SERVICE PROVISION AGREEMENT

between

{Y}.......................... Water Service Board
&
{Z}.......................... Water Service Provider

Model Service Provision Agreement for
Category II Water Service Providers
(Public/Community Water Service Provider)
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ACRONYMS

SPA: Service Provision Agreement
UfW: Unaccounted for Water
WAB: Water Appeals Board
WSP: Water Service Provider
WASREB: Water Services Regulatory Board
WSS: Water and Sanitation Services
Clause 1 Definitions and Interpretation

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

a. “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.


c. “Agent” means a unit appointed by a Licensee or appointed by Water Service Provider.

d. “Agreement Year” means the year this SPA is Signed.

e. “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 prepared by the Provider detailing any changes to the Approved Business Plan.

i. “Assets”, unless otherwise stated, means the fixed 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 fixed 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 services 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 scientific 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 defines the operations of the Provider and is 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 undertaken by or for the benefit 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 installations; etc.) in order to maintain, improve and enlarge water service provision according to standards and regulation.

l. “Capital Works Plan” means a plan for Capital Works prepared by the Licensee and approved by the WASREB in accordance with the guidelines and this SPA.
m. “Commencement Date” means the day the Provider assumes operations.

n. “Commissioning” means setting the system used in the provision of water services to work under controlled conditions and monitoring that it is safe for continued operation.

o. “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.

p. “Conditions” means the General Conditions and the Particular Conditions.

q. “Connection Charge” means the amount charged to Customers for the installation of a connection from the distribution main to the Customer’s property.

r. “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).

u. “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.

z. “Deed of handover” means the deed of handover to be executed by the Licensee and the service provider.

aa. “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.

cc. “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.
ee. “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 is Signed and approved by Water Services Regulatory Board and as given in the SPA Data Sheet.

ii. “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.

ll. “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.

mm. “Facilities” means the infrastructure, facilities and assets the Service Provider uses to provide the Water Services.

nn. “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.

oo. “Financing” means credits, grants or any other money provider by the Government of Kenya development, or Development Financial provider, Institution or any other Financial arrangement to be approved by the Government.

pp. “Force Majeure” means an exceptional event or circumstance which is beyond the parties control such as war, rebellion, terrorism, riot, natural catastrophes.

qq. “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.


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.

uu. “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 authorized 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.

zz. “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.

aaa. “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.

ccc. “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.

eee. “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.

iii. “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.

lll. “Performance Targets” means the Targets in Schedule E, F specified by the WSRB and other Targets included in the Schedule D.

mmm. “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.
“Personnel” means any and all persons employed by the party concerned, under whatever legal relationship, including but not limited to, full and part time employees, staff, advisors, agents, servants, representatives, and independent contractors, and such personnel shall at all times be treated and regarded as employees of the appropriate party.

“Potential Customer” means a person other than the Board or the Provider or a Customer, located in the Service Area, who wishes to receive Services from the Provider.

“Proposed Capital Works Plan” means the Capital Works Plan developed by the Provider and submitted to the Licensee.

“Provider” means that Water Service Provider named as such in this Agreement and in the SPA Data Sheet and its legal successors in title.

“Provider Income” means the income due to the provider in order to meet its Obligations for water service provision under this SPA.

“Provider Remuneration” means the remuneration due to the provider as defined in this SPA.

“Provider’s Representative” means the person appointed by the Service Provider as its authorised representative.

“Provider Service Obligations” means the Obligations of the Provider’s within the Licensee Area to provide the Water Services, Wastewater Services, and Other Services as specified in the Schedule D.

“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.

“Public Funds” are as defined in the Public Procurement and Disposal Act 2005.

“Raw Water” means untreated water which is or may be abstracted from sources of supply which is available for water supply purposes.

“Regulations” means all regulations of the Republic of Kenya applicable directly or indirectly to water supply and sewerage services.

“Rehabilitation Works” means work undertaken on the network assets in order to restore them to a proper and effective condition.

“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, includes the complete replacement or renewal of the asset.

“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.

“Regulations” means all regulations of the Republic of Kenya applicable directly or indirectly to water supply and sewerage services.

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

**Revenue Account Administrator** is one or two persons designated to manage the revenue account.

**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.

**Revenue Account** means a bank account set up to receive funds collected from Customers.

**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.

**Schedules** means the document(s) entitled schedules referred to in this SPA.

**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.

**Services** means the services to be provided by the Service Provider under the SPA.

**Service Needs Plan** means a Plan for achieving the 10 year Projection.

**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.

**SPA** means this Service Provision Agreement.

**SPA Data Sheet** means the pages entitled Service Provision Data Sheet Registration Details.

**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.

**Small Scale Service Provider** means an Independent provider providing Water services from an existing water service provider by Hawking.

