

## WP5.2

Development of standard protocols and procedures for efficient and effective cross border water supply. Technical protocols for the cross-border water supply addressing 7 different topics: planning, design, operation and maintenance, financing, water quality, contingency management, governance.

## ANNEX 1

Lead Author/s	<b>FB5 University of Ljubljana</b> Mohor Gartner, Vesna Vidmar, Ajda Cilenšek, Matej Cerk
Lead Author/s Coordinator	dr. Primož Banovec
Date last release	29.8.2016
State of document	Final



Let's grow up together



The project is co-funded by the European Union,  
Instrument for Pre-Accession Assistance

This is a suggested draft contract. An analysis of which articles are obligatory, recommended or optional based on project partners opinions is available in Deliverable 5.2 (Draft): Development of standard protocols and procedures for efficient and effective cross border water supply. Technical protocols for the cross-border water supply addressing 7 different topics: planning, design, operation and maintenance, financing, water quality, contingency management, governance (Banovec et al., 2015).

Fields that need to be inserted by contracting parties are in grey underlined italic text.

Guidelines are in border and blue font usually describing other potential scenarios.

---

**DRAFT CONTRACT  
FOR CROSS BORDER WATER  
SUPPLY**

---

Date: <<Date of signature>>

Location: <<Location of signature>>

<<full name of the 1st Party>>, hereinafter <<1st Party's short name>> or Supplier

AND

<<full name of the 2nd Party>>, hereinafter <<2nd Party's short name>> or Recipient,

agree and fully commit to comply with all the rules applicable in this document.

**Guidelines**

*In the case that the water supply is not a one-way, Supplier and Recipient are not unambiguously defined. Therefore, in case of bidirectional water supply content of this Contract should be appropriately changed (e.g. instead of Supplier and Recipient use 1st party and 2<sup>nd</sup> party, etc., or use short parties' names).*

The purpose of this document, hereinafter Contract, is to form an agreement on <<Category of water supply>> water supply and to facilitate collaboration between <<1st Party's short name>> and <<2nd Party's short name>>.

- I. WHEREAS, the <<1st Party's short name>> has a water supply system that provides service to its residents and customers located within the <<1st Party's region of water supply>>; and
- II. WHEREAS, the <<2nd Party's short name>> has a water supply system that provides service to its residents and customers located within the <<2nd Party's region of water supply>>; and
- III. WHEREAS, the <<2nd Party's short name>> has a need for a new source of water supply and has considered alternative means of obtaining that supply, including <<alternative solution(s) description for additional water supply for 2nd Party>>; and
- IV. WHEREAS, following the consideration of other alternatives, the <<2nd Party's short name>> has determined to obtain its water supply from the <<1st Party's short name>>, which has abundant quantity of <<raw or potable water; depends which quality level of water is supplied to 2nd Party>> water at the <<name of water source or treatment plant>>; and
- V. WHEREAS, the <<2nd Party's short name>> shall purchase water from the <<1st Party's short name>> for resale to its customers; and
- VI. WHEREAS, <<1st Party's short name>> and <<2nd Party's short name>> agree that transferred water is NOT COMMERCIALY (i.e. not for profit)

- 
- traded as a product or a service, but the water is sold/bought only as service (e.g. water extraction, treatment, distribution, etc.) of public good; and
- VII. WHEREAS, it is recognized by various Regulatory authorities as being in the public interest, approve that interconnection between water systems.
- VIII. NOW, THEREFORE, subject to the terms and conditions hereof, Parties hereto, for good and valuable consideration, and intending to be legally bound hereby, consent and **it is agreed as follows.**

## 1 PREAMBLE

### 1.1 Legislative alignment

1.1.1 Parties state that this Contract is in accordance with the following legislation and regulations of both Parties.

- a.) <<1st Party's short name>> legislation:  
<<list of legislation which 1st Party has to abide and it is in accordance with this Contract>>.
- b.) <<2nd Party's short name>> legislation:  
<<list of legislation which 2nd Party has to abide and it is in accordance with this Contract>>.

#### **Guidelines**

*When Parties are from different countries, regions or municipalities, they should be check that draft Contract is in accordance with their national legislation and international/interregional/inter-municipal agreements, which affect (cross border/cross regional ) water supply, water resources, trade, customs, water management, directives, etc.*

### 1.2 Statements and objectives

1.2.1 Mutual cooperation and good faith

<<1st Party's short name>> and <<2nd Party's short name>>, hereinafter Parties, agree to cooperate with each other and to use reasonable efforts in the implementation of this Contract, and to sign or cause to be signed, in a timely fashion, any and all necessary instruments and documents, and to take such other actions as may be reasonably necessary in order to effectuate the purposes of this Contract.

---

1.2.2 In entering into this Contract, Parties recognise that it is practically impossible to make provisions for every contingency which may arise during the validity of this Contract. Accordingly, Parties hereby state and acknowledge their mutual intent that this Contract shall be enforced and implemented between them with fairness and without detriment to either Party's interest.

### 1.2.3 Objectives

Parties wish to:

- a.) set out the operational arrangements;
  - b.) clarify their respective rights and obligations in relation to each other;
  - c.) establish clear <<Category of water supply>> water supply objectives from <<1st Party's short name>> and <<2nd Party's short name>> in relation to the supply of water;
  - d.) establish the basis for future cooperation in ensuring that appropriate and sufficient measures are taken to achieve these objectives;
  - e.) provide <<Category of water supply>> water supply services in an efficient, equitable, cost effective and sustainable manner;  
and
  - f.) set terms that are fair and equitable for both Parties,
- and have agreed to do so in this Contract.

## 1.3 **Definitions**

Supplier – Party which sells (potable) water to the other Party (Recipient) through bulk water supply system.

Recipient – Party which buys (potable) water from the other Party (Supplier) through bulk water supply system.

Party; Parties – single partner of this Contract (Recipient or Supplier); or used for expression of all partners of this Contract (e.g. water utilities).

Contract – this Contract and any appendix or appendices hereto, as well as any subsequent amendment, notation or substitution of this Contract and appendix or appendices in accordance with this Contract.

Successors in title – in case that any of Parties legal name is changed or they are merged or taken over by another water utility/company, the successor takes all responsibilities and obligations of this Contract.

Delivery point – installation (e.g. manhole, small building, etc.) on the border or close to border where at least water meter is installed.

---

Preceding contracts – any other old contract(s), which (could) affect this Contract.

Category of water supply – it can be defined as cross border/international, interregional/inter-municipal water supply. If the water supply does not cross any of stated borders, category can be defined as bulk or wholesale water supply.

Type of water supply – water supply can be permanent or temporary (in agreed season or for agreed duration, emergency, etc.).

Quality level of water – supplied water can be raw, partially treated or potable.

Automatic renewal – it can be agreed that after certain date (e.g. after 20 years of water supply) this Contract is only automatically extended, for example, every year this Contract is silently renewed if none of Parties requires termination of this Contract 6 months before the automatic renewal.

Initial period – agreed duration of this Contract. After Initial period has passed, Automatic renewal could be implemented.

Termination date – when bulk water supply under this Contract ceases. Remaining drawn volume and other debts still must be paid after this date.

Actual annual withdrawn quantity – real volume of water transferred in a year. It is reasonable that mentioned quantity could slightly vary from Agreed annual quantity.

Agreed annual quantity – contractual Agreed annual quantity of water which Supplier shall make available for Recipient and Recipient shall withdraw. Agreed annual quantity is part of price model.

WSS – water supply system

CB – cross border

CR – cross regional

Appendix – is an extra part at the end of this Contract. It may be written at the same time as this Contract so it's not in any way an amendment.

Amendment – is a change, an alteration of this Contract, written at a later date.

Ramp up/down rate – speed at which the water flow/pressure increases/decreases.

Normal operating conditions – period when water supply system is functioning normally: not in period of Limited water supply (Article 6.3), Normal maintenance and repair (Article 7.2), Unexpected failures and leaks (Article

---

7.3), Emergency (Article 7.4), Urgent supply (Article 7.5), Droughts (Article 7.6), Deduction of water supply (Article 14.1), Vis major (Article 15).

Water shortage – period of dry season (drought) or/and high demand.

Emergency – an incident, event or occurrence when, in the opinion of either Party, there is a significant variation from agreed quantity, quality, flow (velocity) rate, pressure or repair times.

Urgent supply – need for excessive quantity of water by either Party for short period of time.

Water allocation ratio – sharing ratio of available water quantity in case of water shortage.

Alternative water meter – backup water meter for (temporary) replacement of broken water meter.

Current reading value – reading of volume on water meter for the current accounting period.

Previous reading value – reading of volume on water meter for the previous accounting period.

Instalment – any of several parts of successive payments in settlement of a debt.

Penalty charge – any kind of penalty amount, which applies according to this Contract.

Affected Party – Party, which is affected by breach of this Contract, Vis major or damage caused by other Party.

Minor Breach – also referred to as partial breach. This breach of Contract is less severe than a Material breach and it gives the Affected Party the right to sue for damages but does not usually excuse him from further performance.

Material Breach – a substantial breach of Contract usually excusing the Affected Party from further performance and giving him the right to sue for damages.

Vis major – event, occurrence, circumstance or condition beyond the reasonable control of either Party.

Regular meeting – meetings between Parties on regular basis to discuss any matters related to the <<Category of water supply>> water supply.

Regulatory authorities – all legal water management authorities of both Parties.

Business day – any day except a Saturday, Sunday or a public holiday in the Country of Parties.

---

Commencement date – date on which this Contract shall enter into force. Commencement date may be the same as the Date of signature.

Commencement date of the delivery/purchase – start date of water delivery/purchase.

Nominal capacity – water quantity capacity of water. Could be related to water source or potable water treatment plant or flow in pipeline; on the annual, monthly, daily or hours time level.

High demand – exceptional high consumption of water by end users, which results in water shortage of water even in normal available water quantity from water source.

SCADA – Supervisory Control And Data Acquisition

Constant measured parameters – parameters that are constantly monitored with permanently installed instruments in Delivery point.

Regular measured parameters – parameters that are regularly monitored with sampling and analysis.

Dispute – any difference or questions at any time arise between Parties as to the construction, meaning or effect of this Contract or the rights or obligations of Parties herein, or should Parties fail to agree upon any matter.

## **1.4 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- a.) mentioning anything after includes, including, for example, etc. or similar expressions, does not limit what else might be included.
- b.) The singular includes the plural and conversely.
- c.) If a word or phrase is defined, its other grammatical forms have the corresponding meaning.
- d.) A reference to a person, corporation, trust, partnership an incorporated body or other entity includes any of them and any executor, administrator or successor in law of the person.
- e.) A reference to an Article, Appendix or Amendment is a reference to an Article, Appendix or Amendment to this Contract.
- f.) A reference to a contract or document including, is a reference to this Contract or document as amended, varied, supplemented, novated or

---

replaced except to the extent prohibited by this Contract or that other contract or document.

- g.) A reference to Party to this Contract or another Contract or document includes Party's successors and permitted substitutes or assigns and, where applicable, Party's legal personal representatives.
- h.) A reference to legislation or to a provision of legislation includes modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- i.) A reference to a day or days is a reference to calendar day(s). A reference to Business week is a reference to five Business days. Likewise, Parties shall be aware that in the case of cross border water supply, countries may have different public holidays and Non-Business days.
- j.) A reference to limit in Business days is a reference to the sum of Business days when both Parties reach that limit.

