



Put logo of County government here

Put Logo of WSB or WSP here as case may be

**Community Water Service Provision Agreement**  
between  
**X county ,**  
**{Y} Water Service Board ( or appointed Key WSP)**  
on the one part  
&  
**{Z} Community Water Service Provider**  
on the other part

Model Service Provision Agreement for Community Water Service Providers

**January 2017**

*Useful for all very small scale operators within a big provider area;  
contents to be used as is without change.*

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## PREAMBLE

THIS AGREEMENT is made between the County Government of ..... of P. O. Box \_\_\_\_\_ ; Water Services Board ( *this can be changed to WSP*) of P. O. Box ..... Republic of Kenya (hereinafter described as the Board) which is duly licensed by the Water Services Regulatory Board of the one part and the [\_\_Provider\_\_], a small scale community water services provider of P.O Box ..... , a legal entity established under the Societies Act/ Companies Act [date] of the Republic of Kenya.

## WHEREAS:

1. Whereas under the Constitution of Kenya 2010 provision of water services is a devolved function to be provided by the county government through entities which meet the criteria set in national standards under the Water Act 2016
2. Under the relevant provisions of the repealed Water Act 2002, the Board was licensed by the Water Services Regulatory Board on \_\_\_\_\_ to be responsible for the efficient and economical provision of water services within its area of jurisdiction and in the Water Act 2016 the Board has been retained during the transition period.
3. The Board'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 services and the Board under the Constitution has the mandate to provide technical assistance and capacity building to the county and to safeguard assets it has developed or developed under its direction.
4. It is recognised that the Board has the mandate to provide technical assistance to the county government and is thus involved in this agreement pursuant to this mandate to ensure accountable water service delivery in the county
5. The Board in compliance with the law has facilitated the operationalisation of the Provider which has had its assets developed by ..... donor / county/ national government funding
6. The Provider is desirous of being appointed by the county government as a water service provider in the county and to contracted by the Board/ County to act as a Provider on behalf of the County and to provide services in accordance with these principles embodied in the Water Act 2016.
  - a. Consumer protection by providing water services according to set standards.
  - b. Continuation of the ownership of such facilities by the SSP.
  - c. Encouraging the separation of asset ownership and provision of services in these SSP by the owners employing professional management for operations and maintenance in compliance with Water Act 2016.
  - d. Maintenance by the SSP of proper accounts and records relating to provisions of water services according to guidelines and orders issued by the WASREB.
  - e. Adoption of management improvement programmes recommended by the board and the regulator in service provision and in the maintenance of facilities including management of demand and provision of resources for system renewal.
  - f. Adopting terms and conditions advised by the board of undertaking additional infrastructural investment in line with the prioritised investment needs of the service area in which the SS operates.

- g. Reporting to the County Government and regulator to ensure that consumers are protected and appropriate data on water access levels are maintained.
- 7. The Provider is a legally registered entity and its constitution complies with the Corporate Governance Guideline with appropriate modifications to suit its circumstances.
- 8. The provider currently owns the assets which are being used or are to be used to provide water services but which shall be for public benefit.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

## **PART A**

## **General Conditions of the Service Provision Agreement**

### **1.1 Definitions and Interpretations**

In the SPA the following words and expressions shall have the meanings stated below, unless otherwise required by the context:

- a) "Access" means the right to at least a basic level of service at prices specified herein.
- b) "Annual Report" means the report the Provider is required to prepare under sub article 10.2
- c) "Business Plan" means the document which defines the operations of the Provider and includes tariff schedules, investment plans, management and governance structures, and strategies to achieve performance targets including the projected cash flows and the sources of finance for any new Facilities
- d) "Board" means the person named as the Board in the SPA Data Sheet and the legal successors in title to this person; This entity shall provide services in this agreement during the transition period.
- e) "County" means the devolved level of government which has the mandate as per the constitution to provider water services and has chosen to appoint the provider as one of its units to provide services.
- f) "Contingency Fund" means a separate fund maintained by the Provider to be used for purposes of financing expenses related to provision of water services by the Provider
- g) "Customer" means a person other than the Board or the Provider who receives Services from the Provider
- h) "Customer Contract" means a contract between the Provider and a Customer which governs the supply of services to that customer, payment by the customer to the provider, and other terms of the arrangement
- i) "Day" means a calendar day and "year" means 365 days.
- j) "Default" means a failure by a Party to perform its obligations under the SPA.
- k) "Dispute Resolution Process" means the process for resolving disputes between the Parties set out in article [11](#)
- l) "Effective Date" has the meaning given in subarticle [3.1](#), and is noted in the SPA Data Sheet
- m) "Expiration Date" shall be the date specified in the SPA Data Sheet
- n) "Facilities" means the infrastructure assets the Provider uses to provide the Services
- o) "Government" means the Government of Kenya
- p) "Laws" means all national (or county ) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in Kenya
- q) "Operations and Maintenance (O&M) Plan" means the document detailing the staffing, investment and monitoring arrangements in place or planned 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
- r) "Party" means the Board or the Provider, as the context requires
- s) "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

