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TEMPLATE FOR A

CONTRACT FOR THE OPERATION & MANAGEMENT OF THE DRAINAGE / SEWERAGE SYSTEM

in City

September, 2011

Ministry of Construction – Hanoi

in cooperation with

**Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Technical Assistance on behalf of GIZ by GFA Consulting Group & Associates**

Your contact
with GFA Consulting Group GmbH

Gudrun Krause

Fax +49 (40) 6 03 06169
Email: gudrun.krause@gfa-group.de

Address

**GFA Consulting Group GmbH
Eulenkrugstraße 82
D-22359 Hamburg
Germany**

Approved by
Frank Pogade
Chief Technical Advisor

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PART I: LEGAL BASIS

1. Both parties sign an AGREEMENT in accordance with the duties, responsibilities and restrictions as stipulated by the following laws:

- Civil Law No. 33/2005/QH11 dated 14/06/2005
- Construction Law No. 16/2003/QH11 dated 26/11/2003
- Bidding Law No. 61/2005/QH11 dated 29/11/2005
- Law on Urban Planning No. 30/2009/QH12 dated 17/06/2009
- Law on Environmental Protection No. 52/2005/QH11 dated 29/11/2005
- Law on Water Resources No. 08/1998/QH10 dated 20/05/1998
- Law on Environmental Protection Tax No. 57/2010/QH12 dated 15/11/2010
- Labour Code of the Socialist Republic of Vietnam;
- Law on Administrative Proceedings No. 64/2010/QH12 dated 24/11/2010
- Decree No. 12/2009/NĐ-CP dated 12/02/2009 on management of investment projects for construction works
- Decree No. 209/2004/NĐ-CP dated 16/12/2004 on quality management of construction works
- Decree No. 49/2008/ND-CP dated 18/04/2008 amending some articles of Decree 209/2004/NĐ-CP dated 16/12/2004 on quality management of construction works
- Decree No. 88/2007/NĐ-CP dated 28/05/2007 on drainage and sewerage for urban areas and industrial zones
- Circular No. 09/2009/TT-BXD dated 21/05/2009 providing detailed guidelines for the implementation of some contents of Decree 88/2007/ND-CP on Drainage and Sewerage in Urban Areas and Industrial Zones
- Law on the exploitation and protection of irrigation works
- Vietnamese Standards on Waste water Management
- Local regulation on Waste water Management of city/province
- Other relating legal documents

PART II: PARTIES TO THE CONTRACT

Party A (“GRANTOR”)

.....

.....

Legal representative:

Position:

Address:

Mandate contract No.:

Account number:

Tax code:

Telephone and fax number:

Email address:

Party B (“OPERATOR”)

.....

.....

Legal representative:

Position:

Address:

Mandate contract No.:

Account number:

Tax code:

Telephone and fax number:

Email address:

*The two parties hereby agree to sign the Contract for the Operation & Management
of the Drainage / Sewerage System basing on the following provisions*

PART III: CONTRACT CONTENT

Article 1: Definitions of Terms Used in the Contract

- *Authorized Officer* means the person assigned by GRANTOR to have the duties, rights and obligations outlined in Article 21 hereof.
- *Claims during the implementation of the CONTRACT* (hereinafter referred to as CLAIMS) are made in case of either party's inappropriate implementation or non-implementation of the obligations defined in the CONTRACT to ask for conformation to the CONTRACT.
- *Commencement Date* means the day when the SERVICES start.
- *Completion Date* means the date on which the SERVICES are required to have been completed in accordance with the CONTRACT, and in relation to the term 'CONTRACT' means the end of that CONTRACT.
- *Contract* means the agreement and the several documents listed herein.
- *Contract Price* is the total value to be paid by GRANTOR to OPERATOR for carrying out O&M works of the DRAINAGE/SEWERAGE SYSTEM in 01 (one) year as stipulated in this CONTRACT.
- *Customers* are the owners of the land use rights, of houses, of industrial and commercial sites and also administration offices and business and service entities as defined in Article 2, Item 5 of Decree 88/2007/ND-CP that are benefiting from drainage/sewerage SERVICES and / or have signed a service contract with OPERATOR of the DRAINAGE/SEWERAGE SYSTEM.
- *Drainage/Sewerage System* is the combination of all infrastructural facilities and their elements that serve the purpose of waste water and storm water drainage, transportation and treatment as regulated in Article 2, Item 10,11 and 12 of Decree No. 88/2007/ND-CP dated May 28, 2007 on drainage and sewerage in urban areas and industrial zones.
- *Default Notice* means a written note from GRANTOR to OPERATOR in case he has fallen behind with his contractual duties.
- *Default Points* means points compiled by the AUTHORIZED OFFICER upon OPERATOR'S non-compliance with agreed performance standards.
- *Dispute Settlement Committee* is the entity to solve any dispute with default points. This committee will be composed of the AUTHORIZED OFFICER, and one representative from OPERATOR. Both parties may agree on a third person from another institution.
- *Financial Penalties* means penalties to be paid by OPERATOR to GRANTOR, through adjustments in payments by GRANTOR to OPERATOR or otherwise, upon issuance by GRANTOR of DEFAULT NOTICE.
- *Force Majeure Event* means occurrences beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the said party is unable to prevent or provide against, including without limiting the generality of the foregoing, war (declared or undeclared), insurrection, acts of terrorism, maritime or natural disasters, boycotts or strikes other than strikes limited to the workforce of, or provided by, OPERATOR, and prolonged power supply interruption;
- *Grantor* of the drainage/sewerage system (hereinafter referred to as GRANTOR) is [name of the owner of the DRAINAGE/SEWERAGE SYSTEM]
- *Grantor Staff* mean all personnel specifically designated by GRANTOR'S authorized officer to be responsible for assuring proper delivery of SERVICES under this CONTRACT.

- *Liens* means a security interest granted over an item of property to secure the payment of a debt or the performance of some other obligation. The owner of the property, who grants the lien, is referred to as the lienor and the person who has the benefit of the lien is referred to as the lienee.
- *Notice* means either a RECTIFICATION NOTICE, a DEFAULT NOTICE, or a supplemental DEFAULT NOTICE served upon OPERATOR by GRANTOR for failure to properly perform the SERVICES in accordance with the provisions of the CONTRACT.
- *Operation and Maintenance Contract* (hereinafter referred to as CONTRACT) is a legal document signed between the GRANTOR and the OPERATOR, who is assigned with the management, operation and maintenance of the drainage/sewerage system.
- *Operator of the drainage/sewerage system* (hereinafter referred to as OPERATOR) means the company that has signed the CONTRACT for the provision of the SERVICES listed herein.
- *Operator Representative* means the person designated by OPERATOR to have the duties, rights and obligations outlined in Article 22 hereof.
- *Operator Staff* means all personnel responsible for delivering SERVICES under this CONTRACT including operators, supervisors and administrative staff.
- *Performance Bank Guarantee* means the OPERATOR's paying a deposit or issuing a letter of indemnity as a guarantee for the realization of its obligations as defined in this CONTRACT.
- *'Performance based contract* means a CONTRACT based on defined results rather than bills of quantity or scopes of services. These types of contracts enable results to be achieved using the creativity and innovative methods of the service provider.
- *Performance Indicators* are benchmarks to periodically assess the performance of the service provider. Performance indicators are linked to target values, so that the measured value of the performance can be assessed as meeting expectations or not.
- *Rectification Notice* means a notice instructing OPERATOR to remedy a performance failure within a reasonable period of time
- *Regulatory Framework* means any laws, regulations, decrees and policies officially developed and approved by the government, for the purposes of regulating the effluent discharge from waste water treatment facilities to bodies of public waters. A reference to any Act of Parliament, or to any Other Regulation, or the like shall be deemed to include a reference to any amendment or re-enactment of the same.
- *Review Date* occurs on each anniversary of the COMMENCEMENT DATE. On the REVIEW DATE the CONTRACT PRICE is reviewed and revised in line with the Consumer Price Index on the variable elements of the CONTRACT PRICE.
- *Schedule* means the schedule hereto prepared by OPERATOR to achieve the targets and efficient performance of the SERVICES in accordance with the CONTRACT.
- *Services* means all activities to be carried out under the CONTRACT including all duties to be performed by OPERATOR in accordance with the CONTRACT.
- *Termination* means the ending of the CONTRACT by GRANTOR under the circumstances specified within the CONTRACT.
- *Variation* means any kind of alteration to the SERVICES.
- *Waste Water Charge* means the total amount of money a discharger has to pay monthly/quarterly as regulated in Decree 88.2007/ND-CP on drainage and sewerage in urban areas and industrial zones. The charge is based on the

consumed volume of water and the WASTE WATER TARIFF applicable for the respective discharger.