## 1.5 Preceding contracts

Preceding contracts which are superseded by this Contract:

<<not valid preceding contracts>>.

Preceding contracts which shall continue to be fully valid:

<<fully valid preceding contracts>>.

Articles from preceding contracts which shall continue to be fully valid:

<<not fully valid preceding contracts; specify contracts numbers and articles>>.

### **Guidelines**

*This article should clarify if there are or are not any preceding contracts. In case of existing preceding contracts signed between Parties they should be listed in this Article.*

## 2 OBLIGATIONS

### 2.1 Obligations of Supplier

Obligations of Supplier are to:

- 2.1.1 supply water in the defined limits;

---

2.1.2 to recover charges, including interest due,

2.1.3 to provide customer report.

2.1.4 Cooperation with Recipient in unexpected and emergency situations as much correct as possible.

## **2.2 Obligations of Recipient**

Obligations of Supplier are to:

2.2.1 receive water;

2.2.2 to pay charges, including interest determined.

2.2.3 Cooperation with Supplier in unexpected and emergency situations as much correct as possible.

## **2.3 Joint obligations**

Parties have joint obligations to:

2.3.1 Co-operate and liaise: each party must co-operate and liaise fully with the other to ensure that this Contract is implemented effectively.

2.3.2 Make review every five years.

## **3 DURATION**

### **3.1 Commencement**

Effective Commencement date of this Contract is <<Commencement date>>.

<<optionally: Commencement date of the delivery/purchase; text>>.

### **3.2 Period**

This Contract shall endure for an Initial period of <<Initial period/duration of this Contract>> after Effective commencement date.

### **3.3 Review**

Notwithstanding any other provisions in this Contract, this Contract shall be reviewable at any time during the initial or extended Contract period. Any amendments resulting from any review contemplated shall be reduced to writing and signed by both Parties.

---

## 3.4 Extension

This Contract may be extended by amendment at the end of the Initial period or during the Initial period as may be necessitated by the recovery period of any capital contribution agreed by Parties, provided that Parties reach agreement on the terms and conditions of the extension.

If duration was not changed by any amendment or if contract is not terminated, it is agreed that at the end of the Initial period, there is an annual Automatic renewal (silent extension) of this Contract.

## 3.5 Termination

### 3.5.1 Legitimate reasons for termination

- a.) At the end of Initial period with at least <<minimum notice before termination at the end of Initial period in months>> months' notice from either Party.
- b.) If this Contract relation enters into Automatic renewal process defined under second paragraph of Article 3.4, this Contract can be terminated only at the end of the Automatic renewal period with at least <<minimum notice before termination in Automatic renewal process in months>> months' notice from either Party.
- c.) Recipient fails to pay invoice for <<termination because of unpaid invoice for defined period; period in months>> month(s) or it has debt by unpaid invoices at least for <<termination because of debt; debt limit with written currency>>. Only Supplier is entitled to this reason for termination.
- d.) There is proven unremedied Material breach for at least <<time limit for termination of this Contract because of unremedied Material breach; in days>> days (Article Material breach). **Both sides are entitled to this reason for termination.**
- e.) In case of lasting Vis major or extensive damage/destruction of infrastructure or both as defined in Article Unavoidable contract termination. **Both sides are entitled to this reason for termination.**
- f.) It is agreed by Parties with written agreement.

### 3.5.2 Prohibited reasons for termination

- a.) Recipient may not excuse itself from the agreement in »in the period of contract validity« in case it finds alternative sources for water supply which might be less costly.

### 3.5.3 Termination date

---

Termination date depends on the used reason for termination under Article 3.5.1:

- a.) Articles 3.5.1a.) and 3.5.1b.) – at the end of Initial period or Automatic renewal period,
- b.) Articles 3.5.1c.), 3.5.1d.) and 3.5.1e.) – is maximum <<maximum months between: Termination date AND termination notice on late invoice payment, debt, unremedied Material breach or lasting Vis; in months>> months after termination notice,
- c.) Article 3.5.1f.) – on agreed date.

#### 3.5.4 Termination process

After notice on the termination, Supplier shall continue to provide <<Category of water supply>> water supply services and Recipient shall continue to withdraw the water and pay charges in accordance with this Contract until the Termination date.

After Termination date, remaining drawn volume or other debts also of event under Article 10.14.3b.) shall be invoiced within 60 days. If stated invoices are not paid until the deadline on the invoice, Dispute resolution of this Contract still applies even though it is due the Termination date.

**Guidelines**

*If such a detailed definition on notice period and Termination date is not needed in the contract, at least there should be an appropriate notice before termination.*

## **4 CURRENT DATA AND PROJECTIONS**

### **4.1 Demand**

#### 4.1.1 Forecasted expected water quantity demand

By <<date till when Recipient annually provides forecast expected water quantity demand; e.g.: 1 November>> every year Recipient must provide to Supplier written notification of:

- a.) its forecasted expected water quantity demand for each month of the next financial year; and
- b.) its forecasted expected water quantity demand for each of the 5 financial years following the next financial year.

---

4.1.2 Recipient shall notice Supplier immediately in case of any unforeseen major changes in future demand (e.g. new bulk water customer, etc.) which could have significant effect on <<Category of water supply>> water supply.

4.1.3 Optionally, Recipient could inform Supplier about forecasted expected water quantity demand with plan of future development of water supply system (for example: Action plan).

## **4.2 Nominal capacity**

4.2.1 By <<date till when Supplier annually provides forecast expected Nominal capacity; e.g.: 1 November>> every year Supplier must provide to Recipient written notification of:

- a.) its forecasted expected Nominal capacity of water source or potable water treatment plant for each month of the next financial year;
- b.) its forecasted expected Nominal capacity of water source or potable water treatment plant for each of the 5 financial years following the next financial year; and
- c.) a detailed report on the security of supply to Recipient. The report must reflect capacity concerns identified by Supplier; indicate which measures shall be implemented by Supplier to address or alleviate concerns and make recommendations as to actions that may be taken by Recipient to address or alleviate concerns.

4.2.2 Supplier shall notice Recipient in case of any unforeseen major changes in capacity, which could have significant effect on <<Category of water supply>> water supply.

4.2.3 Water source quantity permit limit is defined under Article 6.2.

## **5 TYPE OF WATER SUPPLY**

Different types of water supply are declared. Include only types that are applicable for your Water Supply Case There shall be following type(s) of water supply:

### **5.1 Permanent water supply**

Permanent water supply may only be disturbed under conditions of Limited water supply (Article 6.3), Normal maintenance and repair (Article 7.2), Unexpected failures and leaks (Article 7.3), Emergency (Article 7.4), Urgent supply (Article 7.5), Droughts (Article 7.6), Deduction of water supply (Article 14.1), Vis major (Article 15), or if it is mutually agreed.

---

## 5.2 Temporary water supply

- 5.2.1 Temporary water supply is <<type of temporary water supply: seasonal, urgent, etc.>>.
- 5.2.2 Recipient must notice Supplier <<notice before temporary water withdrawal; in Business days>> Business days before desired start of water withdraw.
- 5.2.3 Annual maximum temporary supply is <<annual maximum temporary supply in days>> days.

### **Guidelines**

*If water supply is not a unidirectional (one-way), this Article 5 needs to be significantly redefined.*

*If there is only permanent or temporary supply, Articles 5.1 and 5.2 appropriately redefined or deleted.*

## 6 WATER SUPPLY STANDARDS

### 6.1 Quantity of water

#### 6.1.1 Annual quantity

- a.) Agreed annual quantity is <<contractual Agreed annual quantity of supplied water in m3>> m<sup>3</sup>.
- b.) It is reasonable that Actual annual withdrawn quantity could vary. It can be above Annual agreed volume only if Supplier agrees (has excessive quantity of water). Agreed annual quantity affects fixed charge and Actual annual withdrawn quantity affects variable charge. **Acceptable annual difference between Agreed annual quantity and Actual annual withdrawn quantity is 5% - in that case fixed charge couldn't be changed. If difference exceed 5%, fixed charge could be reconsider.**
- c.) There is possibility to propose change of Agreed annual quantity by either Party. Proposition is accepted only if both Parties give written agreement (amendment to this Contract). If change of Agreed annual quantity require upgrade of water supply system, Parties must define ratio of financing mentioned upgrade and prepare design with all necessary technical documentation on the upgrade.

---

### **Guidelines**

*It would be reasonable if Recipient proposes change of Agreed annual quantity and this requires upgrade of water supply system and investment, it would be fair that Recipient covers all the costs of upgrade, except that the Supplier need that, too. In that case (both have need for water resource upgrading), it would be fair that Supplier and Recipient cover costs of upgrade in proportion of their needs.*

#### 6.1.2 Monthly quantity

- a.) Minimum: Recipient shall withdraw a minimum of <<minimum monthly quantity in m3, which Recipient shall withdraw>> m<sup>3</sup> per month.
- b.) Maximum: Supplier can provide a maximum of <<maximum monthly quantity in m3, which Supplier can possibly provide>> m<sup>3</sup> per month because <<Name of Water Resource>> has its limitation of <<quantity of supplied water in m3>> in following moths <<Names of Moths>>.

#### 6.1.3 Daily quantity

- a.) Basic daily water quantity, which Supplier has to provide under Normal operating conditions and will endeavour to provide outside Normal operating conditions, is <<Basic daily water quantity in m3>> m<sup>3</sup> per day.
- b.) Maximum: Supplier can provide a maximum up to <<maximum daily quantity in m3, which Supplier can possibly provide>> m<sup>3</sup> per day.

#### 6.1.4 Hourly quantity

- a.) Maximum: Supplier can provide a maximum of <<maximum hourly quantity in m3, which Supplier can possibly provide>> m<sup>3</sup> per hour.

6.1.5 Supplier can provide more than stated maximum of water quantity in Articles 6.1.2, 6.1.3 and 6.1.4 only if it is technically possible and Supplier agrees.

6.1.6 Inside the quantities defined in paragraphs 6.1.1., 6.1.2., 6.1.3., and 6.1.4. ratio for variable charge is the same. If actual quantities exceed this limits, than variable charge could be changed if it is accepted from both sides with addendum. This can not be the case for Emergency cases.

## **6.2 Water source quantity permit limit**

6.2.1 Supplier states that the annual water source quantity permit limit, which is (also) used for <<Category of water supply>> water supply, is <<annual water source quantity permit limit of water source used (also) for CB WSS in m3>> m<sup>3</sup>. Forecasted Nominal capacities shall be done according to the Article 4.2.

---

6.2.2 Supplier states that the permit limit of flow from water source, which is (also) used for <<Category of water supply>> water supply, is <<permit limit of flow from water source used (also) for CB WSS in m<sup>3</sup>/s>> m<sup>3</sup>/s.

6.2.3 Supplier shall notice Recipient immediately in case of any change in the annual water source quantity permit limit or permit limit flow.

### **6.3 Limited water supply**

6.3.1 This Article 6.3 applies on scenario of water shortage: high demand, emergency (Article 7.4) or drought (Article 7.6).

6.3.2 Supplier shall develop water shortage response plan.

6.3.3 In case of water shortage, Parties shall share following Water allocation ratio of the available water quantity: Supplier:Recipient is <<Water allocation ratio of the available water quantity Supplier:Recipient, e.g.: 2:1>>.

6.3.4 In case of temporary water shortage («during natural limits of water source»), Supplier has a right to temporary cancel water supply.