- t) "Provider" water service provider named as Provider in the SPA Data Sheet and the legal successors in title to this person
- u) "Provider's Representative" means the person appointed by the Provider under subarticle 13.3
- v) "Revenue Account" means the account maintained by the operator where all revenue of water service sales is banked and the outflows are as per the WASREB standards"
- w) "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
- x) "Schedules" means the document(s) entitled schedules referred to in this SPA
- y) "Service Area" means that area in which the Provider is to provide the Services, as required by article 5 and specified in Appendix A.
- z) "Services" means the services to be provided by the Provider under the SPA, as defined in article 5.
- aa) "SPA" means the Service Provision Agreement, which comprises the General Conditions, the SPA Data Sheet, the Particular Conditions, and the Schedules
- bb) "SPA Data Sheet" means the pages entitled SPA Data Sheet
- cc) "Tariffs" means the charges levied on the consumption of water services (volumetric rate, per livestock rate, monthly flat rate, etc) as well as for access to a water system (such as membership fees and connection fees) approved by the Regulatory Board
- dd) "Transition Period" means the period provided by the Water Act 2016
- ee) "WASREB" means the Water Services Regulatory Board established by the Water Act (2016)

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## **2 General Provisions**

### **2.1 Compliance with Laws**

- 1) Each Party shall, in performing the SPA, comply with applicable Laws and Guidelines in the sector.
- 2) The 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 completion of the Services

### **2.2 General Rights and Obligations**

#### **2.2.1 Rights and Obligations of the Provider**

1. The Provider shall be responsible for providing access to water services to **all** residents within its demarcated area of supply who demand water service
2. The Provider shall have the right to collect **approved** tariffs from users accessing the services it provides
3. The Provider shall bank all such revenues in a ringfenced account under the supervision of the Board/ County
4. The The Provider shall not assign this Agreement without the prior written consent of the Board/County
5. The Provider may, following due notice to and approval of the Board/County contract out services including management, administration and repair and

maintenance to independent contractors but the Provider shall remain responsible to the Board the provision of water services of the standard herein stipulated

6. The Provider is obligated to provide access to its facilities and records of its activities to the Board/County and to the Regulatory Board and to allow for the ascertainment of compliance with the provisions of this Agreement.

### **2.2.2 Rights and Obligations of the Board/County**

- 1) The Board may provide technical, financial and other support to the Provider to enable the Provider meet its obligations under this Agreement, particularly with regard to asset management and development, the obligation to provide water services efficiently and economically to all the residents within its area of supply and to upgrade the services as agreed between the parties.
- 2) The Board will be obligated to monitor the performance of the Provider in line with performance targets laid out in this agreement And ensure corrective action is taken
- 3) In the event of a force majeure type of event (such as riots, floods, earthquake) the Board will provide the necessary support to ensure continuity of service.
- 4) The Board shall ensure that the provider complies with the water service regulations set up by the Board under section 73 of the Act.

### **2.3 Separate Liability**

This Agreement does not create joint liability of the parties and each party shall be separately liable for its acts of omissions. Each party shall indemnify the other against any losses incurred as a result of the actions of the other.

## **3 Commencement and Duration**

### **3.1 Effective Date and Commencement**

The SPA will become effective on the date specified as the Effective Date in the SPA Data Sheet.

### **3.2 Duration**

Unless terminated earlier in accordance with clause [12](#), 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 Which is schedule A

### **3.3 Renewal**

- 5) The SPA may be renewed with the consent of both parties, subject to written confirmation by both parties of the intent to renew this SPA six months prior to the Expiration Date.