**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.

**Tariffs** means the charges levied on the consumption of water services as well as for access to a water system.
“Tariff Schedule” means the schedule of tariffs charges to each Customer category.

“Third Party Provider” means a person or entity other than the Provider or the Licensee that provides services authorized by the License. “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.

“Water Appeals Board” means the Appeals Body established by the Water Act, 2002.

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

“Water Resources Management Authority” (WRMA) means the Authority established by the Water Act, 2002.

“Water Service” means any services 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.
AGREEMENT

THIS AGREEMENT is made on the ……………………… day of …………………….. 200……………….

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 one 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 the other part,

WHEREAS:

1. Under the Relevant provisions of the Water Act 2002, the Licensee is licensed by the Water 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 Service Provider resides and where the Service Provider has been providing and continues to provide Water Services

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 Services.

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 defined area subject to the conditions, covenants and terms stipulated herein.

2. During the subsistence of this Agreement the powers, duties and functions of the Licensee in the Service Provider’s defined 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 its services.
3. This Agreement provides for a temporary surrender of operations, functions and possession of the fixed assets used by the Licensee or which the Licensee upon 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 surrender of the Assets shall be governed by the provisions of the Agreement and the Deed of Handover duly Signed by the Licensee and the Service Provider, 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.
Clause 2  Representations

2.1 General

a) The Service Provider confirms that 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 the Service Provider’s ability to perform its Obligations under this agreement and the transactions contemplated hereby.

b) 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 Service Provider, or employ any other person or body to perform the services within the Service Provider’s area unless such alternative provision has been agreed upon between the Licensee and the Service Provider.

2.2 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 such change to the other party at least seven (7) days before it comes into effect.

Clause 3  Conditions Precedent to the Commencement of SPA

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 applicable charges as per the Regulatory Board Guidelines.

b) The Service Provider shall obtain the Relevant registration as a legal entity under the Societies Act, Cap. 108 or other Relevant statute of the Laws of Kenya and to provide evidence of such registration as part of Schedule A of this Agreement.
c) 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.

d) Subject to its water requirements, the Service 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 the a mediator to mediate.

c) Thereafter, if no agreement will be reached, the parties shall proceed to the Water Appeals Board.

3.3 Regulatory Board Guidelines and Recommendations

The guidelines 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, 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.

Any amendments to this SPA based on new changes or amendments to the Regulatory Board’s guidelines 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 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 and indicated in schedule A.

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 and Rights

4.1 Service Provider’s Obligations

a) To ensure that it possesses and retains all the necessary expertise necessary to fulfill the technical, commercial, financial and administrative functions.

b) To provide the services within the Service Provider’s Defined Service Area, Schedule A.

c) To meet all the required standards, guidelines and provisions of the SPA.

d) To obtain all necessary licenses, permits and warranties necessary to carry out its obligations in accordance with statutes in force.

e) To maintain the assets in good working order and not to dispose of any assets without the authorization of the Licensee.

f) 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.

g) To come up with proposals for improvement of the assets so as to enhance service delivery.

4.2 Service Provider’s Rights

a) To carry out the above Obligations such as Rights of disconnection of services to properties for non-payment for water and sanitation services.

b) To take legal action for breach of Obligations by Customers and others causing damage or adversely affecting the services.

c) To ensure that appropriate measures for the protection of the environment are adhered to in line with appropriate legislations.

d) To maintain, exercise all statutory powers within the area, in relation to works, assets, pipe work and appurtenances of the water supply and sanitation systems.

e) To have access to land, property and water sources within the Service Provider’s area subject to rules on public security.

4.3 Licensee’s Obligations

a) To finance and implement capital works.

b) To incorporate into planning the outcome of Customers consultations on improvement of service quality and other issues touching on Customer care.

c) To prepare studies of demand forecast and expansion of the facilities if agreed upon between the Licensee and the Service Provider.

d) To obtain and keep in force all licenses, permits and warranties outside the responsibility of the Service Provider.
e) To propose Tariff Adjustments to the Regulatory Board.
f) To monitor the Performance of the Service Provider in line with Performance Targets for the sector issued through regulation.
g) To carry out a Customer Satisfaction Survey every two (2) years.

4.4 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 prior to License. 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 on the justification for which such payment is 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 this 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 under Performance, then the Service Provider will pay a penalty to the Licensee as provided in the Special Conditions.
e) If Performance Incentives have been agreed upon in the Special Conditions, then 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, Duration, Renewal & Extension of SPA

5.1 Effective Date

The SPA will become effective on the date of its signature by the Licensee and the Service Provider after approval by the Regulatory Board.