- *Waste Water Tariff* is the (structured) unit price that dischargers have to pay for drainage/sewerage SERVICES. The unit prices for different categories of dischargers or waste waters can differ.

Article 2: Objective and Purpose of the Contract

- 2.1. The objective of this CONTRACT is the management, operation and maintenance of the DRAINAGE/SEWERAGE SYSTEM in the city of [...].
- 2.2. The purpose of the GRANTOR is improving the quality of public health and environmental hygiene by providing drainage/sewerage facilities managed and operated by the OPERATOR in an efficient way for the best possible environmental quality in the city of [...].
- 2.3. The purposes of the CONTRACT is stipulating the rights and duties of the two contracting parties to ensure the maintenance and development of the DRAINAGE/SEWERAGE SYSTEM in [City] in a sustainable manner, meeting technical norms and standards as set out by the state on drainage/sewerage and waste water treatment regulations, improving operation efficiency of drainage/ sewerage system and service quality.

Article 3: Scope and Content of services

The GRANTOR assigns the OPERATOR with the management, operation and maintenance of the DRAINAGE/SEWERAGE SYSTEM in the city of [...] basing on appendices A-K.

Article 4: Terms of Contract Performance

- 4.1. Contract signing date: This is the commencement date of the contract.
- 4.2. Date for the commencement of management, operation and maintenance activities:
- 4.3. Completion date:
- 4.4. Contract duration:
- 4.5. This CONTRACT can be extended by mutual agreement of the Parties. In case both parties wish to extend the CONTRACT, negotiations need to be carried out at least 1 (one) year prior to the COMPLETION DATE. The TERMINATION of the CONTRACT shall be carried out in compliance with the prevailing law and specific stipulations of this CONTRACT.

Article 5: Contract Price

- 5.1. The value of the CONTRACT is:VND/year
- 5.2. The CONTRACT PRICE agreed by both parties is based on the agreed scope of services and comprises:
 - a) Costs for operation and maintenance of the assets, for example:
 - Labour cost;
 - Costs of mobile assets;

- Spare parts;
 - Costs of electricity, water supply, petrol, gasoline, chemicals for waste water, and sludge treatment, materials for operation and maintenance such as grease, mineral oil, paints, cleaning materials, etc.;
 - Costs of office stationary, materials and tools;
 - Cost for disposal of sludge, solid waste generated from waste water treatment process, including cost of solid waste disposal.
- b) Costs for rental of office, land, workshops etc. and for office equipment. Costs for rental of special equipment (if applicable);
- c) Overhead costs and others such as tax, insurance, business profit etc.
- d) Financial duties, taxes, levies, charges and contributions, etc.
- e) Sub-contracts;
- f) Other relevant legitimate costs.

5.3. All things required to be supplied or performed by OPERATOR under the CONTRACT shall be at OPERATOR'S costs and deemed to be included in the CONTRACT PRICE.

Article 6: Contract Mode

6.1. Both parties agree to make this a PERFORMANCE BASED lump-sum CONTRACT.

6.2. The CONTRACT PRICE will remain unchanged during the CONTRACT period with the SERVICES defined in the CONTRACT except for any adjustments written in Article 10 of this CONTRACT.

Article 7: Terms Of Payment

7.1. The GRANTOR will pay the OPERATOR for the rendered SERVICES as stipulated in the attached specification of SERVICES, upon reception of the respective invoices.

7.2. The monthly payment shall be the CONTRACT PRICE divided by 12 months.

7.3. Any direct income of OPERATOR through the provision of SERVICES (i.g. through direct billing of CUSTOMERS) shall be deducted accordingly.

7.4. From any sum due to OPERATOR under the CONTRACT, GRANTOR may deduct the amount of any sum which if in good faith regards as being owed by OPERATOR to GRANTOR under the CONTRACT or otherwise.

7.5. The CONTRACT PRICE shall constitute the only income of OPERATOR in connection with the CONTRACT which intentionally implies that it shall not accept any trade commission, discount allowance or indirect payment or other consideration in connection with the CONTRACT, without notifying and accounting for same to GRANTOR.

Article 8: Time Limit for payment

8.1. By both parties' agreement, payment will be made within 14 working days since GRANTOR's receipt of documents relating to payment as stipulated herein. Details are as follows:

- a) Within 7 (seven) working days since the receipt of valid payment request from the OPERATOR, the GRANTOR has to complete all procedures and submit the payment request to a competent authorities for payment.

- b) Within 7 (seven) working days since the receipt of valid payment request from the GRANTOR, the competent authority has to remit the requested amount of payment to the OPERATOR.
- 8.2. In case payment is delayed after more than 15 (fifteen) days since the time of payment as agreed in Clause 8.1 of this Article, the OPERATOR is entitled to enjoy the highest interest rate of the bank where both parties have agreed to open the transaction account for the delayed amount. Besides, according to the Civil Law and other relating legal documents, the OPERATOR shall put a claim for any loss compensation if there is proof that the loss is caused by the GRANTOR's delayed payment.

Article 9: Receipts and invoices relating to payment

- 9.1. Invoices submitted by OPERATOR shall be in VND for the amount as set out in the CONTRACT PRICE.
- 9.2. OPERATOR shall submit invoice for each calendar month of operation.
- 9.3. Invoices shall be submitted by OPERATOR within one working week from the completion of the month.
- 9.4. Each invoice shall include the CONTRACT title.
- 9.5. Only original invoices will be accepted for payment. If the original invoice is lost in transit or misplaced, a certified true copy of such invoice signed by the OPERATOR REPRESENTATIVE shall be submitted.
- 9.6. Eraser or white ink shall not be used for alteration, and invoices amended in this way shall be rejected.
- 9.7. If GRANTOR finds the invoice so submitted to be correctly prepared, adequately supported and in conformity with the requirements of the CONTRACT, then GRANTOR shall within five (5) working days of receipt of the invoice in question remit the invoiced amount into the bank account nominated by OPERATOR.
- 9.8. In the event of GRANTOR disputing any item of any invoice submitted by OPERATOR, GRANTOR shall within ten (10) days notify to OPERATOR the item in dispute and shall specify reason for dispute. Payment in respect of such item in dispute shall be withheld until settlement of the dispute, but all undisputed items of such invoice shall be paid in accordance with Article 26, Clause 26.7 herein.

Article 10: Adjustment of Contract Price

- 10.1. The CONTRACT PRICE shall be reviewed on each anniversary of the COMMENCEMENT DATE and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the Consumer Price Index since the COMMENCEMENT DATE and such increase or reduction shall take effect in respect of twelve-month period commencing on the relevant REVIEW DATE.
- 10.2. Additionally, the CONTRACT PRICE shall be reviewed every second anniversary of the COMMENCEMENT DATE and adjusted in case

- there is a significant change in the required or delivered quantity and quality of SERVICES;
 - there is a change in government policies and regulations;
 - the basis for price calculations or relevant framework conditions have changed remarkably.
- 10.3. The proposal for price adjustment shall be developed and submitted by the OPERATOR to competent authorities for approval after agreement with the GRANTOR has been reached.

