



*Ensuring Access to Quality Water Services for All*

## **SERVICE PROVISION AGREEMENT**

Between

{Y}..... Water Services Board

&

{Z}..... Service Provider  
operating

a Public/Community Water and Sanitation  
System

Model Service Provision Agreement (SPA) for  
Category III Water Service Providers  
(Public/Community System Operated  
by Third Party)



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Board Supported by



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**Water Services Regulatory Board – Service Provision Agreement for Category III**





## Clause 1 Definitions and Interpretation

The following words and expressions shall have the meanings assigned hereto unless otherwise required by the context::

- . "Abstraction" in relation to water contained in any source of supply, means the doing of anything whereby any portion of that water is removed from that source of supply, whether temporarily or permanently, including the doing of anything whereby the water is so removed for the purpose of being transferred to another source of supply.
- b. "Act" means the Water Act, 2002. "Agreement Year" means the year this SPA is Signed
- . "Agent" means a unit appointed by a Licensee or appointed by Water Service Provider.
- d. "Agreement Year" means the year this SPA is Signed.
- . "Amendment Request" means a request to amend the SPA submitted in accordance with this SPA.
- f. "Approved Business Plan" means the Business Plan approved by the Licensee.
- g. "Annual Report" means the report the Service Provider is required to prepare according to the Relevant guidelines of the Regulatory Board.
- h. "Annual Business Plan Update" means the annual updates to the Business Plan pre-pared by the Provider detailing any changes to the Approved Business Plan.
- . "Assets" , unless otherwise sated, means the fi xed and other assets of the Licensee or which the licensee has otherwise been able to acquire the use of, the use of which are to be granted to the Service Provider in accordance with this Agreement, and the fi xed assets to be procured, constructed or provided by the Licensee under the provisions of this Agreement and includes interalia, all buildings, rights, mains, pipes, sewers, works, plant, and equipment associated with the management and administration of the serv-ces and abstraction and collection of raw water and the conveyance and treatment of sewage, the treatment, storage and distribution of potable water, plant, equipment and facilities used or intended to be used for the purposes of scientifi c analyses or for the measurement of water and sewage and for the avoidance of doubt includes all plans, records and associated information irrespective of the format in which such plans, records and associated information are maintained or otherwise stored.
- j. "Business Plan" means the document which defi nes the operations of the Provider and s elaborated according to the Relevant guidelines issued by the Regulatory Board.
- k. "Capital works" means all new capital works and major rehabilitation works to be under-taken by or for the benefi t of the licensee ( whether by or through the service provider or any other body, company, or organization . And includes also construction work and the procurement

and installation of capital equipment to extend, rehabilitate or replace the facilities. This includes all major work carried out on the water services system (production and purification installations; storage facilities; supply, distribution, evacuation networks; building and other installation; etc.) in order to maintain, improve and enlarge water service provision according to standards and regulation

- . “Capital Works Plan” means a plan for Capital Works prepared by the Licensee and approved by the WSRB in accordance with the guidelines and this SPA.

- . “Commencement Date” means the day the Provider assumes operations
- . “Commissioning” means setting the system used in the provision of water services and sanitation to work under controlled conditions and monitoring that it is safe for continued operation
- . “Contingency Fund” means a separate fund maintained by the Service Provider to be used for purposes of financing expenses related to provision of water services by the Service Provider.
- . “Conditions” means the General Conditions and the Particular Conditions.
- . “Connection Charge” means the amount charged to Customers for the installation of a connection from the distribution main to the Customer’s property.
- . “Connection Fund” means a fund established by or on behalf of the Provider to cover the costs of new connections for eligible Customers.
- s. “Connection Regularization Plan” means a plan to regularize illegal connections developed and approved.
- t. “Cure Period” means, in respect of a Default Notice given to the Provider and the period specified in the Default Notice (or if no such period is specified 10 Business Days from the date of the Default Notice).
- . “Cure Plan” means a plan to rectify a default, as provided in this SPA.
- v. “Customer” means any Person or organization who has entered into or will enter into or is deemed to have entered into a Customer Agreement and to whom water is supplied or from whom Sewage (including sewage) is removed and discharged and who is so supplied or served by a Service Provider or who should be so supplied or served by the Service Provider pursuant to its Obligations, and who is or will be required to pay for such Services and is also a person previously referred to as a “Consumer.”
- w. “Customer Agreement” means a contract between the Water Service Provider and a Customer which governs the supply of services to that Customer, payment by the Customer to the Water Service Provider and other terms of the arrangement
- x. “Customer Tariff” means the tariff charged by the Water Service Provider to Customers in accordance with the provisions of this Licence and the Service Provision Agreement and as approved by the Water Services Regulatory Board;
- y. “Day” means a calendar day and “year” means 365 or 366 days.
- . “Deed of Surrender” means the deed of Surrender to be executed by the Licensee and the service provider.
- a. “Default” means a failure by a Party to perform its Obligations under this Licence.
- bb. “Default Notice” means a notice of Default given by one Party to the other in accordance with provisions of the Agreement.
- c. “Delegated Works” means Capital Works to rehabilitate, renew and extend the Facilities, which are the responsibility of the Licensee, but

which the Licensee delegates to the Provider to procure, manage and implement

- dd. "Delegated Works Fee" means an amount which the Licensee is due to pay the Provider for managing or implementing the Delegated Works.



- e. "Dispute Resolution Process" means the process for resolving disputes between the Parties set out in this SPA.
- ff. "Draft Business Plan" means the Business Plan prepared by the Provider for submission to the Licensee
- gg. "Drinking Water" and "Potable Water" means water that is available or otherwise supplied and intended to be suitable for human consumption on the premises to which the water is supplied.
- hh. "Effective Date" is the day this SPA has been signed and given in the SPA Data Sheet.
- i. "Emergency Notice" means a notice given when there is a breach of the SPA that threatens public health or safety.
- jj. "Exclusivity" means the exclusive right to provide Services in a given area.
- kk. "Expiration Date" is the day this SPA shall expire and has been specified in the SPA Data Sheet.
- l. "Extensions" means any expansion of the Facilities required to provide Services to new Customers including but not limited to the construction of abstraction, treatment and distribution systems for Water Services, and the collection and treatment systems for Wastewater Services.
- m. "Facilities" means the infrastructure, facilities and assets the Service Provider uses to provide the Water Services.
- n. "Financial year" means a period of twelve continuous months as agreed between the parties which is deemed or agreed to be financial year of the Relevant party.
- o. "Financing" means credits, grants or any other money provided by the Government of Kenya development, or Development Financial provider, Institution or any other Financial arrangement to be approved by the Government.
- p. "Force Majeure" means an exceptional event or circumstance which is beyond the parties' control such as war, rebellion, terrorism, riot, natural catastrophes.
- q. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled, experienced and prudent person engaged in the provision of services and the carrying out of operations, maintenance and administration pursuant to this Agreement from time to time.
- r. "Government" means the Government of Kenya.
- ss. "Income Account" means an Account set up by the Service Provider to receive the Service Provider's Income, which will be transferred to this account from the Revenue Account.
- tt. Illegal connection means connection done without authorization of WSP.

- u. “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in Kenya.
- vv. “Licensee’s Remuneration” means the remuneration allowed to the Licensee to recover its costs associated with the provision of Services, allocated by Provider.
- ww “Licensee’s Representative” means the person appointed by the Licensee as its authorised representative.



- xx. "Maintenance" means those activities which are necessary, using good industry practice, to prolong the life of an asset, ensure its reliability, prevent the necessity for repairs, ensure the asset performs the function for which it is intended and preserve the materials from which the asset is constructed.
- yy. "Mediator" means a person appointed by the Licensee and the Service Provider to mediate between the parties and to attempt an amicable settlement in the event of a dispute or difference arising out of or relating to this Agreement or any breach thereof.
- z. "Metering Plan" means a plan prepared by the Service Provider for the installation and fixing of Customer Meters for first-time connections and for ensuring that all existing domestic, commercial, industrial and institutional Customers have functioning Meters.
- aa. "Minimum Service Level" means the service level defined by the Regulatory Board and attached to this SPA to ensure efficient availability, continuity and quality of water and sanitation services provisions for Customers.
- bbb. "Model Customer Contract" means the model Customer contract developed by the Licensee or Regulatory Board.
- cc. "New Connection Fund" means a fund established by or on behalf of the Provider to cover the costs of new connections.
- ddd. "Notice of Tariff Correction" means the notification by the Regulatory Board when it determines that a tariff adjustment has not been made in accordance with the Regulatory Board Tariff Guidelines or other applicable rules and regulations
- ee. "Opening Facilities" means those Facilities which were in existence at the Effective Date and are specified in the Schedules.
- fff. "Operations and Maintenance (O&M) Plan" means the document detailing the activities to be carried out over a years period including all needed resources such as staffing and investment and also included the monitoring arrangements in order to ensure that the Provider meets performance targets specified in the Agreement. Any details of contingency funds for maintenance and rehabilitation are included in the O&M plan
- ggg. "Other Business" has the meaning of all business not covered under the provision of Water Services as defined by the Act.
- hhh. "Party" means the Licensee or the Water Service Provider, as the context so dictates.
- ii. "Special Conditions" means Conditions of this SPA which specify any modifications to the General Conditions.
- jjj. Penalty means the amount that the Provider must pay to the Licensee for failure to achieve the Performance Targets.
- kkk. "Performance Incentives" means the incentive payment which may be made to the Provider for exceeding its Performance Targets.

- ll. "Performance Targets" means the targets in Schedule E, F specified by the WASREB and other targets included in the Schedule D
- mm. "Performance Guarantee" means a guarantee, which shall be provided by the Service Provider to the Licensee to guarantee performance and payment Obligations in accordance with its terms and conditions of this Licence.





- nn. "Personnel" means any and all persons employed by the party concerned, under what-ever legal relationship, including but not limited to, full and part time employees, staff, advisors, agents, servants, representatives, and independent contractors, and such per-sonnel shall at all times be treated and regarded as employees of the appropriate party.
- oo. "Potential Customer" means a person other than the Board or the Provider or a Cus-tomer, located in the Service Area, who wishes to receive Services from the Provider.
- pp. "Proposed Capital Works Plan" means the Capital Works Plan developed by the Provider and submitted to the Licensee
- qq. "Provider" means that Water Service Provider named as such in this Agreement and in the SPA Data Sheet and its legal successors in title.
- rr. "Provider Income" means the income due to the provider in order to meet it's Obligations for water service provision under this SPA.
- sss. "Provider Remuneration" means the remuneration due to the provider as defi ned in this SPA.
- ttt. "Provider's Representative" means the person appointed by the Service Provider as its authorised representative.
- uu. "Provider Service Obligations" means the Obligations of the Provider's within the Licens-ee Area to provide the Water Services, Wastewater Services, and Other Services as speci-fi ed in the Schedule D.
- vvv. "Public Assets" means all assets used by the Service Provider for the provision of water services and which assets vest in the Licensee in trust for the Government and people of Kenya and which have to be managed as such under the existing Laws of Kenya.
- www. "Public Funds are as defi ned in the Public Procurement and Disposal Act 2005.
- xxx. "Raw Water" means untreated water which is or may be abstracted from sources of sup-ply which is available for water supply purposes.
- yyy. "Regulations" means all regulations of the Republic of Kenya applicable directly or indi-rectly to water supply and sewerage services.
- zz. "Rehabilitation Works" means work undertaken on the network assets in order to restore them to a proper and effective condition.
- aaa. "Repair" means those activities which are necessary, in accordance with good industry practice, to restore an asset to being fully functional in the event of such asset failing to perform the function (in part or in full) for which it is intended and, where necessary, ncludes the complete replacement or renewal of the asset.
- bbbb. "Regulatory Board Guidelines" are guidelines prepared by the Regulatory Board which are binding and will be circulated to the Licensee and the Water service Providers from time to time.
- ccc. "Regulations" means all regulations of the Republic of Kenya applicable directly or indi-rectly to water supply and sewerage services

dddd “Regulatory Board” means the Water Services Regulatory Board established by the Water Act, 2002.



- eee. Renewals means the activities required to keep the assets within the Service Area in an acceptable conditions by replacing any assets that reaches the end of its normal working life.
- ffff. "Revenue Account Administrator" is one or two persons designated to manage the revenue account.
- gggg. "Revenue requirement" means the amount of revenue needed to meet full costs of the Provider including operations costs, maintenance costs, rehabilitation costs, capital development costs, financing costs, regulatory levies, profit margins, and other similar costs.
- hhhh. "Revenue Account" means a bank account set up to receive funds collected from Customers
- iii. "Revenue Surplus" means any remaining funds in the Revenue account after the full payment of the Provider Remuneration, the Licensee Remuneration, Regulatory Levy and any penalties or incentives payments.
- jjjj. "Schedules" means the document(s) entitled schedules referred to in this SPA.
- kkkk. "Service Area" means that area in which the Provider is to provide the Services, as required in Schedule C. It is not limited to the area supplied by the piped water or sewerage
- III. "Services" means the services to be provided by the Service Provider under the SPA.
- mmm "Service Needs" means a 10-year projection of the Facilities required to provide the water and wastewater service coverage, quantity and quality which Customers and Potential Customers demand at the allowed tariff levels within the Licence Area.
- nnn. "Service needs Plan" means a Plan for achieving the 10 year Projection.
- ooo. "Service shortfall" means the difference between the water and wastewater service coverage, quantity and quality which Customers and potential Customers would demand at the allowed tariff levels, and the level of such services which can be provided with the existing facilities.
- ppp. "SPA" means this Service Provision Agreement.
- qqq. "SPA Data Sheet" means the pages entitled Service Provision Data Sheet Registration Details..
- rrr. "Sewage" means foul or used water, soiled water, whether treated or not originating from any premises and includes any discharge from water closets and urinals and water containing excremental liquid or substance
- ssss. "Small Scale Service Provider" means an Independent provider providing Water services from an existing water service provider by Hawking.
- tttt. "Subsidies" means funds received from Government agencies, charitable organizations or international development agencies to cover some or all of the costs of provision of water and sanitation services.
- uuu. "Tariffs" means the charges levied on the consumption of water services as well as for access to a water system

vvvv. “Tariff Schedule” means the schedule of tariffs charges to each Customer category.