5.2 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, Schedule A.

5.3 Renewal/Extension

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

Clause 6  Scope of Services

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

6.2 Services
The Service Provider shall provide the following Services:
1) Supply potable water and if included in Schedule C provide sanitation services for households, businesses and other establishments, treatment of the wastewater and disposal of the effluent and sludge if any in accordance with the Relevant standards, guidelines and any statutory Obligations.
2) If the service Provider offers business services, other than Water Services, these services shall be listed in Schedule C and ring-fenced from Water Services.

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 is responsible for obtaining all required licenses or permits and pay all required abstraction and water use fees.

Clause 7  Tariffs, Income and Financial Arrangements

7.1 Customer Tariffs
1) The Provider shall charge the Tariffs as per its Business Plan appended to this Agreement and Business Plan revisions submitted annually to the Licensee. Customer Tariff 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 except where subsidies are provided.
2) If this SPA provides for approved tariff adjustments and the Regulatory Board has agreed to its implementation, each adjustment shall be carried out by giving notice to the Licensee and the public at least Four (4) weeks in advance of implementation.
3) The 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 with both parties justifying the request with all the necessary documentation and estimations. The proposal shall be presented according to the requirements of the Relevant guidelines of the Regulatory Board and forwarded for approval to the Regulatory Board.

4) The Regulatory Board may approve the tariff application or issue a “Notice of Tariff Correction.” If any of the parties under this agreement does not agree to the adjustment proposal it can refer the matter to the Regulatory Board for determination.

5) In the case where third parties receive payments 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 documentation on their use. The third party shall at the time of receiving such payment be informed with the payments that such a justification and documentation is compulsory under the Licence.

6) The Customer tariffs are composed of the providers, the licensee remuneration and the regulatory levy. The composition has also to take into consideration the approved payment Provision under this SPA. Any other payments to third parties or not related directly to water services must be specified.

7.2 Service Provider’s Income

The Service Provider Income shall be that amount left after paying the Licensee Remuneration and the Regulatory Levy which the Service Provider may keep from the total income from billing based on the approved tariffs in order to meet it’s Obligations for the service provisions. No adjustments to the Tariffs shall be carried out without the approval of the Regulatory Board. The service Provider shall use its Income solely for the purposes of providing the Services under this SPA.

7.3 Licensee’s Remuneration

The Licensee Remuneration is the amount the Licensee may be paid to cover its operational costs and the costs associated with the facilities, agreed between the parties. 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. No adjustments shall be carried out without the approval of the Regulatory Board. Within the first 12 months of the commencement the Licensee and the Provider have to submit a justified remuneration proposal to the Regulatory Board following the Relevant guidelines.

7.4 Subsidies

Subsidies received during the existence of this Agreement must be made known to the Licensee and the Regulatory Board and may initiate a tariff review if the Regulatory Board decides so. Any amount of subsidy received shall be indicated in the special conditions and at all tariff adjustment proposals.
7.5 Financial Arrangements

1) 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.

2) Payment collected will be deposited immediately in the Tariff 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.

3) In the event that there are insufficient funds in the Revenue Account to pay all these charges the Service Provider’s Income and the Licensee Remuneration shall be reduced for each party by the same proportion but after the Regulatory Levy has first been deducted and transferred to the Regulatory Board.

4) In the event that there are excess funds left in the Revenue Account after payment of all the three charges these funds shall be used to clear any outstanding arrears owed to the Service Provider or the Licensee as a result of previous insufficiencies of funds, with the reduction in arrears of each party being proportionate to the total arrears owed to that party.

7.6 Revenue Account

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

2) 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, paid monthly, the Service Provider Income and the Licensee Remuneration, paid weekly. Payments to other parties have to be approved by the Regulatory Board.

3) The Parties will jointly select one or two Revenue Account Administrator 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.

7.7 Income Account

A Income Account shall be a bank 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.

Clause 8 Regulatory Levy

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

1) Where this Agreement relates to the operations of an already existing and functional operator, a detailed asset register of existing assets, including a full inventory and value shall be attached to the SPA.

2) Where the Agreement applies to a newly set up Service Provider or value of assets is not available, the Provider will, within a period of six months, prepare and submit an inventory and value of the Assets which it will use in the provision of water services.

3) All significant changes in the value of assets shall be recorded in the inventory of assets according to the rules and regulations of the Regulatory Board.

4) The Service Provider shall implement appropriate asset management techniques and indicate all replacement, rehabilitation and maintenance works carried out.

5) The Service Provider may access any available grants or credits for infrastructure development in agreements with the licensee.

6) The Service Provider has the obligation to make any debt service and interest payments on loans taken by the Service Provider.

