

# TERMS OF REFERENCE

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## ARTICLE I. DEFINITION OF TERMS:

As used in this Agreement, the following terms shall have the corresponding meaning:

*Actual Day of Delivery* – the date which potable water was actually delivered by the Bulk Water Supplier which may be earlier or later than the Day One of Delivery.

*Agreement* - refers to this Bulk Water Supply Contract.

*Back Up Power* – any source of power that can be used in the event of interruption of normal power supply.

*Bulk Water Supplier (BWS)* – an entity that provides MCWD potable water intended for distribution in its service area

*Bulk Water Supply* – potable water supplied by the BWS to MCWD

*Clearance* – clearance/permit issued by the local government unit or pertinent government agencies.

*Contract Price* – the price agreed by BWS and MCWD of the bulk water supply according to the period of delivery as defined in Article XII – Price and Consideration. The contract price is inclusive of all applicable taxes.

*Day One of Delivery* – the original date of which potable water is required to be delivered by the BWS to MCWD's designated injection point(s), which shall be within a maximum period of twelve (12) months after receipt of the Notice to Proceed (NTP) by the BWS or actual first day of delivery whichever comes later.

*Drop-off Point(s)* – additional injection point(s) identified by MCWD along the interconnecting pipelines of BWS before the main injection point.

*Facilities* – refers to raw water intake, pre-treatment, Seawater Reverse Osmosis (SWRO) treatment plant, storage tanks, production and water treatment facilities, land and other associated equipment and facilities, both onshore and offshore, interconnecting pipelines, flow meter assembly, backup power equipment, power supply systems and other appurtenances and auxiliary equipment necessary to efficiently operate the desalination plant under this Agreement.

*Independent Laboratory* - is any Department of Health (DOH) accredited laboratory capable of conducting water analysis which is neither owned nor controlled by one or both parties to this agreement.

*Injection Point* - refers to delivery or drop-off point(s) or the point(s) where BWS's pipe interconnects to MCWD's receiving infrastructure / facility.

*Inspection* - means the conduct of any investigation/verification/ examination of Bulk Water Supplier's water source and other facilities which includes but not limited to water sampling for analysis.

*Off-peak hour flow rate* – the time between 8:01PM and 4:00AM

*Peak hour flow rate* – the time between 4:01AM and 8:00PM

*Potable Water* - refers to the delivered treated water with quality within the standards limits set in the latest Philippine National Standards for Drinking Water and MCWD Drinking Water Quality Standards both for acceptability and health aspects.

*Project* – refers to the herein Bulk Water Supply Contract including the facilities as herein defined.

*Raw Water Source* – is the unprocessed water taken directly from the sea or the ocean or within ten (10) meters onshore from the highest tide of the shoreline, provided that the raw water shall have a Total Dissolved Solids (TDS) value of not less than 30,000 parts per million (ppm)

*Seawater* – refers to water from the sea or ocean with Total Dissolve Solids (TDS) value of at least 30,000 parts per million (ppm).

*Service Area* – refers to the Local Government Units served by Metropolitan Cebu Water District which currently covers four (4) municipalities namely, Compostela, Liloan, Consolacion and Cordova and four (4) cities namely, Cebu City, Talisay City, Lapu-Lapu City, and Mandaue City.

*Service Interruption* – any stoppage in the delivery of bulk water supply.

*Sustainability* – shall mean the capability of the water source and facilities to produce the volume required under this Agreement all throughout its entire duration.

*Total Dissolved Solids (TDS)* - the amount of organic and inorganic materials dissolved in a particular volume of water. It is essentially a measure of anything dissolved in water that is not a water molecule.

*Turbidity* - refers to the suspension of fine colloidal particles that do not readily settle out of solution and can result in a cloudy appearance of water.

*Water Quality Standards* - refers to Philippine National Standards for Drinking Water and MCWD Drinking Water Quality Standards as shown in Annex “A”<sup>1</sup> hereof.

## **ARTICLE II. THE PROJECT**

Section 1. This is a bulk water supply contract procured under Republic Act 9184 otherwise known as the “Government Procurement Reform Act” whereby potable bulk water shall be delivered by the BULK WATER SUPPLIER (BWS) at tiered volumes define in Article III Section 2 to the designated injection point.

## **ARTICLE III. TERM AND PROJECT MILESTONES**

### **Section 1. CONTRACT DURATION & EFFECTIVITY**

This Agreement shall take effect upon signing or execution and shall remain in full force and effect up to a period of twenty-five (25) years from Actual Day of Delivery.

Within seven (7) calendar days from contract signing, MCWD shall issue the Notice to Proceed (NTP) together with a copy or copies of the signed Agreement to BWS. All notices called for by the terms of this Agreement shall be effective only at the time of receipt thereof by BWS.

### **Section 2. QUANTITY OF WATER and “DAY-ONE” OF DELIVERY**

BWS shall deliver an aggregate volume of 25,000 cubic meters per day of potable water to MCWD based on the following tiered delivery schedule:

<i>10,000 cubic meters per day</i>	<i>Year 1 – For 12 months from 1<sup>st</sup> day of actual delivery</i>
<i>25,000 cubic meters per day</i>	<i>Year 2 – from end of Year 1 until contract expires</i>

Day one (1) of delivery shall be eight (8) months from the issuance of the Notice to Proceed (NTP), and full delivery of the 25 MLD shall be twenty (20) months from the NTP thereof.

