Bulk Water Supply Agreement

Between

{X}……..Bulk Water Service Provider (BWSP)

{Y} ……Water Service Provider (WSP)

Model BULK SUPPLY agreement

Section 100 of the Water Act 2016

ATTACHMENTS

Schedule A: Parties Data Sheet & Registration Details

Schedule B: Placement of bulk meters

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Schedule D: Water Tariff

Schedule E: copy of water permit

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BULK WATER SUPPLY AGREEMENT

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

BETWEEN

1. Bulk Water Service Provider (BWSP) who is licensed as a water service provider under the Water Act 2016 of P.O. Box …….. and body corporate duly established under the Companies Act 2015 and issued with a licence by the Water Services Regulatory Board to provide water services in its licensed area for bulk supplies.

AND

2. ---------- ("the Service Provider ") a corporate entity established under Companies Act 2015 of P.O. Box ……of the other part, and licensed to supply water by water Services Regulatory Board under the Water Act 2016.

WHEREAS:

A. Every Kenyan under the Constitution 2010 Article 43 (1) d is entitled to clean and safe water in adequate quantities

B. Article 10 of the Constitution 2010 provides national values and principles that are to bind every public organ and public officer

C. In the past the BWSP has sold bulk water to the Service Provider without any agreement on scope as per the law.

D. Under the section 100 of the Water Act 2016, It is a requirement that bulk water sales be reduced to agreements .

E. Under section 100 the Water Services Regulatory Board should approve the provisions of the bulk water supply agreement before it becomes effective

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

a. "Abstraction" in relation to water contained in any source of supply, means the doing of anything whereby any portion of that water is removed from that source of supply, whether temporarily or permanently, including the doing of anything whereby the water is so removed for the purpose of being transferred to another source of supply.

b. "Act" means the Water Act, 2016.

c. "Assets" , unless otherwise stated, means the fixed and other assets of the licensee or which the BWShas otherwise been able to acquire the use of, the use of which are to be granted to the BWS in accordance with this Agreement, and the fixed assets to be procured, constructed or provided by the BWSunder the provisions of this agreement and includes *interalia*, all buildings, Rights, mains, pipes, sewers, works, plant, and equipment associated with the management and administration of the services and abstraction and collection of raw water and the conveyance and treatment of sewage, the treatment, storage and distribution of potable water, plant, equipment and facilities used

or intended to be used for the purposes of scientific analyses or for the measurement of water and sewage and for the avoidance of doubt includes all plans, records and associated information irrespective of the format in which such plans, records and associated information are maintained or otherwise stored.

d. Bulk water supply means water sold by the BWSP to a service provider for the service provider to distribute.

e. “Cure Period” means, in respect of a Default Notice given to the Provider/BWS 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).

f. “Cure Plan” means a plan to rectify a default, as provided in this SPA.

g. “Day” means a calendar day and “year” means 365 or 366 days.

h. “Default” means a failure by a Party to perform its Obligations under this Agreeement

i. “Default Notice” means a notice of Default given by one Party to the other in accordance with provisions of the Agreement.

j. “Dispute Resolution Process” means the process for resolving disputes between the Parties set out in this SPA.

k. “Drinking Water” and “Potable Water” means water that is available or otherwise supplied and intended to be suitable for human consumption on the premises to which the water is supplied.

l. “Effective Date” is the day this Agreeement is signed and approved by Water Services Regulatory Board and as given in the SPA Data Sheet.

m. “Facilities” means the infrastructure, facilities and assets the BWSP uses to provide the Water Services.

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

o. “Government” means the Government of Kenya.

p. “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in Kenya.

q. “license” means the authorisation to be a public water service supplier issued to the parties by Water Services Regulatory Board to provide water services in accordance with section 86 of the Water Act 2016.

r. “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.

s. “Mediator” means a person appointed by the BWSPand the Service Provider from among competent persons to mediate between the parties and to attempt an amicable settlement in the event of a dispute or difference arising out of or relating to this Agreement or any breach thereof.

t. “operations manual” means the operational details that show how staff will read the meters, maintain the assets and provide feedback to each other to ensure the supply system is working to deliver on the agreement.

u. “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 BWSP meets Performance Targets specified in the Agreement. Any details of contingency funds for maintenance and rehabilitation are included in the O&M plan.

v. “Party” means the BWSor the Water Service Provider , as the context so dictates.

w. “Penalty” means the amount that the either party must pay to the other for failure to achieve the Performance Targets.

x. “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.

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

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

aa. “Public Assets” means all assets used by the BWSP for the provision of bulk water and which assets vest in trust for the Government and people of Kenya and which have to be managed as such under the existing Laws of Kenya.

ab. “Public Funds” are as defined in the Public Procurement and Asset Disposal Act 2015.