9.2 Asset Development

1) The Licensee may support the Service Provider in the asset development by providing funds, additional facilities or carrying out works in agreement with the Service Provider. In this case the licensee becomes asset holder with all the Rights an asset holder is entitled to or is included in the Schedule F of this SPA. Both parties shall agree on the percentage contribution of the parties to the cost of development and the share of assets held.

2) The Licensee shall consult with the Service Provider in developing additional Facilities, and the Service Provider shall cooperate with the Licensee in planning and construction of such new facilities.

3) Where an international or bilateral financial institution or any third person has provided finance to the Licensee either by way of loan or by grant aid, the Service Provider shall comply with any conditions agreed upon by the Licensee in respect of carrying out and commissioning the works. All Service Provider owned assets are Public Assets and have to be managed as such under the existing laws of Kenya. The Licensee has the obligation to ensure that such public assets are managed and maintained accordingly and to the interest of the public.

Clause 10  Customer Management

10.1 Customer Agreement

The Service Provider shall enter into a Customer Agreement with each Customer within six months of signing the SPA. The Customer contracts shall be in accordance with Regulatory Board guidelines and/or the model Customer contract.
10.2 Metering of Consumption

The Service Provider shall ensure that all new connections are metered, and that existing connections without meters are metered according to a Metering Plan. All meters installed shall comply with good utility standards and Regulatory Board specifications on meters, and shall be placed in such way as to be accessible to meter readers.

10.3 Monitoring of UFW

The Service Provider shall install a Bulk Metering system for the purpose of monitoring ‘Unaccounted for Water’ (ufw).

10.4 New Connections

The Service Provider shall offer connections to potential Customers which can ensure payment of a monthly bill according to the consumption within the Service Area. Customers will be required to pay the cost of new connections entirely.

10.5 Customer Satisfaction

In the event that the Customer satisfaction survey carried out by the Licensee shows that Customers are not reasonably satisfied, the Service Provider will agree with the Licensee actions to be taken to improve Customer satisfaction, and 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.

10.6 Customer Complaints

The Service Provider shall record all Customers and potential Customers complaints by area, service and type of complaint, and report to the Licensee annually on the complaints received. The Service Provider will make every reasonable effort to resolve complaints from Customer and Potential Customers within its Service Area and keep records of complaints.

10.7 Customer Information

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

Clause 11 Planning, Reporting and Record Keeping

11.1 Operation and Maintenance Plan

The Provider shall prepare and annually update a simplified Operation and Maintenance Plan including the proposed tariffs and investments. The plan shall be prepared according to the Relevant guideline issued by the Regulatory Board. With the updated plan the provider shall submit...
an annual budget to the Licensee at least two months before beginning of the financial year. The Licensee shall review the Draft Plan and in consultation with the Service Provider, suggest adjustments and agree on the Final Plan.

11.2 Short and Long Term Development Plan
The Service Provider shall prepare Short and Long Term Development Plans according to the Relevant guideline issued by the Regulatory Board for the development and improvement of assets and facilities used in water services provision.

11.3 Minimum Service Level Agreement
The provider will submit a plan to achieve the minimum service level for Service Provider managed systems attached to this SPA in Schedule D not later than 3 month after signing of the SPA. This plan 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.

11.4 Annual Reports by Service Provider
The Provider shall prepare each year an Annual Report according to the reporting guidelines of the Regulatory Board. The licensee may request additional information if needed. A copy of the reports submitted to the Licensee shall, simultaneously, be submitted to the Regulator. The Annual Report shall be submitted to the Licensee within three months of the end of the year to which it relates.

11.5 Record Keeping and Inspections
1) The Provider shall keep records in accordance with set regulations, standards and guidelines. 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.
2) The Service Provider shall establish and maintain suitable accounting records. All registers, books, records and other recorded information shall be in English.
3) The Provider shall allow the Licensee and the Regulatory Board access to its records at any time for inspection. The Provider shall respond to requests for information within 2 weeks or within the time specified by the request.

Clause 12 Default and Force Majeure

12.1 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.

12.2 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 written consent of the Regulatory Board.

12.3 Damages

If 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.

12.4 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:
   a. Any act of war, declaration of hostilities or belligerence, blockade or revolution;
   b. Insurrection, public disorder or riot;
   c. Explosion, fire, earthquake, excessive and extraordinary floods and volcanic eruption;
   d. 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;
   e. 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, if 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 13** Amendment of the Agreement

1) The Parties acknowledge that circumstances, objectives and available information will 
change over the duration of the SPA and commit to work together in good faith to amend 
the SPA where such amendment would better serve the interests of Customers and Po-
tential Customers but subject to approval by the Regulatory Board.

