



THE WATER SERVICES REGULATORY BOARD
P.O. Box 41621 – 00100
Nairobi,
KENYA

ISSUE OF LICENCE FOR PROVISION OF WATER SERVICES
THE WATER ACT, 2016

THE WATER SERVICES REGULATORY BOARD herein referred to as (**WASREB**), acting under powers given to it by section 72 of the Water Act 43 of 2016 and having considered all matters under section 77, 85 , 86 and 90 of the Water Act 2016 and all consequential and incidental powers created by Legal Notice 59 and Legal Notice 60 of 2017 that water services boards have NOT transitioned to Water Works Development Agencies and are thus asset holders under the meaning provided by the repealed Water Act 2002; Legal Notice 167 of 2012 issued by the Transition Authority; Gazette Notice 2238 of 1st April 2016 also issued by the Transition Authority and further guided by the Constitution 2010, Articles 21, 43, 46, 189, 191 and 259, read together with Fourth Schedule and having taken into account all relevant information and having due regard to the Transition Period under the Water Act 2016, **WASREB** herein **issues** the license of the water service provider on the conditions prescribed hereafter under section 90 of the Water Act 2016 and these conditions override all previous conditions where there is inconsistency.

Issued to:

THE WATER SERVICES COMPANY
Commercial viable water service provider
Reference Number: [.....]
Date of Issue

Authorised persons to issue: Chief Executive Officer

Seal

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ACRONYMS

CIDP :	County Integrated Development Plan
NEMA:	National Environment Management Authority
NRW:	Non Revenue Water
PFMA:	Public Finance Management Act 2012
TDS :	Total Dissolved Solids
USSD :	Unstructured Supplementary Service Data
WARIS :	Water Regulation Information System
WSB:	Water Service Board
WSP:	Water Service Provider
WASREB:	Water Services Regulatory Board
WRA:	Water Resources Authority
WSS:	Water and Sanitation Services

THIS LICENSE is to _____ **WATER SERVICES COMPANY** , (“the Licensee”) a county entity ofCounty established under the Companies Act 2015 and recognised as a county entity under the Public Finance Management Act 2012 by the said county government.

WHEREAS:

- I. Under the Constitution 2010 the functions of the national government and county government are demarcated under the Fourth Schedule.
- II. The Fourth Schedule of the Constitution states that the national government functions are consumer protection, capacity building and technical assistance to the counties, national public works , protection of the environment and natural resources with a view to establishing a durable sustainable system of development including water protection, securing sufficient residual water, hydraulic engineering and the safety of dams.
- III. The Fourth schedule of the Constitution states that the county government functions include implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation , county public works and services including water and sanitation services
- IV. The Constitution 2010 article 43 (1) states that access to safe water in adequate quantities is a right and also states that access to reasonable standards of sanitation is a right; and article 191 lays down the role of national standards.
- V. The county governments are now operational and are in charge of the provision of water services in their counties as per LN 167 of 2013 and section 154 of the Water Act 2016 and further pursuant to Gazette Notice 2238 of 1st April 2018 and article 191 of the Constitution, the national standards prevailing is that provision of water services is through an commercial viable water provider operating at arm’s length and with ring fenced revenue but at all times accountable to the county government for performance.
- VI. The Water Act 2016 has provided that WASREB shall regulate all water service providers which are county entities to ensure consumer protection and commercial viability.
- VII. The water service boards continue to hold public assets in trust for the national government and are agencies of the national government under the Water Act 2002 and thus have a continued interest in establishing that the assets are properly used and maintained until all assets are transferred under the Transition to Devolution Act 2012 or any other successor Act and all loans attaching to developed and used assets are paid off in full.
- VIII. Also the Licensee is operating in a sector under national regulatory standards and as such is under legal obligation to adhere to all the national standards and guidelines under the Water Services Regulatory Board.
- IX. The Licensee’s area of jurisdiction covers the geographical area within which the Licensee resides and where the Licensee has been providing and continues to provide Water Services as directed by the County Government in the Kenya Gazette.
- X. It is illegal under section 85 of the Act to provide water services in the area of jurisdiction of the licensee without the authority of a license.

The License is therefore issued as per section 90 of the Act according to the following conditions.

CLAUSE 1 DEFINITION AND INTERPRETATION

1.1 Definitions

The following words and expressions shall have the meanings assigned 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.
- b. “Act” means the Water Act, 2016 and its successor legislation.
- c. “Annual Report” means the report the Licensee is required to prepare and submit according to the Relevant guidelines of the Regulatory Board.
- d. “Annual Business Plan Update” means the annual updates to the Business Plan prepared by the Provider detailing any changes to the Approved Business Plan.
- e. “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 fixed assets to be procured, constructed or provided by the Licensee under the provisions of this agreement and includes *interalia*, all lands, 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, IT systems and associated information irrespective of the format in which such plans, records and associated information are maintained or otherwise stored.
- f. “Business Plan” means the formal document which defines the business goals , reasons they are attainable and plans for reaching them for the Provider and is elaborated according to the Business Planning Guidelines issued by the Regulatory Board.
- g. “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 Licensee or any other body, company, or organization, and includes also construction work and the procurement and installation of capital equipment to extend, rehabilitate or replace the facilities. This includes all major work carried out on the water services system (production and purification installations; storage facilities; supply, distribution, evacuation networks; building and other installation; etc.) in order to improve and enlarge water service provision according to standards and regulation. It includes capital renewal if it replaces a system at the end of service life.
- h. “Capital Works Plan” means a plan for Capital Works prepared by the Licensee and approved by the WSRB in accordance with the guidelines and this Licence .
- i. “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.

- j. “Contingency Fund” means a separate fund maintained by the Licensee to be used for purposes of financing expenses related to provision of water services by the Licensee .
- k. “Connection Charge” means the amount charged to Customers for the installation of a connection from the distribution main to the Customer’s property.
- l. “Connection Fund” means a fund established by or on behalf of the Licensee to cover the costs of new connections for eligible Customers.
- m. “Connection Regularization Plan” means a plan to regularize illegal connections developed and approved.
- n. “County” means the county government ofand particularly the CEC in charge of Water and Sanitation affairs in that county
- o. “Cure Period” means, in respect of a Default Notice given to the Licensee 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).
- p. “Cure Plan” means a plan to rectify a default, as provided in this Licence .
- q. “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 septage (including sewage) is removed and discharged and who is so supplied or served by a Licensee or who should be so supplied or served by the Licensee 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.”
- r. “Customer Agreement” means a contract between the Water Licensee and a Customer which governs the supply of services to that Customer, payment by the Customer to the Water Licensee and other terms of the arrangement
- s. “Customer Tariff” means the tariff charged by the Licensee to Customers in accordance with the provisions of this Licence approved by the Water Services Regulatory Board;
- t. “Day” means a calendar day and “year” means 365 or 366 days in a leap year
- u. “Deed of handover” means the document to be executed by the Licensee and the WSB or the Licensee and the county government and elaborates on the assets given to the licensee to conduct the water operations business.
- v. “Default” means a failure by the Licensee to perform its Obligations under this Licence.
- w. “Default Notice” means a notice of Default given by WASREB in accordance with provisions of the License.
- x. “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 third parties including small scale service providers to procure, manage and implement.
- y. “Delegated Works Fee” means an amount which the Licensee is due to pay the Provider for managing or implementing the Delegated Works.
- z. “Dispute Resolution Process” means the process for resolving disputes set out in this Licence .

- aa. “Drinking Water” and “Potable Water” means water that is supplied and is to be suitable for human consumption on the premises to which the water is supplied.
- bb. “Effective Date” is the day this Licence is signed and approved by Water Services Regulatory Board.
- cc. “Emergency Notice” means a notice given when there is a breach of the Licence that threatens public health or safety.
- dd. “Exclusivity” means the exclusive right to provide Services in a given area.
- ee. “Expiration Date” is the day this Licence shall expire and has been specified in the Licence Data Sheet.
- ff. “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.
- gg. “Facilities” means the infrastructure, facilities and assets the Licensee uses to provide the Water Services.
- hh. “Financial year” means a period of twelve continuous months from 1st July to 30th June of every period.
- ii. “Financing” means credits, grants or any other money provider by the Government of Kenya, Development Financial Institution or any other Financial arrangement to be approved by the Government either at county or national level.
- jj. “Fit and Proper Test” means a test aiming to prevent corrupt or untrustworthy people from serving on the board of a licensee.
- kk. “Force Majeure” means an exceptional event or circumstance which is beyond the Licensee control such as war, rebellion, terrorism, riot, natural catastrophes.
- ll. “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.
- mm. “Government” means the Government of Kenya.
- nn. “Income Account” means an Account set up by the Licensee to receive the Licensee’s Income, which will be transferred to this account from the Revenue Account.
- oo. “Illegal connection” means connection done without authorization of the licensee.
- pp. “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.
- qq. Licensee means the body provided with a license by the water services WASREB to provide water services under section 85-87 of the Water Act 2016 or the successor body or bodies to that licensee functions and powers under any other legislation.

- rr. “Licensee Income” means the income due to the licensee in order to meet its Obligations for water service provision under this Licence and determined in the annual budget approved by licensee.
- ss. “Licensee’s Representative” means the person appointed by the Licensee as its authorised representative.
- tt. “Maji Voice” is a complaints and feedback ICT system deployed by WASREB to track consumer complaints resolutions.
- uu. “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.
- vv. “Mediator” means a person appointed by the WASREB and the Licensee to mediate between them and to attempt an amicable settlement in the event of a civil dispute arising out of or relating to this Licence or any breach thereof.
- ww. “Meter” means an apparatus installed for the purpose of measuring the quantity of water or sewage flow through an identified pipe or channel and meets the required technical standards.
- xx. “Metering Plan” means a plan prepared by the Licensee 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 at all times. It also includes installation and fixing of production meters, bulk and zonal meters for purposes of unbundling water volumes.
- yy. “Minimum Service Level” means the service level defined by the WASREB and attached to this Licence to ensure efficient availability, continuity and quality of water and sanitation services provisions for Customers.
- zz. “Model Customer Contract” means the model Customer contract developed by the Licensee and incorporating all provisions proposed by the WASREB as minimum requirements.
- aaa. “New Connection Fund” means a fund established by or on behalf of the Licensee to cover the costs of new connections for purposes of accelerating access to water services while at the same time allowing licensee to take control and responsibility on the quality of materials used for new connections.
- bbb. “Notice of Tariff Correction” means the notification by the WASREB when it determines that a tariff adjustment has not been made in accordance with the WASREB Tariff Guidelines or other applicable rules and regulations.
- ccc. “Opening Facilities” means those Facilities which were in existence and in use at the Effective Date and are specified in the Schedules.
- ddd. “Operations and Maintenance (O&M) Plan” means the document detailing the activities to be carried out over a year’s period including all needed resources such as staffing and investment and also included the monitoring arrangements in order to ensure

- that the Licensee meets Performance Targets specified in the Agreement. Any details of contingency funds for maintenance and rehabilitation are included in the O&M plan.
- eee. “Other Business” has the meaning of all businesses not covered under the provision of Water Services as defined by the Act.
- fff. “Penalty” means the amount that the Licensee must pay to the WASREB for breach of material license conditions and failure to achieve the Performance Targets .
- ggg. “Performance Incentives” means the incentive payment which may be made to the Licensee for exceeding its Performance Targets.
- hhh. “Performance Targets” means the Targets in Schedule D and E specified by the WASREB and other Targets included in the Schedule D.
- iii. “Performance Guarantee” means a guarantee, which shall be provided by the Licensee to the WASREB to guarantee Performance and payment Obligations in accordance with its terms and conditions of this Licence.
- iii. “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.
- kkk. “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.
- lll. “Proposed Capital Works Plan” means the Capital Works Plan developed by the Provider and submitted to the WASREB in fulfilment of the requirements set forth in this license.
- mmm. “Provider” means Licensee or any other entity recognised by the county government to provide water services in a defined area of a county and named as such in this Licence and in the Licence Data Sheet and its legal successors in title.
- nnn. “Provider’s Representative” means the person appointed by the Licensee as its authorised representative.
- ooo. “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.
- ppp. “Public Assets” means all assets used by the Licensee 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.
- qqq. “Public Funds” are as defined in the Public Procurement and Asset Disposal Act 2015.
- rrr. “Raw Water” means untreated water which is or may be abstracted from sources of supply which is available for water supply purposes.
- sss. “Regulations” means all subsidiary legislation of the Republic of Kenya applicable directly or indirectly to water supply and sewerage services.