In view of the water crisis, BWS may, however, be allowed to make partial delivery before Day One of Delivery, subject to MCWD’s prior written approval. If allowed, penalties for short delivery may not apply. The partial delivery shall in no way change the term of this Agreement.

To address fluctuations in demand, BWS may be allowed to deliver an additional supply of up to ten percent (10%) of the required daily volume.

Either party may request for extension of Day One based on justifiable cause or reason within thirty (30) calendar days before the expected Day One of Delivery.

## **ARTICLE IV. INJECTION POINT, FACILITIES & EQUIPMENT**

### **Section 1. INJECTION POINT(S), DROP-OFF POINT(S) & PRESSURE**

At Day One of Delivery, BWS shall deliver to the existing 400mm dia. Pipeline located along C. Padilla corner F. Vestil St. Cebu City as shown in Annex "B"<sup>2</sup> and Annex "C".

BWS should be able to overcome a pressure of 80 psi at the injection point at any given time.

### **Section 2. PROJECT SITE**

BWS must have a legal right over the property as evidenced by a title, contract of sale, lease, usufruct, a joint venture agreement or any other documents showing that it has ownership or possessory rights over the land or real property designated for the project.

If BWS shall possess the land through lease or usufruct or joint venture agreement, it should be valid for the entire duration of the Agreement. It shall also be the responsibility of the BWS to annotate in the title over the land whether owned, leased or under usufruct agreement, that the property is reserved or utilized for the Project.

Annotation and submission of proof of ownership and/or possessory right or joint venture agreement as stated above shall be done prior to Day One of Delivery at the expense of BWS.

### **Section 3. INSTALLATION OF ELECTROMAGNETIC FLOW METER AND OTHER EQUIPMENT**

In the specified injection point(s), BWS shall install an appropriate electromagnetic flow meter capable of remote and real-time monitoring of the total volume, flow rate, and pressure, chlorine residual and TDS of the infused water supply.

To determine its capability, the electromagnetic flow meter must comply with the attached technical specifications and capability requirements. Please see Annex "C"<sup>3</sup> for the technical specifications of the electromagnetic flow meter.

Location of the Flow Meter Assembly must be within 10 meters from the injection or as may be approved by MCWD.

### **Section 4. CONSTRUCTION OF METER VAULTS AND OTHER NECESSARY PIPELINES OR APPURTENANCES**

In the specified injection point, BWS shall construct a reinforced concrete meter vault to house the 2 units Ø300 mm electromagnetic flow meters and other appurtenances.

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<sup>2</sup> Annex B – *Location Map of the Injection Point*

<sup>3</sup> Annex C – *Electromagnetic flowmeter with GPRS*

The BWS shall refer to the *Conceptual Design for the Installation and Construction of Concrete Meter Vault*, marked as Annex “D”<sup>4</sup>.

BWS shall submit a signed and sealed Structural Computation of the Concrete Meter Vault for MCWD’s reference.

Section 5. **CONSTRUCTION COSTS, OPERATION AND MAINTENANCE EXPENSES**

BWS shall exclusively shoulder the following for the duration of this Agreement:

- 5.1. All costs for the construction of the facilities for the Project;
- 5.2. All expenses for the installation of the necessary equipment, tools or other appurtenances; and
- 5.3. All costs for the operation and maintenance of the facilities.

Section 6. **REPAIRS AND MAINTENANCE**

For purposes of making any repairs or maintenance on the facilities, pipelines or appurtenances which affect the delivery or receipt of water in this Project, either party shall be entitled to claim a maximum of TWO HUNDRED EIGHTY-EIGHT (288) HOURS per year, provided, there is prior written notice given to the other party in cases of planned repairs and maintenance, and that the latter has concurred as to the existence of such defect that needs repair or maintenance. For emergency or unplanned repairs, immediate notice shall suffice.

Section 7. Any site preparation/development, infrastructure designed and constructed by BWS must have the approval of the appropriate government agency, i.e., Office of the Building Official (OBO), Department of Environment and Natural Resources (DENR), Department of Public Works and Highways (DPWH) or any regulating body.

Section 8. BWS shall hold MCWD, its employees, consultants, and assignees, free from any liability arising from the construction, operation, and maintenance of the facilities for the Project.

Section 9. All facilities built, installed, or used by BWS shall be exclusively used for this Project.

Section 10. BWS shall at any time, allow full access to MCWD in order for the latter to inspect all facilities of the project with prior written notice to BWS.

Section 11. The installation of any equipment or appurtenances required from BWS under this Project shall not change the nature of this agreement, neither shall it alter, amend or modify the contractual rights and obligations of the parties as herein stipulated and agreed which is strictly a water supply contract which is entered into pursuant to the Government Procurement Reform Act under RA 9184.