2) If the Parties cannot agree on an amendment, but one Party nevertheless considers that 
an amendment is necessary, the matter shall be resolved through the Dispute Resolution 
Process.

**Clause 14** Dispute Resolution Process

1) If any dispute arises out of or in connection with this SPA, either Party shall give a writ-
ten 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 Appeal 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 Appeal 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 15** Termination of the Agreement

15.1 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.

15.2 Termination of this SPA by Cause

15.2.1 Termination by the Licensee

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 meets 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.

15.2.2 Termination by the Service Provider

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) Fails to pay any money it owes to the Service Provider within Six (6) months of its falling due.

b) 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.
c) Becomes bankrupt or insolvent.
d) Goes into liquidation.
e) Has a receiving or administration order made against it.
f) Carries on business under a receiver, trustee or manager for the benefit of its creditors.
g) Engages in any corrupt or fraudulent practice.
h) 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.

15.3 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.

15.4 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.

15.5 Upon Termination or Expiry of this SPA

1) 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.

2) In case of termination for cause, the defaulting party shall not make any claim for lost or foregone 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.

3) 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.

4) 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).

5) 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 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.

15.6 Surrender of Information, Documents and Assets on Termination of the SPA

1) The Service Provider shall, on the expiry or early termination of this Agreement immediately provide to the Licensee all information and documents held or used by the Service Provider.

2) The Service Provider shall, on expiry or early termination of this Agreement immediately hand over all the Assets used in the provision of Water Services to the Licensee, in good working order, the ownership of the Assets being always vested in the Licensee. If the assets are not in good working order on surrender over, the Service Provider shall be liable to pay the Licensee the reinstatement costs in full.

Clause 16 Emergency

16.1 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.

16.2 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.

16.3 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.

16.4 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 17  Transparency
The Licensee shall make copies of the SPA and all amendments available to the Public upon re-quest at no charge and by posting it on a suitable website. It shall also provide notices in the mass media within the service area.

Clause 18  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 financiers’ funds are provided, the related rules, regulations and statutory provisions will be adhered to for procurement purposes.

Clause 19  Separate Liabilities
This Agreement does not create joint liability of the parties and each party shall be separately liable for its own acts of omission or commission. Each party shall indemnify the other against any losses incurred as a result of the actions of the other.

Clause 20  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 indemnified 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 Service 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 Commencement 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
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 destroyed 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 21 Indemnities

21.1. The Service Provider hereby covenants to indemnify and hold harmless the Licensee and its personnel and keep it and them fully and effectively indemnified 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, fines, legal fees, Penalties and proceeding and expenses incurred 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 in the employment of, or seconded to, the Service Provider.

21.2. Save to the extent provided above, the Licensee covenants to indemnify and hold harmless the Service Provider and its personnel and keep it and them fully and effectively indemnified from and against all liability and expenditure for which it is responsible whether 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, fines, legal fees, Penalties proceedings and expenses incurred in disputing any action, proceeding or claim.

Clause 22 Disposal of Assets

22.1. The Service Provider shall not sell, hand over, transfer or otherwise dispose of any assets, without the prior approval in writing of the Licensee.

22.2. 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.

22.3. 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 written 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 23 Performance Guarantee**

23.1 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.

23.2 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.

23.3 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.

23.4 Any interest or charges accruing in the account shall lie with the Service Provider.

**Clause 24 Application Fee**

The regulatory Board shall charge an Application Fee towards the cost of processing and approval of the SPA of such amount or shall be determined by the Regulatory Board as 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

1. Clause 6.3 – Licensee’s Remuneration – The amount agreed upon between the Licensee and the Service Provider as Licensee’s Remuneration is Kenya Shillings ________________ (Amount in Words.)

2. Clause 6.6.3 - The Revenue Account Administrator (s) appointed by the Licensee and the Service Provider are:
   a. .................................................................................................
   b. .................................................................................................

3. Clause 10.3 – The Minimum Service Level Plan is as follows:

4. Clause 21 – The amount of Performance Guarantee is Kenya Shillings ________________ (Amount in words).
Schedule A: Service Provider’s Data Sheet & Registration Details

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<th>Conditions</th>
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</tbody>
</table>

**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) if 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; m³/year
3. Amount of water sold; m³/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 Provider’s 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 update of the time schedule whenever tariff adjustments are discussed is compulsory.