Article 11: Taxes and financial obligations

- 11.1. OPERATOR shall in respect of this CONTRACT assume full and exclusive liability for payment of all taxes, duties, levies , charges and contributions of any nature whatsoever that are from time to time imposed by either the Government of Vietnam or any other fiscal or other authority whatsoever, in respect of :
- employees or agents of OPERATOR (whether or not such taxes, duties, levies, charges and contributions are measured by wages, salaries and/or other remuneration)
 - the gains of OPERATOR arising directly or indirectly out of the performance of the SERVICES.
- 11.2. OPERATOR shall report and pay all such taxes, duties, levies, charges and contributions directly to the appropriate authorities and otherwise comply with any applicable laws and regulations.
- 11.3. OPERATOR hereby covenants all claims, suits, costs, liabilities, judgments, fines, penalties, demands, loss or damage including any and all expenses, disbursements, fines, penalties, demands, legal fees, sums and amounts which GRANTOR suffers, incurs or is put to resulting from, or in any way connected with, any assessment or imposition, for which OPERATOR is liable.

Article 12: Deduction of Expenses

All payables from the OPERATOR to the GRANTOR as defined in this CONTRACT can be deducted from any sums due or to become due to OPERATOR under this CONTRACT or any other contracts signed with the GRANTOR.

Article 13: Asset Management

Besides the rights and obligations prescribed in existing legal documents on assigned asset management for the realization of the CONTRACT, the OPERATOR is also subject to the following rights and obligations:

- 13.1. The OPERATOR is obliged to make a list of all the assets assigned for management following the guidance on the listing form in Circular No.245/2009/TT-BTC dated December 31, 2009 on the implementation of some content of Decree No. 52/2009/ND-CP dated June 03, 2009 by the Government providing detailed guidance on the implementation of some articles in the Law on the Management and Use of state assets, including the following content:
- The number of the assets handed over
 - The value of the assets handed over

- The status quo of the assets handed over
- The records of the assets handed over

13.2. The OPERATOR is obliged to protect the assets assigned for management.

13.3. The OPERATOR is obliged to periodically check and assess the quality and remained value of the assets and inform the GRANTOR of such in written.

13.4. The OPERATOR is obliged to prepare and submit periodical reports on the management and use of the assets assigned. The report should include the status of the management and use of the assets as well as recommendations for the completion of the legal framework, the efficiency enhancement of asset management and use.

13.5. The OPERATOR is obliged to establish, manage and file records of the assigned assets following legal regulations on the management and use of state assets. The documentation of the assets assigned by this CONTRACT include:

- Documents relating to the formation of and changes to assets according to legal regulations;
- A list of assets as stipulated by legal regulations;
- Reports on the status quo of the management and use of assets as stipulated by legal regulations;
- The data base of the assets assigned.

Article 14: Contract Adjustment

14.1. CONTRACT adjustment shall be possible in case the legal basis, technical specifications, standards, scope of work, etc. have changed substantially and one of the parties requires an adjustment of the CONTRACT.

14.2. CONTRACT adjustment needs the agreement of both contract parties. If no agreement can be achieved, each party has the right to terminate the CONTRACT unilaterally, but no earlier than 60 days [*to be decided and agreed by contract parties*] after the adjustment proposal has been refused by the other party or if no answer is received after a period of 30 days.

Article 15: Notices and Correspondance

15.1. All NOTICES required or authorizations to be given under the CONTRACT must be given in writing or facsimile and must quote the CONTRACT name. All such NOTICES must be served either by personal delivery, or by fax transmission.

15.2. Without prejudice to the provisions set out relating to NOTICES, subject to any provision to the contrary herein contained or to any specific agreement between the parties, all instructions, information, agreements, authorizations, approvals and acknowledgements shall be either by letter or by facsimile.

Article 16: Local Regulations

All drainage/sewerage activities stipulated in their CONTRACT shall be carried out in accordance with local regulations on wastewater management.

Article 17: Rights and Obligations of Grantor

In addition to the rights and obligations defined in Decree No. 88/2007/ND-CP dated 28 May, 2007 on drainage and sewerage in urban and industrial areas, the local regulation on wastewater management, as well as other relating legal documents, the GRANTOR also has the following rights and obligations.

17.1. Rights of Grantor

17.1.1. GRANTOR has the right to supervise the CONTRACT execution in accordance with the requirements for quality, quantity, specifications, standards, progress, work safety, environmental sanitation, etc. as mentioned in this CONTRACT.

17.1.2. The right to carry out audits

- GRANTOR or its duly authorized representative shall, at any time during the execution of the SERVICES under this CONTRACT, have the right to carry out audits of all the records and related documents, procedures and controls of OPERATOR insofar as they relate to this CONTRACT.
- OPERATOR shall maintain or cause to have maintained its books and records, insofar as they relate to this CONTRACT, in accordance with generally accepted practices. GRANTOR or its authorized representative shall have the right to reproduce any of the aforementioned records and documents.

17.1.3. The GRANTOR shall have the right to inspect and supervise the DRAINAGE/SEWERAGE SYSTEM and its facilities at any time for the assurance of the efficiency of management, operation and maintenance activities agreed in the CONTRACT.

17.1.4. The right to terminate the CONTRACT in accordance with Article 35 herein.

17.2. Obligations of Grantor

17.2.1. To pay OPERATOR'S invoices on time according to financial agreements as stipulated in this CONTRACT.

17.2.2. Handing over of documentation of all assets and sewage/drainage facilities to OPERATOR within 3 weeks after this CONTRACT becomes effective, including all required hard and software.

17.2.3. Clarify/answer within 10 working days all questions raised by OPERATOR in conjunction with his contractually agreed tasks and necessary to provide his SERVICES.

17.2.4. Agree to the collection of the WASTE WATER CHARGES by OPERATOR directly from CUSTOMERS or through the water supply company.

17.2.5. Provide financing to replace all components of the DRAINAGE/SEWERAGE SYSTEM that have been identified by OPERATOR as non-functional and un-repairable.

Article 18: Rights and Obligations of Operator

In addition to the rights and obligations defined in Decree No. 88/2007/ND-CP dated 28 May, 2007 on drainage and sewerage in urban and industrial areas, the local

regulation on wastewater management, as well as other relating legal documents, the GRANTOR also has the following rights and obligations.

18.1. Rights of Operator

- 18.1.1. The right to organize business and manufacturing activities as stipulated in legal regulations, to be paid duly for the management, operation and maintenance of the DRAINAGE/SEWERAGE SYSTEM as agreed in the CONTRACT;
- 18.1.2. The right to submit proposals for CONTRACT PRICE adjustment for approval by competent state authorities in accordance with regulations;
- 18.1.3. The right to be compensated for losses caused by stakeholders as regulated by the law;
- 18.1.4. The right to supervise discharging activities of dischargers and propose solutions for cases of violation.