6.3.5 When Supplier is aware that water shortage will occur or unexpectedly occurs, it shall notify Recipient immediately: firstly spoken, than officially written (obligatory notice is also defined in Articles 7.4 and 7.6.).

### **6.4 Water Quality**

6.4.1 Quality level of water

Supplied Quality level of water is <<raw, partially treated or potable>>.

6.4.2 Supplier shall in Normal operation conditions provide healthy and disinfected water in accordance with agreed Water quality parameters values. **Supplier is obligated to give notice to Recipient immediately after recognising relevant quality parameter vary outside the limits.**

6.4.3 If there is evidence that Supplier provides water quality outside parameters value for more than 24 hours without given notice to Recipient, Recipient is not bound to pay fixed and variable costs in the period when water quality is outside parameters values and has right to temporary stop withdrawal of the water till the water quality parameters values are inside thresholds.

6.4.4 If there is evidence that Supplier provides water quality outside parameters for more than 24 hours without given notice to Recipient and bad water quality

---

has damaging effects to the water supply system of Recipient, Supplier shall pay a penalty to Recipient, which has to be reasonable.

- 6.4.5 Parties have obligation to maintain water quality in their own water supply systems: Supplier till borderline and Recipient after borderline between water supply systems.
- 6.4.6 Supplier is not obliged to maintain water quality parameters values outside Normal operating conditions.
- 6.4.7 If either Party's legislation water quality parameters values change in a way that it would be contrary to the water quality parameters values in this Contract, as soon as practicable, Parties shall meet to review and endeavour to agree on appropriate changes.
- 6.4.8 Outside Normal operation conditions, Supplier takes reasonable endeavours to provide water quality parameters values inside threshold. Although it does not succeed, Supplier did not breach this Contract. Normal operational conditions must be clarified between Parties.
- 6.4.9 During an Urgent supply (Article 7.5) Parties may agree that Water quality parameters can vary to optimize the operation of either Party's Water Supply System.
- 6.4.10 Water quality management is under Monitoring (Article 7.1).

## **6.5 Flow rate**

- 6.5.1 Flow rate limits on Delivery point under Normal operating conditions are following:
- a.) Maximum: <<maximum flow rate on Delivery point in m<sup>3</sup>/s>> m<sup>3</sup>/s.
  - b.) Minimum: <<minimum flow rate on Delivery point in m<sup>3</sup>/s>> m<sup>3</sup>/s.

## **6.6 Flow velocity rate**

- 6.6.1 Flow velocity limits on Delivery point under Normal operating conditions are following:
- a.) Maximum: <<maximum flow velocity rate on Delivery point in m/s>> m/s.
  - b.) Minimum: <<minimum flow velocity rate on Delivery point in m/s>> m/s.

---

### **Guidelines**

*Generally recommended flow velocity rate is from 0,3 m/s to 1,0 m/s, with possibility in emergency cases to increase velocity up to 2.0 m/s.*

*Parties should be cautious that thresholds for minimum and maximum flow velocity rate are in accordance with flow rate in Article 6.5. and Pipeline nominal diameter on Delivery point in Article 6.7.*

## **6.7 Pipeline diameter**

Pipeline nominal diameter (DN) on Delivery point shall be DN<<pipeline nominal diameter on Delivery point in DN, mm>>.

## **6.8 Water pressure**

6.8.1 Water pressure limits on Delivery point under Normal operating conditions are following:

- a.) Maximum: <<maximum water pressure on Delivery point in bar>> bar.
- b.) Minimum: <<minimum water pressure rate on Delivery point in bar>> bar.

6.8.2 Supplier must provide reasonable constant pressure.

6.8.3 Supplier must use appropriate protocol (must be properly defined and agreed by both Parties) in case when pressure is outside thresholds.

6.8.4 Supplier must notice Recipient beforehand on any expected/planned reduction or increase of water pressure outside thresholds. In case of unexpected reduction or increase, Supplier must notice Recipient immediately.

6.8.5 If Recipient requests a period with flow rate over maximum (under Article 6.5.1a.) and Supplier approves it, in the stated period Supplier did not breach the contract if if water pressure is under minimum limit under Article 6.8.1b.).

## **7 SYSTEM OPERATING STANDARDS**

### **7.1 Monitoring**

---

### **Guidelines**

*In this draft Contract it is specified that primary Supplier is responsible for monitoring till the borderline of <<Category of water supply>> water supply system, including Delivery point. It is also specified that monitoring is done on Delivery point. In case that monitoring would not be done on Delivery point, this Contract must be adopted.*

*Recipient must have access to Delivery point to make its own monitoring if it wishes to. However, it could be defined in the contract that Parties can propose some other arrangement.*

*Sampling and analysis could be also appointed to 3<sup>rd</sup> party.*

- 7.1.1 For the purpose of this Contract, monitoring is specified as Constant and Regular measurement of the parameters including <<monitored parameters on Delivery point; e.g.: flow (velocity) rate, quantity, pressure, turbidity, pH, chlorine residual, fluoride, etc.>>.
- 7.1.2 Monitoring is done on Delivery point.
- 7.1.3 Primary Supplier is responsible for monitoring till the borderline of <<Category of water supply>>, including Delivery point.
- 7.1.4 SCADA is used for monitoring of Constant measured parameters.
- 7.1.5 Supplier monitors and shall give instantaneous access to Recipient on data from SCADA <<monitored parameters in SCADA, to which also Recipient has instantaneous access>> on Delivery point. Supplier shall also provide recipient with any done report on Constant measured parameters within one month.
- 7.1.6 Regular measured parameters including <<monitored parameters by sampling and analysis>> are monitored by sampling and analysis. Supplier shall provide Recipient with all accumulated data, results and reports **on both sides agreed interval (1 or 3 or 6 or 12 months)**..
- 7.1.7 Supplier must provide Recipient with calibration tests results and reports on all instruments in Delivery point within <<time limit of Supplier to provide recipient with results and reports on calibration; in Business days>> Business days.
- 7.1.8 Recipient may make its own monitoring on its own expenses.
- 7.1.9 If Supplier is aware of any future deviations or measurements show deviations in monitored parameters, Supplier shall notify Recipient immediately.

- 
- 7.1.10 If Supplier measures degradation in water quality in part of its system which may affect water quality of supplied water to Recipient, Supplier must notify Recipient of the problem immediately.
- 7.1.11 If Recipient measures a degradation in water quality which may originate from Supplier's water supply system, Recipient must notify Supplier of the problem immediately.
- 7.1.12 All accumulated data, results and reports shall be permanently archived by both Parties.
- 7.1.13 Necessary measured Water quality parameters and their minimum frequency of measurement are defined in Appendix that is agreed by both Parties.
- 7.1.14 Outside Normal operation conditions, Supplier takes reasonable endeavours to provide monitoring of all parameters. Although it does not succeed, Supplier did not breach this Contract.

## **7.2 Normal maintenance and repairs**

- 7.2.1 This Article 7.2 addresses normal maintenance and repairs which (may) affect <<Category of water supply>> water supply.
- 7.2.2 Parties maintain and repair their part of water supply system.
- 7.2.3 Interruptions in supply are allowed for normal maintenance and repairs.
- 7.2.4 Parties are obliged to use ordinary and reasonable care to maintain water service.
- 7.2.5 Parties agree on endeavour to minimize disruptions.
- 7.2.6 Either Party shall notify other Party on planned maintenance and repairs <<Business days' notice before planned maintenance and repairs>> Business days beforehand. If other Party disagrees, it must propose reasonable alternative date for normal maintenance and repairs. If planned maintenance and repairs would significantly affect either Party's water supply (e.g. in dry season, fire warning period etc.), they shall postpone the planned work to a more appropriate time.
- 7.2.7 In period of normal maintenance and repairs monitored parameters may vary. Likewise Supplier did not breach this Contract if the monitored parameters vary in period of normal maintenance and repairs.

---

7.2.8 If neither Party gives notice on normal maintenance and repairs <<Business days' notice before planned maintenance and repairs>> Business days beforehand, penalty may apply (Article 12.1).

**7.3 Unexpected failures and leaks**

7.3.1 In case of unexpected significant failure or leak presumably flow (velocity) rate, pressure, quantity and Water quality parameters values will presumably vary.

7.3.2 Whether one of Either Parties becomes aware of a failure or leak on either side of the water supply system, it shall notify other Party immediately.

7.3.3 Party, which water supply system has failure or leak that significantly affects <<Category of water supply>> water supply must:

- a.) take all actions necessary to comply with flow, pressure and Water quality parameters values as soon as possible;
- b.) provide other Party with report on the failure or leak no later than one month from the date of the failure or leak.

7.3.4 Both Parties shall restore Normal operation conditions after failure or leak within the following times (Table of suggestions from *Model Bulk Water Supply Contract* (2006)):

Pipe diameters	Time to repair
Up to 1 000 mm	within 12 hours
Larger than 1 000 to 1 800mm	within 15 hours
Larger than 1 800 to 2 100 mm	within 18 hours
Larger than 2 100 mm	within 24 hours

7.3.5 Whether it becomes clear that it will not be possible to adhere to the times specified in previous Article 7.3.4, Party which has problem of failure or leak, shall immediately notify other Party. All repairs which exceed 24 hours shall be treated as an Emergency (Article 7.4).

7.3.6 Nevertheless, the failures and leaks which significantly affect <<Category of water supply>> water supply

- a.) on Supplier's water supply system, Supplier is obliged to provide Recipient with Annual quantity of water specified under Article 6.1.1a.);  
or

---

b.) on Recipient's water supply system, Recipient is obliged to withdraw from Supplier Annual quantity of water specified under Article 6.1.1a.).

7.3.7 Parties have no liability in case of circumstances beyond their control.

## **7.4 Emergency**

7.4.1 An incident, event or occurrence shall be considered an Emergency when there is, in the opinion of either Party, a significant variation from:

a.) the agreed quantity, Water quality parameters, flow (velocity) rate and pressure for a period longer than 24 hours; or

b.) the agreed repair time referred in Article 7.2 exceeds 24 hours.

7.4.2 Either Party shall within 1 hour of becoming aware of an Emergency or possible Emergency immediately notify the other Party.

7.4.3 Parties shall agree on a process for addressing the Emergency. Where Parties fail to reach an agreement either Party may refer the matter for resolution of Dispute under Article 16.

7.4.4 Where an emergency has been addressed by Parties, a debriefing meeting may be requested by either Party to review the process and procedure employed to address the emergency and a formal report shall be prepared.

## **7.5 Urgent supply**

7.5.1 Urgent supply is defined as need for excessive quantity of water for short period of time – *<<Urgent supply time limit; in hours>>* hours (e.g. in case of firefighting etc.) Either Party can initiate Urgent supply if that is reasonable.

7.5.2 If Supplier needs Urgent supply that could significantly reduce currently available quantity of water which is delivered to Recipient, Supplier should endeavour in the time of Urgent supply to supply Recipient within or as close as possible to Normal operation conditions. Urgent supply must not take longer than *<<Urgent supply time limit; in hours>>* hours.

7.5.3 If Recipient needs Urgent supply this could significantly reduce quantity of water available for local water supply in Supplier's system. Supplier must endeavour to enable Recipient excessive quantity of water and to be within or as close as possible to Normal operation conditions in the time of Urgent supply. Urgent supply must not take longer than *<<Urgent supply time limit; in hours>>* hours.