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<sup>4</sup> Annex D series - *Design for the Installation & Construction of Concrete Meter Vault*

## **ARTICLE V. WATER SOURCE**

### **Section 1. SEAWATER**

BWS shall utilize seawater to be processed and treated into potable water.

### **Section 2. PROJECT SUSTAINABILITY**

The BWS shall ensure that the source shall be sustainable and one hundred percent (100%) reliable at any time all throughout the duration of the contract. As proof that the water source can sustain the supply of water for this project, the BWS shall submit a feasibility or water resource study before Contract Signing.

**Section 3.** BWS must ensure compliance with the Water Code of the Philippines and all other pertinent laws, ordinances, rules and regulations that strictly mandate policies, and regulate or monitor any operation involving the extraction and treatment of seawater.

## **ARTICLE VI. PERMITS, LICENSES AND CLEARANCES**

### **Section 1. PERMIT FROM NATIONAL WATER RESOURCES BOARD (NWRB)**

BWS shall submit a National Water Resources Board (NWRB) water right/permit or at least an MCWD - endorsed application before Day One of Delivery.

The water right/permit or endorsement may be issued under the name of MCWD. If the water right/permit is under BWS's name, it must be for "MCWD BULK WATER SUPPLY PURPOSE ONLY".

Submission of the actual water right/permit must be done within eight (8) months from receipt of Notice to Proceed or Actual Day of Delivery whichever comes first. Provided, BWS should submit proof of application prior to contract signing.

### **Section 2. LGU SUPPORT ON THE PROPOSED PROJECT**

As a mandate of the local government to provide basic services and upgrade the quality of life of the people in the community, the support of this project must be secured by BWS from the Local Government Unit (LGU) exercising authority over the area where the project is situated.

As part of the post-qualification requirements, the BWS shall secure a LETTER OF NO OBJECTION (LONO) from the Local Chief Executive of the LGU where the proposed Project facility shall be constructed or operated.

A joint venture agreement or any other contract evidencing partnership between the LGU and BWS shall likewise suffice.

Any other license and/or permit required by any other local government unit, agency or office for the operation of this Project shall likewise be the sole responsibility of BWS.

Cease and desist order issued by the court or any proper authority resulting to interruption in the operation due to BWS's non-compliance of permits and/or licenses shall make BWS liable for penalties under Article XVII. "Damages and Penalties" hereof and shall further give MCWD the option to rescind this Agreement.

Section 3. **EXCAVATION PERMITS, RIGHT OF WAY AND OTHER CLEARANCES**

BWS shall comply with the excavation, right of way, and all other clearances that may be required by law or local ordinance in order to comply with the provisions of this Agreement.

The BWS shall provide a copy of the excavation permit to MCWD any time during the implementation of the Project.

Section 4. **ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) OR ANY EQUIVALENT PERMIT**

BWS shall submit to MCWD an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR) prior to Day One of Delivery.

Section 5. **CLEARANCE OR AUTHORIZATION FROM BUSINESS CONSORTIA OR PARTNERS**

Whenever applicable, BWS shall submit a clearance or authorization (i.e. board resolution or secretary's certificate) to enter into and execute contract for this Project from all its business consortia or partners.

Section 6. **MISCELLANEOUS PERMITS**

All other permits, licenses shall be secured at the expense of BWS and must be submitted to MCWD any time during the implementation of the Project.

Section 7. Failure to secure the required permits, licenses and clearances as mentioned in this Article shall be a ground for the termination of the Agreement without prejudice to the penalty to be imposed under Article XVII, "Damages and Penalties".

## **ARTICLE VII. QUANTITY OF WATER AND FLOW RATES**

Section 1. BWS shall deliver potable water to MCWD according to the following hourly flow rate computation for the specified injection point:

**Year 1**

Period	Minimum flow rate based on volume required (10,000 cu.m. per day)	Maximum flow rate based on maximum volume allowed (10,000 cu.m. per day + 10%)
4:01AM – 8:00PM	500 cu.m./hr	550 cu.m./hr
8:01PM – 4:00AM	250 cu.m./hr	275 cu.m./hr

### Year 2 to Year 25

Period	Minimum flow rate based on volume required (25,000 cu.m. per day)	Maximum flow rate based on maximum volume allowed (25,000 cu.m. per day + 10%)
4:01AM – 8:00PM	1,250 cu.m./hr	1,375 cu.m./hr
8:01PM – 4:00AM	625 cu.m./hr	687.5 cu.m./hr

Section 2. For failure to meet the minimum required volume per day including the above required hourly flow rate, BWS shall be liable for the penalty provided for in Article XVII, Section 2. “Penalty for Short Delivery”.

Section 3. Any water delivery in excess of the specified flow rate will not oblige MCWD to pay for such unless prior request in writing is made by MCWD.

Section 4. Any volume delivered in excess of the maximum flow rate *as requested by MCWD* shall be billed at one hundred percent (100%) of the prevailing Contract Price inclusive of all applicable taxes.