18.2. Obligations of Operator

- 18.2.1. During the CONTRACT PERIOD, OPERATOR shall upon and subject to the terms of the CONTRACT with due care and diligence provide the SERVICES in a proper, skilful and workmanlike manner in accordance with the written instructions and to the entire satisfaction of the AUTHORIZED OFFICER.
- 18.2.2. Should OPERATOR require any further instruction or information in connection with performance of the SERVICES, OPERATOR shall make a written application for the same to the AUTHORIZED OFFICER in which the requirement is stated in adequate detail. Such application shall be made within 10 working days after the requirement occurs, and shall be answered by the GRANTOR within 14 working days after receiving the written application.
- 18.2.3. OPERATOR shall at all times during the CONTRACT PERIOD allow the AUTHORIZED OFFICER and such persons as may from time to time be nominated by the AUTHORIZED OFFICER access to:
 - All locations for the purpose of inspecting work being performed pursuant to the provision of the SERVICES.
 - All locations for the purpose of inspecting records and documents in the possession of OPERATOR in connection with the provision of the SERVICES.
 - Materials, stores and spare parts in order to ensure that such items comply with manufacturers' specifications and have been obtained from such suppliers as are specified in the Specification.
 - Any employee or agent of OPERATOR for the purpose of interviewing him/her/them in connection with the carrying out of all or any part of the SERVICES.
 - EQUIPMENT used or proposed to be used in connection with the performance of the SERVICES for the purpose of ensuring that such EQUIPMENT meets the requirements of the Specification and relevant legal requirements.
- 18.2.4. OPERATOR will within 03 (three) working days provide the AUTHORIZED OFFICER, upon request, copies of all warranties , maps, as-built plans, maintenance logs and records, maintenance and performance standards, and any and all other records related to the facilities, to the extent known and available to OPERATOR.
- 18.2.5. In the event of OPERATOR being unable to perform the SERVICES or any part thereof, OPERATOR shall immediately inform the AUTHORIZED OFFICER giving

details of the circumstances, reasons and likely duration and action taken to rectify the situation. Nothing in this condition shall in anyway alter modify, relieve or in anyway vary OPERATOR'S obligation to provide the SERVICES.

- 18.2.6. If OPERATOR fails to provide the SERVICES or any part thereof with due diligence or in a proper , skillful and workmanlike manner, or to the CONTRACT STANDARD and to the entire satisfaction of the AUTHORIZED OFFICER, GRANTOR may itself provide or may employ and pay other persons to provide the SERVICES or any part thereof and all costs incurred thereby maybe deducted from any sums due or to become due to OPERATOR under the CONTRACT, and shall be recoverable from OPERATOR by GRANTOR as a debt.
- 18.2.7. OPERATOR shall provide to the AUTHORIZED OFFICER a copy of each year's audited accounts within six months of the relevant accounting reference date. In the event that OPERATOR fails to provide accounts in accordance with this condition, without prejudice to any other rights or remedies available to GRANTOR, the AUTHORIZED OFFICER or such persons as may from time to time be nominated by the AUTHORIZED OFFICER shall be given access to all and any accounting documents and information in the possession, Custody or control of OPERATOR which are relevant to the CONTRACT.
- 18.2.8. OPERATOR is obligated to properly manage and operate the facilities within the scope of this CONTRACT so that it will achieve most cost effective operation, while in compliance with Vietnamese Environmental Regulations.
- 18.2.9. OPERATOR shall update the asset documentation regularly and submit to the owner once a year.
- 18.2.10. Risks in and the care and custody of any or all parts of the SERVICES and all EQUIPMENT shall remain with OPERATOR throughout the duration of the CONTRACT.
- 18.2.11. OPERATOR shall notify GRANTOR as soon as possible of all things which in the opinion of OPERATOR appear to be deficiencies, omissions, contradictions or ambiguities or conflicts with applicable law in the CONTRACT. The AUTHORIZED OFFICER will review these items and issue the necessary instructions before OPERATOR proceeds with any part of the SERVICES affected.
- 18.2.12. OPERATOR shall notify GRANTOR immediately whenever accidents or incidents occur. OPERATOR shall also notify GRANTOR of any other incidents arising out of the performance of the CONTRACT which might affect the interests or other operations of GRANTOR, or others.
- 18.2.13. OPERATOR shall notify GRANTOR immediately of any impending or actual stoppages of SERVICES, industrial disputes or other matters affecting or likely to affect the performance of the CONTRACT or lead to a delay in the CONTRACT time schedule.
- 18.2.14. OPERATOR shall keep GRANTOR fully informed of the progress of the SERVICES.
- 18.2.15. OPERATOR shall constantly train and educate his staff and install knowledge management and institutional learning procedures.

Clause 19: Personnel of the Operator

- 19.1. OPERATOR warrants that it does and will have the experience and capability including sufficient and competent supervisors and other personnel to efficiently and expeditiously perform the SERVICES throughout the CONTRACT PERIOD. If in the opinion of the AUTHORIZED OFFICER there is inadequacy in the number or

competence of persons engaged in performing the SERVICES, then OPERATOR shall on request, at no extra cost to GRANTOR provide additional or alternative competent persons.

19.2. OPERATOR shall ensure that OPERATOR STAFF employed under the CONTRACT are at all times properly and sufficiently qualified, trained, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the SERVICES and in particular:

- The task(s) such person has to perform;
- All relevant provisions of the CONTRACT;
- All relevant policies, rules, procedures and standards of GRANTOR.
- All relevant rules, procedures and requirements concerning health and safety at work, such as Labour code of The Socialist Republic of Vietnam
- Fire risks and fire precautions;
- The need to maintain the highest standards of hygiene, courtesy and consideration;
- The need to recognize situations which may involve any actual or potential danger of personal injury to any person at any location and, where possible, without personal risk, to make safe such situations, and forthwith to report such situations to the AUTHORIZED OFFICER and where the location belongs to GRANTOR, to the member of GRANTOR STAFF with responsibility for the location.

19.3. All items of value found by OPERATOR at any location within the premises of OPERATOR shall be dealt with basing on local regulations.

19.4. OPERATOR shall immediately inform all relevant trade unions representing OPERATOR'S workforce of the award of the CONTRACT and COMMENCEMENT DATE and shall confirm compliance with this condition in writing to the AUTHORIZED OFFICER.

19.5. OPERATOR shall make its own arrangements for the engagement of personnel, local or otherwise, and, unless the CONTRACT otherwise provides, for their transport, housing, maintenance, payment , board and lodging.

19.6. OPERATOR shall at its own cost forthwith replace any of its employees or agents whom GRANTOR, in its sole discretion, considers to be incompetent, to have acted in a manner prejudicial to GRANTOR'S best interest, to have failed to comply with GRANTOR'S safety or other rules or regulations, to have produced sub-standard work or whom GRANTOR, in its sole discretion, wishes to be replaced for any other good reason. GRANTOR shall not exercise this right thoughtlessly or carelessly.

19.7. OPERATOR agrees that it shall furnish to GRANTOR, if requested, satisfactory evidence that OPERATOR STAFF who are engaged in the SERVICES have been paid on time and in full for their wages and for any other payments required by law to be paid to them. Unless OPERATOR provides such satisfactory evidence, GRANTOR may make such payments directly to such personnel or to any organizations on their behalf. Any such payments made by GRANTOR shall be deemed to be payments to OPERATOR under the CONTRACT and OPERATOR shall have no further entitlement to any amounts so paid.

Article 20: Staff Control and Supervision Of Operator

20.1. OPERATOR shall appoint a OPERATOR REPRESENTATIVE to act on behalf of OPERATOR for all purposes connected with the CONTRACT. Any NOTICE, information, instruction or other communication given or made to the OPERATOR REPRESENTATIVE shall be deemed to have been given or made to OPERATOR.