### **3.4 Conditions Precedent**

- 1) This SPA and all the terms and targets has been approved by the WASREB
- 2) The Provider has obtained abstraction rights, where applicable, from the relevant government authority
- 3) Confirmation by the Provider/ Board that they have exclusive use of the assets required for service delivery

## **4 WASREB Guidance**

- 1) The Parties acknowledge that the WASREB may from time to time issue guidelines as well as orders providing direction on matters related to the provision of water and wastewater services.



- 2) The Parties agree to comply with such guidelines and to interpret this SPA in such a way as to be consistent with such guidelines where possible, or if this is not possible to amend the SPA to make it consistent with the guidelines
- 3) The Parties agree that the WASREB guidelines on tariffs will not adversely affect the Provider's financial viability

## **5 Scope of Services**

### **5.1 Service Area**

The Service Area is that area described in Schedule B as demarcated by the water service board.

### **5.2 Services**

The Providers shall provide the following Services:

- 1) Supply water to meet the needs of people and businesses in the service area, to the best of its ability given the Facilities it has available and in accordance with its Business Plan and Service Obligations set out in Schedule C.
- 2) Such other service requirements as are specified in Schedule D.

### **5.3 Maintenance**

The Provider shall maintain the Facilities in good working order and shall have a maintenance schedule for all the assets in accordance with the relevant WASREB guideline

## **6 Tariffs**

### **6.1 Customer Tariffs**

- 1) The Provider shall charge the Tariffs as per its Business Plan appended to this Agreement and Business Plan revisions submitted annually. Tariff shall be sufficient to cover the reasonable cost of providing the Services, maintaining the Facilities and to meet any costs of providing new Facilities including debt servicing costs on outstanding loans taken for this purpose, and where appropriate, the cost of asset renewal and development
- 2) Regular adjustments to the tariffs in Schedule E will be on the basis adjustments processes approved by WASREB. The provider may request an annual tariff review based on projected annual revenue requirements where the regular adjustment is insufficient to account for major changes in revenue requirements.
- 3) Any surplus shall be placed in a Contingency Fund which shall be used for the purpose of expanding extensions.
- 4) The Tariffs charged shall comply with WASREB Tariff Guidelines for small scale operators.

### **6.2 Tariff Revenues**

- 1) The Provider shall maintain a dedicated bank revenue account for Tariff Revenues collected from Customer and this revenue shall not be mixed with revenue from other sources.
- 2) The Provider shall use the Tariff Revenue solely for the purposes of providing the Services, maintaining the Facilities and meeting any debt service obligations on loans taken for providing the Services, but may also use it to finance renewal and development According to expansion of service area as agreed with the water service board.
- 3) From the revenue account the first payments shall be regulatory levy, the licensee administration fee and the service provider income which shall be adequate to enable the provider meet its own annual expenses approved in the annual budget.

- 4) This revenue account shall be operated with the approval and guidance of the Board as regards priority of outgoings.

## **7 Asset Maintenance, Management and Development**

- 1) The Provider will, within a period of six months, prepare and submit an inventory and valuation of the Assets which it will use in the provision of water services.
- 2) All significant changes in the value of assets, as defined by any guidelines on asset valuation issued by the WASREB, shall be recorded in the inventory of assets.
- 3) Capital investments will be in adherence to technical guidelines issued by the Ministry of Water and Irrigation or the regulatory board and will be undertaken only after technical approval by the Board.
- 4) The Provider has the obligation to make any debt service and interest payments on loans taken by the Provider.
- 5) The Board/County may provide additional Facilities to the Provider to allow it to better serve the Service Area. This will be by way of a grant of infrastructure assets which have been constructed and financed by the Board. If it does the ownership of the facilities provided shall be agreed between the parties based on the percentage contribution of the parties to the cost of development..
- 6) The Board/County shall consult with the Provider in developing additional Facilities, and the Provider shall cooperate with the Board in planning and construction of such new Facilities.
- 7) The Provider may use the assets to secure borrowing for capital investment, as reflected in its business plan, under terms and conditions to be agreed between the provider, the Board/County and the financing institution.
- 8) The Provider shall maintain all additional facilities in good working order.

## **8 Customer Management**

### **8.1 Customer Contract**

- a) The Provider shall enter into a Customer Contract with each Customer
- b) The Customer contracts shall be fair and reasonable and in accordance with WASREB guidelines

### **8.2 Billing and Customer Payments**

The Provider shall bill the Customers for the Services in accordance with the Tariff, and collect payment from the Customers, in accordance with good utility practices, and any applicable WASREB guidelines.