Section 5. The total volume of potable water delivered by BWS shall be measured with electromagnetic flow meters as shown in Annex “C”, pressure transducer as shown in Annex “E”<sup>5</sup>, and other monitoring devices (SCADA Monitoring System) as shown in Annex “F”<sup>6</sup> series.

Flow meter sizes shall be determined by MCWD depending on the number of injection point(s) and the total volume and flow rates shall be based on the aggregate sum of all injection point(s).

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<sup>5</sup> Annex “E” – *Pressure Transducer*

<sup>6</sup> Annex “F” series – *Design & Technical Specifications of SCADA Monitoring System*



Section 6. The monitoring system that will be provided by the BWS shall be compatible with the existing MCWD SCADA monitoring system, capable of wireless connection and transmission of the following data through SMS and other reliable means: total volume, flow rate, pressure, TDS and residual chlorine.

However, regardless of the time, in instances when any of the parameters fail to comply with the allowable range set by both parties, the monitoring system shall trigger an alarm to MCWD's SCADA monitoring system. All cost incurred in the transmission of data to MCWD i.e., software, hardware, GPRS transmission, etc. shall be borne by BWS.

The software shall be capable of displaying pressure, flow rate, total volume, TDS and residual chlorine at the same time. The said flow meters, vault structure and appurtenances within the vault shall be provided, owned, installed, and maintained by BWS.

All costs incurred in the assurance of the reliability of the data collection and the data transmission to MCWD SCADA, i.e. software, hardware, GPRS transmission, calibration and maintenance of the device, etc., shall be borne by the BWS. The said device and appurtenances within shall be provided, owned, installed and maintained by the BWS.

Section 7. MCWD shall define the specifications of the flow meter, data logger, pressure transducer, software and other appurtenances. Such Technical Specifications and Drawings shall form part of this Agreement.

BWS shall submit to MCWD, the complete and detailed design, specifications and brochures of the electromagnetic flow meter and other appurtenances inside the vault meter structure like, but not limited to the following: valves (gate/butterfly, air vacuum/air release, etc.) tees, pressure gauges, check valves, etc. for MCWD's approval prior to installation.

It shall be the responsibility of MCWD to cause the preparation of the conceptual design flow meter vault and control structure as shown in Annex "D".

All permits and fees in relation to the foregoing shall be borne by BWS.

Section 8. The flow meter shall be installed symmetrically within ten (10) meters or as may be approved by MCWD from the main injection point and shall be housed in a concrete meter vault based on the conceptual design provided by MCWD. All materials and labor costs, right of way acquisitions, in the construction and location of the meter vaults shall be at the expense of BWS. The vault's Technical Specifications and Drawings shall form part of this agreement.

The conceptual design and specifications of the structures of the flow meter and the vault prepared by MCWD shall be followed by the BWS.

- Section 9. Both parties shall conduct daily meter reading simultaneously or as may be necessary as determined by both parties. Neither party is authorized to tamper nor make adjustments on the setting of any of the flow meters or any of its parts without the consent of the other. To ensure compliance, an enclosure for the meter with double lock (one (1) lock for MCWD and one (1) lock for BWS) shall be installed by the BWS.
- Both parties shall observe and comply the meter reading protocols provided under “Annex H<sup>7</sup>”.
- Section 10. Prior to installation, the BWS shall submit the required flow meters, including the spare units, to MCWD for testing and calibration. In case MCWD is not able to do so, both parties shall agree on a Department of Science and Technology (DOST) accredited laboratory to conduct the testing and calibration in the presence of both parties. The BWS shall immediately submit the calibration results to MCWD. All costs incurred shall be shouldered by the BWS.
- Section 11. The cost of testing and repair or replacement of defective meter shall be exclusively shouldered by BWS.
- Section 12. Any replacement of a defective flow meter shall be done within five (5) calendar days from the time a suspected defect was confirmed and shall be the responsibility and for the account of BWS.
- Section 13. Any protest for over- or under-registration or other defect in the flow meter shall be filed by either party within thirty (30) calendar days from receipt or submission of the subject bill. Failure to protest on time waives the right to seek adjustment of the billed amount.
- Section 14. Calibration and proper maintenance of the flow meters shall be done annually at the expense of BWS. In cases where MCWD deems it necessary, calibration and maintenance shall be done immediately at the expense of BWS.
- Section 15. BWS shall provide a spare unit of each flow meter for each injection point to be installed upon pull-out due to preventive or corrective maintenance. The spare units should be of the same specification with that of the main units.
- Section 16. In case the BWS fails or refuses to calibrate or replace a defective flow meter, MCWD may refuse to accept the water supply until the BWS submits its flow meters for calibration or replacement at the latter’s expense. The BWS shall also be liable for the penalty provided for in Article XVII, Section 2. “Penalty for Short Delivery”

## **ARTICLE VIII. QUALITY OF WATER**

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<sup>7</sup> Annex “H” – *Protocol on Metering and Measurement of Bulk Water Supply*

Section 1. BWS shall supply MCWD with potable water conforming to Annex “A” - MCWD Water Quality Standards. Failure of BWS to comply with the standards or the specifications provided therein shall give MCWD the right to unilaterally refuse acceptance taking into consideration first and foremost the general public health and safety and BWS shall be liable for penalty provided for in Section 2 of Article XVII “Penalty for Short Delivery.”

