the preparation and negotiation of this Agreement and any related documents.

17.9 Third-Party Beneficiaries

Except as otherwise expressly provided herein, this Agreement is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.

17.10 Force Majeure

No failure or omission to carry out or observe any terms, provisions or conditions of this Agreement shall give rise to any claim by any Party against another Party or be deemed to be a breach or default of this Agreement if the same shall be caused or arise out of an Event of Force Majeure, as defined below.

17.10.1 Events of Force Majeure

The following events shall constitute an "Event of Force Majeure":

- (a) any war, declared or not, or hostilities or belligerence, blockade, revolution, insurrection, riot, public disorder, expropriation, requisition, confiscation, nationalization or prolonged obstruction of the exercise of rights or powers referred to in Section 7.2, export or import restrictions closing of harbors, docks, canals or other assistance to or adjuncts of shipping or navigation of or with any place, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of, any governmental authority of or within the Republic, or
- (b) fire, unusual flood, drought, earthquake, pollution of Raw Water (other than caused by the act or omission of the party invoking such Event of Force Majeure), volcanic eruption, storm, lightning, tide (other than normal tide), tidal wave, unusually severe weather conditions, perils of the sea, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistance to or adjuncts of shipping or navigation, epidemic, quarantine, strikes or combination of workmen, lockouts or other labor disturbances, or
- (c) any other event, matter or thing wherever occurring, which shall not be within the reasonable control of the party affected thereby.

"Event of Force Majeure" shall not include (A) lack of funds or inability to access funds for the performance of any obligation under this Agreement, (B) fluctuations in foreign exchange rates, or (C) inflation (other than Extraordinary Inflation). For the purposes of Force Majeure due to an Extraordinary Inflation, this should only apply for costs related to water and sewerage services which are impacted, as determined by the Regulatory Office. In no event shall late payment or non-payment of moneys due be excused by an Event of Force Majeure.

17.10.2 Duties of Party Invoking an Event of Force Majeure

The Party invoking an Event of Force Majeure shall (i) notify in writing each other Party as soon as reasonably possible of the nature of the Event of Force Majeure and the extent to which the Event of Force Majeure suspends the affected Party's obligations under this Agreement and (ii) resume performance of its obligations as soon as the effects of the Event of Force Majeure cease to exist.

17.10.3 Minimizing Loss Due to an Event of Force Majeure

The Parties shall consult with each other and take all reasonable steps to minimize the losses of either Party resulting from an Event of Force Majeure.

17.11 Conduct of the Concessionaire Pending the Expiration Date

The Concessionaire hereby covenants that, from the date three (3) months prior to and including the Expiration Date, unless MWSS shall otherwise consent in writing (which consent shall not unreasonably be withheld), the Concessionaire shall conduct the business and operations of the Concession in the ordinary and usual course in a

manner consistent with past best practice and, without limiting the generality of the foregoing, the Concessionaire shall:

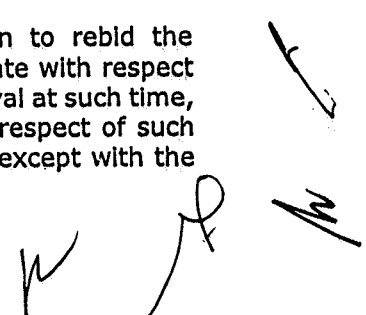
- (i) use its reasonable efforts to preserve and maintain the Facilities and Inventories;
- (ii) maintain in accordance with its normal best practices all documents, agreements, contracts and other corporate records of MWSS relevant to its business and operations;
- (iii) at all times comply with all material laws, statutes, rules, regulations, orders and directives of any governmental authority having jurisdiction over the Concessionaire or its businesses;
- (iv) give prompt written notice to MWSS of: (a) the commencement of any dispute or proceeding between the Concessionaire and any governmental body which, if determined adversely to the Concessionaire, could reasonably be expected to have a material adverse effect on the Concessionaire's business or financial condition; (b) the occurrence of any material event of default in any material agreement of the Concessionaire or any event which, upon a lapse of time or the giving of notice or both, would become a material event of default under any such agreement; and (c) the occurrence of any other event which has or could reasonably be expected to have a material adverse effect on the Concessionaire's business or financial condition;
- (v) not waive any valuable right owed to the Concessionaire; or
- (vi) not reorganize departments or otherwise revise its organizational structure in any material fashion, other than any such reorganization consistent with the terms hereof.