- 
- 7.5.4 If Recipient has ability to make excessive withdraw without beforehand communication with Supplier,
- a.) Recipient is allowed to do that if Urgent supply is reasonable and Recipient is not able to notice Supplier beforehand. However Recipient must notify Supplier on excessive withdraw as soon as possible.
- 7.5.5 Either Party shall notice other Party immediately on Urgent supply which could affect cross border water supply
- 7.5.6 If Urgent supply is longer than *<<Urgent supply time limit; in hours>>* a debriefing meeting may be requested by either Party to review the process and procedure employed to address the Urgent supply and a formal report shall be prepared.
- 7.5.7 When Urgent supply period is ended, both Parties shall endeavour to achieve Normal operation conditions as soon as possible.
- 7.5.8 Nevertheless, water quantity transferred during Urgent supply is normally measured and charged.

## **7.6 Drought**

- 7.6.1 For the purposes of this Article 7.6 a drought is defined as any event, series of events or changes in water allocation in water source which impact or impacts on the availability of raw water to Supplier and consequently on the agreed quantity of water to be provided to Recipient in terms of this Contract.
- 7.6.2 Supplier is responsible for obtaining and generating all information required to monitor and forecast all factors influencing the quantity of water available. Recipient agrees to assist Supplier, where possible, in obtaining information on water quantity.
- 7.6.3 Supplier must issue a written drought warning to Recipient if Supplier will implement water restrictions. Supplier must withdraw a drought warning issued when water restrictions are stopped.
- 7.6.4 Recipient may request, that Supplier shall convene weekly meetings with Recipient in the period of drought warning and water restrictions to provide updates, especially on water quantity availability.
- 7.6.5 Recipient must accept water restriction in supply if end consumers serviced by Supplier are also under water restriction. Water restriction is consistent with the Water allocation ratio in Article 6.3. If water restriction is longer than *<<duration of water restriction to imply reduction of Agreed annual quantity; in*

---

*months>>* months, Agreed annual quantity for the defined period of year is reduced in accordance with duration of the water restriction and water quantity supplied to Recipient in that time.

## **7.7 Water losses**

- 7.7.1 Each Party is responsible for water losses on their part of water supply system.
- 7.7.2 Water quantity measured at Delivery point can be deducted for billing (invoice) through water losses only for situation in Article 7.7.4.
- 7.7.3 Water quantity measured at Delivery point can be increased for billing (invoice) in accordance with mutually defined methodology.
- 7.7.4 If there are significant water losses between borderline of water supply system and Delivery point where water quantity is measured, leaks on this part of system must be mitigated as soon as possible by Party, which has claim over the stated part.

### **Guidelines**

*In this draft Contract it is assumed **and strongly recommended** that Delivery point is nearby to borderline between water supply systems of Supplier and Recipient.*

## **7.8 General rules on ownership, operation and maintenance of the system**

- 7.8.1 Parties have ownership and responsibility over their own part of the water supply system.
- 7.8.2 Supplier shall operate and maintain its system to offer high level water supply and in a way which shall not cause damage on Recipient's water supply.
- 7.8.3 Recipient is responsible to operate and maintain system after borderline in a way which shall not cause damage on Supplier's water supply.
- 7.8.4 Neither party shall acquire any rights whatsoever in the water system of the other.

---

## 8 DELIVERY POINT

### **Guidelines**

*It is possible that there are multiple delivery points. In such a case draft Contract has to be appropriately adapted or multiple contracts are signed.*

### 8.1 General

Delivery point is installation (e.g. manhole, small building, etc.) on the border or close to border where measuring instruments are installed.

Delivery point shall be adequately protected and secured.

Details on water meter are under Article 9.

### **Guidelines**

*In this model Contract it is assumed that Delivery point has also other instruments than just water meter.*

*If Parties wish to have on Delivery point just water meter, they should adjust this model Contract accordingly.*

### 8.2 Location

Location of the delivery point is on the following coordinates; latitude <<latitude coordinate of the delivery point>> and longitude <<longitude coordinate of the delivery point>>.

It is highly recommended to have schematic view (plan) of the delivery point in separate Appendix.

### 8.3 Ownership, operation and maintenance

Supplier has ownership and responsibility over Delivery point.

Supplier shall operate and maintain Delivery point by <<legislation or rules or similar by which Delivery point will be operated and maintained>>. If it is reasonable and both Parties agree, Recipient may carry out urgent maintenance works on Delivery point.

Supplier shall maintain all measuring instruments in Delivery point.

### 8.4 Access

Both Parties must have access to Delivery point and its measuring instruments (e.g. water meter, etc.).

---

## 9 WATER METER

### **Guidelines**

*This Article is written on presumption of 1 water meter, which is part of Delivery point under ownership of Supplier.*

*There could be 2 water meters: Supplier's and Recipient's which have to be as close as possible.*

### 9.1 General

9.1.1 Water meter is part of the Delivery point.

9.1.2 Supplier has ownership and responsibility over the water meter.

9.1.3 Supplier shall install, operate and maintain the water meter.

9.1.4 Installation, testing and calibration procedure shall be in accordance with <<legislation or rules or protocol or similar which is basis for procedure of installation, testing and calibration of water meter>> in Appendix that is agreed by both Parties.

9.1.5 The water meter shall measure the water quantity which Supplier provides to Recipient. The measured water quantity shall represent the base for charges.

9.1.6 Supplier shall provide remote reading through SCADA for Recipient.

9.1.7 Agreed type of water meter shall be used. Alternative water meter should be available for use in case of testing or replacement of faulty water meter.

### 9.2 Accuracy thresholds

9.2.1 Parties agree that acceptable errors in measurement of flow are not more than <<acceptable errors for water meter above or below actual flow in %>> % above or below the actual flow. Whether actual flow is above or below upper or lower threshold, water meter is defined as inaccurate.

### **Guidelines**

*In two bulk water supply contracts from USA (Agreement, 2005, 2008), the acceptable errors are defined as 2 % or 3 % above or below the actual flow.*

### 9.3 Maintenance

---

Supplier shall maintain water meter. It shall perform testing and needed calibrations and if necessary, by agreement of Recipient, replace faulty water meter with new one.

Supplier shall provide Recipient with:

- a.) annual report on maintenance;
- b.) testing and calibration reports through the year.

## **9.4 Testing and calibration**

9.4.1 Testing of water meter shall be done regularly at least <<water meter testing frequency: minimum how many times per year>> per year. Testing results must be submitted within 2 weeks to Recipient.

9.4.2 If calibration is done, Supplier shall submit report to Recipient within 2 weeks.

9.4.3 If Recipient assumes that water meter is faulty, it can require from Supplier to make additional or special water meter test at any time. Supplier must within <<Business days' limit for Supplier to perform water meter test by Recipient request outside regular schedule for testing>> Business days perform water meter test and provide Recipient with results. If:

- a.) water meter is within acceptable errors from Article 9.2.1, Supplier shall charge this water meter test to Recipient and Recipient shall cover the charge;
- b.) water meter is not within acceptable errors from Article 9.2.1, Supplier shall cover the cost of water meter test, calibration and/or replacement of the faulty water meter.

9.4.4 Supplier shall notice Recipient on schedule of testing and calibration in Articles 9.4.1 and 9.4.3 at least <<beforehand notice to Recipient on date of testing and calibration; in Business days>> Business days preceding the date. Recipient has a right to accompany testing and calibration under reasonable conditions with at least one of its representatives.

## **9.5 Water meter replacement**

9.5.1 If water meter is faulty, it must be replaced. Supplier covers replacement costs.

9.5.2 Supplier shall notice Recipient on schedule of water meter replacement at least <<beforehand notice to Recipient on date of water meter replacement; in Business days>> Business days preceding the date. Recipient has right to

---

accompany water meter replacement under reasonable conditions with at least one representative.

## 9.6 Inaccurate and not measured quantity

9.6.1 Parties shall mutually adjust the invoices rendered during the period of inaccuracy or no measurements.

9.6.2 Parties agree on correction of registered volume by error during inaccurate measurements and to limit its claim for adjustment to the percentage of meter inaccuracy for the 30 days preceding testing.

9.6.3 Parties agree on methodology for estimation of transferred water during no quantity measurements:

- a.) quantity is defined from statistics for the same time period of year before.
- b.) If statistics is not available, quantity is defined on planned scheduled water supply.

## 9.7 Reading

9.7.1 Water metering reading shall be done monthly (if it's not agreed different by both sides) in the defined days ( by ex. between 25<sup>th</sup> and the last day of the month.

9.7.2 Supplier shall notice Recipient on schedule of water meter reading at least <<beforehand notice to Recipient on date of water meter reading in Business days>> Business days preceding the date. Recipient has right to accompany water meter reading under reasonable conditions with at least one representative.

9.7.3 Both Parties shall permanently archive results of water meter reading.

## 10 REGULAR CHARGES AND PAYMENTS

### 10.1 Types and amounts of regular charges

Regular charges for Recipient are following.

- a.) Water withdraw variable charge per m<sup>3</sup>: <<value of variable charge per m3>> <<currency used for accounting>> per m<sup>3</sup>.
- b.) Fixed charge per <<accounting period, e.g. month>>, which Recipient has to cover regardless the volume withdrawn: <<value of fixed charge per accounting period>> per <<accounting period, e.g. month>>.

- 
- c.) Charges in un-expecting situations (e.g. floods on the water sources, etc.) are accounting in line with this contract. If no one side has responsibility for damages, and if they have influence on both sides, it is recommended that ratio of charge is the same as the ratio of delivered water in the last year.

**Guidelines**

*If Recipient proposes significantly low annual quantity (in reality they would probably withdraw more), Supplier may request penalty charge for every excessive m<sup>3</sup> of water. In this draft Contract this is defined under Article 12.2.*

*If the total costs are evaluated with method of investments to agreed investment plans by agreed methodology(possibility of separate Appendix), it is strongly recommended that Recipient transfers payment for fixed costs to separated bank account for better transparency.*

*Paying fixed charge regardless the withdrawn volume is so called take or pay provision.*

## **10.2 Methodology on defining charges**

10.2.1 Types and calculation of charges are defined through methodology/price model (should be written in separate Appendix). Costs and water quantities (agreed, actual, etc.) are basis for calculation of charges.

10.2.2 Difference between Current reading value and Previous reading value, plus water losses, variable charge, under Article 10.1a.).

10.2.3 Parties agree that the defined price covers regular and investments costs related to the cross border water supply.

### **10.2.4 Excluded costs**

Parties agree that this cross border water supply is excused from customs and following taxes and fees: <<fees and taxes, which are excluded from calculation of regular charges>>.

---

### **Guidelines**

*Methodology should be harmonized and adopted by both partners for definition of variable and fixed charge (it should be written in separate Appendix). Variable charge may include following costs:*

- *material,*
- *services,*
- *provision of information,*
- *electricity and other energents,*
- *labour,*
- *other variable costs (agreed).*

*Fixed charge may include following costs:*

- *infrastructure depreciation – facilities,*
- *infrastructure depreciation – equipment,*
- *other fixed costs (agreed), or*
- *capital improvements (agreed investments).*

*Costs above may or may not include VAT.*

*Other fees and taxes which Supplier usually applies to local water supply (water abstraction, water protection, customs, etc.) should not be charged to Recipient from another country. If Supplier requests that such fees and taxes should be charged, that has to be well reasoned and defined.*

## **10.3 Regular charges and withdrawn quantity**

10.3.1 Actual withdrawn quantity can slightly vary from Agreed withdrawn quantity and this affects amount of payment from Recipient on basis of variable charge.