- ttt. “Rehabilitation Works” means works undertaken on the network assets and other water facilities in order to restore them and or upgrade them to a proper and effective working condition.
- uuu. “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 (optimally in part or in full) for which it is intended and, where necessary, includes the complete replacement or renewal of the asset.
- vvv. “WASREB Guidelines” are guidelines prepared by the WASREB under section 75(4) of the Act and which are binding on all Licensees and all water providers
- www. “Regulatory Board” means the WASREB established by the Water Act, 2002 and the successor entity under the Water Act 2016.
- xxx. “Renewals” means the activities required to keep the assets within the Service Area in an acceptable conditions by replacing any asset that reaches the end of its useful working life.
- yyy. “Revenue Account” means a bank collection account set up to receive funds collected from Customers and from which only specified outflows are allowed.
- zzz. “Revenue Account Administrator” is the accounting officer of the licensee and two other employees of Licensee designated to manage the revenue account.
- aaaa. “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.
- bbbb. “Revenue Surplus” means any remaining funds in the Revenue account after the full payment of the Provider Income, the WSB Remuneration, Regulatory Levy and any Penalties or Incentives payments.
- cccc. “Schedules” means the document(s) entitled schedules referred to in this Licence .
- dddd. “Service Area” means that area in which the Licensee is to provide the Services, as required in Schedule B. It is not limited to the area supplied by the piped water or sewerage.
- eeee. “Service life” is the actual period of time during which [the asset] or any of its components performs without unforeseen cases of disruption for maintenance and repair”
- ffff. “Service Needs Plan” means a 10-year projection of the Facilities required to provide the water and wastewater service coverage, quantity and quality which Customers and Potential Customers demand at the allowed tariff levels within the Licence Area.
- gggg. “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.

- hhhh. “Special regulatory regime” mean administrative sanctions used to enforce the licensee obligations after approval of the WASREB under section 102 of the Act to ensure compliance with rules , regulations and guidelines under the Act.
- iiii. “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.
- iiij. “Small Scale provider ” means a provider providing water services from its own facilities constructed either with public funds or private funds and produces less than 2,500 cubic metres per day.
- kkkk. “Subsidies” means funds received from the national government, county government, charitable organizations or international development agencies to cover some or all of the costs of provision of water and sanitation services.
- llll. “Tariffs” means the charges levied on the consumption of water services as well as for access to a water system or sewerage system.
- mmmm. “Tariff Schedule” means the schedule of tariffs charges to each customer category.
- nnnn. “Third Party Provider” means a person or entity within the service area of a Licensee who provides water services or services incidental under the authorisation of a third party agreement with the authorized Provider.
- oooo. “Unforeseeable” means not reasonably foreseeable and against which adequate preventive precaution could not reasonably be taken by an experienced Licensee by the effective date.
- pppp. “Water operator license means the permission issued to the managing director and key management staff of a license to operate the facilities possessed by the licensee and which shall be revoked on material non-compliance”.
- qqqq. “Water Tribunal” means the body established by the Water Act, 2016 or its successor to hear disputes
- rrrr. “Water Resources Authority” (WRA) means the Authority established by the Water Act, 2002 or its successor under the Water Act 2016.
- ssss. “WSB’s Remuneration” means the remuneration allowed to the WSB to recover its loan costs associated with the provision of services assets , allocated to the Licensee.
- tttt. “Water Service” means any services of or incidental to the supply of water or provision of sewerage.
- uuuu. “Water Service Board” means the body established under section 51 of the Water Act 2002 and its successor body under the Water Act 2016.

1.2 Interpretation

In this Licence , except where the context requires otherwise:

- i. Words indicating one gender includes all genders;
- ii. Words denoting the singular only shall include the plural and vice versa.

- iii. Unless the context otherwise requires, reference to any Clause or schedule is to a Clause or schedule of or to this License
- iv. The headings in this License are inserted for convenience only and shall not affect the construction hereof.
- v. “written” or “in writing” means hand-written, type-written, printed or electronically made and resulting in a permanent record.
- vi. “social media” means websites and applications that enable licensee to create and share content or to participate in social networking to advance its mandate

CLAUSE 2 EFFECTIVE DATE, DURATION, RENEWAL AND EXTENSION OF Licence

2.1 Effective Date

The Licence will become effective on the date of its approval by the Regulatory Board.

2.2 Service Area of License

- a. The Service Area is that area provided in a map described in Schedule B.
- b. The area more particularly comprises of the following sub counties/ locations
- c. The Licensee shall ensure that the whole service area is mapped in a digital ,layered geo-referenced format for all its facilities and installations

2.3 Duration

Unless earlier terminated this Licence shall remain in effect until the Expiration Date, which shall be 5 years from the date of issue of the License.

2.4 Renewal/Extension

The Licence may be renewed by the Licensee sending a request of renewal six months before expiry of the license with a copy of the letter to the CEC in charge of water in the county

CLAUSE 3 REPRESENTATIONS AND WARRANTY

3.1 Warranty

The Licensee warrants to the WASREB that;

- a. It is a legal entity duly incorporated under the Laws of Kenya in accordance with section 77 of the Water Act 2016.
- b. Its board of directors currently meet the standards of the WASREB in terms of competence and stakeholder representation provided in the Corporate Governance Guideline as evidenced by Schedule H and shall be maintained during the tenure of the License.
- c. It is a schedule 2 county entity under the PFMA and has liaised with the County Government and obtained the consent of the county government for the performance targets in the license.
- d. It has signed an updated Deed of Handover withwater service board listing all the assets handed over to it to operate under the Water Act 2002.
- e. It has signed a Deed of Handover with the county government listing all the assets handed over to it to operate as a county entity.

- f. It shall ensure that all loans attaching to any assets handed over to it by the water service board or its legal successor shall be paid fully to the National Treasury as per the financing agreement.
- g. There is no litigation, actual or pending at the date of issue of this license, which relates to the licensee and to which the Licensee is a party or of which the Licensee is aware which would materially affect the Licensee or its ability to perform its Obligations under this License and the transactions contemplated hereby and the licensee shall immediately disclose such litigation immediately it arises.
- h. It shall not resolve in any meeting nor enter into any other agreements with any party which jeopardise or make futile the obligations in this License, the obligations of the licensee under the law, or seek to abrogate the standards, guidelines and benchmarks set by the Regulatory Board.
- i. The performance of this License and the transactions contemplated hereby do not and will not infringe and are not and will not be contrary to any laws or regulations of any Governmental, administrative or regulatory body.
- j. It will consult with County Government at all times to ensure that all its obligations in this License are adhered to.
- k. It will provide access to the WASREB to visit, inspect and conduct tests on all documents and areas of WSS provision and the licensee shall make reasonable provision to assist the WASREB in such events.
- l. The licensee warrants that the revenue raised in the service area is to use, improve, upgrade, purchase and add new items to the fixed assets of the licensee during the subsistence of this license 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 license.
- m. Subject to the provisions of the Act, there are at present in existence private operators including boreholes which supply water within the service area of the license, these shall be allowed to continue under a sublicense until the licensee is in a position to supply an equivalent amount and quality of water. In the event of the Licensee meeting such supply, operators supply shall cease but shall remain in the records of the licensee to maintain reserve capacity.

3.2 Licensee Representatives

The Licensee's Representative shall be the Managing Director of the Licensee and shall have all authority necessary to act on the Licensee's behalf under the Licence .

CLAUSE 4 CONDITIONS PRECEDENT AND DOCUMENTS

4.1 Regulatory Conditions:

- a. As per the provisions of the Water Act 2016 the Licensee shall have the exclusive use of the water supply and sanitation assets and facilities in the Licensee's area apart from the facilities used in the provision of services other than water services as specified in Schedule C.
- b. Before the effective date a detailed asset register and a Deed of Handover in relation to the assets shall be executed between the licensee and the water service board which has jurisdiction in that area to be used by the licensee for the tenure of the license until section 84 of the Water Act 2016 becomes operational.

- c. Before the effective date and in the absence of county legislation the Licensee and the related County Government shall establish an Agreement relating to the handover and use of assets .
- d. Subject to its water requirements, the Licensee shall maintain valid Abstraction Permits giving it abstraction rights commensurate with its water requirements from the Water Resources Authority.
- e. Subject to its discharge requirements the Licensee shall maintain a valid Effluent Discharge Permit with the Water Resources Authority and NEMA as the case may be.

4.2 WASREB Guidelines and Orders

- a. The guidelines of the WASREB will be based on the provisions of the Water Act 2016 and shall be binding to the Licensee and therefore this Licence shall be interpreted in such a way as to be consistent with such guidelines.
- b. Any amendments to this Licence based on new changes or amendments to the Regulatory Board's guidelines shall also be first approved by the WASREB before they are implemented.

4.3 Notices and Communications

Wherever these conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges 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 Licence Data Sheet and indicated in schedule A.

Except as otherwise specified herein, any notice or communication between the parties shall be in English. Any communication between the Licensee and the general public shall either be in English or in Swahili.

CLAUSE 5 AVAILABILITY AND POSSESSION OF FACILITIES

5.1 Possession of Facilities

- a. The Licensee shall possess the Facilities handed over to it by theWater Services Board, the County Government or any other party, for the purposes and consideration of providing the Services, for the duration of the Licence . The Facilities maintained in accordance with this clause shall be known as the Opening Facilities and are provided in the Asset Register annexed to this Licence.
- b. The Licensee shall maintain all the available information on the Facilities, including their :
 - i. physical identity,
 - ii. physical location
 - iii. area coordinates in terms of real property
 - iv. condition of the assets
 - v. lifespan of the assets.
- c. The available information shall include a copy of all easement arrangements as provided by sections 104 and 107 of the Water Act 2016.
- d. The Licensee shall cooperate with the Water Service Board and all other public agencies in identifying and securing control over the assets and facilities.

5.2 Availability of Appropriate Assets/Facilities

- a. The licensee shall ensure that where certain of the services provision will be contingent on facilities' improvements, and that these improvements are the responsibility of the County

Government or the Water Service Board and they fail to provide for the facility improvements, the Licensee shall not be relieved of its obligation to provide the specified aspects of the service unless the responsibility to provide the assets was the responsibility of the water service board or the county government as specified in the CIDP/ Development Plan of each respective board.

- b. Schedule R shall list the facilities improvements and the aspects of the Services, which are contingent on those improvements.

CLAUSE 6 OBLIGATIONS, RIGHTS AND PERFORMANCE TARGETS

6.1 Duty to provide access to water services

- a. The Licensee has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services.
- b. This duty is subject to:
 - i. the availability of resources;
 - ii. the need for an equitable allocation of resources to all consumers and potential consumers within the licensee's area of jurisdiction;
 - iii. the need to regulate access to water services in an equitable way;
 - iv. the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
 - v. the duty to conserve water resources;
 - vi. the nature, topography, zoning and situation of the land in question; and
 - vii. the right of the WASREB/county government to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.
- c. In ensuring access to water services a licensee must take into account among other factors—
 - i. alternative ways of providing access to water services;
 - ii. the need for regional efficiency;
 - iii. the need to achieve benefit of scale;
 - iv. the need for low costs;
 - v. the requirements of equity; and
 - vi. the availability of resources from neighbouring licensees .
- d. A licensee may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- e. In emergency situations, a licensee must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of the licensee.
- f. A Licensee may impose reasonable limitations on the use of water services as per section 105 of the Water Act 2016.

6.2 Licensee Rights

- a. To bill customers for all services provided
- b. To carry out rights of disconnection of services to properties for non-payment for water and sanitation services.

- c. To enforce standards on infrastructure and appurtenances used for customers who consume services
- d. To take legal action for breach of obligations by customers
- e. To take legal action against third parties for causing damage to facilities or adversely affecting the services.
- f. To take all actions to ensure that appropriate measures for the protection of the environment are adhered to in line with appropriate legislations including protection of catchment and water sources as per section 104, 105 and 107 of the Water Act 2016.
- g. 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.
- h. To have access to land, property and water sources within the Licensee 's area subject to rules on public security and ownership.

6.3 Performance Targets, Penalties and Incentives

- a. The Licensee shall ensure that the performance targets in schedule D1 are met and reported quarterly as stated in the License.
- b. The Licensee shall ensure that any targets set independently by the county government under county legislation are disclosed to the Regulatory Board.
- c. Penalties and Incentives given by the County to the Licensee have to be approved by the WASREB prior to License for purposes of consumer protection.
- d. Categories of all Penalties or Incentives will be indicated disclosed in this License before the effective date and will form part of the License.
- e. The WASREB 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.
- f. The Performance Penalties for the Licensee will be those set out in Clause 18 to this License. If the Licensee 's Performance falls below the Performance Targets and there is a Penalty for such under Performance, then the Licensee will pay a penalty to the WASREB as provided that clause.
- g. If Performance Incentives have been allowed under this License, then the Licensee shall be paid that Performance Incentive out of the Revenue Account as per the Tariff Conditions of the existing tariff. The total amount of Performance Incentives which can be paid to the Licensee for Performance in any year shall not exceed 2% of human resource annual emoluments.

CLAUSE 7 HUMAN RESOURCE COMPETENCE AND CODE OF CONDUCT

7.1 Management and Staff Structure

- a. On issue of License, the managing director and key management staff shall be deemed to have been issued with an individual water operator's license.
- b. The licensee shall maintain a managing director, Core Management Team and staff that meet the national standards in Legal Notice 137 of 2012 on technical competence of water service providers and any subsequent legislation replacing the legal notice.
- c. The licensee shall maintain the staff expenses within the standards of less than 30 per cent of its operation and maintenance costs.
- d. The Licensee shall on an annual basis file returns with the WASREB on the Technical Competence of all its staff in accordance with the national standards.
- e. There shall be no change in the senior management staff of the Licensee without prior discussion and agreement with the WASREB and such change shall be in accordance with the employment

laws and shall not lead to the Licensee lacking capacity in the core areas of service provision or lead to litigation that would threaten the commercial viability of the Licensee.

