

# THE OFFICE OF UTILITIES REGULATION ACT, 1995

## ROSE HALL UTILITIES COMPANY LIMITED SEWERAGE SERVICES LICENSE, 2004

### 1. Short Title

1.1 This License may be cited as **ROSE HALL UTILITIES COMPANY LIMITED Sewerage Services License, 2004**

### 2. Interpretation

2.1 In this License-

**“Government”** means the Government of Jamaica

**“Licensed Business”** means the business of collection, treatment and disposal of Sewage as carried out under this Licence

**“MOH”** means the Ministry of Health

**“NEPA”** means National Environmental Planning Agency

**“NRCA”** means Natural Resources Conservation Authority

**“OUR Act”** means Office of Utilities Regulation Act, 1995 as amended

**“Prescribed Utility Service”** means provision of sewerage services being the bulk collection, treatment and disposal of sewage.

**“RHUC”** means Rose Hall Utilities Company Limited

**“The Licensee”** means Rose Hall Utilities Company Limited, a limited liability company duly incorporated under the Laws of Jamaica with its registered office situate at Rose Hall, Montego Bay in the Parish of St James, Jamaica.

**“The Minister”** means the Minister with the portfolio responsibility for Sewerage.

**“The Office”** means the Office of Utilities Regulation

2.2 This License shall be read and construed, subject in all respects to the provisions of the OUR Act, the Natural Resources Conservation Authority Act, and any applicable legislation, statutory modification, consolidation or re-enactment thereto and all regulations or rules made pursuant thereto. Unless the context otherwise requires, expressions in this License shall bear the same meanings ascribed to those expressions under the relevant Acts.

3. **Grant of License**

3.1 Pursuant to Section 4 of the OUR Act, the Minister hereby grants RHUC a License to provide the *prescribed utility service* at the location as described in Schedule 1 hereto.

4. **Term**

4.1 Subject to the provisions herein contained, the term of this License shall be for twenty (20) years from the date hereof (hereinafter called "the date of the Licence") and negotiations for a new license shall be commenced not later than the beginning of the seventeenth year of the said term.

5. **Assignment of License**

5.1 This License may not be assigned or transferred by *the Licensee* without the consent of *the Minister*.

6. **Fees**

6.1 *The Licensee* shall pay to *the Office* on or before May 1, of each year, a Regulatory Service fee of \$200,000.00 or an amount calculated at 0.25% of the annual gross revenues from the *Licensed Business*, as determined from the audited financial statements for the most recent financial year prepared pursuant to this License, whichever is greater.

7. **Obligations of Licensee**

7.1 *The Licensee* shall discharge its obligations and perform the duties imposed or authorized as set out in the Conditions of this licence at Schedule 2 hereto and as prescribed by the OUR Act, and any other applicable legislation, regulations, codes or standards.

7.2 *The Licensee* shall comply with any order made by *the Minister*, pursuant to this License or to powers vested in him by any other relevant legislation applicable hereto with all reasonable promptitude.

- 7.3 *The Licensee* shall comply with any order, or directive given by or rules prescribed by *the Office* pursuant to this License or to any applicable legislation with all reasonable promptitude.
- 7.4 *The Licensee* shall maintain and keep in good repair all equipment used in carrying out the *Licensed Business*.
- 7.5 *The Licensee* shall ensure that there is safe access to all sampling and monitoring points and shall grant free and uninterrupted access/entry to authorized agencies including NEPA and MOH to enter any premises operated by *the Licensee* to carry out such sampling and monitoring and any other official activity designed to protect public health or the environment.
- 7.6 *The Licensee* shall at all times maintain adequate and relevant insurance in relation to the plant used in the *Licensed Business* and, in particular, public liability insurance shall cover personal injury including death.

**8. Regulation by the Office**

- 8.1 *The Licensee* in carrying out the *Licensed Business* shall be subject to regulation by *the Office* pursuant to the OUR Act and any other applicable Act and all regulations and rules made pursuant thereto.
- 8.2 *The Licensee* shall submit to *the Office*, details of its operations and such technical information as is necessary and required by *the Office* to perform its functions under the OUR Act or any other Act and all regulations and rules made pursuant thereto.