10.3.2 Whether actual withdrawn quantity is below or above Agreed quantity, Recipient pays the same amount to cover fixed charges, **in case that the difference is below  $\pm$  5%. If Actual withdrawn quantity is more than 5% of Agreed withdrawn quantity, fixed charges are accounting on the basis of Actual withdrawn quantity, or the difference is overturn in the next year. .**

10.3.3 Recipient can withdraw more water than agreed quantity only if Supplier agrees. For withdrawn quantity significantly above Agreed quantity, Penalty charge applies (Article 12.2).

---

## 10.4 PORAČUN – closing balance accounting

10.4.1 Parties shall do closing balance accounting in the beginning of every year to define actual costs. Since in the first months of the current year actual costs for the previous year are not available, actual costs for the first available year are used.

10.4.2 Difference between planned and actual costs in the previous year shall be considered in the calculation of the planned price for the following year.

### **Guidelines**

*For example: in January 2016 closing balance accounting needs to be done. If actual costs for 2015 are not available yet, therefore actual costs for 2014 represent the base.*

## 10.5 Projections

Supplier shall annually, on basis of projected demand by Recipient (Article 4.1), before or on 31 January of each year, submit five year projections for Regular charges to Recipient with a detailed cost breakdown of the proposed Regular charges, including all variable and fixed costs.

## 10.6 Accounting period

Parties agree that accounting period shall be every <<accounting period, e.g. month>> on Supplier's 1<sup>st</sup> Business day of the <<accounting period, e.g. month>> when the invoice must be issued to Recipient.

## 10.7 Issue of invoice

10.7.1 Invoice shall be issued to Recipient <<time limit for invoice to be issued to Recipient after water meter reading; in Business days>> Business days after reading (Article 9.7).

10.7.2 Invoice may be issued overdue only when water meter malfunctioned and agreed adjustment to volume or estimation of volume is needed or if it is mutually agreed.

## 10.8 Deadline to pay invoice

Recipient has <<deadline to pay invoice; in days>> days to pay the issued invoice.

---

## **10.9 Late payment**

If the payment is overdue, interest on late payment applies in accordance with law in the country of Supplier.

## **10.10 Special payment arrangements**

Recipient and Supplier may agree to the settlement of the Recipient's invoice in instalments where Recipient is not able to settle an invoice in full on the due date.

## **10.11 Currency exchange rate**

Parties agree that currency exchange rate is applied as follows

- a.) if invoice is payed within deadline, currency exchange rate on the day that invoice was issued applies;
- b.) if invoice is payed overdue, exchange rate on the day of payment applies.

## **10.12 Method of payment**

The payment shall be done by electronic transfer to such bank account as Supplier may advise Recipient in writing.

## **10.13 Data on invoice**

Following data shall be written on the invoice:

- a.) total volume of water registered on water meter from current and previous reading with dates and times;
- b.) difference between water volumes in a.);
- c.) amount payable for variable and fixed charge;
- d.) the final date for payment;
- e.) if any: overdue debt with interest;
- f.) any obligatory data that invoice must include according to laws and rules in the country of Supplier.

## **10.14 Recipient query for incorrect invoice**

10.14.1 Recipient may give Supplier written notice if it disputes any invoice given within 15 Business days after the invoice was issued.

---

10.14.2 Notwithstanding any dispute, Recipient must, on the relevant due date, pay

- a.) if it does not dispute fixed costs, amount payable by fixed charge; and
- b.) at least 50% of the amount payable by variable charge if the stated amount is not greater than 150% of the maximum payable amount of the last 3 invoices.

10.14.3 If Parties come to conclusion that invoice is incorrect and they agree on new amount payable on the redefined invoice,

- a.) Supplier issues special invoice in which Recipient pays the rest of the amount together with, if applicable, interest rate (Article 10.9). Interest rate does not apply if the rest of the amount is paid till the relevant due date of the original invoice; OR
- b.) if Recipient exceeds amount payable by paying 50% of variable charge costs for incorrect invoice, Recipient does not issue special invoice for Supplier, but Supplier makes appropriate deduction(s) in next invoice(s) with interest calculated at the same rate imposed by Supplier (Article 10.9).

10.14.4 If Parties cannot agree on invoice correctness in 30 days since the written notice from Supplier, either Party may refer the matter to Dispute resolution under Article 16.

## **11 IRREGULAR CHARGES AND PAYMENTS**

11.1.1 Irregular charges cover costs, **which are not included in calculation of regular charges (as defined in agreed methodology):**

- a.) investments and installation costs of Supplier which directly affect cross border water supply. This also includes major maintenance works, which affect cross border water supply (for example: replacement of main pipeline, etc.),
- b.) testing, calibration and replacement of measurement instruments (e.g. water meter, etc.),
- c.) testing costs for case under Article 9.4.3b.),
- d.) unpaid claims.

11.1.2 Articles 10.8, 10.9, 10.10 and 10.11 apply also for invoices in this Article 11.

11.1.3 Irregular charge under 11.1.1a.) does not apply if investments and installations costs of Supplier only affect their own system.

---

11.1.4 The payment shall be done by electronic transfer to such bank account as Parties specify.

11.1.5 Parties cover themselves investments and installation costs that relate only to their local water supply system.

11.1.6 Furthermore, Supplier recovers costs of investments and installations, which relate partially or fully with cross border water supply.

Each party must bear its own costs arising out of the Dispute resolution under Article 16.

## **12 PENALTIES.**

### **12.1 Minor breach penalty**

12.1.1 In the event that Supplier

- a.) fails to meet any of its obligation in terms of this Contract; or
- b.) fails to notify, inform or submit to Recipient such matters within the specified time periods as Supplier is obliged to do in terms of this Contract; or
- c.) fails to implement any actions or exceed the duration for the completion of actions Supplier undertook in terms of any notice or submission to Recipient in terms of this Contract;

Recipient may deduct <<amount or percentage agreed to deduct from invoice for current or next accounting period, e.g. 1000€ OR 10%>> from the invoice payable for water supply services provided by Supplier, in the <<accounting period, e.g. month>> within which such failure occurred or the <<accounting period, e.g. month>> following such failure.

12.1.2 Recipient must notify Supplier of any proposed deduction at least 10 Business days in advance of such a deduction being made and must grant Supplier an opportunity to:

- a.) demonstrate to the reasonable satisfaction of Recipient that the failure referred to in Article 12.1 did not take place; or
- b.) justify to the reasonable satisfaction of Recipient why the failure referred to in Article 12.1 could not have been prevented.

12.1.3 The justification of Supplier referred to in Article 12.1.2b.) shall be evaluated by Recipient in accordance with the following criteria:

- a.) the seriousness and repetitive nature of a failure;

- 
- b.) the degree of impairment to public interest;
  - c.) the degree of negligence of Supplier; and
  - d.) the diligence displayed by Supplier in rectifying the effects of the failure.

12.1.4 Any deduction imposed in terms of this Article 12.1 shall not in any way limit either Party's right to any other remedies provided for in this Contract or in any law.

12.1.5 In the event that Supplier disputes a deduction it may refer the matter for resolution in terms of Dispute resolution under Article 17. The application of Dispute resolution shall not suspend the implementation and effect of such a deduction.

12.1.6 Recipient shall refund any deduction to Supplier where a dispute is settled in favour of Supplier.

12.1.7 The application of a penalty shall not release Supplier from its obligations pursuant to this Contract and pursuant to any regulatory provisions.

12.1.8 In the event that Recipient:

- a.) fails to meet any of its obligation in terms of this Contract;
- b.) has unjustified abnormal no withdrawal of water for longer than <<time limit for unjustified abnormal no withdrawal of water before penalty; in days>> days; or
- c.) is not limited to withdraw the water and it withdraws less than <<percentage of Agreed annual quantity that must be withdrawn by Recipient, otherwise penalty may apply; in %>>% of Agreed annual quantity under Article 6.1.1,

Supplier may charge penalty up to <<maximum penalty which Supplier may charge to Recipient; in accounting currency>> <<currency used for accounting>> to Recipient.

12.1.9 Minor breach penalty is limited up to <<upper limit of penalty payment for Minor breach>>.

## **12.2 Unauthorised excessive withdraw of water penalty**

12.2.1 If Recipient withdraws more than agreed Annual quantity of water in a year **without authorisation of Supplier**, Supplier may apply Penalty charge for every excessive m<sup>3</sup>.

---

12.2.2 Agreed Penalty charge for unauthorised excessive volume defined in Article 12.2.1 is <<agreed Penalty charge for excessive volume; accounting currency per m3>> <<currency used for accounting>> per m<sup>3</sup>.

### **12.3 Material breach penalty**

12.3.1 Material breach penalty is limited up to <<upper limit of penalty payment for Material breach; accounting currency>> <<currency used for accounting>>.

## **13 BREACH**

### **13.1 Not a breach**

For purpose of this Article 13, agreed allowed breaches (e.g. Vis Major, etc.) in this Contract cannot be specified as Minor or Material breach.

### **13.2 Minor breach**

13.2.1 Minor breach is considered as a breach of Contract that is less severe than a Material breach and it gives the Affected Party the right to receive penalty payment from other Party but does not excuse it from further performance.

13.2.2 If either Party commits a Minor breach and should the other Party wish to claim specific performance or damages or both, the latter Party shall deliver a written notice to the other Party notifying it of the Minor breach and requesting to remedy the breach within a period of <<time limit to remedy Minor breach; in days>> days (or such longer period if the breach in question cannot reasonably be remedied). If the addressed Minor breach is not remedied in the requested period, penalty can be requested as defined under Article 12.1.

13.2.3 If the Minor breach for which one Party has successfully claimed damages or specific performance or both occurs again, this Minor breach shall be deemed to be a Material breach if the other Party fails to remedy the Breach within the <<time limit to remedy repetitive Minor breach or it is considered as Material breach; in days>> days' notice period given.

### **13.3 Material breach**

13.3.1 Material breach is considered as a substantial breach of Contract usually excusing Affected Party from further performance and giving him the right to receive penalty payment from other Party. Performance could be withheld temporary or Affected Party could give notice and state termination of this Contract.

---

13.3.2 If either Party commits a Material breach and should Affected Party wish to (temporary) withhold performance or request to receive penalty payment or terminate this Contract or all, Affected Party shall deliver a written notice to the other Party notifying it of the Material breach and requesting to remedy the breach within a period of <<time limit for termination of this Contract because of unremedied Material breach; in days>> days (or such longer period if the breach in question cannot reasonably be remedied). If the addressed Material breach is not remedied in the requested period, Affected Party can to the stated withhold performance, request for penalty payment (Article 12.3) or even terminate this Contract in accordance with Article 3.5.1a.).