### **8.3 Customer Satisfaction**

- 1) The Provider shall carry out a survey of customer satisfaction at least every three years and submit the report to the Board/ County and WASREB
- 2) In the event that the customer satisfaction survey shows that customers in the provider area are not reasonably satisfied, the Provider will agree with the Board/County actions to take to improve customer satisfaction, and each Party will then be obliged to take those actions.

### **8.4 Complaints**

- 1) The Provider will make every reasonable effort to resolve complaints from Customer and Potential Customers within its Service Area And will ensure that it complies with WASREB guidelines on this issue and the targets set in schedule D.

## **9 Planning, Reporting and Record Keeping**

### **9.1 Business Plan**

The Provider shall prepare and annually update a five-year Business Plan, including

- 1) Operation & Maintenance Plan
- 2) Service Plan
- 3) Proposed investments and tariffs

### **9.2 Water provider Profile**

To enable it meet its business plan obligations the provider shall maintain the profile that meets the regulatory board criteria as per Legal Notice 137 of 2012 or any successor legislation and the board and management profile which meets this criteria is set out in schedule G.

### **9.3 Reports to be Prepared by the Provider**

- 1) The Provider shall prepare in each quarter a report which shall be submitted to its board of director shows
  - a. information about, and an analysis of its operations for the quarter;
  - b. the billings for the quarter showing distinctly the gross and net billings;
  - c. collections for the quarter showing distinctly the gross and net billings,;
  - d. Financial inflows and expenditure
  - e. Water quality reportThe report shall then be submitted to County/Board and WASREB.
- 2) The Provider shall prepare each year an Annual Report which includes:
  - a. Service Obligations which includes a comparison of actual service levels compared to planned service levels Outlined in schedule D
  - b. Budget for the previous year comparing the actual budget to the forecast budget for the next year. The latter shall include forecasts of operating and maintenance costs, debt servicing costs for any outstanding loans, customer numbers, volumes produced, proposed tariffs, and revenues
  - c. Revised Business Plan
- 3) The accounts of the Provider must be subjected, annually, to an independent financial and technical audit at the cost of the Provider. The audited results will be included in the Annual Report.

The Annual Report shall be submitted to the Board/County and WASREB within three 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 Provider to its customers by posting it in the premises of the Provider where it can easily be read.

### **9.4 Record Keeping**

- 1) The Provider shall keep records of its assets, their condition, its customers, volumes produced and sold, costs and revenues, in accordance with good utility practice, and relevant WASREB Guidelines.
- 2) The Provider shall allow the Board/ County access to its records at any time on written notification. The Provider shall respond to requests for information from the Board/County within a reasonable period, to the best of its ability.

## **10 Amendment of SPA**

- 1) The Parties acknowledge that circumstances, objectives and available information will change over the duration of the SPA, due to the implementation of the Water Act 2016;

and commit to work together in good faith to amend the SPA where such amendment would better serve the interests of Customers and Potential Customers.

- 2) Either Party may request an amendment. Any amendments to this Agreement must be agreed to between the provider and the Board and subject to approval by the WASREB.
- 3) 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 WASREB for determination as a dispute under Clause [11](#).

#### **11 Dispute Resolution**

- 1) If any dispute arises out of or in connection with this SPA, either Party may give notice to the other Party of the same, whereupon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement through mutual consultation and negotiation between the senior executives of each Party.
- 2) In the event that the Parties do not resolve a dispute within forty five (45) days of notice of the dispute being given, either Party may refer the dispute to the WASREB for determination.
- 3) The Parties will abide by the decision of the WASREB on the dispute.