**9. Information Access and Audit Rights**

- 9.1 *The Office* and any person duly authorized by *the Office* shall be entitled during normal business hours and without notice to enter any premises owned or occupied by or in the possession of *the Licensee* from time to time for the purpose of inspecting any books, records and accounts of *the Licensee* in regards to the *licensed business* and *the Licensee* shall be obliged to fully co-operate and assist *the Office* for such purpose.
- 9.2 Any agent or person duly authorized by *The Office, NEPA or MOH* may, during the continuance of this licence, at any reasonable time (except in the case of emergencies, in which case the agent or authorized officer shall be allowed to carry out the following duties at any time):
- (a) inspect and investigate the operation, including conditions relating to the nature and composition of any discharge and/or to inspect and investigate the treatment facility including any lands and buildings;

- (b) install, maintain or read equipment or apparatus used for the recording of the release of substances into the environment or to monitor the performance of the operating plant.

**10. Requirement for Information and Audited Accounts**

- 10.1 The accounts of *the Licensee* shall be audited annually, at the expense of *the Licensee* by an independent auditor of good standing and repute and who is authorized to provide such services in Jamaica in accordance with the provisions of the Companies Act.
- 10.2 The Licensee shall submit to *the Office* within 3 months of the end of the Licensee's financial year a copy of the annual audited accounts including Balance Sheet, Profit and Loss Account and Cash Flow related to the *Licensed Business*.
- 10.3 *The Licensee* shall furnish to *the Office* such other annual regulatory reports as *the Office* may prescribe, within 45 days after the end of each financial year in such form as *the Office* prescribes.

**11. Modification**

- 11.1 This Licence may be modified at any time during the term by agreement between *the Licensee* and *the Minister*.
- 11.2 Notwithstanding paragraph 11.1 above, modification to the conditions and schedules relating to standards, price-controls and other regulatory matters shall be modified by *the Office*, after taking into account the views of *the Licensee*, without reference to *the Minister*.

**12. Suspension / Revocation**

- 12.1 *The Minister* may, on the recommendation of *the Office*, at any time suspend or revoke this Licence by not less than 30 days notice in writing (the "Notice of Revocation or Suspension") to *the Licensee*:
  - a. if upon charges being proffered with proper particulars, it shall have been determined that *the Licensee* has, without just cause or excuse, failed to comply with any material term of this License or to carry out in good faith and with reasonable diligence the activities referred to in this License, which determination shall specify in exact detail the respects in which *the Licensee* so failed, provided that such failure shall have continued for a period of thirty (30) days and shall have materially impaired the *Licensed Business*.
  - b. if *the Licensee* has gone into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;

- c. if any fee or financial obligation payable under this license or in relation to any related Statute or any fine imposed by a Court of Law is unpaid thirty (30) days after it has become due and after the expiration of this thirty (30)-day period it remains unpaid for a further period of thirty (30) days after *the Office* has given *the Licensee* notice that the payment is overdue;
  - d. if any principal officer of *the Licensee* is convicted of a criminal offence by a Court of Law, which offence has materially impaired *the Licensee's* obligations under this licence.
- 12.2 Prior to the recommendation for the revocation or suspension of this License pursuant to clause 12.1, *the Licensee* shall within a 30-day notification period be given an opportunity to be heard including making written submissions to *the Office* as to why this License should not be suspended or revoked.
- 12.3 *The Minister* upon receipt of the recommendation specified in clause 12.1 may request *the Office* in writing to reconsider its recommendation for the revocation or suspension of the licence.
- 12.4 Notwithstanding the issuance of the Notice of Revocation or Suspension, *the Licensee* shall, if requested by *the Minister*, continue to operate *the Licensed Business* in accordance with prudent utility practice or at the same standards that were used to operate the *Licensed Business* prior to the date of the Notice of Revocation or Suspension, whichever is higher.
- 12.5 Upon revocation of the Licence, *the Minister* or his designee may request *the Licensee* to:
- (i) seek to procure a licensed sewerage services operator to operate the business, until other arrangements are concluded for purchase or take over of the *Licensed Business*, in accordance with prudent utility practice or at the same standards that were used to carry out the *Licensed Business* prior to the date of suspension or revocation of the Licence. Failure to appoint an operator within a period of thirty (30) days after being requested by *the Minister* to do so, *the Minister* shall have the right to appoint an operator to operate the business in accordance with prudent utility practice.
  - (ii) seek offers and conclude all arrangements within a period not exceeding one (1) year of revocation for the purchase or take over of the *Licensed Business*. *The Licensee* shall give *the Office* an opportunity to comment on the terms of invitation and shall take into account any comments made by *the Office* in this regard.