Frequency of tests shall be as often as the frequency indicated under the “Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers” attached as Annex “G,”<sup>8</sup> when the circumstances require. Further, failure to comply with MCWD Water Quality Standards shall entitle MCWD to impose the applicable penalty as provided in Section 3 of Article XVII “Penalty for Non-Compliance to Water Quality Standards”.

The MCWD Water Quality Laboratory shall be the official laboratory to undertake the required tests as per MCWD Water Quality Standards. MCWD shall submit a statement of account to the BWS for the cost of the laboratory tests conducted and the same shall be deducted from the latest billings of the BWS.

Should BWS contest any test result performed by MCWD, the issue shall be resolved through an *Independent Laboratory* applying the “Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers” under Annex “G” at the expense of the BWS.

MCWD’s unilateral refusal to accept water supply shall be based on the following, among others:

- a. Complaints on water quality such as foul smell, discoloration and/or turbidity;
- b. Unacceptable Field Test results for residual chlorine;
- c. Failed laboratory test results on bacteriological, physical and chemical analysis.

In case the failure to comply with water quality standards warrant closure of the facilities as provided under the “Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers,” MCWD shall notify BWS’s field personnel within three (3) hours prior to closure. Subsequent formal notice of closure shall be sent to BWS within two (2) calendar days after closure.

MCWD shall not be liable for any damage that may be incurred arising out of the closure.

Operations shall only resume if all water quality disputes shall have been resolved.

- Section 2. Prior to the construction of the discharge pipeline route (from the water source to the main injection point), the same shall be evaluated by MCWD for purposes of preventing water contamination.
- Section 3. Quality of the input water to MCWD will be monitored from a sampling point as specified in Annex "D".
- Section 4. Quality of the delivered water must not deteriorate due to side reactions with existing pipelines and appurtenances' materials or must not be altered because of its biological and/or chemical components and the transformation it undergoes due to reaction dynamics that are incidental to the types and/or modes of treatment processes employed by BWS.
- Section 5. BWS shall, at its own cost and expense, employ all appropriate pre-treatment and/or post-treatment processes necessary in correcting the instability and/or impairment of the water quality. BWS shall replace the installed Seawater Reverse Osmosis (SWRO) membranes as required, for the duration of this Agreement.
- BWS shall submit to MCWD the brand and serial number of all SWRO membranes installed.
- Section 6. The WATER QUALITY of the delivered water by the BWS shall be monitored at the injection/sampling point by a REAL-TIME MONITORING device/equipment/ system capable of data-logging every 10 minutes and *preferably* capable to transmit logged-data to the existing MCWD SCADA Main Control Center. The device to be installed shall have an accreditation from MCWD Laboratory. The REAL-TIME MONITORING device shall primarily be monitoring the following parameters:
- a. Residual Chlorine in ppm;
  - b. water temperature;
  - c. pH (if available in the market);
  - d. TDS with Conductivity, Resistivity, Salinity;
  - e. Turbidity
- Section 7. BWS shall at any time, allow full access to MCWD in order for the latter to gather water samples at the sampling point located at the meter vault.
- Section 8. Except on extreme emergency cases, BWS must notify MCWD within seventy-two (72) hours prior to any activity that would require interruption of service that could possibly affect water quality such as repair of BWS's water mains, appurtenances and sources. This procedure should be strictly observed so that corresponding re-sampling and testing can be conducted before re-feeding water back to MCWD's system.

## **ARTICLE IX. PRODUCTION AVAILABILITY & INTERRUPTION DUE TO PLANNED AND UNPLANNED DOWNTIME**

### **Section 1. PLANNED OUTAGE, MAINTENANCE PROGRAM AND SCHEDULE**

- 1.1. Each party shall submit the Annual Schedule of Planned Maintenance to other party, not later than thirty (30) calendar days prior to the start of each calendar year for the purpose of obtaining the consent of the other party. The BWS shall coordinate with the MCWD as to maximize overlap of any planned downtime with any scheduled maintenance. The BWS shall exert all efforts to plan the duration of a downtime not exceeding twenty-four (24) hours, and may be extended within justifiable reasons.
- 1.2. Each party shall conduct regularly all scheduled maintenance of their respective facilities, including repairs, overhauls, improvements and replacements, in accordance with the maintenance plans and schedules developed at the start of the calendar year.
- 1.3. A planned downtime shall be confirmed by BWS thirty (30) calendar days prior to such downtime and reconfirmed twenty-one (21) calendar days in advance. The BWS may request to reschedule a planned downtime for any valid reason, and MCWD shall make reasonable efforts to accommodate the request. If MCWD cannot accommodate the request, it shall inform the BWS in writing as early as possible, which should not be later than fifteen (15) calendar days after its receipt of a request for rescheduling any planned downtime.
- 1.4. The written consent of the MCWD to the conduct of the maintenance works must be obtained, and the failure of the MCWD to give the requested consent within three (3) working days from receipt of the written notice shall be deemed consent on the performance of the Maintenance Works.