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

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

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

af. “Repair” means those activities which are necessary, in accordance with good industry practice, to restore an asset to being fully functional in the event of such asset failing to perform the function (in part or in full) for which it is intended and, where necessary, includes the complete replacement or renewal of the asset.

ag. “Regulatory Board Guidelines” are guidelines prepared by the Regulatory Board which are binding and will be circulated to the BWSP and the Water Service Providers from time to time.

ah. “Regulatory Board” means the Water Services Regulatory Board established by the Water Act, 2016.

ai. “Services” means the services to be provided by the BWS under the Agreement .

aj. “SPA” means this agreement.

ak. “SPA Data Sheet” means the pages entitled Service Provision Data Sheet Registration Details.

al. “Tariffs” means the charges levied on the consumption of bulk water provided.

am. “Tariff Schedule” means the schedule of tariffs charged per volume category.

an. “Water Tribunal ” means the Appeals Body established by the Water Act, 2016

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

ap. “Water Resources Authority” (WRMA) means the Authority established by the Water Act, 2016

aq. “Water Service” means any services of or incidental to the supply of water

In this Agreement except where the context requires otherwise:

a) Words indicating one gender includes all genders;

b) Words denoting the singular only shall include the plural and *vice versa.*

c) Unless the context otherwise requires, reference to any Clause or schedule is to a Clause or schedule of or to this Agreement.

d) The headings in this agreement are inserted for convenience only and shall not affect the construction hereof.

e) Provisions including the word “agree”, “agreed” or “agreement” require the same to be decided upon by both parties and to be recorded in writing at the ‘**Special Conditions’** to this SPA;

f) “written” or “in writing” means hand-written, type-written, printed or electronically made and resulting in a permanent record.

2. NATURE AND PURPOSE

a. This bulk water supply agreement establishes the commercial and operational arrangements under which the BWSP supplies water to the WSP and the manner in which the regulator shall oversee the agreement.

b. This agreement is entered into in accordance with the requirements of the relevant sections of the Water Act 2016.Section 66 of the Act requires the arrangements to deal with and include:

i. standard of quality of the water to be supplied
ii. volume of water to be supplied
iii. continuity of water supply
iv. area of water supply
v. maintenance of adequate reserves of water by the BWSP
vi. maintenance of adequate reserves of water by WSP
vii. cost to be paid by the WSP for the supply of water to it

c. The BWSPhereby contracts to the Service Provider to provide bulk Water Services to the Service Provider ’s defined area subject to the conditions, covenants and terms stipulated herein.

3. SCOPE OF SERVICES

a. **Service Area**

i. The BWSP shall supply water in bulk and the WSP shall take the supply from point .....where the bulk water meter is placed . The responsibility of the BWS shall end at the bulk meter

ii. In the absence of a bulk meter the responsibility of the BWSP ends at .....which area is more particularly defined in schedule.

b. **Volume**

The BWSP shall supply …….cubic metres of water per day

c. **Quality of water**

i. The BWSP shall supply treated/raw water to WSP as per the standards specified in the schedule to the agreement

ii. The BWSP shall submit monthly reports on water quality supplied as specified in the Water Quality and Effluent Monitoring Guidelines and shall assure in its required reports that the water quality is as required .

d. **Pricing**

The BWSP shall sell the water at Kshs ..... per cubic metre and that price shall only change after approval by the Water Service Regulatory Board published in the Kenya Gazette and notified by letter to all the parties.

e. **Quality of Service and continuity of supply**

The BWS shall give the supply for .....hours a day continuously and shall notify the WSP in advance on any interruption to the continuity of supply.

f. There shall be no alterations to the scope of services without the authority of the Regulatory Board.

4. OPERATIONAL CONSIDERATIONS

a. Measurement of water supplied

i. The quantity of bulk treated water supplied by the BWSP to Service Provider must be measured by flow meters located at points agreed between the BWSP and Service Provider and documented in the schedule to this agreement.

ii. To ensure their accuracy, the flow meters will be placed, tested and calibrated according to best industry practice or when requested by Service Provider or the BWSP and shall also be in accordance with the relevant guidelines.

iii. All costs associated with such testing or calibration must be met by the BWSP unless data and information obtained from flow meters are shared, in which case costs must be shared.

iv. The cost of any additional testing must be borne by the party making the request.

v. Data and information from flow meters must be made available on an integrated basis to each organisation's telemetry and other relevant communications and monitoring systems.

vi. This information must be freely available to the regulatory board upon request.

b. Charges for the supply of water

i. Service Provider will pay the BWSPmonthly charges for the bulk treated water supplied to it according to the readings recorded in the bulk meter.

ii. The tariffs for the bulk treated/ raw water shall be determined only to allow the minimum allowable costs for efficient abstraction, treatment(if any) and transmission and that part of maintenance of the transmission line that is directly attributed to the bulk supply up to the bulk meter.

iii. Any negligence and inefficiency in the abstraction, treatment and transmission shall be borne by the BWSP.

c. Billing and payment arrangements

i. The BWSP must render to Service Provider an account for the bulk treated water supplied to Service Provider within twenty-one (21) days from the last day of the preceding calendar month.