- f. To maintain commercial viability the Licensee shall only sign collective bargaining agreements that support performance based employment and enable the Licensee to remain within the national viability standards in the sector.
- g. In the event that the composition of the key management staff or other control structures for human resource are not in line with the criteria and standards set by the regulatory board, the Licensee shall be required to carry out the necessary adjustments within twelve (12) months of the Effective Date.
- h. The Licensee shall ensure that no employee of the Licensee shall be a provider of water services or any aspect of water services within the county or license area of the Licensee to mitigate conflict of interest.

7.2 Compliance to Corporate Governance for Board members

- a. During the tenure of the Licensee the Corporate Governance Standards in the sector shall be maintained and respected in annual general meetings, board meetings and management meetings and only resolutions that within the standards in the water service sector shall be valid.
- b. All Board Members shall be appointed only after an open competitive stakeholder participation procedure as prescribed in the Corporate Governance Guidelines for the sector.
- c. All Board Members and Members of Staff shall meet the Fit and Proper Test prevailing in the water services sector and no license shall be issued or maintained until there is compliance on and submission on the fit and proper test.
- d. Every board members shall sign an undertaking to comply with the law and ensure compliance with this license.
- e. The Licensee shall ensure that all board members and staff sign and adhere to Public Officers Ethics Act Code of Conduct.
- f. The format of the Code of Conduct shall be as prescribed by the Leadership and Integrity Act 2012 and Public Officers Ethics Act 2003
- g. The Licensee shall employ staff on performance linked remuneration and annual appraisal to achieve the terms and conditions of this License and to promote sound business principles in the provision of water services.
- h. The Licensee shall ensure that notices and agenda of each annual general meeting and extraordinary meetings of the members are notified to WASREB at least 7 days before the date of the meeting and the annual report sent with the notice of the annual general meeting.

CLAUSE 8 SERVICE PROVISION CONTRACTS BETWEEN LICENSEE AND THIRD PARTIES

8.1 Exclusive service provision

- a. This clause applies to both water provision , sewerage, septage and sludge disposal into the facilities of the Licensee.
- b. If Schedule B provides that all Services, all parts of the Service Area, are to be exclusive, then the Licensee shall not enter into agreements with other water service providers whether public or private and shall NOT allow other Providers to provide those Services in those areas as it has enough capacity.
- c. If the Licensee has exclusive rights conferred under this clause, and does not provide the Service to Customers and Potential Customers who want the Services covered by those exclusive rights,

and does not have an appropriate and any credible plan to provide such Services in its Approved Business Plan then the Licensee will lose its exclusive rights with respect to those Services it has failed to provide in the areas it has failed to serve and shall enter into third party contracts for service delivery.

- d. In this event the Licensee shall notify the WASREB and the County Water Department of its intention to withdraw from exclusive rights, specifying the affected Areas and Services the WASREB shall notify the Licensee that exclusivity has been withdrawn and only convinced that this was the best option.

8.2 Sub-Contracting of Water Obligations

- a. If the Licensee holds the exclusive right of service provision in an area, then the Licensee shall ensure that all other informal providers providing water to domestic consumers in this area are registered with the Licensee and with the County Government as per the national standards and County Water Statute.
- b. If their services are still required within the service area of the Licensee, all such providers shall sign sub- contracting agreements with the Licensee in order to operate under this Licence with the clear understanding that their services shall be phased out.
- c. The licensee will be responsible for the quality and quantity of service provision in the exclusive area and shall rely on support from the County Government as per the County Water Statute to enforce such agreements for consumer protection.
- d. Each subcontracting agreement shall provide for administrative costs payable to the Licensee to ensure that the Licensee is responsible for any acts or defaults of any subcontractor, its agents or employees, as if they were the acts or defaults of the Licensee . Each contract entered into by a Licensee and a subcontractor shall include provisions which would entitle the Licensee to require the contract to be assigned to the Licensee in the event of termination.
- e. A sub- contracting agreement shall only be within the License period and must have an assignment clause to the Licensee.
- f. All such subcontracting agreements shall be disclosed to the regulatory board.

8.3 Subcontracting of exhauster operations –section 108 of the Water Act 2016

- a. Where the sewer network of the Licensee does not cover the whole License area then the Licensee shall ensure that all exhausters of domestic septic tanks and commercial buildings are registered with the Licensee and get the consent upon payment of an appropriate regulated fee to dispose at designated points into the sewer network or decentralised treatment facility.
- b. The registration must capture the identification details of the disposer, his vehicle registration number and the area in which the disposer obtains the sludge and the volume of disposal.
- c. The registration shall capture the payment details of each disposer.
- d. The Licensee shall ensure that the designated points of disposal of the waste water and sludge meets the standards for such facilities and is maintained to protect the environment and safe disposal of waste.
- e. The Licensee shall maintain a daily register of all disposals in volume undertaken at the discharge point and shall as per sampling schedule under the Water Quality and Effluent Monitoring Guideline test samples of the sludge.
- f. The Licensee shall ensure that all such waste shall be treated to the required standard.
- g. the Licensee shall ensure that all other informal providers providing exhauster services through septage and sludge disposal to domestic consumers in this area are registered with the Licensee

and with the County Government as per the national standards and County Water Statute and meet the service provisions standards on safety, price and environmental protection.

8.4 Third party providers

- a. Subject to approval by the Regulatory Board, the Licensee may enter into partnerships with other Third Party Providers in the public sector or private sector under section 93 of the Water Act 2016 to provide the services required under this Licence. Such Agreements may extend beyond the Licence Expiration Date, but provided that such are accepted by the Licensee, County Government and approved by the WASREB before they come into effect.
- b. Such Agreements with Third Parties may also result in an amendment of this Licence subject to agreement with the Licensee, County Government and prior approval given by the Regulatory Board.
- c. If a Third Party Licensee provides the required Services in the Service Area to the standard the Licensee is required to provide, the Services provided by that Third Party will, for the purposes of assessing whether the Licensee has met its Service Obligation, be treated as though they were provided by the Licensee.

8.5 Sourcing of Supply and Bulk Supply from other Providers

- a. In accordance with section 100 of the Water Act 2016, subject to the capital works development of the county or water service board as the case may be, the licensee is responsible for making its own arrangements for sourcing the water resources or bulk supplies it needs to provide the services.
- b. The licensee shall ensure that any fees and charges for bulk water shall meet the consumer protection standards and is responsible for obtaining all required Licences or permits.
- c. The Licensee shall supply water to other providers for resale on basis of a bulk water agreement approved by the WASREB as per the provisions of section 100 of the Water Act 2016.
- d. In the case of emergency the Licensee may be ordered to supply water to another Licensee on the same terms as those for supplying water to commercial customers using an equivalent volume of water, or on such other terms as agreed by the two parties and approved by the Regulatory Board.

CLAUSE 9. WATER QUALITY MANAGEMENT

9.1 Quality of water supplied

- a. A licensee shall ensure that all its consumers are provided with water from an improved source meeting the following criteria:
 - i. It is accessible on the premises of the consumer
 - ii. Water is available when needed
 - iii. Water provided by the licensee and the operators it supervises is free from chemical and bacteriological contamination according to the standards on water quality.
- b. A licensee shall maintain a water system that allows for the adequate treatment of water to be supplied to consumers by ensuring it adheres to the Kenyan water treatment standards.
- c. A licensee shall depending on the size of its operations maintain:

- i. a certified water testing laboratory,
 - ii. Portable turbidimeter for testing turbidity (cloudiness caused by particles in the water)
 - iii. Test strips and colorimeter with appropriate reagents for testing chemical water quality parameters such as hardness, iron, manganese, nitrate/nitrite, phosphate, and sulphate
 - iv. Handheld Pocket Pro for testing pH, conductivity, TDS, and salinity
 - v. Portable membrane filtration kit with a portable incubator that is assembled in-house for testing microbiological water quality
 - vi. Test strips, color wheel test kit, and colorimeter with appropriate reagents for testing total and free chlorine concentration
 - vii. competent water testing personnel according to national standards in order to ensure that water quality monitoring is carried out according to existing standards
- d. The licensee shall maintain an approved water sampling programme according to the Water Quality and Effluent Monitoring Guideline.

9.2 Quantity of water supplied

- a. A licensee shall ensure that it provides water which meets the basic minimum of 40 litres per day for each person served within its system.
- b. The licensee shall maintain an equity based water rationing schedule where it has inadequate water which shall be provided to the public and shall be on its website.

9.3 Quality of water supplied by operators

- a. Where a licensee monitors all other operators under clause 8 of this license within the county it shall ensure that as a minimum these operators chlorinate water supplied from their sources to consumers.
- b. Where the licensee oversees the operations of other water operators in the county it shall ensure that it trains the operators on the use of 9.1 d (ii)-d(vi) and captures the data on its water quality monitoring report.
- c. Once every quarter the licensee shall budget and provide for a back up water sampling programme for all its operators under its jurisdiction.
- d. The licensee shall be entitled to use the administrative fee obtained from the operators to carry out this program.

9.4 Reporting programme

- a. The licensee shall submit to WASREB a monthly analysis of its water quality tests according to the approved sampling programme. The submitted tests shall not be received in WASREB later than the 15th day of every month.
- b. The licensee shall also ensure a copy of the report is submitted to the relevant office in the county water department.
- e. The licensee shall ensure that every water service operator operating within its jurisdiction complies with the water safety quality standards and reports on these standards in the report sent monthly to WASREB and the relevant county water office.

- f. On issue of the License the licensee shall commence a risk based framework of water quality management based on Water Safety Planning according to national standards.

CLAUSE 10 FINANCIAL ARRANGEMENTS, TARIFFS AND LOAN REPAYMENT

10.1 Financial management

- 1) The Licensee shall adhere to the provisions of the Public Finance Management Act(PFMA) 2012 and the regulations published in managing its finances.
- 2) As a county entity under the PFMA, the Licensee shall submit its annual budget to the County with a copy to WASREB
- 3) The Licensee shall only obtain loans after disclosure and approval by the WASREB and approvals under its constitution and the Public Finance and Management Act 2012.
- 4) The licensee shall ensure that its budget is compliant to the tariffs and the tariff conditions published by WASREB.
- 5) The licensee shall ensure that ninety (90) days at the end of every financial year its financial statements duly signed by the board chairman and the managing director are submitted to the Auditor General with a copy of those accounts being given to the county government and WASREB.
- 6) The licensee shall ensure that one hundred and eighty (180) days after the end of the financial year the Audited Accounts are submitted to shareholder in an annual general meeting.
- 7) The licensee shall undertake appropriate measures to resolve issues arising from audit and submit progress report to the county and the regulatory board.
- 8) The licensee shall maintain the audited accounts and annual report on its website until the next annual general meeting.
- 9) The Licensee shall maintain a Credit and Debt Management Policy that ensures accounts receivables are.....and supplier debts do not and strategies are put in place to ensure prudent management of receivables and payables.

10.2 Customer Tariffs(national standards of tariff setting)

- 1) Generally a customer tariff shall meet the following minimum requirements for consumer protection conditions:
 - a. On its structure differentiate on an equitable basis between—
 - i. different users of water services;
 - ii. different types of water services; and
 - iii. different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area;
 - b. place limitations on surplus or profit;
 - c. place limitations on the use of income generated by the recovery of charges.
 - d. provide for tariffs to be used to promote or achieve water conservation and source protection.
 - e. social equity;
 - f. the financial sustainability of the water services in the geographic area in question;

- g. the recovery of costs reasonably associated with providing the water services;
 - h. the redemption period of any loans for the provision of water services contracted by the licensee
 - i. The need for a reasonable return on capital invested for the provision of water services if the investor is a third party
 - j. the need to provide for drought and excess water availability.
- 2) As per section 72(1)b of the Water Act 2016, tariffs to be charged to the consumers must be evaluated and approved by WASREB to ensure they meet the minimum national standards on consumer protection as follows:
- a. **Minimum Consumption** bracket for domestic consumers shall be **6M³ per month** per household.
 - b. Only the first 6M³ of domestic consumption and supply to water kiosks shall be **eligible for cross subsidy**.
 - c. The billing for consumption in the first consumption bracket shall be on **actual consumption**.
 - d. There shall be **a tariff for shared connections** such as multi-dwelling units and gated communities, distinct from domestic and commercial tariff.
 - e. All tariffs proposed to be charged shall be informed by an **Affordability Study** carried out within the service area of the utility¹.
 - f. The tariffs for both prepaid and post-paid customers shall be **uniform** for each category of customer.
 - g. The **consumption brackets** in M³ for the different categories shall be as follows:
 - i. Domestic Customers: 0-6, 7-50, >50
 - ii. Commercial, Government and Industrial customers: 0-50, 51-100, >100
 - iii. Educational institutions: 0-600, 601-1200, >1200
 - iv. Prepaid Water Kiosk: Flat rate per M³
 - v. Manned Water Kiosks: Flat rate per M³
 - vi. Multi-dwelling units and gated communities: Flat rate per M³
 - h. There shall be a standing charge imposed on all active connections to cover the administration of such a connection
- 3) At the commencement of the License the present tariff level and structure will be deemed approved by WASREB on approval of the License . The subsequent applications for tariff adjustments shall follow the National Tariff Guidelines and standards.
- 4) All tariffs must at all times be made public by the Licensee in the pay stations, all offices where customers have access to , water kiosks and on the website of the Licensee.
- 5) Every water service bill issued by the Licensee whether physical or electronic must show the water consumed and the period; and provide itemisation of the billing to minimise billing disputes.
- 6) If this License provides for automatic tariff adjustments according to the indexation formula issued by the WASREB and the WASREB has agreed to the implementation of each adjustment, the same shall be carried out by giving notice to the licensee and the public at least four (4) weeks in advance to the implementation.