Water Services Regulatory Board – Service Provision Agreement for Category III



www. "Third Party Provider" means a person or entity other than the Provider or the Licensee that provides services authorized by the Licence. "Unforeseeable" means not reasonably foreseeable and against which adequate preventive precaution could not reasonably be taken by an experienced service provider by the effective date.

xxxx. "Water Appeals Board" means the Appeals Body established by the Water Act, 2002.

yyyy. "Water Meter" or "Meter" means an apparatus installed for the purpose of measuring the quantity of water or sewage flow through an identified pipe.

zzz. "Water Resources Management Authority" (WRMA) means the Authority established by the Water Act, 2002

aaaa. "Water Service" means any service of or incidental to the supply of water or provision of sewerage

In this SPA, except where the context requires otherwise:

- a) Words indicating one gender includes all genders;
- b) Words denoting the singular only shall include the plural and vice versa.
- c) Unless the context otherwise requires, reference to any clause or schedule is to a clause or schedule of or to this Agreement.
- d) The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
- e) Provisions including the word "agree", "agreed" or "Agreement" require the same to be decided upon by both parties and to be recorded in writing at the 'Special Conditions' to this SPA;
- f) "written" or "in writing" means hand-written, type-written, printed or electronically made and resulting in a permanent record.



**Water Services Regulatory Board** – Service Provision Agreement for Category III

# AGREEMENT

THIS AGREEMENT is made on the ..... day of ..... 20.....  
....year

BETWEEN

1. \_\_\_\_\_ WATER SERVICES BOARD, ("the Licensee") a State Corporation established through Legal Notice Number \_\_\_\_\_ of \_\_\_\_\_ by the Minister in charge of water affairs, in the exercise of the powers conferred on the Minister by section 51 of the Water Act , 2002 of the Laws of Kenya, of P.O. Box ..... of the other part,

AND

2. ----- ("the Service Provider") a corporate entity established under the Societies Act, Cap. ----- of the Laws of Kenya and of P.O. Box .....of other part,

WHEREAS:

1. Under the Relevant provisions of the Water Act 2002, the Licensee is licensed by the Wa-ter Services Regulatory Board with effect from \_\_\_\_\_, for a period of ten(10) years to be responsible for the efficient and economical provision of Water Services within its area of jurisdiction.
2. The Licensee's area of jurisdiction covers the geographical area within which the Provider community resides and where it has been providing and continues to provide Water Ser-vices.
3. The Licensee is required by Sections 53 and 55 of the said Act to enter into arrangements with the Service Provider for the exercise and performance of all or any of its powers and functions under the Licence and particularly in relation to the provision of Water Ser-vices.
4. The Licensee and the Service Provider are subject to regulation by the Regulatory Board.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The Licensee hereby engages the Service Provider and the Service Provider accepts the engagement to provide Water Services within the Service Provider's defi ned area subject to the conditions, covenants and terms stipulated herein
2. During the subsistence of this Agreement the powers, duties and functions of the Licens-ee in the Service Provider's defi ned area shall be exercised and performed by the Service Provider and the Licensee shall retain the powers to perform the functions and discharge responsibilities stipulated in the Act in areas where the Service Provider has not extended  
ts services
3. This Agreement provides for a temporary transfer of operations, functions and possession of the fi xed assets used by the Licensee or which the

Licensee has otherwise been able to obtain the use of, to the Service Provider and all such assets shall be conveyed back to the Licensee on the expiry of this Agreement. The temporary transfer of the Assets shall be governed by the provisions of the Agreement and the Deed of Surrender duly signed by the Licensee and the Service Provide, Schedule G.





4. The Service Provider is to use, improve, upgrade, purchase and add new items to the fixed assets of the Licensee during the subsistence of this Agreement and such new assets purchased and added shall be deemed to be vested and remain with the Licensee during and after the subsistence of this Agreement.

## General Conditions of the Service Provision Agreement (SPA)

### **Clause 2** Representations

#### **2.1** The Service Provider represents and warrants that;

- a) It is a legal entity duly registered/incorporated under the Laws of Kenya and has all requisite legal power and authority to enter into this Agreement and such other Agreements, being Agreements to which the Service Provider will be a party, as are contemplated elsewhere in the Agreement and in the appendices hereto and to carry out the terms, conditions and provisions thereof.
- b) There is no litigation, actual or pending at the date of execution of this Agreement, which relates to the Service Provider and to which the Service Provider is a party or of which the Service Provider is aware which would materially affect the Service Provider or its ability to perform its Obligations under this Agreement and the transactions contemplated hereby.

#### **2.2** The Licensee represents and warrants that;

- a) The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not and will not infringe and are not and will not be contrary to any laws or regulations of any Governmental, administrative or regulatory body
- b) It will provide to the Service Provider all necessary access to, and exclusive use of, the assets, free of any additional charge other than the financial provisions specifically provided in this Agreement and without responsibility for any debt charges on such assets other than as provided for in the provisions of this Agreement and without interruption from any other person provided that the Licensee as well as the Regulatory Board has the right at all reasonable times, in all reasonable places, and subject to the operational needs of the provision of the service to visit, inspect and conduct tests on all documents and areas of WSS provision and the Service Provider shall make reasonable provision to assist the Licensee and the Regulatory Board in such events
- c) Subject to the provisions relating to Termination of this Agreement, the Licensee will not, for the whole period of this Agreement, retain, use or employ another contractor or Service Provider, or employ any other person or body to perform the services within the Service Provider's area unless such alternative provision is caused or made necessary by any failure by the

Service Provider to perform its Obligations under this Agreement or f it is deemed necessary by the Licensee to employ other contractors to carry out capital works and in which case the practical consequences will be agreed upon by the parties.



- d) However, subject to the provisions of the Act, there are at present in existence private wells and boreholes which supply water and these shall be allowed to continue unless and until the Service Provider is in a position to supply an equivalent amount and quality of water. In the event of the Service Provider meeting such supply, the arrangements for the substitution of the Service Provider's supply for the previous private supply, including issues of compensation, shall be agreed between the Licensee, the Service Provider and the person who had the previous supply subject to approval by the Regulatory Board.

## 2.3 Parties' Representatives

The Service Provider's Representative shall be the person so named in the SPA Data Sheet. The Service Provider shall appoint its Representative and shall give the Representative all authority necessary to act on the Service Provider's behalf under the SPA.

The Licensee's Representative shall also be the person so named in the SPA Data Sheet. Likewise, the Licensee shall appoint its Representative and shall give the Representative all authority necessary to act on its behalf under the SPA.

Either party may change its representative from time to time and shall give notice of the change to the other party at least seven (7) days before it comes into effect.

## Clause 3 Conditions Precedent and Documents

### 3.1 Regulatory Conditions

- a) The Regulatory Board shall approve this Agreement after the Licensee and the Service Provider have met all the conditions herein and any other conditions applicable as per the Regulatory Board Guidelines.
- b) The Licensee shall have the exclusive use of the water supply and sanitation facilities in the Service Provider's area apart from the facilities used in the provision of services other than water services as specified in Schedule C.
- c) The Government and the Licensee shall execute Development Agreements with Development Partners and grant Agreements relating to the funding of Projects.
- d) A Deed of Surrender in relation to the assets shall be executed by the parties unless stated differently in the Particular Condition as specified in Schedule C.
- e) If applicable the Licensee and the related Local Authority shall establish an Agreement relating to the transfer of assets and staff.
- f) The Service Provider shall obtain appropriate insurance covers for all the anticipated risks to the assets and staff with an insurance company of repute

to be effective from the Commencement Date, such insurance cover shall first be approved by the Licensee.

- g) The Service Provider shall provide a satisfactory time schedule in which to achieve the set Minimum Service Level Requirements.
- h) Subject to its water requirements, the Provider shall obtain a valid Extraction Permit giving it abstraction rights commensurate with its water requirements from the Water Resources Management Authority.



### 3.2 Operational Conditions

These precedent conditions shall be satisfied within six (6) month of the Effective Date.

In the event that these cannot be achieved the Parties will proceed as follows:

- a) The parties shall meet and attempt an Agreement on such extension as shall be fair and reasonable in the circumstances to allow such conditions to be satisfied.
- b) In the event that no such Agreement can be reached the parties shall call upon a mediator to mediate.
- c) Thereafter, if no Agreement will be reached, the Parties should proceed to the Water Appeal Board.
- d) The decision of the Water Appeal Board shall be final.

### 3.3 Regulatory Board Guidelines and Recommendations

- a) The guidelines and standards of the Regulatory Board will be based on the provisions of the Water Act 2002 and shall be binding to the parties and therefore this SPA shall be interpreted in such a way as to be consistent with such guidelines. If the SPA is inconsistent with the guidelines and standards, it shall be amended by the Licensee and the Service Provider so as to make it consistent. If the parties fail to reach an Agreement on how to amend the SPA, the parties shall seek a resolution by following the Dispute Resolution Process
- b) Any amendments to this SPA based on new changes or amendments to the Regulatory Board's Guidelines and Standards shall also be first approved by the Regulatory Board before they are implemented.

### 3.4 Notices and Communications

- a) Wherever these conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, by either party to this Agreement, these communications shall be in writing and delivered to the providers address by hand against receipt, sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the SPA Data Sheet.
- b) Except as otherwise specified herein, any notice or communication between the parties shall be in English. Any communication between the Service Provider and the general public shall either be in English or in Swahili.

## **Clause 4** Obligations, Rights and Performance Targets

### 4.1 Service Providers Obligations:

- a) To supply potable water and provide for the effective and sanitary removal of waste water in accordance with the Relevant standards and guidelines
- b) To ensure that it possesses and retains all the necessary expertise necessary to fulfil the technical, commercial, financial and administrative functions and to provide the services

within the Service Provider's Defined Service Area as specified in Schedule B and to meet all the required standards, guidelines and provision of the SPA.

- c) To obtain all necessary licenses, permits and warranties necessary to carry out its Obligations in accordance with statutes in force.
- d) To maintain the assets in good working order and not to dispose of any assets without the authorization of the Licensee.
- e) To fulfill the performance targets set in Schedule E and achieve them within a time frame agreed upon with the Licensee and attached to this SPA.
- f) To come up with proposals for improvement of the assets so as to enhance service delivery
- g) To ensure that all its employees who have contact with the public have identification documents, to be produced when required and to retain such identification documents when the services of the employees are terminated.
- h) To ensure that all qualified and certified personnel are employed for tasks of potential risk to health or to the safety of the persons. The Service Provider shall make arrangements to enhance the skills and competencies of its officers.
- ) To ensure that all restricted operations personnel are subjected to medical examinations at intervals of not more than three (3) years or as may be required in the circumstances of outbreaks of water borne disease or infections. The Service Provider shall take all practical steps to ensure the confidentiality of any medical report which it receives.
- j) Not to dispose of any assets except in accordance with this SPA
- k) To provide all necessary and adequate working capital and other financing at all times during the period of this Agreement to enable it to fulfill all its Obligations and, in particular, to provide the services in the Service Provider's Area.
- ) To provide, maintain and routinely upgrade any software or systems required.
- m) To obtain appropriate insurance coverage for the Agreement period with an insurance company of repute against claim, losses, damages to assets, accidents, injury or death which shall be forwarded in copy to the Licensee.
- n) To comply with the provisions of any environmental legislation and other applicable Laws of Kenya.

#### 4.2 Service Provider's Rights

- a) To carry out the above Obligations such as rights of disconnection of services to proper-ties for non-payment for Water and Services
- b) To enter into premises and properties within the Service Area

- c) Prior to the Commencement Date, to access the Service Provider's Area as it requires to make arrangements for the commencement of its Obligations on the Commencement Date.
- d) To abstract water and control discharges to sewers and make permitted discharges to watercourses





- e) To manage, use and operate assets.
- f) To take legal action for breach of Obligations by Customers and others causing damage or adversely affecting the services.
- g) To maintain, exercise all statutory powers within the area, in relation to works, assets, pipe work and appurtenances of the water supply and sewerage systems, to have access to land, property and water sources of supply within the Service Provider's area subject to rules of public security.
- h) Following due notice and approval of the Licensee, to contract out services including management, administration, repair and maintenance to independent contractors but to at all times shall remain responsible to the Licensee for the provision of water services of the standard herein stipulated.