- 20.2. OPERATOR shall forthwith give NOTICE in writing to the AUTHORIZED OFFICER of the identity, address and telephone numbers of the person appointed as OPERATOR REPRESENTATIVE and of any subsequent appointment.
- 20.3. OPERATOR shall forthwith give NOTICE in writing to the AUTHORIZED OFFICER of the identity, address and telephone numbers of any person authorized to act for any period as deputy for the OPERATOR REPRESENTATIVE and when such deputy ceases to be so authorized.
- 20.4. OPERATOR shall ensure that the OPERATOR REPRESENTATIVE, or a competent deputy, duly authorized by OPERATOR to act on its behalf, is present at the location and available to meet the AUTHORIZED OFFICER or the AUTHORIZED Officer's representative at all reasonable times during which the SERVICES is provided.
- 20.5. The OPERATOR REPRESENTATIVE shall inform the AUTHORIZED OFFICER promptly of and confirm, in writing, any instances of activity or omission on the part of GRANTOR which prevent or hinder, or which may prevent or hinder OPERATOR from complying with the CONTRACT. The provision of information under this Condition shall not in anyway release or excuse OPERATOR from any of its obligations under the CONTRACT.
- 20.6. OPERATOR shall provide a sufficient number of supervisors to ensure that the OPERATOR STAFF engaged in and about the provision of the SERVICES are at all times adequately supervised and properly perform their duties to the agreed standards.
- 20.7. OPERATOR shall ensure that its employees perform their duties in an orderly and as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- 20.8. OPERATOR shall ensure that, when requested to do so, any employee of OPERATOR shall disclose his/her identity and status as an employee of OPERATOR and shall not avoid doing so.
- 20.9. OPERATOR shall require its employees at all times while engaged in the provision of the SERVICES to be properly and presentably dressed in appropriate uniforms or work wear, including personal protective equipment such as, but not limited to overalls, protective footwear and gloves to the satisfaction of GRANTOR. Such uniforms and personal protective equipment to be worn by OPERATOR STAFF shall be provided, maintained and replaced as necessary by OPERATOR.

Article 21: Rights and Obligations of Grantor's Authorized Officer

- 21.1. The AUTHORIZED OFFICER shall by NOTICE provide OPERATOR with all information, instructions and decisions of GRANTOR made under the provisions of the CONTRACT. All information, instructions and decisions from the AUTHORIZED OFFICER shall be as if from GRANTOR and shall commit GRANTOR.
- 21.2. The AUTHORIZED OFFICER may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of such delegation shall be the subject of prior notification to OPERATOR. Information, instructions and decisions from any nominated deputy acting within the terms of his delegated authority shall be as if from the AUTHORIZED OFFICER.
- 21.3. The AUTHORIZED OFFICER and any person authorized by the AUTHORIZED OFFICER shall have access at all reasonable times to components of the DRAINAGE/SEWERAGE SYSTEM, and OPERATOR shall afford every facility for and every assistance in obtaining the right of access.
- 21.4. Only the AUTHORIZED OFFICER or his nominated deputy is authorized to receive on behalf GRANTOR, notifications, information and decisions of OPERATOR under the provisions of the CONTRACT.

- 21.5. GRANTOR shall have the right to change the AUTHORIZED OFFICER at any time at its sole discretion and shall notify OPERATOR accordingly.
- 21.6. Instructions, information and decisions from anyone other than the AUTHORIZED OFFICER or any nominated deputy acting within the terms of his delegated authority, shall have no contractual force or validity even if they are written on GRANTOR notepaper.

Article 22: Rights and Obligations of Operator Representative

- 22.1. The OPERATOR REPRESENTATIVE shall have the right to commit OPERATOR to any course of action within the rights of OPERATOR under the provisions of the CONTRACT and shall notify GRANTOR of all information and decisions of OPERATOR under the provisions of the CONTRACT. All information and decisions from the OPERATOR REPRESENTATIVE shall be as if from OPERATOR and shall commit OPERATOR.
- 22.2. The OPERATOR REPRESENTATIVE may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of any such delegation shall be the subject of prior agreement of GRANTOR. Information and decisions from any such nominated deputy acting within the terms of his delegated authority shall be as if from the OPERATOR REPRESENTATIVE.
- 22.3. Only the OPERATOR REPRESENTATIVE or his nominated deputy is authorized to receive, on behalf of OPERATOR, notifications, information and decisions of GRANTOR made under the provisions of the CONTRACT and notification to the OPERATOR REPRESENTATIVE shall be deemed to be notification to OPERATOR.
- 22.4. While the SERVICES are being performed the OPERATOR REPRESENTATIVE or his nominated deputy shall be readily available to discharge his responsibilities in accordance with the CONTRACT.
- 22.5. The OPERATOR REPRESENTATIVE shall not be replaced except with the prior agreement of GRANTOR to the choice of successor.

Article 23: Sub-Contracting

- 23.1. OPERATOR is permitted to assign Sub-contractors for specific tasks.
- 23.2. If the annual sum of all sub-contracts exceeds 25% of the total annual CONTRACT PRICE, a written approval from GRANTOR is needed for each additional sub-contract.
- 23.3. A list of organizations or individuals proposed as sub-contractors shall be submitted to GRANTOR for NOTICE.
- 23.4. The selection of sub-contractors shall not change the agreed rights and obligations of GRANTOR and OPERATOR.

Article 24: Wastewater Charge

- 24.1. The OPERATOR shall have the responsibility to develop and submit the proposal for WASTEWATER CHARGE basing on regulations in Articles 49-54 of Decree No. 88/2007/NĐ-CP dated 28 May, 2007 on drainage/sewerage in urban and industrial areas and other relating legal documents.
- 24.2 The GRANTOR is responsible for the management and use of WASTEWATER CHARGE for the following purposes:
- a) paying for the management contract;
 - b) paying for wastewater charge collection services;

c) investing in the maintenance and development of the drainage/sewerage system.

Article 25: Insurances

- 25.1. Without limitation of its obligations and responsibilities, OPERATOR shall maintain for the duration of the CONTRACT the following insurances with insurers acceptable to GRANTOR:
- social security (insurance)
 - health insurance
 - Employer's liability insurance
 - Property insurance
 - Third-party insurance
- 25.2. Right after this CONTRACT becomes effective each party shall be liable for signing the insurance contracts with insurance companies and pay insurance premium with the insurance duration and mode as agreed by parties in the insurance policy.
- 25.3. In addition, OPERATOR shall maintain for the duration of the CONTRACT adequate vehicle insurance for owned, non-owned or hired motor vehicles, covering liabilities arising from the use and/or operation of the vehicles including liability contractually assumed to third parties under this CONTRACT, liability to passengers and liability for damage due to collision.
- 25.4. Approval by GRANTOR of any insurer or terms of insurance proposed by OPERATOR shall not relieve OPERATOR of any obligation or liability under or arising from the CONTRACT or generally at law.
- 25.5. The insurance policies OPERATOR is required to have and those additional policies which OPERATOR feels desirable to have in connection with the SERVICES shall, as far as applicable, name GRANTOR co-insured, and shall contain a waiver of insurers' subrogation rights against GRANTOR, and their respective employees.
- 25.6. GRANTOR shall have the right to inspect all policies of insurances provided for in the CONTRACT and the receipts for the current premiums.
- 25.7. OPERATOR'S liability under the CONTRACT will not be restricted, limited or altered by any stipulation or arrangements in the CONTRACT with regard to insurance policies. The deductibles applying under the insurances arranged by OPERATOR shall be for the account of OPERATOR.
- 25.8. Should OPERATOR fail to procure or maintain any of the aforesaid insurance for which it is responsible for them, OPERATOR shall indemnify GRANTOR and the other beneficiaries of said insurance to the extent they or any of them suffers loss or damage liability or expense in consequence of such failure, act or omission.
- 25.9. If OPERATOR fails to effect or keep in force the required or any other insurance which it may be required to effect under the terms of the CONTRACT then GRANTOR may effect and keep in force any said and pay the premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by GRANTOR as aforesaid from any monies due or which may become due to OPERATOR or recover them as debt due from OPERATOR.
- 25.10. OPERATOR shall notify GRANTOR of any occurrence likely to give rise to a claim under any insurance policy as soon as possible and in any event within fifteen (15) days of such occurrence. Thereafter OPERATOR shall handle the claim directly with the relevant insurers, and shall act in the best interests of both parties to this CONTRACT and keep GRANTOR fully advised of all developments.