- 7) All requests for tariff reviews shall be in accordance with the Tariff Guideline and any regulations issued under LN 137 or 2012 or their replacement under the Water Act 2016.
- 8) In the event that third parties receive payment generated from the application of the approved tariffs, except the levy for the Regulatory Board, the tariff adjustment proposal shall include such payments as well as the documentation of their use. The third party shall be informed that for such payments, a justification and documentation is compulsory under the Regulatory Board's Guidelines. (Any other payments to third parties must be specified and shall only be considered justified if the third party uses these funds for Water and Sanitation Service provision including operation and asset improvement.)

10.3 Licensee Income

- a. The Licensee income will be the amount the Licensee shall keep from the income through billing based on the approved tariffs in order to meet its obligations for the service provision under this license.
- b. In the tariff adjustment proposals the Licensee has to justify the level of remuneration with its costs and performance in accordance to the Tariff guidelines. No adjustments shall be carried out without the approval of the Regulatory Board.
- c. The licensee must disclose all expenses to be incurred to the WASREB failure to which section 145 of the Water Act 2016 shall apply.
- d. The Licensee shall use the Revenue solely for the purposes of providing the Services under this License as guided by the tariff conditions and the targets in the license.
- e. Subsidies from the county government shall be declared to the WASREB in all tariff adjustment proposals and financial statements.
- f. Subsidies received during the License period must be notified by the Licensee to the WASREB and may initiate a tariff review if the WASREB decides so. In the event that the Licensee does not notify the WASREB of the receipt of subsidies the WASREB may decide on adequate action such as compensation to the consumers or termination of this License.

10.4 Water Service Board Remuneration

- a. The water service board (WSB) remuneration is the amount the WSB may keep to cover its loan repayment costs and the costs associated with the disclosed development of facilities, agreed between the Licensee and the WSB.
- b. In the tariff adjustment proposals the WSB shall justify the level of remuneration, any accounts receivable on loans and performance in accordance to the relevant sector guidelines and provide all relevant information to WASREB and the Licensee failure to which section 145 of the Water Act 2016 shall apply.
- c. No adjustments of WSB remuneration shall be carried out without the approval of the Regulatory Board.
- d. Within the first 12 months of the commencement of this License, the Licensee and the WSB shall submit a justified remuneration proposal for the WSB to the WASREB following the Tariff guidelines.
- e. For the first year after the commencement date of this License the Licensee and the WSB may agree on an estimated percentage for the Licensee Remuneration.

- f. Within the first 24 months of the commencement the Licensee and the WSB have to submit a detailed and justified remuneration proposal for the Licensee and the WSB to the Regulatory following the Tariff Guidelines.

10.5 Adjustments to Licensee Income and Water Service Board Remuneration

- a. The Licensee's income and water service board remunerations are part of tariff levels and tariff structure. Therefore, all such adjustments need the prior approval of the Regulatory Board.
- b. If the adjustment is planned to be carried out according to an indexation formula and such formula is part of the approved Licence the parties can adjust the remuneration on an annual basis by informing the WASREB in writing at least Four (4) weeks in advance and notifying the public at least four weeks (4) in advance.
- c. If no indexation is planned or given, the adjustments of the remunerations shall be based on the updated Business Plan of the Licensee and the updated Investment/Capital Works Plan of the water service board and need to be approved by the Regulatory Board.
- d. The parties shall jointly submit a Remuneration Adjustment Proposal according to the Relevant guidelines which shall be treated like a tariff adjustment proposal.

10.6 Financial Arrangements

- 1) The Licensee shall monthly bill all the customers in accordance with the tariff evaluated by the WASREB and the payment collected will be deposited immediately in the Revenue Account. The License fee for water services provision will first be transferred to the Regulatory Board. Thereafter, the Licensee will receive its Income and the WSB will be paid the Remuneration out of the Revenue Account.
- 2) The Licensee fee shall be paid monthly and calculated on the amount billed as provided in this Licence in clause 11.
- 3) A reserve percentage as specified in the License Data Sheet shall be held in the Revenue Account until the Tariff payment reconciliation. Late payments shall attract a penalty as per Clause 18.1(d)ii.
- 4) The WSB Remuneration and the Licensee's Income shall be reconciled with the Revenue Account payments on a quarterly basis no more than ten (10) days after the end of each quarter.
- 5) The Licensee shall submit to the WASREB and the County a summary of:
 - a. The total volume of water billed and amount collected, with a break down by customer category;
 - b. A calculation of the total Licensee Income and WSB Remuneration during the quarter;
 - c. A calculation of any applicable penalties or incentives payments;
 - d. A summary of the total payments made from the Revenue Account to the Licensee and to the WSB during the applicable quarter;
 - e. A balance of payments due to the Licensee and Water Service Board from the Revenue Account for the applicable quarter
- 6) No more than five (5) days after receiving the quarterly reconciliation, the WSB shall notify the Licensee in writing of any corrections or clarifications required or its acceptance of the quarterly reconciliation.

- 7) The last quarter reconciliation shall include any annual performance incentive payments which have been authorised to be issued under this License and have been disclosed during tariff adjustment.
- 8) In the event that there are insufficient funds in the Revenue Account to pay all these charges, the Licensee Income and the WSB Remuneration shall be reduced for each party by the same proportion after the Regulatory Levy (License fee) has been deducted and transferred to the Regulatory Board.

10.7 Revenue Account

- a. A Revenue Account shall be a bank account set up to receive funds collected from customers and /income incidental to the business of all water services. The bank at which the Revenue Account is held shall be selected by the Licensee from among first tier reputable commercial banks having a license from the Central Bank of Kenya and headquartered in Kenya and normally used by public agencies.
- b. A Licensee shall have a maximum of two revenue accounts which shall be publicised in its website.
- c. The Licensee will deposit all funds collected in the Revenue Account. The only payments out of the Revenue Account shall be the Regulatory levy (License fee) which shall be paid monthly, the Licensee 's Income which shall be deposited into its operation account and the WSB Remuneration both of which shall be paid monthly. Payments to other parties should have been disclosed and first be approved by the Regulatory Board.
- d. The board of directors will select two or three Administrators for the Revenue Account from the managing director and the core management team whose signatures 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 License, sector regulation and the PFMA. The Revenue Account Administrator(s) shall be available in such a way that no interruption of services are due to untimely withdrawal of funds from the account.
- e. Where a licensee defaults on the loan repayment the revenue account may be attached by legal means to ensure the repayment of the loan to the national treasury and a relevant additional signatory shall be added to enforce this condition.
- f. The operations account shall be run in accordance with the Public Finance and Management Act 2012.
- g. The Licensee will ensure that the Revenue Account Administrator will be entitled to receive statements of deposits, withdrawals, and the balance of the Revenue Account, from the bank at which the Revenue Account is held, at any time on a day the bank is open, on reasonable notice.
- h. If the Licensee generates any surpluses (revenues minus payments and costs) they shall be placed in a Contingency Fund which shall be run in accordance with regulations for such funds.

CLAUSE 11 LICENSE FEE-GAZETTE NOTICE 12188 OF 23rd NOVEMBER 2018

- 1) This clause is subject to section 89 of the Water Act 2016 and any regulations and publications made thereunder.
- 2) The license fees to be paid under this license is a one off license fee of 0.1% of last audited turnover to be paid with issuance of License and a License operation fee of 4% to be paid by the 15th day of each month.

- 3) The licensee is obliged to pay the license fee published by the WASREB according to the Water Act 2016 section 89 and any rules made there under on method of payment.
- 4) The licensee is obliged to pay all arrears and penalties charged for the regulatory levy charged in accordance with LN 36 of 2008.
- 5) Subject to subparagraph (5) below, the fee for any year shall be the amount determined by the WASREB to be the regulatory cost for that year of the Licence.
- 6) The fee for any year shall be adjusted to take account of the licensee's share of any under-estimate or over-estimate of the regulatory cost for any earlier year if—
 - a. the under-estimate or over-estimate has not been previously taken into account; and
 - b. the Licensee held a Licence during the earlier year in which the under-estimate or over-estimate occurred.
- 7) For the purposes of paragraphs (4) the licensee's share of costs and any under-estimate or over-estimate shall be determined in accordance with general principles of finance.

CLAUSE 12 ASSET MANAGEMENT, MAINTENANCE AND DEVELOPMENT

12.1 Strategic Asset Management

- a. The Licensee shall ensure that asset maintenance and management shall be strategically carried out for customer focus, service orientation and business results.
- b. The Licensee shall implement strategic asset management techniques based on best industry practice and establish an asset management plan on an annual basis to indicate all replacement, rehabilitation and maintenance works carried out including their values at the time and costs associated with either maintaining or disposing them.

12.2 Asset Register

- a. The licensee shall maintain a detailed asset register of existing assets for water and sewerage provision, which includes a full inventory and residual value and which shall be attached to this License.
- b. The register and inventory shall be continuously updated and disclosed to the board of directors of the Licensee, the shareholder and WASREB on an annual basis.
- c. The licensee shall not dispose of any land, facilities and infrastructure affixed to land and assets of any value. All other movable assets may be disposed with prior disclosure to the WASREB and with approval of the county government (if the assets have been transferred) and the water service board if the assets have not been transferred and there are loan obligations attaching to it.
- d. All significant changes in the value of assets shall be updated in the assets register according to standard IAS 16 and the financial regulations under the PFMA.
- e. Where the value of assets is not available, the Licensee shall, within a period of twelve(12) months, prepare and submit an asset register and value of the assets which it will use in the provision of water services to the regulatory board.
- f. The Licensee shall continuously update the asset register for all assets from the various sources of funds that the assets have been built from.

12.3 Asset Maintenance

- a. The Licensee shall from its Licensee income maintain all the assets in serviceable condition in order to optimally provide the services according to good utility practice. The maintenance shall include:
 - i. inspections being carried out periodically to monitor and evaluate how facilities and systems are performing optimally such as line patrols, servicing of pump installations, valves and other similar appurtenances.
 - ii. preventive maintenance which shall ensure that systems or components continue to perform their intended functions throughout their service life (e.g. obstructions are removed and depleted protection fluids are replenished); valves and pumps are well anchored on their supports and electrical installations are intact.
 - iii. identifying repairs are required when defects occur and unplanned interventions are required such as replacement of small equipment and parts which are routinely replaced in sound water and sewerage engineering practice.
 - iv. rehabilitation of major component of a system when the system is reaching the end of its useful service life.
 - v. clearance of bushes to allow for continued access to facilities and appurtenances of all water installations.
- b. There shall be no restrictions to the Licensee's responsibilities for repairs and replacements for all assets.
- c. The licensee shall ensure that all the assets in the network of water services are mapped in a layered geo referenced format to allow for modern water facilities management using open GIS technology.
- d. The Licensee under the Asset Management Plan will have Procedures for Maintenance Services to provide for the efficient routine and preventative maintenance of the facilities in accordance with good utility practice and in accordance with requirements of the sector guidelines. The Asset Management Plan shall be updated and provided to the WASREB annually.
- e. The Licensee shall within the Asset Management Plan propose rehabilitation and renewals which should be carried out to the Facilities.
- f. The software, source data and similar intellectual property required to understand and review the Asset Management Plan shall be transferred to the Licensee by the WSB or county without charge at the termination or expiration of this Licence.
- g. In the event that the Licensee fails to maintain or repair the works necessary for the provision of Services this shall be deemed a material breach of the License and shall be grounds for taking administrative action under clause 18 of the License.
- h. Except in an emergency, the Licensee shall give notice as appropriate to a Customer before entry into its premises to undertake maintenance or repairs up to a customer meter or a stop tap. If none of these are installed within the Customer's property, maintenance and repairs will be up to the boundary. A customer will be responsible for maintenance and repairs after the boundary or meter/stop tap and the customer contract / regulations shall state so.
- i. In case of a major breakdown in either water or sewerage provision and during emergencies the Licensee shall carry out repairs within 24 hours to minimize the inconveniences to customers and shall supply notifications of the interruptions to the WASREB and to all consumers of the expected length of interruption.
- j. Where the Licensee is not responsible for the cost of the works it undertakes in such emergency, such costs shall be reimbursed by the person responsible and the Licensee shall retain the expenses so incurred. The Licensee will furnish the water service board or that other party

with a detailed breakdown of the costs incurred in carrying out the works. If the costs are not agreed upon by both parties they may refer the matter to the Regulatory Board.

- k. The Licensee shall use best endeavours to obtain and maintain ISO certification on major facilities on quality management (ISO 9001), environmental management (ISO 14001), and occupational health and safety (OHSAS 18001).