## **14 RISK MANAGEMENT**

### **14.1 Deduction of water supply**

14.1.1 In the event that Recipient fails to pay invoice on the due date, Supplier shall:

- a.) give Recipient written notice that the invoice was not payed till the due date and that it intends to reduce the agreed Daily quantity by 20% (or % that is agreed by both sides). within 30 days of such notice if at least 50% (or % that is agreed by both sides) of the invoice is not paid within this period or Recipient fails to enter into an agreement with Supplier for the payment of the account in instalments (Article 10.10).
- b.) Where a Supplier has reduced the Daily quantity by 20% in accordance with Article 14.1.1a.), it shall again give Recipient notice in a manner similar to that stated in Article 14.1.1a.), that the Daily quantity shall be limited by a further 20% (or % that is agreed by both sides).
- c.) The phased reduction in Daily quantity may, on further notice in a manner similar to that stated in Article 14.1.1a.), exceed 40% (or % that is agreed by both sides), provided that Daily quantity shall under no circumstances whatsoever be reduced under agreed Basic daily water quantity (Article 6.1.3a.)). Where Parties fail to reach agreement either Party may refer the matter to Dispute resolution under Article 16.
- d.) If limitation of water supply by this Article 14.1 occurs, Supplier may supply Recipient in that year with agreed Annual quantity which is subtracted by the sum of reduced quantity.
- e.) Supplier, where possible, shall provide reasonable assistance to Recipient in respect of the payment of the invoice, including agreement referred to in Article 10.10.

---

## 14.2 Insurance

Each Party shall be responsible for the costs of insuring infrastructure and assets owned by it and its own third party liability insurance.

## 14.3 Guarantees

Supplier may require from Recipient to deposit a Security due payment which should be estimated amount for *<<accounting period, e.g. month>>*. Anytime Supplier is forced to use the Security due payment, Recipient shall restore it in 60 days. If the Security due payment is still deposited after termination of this Contract, Supplier must refund it to Recipient 60 days after termination of this Contract.

## 14.4 Damage caused between Parties

14.4.1 Parties acknowledge that as their water supply systems are interconnected and that there is potential for the operation of one Party's water supply system adversely affects the other Party's water supply system irrespective of compliance with this Contract.

14.4.2 Either Party agrees that where the operation of its water supply system directly causes damage to the water supply system of other Party (Affected Party), Parties shall, in good faith, negotiate and agree a reasonable amount to compensate the Affected Party for the pecuniary losses and expenses the Affected Party has incurred to rectify the damage to its water supply system as a direct, natural and reasonable consequence of the operation by the other Party of its Water Supply System.

14.4.3 Affected Party may only require the other Party to compensate it for such pecuniary losses and expenses under Article 14.4.2:

- a.) as have, on the balance of probabilities, been caused by the other Party's operation of its water supply system; and
- b.) which could not reasonably have been mitigated by the affected party.

14.4.4 For the avoidance of doubt:

- a.) the compensation for damage referred to in Article 14.4.2 is limited as set out in that article and excludes any other kind of compensation (including for indirect or consequential losses);
- b.) Article 14.4.2 applies whether or not the cause of the damage is a breach of this Contract, although where the cause of the damage does

---

constitute a breach of this Contract, Article 14.4.2 does not preclude any other enforcement action available to Parties;

- c.) compensation may be requested also for damage caused outside Normal operating conditions; and
- d.) where Parties are unable to agree a reasonable amount under Article 14.4.2, the matter shall be resolved in accordance with Dispute resolution under Article 16.

14.4.5 Any failure by either Party to comply with this Contract which is directly attributable to damage to its water supply system caused by other Party, is not a breach of this Contract.

## **15 VIS MAJOR**

### **15.1 Event of Vis major**

15.1.1 No Party shall be liable for any failure to fulfil its duties and obligations in terms of this Contract where such failure is caused by any event, occurrence, circumstance, condition, catastrophe, or circumstances beyond the reasonable control of either Party – Vis major (including, but not limited to landslides, lightning, earthquakes, floods, power failure, acts of military or third—party civil authorities or public enemies war blockade, sabotage, fire, use of water for fire fights, explosion, bombing, insurrection, riot, civil disobedience), the occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimised, that affects the powers, rights, duties or obligations of Parties under this Contract.

15.1.2 If the Affected Party is prevented in whole or in part from carrying out any obligation (other than an obligation to pay money) by an event, occurrence, circumstance or condition referred to Article 15.1.1, shall as soon as possible promptly notify the other Party in writing of the event. The notice must:

- a.) Specify the obligations it cannot perform.
- b.) Fully describe the event of Vis major.
- c.) Estimate the time during which the event of Vis major will continue, and
- d.) specify the measures proposed to be adopted to remedy or abate the event of Vis major and its duration.

The Affected party shall keep the other Party informed of the above at regular intervals or promptly on request of the other Party.

---

15.1.3 If Emergency event (Article 7.4) is not remedied for reasonable long period and it is out of control of either Party, it may be defined as Vis major.

15.1.4 In case of need for excessive quantity of water by either Party (e.g.: in case of firefighting etc.), system operating standards are defined under Urgent supply in Article 7.5.

15.1.5 In case of need for drought, system operating standards are defined under Article 7.6. and water quantity limitation under Article 6.3 applies.

15.1.6 Parties may define other actions and management for specific Vis major event with protocol.

## **15.2 Suspension of obligations**

15.2.1 Following the notice on Vis major, any obligation (other than an obligation to pay money) which cannot be performed, shall be suspended as far as it is affected by the event of Vis major and while that event of Vis continues.

15.2.2 If, as a result of the event of Vis major, the performance of a Party's duties and obligations is only partially affected, such party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition; provided that nothing in this Article shall preclude the operation of the Emergency procedure provided for in Article 7.4.

## **15.3 Remedy of an event of Vis major**

15.3.1 Supplier shall have to use ordinary and reasonable care to maintain the water service and the supply herein provided. Supplier shall not be liable in any way to Recipient for any interruption or diminishing of water service or supply caused by circumstances beyond Supplier's specific control or the normal changes and fluctuations on the system.

15.3.2 The Affected party must remedy the event of Vis major to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

15.3.3 Upon the cessation of the event of Vis major the Affected party thereby shall notify the other party of such cessation.

## **15.4 Mitigation**

---

15.4.1 The Affected Party must take all action reasonably practicable to mitigate any loss suffered by other Party or a third party as a result of its failure to carry out its obligations under this Contract.

## **15.5 Unavoidable contract termination**

If an event of Vis major causes material and unavoidable physical damage or destruction to all or any of Parties infrastructure or materially delays or prevents the performance of any duties and obligations in terms of this Contract, or interrupts services and continues for more than <<termination contract limit in case of lasting Vis major; in days>> days after any notification, either Party may initiate the termination of this Contract in accordance with Article 3.5.

## **16 DISPUTE RESOLUTION**

### **16.1 General**

16.1.1 Should any difference or questions at any time arise between Parties as to the construction, meaning or effect of this Contract or the rights or obligations of Parties herein, or should Parties fail to agree upon any matter (herein referred to as "Dispute"), Parties shall resolve Dispute in accordance with Dispute Resolution in this Article 16, unless an alternative process for resolving a specific type of dispute has been provided elsewhere in this Contract.

16.1.2 Parties irrevocably consent to comply with the provisions of this Article 16 and neither Party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions. Parties agree that they shall not commence any litigation procedures in respect of a dispute arising in terms of this Contract save where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.

16.1.3 No Dispute arising from this Contract shall entitle the other Party to discontinue or suspend the execution of any of its powers, rights, duties or obligations in terms of this Contract, pending the settlement of Dispute, unless specifically provided for elsewhere in this Contract.

16.1.4 All Dispute resolution communication shall be in <<language of Dispute resolution communication>>. Possible spoken or written evidence in languages other than <<language of Dispute resolution communication>> shall be admitted without translation.

### **16.2 When dispute arises**

---

16.2.1 If any difference or dispute arises between Parties under or in relation to this Contract or its subject matter (Dispute), they agree to seek, in good faith, to resolve the matter.

16.2.2 Dispute arises at the time when one Party notifies the other Party in writing that there is a difference or dispute about a matter specified in the notice.

### **16.3 Negotiations**

16.3.1 When Dispute arises, firstly Parties try to resolve the matter by negotiations between the Principal Representatives.

16.3.2 If the Principal Representatives do not resolve Dispute within 5 Business Days of it being notified, either Party may give written notice to other Party, requiring the Dispute to be resolved by the Panel. The Panel consists of the Managing Directors of both Parties.

16.3.3 The Panel shall meet to consider any Dispute within 5 Business Days of it being referred to the Panel.

16.3.4 A decision of the Panel may only be made by the unanimous agreement of the members of the Panel.

16.3.5 If the Panel is unable to reach a decision regarding the Dispute within 10 Business Days of it being referred to the Panel, either of Parties may submit Dispute to mediation.

### **16.4 Mediation**

16.4.1 Each Party shall submit a list with 3 names of knowledgeable persons, with expertise relating to the particular field in which Dispute arose, as potential mediators from which one mediator shall be selected by agreement between Parties. Should Parties fail to reach agreement on the choice of the mediator within 10 Business days from the day on which it has become apparent that the matter cannot be settled through negotiation, Parties shall request the International Water Association or similar organization on regional level to assist in the negotiations to appoint a suitable mediator.

16.4.2 Mediation must commence within 10 Business Days of the appointment of a mediator, or as otherwise agreed by Parties.

16.4.3 Any mediation meetings and proceedings under this Article 16.4 shall be held <<town/city of mediation meetings>> at a convenient location as agreed by

---

Parties and be conducted in accordance with the rules or code determined by the mediator or as otherwise agreed by Parties.

16.4.4 The mediator shall, in his sole discretion, determine the form of representations to be made, provided that in making this determination, the mediator shall consult the disputing Parties and may be guided by their common reasonable desire on the form in which the said representations are to be made. All representations by Parties shall be made without prejudice.

16.4.5 The mediator shall within a period of 10 Business days after receipt of the representations of Parties endeavour to facilitate an agreement between them or determine a procedure or framework within which they can negotiate to resolve Dispute or difference. All representations by Parties shall be made without prejudice.

16.4.6 Any such negotiated agreement shall be in writing, signed by both Parties and be binding on Parties.

16.4.7 If Parties fail to negotiate agreement 20 Business days after representations to mediator, either Party may submit dispute resolution to arbitration.

16.4.8 Parties agree to contribute equally to the cost of the mediator and each party shall bear any other costs separately regardless of the outcome of the mediation.

## **16.5 Arbitration**

16.5.1 There shall be 3 arbitrators which are independent persons:

- a.) first is assigned by Supplier,
- b.) second is assigned by Recipient, and
- c.) third is assigned by first two arbitrators.

Arbitrator may not be the same person as the mediator appointed under Article 16.4. Arbitrators shall be selected within 20 Business days after either of Parties submitted dispute resolution to arbitration.

16.5.2 Decisions are made by majority vote.

16.5.3 The arbitrators appointed shall not be obliged to follow the strict principles of law in determining Dispute, but shall be entitled, in their sole discretion to determine Dispute with due reference to the equities prevailing in respect of Dispute. The arbitrators shall have the power to give default judgment if any Party fails to make submissions on due date or fails to appear at the

---

arbitration, provided that reasonable notice has been given to Parties to make their submissions or appearances.

16.5.4 Parties irrevocably agree and undertake that any award or order or whatsoever made by the arbitration shall be final and binding upon them. Parties hereby exclude all rights of appeal, which might otherwise be conferred upon them by law.

16.5.5 This Article shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitration.

16.5.6 The arbitration shall be conducted and held in accordance with the laws <<define in accordance with which law arbitration will be held>>.

16.5.7 Any arbitration meetings and proceedings under this Article shall be held in <<town/city of arbitration meetings>> at a convenient location as agreed by Parties and be conducted in accordance with the rules or code determined by the arbitrator or as otherwise agreed by Parties.