Article 26: Performance Bank Guarantee

- 26.1. Once the CONTRACT has been signed, OPERATOR shall provide GRANTOR with a PERFORMANCE BANK GUARANTEE through a bank agreed by both parties to ensure that OPERATOR shall perform all of its obligations and liabilities contained in, and in accordance with, the CONTRACT. GRANTOR shall not be obliged to make any payments to OPERATOR under the CONTRACT until it has received a PERFORMANCE BANK GUARANTEE in compliance with this Clause.
- 26.2. The PERFORMANCE BANK GUARANTEE will be 10% of the CONTRACT PRICE at the maximum; for high risk prevention, the value of the guarantee can be increased to more more than 30% of the CONTRACT PRICE provided GRANTOR's agreement. The value of the PERFORMANCE BANK GUARANTEE for this CONTRACT is agreed by both parties to be VND (In words:) in order to ensure that OPERATOR shall perform all of its obligations and liabilities contained in, and in accordance with, the CONTRACT.
- 26.3. OPERATOR shall obtain and provide to GRANTOR such PERFORMANCE BANK GUARANTEE if OPERATOR fails to perform any of its obligations or to fulfill any liability arising out of, in connection with the CONTRACT.
- 26.4. OPERATOR shall not reclaim the PERFORMANCE BANK GUARANTEE in case it turns down the CONTRACT once it has taken effect and in cases of breaches of CONTRACT as regulated herein.
- 26.5. In case OPERATOR is a joint-venture, each of its partners shall have to hand in the PERFORMANCE BANK GUARANTEE for GRANTOR with the amount of deposit being equivalent to each partner's share of the CONTRACT value. If the head of the joint-venture is appointed to hand in PERFORMANCE BANK GUARANTEE, each partner shall provide the head with their own PERFORMANCE BANK GUARANTEES which, in turn, shall be handed over to the GRANTO by the head of the joint-venture.
- 26.6. PERFORMANCE BANK GUARANTEE shall be governed by, and construed in accordance with Vietnam law and all parties shall agree to subject any disputes which may arise in connection with the PERFORMANCE BANK GUARANTEE to the jurisdiction of the relevant courts of Vietnam.

Article 27: Liabilities

- 27.1. GRANTOR shall supervise the implementation of the legal frame. GRANTOR shall check and supervise OPERATOR's compliance with regulations on affluent standards as well as sludge disposal for wastewater treatment plant.
- 27.2. OPERATOR shall abide by and comply with all applicable law, rules and regulations on water resources and environment protection, exploitation and protection of irrigation works, and other legal documents relating to these SERVICES.
- 27.3. OPERATOR shall obtain all licenses and permits for OPERATOR to do business and employ persons and shall obtain all temporary permits, authorizations and work permits required by any applicable law, rules or regulations.
- 27.4. All costs of complying with all applicable laws, rules and regulations and obtaining authorities, approvals, licenses, permits, for performance of the SERVICES shall be for the account of OPERATOR.
- 27.5. All operations necessary for the performance of the CONTRACT shall be carried out so far as compliance with the requirement of the CONTRACT permits so as not to interfere unnecessarily or improperly with the convenience of the public or the access to, public or private roads and footpaths to or of properties. OPERATOR hereby indemnifies GRANTOR against all claims, demands, proceedings, damages costs, charges and

expenses whatever arising in relation to any of the aforesaid matters in so far as OPERATOR is responsible for such interference.

Article 28: Indemnity

- 28.1. OPERATOR shall indemnify and keep indemnified GRANTOR fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the CONTRACT.
- 28.2. The aforementioned costs and expenses include any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by OPERATOR, or any other loss which is caused directly or indirectly by any act or omission of OPERATOR.
- 28.3. This condition shall not apply to the extent that OPERATOR is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-operators, or by any circumstances within its or their control.

Article 29: Responsibility for Services

- 29.1. OPERATOR shall perform the SERVICES in accordance with the CONTRACT and with all proper skill and care shall ensure that the SERVICES and facilities, materials and equipment used to produce or incorporated into the SERVICES shall be fit for their intended purpose and of good quality and workmanship.
- 29.2. In the event of any non-compliance with the agreed SERVICES, OPERATOR shall be responsible at own costs for the correction of any defective SERVICES.
- 29.3. In the event of any non-compliance with the agreed SERVICES, GRANTOR shall notify OPERATOR of the breach. Upon reception of such notification from GRANTOR, OPERATOR shall immediately carry out its responsibilities. Alternatively, GRANTOR may undertake any of OPERATOR'S responsibilities as agreed on in this CONTRACT, in which case GRANTOR shall notify OPERATOR of its intention and shall be entitled to recover from OPERATOR all costs incurred by GRANTOR in carrying out such responsibilities.

Article 30: Defaults In Performance Of Services

- 30.1. At any time after the COMMENCEMENT DATE of the CONTRACT the AUTHORIZED OFFICER may investigate each case where OPERATOR has failed to properly perform the SERVICES in accordance with the provisions of the CONTRACT.
- Where the AUTHORIZED OFFICER is satisfied that in any particular case OPERATOR has failed to perform the SERVICES completely in accordance with the provisions of the CONTRACT he shall be entitled to issue to OPERATOR a NOTICE instructing OPERATOR to remedy the failure within a reasonable period of time (RECTIFICATION NOTICE).
 - In addition, where the SERVICE which has not been performed in accordance with the provisions of the CONTRACT is, in the opinion of the AUTHORIZED OFFICER, of such a type or provided at such a frequency that the issuing of RECTIFICATION NOTICE would be inappropriate and/or no effect the AUTHORIZED OFFICER shall be entitled to issue a DEFAULT NOTICE.
- 30.2. If OPERATOR fails to remedy the SERVICES deficiency which is the subject of a RECTIFICATION NOTICE the AUTHORIZED OFFICER shall be entitled to issue a DEFAULT NOTICE. Further failure of OPERATOR to remedy the SERVICE deficiency

may result in the issuing of SUPPLEMENTARY DEFAULT NOTICES. Each DEFAULT NOTICE and supplementary DEFAULT NOTICE will require OPERATOR to remedy the SERVICE deficiency within a set or defined period.

30.3. In addition to the aforementioned reasons and prohibited actions defined in Article 11 of Decree 88/2007/ND-CP on drainage/sewerage in urban and industrial areas, the following matters shall be included in the types of SERVICES deficiencies for which NOTICES may be issued.

- Failure to dispose on designated location sludge, wastes/grits collected from bar screens and other sources.
- Failure to remove debris/waste from the bar screens at the intake structure.
- Unsafe Working Practices.
- Misuse of the plant equipments and vehicles.
- Failure to make reports.

30.4. For matters related to compliance with Vietnamese Environmental Standards, the specific penalties stipulated therein or any related laws for such failure to meet the standards shall prevail and will be the responsibility of OPERATOR.

30.5. The time periods during which OPERATOR is to remedy deficiencies shall be reasonable, taking the nature and frequency of the SERVICES into account. Each time period shall commence when OPERATOR is initially notified in writing.

30.6. Each NOTICE may refer to one or more than one elemental SERVICE deficiency, each of which shall be rectified by OPERATOR.

30.7. All NOTICES shall be recorded and used by the AUTHORIZED OFFICER in determining OPERATOR'S overall SERVICES performance and shall also be used in determining FINANCIAL PENALTIES and whether GRANTOR may TERMINATE the CONTRACT.

30.8. During the first three (3) months immediately following the COMMENCEMENT DATE no DEFAULT POINTS shall be recorded in respect of RECTIFICATION NOTICES. However, DEFAULT POINTS may be recorded in respect of DEFAULT NOTICES and SUPPLEMENTARY DEFAULT NOTICES and the FINANCIAL PENALTIES Provisions above shall apply at all times after the COMMENCEMENT DATE.