1. 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.
2. 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:

<table>
<thead>
<tr>
<th>Service Indicator</th>
<th>Benchmarks</th>
<th>Other indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SI 1 Coverage of the Service Area</strong></td>
<td>Densely populated areas &gt;90% good, acceptable 80-90%, not acceptable &lt;80%</td>
<td>Increase the percentage of population with adequate drinking water (connected, public distribution network) and sewer services or sanitation (connection and individual installations) by between 3.5-5% annually depending on current coverage.</td>
</tr>
<tr>
<td></td>
<td>Low density areas &gt;80% good, 70-80% acceptable, &lt;70% for water and sanitation</td>
<td></td>
</tr>
<tr>
<td><strong>SI 2 Drinking Water Quality</strong></td>
<td>Number of test within norm/total number of test carried out:</td>
<td>Total number of test carried out/number of tests planned according to guidelines and standards</td>
</tr>
<tr>
<td></td>
<td>&gt;95% good, 90-95% acceptable, &lt;90% unacceptable.</td>
<td>&gt;95% good, 90-95% acceptable, &lt;90% unacceptable.</td>
</tr>
<tr>
<td><strong>SI 3 Service Hours (water quantity)</strong></td>
<td>Large and medium towns (&gt;100,000 Population)</td>
<td>Opening hours of public distribution system 12 hours/day, 7 days a week.</td>
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<tr>
<td></td>
<td>20-24 h good, 16-20 h acceptable, &lt;16 h unacceptable.</td>
<td>Pay station and offices 45 h weekly</td>
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<td>Smaller towns</td>
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</tr>
<tr>
<td></td>
<td>&gt;16 h good, 12-16 h acceptable, &lt;12 h unacceptable.</td>
<td></td>
</tr>
<tr>
<td><strong>SI 4 Billing for Services</strong></td>
<td>Number of billed Customers/total number of connections:</td>
<td>Minimum of one bill per month for all Customers, with minimum of meter read once in 2 months.</td>
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<tr>
<td></td>
<td>100% good, 90-100% acceptable, &lt;90% unacceptable.</td>
<td>Maximum period for payment after bill delivery is 2 weeks.</td>
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<td></td>
<td>Increase % of metered connections by at least 10% annually.</td>
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<td></td>
<td>Accounts receivable less than or equal to two (2) months of monthly billing</td>
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<tr>
<td><strong>SI 5 Client Contacts</strong></td>
<td>Response time on billing contacts, written complaint 5 working days.</td>
<td>No. of complaints categorized by type of complaints</td>
</tr>
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<td></td>
<td>Response time on demand for meter and meter testing 10 working days.</td>
<td>Telephone contacts to requested department/contact person &lt;5 minutes</td>
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<td></td>
<td>Response time on paid new connection &lt;3 weeks</td>
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</tr>
<tr>
<td></td>
<td>Waiting time to pay bill and file complaint &lt;15 minutes</td>
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</tr>
<tr>
<td><strong>SI 6 Interruption of Water Supply and Blockage of Sewer</strong></td>
<td>% of connected properties subject to an unannounced supply interruption of 20-36 hours from the time the interruption is reported &lt;15%, 36-48 hours &lt;8% and &gt;48hours &lt;3%</td>
<td></td>
</tr>
</tbody>
</table>
| SI 7 | Pressure in the Network for Water Supply. | <7 litres per minute water flow at connections at <5% of service area in towns with > 100,000 inhabitants and at <20% with <100,000 inhabitants or | Minimum pressures at Customer faucet: 10m (1bar)
Fire fighting: 15m (1.5bar) and water flow of 15l/s;
Put in place network hydraulic model |
| SI 8 | Unjustified 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 |
| SI 9 | Sewer Flooding | Maximum of 0.5% of total connections per year |
| SI 10 | Quality of Discharged effluent | Daily tests carried out and tests results within the WHO guidelines for effluent |
| SI 11 | Support to Public Institutions 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.

<table>
<thead>
<tr>
<th>Service Indicators</th>
<th>Current status</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Sector Benchmark = final objective</th>
</tr>
</thead>
</table>
| SI 1 Coverage of the Service Area | | | | | | | | High density areas >90%  
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 | | | | | | | | Billing ratio 100% (all connections are billed) |
| SI 5 Client Contacts | | | | | | | | Written 5 working days  
Meter 10 working days  
New connection<3 weeks  
Pay bill/file complaint<15minutes |
| SI 6 Interruption of Water Supply | | | | | | | | Unannounced interruption  
20-36 hours <15% (calculated annually)  
>48 hours<3% ** |
| SI 6 Blockage of Sewer | | | | | | | | Unblocking within  
20-36 hours <15% (calculated annually)  
>48 hours<3% ** |
| SI 7 Pressure in the Network for Water Supply | | | | | | | | Insufficient pressure <5% clients  
towns with > 100,000 inhabitants  
<20% with <100,000 inhabitants |
| SI 8 Unjustified Disconnections | | | | | | | | Max. 0.2% of clients in towns >10,000 connections  
0.4% <10,000 connections |
<p>| 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 - Curb Wastage + Settle Bills on Time | | | | | | | | Indicate the number of clients supported every year. |
| SI 12 Un-accounted for Water | | | | | | | | &lt;20% |
| SI 13 Metering Ratio | | | | | | | | 100% |</p>
<table>
<thead>
<tr>
<th>S1 14 Collect Efficiency</th>
<th>&gt;90%</th>
</tr>
</thead>
</table>
| S1 15 Staff/1000 connections | <5 (WSP with ≤ 3 towns and large WSP)  
<9 (WSP with ≥3 towns) - medium/ small |
| S1 16 Unit Operation Cost | Total Operation Cost/Water Produced (comparison) |
| S1 17 Personal cost is a share cost of O&M.  
- Large companies  
- Medium companies  
- Small companies | <20%  
<30%  
<40% |
| S1 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 under-performing Providers and Licensee.