16.5.8 Subject thereto that the Regulatory authorities for water management of both Parties must be informed of all arbitration proceedings and every Regulatory authority shall have the right to attend with one observer. The only persons present at the arbitration shall be the 3 arbitrators, the legal representatives and a maximum of two other representatives of each Parties to the dispute. This Article relates only to the limitation in respect of the representation of Parties during arbitration and in no way shall be interpreted to limit any of Parties' rights to call witnesses and present evidence substantiating its case to the arbitrator.

16.5.9 Parties agree to contribute equally to the cost of the arbitrator and each party shall bear any other costs separately regardless of the outcome of the arbitration.

## **16.6 Court of Jurisdiction**

16.6.1 If all 3 arbitrators agree that Dispute resolution by arbitration is not possible or has failed, arbitration is aborted. Dispute shall be resolved by court of jurisdiction of the defended.

## **17 RECORD KEEPING AND INFORMATION ACCESS**

### **17.1 Record keeping**

---

17.1.1 Both Parties shall do recording keeping of information regarding cross border water supply including but not limited to meetings minutes, metering and measurement data, monitoring, reports etc.

## **17.2 Information access**

17.2.1 Recipient shall have at reasonable times and in reasonable manner access to financial and operation records (e.g. meter reading, billing records, monitoring results etc.) in relation with <<Category of water supply>> water supply. Supplier shall provide access to stated information within <<time limit for Supplier to provide Recipient with requested data; in days>> days since the request of Recipient.

## **18 CONTACT INFORMATION, COMMUNICATION, NOTICE AND MEETINGS**

*Technical protocol(s): management*

### **18.1 Contact information**

18.1.1 General contact information for Parties are following:

#### **Supplier**

Full name: <<full name of the 1st Party>>

Street: <<street address of Supplier>>

City: <<city of Supplier>>

Post office: <<post office of Supplier>>

Postal Code: <<postal code of Supplier>>

Phone number: <<phone number of Supplier>>

Mobile number: <<mobile number of Supplier>>

Fax: <<fax number of Supplier>>

E-mail: <<e-mail address of Supplier>>

#### **Recipient**

Full name: <<full name of the 2nd Party>>

Street: <<street address of Recipient>>

City: <<city of Recipient>>

Post office: <<post office of Recipient>>

Postal Code: <<postal code of Recipient>>

---

Phone number: <<phone number of Recipient>>

Mobile number: <<mobile number of Recipient>>

Fax: <<fax number of Recipient>>

E-mail: <<e-mail address of Recipient>>

Both Parties must promptly notify other Party on any change in contact information.

#### 18.1.2 Appointment of representatives

- a.) Within five Business Days of Effective commencement date, each Party shall appoint and must, for the duration of this Contract, keep appointed: (1) a Principal representative to administer this Contract on behalf of Party appointing the Principal Representative; and (2) an Operating representative to be responsible for the day to day operation of this Contract on behalf of Party appointing that Operating representative.
- b.) Each Party must advise the other Party in writing the information about the Principal representative and Operating representative: name, contact details including e-mail address, telephone number, mobile number, fax number, and afterhours contact details, and promptly notify the other Party of any change to any of those contact details.
- c.) Afterhours contact details are necessary for including but not limited to the events of unexpected failures and leaks, emergency, urgent supply, Vis major, etc.
- d.) Each Party must confer on its Principal Representative, and warrants to the other Party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance to enter any Contract, or to do any other thing which a Party may do under this Contract, on behalf of Party appointing that Principal Representative.
- e.) Each Party must confer on its Operating Representative, and warrants to the other Party that it has so conferred, all necessary power to be responsible for the day-to-day operation of this Contract on behalf of Party appointing that Operating Representative.

### **18.2 Notice and communication**

- 18.2.1 Parties agree to communicate in <<official communication language>>. Exception for other languages may be made only if both Parties agree beforehand.

---

18.2.2 Within 15 days of the Effective commencement date of this Contract, operative telephone line between Parties shall be established.

18.2.3 Any notice, communication or information required or permitted to be given and any obligation to submit to, notify or inform a Party in terms of this Contract shall, unless specifically provided for otherwise, be officially valid and effective only if in writing and shall be delivered by hand, transmitted by fax or sent by prepaid registered post.

18.2.4 Notice by hand, post or fax

Any notice, demand, consent or other communication made under this Contract and which shall be officially valid and effective:

- a.) must be in writing and signed by a person duly authorised by the sender;
- b.) must be delivered to the intended recipient by prepaid post or by hand or fax or to the address or fax number under Articles 18.1.1 and 18.1.2.

A notice shall be deemed to have been received:

- a.) 2 Business days after posting, if posted by registered post to Party's address in terms of Article 18.1.1;
- b.) on delivery, if delivered to a Principal or Operation representative during normal business hours at Party's physical address;
- c.) on dispatch, if sent to Party's fax number on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of receiver and indicating that the transmission has been made without error.

18.2.5 Notices send by email

Any Notice, which may be given or made under this Contract, may instead be sent by email, if:

- a.) the Notice is signed by a person clearly authorised by the sender in a manner which complies with the (electronic) signature guidelines agreed by Parties;
- b.) the Notice is sent to the email address of the Principal representative; and
- c.) the sender keeps a copy of the Notice sent.

An email shall be deemed to have been received

- 
- a.) receipt by the sender of an email acknowledgement from the receiver's information system showing that the Notice has been delivered to the email address stated;
  - b.) the time that the Notice enters an information system which is under the control of the receiver; and
  - c.) the time that the Notice is first opened or read by the receiver.

18.2.6 If the result is that a Notice under Articles 18.2.4 and 18.2.5 would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 16:00 (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

#### 18.2.7 Notice by phone or mobile

Notice by phone or mobile shall be used for urgent matters, general communication for day-to-day operation and beforehand information sharing. All matters, which shall be communicated through phone or mobile and carry significant decisions, shall be latter confirmed by both Parties in written to prevent any future disputes.

### **18.3 Notices in accordance with Protocol**

Notwithstanding the other provisions of this clause, a Notice may also be given in accordance with a protocol, which would be adopted by Parties.

### **18.4 Meetings**

18.4.1 Parties Joint commission shall meet at least every <<minimum frequency of Regular meetings; in months>> months basis at the Regular meetings to discuss all matters related to the <<Category of water supply>> water supply and this Contract.

18.4.2 Supplier shall be responsible for calling the first meeting in their hometown. Schedule of future meetings shall be agreed at the first meeting. Regular meeting location is turned every time.

18.4.3 If either Party has reasonable topic(s), which are urgent to discuss, it can request for Irregular meeting. Parties shall agree on the date, time and the location of the Irregular meeting within 2 Business days after the request. Exceptionally meeting must be held as soon as possible for Emergency (Article 7.4) and Vis major (Article 15).

---

On all of the meetings, obligatory minutes shall be written in English language, which are at the end of the meeting, signed by both Parties. Latter Parties may translate the minutes into their own languages.

## **19 PUBLIC RELATIONS**

### **19.1 Communication with end customer**

Either Party shall not communicate directly with end users of the other Party where such communication could create in any way doubt or uncertainty in the minds of the end users who provides water services to them.

Parties may agree jointly to communicate with the end consumers. The costs of such communications shall be equally divided between Parties.

### **19.2 Confidentiality**

#### **19.2.1 Confidentiality of this Contract**

As Parties are both public water utilities, Parties agree that this Contract shall be public and may be accessible to anyone.

#### **19.2.2 Definition of confidential information**

For the purposes of this Article 19.2 "Confidential information" means any knowledge, information or know—how relating to a Party's business, systems, customers, property, assets or affairs which:

- a.) has been or is disclosed, communicated or delivered to the other party under or in connection with this Contract; and
- b.) has come or comes to the knowledge, or into the possession, of the other party under or in connection with this Contract,

but does not include the provisions of this Contract.

#### **19.2.3 Confidentiality**

Except as provided in Article 19.2.4, a Party must:

- a.) not disclose any confidential information of the other Party, without the prior written approval of the other Party (which may be given or withheld at that Party's absolute discretion);
- b.) not require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of other Party; and
- c.) take reasonable steps to enforce obligations imposed under this Article 19.2.

---

#### 19.2.4 Permitted disclosures

Despite clause 19.2.3, a Party may disclose confidential information of the other party:

- a.) to any employee, contractor, consultant, Principal representative or Operation representative of Party who reasonably needs to know the confidential information for that Party to exercise its rights or perform its obligations under this Contract; and
- b.) if it is: (1) required by any International agreement; or (2) compelled by Dispute resolution or a court order, to disclose it.

#### 19.2.5 Permitted disclosure to an employee, contractor, consultant, Principal representative or Operation representative

A Party may only disclose confidential information under Article 19.2.4a.) if it imposes on the person to whom the confidential information is disclosed, an obligation:

- a.) only to use the confidential information; and
- b.) not to disclose that confidential information to any other person, except, for the sole purpose for which the confidential information is disclosed.

#### 19.2.6 Permitted disclosure required by International agreement, Dispute resolution or court order

If a Party is required or compelled to disclose confidential information of the other Party under Article 19.2.4b.), it must:

- (a) immediately give written notice of that fact to the other Party; and
- (b) use its best efforts only to disclose that confidential information of other Party on terms which preserve the strictest confidentiality.

#### 19.2.7 Breach of confidentiality

Parties agree and acknowledge that:

- a.) a Party may bring proceedings to restrain any breach or threatened breach by the other Party of this Article 19.2; and
- b.) the unauthorised use, disclosure or divulgence of, or dealing with, the confidential information of Party by the other Party will cause irreparable harm to that Party, for which damages will not be an adequate remedy.

#### 19.2.8 Survival

This Article 19.2 survives the termination of this Contract.

---

## 20 CONSTRUCTION

### *Guidelines*

*This article is needed in case that (new) cross border water supply needs construction works or significant installation of instruments or maintenance works.*

*Basic information about what is needed on construction: timeline, planning, design, execution of works, financing.*

*Example is written for case when there is new construction needed.*

*If it is more appropriate, Parties should omit this Article in this Contract and sign separate contract which affect only Construction works and later or parallel this Contract.*

### 20.1 Planning, design and construction

20.1.1 Either Party, if needed, shall construct its own infrastructure needed for cross border water supply system. However, Parties shall plan and design jointly the cross border water supply system to avoid any incompatibility between water supply systems of Parties. Planning and design may be following:

- a.) Supplier shall plan and design its own part of cross border water supply system, **which has no influence on Recipient;**
- b.) Recipient shall plan and design its own part of cross border water supply system, **which has no influence on Supplier;** and
- c.) both Parties shall harmonize plan and design of the cross border water supply system, **which has impact on both sides. Thus work could be, but are not limited to the follows:**
  - **Water resource upgrading,**
  - **Water resource protection,**
  - **Water treatment plant upgrading,**
  - **Objects needed for upgrading distribution capacity,**
  - **Objects needed for increasing security of overall water supplying.**

#### 20.1.2 Technical documentation

This Contract shall later be amended with appropriate technical documentation:

- a.) which includes planning and design;
- b.) where it is clear that stated all quantities, flow (velocity) rate, pressure, pipeline diameter under Articles 6.1, 6.5, 6.6, 6.7 and 6.8 are available and that has no adverse consequences on Supplier and that agreed Delivery point with water meter shall be installed.