#### 4.3 Licensee's Obligations

- a) To make all reasonable efforts to assist the Service Provider to gain access to assets or to land on which it is required to exercise its duties. If access cannot be obtained even with the assistance of the Licensee, and there is no fault or negligence on the part of the Service Provider, the Service Provider shall not be considered to be in default of its Obligations under this Agreement.
- b) To finance and implement Capital Works.
- c) To arrange for the carrying out of surveys and review draft strategic business and the annual investment plans
- d) To consult with Customers on improvement of service quality and other issues touching on Customer care.
- e) To prepare studies of demand forecast and expansion of the water supply systems in consultation with WSP
- f) To carry out an Environmental Impact Assessment whenever is appropriate or compulsory according to legislation
- g) To obtain and keep in force all licences, permits and warranties outside the responsibility of the Service Provider.
- h) To give the Service Provider full access to all necessary information, plans, policies, papers, reports and data in order to enable the Service Provider to carry out the services and assist the Service Provider to obtain, from the Government, local government or statutory bodies, all necessary consents and permits as required by Law.
- ) To monitor the performance of the Service Provider in line with performance targets for the sector issued through regulation

#### 4.4 Service Area

The Service Area is that area described in Schedule B as such. All alterations to the Service Area shall be made according to the provisions of this Agreement and with prior approval by the Regulatory Board.



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#### 4.5 Performance Targets, Penalties and Incentives

- a) Penalties and Incentives given by the Licensee to the Service Provider have to be approved by the Regulatory Board. Categories of all penalties or incentives will be indicated and will form part of the Agreement as the Special Conditions.
- b) The Regulatory Board has to be informed at least four (4) weeks prior to the payment of any intended penalty or incentive the justification for which such payment must be given.
- c) The Performance Targets for the Service Provider are set out in the Schedules to this Agreement and in the sector guidelines. The Service Provider shall monitor its performance against the Performance Targets and report as stated in the SPA and the Relevant guidelines.
- d) The Performance Penalties for the Service Provider will be those set out in the Special Conditions to this Agreement. If the Service Provider's performance falls below the Performance Targets and there is a Penalty for such underperformance, then the Provider will pay a penalty to the Licensee provided in the Special Conditions.
- e) If Performance Incentives have been agreed upon in the Special Conditions. The Service Provider shall be paid that Performance Incentive out of the Revenue Account as per the Special Conditions. The total amount of Performance Incentives which can be paid to the Service Provider for performance in any year shall have an agreed ceiling.

### Clause 5 Effective Date and Renewal/Extension

#### 5.1 Effective Date

The SPA will become effective on the date it is approved of by the Regulatory Board.

#### 5.2 Surrender of Assets

On the Effective Date the parties herein shall execute the Deed of Surrender and the Licensee will surrender (in accordance with schedule G) and the Licensee will surrender the assets listed in schedule and the Service Provider will accept such assets. For the avoidance of doubt, or "Surrender" in this context, means the right to use and the duty to maintain such assets. The Licensee gives no warranty as to the completeness of the list of assets in the schedule nor as to the conditions or operational capacity of the items listed therein. Within Six (6) months after the Effective Date, the parties shall establish the Agreed Physical Asset Register and if not agreed upon, the Parties shall seek mediation over the issue. If the parties are not satisfied with the decision of the mediator, the parties shall refer the matter to the Water Appeals Board, the decision thereof will be final and binding. On Termination of this Agreement, the Service Provider shall return the assets to the Licensee or

if the Licensee so elects, to a successor Service Provider. The Surrender may include Agreements as to existing liabilities.



### 5.3 Duration

Unless earlier terminated, this SPA shall remain in effect until the Expiration Date, which shall be the number of years from the Effective Date specified in the SPA Data Sheet.

### 5.4 Renewal/Extension

This SPA may be renewed or modified with the consent of both parties, subject to their written confirmation of their intention to renew this SPA at least six (6) months prior to the Expiration Date. The parties herein understand that any renewal or extension shall be subject to the approval of the Regulatory Board and shall not exceed the duration of the original contract. Further, any extension can only be granted by the Licensee during the last six (6) months prior to the Expiration Date of this Agreement.

## Clause 6 Scope of Services

### 6.1 Service Area

The Service Provider's Service Area is that area described as such in the Schedule B of this SPA. All alterations to the Service Area shall be made according to the provisions of this SPA and the sector guidelines and with the prior approval by the Regulatory Board.

### 6.2 Services

The Service Provider shall provide the following Services:

1. Supply potable quality water as required by the Relevant standards and guidelines to meet the needs of Customers in the service area and in accordance with its Business Plan and the special provisions set out in this SPA.
2. Sanitation services including removal of sewage from households, businesses and other establishments, treatment of the wastewater and disposal of the effluent and sludge in accordance with standards and guidelines and consistent with the requirements of this SPA.
3. Maintain and improve the operating condition of all the facilities as defined in this SPA, excluding Delegated Works which shall be carried out by the licensee unless otherwise stated
4. Services other than Water Services and as specified in Schedule C as being the Service Provider's responsibility to provide.

### 6.3 Raw and/or Bulk Water Supply

The Service Provider shall make arrangements for adequate raw or bulk water supply to meet the Service Obligations and will be responsible for obtaining all required licenses or permits and for paying all required abstraction and water use fees.



## Clause 7 Tariffs, Remuneration and Financial Arrangements

### 7.1 Customer Tariffs

- a) Tariffs charged to the Customers must be approved by the Regulatory Board. At the commencement of the SPA the present tariff level and structure will be approved by the Regulatory Board on approval of the SPA. The subsequent applications for tariff adjustments shall follow the Relevant sector guideline. Tariffs shall be sufficient to cover the reasonable cost of providing the Services, maintaining the Facilities and to meet any other costs specified in this SPA such as providing new facilities, debt servicing on outstanding loans, asset renewal and development
- b) All tariffs must at all times be made public by the Service Provider in the pay stations, all offices where Customers have access to and in standpipes or water kiosks.
- c) The Service Provider shall commence to charge the Tariffs as per its Business Plan appended to this Agreement
- d) If this SPA provides for automatic tariff adjustments and the Regulatory Board has agreed to the implementation of each adjustment, the same shall be carried out by giving notice to the Licensee and the public at least four (4) weeks in advance to the implementation.
- e) The Service Provider or the Licensee may request a tariff review in order to adjust the tariffs and/or the remuneration of one or both parties. Such a tariff adjustment proposal shall be established in cooperation by both parties justifying the request with all the necessary documentation and estimations. The request shall be presented according to the requirements of the Relevant guidelines of the Regulatory Board and forwarded to it for approval. The Regulatory Board may approve the tariff application and issue a "Notice of Tariff Correction."
- f) In the event that third parties receive payment generated from the application of the approved tariffs, except the levy for the Regulatory Board, the tariff adjustment proposal shall include such payments as well as the documentation of their use. The third party shall be informed that for such payments, a justification and documentation is compulsory under the Regulatory Board's Guidelines..
- g) If one of the parties under this Agreement does not agree to the adjustment proposal or is not responding to the request of the other party within Three (3) months, it may declare a dispute in writing at least Fourteen (14) days before resorting to the Dispute Resolution Procedure. The parties may also decide to refer the matter to the Regulatory Board for determination before declaring it as a dispute.
- h) The Customer Tariffs are composed of the Service Provider's Income, the Licensee's Remuneration and the Regulatory Levy. The composition has also to take into consideration the Special Provision under this SPA. Any other payments to third parties must be specified and shall only be considered

justified if the third party uses these funds for Water and Sanitation Service provision including operation and asset improvement.

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## 7.2 Service Providers Income

The Service Provider income will be the amount the Service Provider may keep from the income through billing based on the approved tariffs in order to meet its Obligations for the service provisions. In the tariff adjustment proposals the provider has to justify the level of remuneration with its costs and performance in accordance to the Relevant sector guidelines. No adjustments shall be carried out without the approval of the WSRB. The Provider shall use the Provider Revenue solely for the purposes of providing the Services under this SPA.

## 7.3 Licensee's Remuneration

- a) The Licensee Remuneration is the amount the Licensee may keep to cover its operational costs and the costs associated with the facilities, agreed between the parties.
- b) In the tariff adjustment proposals the Licensee shall justify the level of remuneration with its costs and performance in accordance with the Relevant sector guidelines.
- c) No adjustments shall be carried out without the approval of the Regulatory Board.
- d) Within the first 12 months of the commencement of this SPA, the Licensee and the Service Provider shall submit a justified remuneration proposal for the Licensee and the Service Provider to the Regulatory Board following the Relevant guidelines.
- e) The Licensee shall use the Licensee Revenue solely for the purposes of providing the Services under the License.
- f) The level of the Licensees remuneration shall depend on the investments provided and therefore has to be justified in detail. For the first year after the commencement date of this SPA the Licensee and the Service Provider may agree on an estimated percentage for the Licensee Remuneration. Within the first 24 months of the commencement the Licensee and the Service Provider have to submit a detailed and justified remuneration proposal for the Licensee and the Service Provider to the Regulatory following the Relevant guidelines.

## 7.4 Adjustments to Licensee and Service Provider's Remuneration

- a) The Licensee's and Service Provider's remunerations are part of tariff levels and tariff structure. Therefore, all such adjustments need the prior approval of the Regulatory Board.
- b) If the adjustment is planned to be carried out according to an indexation formula and such formula is part of the approved SPA the parties can adjust the remuneration on an annual basis by informing the Regulatory Board in writing at least Four (4) weeks in advance.

- c) If no indexation is planned or given, the adjustments of the remunerations shall be based on the updated Business Plan of the Service Provider and the updated Investment/Capital Works Plan of the Licensee and need to be approved by the Regulatory Board. The parties shall jointly submit a Remuneration Adjustment Proposal according to the Relevant guidelines which shall be treated like a tariff adjustment proposal.

## 7.5 Subsidies

Subsidies shall be indicated in Schedule C and at all tariff adjustment proposals. Subsidies received during the SPA period must be notified by the Service Provider to the Licensee and the Regulatory Board and may initiate a tariff review if the Regulatory Board decides so. In the event that the Service Provider does not notify the Licensee and the Regulatory Board of the receipt of subsidies the Regulatory Board may decide on appropriate action such as compensation to the consumers or Termination of this SPA.

## 7.6 Financial Arrangements

- a) The Service Provider will bill the Customers in accordance with the tariff approved by the Regulatory Board and in accordance with the services delivered and will collect payment from the Customers.
- b) Payment collected will be deposited immediately in the Revenue Account and the Regulatory Levy for water services provision will first be transferred to the Regulatory Board. Thereafter, the Service Provider will receive its Income and the Licensee will be paid the Licensee Remuneration out of the Revenue Account.
- c) The Licensee and the Service Provider shall be paid monthly according to this SPA. The Regulatory Levy shall be paid monthly and calculated on the amount billed. A reserve percentage as specified in the SPA Data Sheet shall be held in the Revenue Account until the Tariff payment reconciliation is done.
- d) The Licensee Remuneration and the Service Provider's Income shall be reconciled with the Revenue Account payments on a quarterly basis no more than ten (10) days after the end of each quarter.
- e) The Provider shall submit to the Licensee a summary of:
  - i. The total volume of water billed and collected, with a breakdown by Customer category
  - ii. A calculation of the total Provider Remuneration and Licensee Remuneration during the quarter
  - iii. A calculation of any applicable penalties or incentives payments;
  - iv. A summary of the total payments made from the Tariff Account to the Licensee and to the Provider during the applicable quarter
  - v. A balance of payments due to the Provider and Licensee from the Revenue Account for the applicable quarter
- f) No more than five (5) days after receiving the quarterly reconciliation, the Licensee shall notify the Service Provider in writing of any corrections or clarifications required or its acceptance of the quarterly reconciliation.
- g) Subject to the Licensee's approval, the Service Provider will make the payment from the Tariff Account.

- h) The last quarter reconciliation shall include any annual performance incentive payments unless otherwise agreed upon between the parties.



- ) In the event that there are insufficient funds in the Revenue Account to pay all these charges, the Service Provider Income and the Licensee's Remuneration shall be reduced for each party by the same proportion after the Regulatory Levy has been deducted and transferred to the Regulatory Board.
- j) In the event that there are excess funds left in the Revenue Account after payment of all the three charges these funds shall be applied as follows:
  - i. First, to clear any outstanding arrears owed to the Service Provider or the Licensee as a result of any previous insufficiencies of funds, with the reduction in arrears of each party being proportionate to the total arrears owed to that party
  - ii. Second, to divide between the parties in proportion to their respective remunerations in the year in which the excess funds were generated.

## 7.7 Revenue Account

A Revenue Account shall be a bank account set up to receive funds collected from Customers. The bank at which the Revenue Account is held shall be selected by the Service Provider from among reputable and credit-worthy commercial banks operating in Kenya.