12.6 At any time after the revocation of the Licence but prior to any intervening sale of the *Licensed Business*, if *the Licensee* demonstrates to the reasonable satisfaction of *the Minister* that the failures which gave rise to the revocation (and any ensuing failures) have been cured and *the Licensee* is capable of fulfilling its obligations under the License, *the Minister* may, on the recommendation of *the Office*, at any time withdraw the Notice of Revocation or Suspension and notify the Licensee that it is no longer required to seek offers for the purchase of the *Licensed Business*.

**13. Powers of The Office**

13.1 The powers of *the Office* under this License are in addition to its powers under relevant statutes. The License shall be read and construed subject in all respects to the provisions of the *OUR Act*, the Natural Resources Conservation Authority Act, and any other applicable legislation, statutory modification, consolidation or re-enactment thereto and all regulations made pursuant thereto.

**14. Powers to Carry out Street Works, Way Leaves, Etc.**

14.1 *The Licensee* must consult with the relevant Ministry and agencies responsible for roadwork prior to carrying out any work which may cause damage to the road surface and shall effect any necessary repairs in accordance with the standards set thereby.

**15. Warranties and Representations**

15.1 *The Licensee* represents and warrants to *the Minister* that -

- (a) it is a limited liability company duly organized and validly existing under the Laws of Jamaica possessing perpetual corporate existence and capacity to sue or be sued in its own name and it has the power to own its assets and carry on the *Licensed Business*;
- (b) it has the power to enter into this Licence and to perform the obligations imposed on it herein and that it has taken all necessary action to enable it to perform its obligations herein;
- (c) it will take and has taken due care and attention in the establishment of the sewerage facilities and will comply with all relevant laws which affects the operation of the *Licensed Business*;
- (d) it has in writing to *the Office*, confirmed its acceptance of this license upon terms and conditions stated therein and that all authorizations and approvals have been duly obtained;

- (e) It has provided *the Office* with all permits, licenses and other authorizations required under the relevant laws to carry out the *Licensed Business*.

16. Notices

16.1 Any notice, order and other documents under this License may be in writing or in print or in electronic format (permitting confirmation of receipt) and shall, if served on:

- a. *the Office*, be addressed to:  
The Director General; and
- b. *the Licensee*, be addressed to:  
The Chief Executive Officer
- c. the Licensor, be addressed to:  
The Minister

at the address, facsimile and email address communicated by the respective parties to each other in writing from time to time.

16.2 Any notice, order or document required or authorized to be served upon any body or person under this License may be served by the same being addressed to such body or person and being left at, or sent by registered post to the registered address of such body or to the usual or last known place of abode of such person as communicated under 16.1 above.

16.3 If served by post it shall be deemed to have been served 5 days after the posting by registered mail at any Post Office in Jamaica. It shall be sufficient only to prove that such letter was properly addressed, registered and put into the post.

16.4 If served by electronic mail or facsimile it shall be deemed to have been served when the electronic mail or facsimile shall have been transmitted by the sender:

- (a) by electronic mail the sender receives electronic confirmation that the message has been delivered to the addressee's email address; and
- (b) by facsimile, the sender receives confirmation through the machine of successful completion of the transmission.

17. **Standards of Service**

*The Licensee* shall comply with any schemes introduced by *the Office* from time to time to enhance customer service and Quality of Service generally.

18. **Price Controls**

1. *The Licensee* is subject to the conditions in Schedule 3.
2. The rates to be charged by *the Licensee* in respect of the prescribed utility services shall be subject to such limitation as may be imposed from time to time by *the Office*.
3. The accounts and records of *the Licensee* shall be maintained in such manner as may be prescribed by *the Office* from time to time after consultation with *the Licensee*.
4. The records kept should be sufficient to separate the activities of the *Licensed Business* from any other business.
5. The book value of the property of *the Licensee* may be adjusted from time to time as a result of revaluations approved by *the Office* and the book value of such property at any given time shall be the value thereof in accordance with the most recent revaluation plus subsequent additions at cost and less subsequent retirements at book value.
6. Annual depreciation allowance shall be computed by applying reasonable annual straight line depreciation rates to the value of property, plant and equipment stated at book value. *The Office* shall satisfy itself as to the reasonableness of applicable depreciation rates; and from time to time determine the adequacy of the depreciation reserves and the reasonableness of the lives used.