### **Section 2. UNPLANNED OUTAGES MAINTENANCE**

In case any unplanned downtime occurs or is foreseen to occur, the requesting party shall immediately notify the other party whether in writing or electronic mail specifying the date and commencement of the unplanned downtime and its expected duration. The period of time from the commencement of an unplanned downtime until resumption of normal delivery of the services (or as may be extended based on any justifiable reason on both parties).

### **Section 3. BACKUP POWER**

Prior to Day One of Delivery, the BWS shall provide supplemental power system at its own expense.

The supplemental power system will be used in case of power interruptions *not attributable to BWS*. It must be capable of delivering 100% of the required volume as indicated in [Section 1 of Article VII](#). BWS shall submit to MCWD a certification from the power provider within twenty-four (24) hours after occurrence of the power interruption.

## **ARTICLE X. EXCLUSIVITY OF SUPPLY**

All water produced from the facility under this Agreement shall be exclusively supplied to MCWD.

For this purpose, any pipe laying not related to the Project shall be prohibited except for purposes of maintenance and repair of BWS's existing pipelines.

## **ARTICLE XI. PROHIBITION TO SUPPLY IN MCWD'S FRANCHISE AND SERVICE AREA**

The BWS hereby agrees to desist and refrain from supplying and distributing water to any person or entity within MCWD's franchise and service areas.

If at the time this agreement was signed, the BWS has an existing contract or agreement with any private individual, entity or government unit, the BWS shall immediately provide MCWD a sworn statement of the list of existing consumers within MCWD's franchise and service areas and provide all copies of such agreement to MCWD prior to Contract Signing. The prohibition covers the extension and/or renewal of the BWS' existing contracts.

Failure to comply with this provision shall be ground for termination of this Agreement.

## **ARTICLE XII. PRICE AND CONSIDERATION**

Section 1. MCWD shall pay for the water delivered by BWS according to the Tiered Bid Price as indicated in the Schedule of Prices.

The ABC for each tier includes price changes not limited to wage increases, power cost, fuel cost, price increases of materials and supplies and other production and maintenance costs, inflation, currency fluctuation and foreign currency devaluation. Hence, the contract price is not subject to price adjustment and escalation during contract implementation considering that the exemption provided in Section 61, Rule XIX – Contract Prices and Warranties of the 2016 IRR of RA 9184 is already incorporated herein.

All prices are inclusive of all applicable taxes and net of penalties.

## ARTICLE XIII. PAYMENT AND BILLING

- Section 1. BWS shall bill MCWD once a month. Payment will be made within twenty (20) working days after receipt of the required correct and complete documents, including among others the hourly log data on flow rate, LSI, pressure, total volume, and water quality test results. Any payment made hereunder shall be inclusive of all applicable taxes and net of all penalties imposable on BWS.

In the event that MCWD fails to accept the volume of water delivered in accordance with the terms set herein under Article III Section 2, without any justifiable reason, MCWD shall be liable for penalty in the form of liquidated damages for any delay in the commencement of water supply (Day One of Delivery) computed as follows:

$$\text{Total Contract Price of Year 1} = 10,000 \text{ cu. m. per day} \times \text{contract price per cu. m.} \times \underline{365 \text{ days}}$$

$$\text{Total Liquidated Damages} = [1/10 \text{ of } 1\% \times \text{Total Contract Price of Year 1}] \times \text{No. of Days of Delay of Acceptance}$$

Until MCWD can accept the volume, provided that the supply is available subject to the technical evaluation of MCWD.

- Section 2. MCWD is authorized to withhold 1% and 5% (for withholding tax and final withholding VAT), and for other legal deductions or taxes, unless BWS can present an exemption from payment of these taxes.
- Section 3. That any provision to the contrary notwithstanding, all payment shall be subject to existing laws and accounting and auditing rules and regulations in the Philippines.

## ARTICLE XIV. NO LIABILITY IN CASES OF FORTUITOUS EVENTS OR FORCE MAJEURE

- Section 1. As a rule, no party shall be liable during the occurrence of any force majeure or fortuitous event.
- Section 2. "Force Majeure or Fortuitous Events" shall mean any event or circumstance or combination thereof that wholly or partly prevents or unavoidably delays any party in the performance of its obligation under this Agreement, but only to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected party and could not have been avoided even if the affected party had taken reasonable care.
- Section 3. It includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirement:
- a. Any Government occurrence not otherwise initiated by MCWD which includes change in laws or hostilities; or

- b. Any act of war (whether declared or not), invasion, armed conflict or act of foreign enemy, blockade, riot, terrorism or exercise of military power; or
- c. Any earthquake, fire, typhoon or any other acts of God or natural environmental disaster adversely affecting the site of the facilities rendering it inoperable.

Section 4. "Force Majeure or Fortuitous Events" shall not include major changes in the quality of the source as a result of seasonal changes including those affected either directly or indirectly by land use or development in the area.