<table>
<thead>
<tr>
<th>Name of Indicator</th>
<th>Definition / Comments</th>
<th>Benchmarks good</th>
<th>acceptable</th>
<th>not acceptable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Service Coverage</td>
<td>% of population served with drinking water (connections and public distribution system)</td>
<td>&gt;90%</td>
<td>80-90%</td>
<td>&lt;80%</td>
</tr>
<tr>
<td>a) household connections (x5: average household size) b) public stand post connections (x 1,000 consumers) denser populated towns low density town areas</td>
<td></td>
<td>&gt;90%</td>
<td>80-90%</td>
<td>&lt;80%</td>
</tr>
<tr>
<td>Sanitation Coverage</td>
<td>% of population with adequate sanitation facilities (connected to sewer and individual installations)</td>
<td>&gt;90%</td>
<td>80-90%</td>
<td>&lt;80%</td>
</tr>
<tr>
<td>a) household connections (x6) b) onsite sanitation (x9) denser populated towns low density town areas</td>
<td></td>
<td>&gt;90%</td>
<td>80-90%</td>
<td>&lt;80%</td>
</tr>
<tr>
<td>Hours of Supply</td>
<td>Total hours of supply per month/30 days (as an average of all service areas)</td>
<td>20-24 hrs</td>
<td>16-20 hrs</td>
<td>&lt;16 hrs</td>
</tr>
<tr>
<td>large and medium towns (&gt;100,000)</td>
<td></td>
<td>12-16 hrs</td>
<td>&lt;12 hrs</td>
<td></td>
</tr>
<tr>
<td>smaller towns (&lt;100,000)</td>
<td></td>
<td>12 hours/day; 7 days/week 45 hours per week</td>
<td></td>
<td></td>
</tr>
<tr>
<td>public distribution system</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>pay stations and offices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unaccounted for Water</td>
<td>(water produced-water billed)/water produced</td>
<td>&lt;20%</td>
<td>20-25%</td>
<td>&gt;25%</td>
</tr>
<tr>
<td>Water Affordability</td>
<td>% of average Household Income</td>
<td>&lt;5%</td>
<td>5-8%</td>
<td>&gt;8%</td>
</tr>
<tr>
<td>Poverty Focus (Consumption within Lifeline Quantity: 20l/capita/day for Household Connections, 12-17l/capita/day for public stand posts)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metering Ratio</td>
<td>Number of metered connections/total number of connections</td>
<td>100%</td>
<td>95 – 100%</td>
<td>&lt;95%</td>
</tr>
<tr>
<td>Collection Efficiency</td>
<td>revenues collected/amount billed</td>
<td>&gt;90%</td>
<td>85-90%</td>
<td>&lt;85%</td>
</tr>
<tr>
<td>Water Quality</td>
<td>Total number of tests carried out/number of tests planned according to Guideline and Standards</td>
<td>&gt;95%</td>
<td>90-95%</td>
<td>&lt;90%</td>
</tr>
<tr>
<td>Number of tests within norm/total num-ber of tests carried out Total Collection/total number of staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bacteriological</td>
<td>Number of tests within norm/total number of tests carried out</td>
<td>&gt;95%</td>
<td>90-95%</td>
<td>&lt;90%</td>
</tr>
<tr>
<td>Test results</td>
<td>Total Collection/total number of staff chloride residual Bacteriological</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff/1,000 connections</td>
<td>Staff/1,000 connections. Might not be applicable to Service Provider owned and managed systems. Therefore reporting is voluntary.</td>
<td>&lt;5</td>
<td>5-8</td>
<td>&gt;8</td>
</tr>
<tr>
<td>large companies</td>
<td></td>
<td>&lt;5</td>
<td>5-8</td>
<td>&gt;8</td>
</tr>
<tr>
<td>medium &amp; small companies (with up to 3 towns)</td>
<td></td>
<td>&lt;9</td>
<td>9-14</td>
<td>&gt;14</td>
</tr>
<tr>
<td>medium &amp; small companies (serving more than 3 towns with different systems)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Water Production per Capita</td>
<td>[m³ produced – 20% UFW]/Population served / 365 days for comparison</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) household connections</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) public stand post connections</td>
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</tr>
</tbody>
</table>
### Average Water Consumption per Capita
- **a)** household connections
- **b)** public stand post connections

\[ m^3 \text{ billed per month/} \ \text{(population served)*30 days} \]