---

## 20.2 Timeline of construction

Construction works shall start on <<start of construction works; DD.MM.YYYY>> and shall be finished until <<end of construction works; DD.MM.YYYY>>. In case of any delay, penalty applies.

## 20.3 Finances

20.3.1 Recipient shall cover the costs of planning, design and construction for its part of cross border water supply.

20.3.2 Supplier shall firstly cover the costs of planning, design and construction for its part of cross border water supply. Later Recipient shall recover planning, design and construction cost of Supplier's part of cross border water supply by:

- a.) paying for all the elements in one-time payment or in agreed instalments;  
or
- b.) paying through fixed costs (by agreed price model which should be defined in separate Appendix).

## 21 GENERAL

### 21.1 Regulatory approval

Parties agree that the Regulatory authorities must be present and sign this Contract to confirm their approval on this <<Category of water supply>> water supply.

### 21.2 Legal authority

Each Party represents and warrants to the other that it has full legal authority to enter this Contract; that the officers or representatives signing this Contract have been duly authorized to sign by their respective Party; that entering this Contract will not conflict with or violate the terms of any other agreement or obligation to which each respective Party hereto is obligated or bound.

### 21.3 Legislative and regulatory changes

Any provisions of this Contract which may become inconsistent with legislation due to amendments to that legislation shall be deemed, insofar as possible, to be amended accordingly, provided that, where such legislative amendments render any provisions illegal, invalid, unenforceable or ineffective, Parties shall renegotiate such provisions in good faith, having due regard to such

---

amendments and to the principles contained herein. If any provision cannot be renegotiated it shall be treated *pro non scripto* and severed from the balance of this Contract, without invalidating the remaining provisions of this Contract or affecting the validity or enforceability of such provisions.

#### **21.4 Relationship between Parties**

Nothing in this Contract creates a relationship of partnership, principal and agent or trustee and beneficiary between Supplier and Recipient.

#### **21.5 Supremacy of this Contract**

In the event that any provision of any other preceding agreement, which is not mentioned under Article 1.5, entered into between Supplier and Recipient, conflicts with the provisions of this Contract, the provisions of this Contract shall prevail.

#### **21.6 Contract binding on successors in title**

This Contract shall bind on any successor in title of Supplier or any successor in title of Recipient; however, this Contract may not be assigned by either Party without the written consent of the other.

#### **21.7 Counterparts**

This Contract, together with its appendices and amendments, may be executed in several counterparts, each of which shall together constitute one and the same document.

#### **21.8 Governing law**

This Contract shall be governed by and construed and interpreted in accordance with the law of the <<Country, party's country, region??>>, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the <<Country, party's country, region??>>, the law as interpreted and applied in the <<Region, Province, Municipality>> shall prevail.

#### **21.9 Sub-contracting**

Parties may sub-contract its powers, rights, duties and obligations in terms of this Contract. The appointment of any sub-contractor shall not release Parties of their duties or obligations in terms of this Contract or in any way affect their responsibility in respect of fulfilling such duties and obligations.

---

## 21.10 Liability of expenses

Each party must pay its own expenses incurred in negotiating and executing this Contract.

## 22 PROTOCOLS

22.1.1 Protocols define detailed regulations of this Contract and its appendices.

22.1.2 Parties may, from time to time, through their Principal representatives, agree on and adopt one or more written protocol(s) regarding the performance by either or both parties of any obligation under this Contract.

22.1.3 A protocol shall be adopted by its execution by the Principal representatives or Directors of both Parties.

22.1.4 Protocols may be including but not limited to:

- a.) Pressure outside thresholds (Article 6.8.3);
- b.) Notices (Article 18.3);
- c.) Unexpected failures and leaks (Article 7.3);
- d.) Dynamic plan of water consumption/demand for each month;
- e.) Water quality monitoring;
- f.) operation and notification of supply limitations during periods of high water demand/droughts;
- g.) shared site/delivery point arrangements;
- h.) emergency and incident response (including Emergency supply arrangements); and
- i.) water quality standards and management practices, including operation of secondary chlorination and notification of 'set-point' changes. This protocol must include: (1) Arrangements for notification of changes to water sources which may have a noticeable, negative impact on aesthetic water quality; (2) Arrangements for notification of breaches of Water quality standards; and (3) Information sharing regarding chemical specifications;
- j.) water usage forecasting and notification;
- k.) communications (including between Parties, notifications to third Parties and media and public communications);
- l.) scheduling and co-operative planning for new works and renewals; and
- m.) billing.

---

22.1.5 A protocol adopted under this Article 22:

- a.) may be amended or terminated in writing and executed by the Principal Representatives or Directors of both Parties; and
- b.) takes effect as if it were part of this Contract.

22.1.6 This Contract prevails over any protocol adopted under this Article 22 to the extent of any inconsistency between them.

## **23 APPENDICES (recommended)**

23.1.1 Map of delivery point and all instruments (+ pumping station, reservoir, etc.);

23.1.2 Water quality protocol/thresholds;

23.1.3 Price model;

23.1.4 Drafts of forms:

- a.) Invoice;
- b.) Monthly registered water volume;
- c.) Testing and maintenance results (water meter);
- d.) Monitoring results of water quality;
- e.) Notice draft;
- f.) Forecast expected water quantity demand;
- g.) Forecast expected Nominal capacity.

23.1.5 Map/scheme of cross border water supply system

---

**24 SIGNATURE AND APPROVAL**

*Technical protocol(s): governance*

Contract number:

<<contract number of Supplier>>

On behalf of

<<full name of the 1st Party>>

<<director or representative of Supplier  
which signs this Contract>>

Signature:

Contract number:

<<contract number of Recipient>>

On behalf of

<<full name of the 2nd Party>>

<<director or representative of Recipient  
which signs this Contract>>

Signature:

**This Contract is approved by:**

<<list of all Municipal, regional, national  
Regulatory authorities of Supplier which  
approve this Contract; including  
representatives names>>

Signature(s):

<<list of all Municipal, regional, national  
Regulatory authorities of Recipient which  
approve this Contract; including  
representatives names >>

Signature(s):

<<Date of signature>>

<<Location of signature>>

---

# CONTENTS

- 1 PREAMBLE ..... 3
  - 1.1 Legislative alignment..... 3
  - 1.2 Statements and objectives ..... 3
  - 1.3 Definitions ..... 4
  - 1.4 Interpretation ..... 7
  - 1.5 Preceding contracts..... 8
- 2 OBLIGATIONS..... 8
  - 2.1 Obligations of Supplier ..... 8
  - 2.2 Obligations of Recipient ..... 9
  - 2.3 Joint obligations ..... 9
- 3 DURATION ..... 9
  - 3.1 Commencement..... 9
  - 3.2 Period ..... 9
  - 3.3 Review ..... 9
  - 3.4 Extension ..... 10
  - 3.5 Termination..... 10
- 4 CURRENT DATA AND PROJECTIONS ..... 11
  - 4.1 Demand ..... 11
  - 4.2 Nominal capacity ..... 12
- 5 TYPE OF WATER SUPPLY ..... 12
  - 5.1 Permanent water supply ..... 12
  - 5.2 Temporary water supply ..... 13
- 6 WATER SUPPLY STANDARDS ..... 13
  - 6.1 Quantity of water ..... 13
  - 6.2 Water source quantity permit limit..... 14
  - 6.3 Limited water supply ..... 15
  - 6.4 Water Quality ..... 15
  - 6.5 Flow rate..... 16
  - 6.6 Flow velocity rate ..... 16
  - 6.7 Pipeline diameter ..... 17
  - 6.8 Water pressure..... 17
- 7 SYSTEM OPERATING STANDARDS ..... 17

---

7.1	Monitoring.....	17
7.2	Normal maintenance and repairs.....	19
7.3	Unexpected failures and leaks .....	20
7.4	Emergency .....	21
7.5	Urgent supply .....	21
7.6	Drought.....	22
7.7	Water losses .....	23
7.8	General rules on ownership, operation and maintenance of the system .....	23
8	DELIVERY POINT .....	24
8.1	General.....	24
8.2	Location .....	24
8.3	Ownership, operation and maintenance .....	24
8.4	Access .....	24
9	WATER METER.....	25
9.1	General.....	25
9.2	Accuracy thresholds .....	25
9.3	Maintenance.....	25
9.4	Testing and calibration .....	26
9.5	Water meter replacement.....	26
9.6	Inaccurate and not measured quantity.....	27
9.7	Reading.....	27
10	REGULAR CHARGES AND PAYMENTS .....	27
10.1	Types and amounts of regular charges .....	27
10.2	Methodology on defining charges .....	28
10.3	Regular charges and withdrawn quantity .....	29
10.4	PORAČUN – closing balance accounting .....	30
10.5	Projections.....	30
10.6	Accounting period .....	30
10.7	Issue of invoice .....	30
10.8	Deadline to pay invoice .....	30
10.9	Late payment.....	31
10.10	Special payment arrangements.....	31
10.11	Currency exchange rate.....	31
10.12	Method of payment .....	31

---

---

10.13	Data on invoice .....	31
10.14	Recipient query for incorrect invoice .....	31
11	IRREGULAR CHARGES AND PAYMENTS .....	32
12	PENALTIES.....	33
12.1	Minor breach penalty.....	33
12.2	Unauthorised excessive withdraw of water penalty.....	34
12.3	Material breach penalty .....	35
13	BREACH.....	35
13.1	Not a breach .....	35
13.2	Minor breach .....	35
13.3	Material breach .....	35
14	RISK MANAGEMENT .....	36
14.1	Deduction of water supply .....	36
14.2	Insurance .....	37
14.3	Guarantees .....	37
14.4	Damage caused between Parties .....	37
15	VIS MAJOR .....	38
15.1	Event of Vis major .....	38
15.2	Suspension of obligations.....	39
15.3	Remedy of an event of Vis major .....	39
15.4	Mitigation .....	39
15.5	Unavoidable contract termination .....	40
16	DISPUTE RESOLUTION .....	40
16.1	General .....	40
16.2	When dispute arises .....	40
16.3	Negotiations .....	41
16.4	Mediation .....	41
16.5	Arbitration .....	42
16.6	Court of Jurisdiction .....	43
17	RECORD KEEPING AND INFORMATION ACCESS .....	43
17.1	Record keeping.....	43
17.2	Information access .....	44
18	CONTACT INFORMATION, COMMUNICATION, NOTICE AND MEETINGS.....	44
18.1	Contact information .....	44

---

---

18.2	Notice and communication .....	45
18.3	Notices in accordance with Protocol.....	47
18.4	Meetings.....	47
19	PUBLIC RELATIONS .....	48
19.1	Communication with end customer .....	48
19.2	Confidentiality .....	48
20	CONSTRUCTION.....	50
20.1	Planning, design and construction .....	50
20.2	Timeline of construction .....	51
20.3	Finances.....	51
21	GENERAL.....	51
21.1	Regulatory approval .....	51
21.2	Legal authority.....	51
21.3	Legislative and regulatory changes .....	51
21.4	Relationship between Parties.....	52
21.5	Supremacy of this Contract .....	52
21.6	Contract binding on successors in title .....	52
21.7	Counterparts.....	52
21.8	Governing law.....	52
21.9	Sub-contracting .....	52
21.10	Liability of expenses .....	53
22	PROTOCOLS .....	53
23	APPENDICES (recommended).....	54
24	SIGNATURE AND APPROVAL .....	55



Let's grow up together



The project is co-funded by the European Union,  
Instrument for Pre-Accession Assistance