12.4 Asset Development

The Licensee shall be responsible for Renewal and Extension to the Facilities, the cost of which shall be for the Licensee's Account. This responsibility of renewal and extension by the Licensee shall apply to Opening Facilities that were in proper working order at the Effective Date and have since failed due to improper maintenance by the Licensee and any new assets that have since been handed over or developed.

a. Service Needs Plan

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

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

b. Capital Works Plan

- i. The Provider shall propose an annual updated five (5) year Capital Works Plan according to the requirements of the Licensee and the Regulatory Board. The plan will also include a projection of the service shortfall if the facilities are not rehabilitated, renewed, or extended. The proposed Capital Works Plan shall take into account the availability of financing.
- ii. The Licensee will review the Proposed Service Needs Plan and the Capital Works Plan, and taking into account the finances available and the other infrastructure needs of the region for which the Licensee is responsible and in consultation with the Licensee, develop an Agreed Capital Works Plan, which will be made available to the Regulatory Board.
- iii. The Licensee will be responsible for implementing the Capital Works Plan. The Licensee will cooperate fully with other parties such as the WSB in implementation of the Capital Works Plan, including by providing access to the facilities and such other property, records, drawings and similar matters as are needed to implement the Capital Works Plan efficiently.
- iv. The Licensee will provide the County with full and timely notification prior to starting any Capital Works and keep the county regularly informed as to progress and plans.
- v. The Licensee may be relieved from complying with part of the Service Obligations to the extent that the implementation of the Capital Works plan temporarily prevents it from fulfilling its service obligations.

12.5 Grants and Credits for Assets Development

After disclosure to the WASREB for consumer protection purposes, the Licensee may access any available grants or credits for infrastructure development after requisite approval by the county government. The Licensee has the obligation to make any debt service and interest payments on loans taken by the water service board upon agreement before commencement of the project.

12.6 Procurement, implementation and commissioning of works

Where an international or bilateral financial institution has provided finance to the WSB either by way of loan or by grant aid for the benefit of the Licensee, the Licensee shall comply with all conditions reasonably imposed by the financing conditions in respect of procurement, carrying out and commissioning of the works. After the works have been commissioned, they shall be handed over to the Licensee and shall become part of the assets and shall be entered in the schedule of assets by the Licensee .

12.7 Appropriate Asset Development Management and Asset adoption

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

12.8 Delegated Work

- a. The Licensee may delegate capital works to rehabilitate, renew and extend the facilities to a competent contractually sourced third party according to the terms of the Public Procurement and Asset Disposal Act 2015. The Licensee shall ensure that the third party will manage the delegated works in accordance with good utility and construction practices and according to the required standards.
- b. If in implementing the delegated works the third party procures construction services and facilities, it will do so competitively, in accordance with applicable procurement law and in accordance with good utility practice.

CLAUSE 13 WASTE WATER MANAGEMENT

13.1 Organisational Management

The Licensee shall have a clearly defined system which meets national standards in place relating to:

- a. wastewater system planning and project implementation
- b. acceptance of new connections to the system
- c. delivery of appropriate training for operations and maintenance personnel
- d. preparation and implementation of a wastewater overflow abatement plan
- e. system maintenance, which may include separate responsibilities for inspection and maintenance
- f. maintenance of records relating to wastewater overflows
- g. notification protocols to follow in the event of serious overflows including notification of relevant authorities, sensitise downstream users and the public as appropriate

h. accessibility of wastewater system plans (i.e. physical plans of the system).

13.2 Wastewater system planning

The Licensee appropriate wastewater system shall involve :

- 1) gathering data as appropriate
- 2) identifying future needs
- 3) assessing alternatives
- 4) designing selected alternatives of the system to convey projected wastewater flows,
- 5) assessing the impact on system capacity of redevelopments in existing areas and extensions to serve new areas.
- 6) Notifying appropriate authorities of immediate interventions in new infrastructure or expansion of existing facilities.

13.3 New wastewater connections

To minimise future overflows, the Licensee shall have in place documented clear procedures and requirements which meet national standards for the planning, design, construction, and testing of new systems and inspection/supervision to complement suitable system planning for new developments.

- a. The Licensee shall ensure that these requirements are disseminated to the public in its areas of jurisdiction.
- b. The Licensee shall not accept new connections that are substandard or unnecessarily overload the wastewater system.
- c. Minimising overflows from new systems should be based on best practice for the situation under consideration and should have regard to ***Practice Manual for Sewerage and Sanitation Systems in Kenya 2008***.

13.4 Wastewater system operations

- a. Where possible the Licensee shall operate in a manner that utilises the storage available within the system to minimise the extent of overflows. This approach shall rely on using all available capacity of the pumping station wet wells and connecting wastewater systems.
- b. The Licensee shall use a range of system input (or demand-side) management techniques to minimise overflows and their impacts. These pollution prevention techniques include:
 - i. controlling wastewater inputs, in particular, major trade waste discharges to the wastewater system
 - ii. customer education and sensitisation on proper disposal of solid waste.
 - iii. wet weather flow reduction by collaborating with county governments as appropriate
 - iv. addition of wastewater storage capacity, eg storage tanks.
 - v. dry weather flow reduction, eg through improved work practices.

13.5 Wastewater system maintenance

The Licensee shall maintain an Asset management system , which includes development of an asset register addressing the whole life operation of the wastewater infrastructure. The Licensee shall undertake the following waste water system maintenance:

- a. **Preventive maintenance**, which shall have the scheduled activities, including routine inspections, which are performed before failure of the asset. This extends the equipment life, reduces overall maintenance costs and increases system

reliability.

- i. Where appropriate, preventive maintenance shall be scheduled using a risk-based approach, considering factors such as the consequences of an overflow, the age of the asset, wastewater system conduit cross sectional area, the likelihood of the overflow, sensitivity of the receiving environment, and the adequacy of the maintenance program.
 - ii. Problems identified during routine inspections must be recorded and assessed for necessary maintenance or prompt repair actions.
- b. Corrective (or reactive) maintenance. This relates to the use of an asset until it fails and requires repair or replacement.
 - c. Emergency maintenance. This is a form of corrective maintenance that is applied to a critical asset that has failed, and may result in a risk to human health or the environment.
 - d. Maintenance planning must be undertaken for all systems; The Licensee shall prepare an operational review of the system before a plan is prepared. Where undertaken, this review shall involve assessing existing facilities, their operating conditions and maintenance practices.
 - e. A schedule for routine inspections of the wastewater system must be prepared, with priorities clearly stated.
 - f. A system for recording and documenting the maintenance history must be included in any plan developed for operation and maintenance. These records, based on inspection reports, should include information on when elements of the system were inspected and what, if any, maintenance was performed.
 - g. The Licensee shall be aware of, and monitor, the significant issues in their systems. In larger systems, this information shall be included in the GIS for the system. A 'significant issue' is one where a failure to maintain may lead to an overflow and therefore environmental pollution.
 - h. The Licensee shall maintain Policies, procedures or protocols for system operation and maintenance as essential for good management. These shall be reviewed periodically and used for personnel training and monitoring activities as necessary.

13.6 Monitoring of waste water system overflows

The Licensee shall endeavour to use the best of telemetry or SCADA systems to provide feedback to the operator in exercising high level supervisory management in gathering and processing real time data for quick decision making.

13.7 Emergency response plan

- a. The Licensee shall have clearly documented procedures in place to minimise the impacts of a wastewater overflow and must provide 24-hour emergency response to minimise or eliminate overflows, and the emergency response teams must when responding to a wastewater overflow, have regard to the established emergency response plan.
- b. The Licensee shall develop an emergency response plan for all wastewater systems. The plan shall have regard to the availability of infrastructure details, operation and maintenance plans, appropriately trained and equipped personnel, and reporting and notification procedures for management, regulators and stakeholders.
- c. The Licensee shall ensure that the emergency response teams shall have access to all wastewater facilities, and to appropriate equipment and information to manage wastewater overflows. These shall include:
 - i. emergency notification phone numbers/contact details

- ii. access to physical plans of the system so that, for example, the volume of wastewater stored in a rising main and the estimated time taken for that main to empty by gravity via a breach in the main can be determined.
- iii. appropriate screening equipment to remove floatable and coarse solids , backup wastewater pumps
- iv. excavation equipment to construct temporary dams
- v. tanker trucks that can pump or vacuum wastewater and sludge *i.e.* flushing units
- vi. public warning signs and emergency tape to mark affected areas
- vii. sampling equipment
- viii. occupational health and safety equipment to protect employees.
- d. The Licensee shall ensure that the cause of the overflow is addressed as soon as practicable within the prescribed national standards and shall ensure it includes temporarily stopping the overflow and then undertaking permanent repairs.
- e. Reasonable and practicable containment of the overflow must be undertaken to prevent the continued risk of pollution to the environment. Containment aims to capture the overflow while it is occurring, so that as much of the wastewater as practicable is returned to the wastewater system when operations are restored. The method has the potential to cause problems at the site or upstream and should be used with caution.
- f. The Licensee shall use the following actions amongst others to contain the overflows:
 - i. temporary weirs or bunding
 - ii. the use of wastewater pumping or vacuum trucks (to remove pools of wastewater or to pump out overflowing pump wells
 - iii. temporary generators for pumping stations if the power supply has failed, and temporary pumps if the pumps have failed
 - iv. bypass pumping
 - v. staggered pump station operation
 - vi. in-wastewater system storage (if feasible)
 - vii. in-stormwater system storage and recovery.
 - viii. Disinfection of ground affected by wastewater or pooled areas provided that the disinfection shall not cause further environmental harm
- g. The Licensee may disinfect the ground affected by wastewater or pooled areas, limited to localised areas and isolated pools produced by the overflows, and must not include disinfecting waterways unless directed to do so by Department of Public Health and/or the NEMA.
- h. The Licensee shall ensure that during containment, and clean-up or remediation, the risk to human health must be managed. This shall be done by restricting access with temporary emergency fencing and by erecting warning signs. Any residents or members of the public likely to be directly affected by the overflow shall be informed using suitable media. Warning measures must remain in place until there is no potential human health risk arising from the overflow.

13.8 Harm remediation and clean-up

- a. The Licensee shall ensure that any environmental harm caused by an overflow must be cleaned up and may require remediation. The Licensee shall ensure that clean-up involves three basic steps, usually taken in the following order:
 - i. Removing wastewater and solids to the maximum amount practicable.

- ii. Washing the spill area to dilute any remaining wastewater, especially where there is the potential for high public exposure.
 - iii. Disinfecting hard surfaces in high public exposure areas to reduce the risk to human health, as directed by Department of Public Health and NEMA.
- b. Cleaning up may require the removal to an acceptable level of all pollutants, including sediments and gross solids that may be left by an overflow. Any structures damaged by erosion or other effects of the overflow should also be repaired and reinstated to their original state as much as practicable.
- c. Unless done so with prior NEMA approval, clean up must not involve the potentially harmful activities of hosing down of gross solids and other pollutants into stormwater drains or aquatic environments, the over-use of disinfectants, or the use of environmentally damaging disinfectants.
- d. In undertaking clean-up activities, the following should be major considerations;
- i. The necessary volumes of mains or other water, the concentration of disinfectant in that water and contact time required to meet the minimum human health protection requirements in consultation with the Department of Public Health.
 - ii. The nature of the immediate environment and any applicable environmental values of the receiving waters.
 - iii. The time of year and the proportion of stream flow that is likely to be made up of disinfected wash-down water from the clean-up process.
 - iv. The potential for the clean-up water to be contained and removed so that discharge to receiving waters is avoided.
 - v. Records must be kept of all actions undertaken to manage the response and minimise environmental harm.
 - vi. At the end of the clean-up all parties involved, including the NEMA, should be notified to verify that the incident has been addressed and circumstances can return to normal.

13.9 Investigate cause and implement improvements

- a. The licensee shall ensure that the cause of an overflow is investigated. When the cause has been determined, actions shall be implemented by the licensee consistent with the level of risk to prevent a recurrence of the event and must be recorded in the events book.
- b. The licensee, if requested to do so by the WASREB or any other relevant regulatory authorities provide a report on significant individual overflows, or an annual report that summarises all critical overflows.

13.10 Emergency response and notification protocol

The Licensee shall after a critical overflow has been detected and the level of risk presented by the overflow estimated, alert the following appropriate agencies:

- a. WASREB

- b. NEMA
- c. Department of Public Health

CLAUSE 14 CUSTOMER MANAGEMENT

14.1 Customer Contract

- a. The Licensee shall enter into a Customer Contract with each Customer within six (6) month of signing this Licence if no such contract exist. The Contract shall govern the rights and obligations of the Licensee and the Customer.
- b. The Customer Contracts shall be in accordance with the national standards set by the Regulatory Board's guidelines and/or the Module Customer Contract approved by the Regulatory Board. The Licensee shall ensure that customers shall comply with the contract requirements.
- c. The contract must contain provisions on public disclosure in case of failure to remit bills on time.