**for comparison**

### Disconnection Ratio (average over year)

- Number of disconnected Customers (>3 months)/total number of connections

<table>
<thead>
<tr>
<th>&lt;5%</th>
<th>5-15%</th>
<th>&gt;15%</th>
</tr>
</thead>
</table>

### Unjustified Disconnections

Larger and medium towns

- Number of unjustified disconnections/total number of connections per year

<table>
<thead>
<tr>
<th>&lt;0.2%</th>
<th>&gt;0.2%</th>
</tr>
</thead>
</table>

Smaller towns

- <0.4% |

### Unit Operation Cost

- Total cost of operation/water produced

**for comparison**

### Liquidity

- Current assets (cash, accounts receivable, stock)/current liabilities

**for comparison**

### Outstanding supplier loans (including Taxes, Pension Funds, etc)

- (Total amount of outstanding loans of suppliers/total collection)*12

<table>
<thead>
<tr>
<th>&lt;2 mths</th>
<th>2-4 mths</th>
<th>&gt;4 mths</th>
</tr>
</thead>
</table>

### Investment Ratio

- Total investments/total collections (Turnover)

**for comparison**

### Billing for Services

- Number of billed Customers/total number of connections

<table>
<thead>
<tr>
<th>100%</th>
<th>90-100%</th>
<th>&lt;90%</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>Turnover per Staff</th>
<th>Total Collection/total number of staff</th>
<th>for comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff/length of pipe network</td>
<td>Staff/length of pipe network (without connections)</td>
<td>for comparison</td>
</tr>
<tr>
<td>Billing/Staff/Month</td>
<td></td>
<td>for comparison</td>
</tr>
<tr>
<td>Collection/Staff/Month</td>
<td></td>
<td>for comparison</td>
</tr>
<tr>
<td>Meter Reading Efficiency</td>
<td>Total numbers of meters read per day/total number of meter readers (incl. supervisors)</td>
<td>for comparison</td>
</tr>
<tr>
<td>Average Personnel Cost per Staff</td>
<td>Personnel cost/total number of staff</td>
<td>for comparison</td>
</tr>
<tr>
<td>large companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>medium companies</td>
<td></td>
<td></td>
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<tr>
<td>small companies</td>
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<tr>
<td>Personnel Cost as a share of Cost of Operation (O+M)</td>
<td>Personnel cost/cost of operation and maintenance</td>
<td></td>
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<tr>
<td>large companies</td>
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<td></td>
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<tr>
<td>medium companies</td>
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<td></td>
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<tr>
<td>small companies</td>
<td></td>
<td></td>
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<tr>
<td>Staff Training</td>
<td>Total hours of training/total number of Personnel</td>
<td>for comparison</td>
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<tr>
<td>Internal Training</td>
<td></td>
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<tr>
<td>External Training</td>
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<tr>
<td>Staff turnover</td>
<td>Total number of staff having left the company/total number of staff</td>
<td></td>
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<tr>
<td>Absence of Staff</td>
<td>Total days of Absence (excl. leave)/total number of staff</td>
<td>for comparison</td>
</tr>
</tbody>
</table>
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
Schedule H: Constitution or Memorandum and Articles of Association

Schedule I: Existing Water and Sanitation Tariff
Schedule J: Lease Agreement and MoU on Staff

Schedule K: Performance Guarantee (Draft)
**Schedule L: Water Service Provider Profile (Details of Board Members)**

Details of Chairman and committee Members:

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Position within Organization</th>
<th>Academic Qualifications</th>
<th>Professional Qualifications</th>
<th>Current Occupation</th>
<th>Age</th>
<th>Sex</th>
</tr>
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<tbody>
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</table>

You may attach additional separate sheet

Details of Key Management Staff:

This list should include manager and all key staff

<table>
<thead>
<tr>
<th>Name</th>
<th>Position within Organization</th>
<th>Academic Qualifications</th>
<th>Professional Qualifications</th>
<th>Age</th>
<th>Sex</th>
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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 Incentives and Penalties as per Clause 3.4