- a) The Service Provider will deposit all funds collected in the Revenue Account. The only payments out of the Revenue Account shall be the Regulatory Levy which shall be paid monthly, the Service Provider's Income and the Licensee Remuneration both of which shall be paid monthly. Payments to other parties should first be approved by the Regulatory Board.
- b) The Parties will jointly select one or two Administrators for the Revenue Account whose signature will be required to authorize any payment made out of the Revenue Account, and who will be responsible for ensuring that payments are made in accordance with this SPA and sector regulation. The Revenue Account Administrator(s) shall be available in such a way that no interruption of services occur due to any untimely withdrawal of funds from the account.
- c) The Service Provider will ensure that both parties and the Revenue Account Administrator will be entitled to receive statements of deposits, withdrawals, and the balance of the Revenue Account, from the bank at which the Revenue Account is held, at any time on a day the bank is open, on reasonable notice.
- d) If the provider generates any surpluses (revenues minus payments and costs) their shall be placed in a Contingency Fund.

The Service Provider is obliged to pay the Regulatory Levy approved by the Regulatory Board and issued by the Minister in charge of Water Affairs to the Licensee and the Licensee shall forward this payment to the Regulatory Board according to the conditions of the License.



## Clause 9 Asset Maintenance, Management and Development

### 9.1 Asset Maintenance and Management

- a) The Service Provider shall at its own cost maintain the Assets in serviceable condition according to good utility practice.. The maintenance shall include routine and preventative maintenance including maintaining all operating and non-operating assets required to provide the services and monitoring the proper functioning of all facilities including small equipment which would routinely be replaced in the usual course of sound water and sewerage engineering practices
- b) The restrictions to the Service Provider's responsibilities for major repairs and replacements shall not apply when it can be shown that the major repairs are necessary due to the failure of the Service Provider to fulfil its Obligations of maintenance or repair of those Relevant assets, provided the Licensee and the Regulatory Board are reasonably satisfied.
- c) Where the Agreement defines the operations of an already functional Service Provider, a Detailed Asset Register of existing assets, including a full inventory and value shall be attached to this SPA.
- d) Where the Agreement applies to a newly set-up Service Provider or the value of assets is not available, the Service Provider shall, within a period of six (6) months, prepare and submit an inventory and value of the Assets which it will use in the provision of water services.
- e) All significant changes in the value of assets shall be recorded in the inventory of assets according to the rules and regulation of the Regulatory Board.
- f) The Service Provider shall implement appropriate asset management techniques, establish an asset management plan and indicate all replacement, rehabilitation and maintenance works carried out.
- g) The Service Provider will develop an Asset Management Plan and Procedures for Maintenance Services to provide for the efficient routine and preventative maintenance of the Facilities in accordance with good utility practice and in accordance to requirements of the Licensee or sector guidelines. The Asset Management Plan shall be updated and provided to the Licensee annually.
- h) The Service Provider shall within the Asset Management Plan propose Rehabilitation and Renewals which should be carried out to the Facilities.
- ) The software, source data and similar intellectual property required to understand and review the Asset Management Plan shall be transferred to the Licensee without charge at the Termination or expiration of this SPA.
- j) In the event that the Service Provider fails to maintain or repair the works necessary for the provision of services and where the Licensee considers it appropriate for reasons of public safety or for efficient delivery of

services, the Licensee may undertake, at the Service Provider's expenses, any works required to remedy the situation, subject to giving of a ten (10) days notice to the Service Provider.





- k) Except in an emergency, the Service Provider shall give notice as appropriate to a Customer before entry into its premises to undertake maintenance or repairs up to a Customer meter or a stop tap. If none of these are installed within the Customer's property, maintenance and repairs will be up to the boundary. A Customer will be responsible for maintenance and repairs after the boundary or meter/stop tap.
- ) In case of a major breakdown during emergencies the Service Provider shall carry out repairs speedily to minimize the inconveniences to Customers. Where the Service Provider is not responsible for the cost of the works it undertakes, such costs shall be reimbursed by the Licensee. The Service Provider will furnish the Licensee with a detailed breakdown of the costs incurred in carrying out the works. If the costs are not agreed upon by both parties may refer the matter to the Regulatory Board.

## 9.2 Asset Development

- a) The Licensee shall be responsible for Rehabilitation, Renewal and Extension to the Facilities, the cost of which shall be for the Licensee's Account. This responsibility of rehabilitation by the Licensee shall not apply to Opening Facilities that were in proper working order at the Effective Date and have since failed due to improper maintenance by the Service Provider.

- b) Service Needs Plan

The Service Provider will prepare a Service Needs Plan within one year of the Commencement Date and shall update the Service Needs Plan at intervals of every three (3) years.. This will include:

- i. Description, by service and area, of current demand and supply
- ii. Ten (10) year projection, by service and area, of growth in demand and supply;
- iii. Projection of the Service Shortfall if the Facilities are not rehabilitated, renewed, or extended, by year, area and service, for the next ten (10) years;
- iv. Set of indicative options for Asset Development Plan could remove the service shortfall by ensuring demand in the area is met for the next ten (10) years;
- v. Recommended set of Asset Developments Plan which would efficiently and effectively meet demand;

- c) Capital Works Plan

The Provider shall propose an annual updated five (5) year Capital Works Plan according to the requirements of the Licensee and the Regulatory Board. The plan will also include a projection of the service shortfall if the

facilities are not rehabilitated, renewed, or ex-tended. The proposed Capital Works Plan shall take into account the availability of fi nanc-ng.

The Licensee will review the Proposed Service Needs Plan and the Capital Works Plan, and taking into account the fi nances available and the other infrastructure needs of the region for which the Licensee is responsible and in consultation with the Service Provider,



develop an Agreed Capital Works Plan, which will be made available to the Regulatory Board.

The Licensee will be responsible for implementing the Capital Works Plan. The Service Provider will cooperate fully with the Licensee in implementation of the Capital Works Plan, including by providing access to the facilities and such other property, records, drawings and similar matters as are needed to implement the Capital Works Plan efficiently.

The Licensee will provide the Service Provider with full and timely notification prior to starting any Capital Works and keep the Service Provider regularly informed as to progress and plans

The Service Provider may be relieved from complying with part of the Service Obligations to the extent that the implementation of the Capital Works plan temporarily prevents it from fulfilling its services Obligations.

d) Grants and Credits for Assets Development

The Service Provider may access any available grants or credits for infrastructure development in Agreement with the Licensee. The Provider has the Obligation to make any debt service and interest payments on loans taken by the Service Provider.

e) Procurement, Implementation and Commissioning of Works

Where an international or bilateral financial institution has provided finance to the Licensee either by way of loan or by grant aid, the Service Provider shall comply with any conditions reasonably imposed by the Licensee in respect of procurement, carrying out and commissioning of the works.

f) Appropriate Asset Development Management

Any extensions to the Assets funded by a Customer shall be implemented by the Service Provider. All proposals for extensions shall be submitted to the Licensee who shall have the right to accept, reject or modify them

### 9.3 Delegated Work

- a) The Licensee may delegate capital works to rehabilitate, renew and extend the facilities to the Service Provider, which are the responsibility of the Licensee. The Service Provider will manage the delegated works in accordance with good utility and construction practices and according to the required standards
- b) If in implementing the delegated works the Service Provider procures construction services and facilities, it will do so competitively, in accordance with applicable procurement guidelines laid out by the Licensee and in accordance with good utility practice.

- c) The costs of the works so procured and any Delegated Works Fee for the Service Pro-vider's costs in managing or implementing the works itself shall be from the Licensee's account. The Delegated Works Fee shall be agreed upon by the Parties and shall be in ine with industry standards for construction, supervision or implementation of the tasks

performed by the Service Provider. In the event that the Parties cannot agree of the fee, the same shall be referred for determination by the Regulatory Board. The Delegated Works Fee shall not form part of the Service Provider's Income, but shall be additional thereto and shall be paid by the Licensee to the Service Provider in accordance with an agreed schedule and subject to the satisfactory completion of the Delegated Works.

- d) If the Provider generates any surpluses (revenues minus payment and cost) they shall be placed in a Contingency Fund.

## **Clause 10** Customer Management

### **10.1** Customer Contract

The Service Provider shall enter into a Customer Contract with each Customer within six (6) month of signing this SPA. The Contract shall govern the rights and Obligations of the Service Provider and the Customer. The Customer Contracts shall be in accordance with Regulatory Board's guide-ines and/or the Module Customer Contract approved by the Regulatory Board. The Licensee shall ensure that the Service Provider shall comply will these requirements.

### **10.2** Metering of Consumption/Monitoring of UFW

- a) The Service Provider shall ensure that all new connections are metered, and that existing connections without meters are metered in accordance with the Asset Management Plan and Capital Works Plan. All meters installed shall comply with good utility standards and Regulatory Board's specifi cations on meters and shall be installed in such a manner as to be accessible to the meter readers.
- b) The Service Provider shall be responsible for maintenance and repair of all Customer meters. Any existing meters which are not functioning for any reason, during or after the Commencement Date shall be replaced by the Service Provider at its own cost.
- c) Where repair of Customer meters is required because of misuse, damage or tampering by the Customer, the Service Provider shall charge the Customer for the cost of the meter or its repair.
- d) The Service Provider shall grant the Customers the right to request for verifi cation of his meter at any time. If the meter is found to be faulty, the Service Provider shall replace it at no cost to the Customer. However, if the meter is not found to be faulty, the Service Provider shall charge the Customer the reasonable cost of testing the meter.
- e) The provider shall install and maintain suffi cient bulk meters in order to monitor water osses and UFW.

### **10.3** New Connections

The Service Provider shall install new connections to potential Customers who can manage the payment of a monthly bill according to consumption within the Service Area. New connections shall be installed in accordance with good utility and industry standards. Customers will be re-quired to meet the entire cost of new connections less any subsidies, if provided. The Service

Provider or the Licensee may avail the subsidies by establishing a New Connections Fund which shall pay a percentage of the costs of the new connections for eligible domestic Customers

#### 10.4 Illegal Connections

The Service Provider shall take reasonable steps to reduce illegal connections. The Service Provider shall prepare a draft Connection Regularization Plan within one year of the Effective Date and shall submit it to the Licensee for approval. The Licensee shall either approve the Connection Regularization Plan or require changes made to it to ensure that it is in line with good utility practice. After approval, the Service Provider shall implement the Connection Regularization Plan. The parties shall comply with any additional provisions related to unregistered connections contained in the Schedules.

#### 10.5 Stand Pipes and Water Kiosks

- a) In the event that funds for a large extension of the network or upgrading of facilities is not feasible, the Service Provider is obliged to offer stand pipes and water kiosks in order to ensure a high coverage rate and a high level of access of the water services especially to the poor who cannot afford a household connection and a monthly bill. Such installations shall be designed and carried out according to the recommendation or guidelines of the Regulatory. The design of such installations must allow for public notices and must be commercially viable and sustainable.
- b) The construction of new standpipes and water kiosks is an element of the Capital Works.
- c) The Service Provider is responsible for the management of such installations in order to ensure the sustainability of such installations and that the service levels set by the sector guidelines are met. The Service Provider shall always remain responsible in all cases where Obligations are sub-contracted.

#### 10.6 Customer Satisfaction

The Licensee shall carry out an independent Customer satisfaction survey at intervals of every two (2) years. The survey shall be consistent with Regulatory Board's recommendations or guidelines. In the event that the Customer satisfaction survey shows that Customers are not reasonably satisfied, the Service Provider will agree with the Licensee on the actions to be taken to improve Customer satisfaction. Each party will then be obliged to take those actions. The outcome of the surveys as well as the actions to be taken shall be communicated to the Regulatory Board.

#### 10.7 Customer Complaints and Compensation

- a) The Service Provider shall ensure that Customers and potential Customers throughout its Service Area have easy access to information from the Service

Provider and are able to lodge complaints with it. The Service Provider shall record all complaints from Customers and potential Customers by area, service and type of complaint and shall report to the Licensee on an annual basis on the complaints received. The Service Provider shall promptly and accurately respond to requests for information and complaints from Customers





according to the Minimum Service Level Guidelines. The Service Provider will make every reasonable effort to resolve complaints from Customer and Potential Customers within its Service Area.

- b) The Regulatory Board may take a decision that the Service Provider should pay a compensation to Customers for its failure to provide the Services or for otherwise failing to comply with the provisions of this SPA. The Service Provider shall accordingly pay the compensation to the Customers as instructed by the Regulatory Board. The failure of the Service Provider should however not extend to those caused by or resulting from unavailability of the Facilities or through other fault of the Licensee.

## 10.8 Customer Disputes

- a) Where a Customer or potential Customer has a dispute with the Service Provider which the Customer or potential Customer has attempted to resolve with the Service Provider and the dispute has not been resolved after thirty (30) days of it being referred to the Service Provider, then either of the parties to the dispute may refer it to the Licensee for resolution
- b) The Licensee shall develop procedures and shall nominate staff for resolving such disputes in accordance with Regulatory Board guidelines and shall inform the Service Provider of the staff and procedures within three (3) months of the signing of this SPA. The Licensee will act as an investigator and mediator towards resolving the dispute between the parties and may order the party found at fault to compensate the other for the losses caused
- c) Decisions made by the Licensee will be binding on both the Service Provider and the other party to the dispute, unless an appeal is lodged with the Water Appeals Board. The decision of the Water Appeal Board on the appeal will be final and binding on the parties.

## 10.9 Customer information

The Service Provider shall display information Relevant to the public such as tariffs and Customer survey results according to the sector guidelines.