Section 5. If the force majeure is due to natural calamities like typhoon, earthquake, etc. which requires a reconstruction of the facilities, the obligations of both parties are suspended for a maximum period of six (6) months after the occurrence of the event. After the suspension period has lapsed, MCWD shall impose without notice, the applicable penalty provided for in Section 2 of Article XVI – "Penalty for Short Delivery" should BWS still fail to deliver the guaranteed minimum volume as per schedule.

## **ARTICLE XV. MCWD STEP-IN RIGHTS**

Section 1. MCWD shall have the right, but not the obligation to assume operational responsibility of the Facilities in place of BWS for purposes of assuring continued and uninterrupted supply of treated water to MCWD. For this purpose, prior notice should be given by MCWD to BWS.

Section 2. This right may be exercised by MCWD in the following cases:

- 2.1 Failure to correct deviation in the MCWD Water Quality Standards stated in Annex "A" for more than forty-eight (48) hours.
- 2.2 Complete stoppage of its operations for any reason and for whatever circumstance and such stoppage continued for more than forty-eight (48) hours.
- 2.3 Failure to comply with other obligations under this Agreement after due notice and demand and such failure continued for more than one (1) month.
- 2.4 Other circumstances which could adversely affect BWS's ability to operate and maintain the facilities in accordance with this Agreement.

Section 3. BWS shall allow and permit MCWD to enter its premises for purposes of exercising its Step-In Rights. MCWD shall exercise due care in operating the facilities. On the other hand, BWS shall be allowed to monitor MCWD's operations.



- Section 4. The obligation of MCWD to pay for the delivered water shall continue despite the exercise of this Step-In Right. However, all expenses incurred in operating the facilities shall automatically be charged to BWS.
- Section 5. The exercise of this right shall not in any way be construed as a buy-out or take-over of the facilities by MCWD.
- Section 6. MCWD shall revert back operational responsibility to BWS at its sole discretion or after the circumstances warranting the exercise of this right shall have ceased.
- Section 7. The exercise of Step-In Rights by MCWD shall not prejudice any penalty imposable upon BWS that accrued prior to the exercise thereof.

**ARTICLE XVI. PERFORMANCE SECURITY**

Section 1. To guarantee the faithful performance of this Contract, the BWS shall post a performance security in the form of cash, manager’s check, cashier’s check, in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security
Cash, manager’s check, cashier’s check	Five percent (5%) of the Annual Approved Budget for the Contract (ABC)

This performance security shall be posted in favor of MCWD and shall guarantee the payment of the amount of the security as penalty in the event it is established that the BWS is in default in its obligations hereunder.

In the execution of the performance security, it shall be executed in accordance with the form prescribed therefore

- Section 2. Within ten (10) calendar days from receipt of the Notice of Award from MCWD but in no case later than the signing of the contract by both parties, the BWS shall furnish the performance security at the amount required and in any of the forms prescribed in the Section 1 of this Article.
- Section 3. The performance security shall be confiscated and this contract terminated should the BWS fail to deliver water for a period of thirty (30) consecutive days due to circumstances other than those falling under [ARTICLE XIV - “NO LIABILITY IN CASES OF FORTUITOUS EVENTS OR FORCE MAJEURE”](#) hereof and it is established that the failure to deliver is solely due to the fault of the BWS.

Prior to making a claim under the performance security, MCWD shall in every case notify the BWS in writing, stating the nature and duration of the default in respect of which the claim is to be made.

Section 4. The Performance Security shall be valid within the period of one (1) year after the expiration of this Agreement. Upon certification by MCWD, that there are no claims filed against BWS after expiration of this Agreement, the Performance Security shall be released.

## **ARTICLE XVII. DAMAGES AND PENALTIES**

### **Section 1. PENALTY FOR LATE DELIVERY**

MCWD shall impose a penalty in the form of liquidated damages for any delay in the commencement of water supply (Day One of Delivery) computed as follows:

*Total Contract Price of Year 1 = 10,000 cu. m. per day x contract price per cu. m. x 365 days*

*Total Liquidated Damages = [1/10 of 1% x Total Contract Price of Year 1] x No. of Days of Delay*

### **Section 2. PENALTY FOR SHORT DELIVERY**

MCWD shall without notice, impose a penalty of one hundred percent (100%) of the Contract Price per cubic meter for SHORT DELIVERY (SD), or delivery below the minimum hourly flow rate, except if attributable to force majeure as defined in Article XIV - "No Liability in Cases of Fortuitous Events or Force Majeure" and computed as follows:

*Penalty (SD) = (Contract Price per cu. m.) x (Undelivered Volume)*

### **Section 3. PENALTY FOR NON-COMPLIANCE TO WATER QUALITY STANDARDS**

3.1. For every non-compliance to the water quality standards, BWS shall be imposed with the following penalties:

- a. One hundred percent (100%) of the Contract Price per cubic meter of the total delivered volume, which is non-compliant with the water quality standards, should BWS continue to operate despite due notice of shutdown from MCWD as provided in Annex "H" Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers:

*Penalty (WQ) = (Contract Price per cu. m.) x (Delivered Volume)*

and

- b. Reimbursement of MCWD's actual costs for water mains flushing, disinfection, water sampling and laboratory analysis.