Article 31: Penalties for Contract Breaches

31.1. For the purposes of assessing whether FINANCIAL PENALTIES are recoverable by GRANTOR from OPERATOR the following method shall be used:

31.2. EACH NOTICE issued shall correspond to the following DEFAULT POINTS:

- | | | |
|--------------------------------|---|------------|
| • RECTIFICATION NOTICE | : | - 1 point |
| • DEFAULT NOTICE | : | - 2 point |
| • Supplementary DEFAULT NOTICE | : | - 3 points |

31.3. In the event of incidents of OPERATOR'S failure to properly perform the SERVICES OPERATOR shall be liable to GRANTOR for the costs incurred thereby to be calculated as set out below:

DEFAULT POINTS in any month	Deduction from monthly installment
0-20	Nil
21-40	0,25%
41-60	0,50%
61-80	1,00%
81-100	1,50%

31.4. The deduction from monthly installment will be registered, certified and signed by the AUTHORIZED OFFICER with copies given to OPERATOR.

31.5. The DISPUTE SETTLEMENT COMMITTEE, which will have to be set up, is the entity to solve any dispute with the DEFAULT POINTS defined in Article 31 herein. In the event of repeated non-fulfillment, GRANTOR is authorized to deduct maximum of 1,5% of monthly payment.

Article 32: Force Majeure

32.1. Neither party shall be liable for any failure to perform any obligation under the CONTRACT to the extent to which performance is prevented, hindered or delayed by a FORCE MAJEURE EVENT.

32.2. A FORCE MAJEURE EVENT shall not include the following:

- Breakdown of any item of Equipment used by OPERATOR.
- Contractual commitment made by OPERATOR which limits the ability of OPERATOR to perform the SERVICES.
- Inability to hire or utilize staff or personnel due to difficulties in obtaining or withdrawal of governmental quotas, licenses or permits.

32.3. Should either party be delayed in performing the CONTRACT by a FORCE MAJEURE EVENT, that party shall notify the other party immediately giving the full particulars thereof, shall use its best efforts to remedy the situation immediately and shall notify the other party of the steps being undertaken to remedy the situation.

32.4. Should OPERATOR be delayed in the performance of the SERVICES by an occurrence which OPERATOR considers is a FORCE MEJEURE occurrence and OPERATOR is unable to avoid or prevent such delay by any reasonable effort, within 7 (seven) days of such occurrence OPERATOR shall request in writing that GRANTOR initiate the procedure for a VARIATION. If GRANTOR agrees that the occurrence is a FORCE MAJEURE EVENT, then as soon as practicable GRANTOR shall authorize a VARIATION. Such VARIATION shall also reimburse OPERATOR for such extra costs as OPERATOR unavoidably incurs by reason of such FORCE MEJEURE occurrence to the extent that OPERATOR cannot reduce or mitigate them by exercising best endeavors to do so.

Article 33: Temporary Suspension of Contract

- 33.1. GRANTOR shall decide on a temporary suspension to the execution of the CONTRACT in case OPERATOR fails to meet agreed requirements of quality, labor safety and tempo.
- 33.2. OPERATOR shall temporarily suspend the execution of the CONTRACT in case GRANTOR fails to pay any payment due to the OPERATOR within 28 (twenty eight) days since maturity date as regulated in Article 8 herein.
- 33.3. Before any party's temporary suspension of the CONTRACT, a notice about such should be sent in writing to the other stating clearly the reasons for the temporary suspension. GRANTOR and OPERATOR shall have responsibility to discuss for solutions for the continuation of the CONTRACT as agreed, except for force majeure cases.

Article 34: Contract Termination

- 34.1. The CONTRACT can be terminated upon the expiration of the agreed contractual period or any agreed extension thereof where either of the parties does not wish to extend of the CONTRACT.
- 34.2. In addition to any deductions which may be made under Article 32 above, GRANTOR may terminate the CONTRACT if more than 100 DEFAULT POINTS are recorded against OPERATOR in any one-month period [*to be adjusted according to local agreements*]. These TERMINATION provisions shall not apply during the three (3) months immediately following the COMMENCEMENT DATE.
- 34.3. At any time after the COMMENCEMENT DATE, GRANTOR may investigate each case where OPERATOR has failed to properly perform the SERVICES in accordance with the provisions of the CONTRACT, has committed a breach of any of its obligations, or has committed any offence under the CONTRACT.
- 34.4. GRANTOR shall be entitled to TERMINATE the CONTRACT where definite proofs are held by GRANTOR that OPERATOR has failed to perform the SERVICES completely in accordance with the provisions of the CONTRACT.
- 34.5. GRANTOR may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the CONTRACT, terminate OPERATOR'S employment under the CONTRACT by NOTICE in writing having immediate effect, if one or more of the following cases occur:
- OPERATOR commits a breach of any of its obligations under the CONTRACT;
 - OPERATOR does not have sufficient equipment, man powers to implement the contracted service pursuant to the regulations;
 - OPERATOR ceases its management activities or fails to operate the whole or a substantial part of the system in accordance with the CONTRACT;
 - OPERATOR becomes bankrupt as according to Vietnam law, or fails to realize its responsibilities and/or obligations as defined in the CONTRACT;
 - OPERATOR has an application made to the court, under the insolvency legislation for the appointment of an administrative receiver;
 - OPERATOR has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 34.6. OPERATOR may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the CONTRACT, terminate the CONTRACT by NOTICE in writing having immediate effect, if one or more of the following cases occur:

- GRANTOR doesn't fulfil its obligations to provide the required investment budget and as a consequence, OPERATOR cannot fulfil its contractual obligations due to missing investments;
- GRANTOR doesn't fulfill its obligation concerning the contractual agreed payments;
- FORCE MAJEURE EVENTS.

34.7. If OPERATOR' s Operation and Maintenance Contract is terminated and is not reinstated, GRANTOR shall:

- Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the TERMINATION of OPERATOR'S employment shall have been calculated and provided such calculation shows a sum or sums due to OPERATOR;
- Be entitled to exercise a LIEN over any of the EQUIPMENT belonging to the to OPERATOR for any sum due hereunder or otherwise from OPERATOR to GRANTOR;
- Be entitled to employ and pay other persons to provide and complete the provision of the SERVICES or any part thereof and to use all such OPERATOR'S materials, clothing, equipment, vehicles or other goods for the purposes thereof;
- Be entitled to deduct from any sums or sums which would have been due from GRANTOR to OPERATOR under this CONTRACT or any other CONTRACT or be entitled to recover the same from OPERATOR as a debt, any loss or damage to GRANTOR resulting from or arising out of the TERMINATION of OPERATOR'S employment. Such loss or damage shall include the reasonable cost to GRANTOR of the time spent by its officers in terminating OPERATOR' s employment and in making alternative arrangements for the provision of the SERVICES or any part thereof.

34.8. When the total cost, loss and/or damage resulting from or arising out of the TERMINATION of OPERATOR'S employment have been calculated and deducted so far as practicable from any sum or sums which would have been due to OPERATOR in respect of SERVICES performed up to the time of TERMINATION of the CONTRACT, any balance shown as due to GRANTOR shall be recoverable as a debt, or alternatively, GRANTOR shall pay to OPERATOR any balance shown as due to OPERATOR.

Article 35: Office and Schedule of Work of Operator

35.1. OPERATOR shall provide and maintain an office, with competent and responsible persons and shall be open during regular working days during official working hours as agreed between both parties. One telephone/ fax line shall be provided by OPERATOR to be used primarily for communication between OPERATOR and GRANTOR.

35.2. OPERATOR shall provide adequate manpower and supervision to continuously operate the facilities under this CONTRACT, 24 hours per day and 365 days per year.

Article 36: Terms of Safety and Labour

36.1. Operational Equipments

- a) All equipments used in hazardous areas must be intrinsically safe and certified as explosion proof. Portable electrical equipment shall be 110V or less.
- b) All lifting equipment provided by OPERATOR shall be clearly marked with safe working load. Equipment used for raising or lowering personnel shall be of an approved type specifically designed for that purpose.