# Clause 11 Planning

## 11.1 Business Plan

- a) The Service Provider shall prepare a five-year Draft Business Plan not later than one (1) month prior to the end of the first financial year, including, Operation & Maintenance Plan, Service Plan, Capital Works Plan and proposed tariffs. This will be updated annually and availed to the Licensee. The Business Plan shall be prepared according to the

Relevant guideline issued by the Regulatory Board and shall also include progressively improved Performance Targets.



- b) In the annual updated Business Plan, the Service Provider shall submit an annual budget to the Licensee at least two (2) months before beginning of the new financial year. The Licensee shall review the Draft Business Plan and in consultation with the Service Provider, agree on the Final Business Plan which shall then become part of this SPA.

## 11.2 Minimum Service Level Agreement

The provider will submit a road map to achieve the minimum service level attached to this SPA (Schedule E) not later than 3 month after signing the SPA. This road map shall be signed and agreed upon by both parties and attached to the SPA. Comparison of planned and achieved progress will be part of the reporting requirements.

## Clause 12 Reporting, Record Keeping and Inspection

### 12.1 Annual reporting by Service Provider

The Service Provider shall prepare an Annual Report according to the reporting guidelines of the Regulatory Board. The Licensee may request additional information if it so requires. A copy of the Annual Report submitted to the Licensee shall also be simultaneously submitted to the Regulatory Board. The Annual Report shall be submitted to the Licensee within three 3 months of the end of the year to which it relates. A short summary of the Annual Report will also be made available by the Service Provider to the Public.

### 12.2 Financial Accounts

The financial accounts of the Service Provider must be submitted annually to an independent financial and technical audit at the Service Provider's cost. Copies of the audited results shall be forwarded to the Licensee and the Regulatory Board not later than six (6) months after the end of the financial year.

### 12.3 Record Keeping and Inspections

- a) The Service Provider shall keep records in accordance with good industry standards and sector regulations. The Service Provider shall use or create registers, books and records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of this Agreement, for providing information to the Licensee and for informing Customers and third parties about service quality and performance.
- b) The Service Provider shall establish and maintain suitable and complete accounting and non-accounting records that summarize technical,

commercial, financial and personnel information. All registers, books, records and other recorded information shall be in English.



- c) To ensure that the Service Provider delivers the Services, maintains the Facilities and otherwise complies with this SPA and with good industry standards and sector regulations, the Licensee shall monitor the Services, Facilities, Provider's operations and performance and the Regulatory Board shall from time to time inspect the compliance to the good industry standards and sector regulations
- d) The Service Provider shall cooperate with the Licensee and the Regulatory Board to allow effective monitoring and inspection. The Service Provider shall allow the Licensee and the Regulatory Board including its duly authorized officers, agents and auditors, free access to its records, documents, drawings and staff at any time for the purpose of verifying the accuracy of information provided by the Service Provider.
- e) The Service Provider shall respond to requests for information within two (2) weeks or within the time specified by the request. If the Service Provider fails to provide the necessary information and fails to ensure adequate record keeping or damages the records, the Service Provider shall be liable to compensate the Licensee for any losses suffered.
- f) The Licensee and the Regulatory Board shall have the right to conduct technical and financial audits at any time.

## **Clause 13** Default and Force Majeure

### **13.1** Notification of Default and Cure Plan

If a default occurs, the party not in default may, in addition to any other remedies it has, give the defaulting party a Default Notice by indicating that it requires the defaulting party to provide to it a written Cure Plan which specifies the reason the default occurred, how the defaulting party intends to remedy the default and the time that the defaulting party will require to remedy the default including additional information on such matters as the party not in default requires. A reasonable time shall be set by which the defaulting party must provide the Cure Plan. Both parties shall agree on the Cure Plan and if no Agreement can be reached, the parties shall refer the matter to the Regulatory Board for a resolution.

### **13.2** Failure to Cure

If the default has not been cured or remedied as agreed in the Cure Plan, or the defaulting party does not submit an acceptable Cure Plan or does not implement any cure plan diligently, the party not in default may, without prejudice to any of its other rights with respect to the default, terminate this SPA with the prior consent written of the Regulatory Board.

### **13.3** Damages

f the Service Provider fails to provide the Services or otherwise to comply with this SPA, then to the extent that the failure does not result from an unavailability of the Facilities or other fault of the Licensee, the Provider shall be liable to compensate the Licensee for losses suffered by the Licensee as a result of the Provider's failure.



### 13.4 Force Majeure

- a) Force Majeure means circumstances arising and completely outside of the control and beyond the contemplation of the parties to this SPA which renders its performance impossible and frees the parties hereto from respective Obligations under this SPA, these shall include but shall not be limited to:
  - i. Any act of war, declaration of hostilities or belligerence, blockade or revolution;
  - ii. Insurrection, public disorder or riot;
  - iii. Explosion, fire, earthquake, excessive and extraordinary floods and volcanic eruption
  - iv. Pollution of Raw Water where such pollution has not been caused by an act or omission of the party invoking such an event and where such pollution cannot be rectified by the exercise of sound water and sewerage engineering practices
  - v. With respect to the Service provider, any significant shortage of Raw water where such shortage is caused by circumstances outside of the reasonable control of the Service Provider; and
- b) The party encountering an event of Force Majeure shall as soon as it appears, give written notice to the other party of the occurrence of the event and also promptly inform the Regulatory Board. The said notice shall include information about the circumstances, known, the extent to which the affected party will be prevented from or impeded in carrying out any of its Obligations under this SPA and a statement of steps necessary to remedy such an occurrence.
- c) Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the SPA as a result of Force Majeure. This Agreement may be terminated in the event of a Force Majeure but only with the prior written approval of the Regulatory Board. The affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure

## Clause 14 Amendment of the Agreement

- a) The Parties acknowledge that SPA is based on imperfect information and agree to allow the information available to be improved. The Parties also acknowledge that the circumstances and objectives envisaged in this SPA may change during the duration of this SPA and agree to work together in good faith to amend the SPA whenever the need arises so as to better serve the interests of Customers and Potential Customers, but subject to approval of the Regulatory Board.
- b) The Service Provider will prepare and submit to the Licensee a Baseline Data Report comprising of Scheme and Performance Summary Sheets according to Schedule A.

- c) If the results of the reporting required by the reporting guidelines indicates the need for an amendment of the SPA, both parties shall inform the Regulatory Board and proceed to submit an amendment proposal to it for approval.





- d) Either Party may request an amendment in writing and the other party will be required to respond within Thirty (30) days. Any proposed amendments to this SPA must be agreed to between the Service Provider and the Licensee and will be subject to approval by the Regulatory Board before being implemented.
- e) If the Parties cannot agree on an amendment, but one Party nevertheless considers that an amendment is necessary, the matter may be referred to the Regulatory Board for de-termination as a dispute.
- f) If the Regulatory Board considers that out of public concern there is need to amend this SPA, it shall approve the amendment and inform the parties accordingly.

## **Clause 15** Dispute Resolution

- 1) If any dispute arises out of or in connection with this SPA, either Party shall give a written notice of fourteen (14) days to the other Party. The Parties shall meet promptly and in good faith attempt to reach an amicable settlement through mutual consultation and negotiation.
- 2) In the event that the Parties do not resolve a dispute within thirty (30) days of notice of the dispute being given, either Party may refer the dispute to an agreed mediator before submitting the dispute to the Water Appeals Board for determination. The party which has established the dispute will give written notice to the other party at least fourteen (14) days before referring the dispute to the Water Appeals Board.
- 3) The Decision of the Water Appeals Board over the dispute shall be final but in the event that the Water Appeals Board shall be considered to have erred in law, an appeal on its decision may be made to the High Court Appeal of Kenya.

## **Clause 16** Termination/Expiry of the SPA

### **16.1** Termination by Mutual Agreement

- a) This SPA may be terminated by mutual Agreement by either party giving to the other a three (3) months notice of the intention to terminate or not to renew the Agreement.
- b) The Regulatory Board shall receive a copy of such notice from the Licensee without delay and shall approve the premature Termination by mutual Agreement of the SPA.
- c) In the event that either party wishes not to renew this SPA at its expiry, prior notice shall be given at least three (3) months before expiry of this SPA.
- d) Following notice of the intention to terminate or not to renew the SPA, the parties shall enter into negotiations with a view to making

appropriate arrangements, including and where applicable financial compensation for the transfer of ownership of assets and so as to allow the Licensee to make alternative arrangements for the provision of water services within the area of supply of the Service Provider and thus ensure continuity of service.



## 16.2 Termination of this SPA for Cause

### 16.2.1 Termination by the Licensee

- 1) The Licensee shall be entitled to terminate the SPA for cause, by giving a Three (3) Months notice to the Service Provider, if the Service Provider:
  - a) Is in serious and sustained default on its Obligations under this SPA and does not show willingness to implement measures within an agreed timeframe to achieve compliance.
  - b) Plainly demonstrates the intention not to continue performance of its Obligations under the SPA.
  - c) Are not able to cope adequately with emergencies such as imminent or direct threat to public health or safety, droughts etc. or gives indication that he will not follow the directions of an emergency notice in accordance with the provisions of this SPA.
  - d) Becomes bankrupt or insolvent.
  - e) Goes into liquidation.
  - f) Has a receiving or administration order made against it.
  - g) Carries on business under a receiver, trustee or manager for the benefit of its creditors.
  - h) Engages in any corrupt or fraudulent practice
  - i) Fails to obtain an abstraction permit required to meet its water requirements from the Water Resources Management Authority.
  - j) If any event occurs outside of the control and beyond the contemplation of the parties to this Agreement which renders its performance impossible and frees the parties hereto from their respective Obligations under this Agreement
  - k) If any act is done or event occurs which has a similar effect to any of the Acts or events stated above.

The Licensee's decision to terminate the SPA shall not prejudice any other rights of the Licensee under the SPA or otherwise.

### 16.2.2 Termination by the Service Provider

- 2) The Service Provider shall be entitled to terminate this SPA for cause, by giving a Three (3) Months notice to the Licensee, if the Licensee
  - a) Substantially fails to perform its Obligations under the SPA in such manner as to materially and adversely affect the ability of the Service Provider to perform its Obligations under this SPA
  - b) Becomes bankrupt or insolvent.

c) Goes into liquidation.

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- d) Has a receiving or administration order made against it
- e) Carries on business under a receiver, trustee or manager for the benefit of its creditors.
- f) Engages in any corrupt or fraudulent practice
- g) If any act is done or event occurs which has a similar effect to any of the Acts or events stated above.

The Service Provider's decision to terminate the SPA shall not prejudice any other rights of the Service Provider under the SPA or otherwise.

### 16.3 Intended Termination

Any intended Termination of the Agreement shall take into account the need not to prejudice the ability of the Service Provider to discharge outstanding financial Obligations, if any, entered into by the Service Provider for purposes of enabling it to implement its commitments under the approved Business Plan

### 16.4 Termination of the SPA by passage of time

If on the Expiry Date, the Service Provider will not have made any attempts or indicated to the Licensee its intention to renew this Agreement, then the Agreement will automatically terminate.

### 16.5 Upon Termination or Expiry of this SPA

- a) Both parties shall ensure that each party is paid the remuneration due to it from the Revenue Account, to the extent that the funds in the Revenue Account are sufficient to do so, and that any shortfall is dealt with in accordance with the procedures provided in this SPA to the extent that they are applicable. Each party will be paid any funds due to it by the other party.
- b) In case of Termination for cause, the defaulting party shall not make any claim for lost or foregoing profits, revenue, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the Termination of this SPA.
- c) In the event of Termination due to prolonged Force Majeure, neither party shall make any claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expense or losses of any kind as a result of or in connection with the Termination of this SPA.
- d) The Service Provider shall seek to ensure the smooth continuation and provision of the services throughout the period from receipt of any notice of Termination of this Agreement till the expiry date of such notice, or during the last six (6) months of the period of the Agreement (if no such notice is served).
- e) On the expiry or on early Termination of this Agreement, the Service Provider shall use its best endeavours and acting in good faith and in accordance with

Good Industry and Management Practice, cooperate with the Licensee and its appointed representatives or



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any new Service Provider which the Licensee may appoint to take over responsibility from the Service Provider. The Service Provider shall seek to ensure the smooth continuation and provision of the services throughout the period from receipt of any notice of Termination of this Agreement till the expiry date of such notice, or during the last six (6) months of the period of the Agreement if no such notice is served.