3.2. MCWD is not obligated to pay the delivered volume, which is non-compliant with the water quality standards.

Section 4. **PENALTY FOR NON-COMPLIANCE TO TECHNICAL SPECIFICATIONS AND STANDARDS**

For failure to comply with the technical specifications and standards as to any of the required parameters, such as but not limited to materials, design, fittings, etc. set by MCWD, a penalty of ten percent (10%) of the Contract Price per cubic meter of the Minimum Volume shall be imposed to BWS until such time that the defect will be corrected.

$$\text{Penalty (TS)} = 10\% \times (\text{Contract Price per cu. m.}) \times (\text{Minimum Volume per day}) \times (\text{No. of Days Non-compliant})$$

Section 5. **PENALTY FOR NON-COMPLIANCE TO OTHER CONTRACT PROVISIONS**

For failure to comply with any other material terms and conditions under this Agreement, may be a ground for the termination without prejudice to the penalty to be imposed under this Article.

Section 6. **PENALTY FOR DAMAGES**

BWS agrees and binds itself to indemnify MCWD for the actual cost of whatever injuries or damages suffered by the latter by reason of the failure, negligence, delay or conduct of the former and/or its employees in the performance of its obligation.

Section 7. **AUTOMATIC DEDUCTION OF PENALTIES AND DAMAGES**

All the aforesaid penalties and damages shall be automatically assessed, deducted and withhold from the account of BWS, and such penalty shall continue to be imposed until compliance has been proven.

For this purpose, MCWD shall have the right to deduct or withhold payment of any amount due or which may become due to BWS in this or any other contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to MCWD.

Section 8. It is understood that any payment made by MCWD to BWS or the failure of MCWD to demand compliance of any of the terms and conditions of this Agreement shall not be considered as a waiver on the part of MCWD for the enforcement of this Agreement or any portion hereof.

## **ARTICLE XVIII. TERMINATION**

Section 1. MCWD reserves the right to terminate this Agreement based on any of the following grounds:

- a. Failure to correct water quality deviations within seven (7) days from receipt of notice of such deviation.
- b. Total sum of liquidated damages reaches ten percent (10%) of the total annual contract price
- c. Failure to deliver for thirty (30) consecutive and successive days due to circumstances other than those falling under [Article XIV, "No Liability in Cases of Fortuitous Events or Force Majeure"](#).
- d. Failure by BWS to secure or renew any expired permits, licenses or clearances from any concerned government agencies.
- e. Applying the provisions in Section 5 of Article XVII, "Penalty for Non-Compliance to Other Contract Provisions.

Section 2. If any of the grounds for termination has occurred, MCWD shall notify BWS in writing, specifying the ground/s and indicating the period to rectify. Within reasonable time from receipt of the notice, the Parties shall commence discussions in good faith with the view of mitigating the consequences of such event and to agreeing on the terms, if any, upon which the arrangement contemplated in this Agreement may be continued, giving regard to all the circumstances existing at such time.

If the ground/s for termination specified in the notice shall not have been remedied to the reasonable satisfaction of MCWD notwithstanding the expiry of thirty (30) calendar days from the BWS's receipt of such notice (unless another period to cure is specified), then MCWD may terminate the Agreement.

## **ARTICLE XIX. DISPUTE RESOLUTION**

Should any dispute related to the Contract and/or rights of the parties arise, the same shall be submitted to mutual consultation, mediation and arbitration, in the order of application. The venue of the proceedings shall be in the City of Cebu.

In case of a court suit, the venue shall be the courts of competent jurisdiction in the City of Cebu, to the exclusion of all other courts.

## **ARTICLE XX. AMENDMENTS**

This Agreement or any part or portions thereof shall be modified or revised only through formal written agreement between the parties hereto, citing therein the specific clause(s) or provisions to be revised and the corresponding amendment.

The representatives of both parties should present proof of authority (i.e. board resolution or secretary's certificate) to make such amendments.

## **ARTICLE XXI. RENEWAL**

Renewal of this agreement shall follow the provisions of RA 9184 or the Government Procurement Reform Act of 2003 and its latest implementing rules and regulations.

## **ARTICLE XXII. INCLUSIONS**

The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

a. Annexes

1. Annex "A" - MCWD Drinking Water Quality Standards
2. Annex "B" - Location Map of the Injection Point
3. Annex "C" - Electromagnetic Flow meter with GPRS
4. Annex "D" series - Design for the Installation & Construction of Concrete Meter Vault
5. Annex "E" series - Pressure Transducer
6. Annex "F" series - Design & Technical Specifications of SCADA Monitoring System
7. Annex "G" series - Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers
8. Annex "H" - Protocol on Metering and Measurement of Bulk Water Supply

b. Bidding Documents;

c. Terms of Reference (TOR);

d. Contract Agreement;

e. Eligibility Documents submitted by the BWS (Program of Work, Technical Specification of Materials, Equipment, etc.);

f. Financial Bid;

g. Notice of Award;

h. Notice to Proceed;

i. All Other Documents required during Post-Qualification, Contract Signing, Before and After Day One of Delivery.