Dated this 16<sup>th</sup> day of June 2004

  
Hon. Donald Buchanan  
MINISTER OF WATER & HOUSING



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## SCHEDULE 1

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- A. The high level technical requirements and design parameters as approved by NEPA/NRCA shall form part of this License, a copy of which shall be deposited with *the Office*.
- B. Location of Service - See Attachment 1 for Location Map

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## SCHEDULE 2

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### Special Conditions of License

A. **Environmental Standards**

*The Licensee* shall conform to all and any standards that may be established by NEPA/NRCA. *The Licensee* shall provide *the Office* with copies of any licenses, standards, special permits issued by NEPA/NRCA from time to time, which shall form part of this License.

B. **Service Standards**

1. *The Licensee* shall meet, as a minimum the following service standards:

- (a) *The Licensee* shall clear 90% of all reported blocked mains within 4 hours of the report being received.
- (b) Odor

*The Licensee* shall maintain the plant in such a manner as to minimize the complaints of odor. There shall be no more than 5 complaints per 100 customers (or hotel rooms serviced) regarding odor in any month.

*The Office* may from time to time, introduce additional or vary these overall standards and will have regard to the performance of *the Licensee* in meeting these standards at the tariff review.

**C. Guaranteed Standards**

*The Licensee* shall implement a scheme of guaranteed standards which may be prescribed by *the Office* from time to time.

In any such scheme, *the Office* will determine from time to time, the level of compensatory payment to be paid by *the Licensee* to the customer should *the Licensee* breach any standard so prescribed.

**D. Billing**

*The Licensee* (or its designee) shall provide appropriate bills to its customers on a monthly basis detailing the basis for all charges.

**E. Reports to the Office**

*The Licensee* shall provide the following annually to *the Office*:

1. Costs and revenues
2. Customer based reports showing total number of customers and type
3. Sewerage report for the relevant period detailing:
  - total volume of sewage collected
  - total volume of sewage treated
4. Effluent quality reports for each quarter
5. Schedules of maintenance programme
6. Number of employees
7. Total number of new service applications
8. Total number of new sewerage connections
9. Total number of delinquent customers – 3 billing periods in arrears
10. Faults reported in collection, conveyance and treatment
11. Average time taken to clear faults
12. Comparison with NEPA environmental quality standards

13. Facilities in/out of service and period of time out

14. Treatment capacity of sewerage plants:

- plant type (ponds, package, etc.)
- installed capacity
- average throughput
- availability

15. Hours of electric power outages to plant

**F. Provision of Prescribed Services to other Utilities**

*The Licensee* is entitled to provide any combination of the services specified in the *Licensed Business* to any other licensed service provider or developer by way of a connection or connections to *the Licensee's* infrastructure.

In such cases the parties may enter into negotiation/commercial agreements. Before concluding such agreements, *the Licensee* must receive the approval of *the Office*.

Specifically, and for the avoidance of doubt, the rates and charges to be applied under this section by *the Licensee* must be approved by *the Office*.

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**SCHEDULE 3**

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*"Test Year"* shall mean the latest twelve months of operation for which there are audited accounts and the results of the test year adjusted to reflect:

- (i) Normal operational conditions, if necessary;
- (ii) Such changes in revenues and costs as are known and measurable with reasonable accuracy at the time of filing and which will become effective within twelve months of the time of filing. Costs, as used in this paragraph shall include depreciation in relation to plant in service during the last month of the test period at the rates of depreciation agreed with *the Office*. Extraordinary or Exceptional items as defined by The Institute of Chartered Accounts of Jamaica shall be apportioned over a number of years not exceeding five years; and

- (iii) Such changes in accounting principles as may be recommended by the independent auditors to *the Licensee*.

**“Rate Base”** means the value of the net investment in the *Licensed Business*. The *Rate Base* shall be calculated on the net sewerage system investment made by *the Licensee* at the time the rates are being set and shall include net investment made by *the Licensee* in the collection, treatment and disposal of sewage and plant assets. The *Rate Base* shall include appropriate rate-making adjustments to take into account known and measurable changes in the plant investment base.