#### **12 Termination by the Board for Cause**

- 1) The Agreement may be terminated by mutual agreement by three months notice of the intention to terminate or not to renew the Agreement.
- 2) The Board/County shall be entitled to terminate the SPA for cause, by giving 15 days notice, under the following circumstances:
  - a) If the Provider 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) If the Provider becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
  - c) If the Provider is found to engage in any corrupt or fraudulent Practice under the relevant legislation
  - d) If efficiency demands that the operators area of jurisdiction is taken up by a more cost effective provider.
  - e) WASREB provides a viability criteria assessment and recommends that the Provider be merged or clustered with another on consumer interest.
- 3) The Board's/County election to terminate the SPA shall not prejudice any other rights of the Board, under the SPA or otherwise.
- 4) Any intended termination of the Agreement shall take into account the need not to prejudice the ability of the provider to discharge outstanding financial obligations, if any, entered into by the Provider for purposes of enabling it to implement its commitments under the Business Plan.
- 5) Following notice of the intention to terminate or not to renew the Agreement the parties shall enter into negotiations with a view to making appropriate arrangements, for the transfer of asset ownership, to allow the Board/County to make alternate arrangements for the provision of water services within the area of supply of the Provider to ensure continuity of service. The obligation to service outstanding debts will also be transferred with the assets.

**13 Transparency**

Unless otherwise stated in the SPA Data Sheet, the Board shall make copies of the SPA available at no charge upon request and by posting it on a suitable website.

**13.1 Interpretation**

□ In the SPA, except where the context requires otherwise:

- a) Words indicating one gender include all genders
- b) Words indicating the singular also include the plural and words indicating the plural also include the singular
- c) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing
- d) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record, and
- e) The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

**13.2 Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- a) 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
- b) Delivered, sent or transmitted to the address for the recipient’s communications as stated in the SPA Data Sheet, except that:
  - i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly, and
  - ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

**13.3 Parties’ Representatives**

- 1) The Provider’s Representative shall be the person so named in the SPA Data Sheet
- 2) The Board’s Representative shall be the person so named in the SPA Data Sheet
- 3) Either Party may change its representative from time to time and shall give notice of the change to the other Party at least one day before it comes into effect.

Signed by .....County Director of Water Dater.....

Name .....

Witness by .....County Officer Water Date.....

Name .....

Signed by .....Water Service Board Date .....

Name .....

Witnessed .....Water Service Board Date .....

Name .....

**AND OF THE OTHER PART**

Signed by .....Provider Date .....

Name .....

Witness.....Provider Date .....

Name .....

Approval Number/Certificate Number WASREB .....

WASREB Date .....

Signed .....

Name.....

**Schedules**  
**These are an integral part of the SPA**

**Schedule A SPA Data Sheet**

**Part A - SPA Data**

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Data</b>
<b>County Name and address</b>		
<b>Board's name and address</b>		
<b>Provider's name and address</b>		
<b>County address for communication</b>		
<b>Board's address for communication</b>		
<b>Provider's address for communication</b>		
<b>County Representative</b>		
<b>Board's Representative</b>		
<b>Provider's Representative</b>		
<b>Effective Date</b>		
<b>Period of SPA</b>		
<b>Expiration Date</b>		

**Scheme summary sheet:** This shall include brief details of the scheme e.g. source, population, facilities, area covered and capacity of works.

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

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



**Schedule B Service provider area ( map and description )**

**Schedule C Business Plan**

**Schedule D minimum service level**

<b>Service Indicators</b>	<b>Current status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Sector Benchmark = final objective</b>
<b>SI 1</b> Coverage of the Service Area  Household Connections  Consumer with Access to Connections  Number of Yard Taps  Number of Customers with Access to Yard Taps  Number of Kiosks  Estimated Number of Customers Served by Kiosks							Low density areas >80%
<b>SI 2</b> Drinking Water Quality							> 95% of tests within norm on total of required tests
<b>SI 3</b> Service Hours							>16 hours
<b>SI 4</b> Billing for Services							Billing ratio 100% (all connections are billed)
<b>SI 5</b> Client Contacts							Written 5 working days Meter 10 working days New connection<3 weeks Pay bill/file complaint<15minutes
<b>SI 6</b> Interruption of Water Supply							Unannounced interruption 20-36 hours <15% (calculated annually) 36-48 hours <8% >48hours<3% **
<b>SI 8</b> Unjustified Disconnections							0.4% <10,000 connections
<b>S1 12</b> Un-accounted for Water							<20%
<b>S1 13</b> Metering Ratio							100%
<b>S1 14</b> Collect Efficiency							>90%
<b>S1 15</b> Staff/1000 connections							<9 (WSP with - medium/small
<b>S1 16</b> Unit Operation Cost							Total Operation Cost/Water Produced (comparison)
<b>S1 17</b> Personnel cost as a share cost of O&M.							<40%

**Schedule E**  
**Approved Tariff**

**Schedule F Asset Register**

**Schedule G**  
**Water Provider Profile**