#### 16.6 Surrender of Assets, Information and Documents on Termination of the SPA

- a) The Service Provider shall, on Termination of the Agreement immediately provide to the Licensee all Relevant information held or used by the Service Provider relating to the Assets including physical data, condition data and operational data and the listing of move-able assets, operating equipment and consumable items owned by the Service Provider that will be transferred to the Licensee, including the quantities, descriptions and prices if applicable.
- b) The Service Provider shall give to the Licensee all Relevant information regarding Customers including charging, billing and payment records and relating to intellectual property rights as well as ensure immediate access to and the use and management of the software and any proprietary software and systems that will be transferred by the Service Provider to the Licensee. The Service Provider shall return all Assets it is required to return to the Licensee as provided for under this SPA.
- c) If the assets are not in good working order on handing over, the Service Provider shall be liable to pay the Licensee the reinstatement costs in full. Best endeavors shall be made by the parties to minimize disruption to the operations and the performance of the services. The costs arising out of the handing-over activities shall be agreed upon by the parties; failure to which the parties should meet the same in equal proportions.
- d) Failure to effect smooth and effective transfer of all assets, information, documentation, software and hardware according to this article shall make the Service Provider liable to the Licensee for such fair sum as shall either be agreed upon between them or as shall be assessed under the provisions in regard to Dispute Resolution.
- e) Upon expiry or early Termination of this Agreement, the Licensee will have the right to acquire from the Service Provider, subject to compensation, any property, totally or partially funded by the Service Provider, which is not part of this SPA. The value of any equipment, intellectual property and supplies will be set by Agreement or by independent valuation. Any delay in the payment of the sums due will accrue interest calculated at the prevailing commercial bank rates.

#### 16.7 Transfer of Contracts, Agreements and Obligations on Termination of the SPA

- a) On Termination of this SPA, all Relevant contracts and Agreements and Obligations made by or with the Service Provider shall be directly assigned or

shall be deemed to be as-signed from the Service Provider to the Licensee so that the Licensee shall, from the date of such Termination, have all necessary rights and duties in relation to such matters which shall be vested in the Licensee and not in the Service Provider, provided that the





Service Provider shall remain liable for any outstanding debts or penalties incurred under this SPA.

- b) Using good industry practice and acting in good faith, the parties shall consult with each other, with the Relevant workers' representative organizations and where applicable with any new Service Provider taking over from the outgoing one so as to ensure that the transfer of personnel to the Licensee or to the new Service Provider is conducted in a fair and proper manner.

## **Clause 17** Emergency

### **17.1** Emergency Notice

Where a breach of the SPA by the Service Provider seriously threatens public health or safety, or the safety of the facilities, the Licensee may issue an emergency notice to the Service Provider and a copy thereof is given to the Regulatory Board without delay. The notice shall specify the breach, and the health or safety issues which led the Licensee to issue the notice. While an emergency notice is in place, the Service Provider shall comply fully with the directions of the Licensee, and shall ensure that its staff and sub-contractors also comply with the Licensee's directions.

### **17.2** Withdrawal of Notice

The Licensee shall withdraw the emergency notice once the threat to public health or safety, or the safety of the facilities is no longer serious and shall copy it to the Regulatory Board.

### **17.3** Cost of Services

The cost of providing the services and complying with any Licensee directions during the period that the emergency notice is in effect will be borne from the Guarantee provided by the Service Provider to the Licensee.

### **17.4** Emergency Termination

The Licensee shall have the right to terminate this SPA in an emergency within fourteen (14) days with the written approval of the Regulatory Board if the Service Provider does not comply with the Emergency Notice and if no immediate improvement can be foreseen.

## **Clause 18** Transparency

The Licensee shall make copies of the SPA and all amendments available to the Public upon request at no charge and by posting it on a suitable website. It shall also provide notices in the mass media within the service area



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## **Clause 19** Compliance with Laws

- 1) Each Party shall, in performing its tasks under the SPA comply with all applicable Laws of Kenya.
- 2) The Service Provider shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and provisions of the Services
- 3) Wherever public or Government funds or other fi nanciers' funds are provided, the related rules, regulations and statutory provisions will be adhered to for procurement purposes.

## **Clause 20** Separate Liabilities

This Agreement does not create joint liability of the parties and each party shall be separately li-able for its acts own of omission or commission. Each party shall indemnify the other against any osses incurred as a result of the actions of the other.

## **Clause 21** Insurance

- 1) Throughout the duration of this Agreement, the Service Provider shall be liable for any and all claims, losses, damages, and liabilities relating to the Assets, works and the services and its responsibilities under this Agreement, and shall keep the Licensee fully indemni-fi ed against any and all claims and other legal actions for damages arising there from; provided, however that nothing in this Agreement shall impose any liability upon the Ser-vice Provider in respect of any proceedings or claims arising from the acts of a third party, except if such acts arise, directly or indirectly from the Service Provider's negligence.
- 2) On an annual basis from the Commencement Date or on the anniversary of the Com-mencement Date, the Service Provider shall obtain appropriate insurance coverage for the following year with an insurance company of repute against:
  - a. Claims, losses, damages or destruction relating to the Assets, works and the Services and its responsibilities under the Agreement;
  - b. Accidents, injury or death occasioned to persons lawfully being provided services by the Service Provider;
  - c. All envisaged liabilities that may be occasioned to persons directly or indirectly employed by the Service Provider in the provision of the services by the Service Provider.

- 3) Before entering into any such insurance arrangements, the Service Provider shall submit all Relevant information to the Licensee for its approval and the Licensee retains the right to grant or withhold such approval as may be necessary to ensure that its interests are adequately and properly protected.



- 4) Where damage to the property occurs, compensation from property insurance cover shall be utilized to repair, reconstruct or replace the property which has been damaged or de-stroyed in order to restore it to its original condition immediately prior to the event which occasioned the loss or damage. In no event shall the insured amount limit the responsibilities of the Service Provider under this Agreement to make good the loss or damage sustained

## **Clause 22** Indemnities

- 1) The Service Provider hereby covenants to indemnify and hold harmless the Licensee and ts personnel and keep it and them fully and effectively indemnifi ed from and against all liability and expenditure, whether arising during the continuance or after the period of this Agreement, including, and without prejudice to the generality of the foregoing, all costs, charges, demands, fi nes, legal fees, penalties and proceeding and expenses ncurrred in disputing any action, proceeding or claim of any nature and any damages, payments, claims or other liabilities suffered or incurred by the Service Provider and its Personnel arising as a result of or in connection with any loss, injury, including death or damage to any member of the public or any personnel or other workman or other person n the employment of, or seconded to, the Service Provider.
- 2) Save to the extent provided above, the Licensee covenants to indemnify and hold harm-ess the Service Provider and its personnel and keep it and them fully and effectively in-demnifi ed from and against all liability and expenditure for which it is responsible wheth-er from the public or the private sector, and whenever arising, namely before, during or after the continuance of the provisions of this Agreement, including all costs, charges, demands, fi nes, legal fees, penalties, proceedings an expenses incurred in disputing any action, proceeding or claim.

## **Clause 23** Disposal of Assets

- 1) The Service Provider shall not sell, hand over, transfer or otherwise dispose of any assets, without the prior approval in writing of the Licensee.
- 2) The Service Provider in its annual report shall list all assets, if any, that have been sold, handed over, transferred or otherwise disposed of during the Agreement year in question and shall provide audited details of all such transactions. The proceeds of sale shall be paid to the Licensee, less the Service Provider's reasonable costs of disposal
- 3) Any assets, which are handed over by the Licensee to the Service Provider, shall only be used for or in connection with the performance of the duties of the Service Provider under this Agreement and shall not be used for any other purpose without the prior writ-ten approval of the

Licensee. In particular, the Service Provider shall not attempt to sell mortgage, lease sub let or franchise or otherwise part with the possession of any of the assets handed over, except in accordance with the provisions of this Agreement.



## Clause 24 Performance Guarantee

- 1) The Service Provider shall procure the maintenance of a Performance Guarantee in full force and effect for the duration of this SPA and provide documentary evidence of the such by attaching the same to this SPA as Schedule K.

The amount of Performance Guarantee shall be determined by the Licensee and shall for the time being constitute an amount of full Kenya Shillings

(KShs. \_\_\_\_\_) or such other amount as equivalent to 1% of Average Annual Monthly Billing.

- 2) The Service Provider shall establish an account with a reputable bank and make the requisite deposit in view of Performance Guarantee and from which account the Licensee may withdraw such sums as it considers adequate to cater for any shortfalls and penalties incurred by the Service Provider in the performance of its Obligations under this SPA.
- 3) For any such withdrawals made by the Licensee from the deposit, the Service Provider shall be immediately required, within a period of two (2) months to deposit such adequate amounts into the account as to top it up to the initial amount and provide proof of the payment to the Licensee. In the event that the Service Provider fails to make the top up, the Licensee may take such measures as it considers necessary to compel the Service Provider to make the deposit
- 4) Any interest or charges accruing in the account shall lie with the Service Provider.

## Clause 25 Application Fee

The Regulatory Board shall charge an Application Fee towards the processing and approval of the Service Provision Agreement of such amount as shall be determined by the Regulatory Board at its sole discretion.





## AGREEMENT FORM

IN WITNESS WHEREOF, the Parties hereto have affixed their respective seals and executed this Agreement on the day and year before written.

Sealed, Signed and Delivered by..... WATER SERVICES BOARD

Common Seal

Name and Signature: .....

Chairman

in the Presence of

Name and Signature: .....  
.....

Chief Executive Officer

Sealed, Signed and Delivered by

WATER SERVICE PROVIDER

Common Seal

Name and Signature: .....

Chairman

in the Presence of

Name and Signature: .....

Managing Director



## SPECIAL CONDITIONS

### Schedule A: Service Providers Data Sheet & Registration Details

| Conditions                                   | Sub-Clause | Data |
|----------------------------------------------|------------|------|
| Service Provider's name and address          |            |      |
| Board's address for communication            |            |      |
| Service Provider's address for communication |            |      |
| Board's Representative                       |            |      |
| Service Provider's Representative            |            |      |
| Effective Date                               |            |      |
| Period of SPA                                |            |      |
| Expiration Date                              |            |      |
| Copy of Registration Details Attached        |            |      |
| Commencement Date                            |            |      |

Scheme summary sheet This shall include brief details of the scheme e.g. source, population, facilities, area covered and capacity of works, Social Economic, Type of Water Service Provider(Cluster) f Cluster name Schemes(Clustered).

Performance summary sheet: This shall include brief details of the Scheme Performance e.g.:  
(annual figures)

1. Population Served
2. Amount of water produced; m<sup>3</sup>/year
3. Amount of water sold; m<sup>3</sup>/year
4. Amount billed; kshs/year
5. Amount collected; kshs/year
6. Total O+M cost kshs/year
7. Personnel emolument kshs/year
8. Chemical costs kshs/year (alum, Chlorine, soda ash)
9. Energy costs kshs/year
10. Number of Total connections.
11. Number of connections with meters



## **Schedule B: Service Providers Service Area**

Definition of Service Area *[insert map or description]*

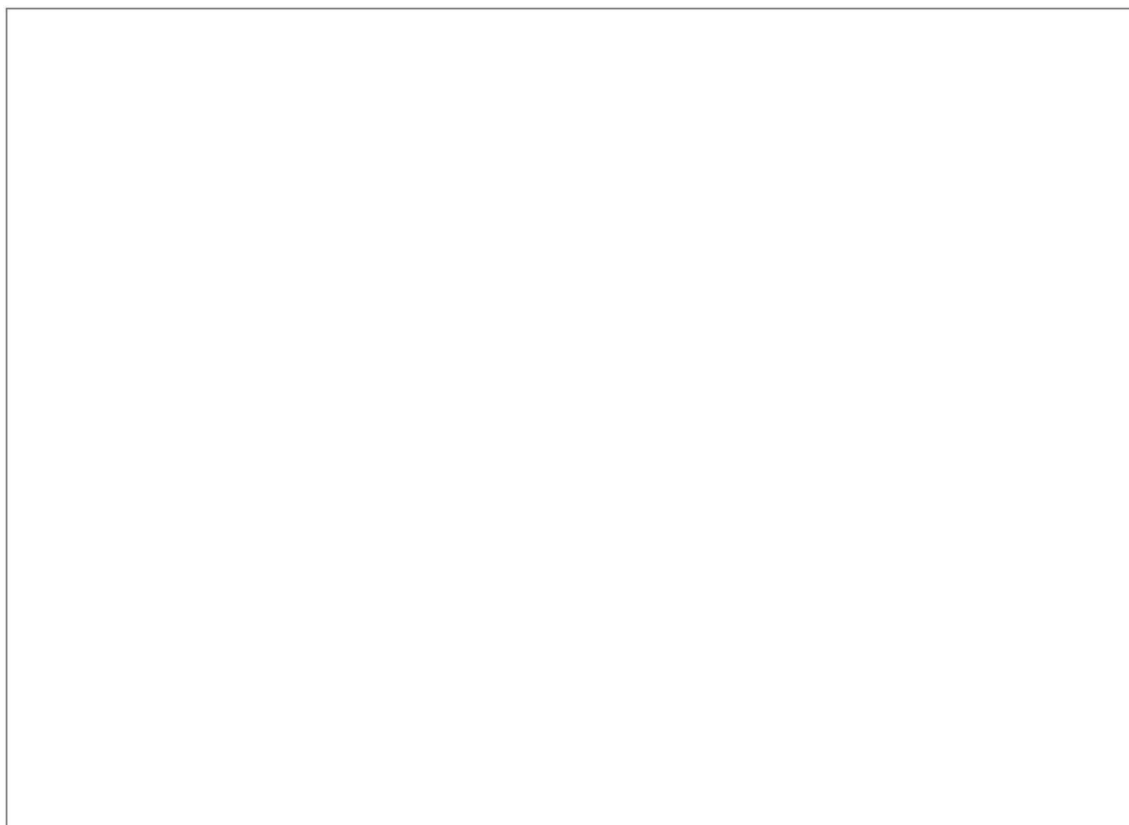
Definition of specific sub-areas *[insert map or description for each area]*

## **Schedule C: Other Business Other than Water Services and Particular Conditions**

*[insert any specific provisions and services]*

## **Schedule D: Minimum Service Level**

The Service Providers in cooperation with the Licensee shall establish a timetable for the achievement of the following Service Level Indicators. This time schedule shall be signed by the service provider and the Licensee and will become part of the SPA. A verification of progress and an up-date of the time schedule whenever tariff adjustments are discussed is compulsory.