17.12 Reversion

Subject to Section 6.13 that requires the transfer of recovered assets to the MWSS prior to Termination Date, upon the expiration of this Concession on the Termination Date, all of the rights duties and powers of the Concessionaire provided under the terms of this Agreement shall automatically revert to MWSS' successors or assigns; provided, however, that the Concessionaire bear all liabilities, and shall be entitled to receive and to retain all revenues, arising out of its operation of the Facilities prior to the expiration of the Concession. The MWSS shall be solely responsible for any taxes, fees or duties payable in connection with such reversion. On the Expiration Date, the Concessionaire shall retain all cash and marketable securities and Disapproved Assets (other than such assets which are integral to the MWSS system) and transfer to MWSS or its successors or assigns:

- (i) the Movable Property in its then-current condition;
- (ii) Inventory having a value (adjusted for CPI) at least equal to the Inventory made available to the Concessionaire on the Commencement Date pursuant to Section 3.3 hereof;
- (iii) Legal title (free of any liens or encumbrances) to new assets contributed by the Concessionaire pursuant to Section 6.13; and
- (iv) All reports, records, designs, manuals, asset registers, employment records, maps and plans associated with the provisions of water and sewerage services within the Service Area.

At the time of such expiration, MWSS shall have the option to rebid the Concession or undertake any other course of action it deems appropriate with respect to the Concession; it being understood that without their express approval at such time, neither MWSS nor the Republic shall incur any financial obligation in respect of such rebidding or other undertaking. This Agreement may not be renewed except with the express written consent of MWSS and the Republic.



17.13 Waiver

No delay by or omission on the part of the Republic, through its officials, employees, agents or representatives, in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy, or be construed as a waiver of such right, power, privilege or remedy. Any single or partial exercise of any such right, power, privilege, or remedy shall not preclude any other or future exercise of any such right, power, privilege, or remedy or the exercise of any other right, power, privilege, or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

Delay or omission by the Concessionaire in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy, or be construed as a waiver of such right, power, privilege or remedy. Any single or partial exercise of any such right, power, privilege, or remedy shall preclude any other or future exercise of any such right, power, privilege, or remedy or the exercise of any other right, power, privilege, or remedy.

17.14 Other remedies

Since this Agreement is imbued with public interest and that recovery of damages alone may not be an adequate remedy, so that in the event of a breach or anticipated breach of such provisions, the remedies of injunction and specific performance may in appropriate circumstances be available.

17.15 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement. The Parties shall negotiate an equitable adjustment in the remaining portions or provisions of this Agreement to effect the underlying purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized officer, all as of the date first written above.

METROPOLITAN WATER WORKS AND SEWERAGE SYSTEM MAYNILAD WATER SERVICES, INC.


PLTGEN REYNALDO V. VELASCO (Ret).
Chairman


RAMONCITO S. FERNANDEZ
President and CEO

Witnesses:


LEONOR O. CLEOFAS, CESO IV
Deputy Administrator


RANDOLPH T. ESTRELLADO
Chief Operating Officer

ACKNOWLEDGMENT

BEFORE ME, personally appeared this 18 day of May 2021 in Quezon City the following:

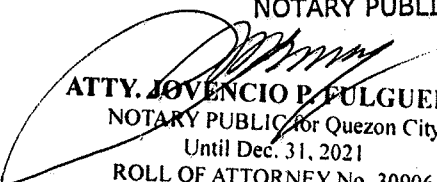
PARTIES	GOV'T ISSUED ID	VALIDITY
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM Represented by:	TIN 000 719 756 000	
PLTGEN REYNALDO V. VELASCO (Ret).	Driver's License N17-71-004769	Valid until 21 May 2022
LEONOR C. CLEOFAS	Driver's License N02-79-082179	Valid until 27 Nov 2022
MAYNILAD WATER SERVICES, INC. Represented by:	TIN 005 393 442 000	
RAMONCITO S. FERNANDEZ	Passport No. P7519928A	Valid until 12 June 2028

known to me to be the same person who executed the foregoing Revised Concession Agreement (Instrument) for and in behalf of said corporations, and they acknowledged to me that the same is their free and voluntary act and that of the respective corporation they represent.

This Instrument consists of only fifty (50) pages including this page in which this Acknowledgement is written, duly signed by parties and their witnesses.

WITNESS MY HAND AND SEAL this MAY 18 at QUEZON CITY, Philippines.

Doc. No. 422;
Page No. 86;
Book No. 5;
Series of 2021;

NOTARY PUBLIC

ATTY. JOVENCIO P. FULGUERAS
NOTARY PUBLIC for Quezon City
Until Dec. 31, 2021
ROLL OF ATTORNEY No. 30906
IBP OR No. 156824 / 02-10-2021 / Pasig City
PTR No. 0599316 / 01-05-2021
MCLE COMPLIANCE No. VI-0027923 valid
Until 4-14-2022