14.2 Metering of Consumption , Monitoring of NRW,Leak Detection,demand management

- a. The Licensee shall maintain a competent officer for NRW management according to national standards to implement the reduction of NRW standards.
- b. The Licensee shall ensure all existing water connections are metered with a functioning meter that meets the national standards in accordance with the Asset Management Plan which is part of the Capital Works Plan.
- c. All meters installed shall comply with national standards and Regulatory Board's specifications on meters and shall be installed in such a manner as to be accessible to the meter readers and to function optimally.
- d. The Licensee shall be responsible for maintenance and repair of all Customer meters. Any existing meters which are not functioning for any reason, during or after the Commencement Date shall be replaced by the Licensee at its own cost.
- e. Where repair of Customer meters is required because of misuse, damage or tampering by the Customer, the Licensee shall charge the Customer for the cost of the meter or its repair and penalties as per prescribed law for tampering.
- f. The Licensee shall grant the Customers the right to request for verification of his meter at any time. If the meter is found to be faulty, the Licensee shall replace it at no cost to the Customer. However, if the meter is not found to be faulty, the Licensee shall charge the Customer the reasonable cost of testing the meter according to the approved tariff.
- g. The Licensee shall map and maintain District Metering Areas, install and maintain sufficient bulk meters in order to monitor water losses and perform water balancing and audit and have a Non Revenue Water Reduction Plan whose implementation status report which shall be submitted to the WASREB and the County water office on a quarterly basis and not later than the 15th day of the next month of the preceding quarter according to the reporting standards in this license.

14.3 New Connections

- a. The Licensee shall ensure that all new connections are metered where potential customers can manage the payment of a monthly bill according to the consumption within the service area.
- b. New connections shall be installed in accordance with good utility and industry standards. Customers will be required to meet the cost of new connections as published in the tariff structure of the Licensee in the Kenya Gazette.

- c. Subject to capital injection by the County Government and any third party, the Licensee may avail a connections subsidy by establishing a New Connections Fund which shall pay a percentage of the costs of the new connections for eligible domestic Customers or enable the payments to be staggered to meet the full cost.
- d. The licensee may establish a new connection fund if applied for and approved by the WASREB in the tariff for the purpose of the licensee to take responsibility for material and quality of workmanship.

14.4 Illegal Connections

- a. The Licensee shall take all reasonable steps to reduce illegal connections including using ICT and GIS and enforcement measures in court to deter illegal connections.
- b. Where economically feasible ,the Licensee shall prepare a Connection Regularization Plan within one year of the Effective Date and shall submit it to the WASREB for approval.
- c. The WASREB shall either approve the Connection Regularization Plan or require changes made to it to ensure that it is in line with good utility practice.
- d. After approval, the Licensee shall implement the Connection Regularization Plan. The parties shall comply with any additional provisions related to unregistered connections contained in the Schedules.

14.5 Water Kiosks

- a. In the event that the service area population tenure or economic status does not allow for household connections or funds for a large extension of the network or upgrading of facilities are not available, the Licensee shall provide water kiosks and other equivalent models in accordance with the national standards in order to ensure a high coverage rate and a high level of access of the water services especially to the vulnerable who cannot afford a household connection and a monthly bill.
- b. Such installations shall be designed and carried out according to the national standards issued by the Regulatory Board. The design of such installations must allow for hygienic water handling, public notices installation and must be commercially viable and sustainable.
- c. The construction of new standpipes and water kiosks is an element of the Capital Works.
- d. The Licensee shall be responsible for the management of such installations in order to ensure the sustainability of such installations and that the service levels set by the sector standards are met. The Licensee shall always remain responsible in all cases where such obligations are sub-contracted.
- e. In cases of severe drought and water shortages the Licensee shall ensure that all residents are provided with a basic service through the water kiosk.

14.6 Customer Satisfaction and feedback

- a. The Licensee shall install Maji Voice system to track consumer issues and complaints in the licensee water service area and use it and publicise it.
- b. The Licensee shall carry out an independent Customer satisfaction survey at intervals of every three (3) years. The survey shall be consistent with Regulatory Board's recommendations or guidelines.
- c. In the event that the Customer satisfaction survey shows that Customers are not reasonably satisfied, the Licensee will disclose on the actions needed to be taken to improve customer

satisfaction to the board of directors and the shareholder. Each authority will then be obliged to take those actions.

- d. The outcome of the surveys as well as the actions to be taken shall be communicated to the Regulatory Board.

14.7 Billing Requirements

The Licensee shall maintain a billing system that is not manual and meets the national standards on software billing requirements which are on the WASREB website.

14.8 Customer Information, Complaints and Compensation

- a. As per the requirements of section 92 of the Water Act 2016, the Licensee shall ensure that customers and potential customers throughout its Service Area have easy access to information from the Licensee and are able to lodge complaints with it and shall provide the following minimum in customer relevant information on its website as per the requirements of Website Transparency Guidelines.
 - i. Application form for water and sewerage connection
 - ii. Tariff for water and sewerage on block basis
 - iii. How to pay for water
 - iv. Cost of obtaining a water supply
 - v. Cost of obtaining a sewerage supply
 - vi. Valid and updated water rationing schedule
 - vii. Contacts of accredited plumbers within its service area
 - viii. Audited accounts and Annual Report of the previous year
 - ix. Date of next stakeholder workshop or event
 - x. How to complain
 - xi. Information on how to become a third party operator within the vicinity of the Licensee
- b. The licensee shall maintain a hot line/ USSD code / Social media accounts and widely and regularly publish them so that customers and members of the public can report matters related to water services which need to be promptly attended to.
- c. The Licensee shall record all complaints from customers and potential customers by area, service and type of complaint and shall report to the WASREB on a quarterly basis on the complaints received, resolution rate and any strategic action needed to solve endemic/repetitive complaints.
- d. The Licensee shall promptly and accurately respond to requests for information and complaints from Customers according to the Minimum Service Level Standards.
- e. The WASREB may take a decision that the Licensee should pay a compensation to Customers for its failure to provide the services or for otherwise failing to comply with the Minimum Service Level Standards.
- f. The Licensee shall accordingly pay the compensation to the Customers as ordered by the Regulatory Board. The failure of the Licensee should however not extend to those caused by or resulting from unavailability of the Facilities or through no fault of the Licensee.

14.9 Customer Disputes

- a. Subject to the provisions of section 82 of the Act, where a Customer or potential Customer has a dispute with the Licensee, which the Customer or potential Customer has attempted to resolve

with the Licensee and the dispute has not been resolved after thirty (30) days of it being referred to the Licensee, then either of the parties to the dispute may refer it to the County water department with a copy to WASREB.

- b. The customer may appeal the decision of the licensee within 14 days of the decision being made.
- c. The WASREB will investigate the complaint and endeavour to mediate towards resolving disputes between the parties and may order the party found at fault to compensate the other for the losses caused.
- d. The Licensee shall establish procedures and shall nominate competent staff for resolving such disputes in accordance with national standards issued by the WASREB under section 72(1) j and k of the Act.

CLAUSE 15 PLANNING

15.1 Strategic Plan

- a. The Licensee shall prepare a five-year Strategic Plan not later than one (1) month prior to the end of the first financial year, including, Operation & Maintenance Plan, Service needs Plan, Capital Works Plan and proposed tariffs and have it approved by the relevant governance structures and it shall form part of this Licence
- b. The licensee shall maintain an annual work plan to implement the strategic plan.
- c. In the annual updated work plan, the Licensee shall submit an annual budget to the county at least two (2) months before beginning of the new financial year for discussion and approval and for agreement on the priorities on revenue allocation and performance target setting. The Licensee shall send a copy of this budget to the regulatory board.

15.2 Minimum Service Level Conditions

- 1) The Licensee shall adhere to the minimum service level attached to this Licence (Schedule D) and the benchmarks attached to this License (schedule E) and shall submit quarterly reports described in 16.1 to incorporate the achievements of the targets set.
- 2) Comparison of planned and achieved progress will be part of the reporting requirements.

CLAUSE 16 REPORTING OBLIGATIONS

- 1) The Licensee shall, in respect of each quarter of a financial year and not later than 30 days after the end of such quarter, prepare a report to the WASREB which has the following components:
 - a. As a minimum, the technical report shall include the following:
 - i. Volume of water (abstracted, produced, distributed and sold);
 - ii. Where applicable, volume of Sewage carried in the Sewers and treated in the Sewage treatment works or of loaded in the decentralised treatment facilities.
 - iii. Numbers and categories of customers;
 - iv. Number of personnel employed;
 - v. Levels of Service performance and commentary with specific reference to the Performance Targets and the Key Performance Targets;
 - vi. Water quality compliance results and commentary;
 - vii. Where applicable, treated Sewage quality compliance results and

- commentary;
 - viii. Profitability, billing ratio;
 - ix. General development of works;
 - x. Renovation works and Repairs carried out or to be carried out;
 - xi. Exceptional events e.g. water shortages, major bursts, pollution incidents.
 - xii. Complaints handling and resolution status.
- b. As a minimum the Financial Report shall comprise of
- i. Revenue earned
 - ii. manpower costs and other costs of employment;
 - iii. board of director costs
 - iv. power costs ;
 - v. local taxation, including property taxes (if any);
 - vi. water charges (including abstraction charges and discharge consent charges);
 - vii. materials and consumables;
 - viii. hired or contracted services;
 - ix. public consultation costs
 - x. charges for bad and doubtful debts;
 - xi. depreciation and amortization (where charged);
 - xii. tangible assets and written-off infrastructure expenditure (analyzed by - repairs, renovations, and replacements); exceptional items; and
 - xiii. all other operating costs (on an aggregated basis);
 - xiv. an analysis of the quarterly turnover under the following headings:
 - water supply Abstraction, treatment, transmission and distribution;
 - Sewage collection, treatment and disposal; and
- c. In summary provide information about, and an analysis of its operations for the quarter showing distinctly the gross and net billings and showing distinctly the gross and net billings;
- 2) The report shall be send through the WARIS system and where not possible through the soft copy with a signed covering letter.
 - 3) The licensee shall also send the quarterly report to County CEC in charge of water

16.1 Annual Reporting

- 1) In addition to the statutory requirements of the Companies Act 2015 and in order to facilitate the monitoring of its financial, commercial and technical operations, the Licensee will present to the County CEC Water and the WASREB, on a yearly basis, not later than three (3) months following the end of the Financial Year, an Annual Report comprising a cumulative Technical and Financial Report .
- 2) The financial report shall comprise of set of final accounts prepared in accordance with PFMA and any regulatory accounting standards issued by WASREB with an analysis of total operating costs (including interest and taxation) of the business showing separately for each of the water and sewerage cost centres as specified in the quarterly reports and the additional following information:
 - a. an analysis of the total turnover under the following headings:
 - i. water supply abstraction, treatment, transmission and distribution;
 - ii. Sewage collection, treatment and disposal; and

- b. on an aggregated basis a certificate to the effect that, in the opinion of the Board of Directors of the Licensee , the Licensee shall have available to it for at least the next twelve (12) months:
 - (i) Sufficient financial resources and facilities to discharge the activities and functions, powers and duties relating to the Services business; and
 - (ii) The management resources which are sufficient to enable it to carry out such activities and functions.

16.2 Annual reporting by Licensee

The Licensee shall prepare and publish an Annual Report for distribution to the public in the Annual Stakeholders Forum according to the relevant WASREB Guidelines and the report shall include:

- a. Licensee strategic priorities and investment program,
- b. Achievements of the strategic priorities and investment program for that year
- c. The WSPs performance and compliance with Service Obligations and Performance Targets

16.3 Financial Accounts

The financial accounts of the Licensee must be submitted annually to the Auditor General for an independent financial and technical audit at the Licensee 's cost. Copies of the audited results shall be forwarded to the County and the WASREB not later than six (6) months after the end of the financial year and the Licensee shall ensure that they are tabled in the annual general meeting of the Licensee.

16.4 Record Keeping and Inspections

- a. The Licensee shall keep records in accordance with the PFMA and good industry standards and sector regulations.
- b. The Licensee 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 License , for providing information to the WASREB and County Government and for informing customers and third parties about service quality and performance.
- c. The Licensee shall in compliance to the PFMA and regulations made there under establish and maintain complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information. All registers, books, records and other recorded information shall be in english and progressively digitised format according to the standards in the sector.
- d. To ensure that the Licensee delivers the services, maintains the Facilities and otherwise complies with this Licence , the Licensee shall be inspected to monitor and evaluate the services, facilities, operations and performance according to an inspection schedule and the WASREB shall from time to time inspect the compliance to the good industry standards and sector regulations.
- e. Where assets have not been transferred to the Licensee under the Water Act 2016 Section 84 and still belong to the WSB the Licensee shall allow the water service board to inspect the facilities to ensure that they are operated and maintained as per the provisions of the deed of handover.
- f. The Licensee shall cooperate with the County Government and the WASREB to allow effective monitoring and inspection. The Licensee shall allow the County Government and the WASREB including its duly authorized officers, agents and auditors, free access to its records, documents, drawings and staff at any time for the purpose of verifying the accuracy of information provided by the Licensee in either operations, technical or financial audits.
- g. The Licensee shall respond to requests for information within two (2) weeks or within the time specified by the request. If the Licensee fails to provide the necessary information and fails to

ensures adequate record keeping or damages the records, the Licensee shall be liable under section 145 of the Water Act 2016.