### **Guidelines on Required Minimum Service Levels**

The following Service Indicators (SI) have therefore, been selected by the Regulatory Board to measure the service level of the provision of water and sewerages services.

1.     SI 1 Coverage of the Service Area  
Population served with individual connections to the water and sewer networks, as well as, public stand posts, Kiosks etc.
  
2.     SI 2 Drinking Water Quality  
Adequate water-testing program to ensure effective control (number of tests) and the assessment of portability through bacteriological and chlorine residual tests.
  
3.     SI 3 Service Hours (Water Quantity)  
Time of continuous water supply at connections, as well as, the opening hours of public stands posts and offices accessible to consumers.



4. SI 4 Billing for Services

Billing and meter reading sequences, conditions for payment of bills by the Customer as well as ratio on metered connection to total Customer.

5. SI 5 Customer Contacts

Complaints from clients, the response time on billing contacts, written complaints, Customer demand for a meter or meter testing and new connections to the networks, as well as, the ease of access to pay points and telephone contacts.

6. SI 6 Interruption of Water Supply and Blockage of Sewer

Unannounced interruption of supply or sewer evacuation due to maintenance and repair work.

7. SI 7 Pressure in the Network for Water Supply

Water pressure and the minimum flow at the connection and the main leading directly to the connection

8. SI 8 Unjustified Disconnections

Number of unjustified disconnections and the compensation paid by the Service Provider to the Customer

9. SI 9 Sewer Flooding

Number of households flooded with sewer during a year

10. SI 10 Quality of Discharged Sewer

Non-and insufficient treated discharged effluent, as well as daily tests carried out (quantity and quality) and in conformity to WHO guidelines.

11. SI 11 Support to Public Institutions – Curb Wastage + Settle Bills on Time

Actions taken by the providers to help reduce wastage of drinking water by government institutions, to increase metering on connections for public institutions, reduce outstanding bills of government and the delay of payment.





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## BENCHMARKS FOR SERVICE INDICATORS (SI)

The benchmarks appended in Table 1 below draw the line between failure and success to achieve minimum service level for the provision of water supply and sewerage services:

| Service Indicator                                                                                                                            | Benchmarks                                                                                                                                                                                                               | Other indicator                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SI 1</b> Coverage of the Service Area<br><br>(network) and sewer services annually depending on current coverage for water and sanitation | Densely populated areas >90% good, acceptable 80-90%, not acceptable <80%<br><br>or sanitation (connected, Low density areas >80% good, 70-80% acceptable, <70% acceptable, <70% annually depending on current coverage. | Increase the percentage of population with adequate drinking water (connected, public distribution and individual installations) by between 3.5-5%                                                                       |
| <b>SI 2</b> Drinking Water Quality                                                                                                           | Number of test within norm/total number of test carried out<br><br>>95% good, 90-95% acceptable, <90% unacceptable                                                                                                       | Total number of test carried out/number of tests planned according to guidelines and standards<br><br>>95% good, 90-95% acceptable, <90% unacceptable.                                                                   |
| <b>SI 3</b> Service Hours (water quantity)<br><br>unacceptable<br><br>Smaller towns                                                          | Large and medium towns (>100.000 Population)<br><br>20-24 h good, 16-20 h acceptable, <16 h unacceptable<br><br>>16 h good, 12-16 h acceptable, <12 h unacceptable                                                       | Opening hours of public distribution system 12 hours/day, 7 days a week.<br><br>Pay station and offices 45 h weekly                                                                                                      |
| <b>SI 4</b> Billing for Services<br><br>increase % of metered connections by at least 10% annually.<br><br>months of monthly billing         | Number of billed Customers/total number of connections<br><br>100% good, 90-100% acceptable, <90% unacceptable<br><br>ceptable                                                                                           | Minimum of one bill per month for all Customers, with minimum of meter read once in 2 months.<br><br>Maximum period for payment after bill delivery is 2 weeks.<br><br>Accounts receivable less than or equal to two (2) |
| <b>SI 5</b> Client Contacts<br>complaint 5 working days.<br><br>meter testing 10 working days.                                               | Response time on billing contacts, written complaint<br><br>Response time on demand for meter and<br><br>Response time on paid new connection <3 weeks<br><br>Waiting time to pay bill and file complaint <15 minutes    | No. of complaints categorized by type of complaints<br><br>Telephone contacts to requested department/contact person <5 minutes                                                                                          |
| <b>SI 6</b> Interruption of Water Supply and                                                                                                 | % of connected properties subject to an announced supply interruption of 20-36 hours                                                                                                                                     |                                                                                                                                                                                                                          |

| Blockage of<br>Sewer                                        | from the time the interruption is<br>reported                                                                                                                    |                                                                                                                                                             |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <15%, 36-48 hours <8% and >48hours<3%                       |                                                                                                                                                                  |                                                                                                                                                             |
| <b>SI 7</b> Pressure in<br>the Network for<br>Water Supply. | <7 litres per minute water flow at<br>connections at <5% of service area<br>in towns with<br>>100,000 inhabitants and at<br><20% with <100,000 inhabitants<br>or | Minimum pressures at Customer faucet : 10m (1bar)<br><br>Fire fighting: 15m (1.5bar) and water flow<br>of 15l/s;<br><br>Put in place network hydraulic mode |



|                                                                                     |                                                                                                                                                                                                                                                                           |                                                                                                                                                            |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SI 8</b> Unjustifi ed<br>Disconnections                                          |                                                                                                                                                                                                                                                                           | Maximum of 0.2% of total connections in a year in towns >10,000 connections and 0.4% <10,000 connections. Reconnection fee not paid or refunded where paid |
| <b>SI 9</b> Sewer Flooding                                                          | Maximum of 0.5% of total connections per year                                                                                                                                                                                                                             |                                                                                                                                                            |
| <b>SI 10</b> Quality of Discharged effluent                                         | Daily tests carried out and tests results within the WHO guidelines for effluent                                                                                                                                                                                          |                                                                                                                                                            |
| <b>SI 11</b> Support to Public nstitutions to Curb Wastage and Settle Bills on Time | The action program will be assessed by the type of actions/support the providers offer public institutions for the reduction of wastage, sensitizing to budged the appropriate amount etc. in comparison to the % of unpaid bill of the total amount of outstanding debts | % of actions carried out from the action program.                                                                                                          |



## Schedule D (1): Time Table for Commitment to Improve Minimum Service Level Indicators.

Each service provider shall propose before signing of the SPA a first “service level Agreement” to the regulator, indicating the service level which will be reached within the contract period. This shall be negotiated with the water services board and put into effect not later than 6 months after the signing of the SPA. It will be considered as a firm engagement by the two parties. As not all SI (Service Indicators) will be reached within the same period, the regulator proposes that the time schedule for each indicator be tied to the business plan. This shall be supported by specific activities as per the attached table towards these goals

| Service Indicators                                | Current status | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Sector Benchmark = final objective                                                                                                                                                   |
|---------------------------------------------------|----------------|--------|--------|--------|--------|--------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SI 1 Coverage of the Service Area                 |                |        |        |        |        |        |        | High density areas >90%<br>Low density areas >80%                                                                                                                                    |
| SI 2 Drinking Water Quality                       |                |        |        |        |        |        |        | > 95% of tests within norm on total of required tests                                                                                                                                |
| SI 3 Service Hours                                |                |        |        |        |        |        |        | Large and medium towns 20-24 hours, small towns >16 hours *                                                                                                                          |
| SI 4 Billing for Services<br>SI 5 Client Contacts |                |        |        |        |        |        |        | Billing ratio 100% (all connections are billed)<br><br>Written 5 working days<br><br>Meter 10 working days<br><br>New connection <3 weeks<br><br>Pay bill/file complaint <15 minutes |
| SI 6 Interruption of Water Supply                 |                |        |        |        |        |        |        | Unannounced interruption<br><br>20-36 hours <15% (calculated annually)<br>36-48 hours <8%<br>>48 hours <3% **                                                                        |
| SI 6 Blockage of Sewer                            |                |        |        |        |        |        |        | Unblocking within<br><br>20-36 hours <15% (calculated annually)<br>36-48 hours <8%<br>>48 hours <3% **                                                                               |
| SI 7 Pressure in the Network for Water Supply     |                |        |        |        |        |        |        | Insufficient pressure <5% clients towns with > 100,000 inhabitants<br><br><20% with <100,000 inhabitants                                                                             |
| SI 8 Unjustified Disconnections                   |                |        |        |        |        |        |        | Max. 0.2% of clients in towns >10,000 connections<br><br>0.4% <10,000 connections                                                                                                    |

SI 9 Sewer Flooding

Maximum 0.5% of total connections  
per year

SI 10 Quality of  
Discharged Effluent  
(in % of all effluent)

100% of effluent are discharged  
according to requirement



|                                                                                                               |  |  |  |  |  |  |  |                                                                                  |
|---------------------------------------------------------------------------------------------------------------|--|--|--|--|--|--|--|----------------------------------------------------------------------------------|
| SI 11 Support to Public Institutions<br>-Curb Wastage + Settle Bills on Time                                  |  |  |  |  |  |  |  | indicate the number of clients supported every year.                             |
| SI 12 Un-accounted for Water                                                                                  |  |  |  |  |  |  |  | <20%                                                                             |
| SI 13 Metering Ratio                                                                                          |  |  |  |  |  |  |  | 100%                                                                             |
| SI 14 Collect Efficiency                                                                                      |  |  |  |  |  |  |  | >90%                                                                             |
| SI 15 Staff/1000 connections<br><br>Large companies<br>medium & small companies                               |  |  |  |  |  |  |  | <5 (WSP with ≤ 3 towns and large WSP<br><9 (WSP with ≥3 towns)<br>- medium/small |
| SI 16 Unit Operation Cost                                                                                     |  |  |  |  |  |  |  | Total Operation Cost/Water Produced<br>(comparison)                              |
| SI 17 Personal costs as a share cost of O&M.<br><br>-Large companies<br>-Medium companies<br>-Small companies |  |  |  |  |  |  |  | <20%<br><30%<br><40%                                                             |
| SI 18 Staff turnover                                                                                          |  |  |  |  |  |  |  | <3%                                                                              |

## NOTES

\* Provide details for each town

\* e.g. The number of clients experiencing unannounced interruption of water supply must not exceed 15% of all clients in a year

\* Effluent above design capacity of treatments plants should not be counted, as well as, effluent discharged from treatment facilities not meeting the standards.



## Schedule E: Sector Benchmarks for the Customer Relevant Indicators and Key Performance Indicators for WSS

The Performance Indicators that the Licensee must use as a minimum requirement. Other indicators will be added through guidelines whenever needed or/and when a special regulatory regime is imposed by the Regulatory Board in case of underperforming Providers and Licensee.