The rates for the supply of services by the *Licensed Business* shall be set such that provided a reasonable opportunity for *the Licensee* to make a reasonable return on capital employed after taking into account all reasonable costs incurred in the provision of the services.

Revenue Requirement = operating costs + depreciation + taxes + return on investment, with each component defined as follows:

**Operating costs:** All prudently incurred costs which are not directly associated with investment in capital plant, other operating costs shall include, but not be limited to: salaries and other costs related to employees; operating costs of the licensed business; interest costs on other borrowings not associated with capital investment, if applicable; rents and leases on property associated with the *Licensed Business*; taxes which *the Licensee* is required to pay other than income taxes of *the Licensee*; and other costs which are determined to be reasonably incurred in connection with the *Licensed Business*.

**Depreciation:** The depreciation component will be calculated by applying annual depreciation rates, as agreed with *the Office* from time to time, to the gross value of the individual plant asset accounts.

**Taxes:** Taxes which are calculated based on the net income of *the Licensee* (Income Taxes) and payable to the Government of Jamaica shall be a component of the revenue requirement. Loss carry-forwards and any incentives to encourage capital investments are not included in the calculation of income taxes.

**Return on Investment:** This component is calculated based on the approved *Rate Base* of *the Licensee* and the required rate of return which allows *the Licensee* the opportunity to earn a return sufficient to provide for the requirements of consumers and acquire new investments at competitive costs. *The Office* shall determine a working capital component of the *Rate Base*.

*The Licensee* shall provide schedules that support these specific operating costs, depreciation expenses, and taxes. The return on investment shall be calculated by multiplying the allowed rate-of-return by *the Licensee's* total investment base (*Rate Base*) for the test year. The allowed rate of return is *the Licensee's* Weighted Average Cost of Capital (WACC). The WACC (“K%”) will balance the interests of both consumers and investors and be commensurate with returns in other enterprises having corresponding risks which will assure

confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital. The WACC will be based on the actual capital structure or an appropriately adjusted capital structure which adjustment is required to keep parity of the interests of the consumers and investors and at the time of the filing such capital structure and WACC shall be adjusted by any known and measurable changes which are expected to occur during the test year.

$$\text{Return on Investment} = K\% * (\text{Rate Base})$$

The *Rate Base* shall be reduced by contributions made by developers or customers in respect of infrastructural development.

### **Initial Tariff**

On the granting of this Licence *the Licensee* shall submit a proposal for the initial tariffs to be charged in respect of services.

### **Subsequent Tariff**

At such intervals as *the Licensee* may determine but no more often than once in every two years, *the Licensee* may submit an application for a tariff review. The Application must be supported with data and information as *the Office* will determine.

### **Rate Review Process**

*The Licensee* shall file with *the Office* proposed rate schedules and shall demonstrate that the rates proposed for the various rate categories will generate the revenue requirement for the test year.

*The Office* shall accept such filing within ten (10) working days following certified delivery of the filing with *the Office* unless the filing is clearly deficient to the extent that it will not allow the complete evaluation of *the Licensee's* application including the proposed rate schedules. If *the Office* determines that the filing is deficient it shall reject such filing within the said ten working days and shall notify *the Licensee* clearly identifying the deficiencies.

Upon acceptance of the rate filing *the Office* shall initiate a rate proceeding to conduct its review of *the Licensee's* proposed rates in which *the Office* shall have full discretion to accept, modify or reject the proposed rates. *The Office* shall have full discretion to determine the format and procedure of such proceedings and in making its decision shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely manner. *The Office's* review shall consist of an evaluation of the revenue requirements including prudent operating costs, depreciation expenses, taxes and a return on investment.

In the absence of an order from *the Office* upon the expiry of ninety (90) days after acceptance of the filing by *the Licensee*:

- (a) rejecting the rates proposed by *the Licensee* on the merits;
- (b) approving the rates proposed by *the Licensee*;
- (c) modifying the rates proposed by *the Licensee*; OR

if *the Office* issues an order rejecting or modifying any portion of *the Licensee's* proposed rates, then upon the occurrence of any of the said events, *the Licensee* may refer the matter to the Appeal Tribunal as established to finally settle and the parties hereby consent to and agree to be bound by the decision of the Tribunal.

The decision of the Tribunal shall become effective on the day of the Tribunal's ruling.