CLAUSE 17. EMERGENCIES

17.1 Emergency Planning

- 1) The Licensee shall maintain emergency response protocols for water service provision generally and for its key facilities.
- 2) The Licensee shall formulate emergency plans together with the county government , water service board and other key actors both public and private in its License Area in the shortest time possible and forwarding the same to the Regulatory Board.
- 3) The emergency plan shall include measures which:
 - a. safeguard drinking water at domestic level
 - b. safeguard the public water supplies from physical damage and contamination
 - c. guarantee supply of safe water through trucking and other means to public afflicted by the emergency
 - d. provides for partnerships with other public and private agencies to mitigate any danger to public health
 - e. Communicate to the public the measures being taken and requirements expected from the public and other agencies.
- 4) The Licensee shall be required to inform the WASREB at the first sign of the imminent risk of emergencies in the Licensee's Area that affects the public, employees of the Licensee and third party operators the general environment, such as droughts, floods, pollution, waterborne epidemics, etc. and the measures to be taken to ensure minimal disruption to water service and availability of potable water to the populace.

17.2 Emergency Notice

- 1) Where a breach of the Licence by the Licensee seriously threatens public health or safety, or the safety of the facilities, the WASREB may issue an emergency notice to the Licensee and a copy thereof is given to the County government without delay. The notice shall specify the breach, and the health or safety issues which led the WASREB to issue the notice. While an emergency notice is in place, the Licensee shall comply fully with the directions of the WASREB and shall ensure that its staff and sub-contractors also comply with the regulator's directions.
- 2) The WASREB 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 County.
- 3) The cost of supervising the services and ensuring compliance with any WASREB directions during the period that the emergency notice is in effect will be borne from the Performance Guarantee provided by the Licensee to the Regulatory Board.

CLAUSE 18 DEFAULT AND FORCE MAJEURE

18.1 Notification of Default and Cure Plan

- a. Default shall occur by reason of failing to adhere to any of the License conditions and the provisions of the Water Act 2016.

- b. If upon inspection or a whistleblowers report or a customer report it is noted that a default has occurred the Licensee shall issue to the WASREB upon receipt of a default notice requiring the licensee to remedy the default through a cure plan.
- c. A Cure Plan shall specify the reason the default occurred and the officer responsible, measures taken against the officer how the defaulting party intends to remedy the default and the time that the defaulting party will require to remedy the default to a satisfactory level.
- d. In the event of failure to implement the cure plan WASREB shall:
 - i. Publish in any media a list of shame naming the Licensee and the defaulted actions.
 - ii. Impose a penalty fee at the rate of **Kshs 2000** per day for each contravened obligation for the duration the obligation is not met. This may be deducted from performance guarantee or enforced by summary action in court. If obtained from the guarantee it shall be maintained after any penalty fee has been deducted
 - iii. Place the Licensee on Special Regulatory Regime determined by WASREB at the cost of the Licensee
 - iv. Prosecute the Managing Director and key management staff and relevant staff under section 101(4) of the Water Act 2016 or if the issues are offences under any other law in Kenya.
- e. The existence of a cure plan does not limit the imposition of civil or criminal sanctions through the judicial process if a law has been broken or third party interests infringed upon.

18.2 Special Regulatory Regime

If the licensee does not implement any cure plan diligently, the WASREB shall impose special regulatory measures which shall include:

- a. Remove from office the board of directors, managing director and key management team and other officer material in perpetuating the breach.
- b. Prohibit the licensee from awarding any bonuses, or increments in salary, emoluments and other benefits of all directors and officers of the licensee;
- c. Appoint a person suitably qualified and competent as a statutory manager the opinion of the WASREB to advise and assist the licensee in designing and implementing the cure plan or other corrective action plan and the person appointed shall regularly report to the WASREB on the progress of the plan;
- d. Impose restrictions on growth of assets or liabilities of the licensee as it deems fit;
- e. Restrict the rate of interest on loans payable by the licensee to such rates as the WASREB shall determine;
- f. Order the licensee to do any or take such other action that the WASREB may deem necessary to rectify a capital deficiency or other weakness;
- h. Impose financial penalties on the Licensee as appropriate;
- i. Issue an order placing the licensee under statutory management;
- k. Restrict the withdrawal of funds from the licensee ;
- l. Cooperating with other enforcement agencies to institute legal proceedings against any officer, director, committee member, employee or agent of the licensee ; and

18.3 Damages

If the Licensee fails to provide the services or otherwise to comply with this Licence , then to the extent that the failure does not result from an unavailability of the Facilities the Licensee shall

be liable to compensate customer as a result of the Licensee's failure as per sector defined compensation.

18.4 Force Majeure

- a. Force Majeure means circumstances arising and completely outside of the control and beyond the contemplation of the licensee which causes material and unavoidable physical damage or destruction to all or any of the water services system and/or materially delays or prevents the performance of any duties and obligations in terms of this Licence, or interrupts the water services, provided that if it is not material the Licensee shall be obliged to continue rendering the services and its obligations under this Licence. These shall include :
 - i. Any act of war, declaration of hostilities or belligerence, blockade or revolution;
 - ii. Insurrection, public disorder or riot;
 - iii. Explosion, fire, earthquake, excessive and extraordinary floods and volcanic eruption;
 - iv. Pollution of raw water where such pollution has not been caused by an act or omission of the Licensee and where such pollution cannot be rectified by the exercise of sound water and sewerage engineering practices;
 - v. Any significant shortage of raw water where such shortage is caused by circumstances outside of the reasonable control of the Licensee but this does not include source and catchment degradation.
- b. The Licensee upon encountering an event of Force Majeure immediately give written notice to the CEC Water 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 Licence and a statement of steps necessary to remedy such an occurrence.
- c. The Licensee shall at all times use all reasonable endeavours to minimize any delay in the performance of the Licence as a result of Force Majeure. This Licence may be terminated in the event of a Force Majeure .
- d. The Licensee shall give notice to the CEC Water , the WASREB and the public when it ceases to be affected by the Force Majeure.

CLAUSE 19 COMPLIANCE WITH LAWS

- 1) The Licensee shall comply with all applicable Laws of Kenya.
- 2) The Licensee 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 20 INSURANCE

- 1) Throughout the duration of this Licence, the Licensee 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 Licence 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 Licence shall impose any liability upon the Licensee 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 Licensee 's negligence.

- 2) On an annual basis from the Effective Date or on the anniversary of the Effective Date, the Licensee 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 License ;
 - b. Accidents, injury or death occasioned to persons lawfully being provided services by the Licensee ;
 - c. All envisaged liabilities that may be occasioned to persons directly or indirectly employed by the Licensee in the provision of the services by the Licensee .
- 3) Before entering into any such insurance arrangements, the Licensee shall submit all Relevant information to the water service board (asset holder) for its approval and the Licensee retains the right to grant or withhold such approval as may be necessary to ensure that its interests are adequately and properly protected.
- 4) Where damage to the property occurs, compensation from property insurance cover shall be utilized to repair, reconstruct or replace the property which has been damaged or 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 Licensee under this Licence to make good the loss or damage sustained.

CLAUSE 21 AMENDMENT OF THE LICENSE

- 1) It is acknowledged that this Licence is a transition document before and legislative changes may be enacted at national level aligning the national or county statutes to the Constitution 2010 it shall be implemented in good faith to ensure its objectives are met.
- 2) It is acknowledged that the circumstances and objectives envisaged in this Licence may change during the duration of this Licence and in good faith it shall be amended whenever the need arises so as to better serve the interests of Customers and Potential Customers, by the Regulatory Board as per the provisions of section
- 3) If the results of the reporting required by the reporting guidelines indicates the need for an amendment of the Licence , the Licensee shall inform the WASREB and proceed to submit an amendment proposal to it for approval.
- 4) The Licensee may request an amendment in writing and the WASREB will be required to respond within Thirty (30) days.

CLAUSE 22 DISPUTE RESOLUTION

Disputes shall be resolved in the following manner:

- 1) Except as to the content of Orders issued by the WASREB and issues of statutory liability, If any dispute arises out of or in connection with this Licence , the licensee shall give a written notice signed by the CEO of fourteen (14) days to the Regulatory Board. Each party shall within 3 (three) days of elapse of written notice of a dispute submit to the other party the following written documents –
 - a. its description of the dispute;
 - b. a statement of that party's position; and

- c. copies of the relevant supporting documentary evidence.
- 2) The Parties shall meet promptly and in good faith attempt to reach an amicable settlement through mutual consultation , negotiation and mediation within 60 days.
- 3) The parties in the event that the matter is agreed that it shall be mediated independently shall apply to the Chartered Institute of Arbitrators or subject themselves to the court mediation process to appoint an independent mediator on terms to be agreed depending on nature and outcome of dispute.
- 4) In the event that the Parties do not resolve a dispute within thirty (60) days of notice of the dispute being given, either Party may refer the dispute Water Tribunal.

5) Severability

The provisions of this clause are severable from the rest of this License and shall remain in effect even after this license is terminated for any reason.

6) Waiver of litigation

The parties irrevocably consent to comply with the provisions of this clause and neither party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions. The parties agree that they shall not commence any civil litigation procedures in respect of a dispute arising in terms of this License.

7) Continuing of obligations

No dispute arising from this license shall entitle the Licensee to discontinue or suspend the execution of any of its powers, rights, duties and/or obligations in terms of this license, pending the settlement of the dispute.

8) Effect of validity of a clause

No waiver or cancellation of a clause, or its declaration to be *ultra vires* shall affect the validity and enforceability of the rest of the provisions of the Licence and they shall continue to be observed as binding conditions.

CLAUSE 23 TERMINATION / EXPIRY OF THE LICENCE

Termination of this Licence for Cause

- 1) The WASREB shall terminate the Licence for cause as prescribed by section 102 (3)c of the Water Act 2016. because of
 - a. The licensee is in serious and sustained default on its obligations under this Licence 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 Licence .
 - 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 Licence .

- d. The Licensee is or is likely to be unable to pay its debts within the meaning of the Insolvency Act 2015
- e. The County has petitioned for the winding up of the Licensee under the Insolvency Act 2015 on grounds of public interest;
- f. a voluntary arrangement has been proposed in relation to the Licensee under the Insolvency Act 2015 or has entered into a scheme of arrangement (those who may propose an arrangement) other than on terms which have been approved in writing by the WASREB.
- g. a receiver has been appointed in relation to the whole or a material part of the Licensee's assets or undertaking;
- h. a resolution has been passed for the winding up of the Licensee;
- i. Board of directors and key management staff engages in any corrupt or fraudulent practice.
- 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.

2) Termination of the Licence by passage of time

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

3) Consequences of Termination or expiry of Licence

- a. The business operations as they are shall be handed over and assigned to the control of the another Licensee to avoid disruption of services and the staff shall continue to daily operate the business or the WASREB in consultation with the CECM in charge of water may appoint a manager to ensure the smooth running of the business.
- b. All creditors shall be paid the remuneration due to them 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 Licence to the extent that they are applicable.
- c. In case of Termination for cause, the Licensee shall not make any claim for lost or foregoing profits, revenue, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Licence .
- d. In the event of Termination due to prolonged Force Majeure, the licensee shall not 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 Licence .
- e. The Licensee shall seek to ensure the smooth continuation and provision of the services throughout the period from receipt of any notice of Termination of this Licence till the expiry date of such notice, or during the last six (6) months of the period of the Licence (if no such notice is served).
- f. On the expiry or on early Termination of this Licence, the Licensee shall use its best endeavours and acting in good faith and in accordance with Good Industry and Management Practice, cooperate with the WASREB/ County Government and its appointed representatives or any new Licensee which the WASREB may appoint to take over responsibility from the Licensee. The Licensee shall seek to ensure the smooth continuation and provision of the services throughout the period from receipt of any notice of Termination

of this License till the expiry date of such notice, or during the last six (6) months of the period of the License if no such notice is served.

4) Surrender of Assets, Information and Documents on Termination of the Licence

- a. The Licensee shall, on Termination of the License immediately provide to the Regulatory Board/ County all Relevant information held or used by the Licensee relating to the Assets including physical data, bank accounts ,condition data and operational data and the listing of moveable assets, operating equipment and consumable items owned by the Licensee that will be transferred to a new Licensee, including the quantities, descriptions and prices if applicable.
- b. The Licensee shall give to the WASREB/ County all Relevant information regarding Customers including charging, billing and payment records and relating to intellectual property rights as well as ensure immediate access to and the use and management of the software and any proprietary software and systems that will be transferred by the Licensee to the new Licensee. The Licensee shall return all Assets it is required to return to the water service board as provided for under the Deed of Handover.
- c. If the assets are not in good working order on handing over, the Licensee shall be liable to pay the water service board the reinstatement costs in full. Best endeavours shall be made to minimize disruption to the operations and the performance of the services. The costs arising out of the handing-over activities shall be agreed upon ~~by the parties~~; failure to which the parties should meet the same in equal proportions.
- d. Failure to effect smooth and effective transfer of all assets, information, documentation, software and hardware according to this article shall make the Licensee liable to the water service board/ WASREB for such fair sum as shall either be agreed upon between them or as shall be assessed under the provisions in regard to Dispute Resolution.