| Name of Indicator                                                                                                                        | Definition                                                                                            | Benchmarks               |            |                |
|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------|------------|----------------|
|                                                                                                                                          |                                                                                                       | good                     | acceptable | not acceptable |
| Water Service Coverage                                                                                                                   |                                                                                                       |                          |            |                |
| a) household connections (x5: average household size)                                                                                    | % of population served with drinking water (connections and public distribution system)               | >90 %                    | 80-90%     | <80 %          |
| b) public stand post connections (x 1,000 consumers)                                                                                     |                                                                                                       |                          |            |                |
| densely populated towns                                                                                                                  |                                                                                                       |                          |            |                |
| low density town areas                                                                                                                   |                                                                                                       | >80 %                    | 70-80%     | <70 %          |
| Sanitation Coverage                                                                                                                      |                                                                                                       |                          |            |                |
| a) household connections (x6)                                                                                                            | % of population with adequate sanitation facilities (connected to sewer and individual installations) | >90 %                    | 80-90%     | <80 %          |
| b) onsite sanitation (x9)                                                                                                                |                                                                                                       |                          |            |                |
| densely populated towns                                                                                                                  |                                                                                                       |                          |            |                |
| low density town areas                                                                                                                   |                                                                                                       | >80 %                    | 70-80%     | <70 %          |
| Hours of Supply                                                                                                                          |                                                                                                       |                          |            |                |
| large and medium towns (>100,000)                                                                                                        | Total hours of supply per month/30 days (as an average of all service areas)                          | 20-24 hrs                | 16-20 hrs  | <16 hrs        |
| smaller towns (<100,000)                                                                                                                 |                                                                                                       |                          |            |                |
| public distribution system                                                                                                               |                                                                                                       |                          |            |                |
| pay stations and offices                                                                                                                 |                                                                                                       |                          |            |                |
| Unaccounted for Water                                                                                                                    |                                                                                                       |                          |            |                |
|                                                                                                                                          |                                                                                                       | >16 hrs                  | 12-16 hrs  | <12hrs         |
|                                                                                                                                          |                                                                                                       | 12 hours/day; 7days/week |            |                |
|                                                                                                                                          |                                                                                                       | 45 hours per week        |            |                |
| Water Affordability                                                                                                                      |                                                                                                       |                          |            |                |
|                                                                                                                                          | (water produced-water billed)/water produced                                                          | <20 %                    | 20-25%     | >25 %          |
|                                                                                                                                          | % of average Household income                                                                         | <5 %                     | 5-8%       | >8 %           |
| Poverty Focus (Consumption within Lifetime Quantity: 20l/capita/day for Household Connections, 12-17l/capita/day for public stand posts) |                                                                                                       |                          |            |                |
| Metering Ratio                                                                                                                           | Number of metered connections/total number of connections                                             | 100 %                    | 95 - 100%  | <95 %          |
| Collection Efficiency                                                                                                                    | revenues collected/amount billed                                                                      | >90 %                    | 85-90%     | <85 %          |

| Water Quality                                                 | Total number of tests carried out/number of tests planned according to Guideline and Standards | >95% | 90-95% | <90% |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------|------|--------|------|
| Number of tests within norm/total number of tests carried out |                                                                                                |      |        |      |
| Total Collection/total number of staff                        |                                                                                                |      |        |      |
| Bacteriological                                               |                                                                                                |      |        |      |



| Test results                                                                | Number of tests within                                                                |         |          |         |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------|----------|---------|
| Total Collection/total number of staff                                      | norm/total number of tests carried out                                                | >95%    | 90-95%   | <90%    |
| chlorine residua                                                            |                                                                                       |         |          |         |
| Bacteriologica                                                              |                                                                                       |         |          |         |
| Staff/1,000 connections                                                     |                                                                                       |         |          |         |
| large companies                                                             | Staff/1,00 connections                                                                |         |          |         |
| medium & small companies (with up to 3 towns)                               | Highly applicable to Service Provider owned                                           | <5      | 5-8      | >8      |
| medium & small companies (serving more than 3 towns with different systems) | manage and d systems. Therefore reporting is voluntary                                | <5      | 5-8      | >8      |
| Average Water Production per Capita                                         | l m produced - 20% UFW)/ Population served / 365 days                                 | <9      | 9-14     | >14     |
| a) household connections                                                    |                                                                                       |         |          |         |
| b) public stand post connections                                            |                                                                                       |         |          |         |
| Average Water Consumption per Capita                                        | billed per month/ (population served*30 days)                                         |         |          |         |
| a) household connections                                                    |                                                                                       |         |          |         |
| b) public stand post connections                                            |                                                                                       |         |          |         |
| connections Disconnection Ratio (average over year)                         | Number of disconnected Customers (>3 months)/total number of connections              | <5%     | 5-15%    | >15%    |
| Unjustified Disconnections                                                  | Number of unjustified disconnections/total number of connections per year             |         |          |         |
| Larger and medium towns                                                     |                                                                                       | <0,2%   |          | >0,2%   |
| Smaller towns                                                               |                                                                                       | <0,4%   |          | >0,4%   |
| Unit Operation Cost                                                         | Total cost of operation/water produced                                                |         |          |         |
| Liquidity                                                                   | Current assets (cash, accounts receivable, stock) for comparison /current liabilities |         |          |         |
| Outstanding supplier loans (including Taxes,                                | (Total amount of outstanding loans of suppliers/total collection)*1                   | <2 mths | 2-4 mths | >4 mths |
| Pension Funds, etc)                                                         |                                                                                       |         |          |         |
| Investment Ratio                                                            | Total investments/total collections (Turnover)                                        |         |          |         |
| Billing for Services                                                        | Number of billed Customers/total number of connections                                | 100%    | 90-100%  | <90%    |



**Water Services Regulatory Board** – Service Provision Agreement for Category III

(The following indicators might not be applicable to Service Provider owned and managed systems and therefore reporting is voluntary)

| Turnover per Staff                                                                                             | Total Collection/total number of staff                                                 | for comparison |        |      |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------|--------|------|
| Staff/length of pipe network                                                                                   | Staff/length of pipe network (without connections)                                     | for comparison |        |      |
| Billing/Staff/Month                                                                                            |                                                                                        | for comparison |        |      |
| Collection/Staff/Month                                                                                         |                                                                                        | for comparison |        |      |
| Meter Reading Efficiency                                                                                       | Total numbers of meters read per day/total number of meter readers (incl. supervisors) | for comparison |        |      |
| Average Personnel Cost per Staff<br>large companies<br>for comparison<br>medium companies<br>small companies   | Personnel cost/total number of staff                                                   |                |        |      |
| Personnel Cost as a share of Cost of Operation (O+M)<br>large companies<br>medium companies<br>small companies | Personnel cost/cost of operation and maintenance                                       | <20%           | 20-30% | >30% |
|                                                                                                                |                                                                                        | <30%           | 30-40% | >40% |
|                                                                                                                |                                                                                        | <40%           | 40-45% | >45% |
| Staff Training<br>Internal Training<br>External Training                                                       | Total hours of training/Total number of Personnel                                      | for comparison |        |      |
| Staff turnover                                                                                                 | Total number of staff having left the company/total number of staff                    | <3%            | 3-6%   | >6%  |
| Absence of Staff                                                                                               | Total days of Absence (excl. leave)/total number of staff                              | for comparison |        |      |

**Water Services Regulatory Board – Service Provision Agreement for Category III**



**Schedule F:** Asset Register signed by the Licensee and the Service Provider

**Schedule G:** Deed of Surrender signed by the Licensee and the Service Provider

f not provided date to be provided (within six months)

**Schedule H: Constitution or Memorandum and Articles of Association**

**Schedule I: Existing Water and Sanitation Tariff**



#### **Schedule J: Lease Agreement**

#### **Schedule K: Performance guarantee (Draft):**

## Schedule L: Water Service Provider Profile(Details of Board Members)

Name and profession of board members starting with the chairman of the board

| Name | Position within Organization | Academic Qualifications | Professional Qualifications | Current Occupation | Age | Sex |
|------|------------------------------|-------------------------|-----------------------------|--------------------|-----|-----|
|      |                              |                         |                             |                    |     |     |
|      |                              |                         |                             |                    |     |     |
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|      |                              |                         |                             |                    |     |     |
|      |                              |                         |                             |                    |     |     |
|      |                              |                         |                             |                    |     |     |

You may attach additional separate sheet

### Details of Key Executive Staff:

This list should include CEO and all key staff

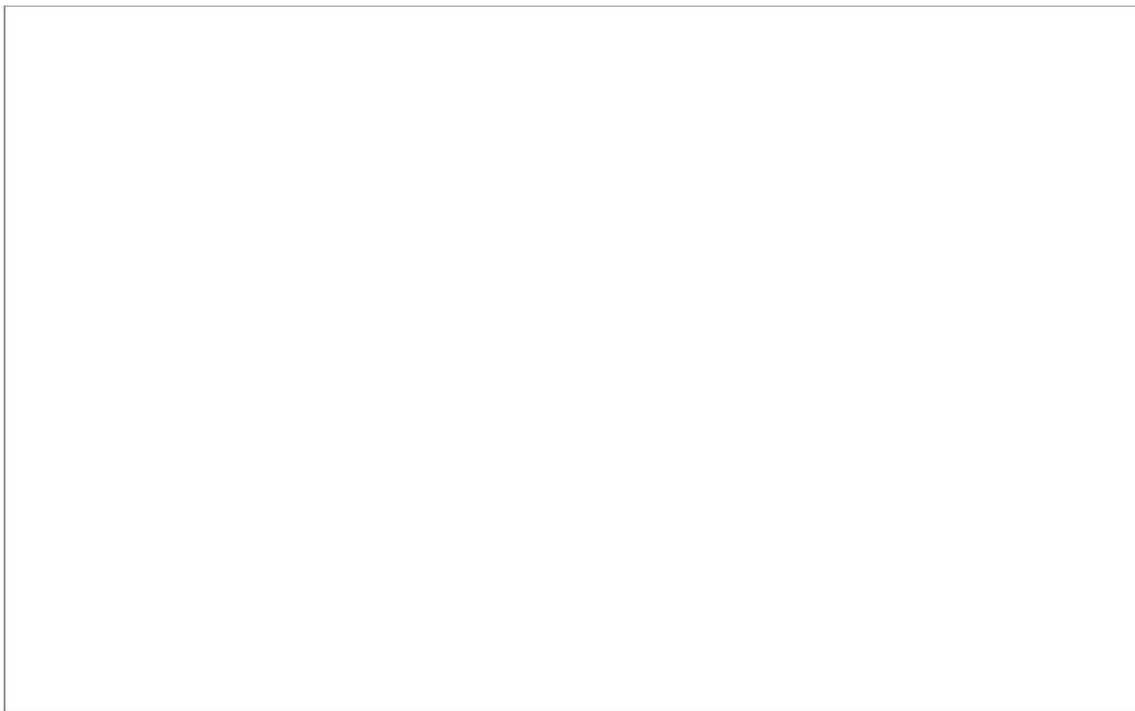
| Name | Position within Organization | Academic Qualifications | Professional Qualifications | Age | Sex |
|------|------------------------------|-------------------------|-----------------------------|-----|-----|
|      |                              |                         |                             |     |     |
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You may attach additional separate sheet

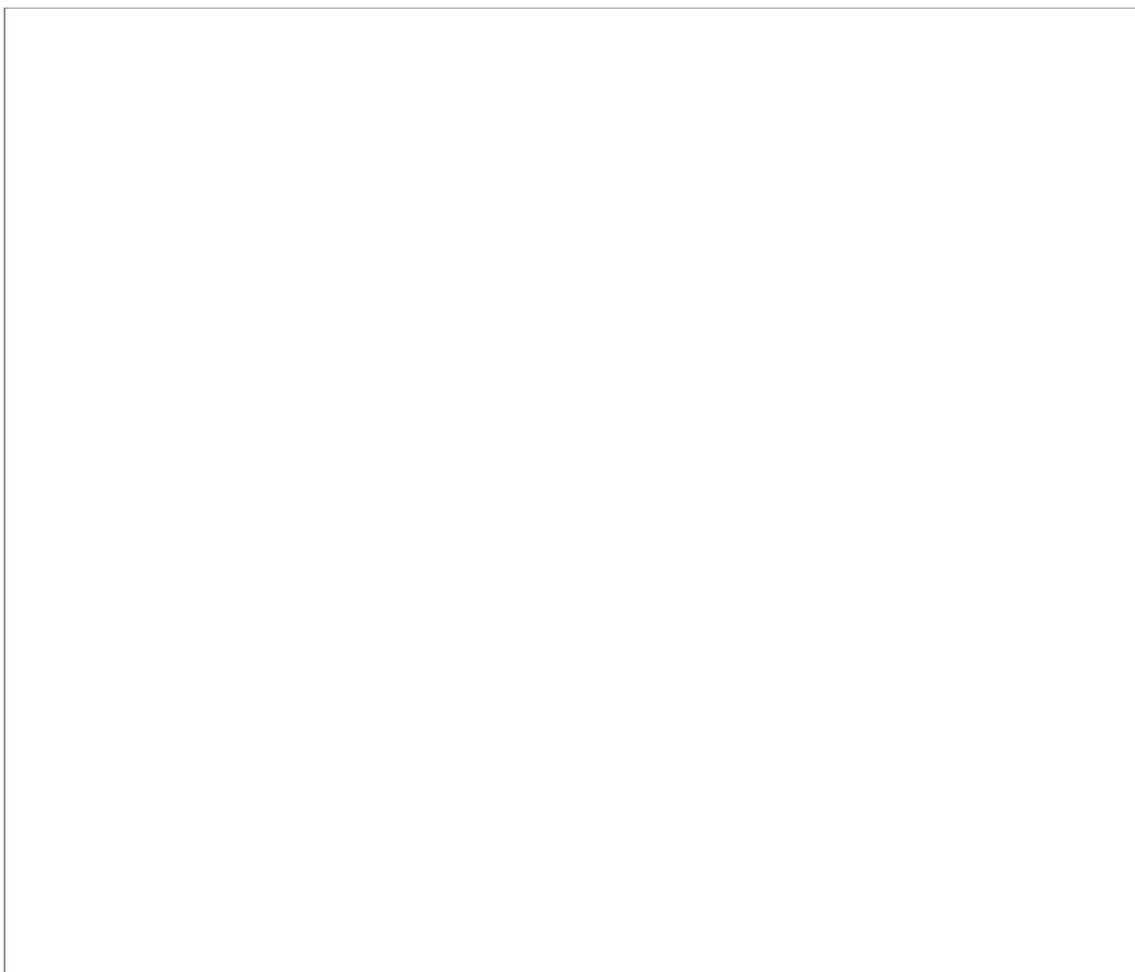
**Schedule M: Business Plan**

**Schedule N: Copy of Customer Model Contract**

**Schedule O:** Copy of Water Permit



**Schedule P:** Copy of Code of Conduct of Chairman and committee members



**Schedule Q:** List of Services in Accordance With Clause 3.2a

**Schedule R:** List of Incentives and Penalties in Accordance with Clause 3.5