36.2. Operational Goal

- a) OPERATOR shall operate all elements of the DRAINAGE/SEWERAGE SYSTEM in a most cost-effective way while meeting all performance indicators as mentioned in Appendix C and reducing environmental impacts to a minimum.
- b) The primary goal for the waste water treatment facility is to produce an effluent quality that is within the parameters required by Vietnamese Environmental Standards; and of quality not “too good” compared with these Standards as “quality” means “additional power costs”.
- c) Reduce energy costs wherever possible.

36.3. Communication and Response To Incidents

- a) OPERATOR shall establish and maintain a suitably equipped communications facility for the purpose of receiving reports/instructions from the AUTHORIZED OFFICER and for relaying the necessary instructions to the relevant personnel. The facility must be continuously manned 24 hours per day, 365 days per year with adequate contact arrangements with key personnel.
- b) For the purpose of operating the CONTRACT, OPERATOR shall nominate a single point of contact for the receipt of instructions.

36.4. Security of assets

- a) OPERATOR will be responsible for leaving all assigned assets with all doors, gates and manhole covers (where provided with a means of locking) properly closed and locked. He will also be responsible for the security of all keys in his possession.
- b) OPERATOR shall be responsible for compensating the GRANTOR for any loss or damage of the assets caused by his negligence of any of the aforementioned responsibilities.

36.5. Occupational Health & Safety

- a) OPERATOR shall nominate an OHS officer in charge of all aspects on occupational health and safety issues.
- b) OPERATOR shall provide protective shoes, gloves and equipment to all workers, for use at all times during performance of SERVICES under this CONTRACT.
- c) Protective equipment shall be kept clean and in good condition, and replaced by OPERATOR as it becomes worn or damaged, and at least on a semi-annual basis.
- d) OPERATOR shall be responsible for providing regular medical check-ups for it's STAFF, on at least a semi-annual basis, and for providing a program of suitable vaccinations, having first obtained medical advice from a medical practitioner.
- e) The AUTHORIZED OFFICER' s representative will meet OPERATOR, before and throughout the performance of this CONTRACT, to make sure that OPERATOR:
 - Complies with his obligations in respect of statutory requirements, like Health & Safety at Work.
 - Implements safety procedures of a standard not less than that of GRANTOR.
 - Is aware of the foreseeable hazards of the works which may affect the safety of employees, GRANTOR'S and AUTHORIZED OFFICER or representative,

and members of the public, and has incorporated safety procedures in his methods of working.

f) OPERATOR must inform the AUTHORIZED OFFICER of any specific hazards which may arise from his proposed methods of working.

36.6. Uniforms

a) OPERATOR shall provide readily recognizable, brightly colored, shirts (or vests) and pants of a single design and color to all its workers, to be worn at all times when performing SERVICES under this CONTRACT, so that they can be readily observed and their performance can be readily monitored. Uniforms shall be kept clean and in good condition and replenished as they become worn or damaged, and on at least a semi-annual basis.

b) OPERATOR shall oblige all sub-contractors to wear respective working cloths as described above.

36.7. Nuisance

a) All operations for the execution of the works shall, so far as compliance with the requirements of the CONTRACT, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to or use or occupation of public or private roads and footpaths to or of properties whether in the possession of GRANTOR or of any other person.

b) OPERATOR shall indemnify GRANTOR in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

Article 37: Terms of Technical Specifications

37.1. Technical Dossier Of the Water Drainage/Sewerage System

The following documents shall be updated and submitted to GRANTOR by OPERATOR once a year:

- Asset documentation;
- Proposed DRAINAGE/SEWERAGE SYSTEM development plan;
- Design documents;
- Information on network construction,
- Management and operation manual;
- And other relevant documents.

37.2. Dealing With Flow

OPERATOR shall be responsible for dealing with flow as far as is reasonably possible by temporary closure of valves or stopping for a limited period without affecting the general effectiveness of the treatment works. Such arrangement shall be subject to the AUTHORIZED OFFICER'S approval.

Article 38: Indicators of Contract Performance

Performance indicators are defined in Appendix C. They shall be elaborated by OPERATOR and approved by GRANTOR, and reviewed by both parties every two years.

Article 39: Asset Settlement upon Contract Termination

- 39.1. Within 15 (fifteen) days since the termination of the CONTRACT as regulated in Article 35 herein, OPERATOR shall have responsibility to make inventory of the assets assigned for the execution of the SERVICES agreed following the Asset Inventory Form in accordance with legal regulations and send it to GRANTOR.
- 39.2. The assets assigned for the execution of the SERVICES agreed in this CONTRACT shall be dealt with in accordance with prevailing laws and regulations.

Article 40: Claims

- 40.1. Either party's CLAIMS shall have to be based on specific proofs and evidence.
- 40.2. Within 30 days of identification of CONTRACT violations, a written notice about such shall be sent by the claimer to the claimee and a CLAIM made. If no CLAIMS are made within 30 days, both parties shall have to observe signed agreements.
- 40.3. Within 30 days of receipt of CLAIMS, if no persuasive evidence and proofs can be produced by the claimee to prove that the complaint is inappropriate in accordance with the CONTRACT, the CLAIM shall have to be accepted. If no response is given from the claimee within this time, the CLAIM is considered to be accepted.
- 40.4. CLAIMS made by either parties shall be sent to addresses agreed by both parties in the CONTRACT.

Article 41: Settlement Of Contract Disputes

- 41.1. Within 30 days of receipt of a CLAIM as regulated in Item 42.3. Article 42 herein, as well as any written notice about disagreements, both parties shall have the responsibility to negotiate for settlement of disputes through the DISPUTE SETTLEMENT COMMITTEE basing on CONTRACT regulations.
- 41.2. Within the 30 days stated in Item 43.1. of Article 43, if no agreements can be reached, or either party does not agree with the other's proposed solutions, the two parties shall put a claim to competent court in accordance with legal regulations.
- 41.3. The time for putting a claim to court for dispute settlement is 02 (two) years since the day on which the parties' legitimate rights and interests are infringed.
- 41.4. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act
- 41.5. GRANTOR, OPERATOR and other stakeholders are obliged to strictly observe and carry out the court's ruling once it has become effective.
- 41.6. The neutralization and termination of the CONTRACT shall leave no impact on the effect of regulations on dispute settlement.

Article 42: Contract Validity

This CONTRACT is effective from the signing date to the liquidization of the CONTRACT as regulated.

Article 43: Other Terms

- 43.1. All instructions, notifications, agreements, authorizations, approvals and acknowledgements shall be in writing.
- 43.2. No review, approval or acknowledgement by GRANTOR shall relieve OPERATOR from any liability or obligation under the CONTRACT.
- 43.3. Words importing the singular only also include the plural and vice versa where the context so requires.
- 43.4. Since the parties fall under the jurisdiction of the agreed judges and courts [*fill in exact name of court*], the undersigned have to indicate their registered office at the beginning of the present AGREEMENT.
- 43.5. Fulfillment and execution of the present agreement is only valid if written NOTICE is sent to the mentioned registered office.
- 43.6. Should a registered office of one of the parties involved change address, it will only be legally valid with regard to the other if the new address is located in the same city and attested by a notary. Meanwhile, NOTICES forwarded to the registered office indicated in the present agreement remains in force.

Article 44: General Provisions

- Both parties are obligated to strict observation of all CONTRACT content.
- Both parties shall observe other provisions and conditions outside this CONTRACT in accordance with prevailing laws and regulations.
- In cases of newly promulgated policies and regulations during the execution of the CONTRACT, both parties shall agree to sign CONTRACT appendice on appropriate amendments.
- This CONTRACT consists of pages and is made into copies of equal validity. GRANTOR shall keep copies, and OPERATOR copies for CONTRACT execution.

[OPERATOR]

[GRANTOR]

(Signed and stamped)

(Signed and stamped)