5) Transfer of Contracts, Agreements and Obligations on Termination of the Licence

- a. On Termination of this Licence , all relevant contracts and Agreements and Obligations made by or with the Licensee shall be directly assigned or shall be deemed to be assigned from the Licensee to the new Licensee so that the new Licensee shall, from the date of such Termination, have all necessary rights and duties in relation to such matters which shall be vested in the Licensee and not in the Licensee , provided that the old Licensee shall remain liable for any outstanding debts or penalties incurred under this Licence .
- b. Using good industry practice and acting in good faith, the parties shall consult with each other, with the Relevant workers' representative organizations and where applicable with any new Licensee taking over from the outgoing one so as to ensure that the transfer of personnel to the new Licensee is conducted in a fair and proper manner.

CLAUSE 24 DISPOSAL OF ASSETS

- 1) The Licensee shall not sell, hand over, transfer or otherwise dispose of any real property other than current assets in accordance with the provisions of section 84 of the Water Act 2016.
- 2) All other current assets shall be disposed in accordance with the Public Procurement and Asset Disposal Act 2015 and there shall be disclosure in the annual report of the licensee to WASREB and the County Government on all assets, if any, that have been sold, handed over, transferred or otherwise disposed of during the License year in question and shall provide audited details of all such transactions.

- 3) The proceeds of sale shall be paid to the Licensee, less the Licensee 's reasonable costs of disposal.
- 4) Any assets, which are handed over by the Licensee by the water service board or the county government, shall only be used for or in connection with the performance of the duties of the Licensee under this License and shall not be used for any other purpose. In particular, the Licensee shall not attempt to sell mortgage, lease sub let or franchise or otherwise part with the possession of any of the assets handed over.

Witness page /enforceable undertaking page

Schedule A: Licensee s Data Sheet & Registration Details

Conditions	Data
Licensee 's name and address	
Regulatory Board's address for communication	info@wasreb.go.ke P.O. Box 41621 00100 Nairobi
Licensee 's address for communication	
Regulatory Board's Representative	CEO
Licensee 's Representative	MD
Period of Licence	5 years
Expiration Date	
Copy of Registration Details Attached	

Schedule B: Licensee Service Area

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

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

Schedule C: Scheme summary for water and sewerage/ sanitation services

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 Licensee (Cluster) if Cluster name Schemes(Clustered).

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

Population Served

Amount of water produced; m³/year

Amount of water sold; m³/year

Amount billed; kshs/year

Amount collected; kshs/year

Total O+M cost kshs/year

Personnel emolument kshs/year

Chemical costs kshs/year (alum, Chlorine, soda ash)

Energy costs kshs/year

Number of Total connections.

Number of connections with meters

Sanitation /Sewerage

- Total Population in SA and population served
- Volumes of influent to be treated
- Waste water treatment capacity
- Billing and collection amount
- No. of staff (contract and permanent)
- O+M cost
- Personnel, chemical and energy costs
- Total (registered, active) and metered connections

Schedule D: Minimum Service Level

The Licensee shall achieve the following Service Level Indicators which are part of the License . A verification of progress and an update of the time schedule whenever tariff adjustments are discussed is compulsory.

Guidelines on required Minimum Service Levels

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

1. SI 1 Coverage of the Service Area

- a. Population served with individual connections to the water
- b. Population served with sewer networks and connections
- c. Population served with kiosks owned by Licensee
- d. Population served by third party providers

2. SI 2 Drinking Water Quality

Adequate water-testing program to ensure effective control (number of tests) and the assessment of portability through:

- a. Physiochemical
- b. Chemical
- c. Microbiological 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

- a. Actual Billing and meter reading sequences, conditions for payment of bills by the Customer as well as ratio on metered connection to total Customer.
- b. Estimated billing

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

- a. Unannounced interruption of supply or
- b. Sewer evacuation due to maintenance and repair work.

7. SI 7 Pressure in the Network for Water Supply – based on Water Supply Practice and Design Manual 2005

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

- i. Min pressure at design flow be 10m in pipe sections with consumer connections
- ii. Max static pressure in urban areas with consumer connections be 60m unless terrain makes in unavoidable
- iii. Min pressure in urban areas with provision for fire fighting be 15m at a withdrawal rate of 15l/sec

8. SI 8 Unjustified Disconnections

Number of unjustified disconnections and the compensation paid by the Licensee 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 Licensee 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.

BENCHMARKS FOR SERVICE INDICATORS (SI)

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

Service Indicator	Benchmarks	Other indicator
<p>SI 1a Coverage of the Service Area Water</p> <p>SI b Coverage of the Service Area Sewerage</p>	<p>Densely populated areas >90% good, acceptable 80-90%, not acceptable <80%</p> <p>Low density areas >80% good, 70-80% acceptable, <70% for water and sanitation</p>	<p>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.</p>
<p>SI 2 Drinking Water Quality and Effluent Quality</p>	<p>Number of test within norm/total number of test carried out: >95% good, 90-95% acceptable, <90% unacceptable.</p>	<p>Total number of test carried out/number of tests planned according to guidelines and standards >95% good, 90-95% acceptable, <90% unacceptable.</p>
<p>SI 3 Service Hours (water quantity)</p>	<ul style="list-style-type: none"> Large and medium towns (>100.000 Population) 20-24 h good, 16-20 h acceptable, <16 h unacceptable Smaller towns >16 h good, 12-16 h acceptable, <12 h unacceptable 	<p>Opening hours of public distribution system 12 hours/day, 7 days a week. Pay station and offices 45 h weekly</p>
<p>SI 4 Billing for Services</p>	<p>Number of billed Customers/total number of connections:</p>	<p>Minimum of one bill per month for all Customers, with minimum of meter read once in 2 months.</p>

	<p>100% good, 90-100% acceptable, <90% unacceptable.</p> <p>Number of estimated bills</p>	<p>Maximum period for payment after bill delivery is 2 weeks.</p> <p>Increase % of metered connections by at least 10% annually.</p> <p>Accounts receivable less than or equal to two (2) months of monthly billing</p>
SI 5 Client Contacts	<p>Response time on billing contacts, written complaint 5 working days.</p> <p>Response time on demand for meter and meter testing 10 working days.</p> <p>Response time on paid new connection <3 weeks</p> <p>Waiting time to pay bill and file complaint <15 minutes</p>	<p>No. of complaints categorized by type of complaints</p> <p>Telephone contacts to requested department/contact person <5 minutes</p>
SI 6 Interruption of Water Supply and Blockage of Sewer	<p>% of connected properties subject to an unannounced supply interruption of 20-36 hours from the time the interruption is reported <15%, 36-48 hours <8% and >48 hours <3%</p>	
SI 7 Pressure in the Network for Water Supply.	<p><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</p>	<p>Minimum pressures at Customer faucet : 10m (1bar)</p> <p>Fire fighting: 15m (1.5bar) and water flow of 15l/s;</p> <p>Put in place network hydraulic model</p>
SI 8 Unjustified Disconnections		<p>Maximum of 0.2% of total connections in a year in towns >10,000 connections and 0.4% <10,000 connections.</p> <p>Reconnection fee not paid or refunded where paid</p>
SI 9 Sewer Flooding	<p>Maximum of 0.5% of total connections per year</p>	
SI 10 Quality of Discharged effluent	<p>Daily tests carried out and tests results within the WHO guidelines for effluent</p>	

<p>SI 11 Support to Public Institutions to Curb Wastage and Settle Bills on Time</p>	<p>The action program will be assessed by the type of actions/support the providers offer public institutions for the reduction of wastage, sensitizing to budgeted the appropriate amount etc. in comparison to the % of unpaid bill of the total amount of outstanding debts.</p>	<p>% of actions carried out from the action program.</p>
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Schedule D (1): Time table for commitment to improve minimum service level indicators.

Each Licensee shall adhere to the attached service level which will be reached within the License period. This shall be negotiated with the approval of the **county government** and put into effect not later than 6 months after the signing of the Licence . It will be considered as a legal commitment. The SI shall be tied to the Strategic Plan. This shall be supported by specific activities as per the attached table towards these goals.

Service Indicators	Current status	Year 1	Year 2	Year 3	Year 4	Year 5	Sector Benchmark = final objective
SI 1 a Coverage of the Service Area Water							High density areas >90% Low density areas >80%
SI 1 b Coverage of the Service Area Sewerage							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 <15 minutes
SI 6 Interruption of Water Supply							Unannounced interruption 20-36 hours <15% (calculated) 36-48 hours <8% annually) >48hours <3% **
SI 6 Blockage of Sewer							Unblocking within 20-36 hours <15% (calculated) 36-48 hours <8% annually) >48hours <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
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							Indicate the number of clients supported every year.

Wastage + Settle Bills on Time							
S1 12 Un-accounted for Water							<20%
S1 13 Metering Ratio							100%
S1 14 Collect Efficiency							>90%
S1 15 Staff/1000 connections Large companies & medium & small companies							<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 WASREB in case of under-performing Providers and Licensee.

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

Water Quality Number of tests within norm/total number of tests carried out Total Collection/total number of staff Bacteriological	Total number of tests carried out/number of tests planned according to Guideline and Standards	>95%	90-95%	<90%
Test results Total Collection/total number of staff chlorine residual Bacteriological	Number of tests within norm/total number of tests carried out	>95%	90-95%	<90%
Staff/1,000 connections Large companies medium & small companies (with up to 3 towns) medium & small companies (serving more than 3 towns with different systems)	Staff/1,000 connections. Might not be applicable to Licensee owned and managed systems. Therefore reporting is voluntary.	<5 <5 <9	5-8 5-8 9-14	>8 >8 >14
Average Water Production per Capita a) household connections b) public stand post connections	[m ³ produced – 20% UFW]/ Population served / 365 days	for comparison		
Average Water Consumption per Capita a) household connections b) public stand post connections	m ³ billed per month/(population served*30 days)	for comparison		
Disconnection Ratio (average over year)	Number of disconnected Customers (>3 months)/total number of connections	<5%	5-15%	>15%
Unjustified Disconnections Larger and medium towns Smaller towns	Number of unjustified disconnections/total number of connections per year	<0,2% <0,4%		>0,2% >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	<2 mths	2-4 mths	>4 mths
Investment Ratio	Total investments/total collections (Turnover)	for comparison		
Billing for Services	Number of billed Customers/total number of connections	100%	90-100%	<90%
Turnover per Staff	Total Collection/total number of staff	for comparison		
Staff/length of pipe network	Staff/length of pipe network (without connections)	for comparison		
Billing/Staff/Month		for comparison		
Collection/Staff/Month		for comparison		
Meter Reading Efficiency	Total numbers of meters read per day/total number of meter readers (incl. supervisors)	for comparison		
Average Personnel Cost per Staff large companies medium companies small companies	Personnel cost/total number of staff	for comparison		
Personnel Cost as a share of Cost of Operation (O+M) large companies medium companies small companies	Personnel cost/cost of operation and maintenance	<20% <30% <40%	20-30% 30-40% 40-45%	>30% >40% >45%
Staff Training Internal Training	Total hours of training/Total	for comparison		

External Training	number of Personnel			
Staff turnover	Total number of staff having left the company/total number of staff	<3%	3-6%	>6%
Absence of Staff	Total days of Absence (excl. leave)/total number of staff	for comparison		

Schedule F: Asset Register Signed by the Licensee and the water service board

Asset Register signed by the Licensee and county government

Schedule G: Deed of Surrender(handover) Signed by the Licensee and the water service board

Schedule H: Constitution or Memorandum and Articles of Association as per Standards of the Corporate Governance Guideline.

Schedule I: Existing Water and Sanitation Tariff

Schedule J: Performance Guarantee

A performance guarantee of Kenya shillings one million shall be issued by the Licensee WSP

TO:

WATER SERVICES REGULATORY BOARD
P.O.BOX 41621- 00100
NAIROBI

WhereasCompany Limited has undertaken to comply with the conditions contained in the Licence to execute the services listed therein.

And whereas it has been stipulated by you in the said Licence thatCompany Limited shall furnish you with a Bank Guarantee by a recognised bank for the sum of Kshs One Million (words) Kshs. 1,000,000 (figures), specified therein as security for compliance with its obligations in accordance with the Licence.

And whereas we have agreed to giveCompany Limited such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider up to a total of Kshs One Million (*amount in words*), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum of sums within the limits of the amount of Guarantee as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We further agree that no change or addition to or other modification of the terms of the Licence to be performed there under or of any of the documents which may be made between you and theCompany Limited shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until the end of the period of Licence.

Signature and seal of the Guarantor _____

Name of Bank
Address
Date

Signature and seal of the Licensee _____

DATE

A performance guarantee of Kenya shillings one million shall be issued by the Licensee

Schedule L: Strategic Plan and Business Plan

Schedule M: Copy of Water Permit and Effluent Discharge Permits

To be maintained during the tenure of the Licence and to be produced upon inspection to WASREB

Schedule N: Enforceable Undertaking by Board Members

Schedule O: List of Incentives and Penalties as per Clause 3.4

Schedule P **Facilities Improvement during License period**

ⁱ All utilities that meet the commercial viability criteria should be able to carry out affordability studies guided by the Wasreb model questionnaire. This has been successfully used in Oloolaiser and ELDOWAS