ii. Service Provider must pay to the BWSP the amount shown on the account within twenty one (21) calendar days of the account being rendered by the BWSP.

iii. The BWS will not charge for water supplied in circumstances where the supplies have been taken over to fight fire or disasters under order of statute.

iv. Such events must recorded and publicised.

v. Accounts may be adjusted under the following circumstances:

   a. When the quantity of bulk treated water supplied has been incorrectly measured;
   b. When Service Provider seeks to recover part or all of the cost of the water used in relevant disaster operations; or
   c. When the BWSP receives or would have received, but for a negligent act or omission, reimbursement as a result of an insurance claim arising from an event of force majeure (in accordance with clause 15).

d. Recovery of costs incurred as a result of negligent or intentional acts oromissions

i. Costs may be recovered by Service Provider in responding to an incident that resulted from a breach of this agreement, a negligent or intentional act or omission by the BWSP that results in the provision of bulk treated water that does not meet the water quality

standards and Service Provider incurs costs as a result of"flushing" its distribution system to remove contamination; or paying redress to its customers for failing to meet water quality standards contained in relevant regulatory instruments;

ii. Service Provider breaches this agreement or commits a negligent or intentional act or omission and the BWSP incurs costs as a result of these Service Provider actions that directly prevent the BWS from complying with the bulk water supply.

e. **Bulk water supplyoperational manuals**

i. The agreement is supplemented by the bulk water supply operational manuals that have been developed by the BWSP and the WSP.

ii. The bulk water supply operational manuals shall contain details of the operations and activities that will be undertaken by the BWS and the WSP in the delivery of treated water, including normal and abnormal operational procedures, planned and unplanned work, quality assurance, quality control, calibration and location of flow meters, access to assets and sharing and exchange of information and other matters as agreed.

iii. The bulk water supply operational manuals must be reviewed at least once in the life of this agreement or when requested by either BWSP or WSP.

iv. The regulatory board may order the review of the operational manuals if upon review they are found to be unsatisfactory based on best industry practice.

5. RELATIONSHIP OF THE PARTIES

a. Nothing in this agreement constitutes a partnership between the BWSP and WSP , nor does it constitute one organisation the agent of the other and no organisation has any authority to bind the other organisation in any way except as expressly specified in this agreement.

b. No organisation enters into this agreement as an agent for any other person or for the benefit of any other person unless expressly specified in this agreement.

6. SAFETY AND THE ENVIRONMENT

a. In performing their obligations under this agreement, their respective operating licences and other legislative and regulatory requirements, theBWSP and Service Provider are committed to the safety of employees, contractors and members of the public and will place safety first when performing their respective obligations.

b. The BWSPand Service Provider will use reasonable endeavours to identify all material risks to the safety of persons, and damage to the environment, which may arise in relation to the performance of their obligations.

c. Each organisation must inform the other of these risks and the practices adopted to eliminate or mitigate these risks. When performing their respective obligations under this agreement, eachorganisation must comply with the other's Operational Health and Safety procedures when on the other's land or premises.

7. REPRESENTATIONS

a. The Service Provider and the BWSPconfirm to each other that there is no litigation, actual or pending at the dateof execution of this agreement, which relates to the parties and to which the Service Provider or the BWSP is a party or of which the parties are aware which would materially affect the Service Provider or the BWSP or ability to perform its Obligations under this agreement and the transactions contemplated hereby.

b. Provided that the water service needs of the Service Provider along the bulk water network are met to the agreed proportions,the BWSPwill not, for the whole period of this agreement, retain, use or supply bulk water to another new Service Provider , unless such alternative provision has been agreed upon between the BWSand the Service Provider .

8. PARTIES' REPRESENTATIVES

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

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

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

9. CONDITIONS PRECEDENT TO THE COMMENCEMENT OF AGREEMENT

a. Regulatory Conditions:

The Regulatory Board shall approve this Agreement after the BWSPand the Service Provider have met all the conditions herein.

The licensee shall have appointed the Service provider in accordance with the water Act 2002.

a) The BWSPshall have a license under the Water Act 2016 enabling it to be a bulk provider.
b) Subject to its water requirements, the BWSP has a valid Extraction Permit giving it abstraction Rights commensurate with its water requirements from the Water Resources Authority.
c) The parties shall have finalised the operational manuals.
d) The service provider is recognised by the respective county government.
e) Both parties present to the regulatory board an enforceable undertaking to ensure and guarantee the supply of the daily required bulk water .

b. Operational Conditions

i. Each party has a license from the regulatory board and shall comply with the license conditions and laws that apply to it as to provision of services.

ii. Any amendments to this agreement shall also be first approved by the Regulatory Board before they are implemented.

10. OBLIGATIONS AND RIGHTS

a. BWS Obligations

i. To maintain the bulk supply assets as per its regulatory conditions in the License.
ii. To provide the services fully as per the supply proportion agreed.
iii. To meet all the required standards for the supply
iv. To come up with proposals for improvement of the assets so as to enhance service delivery.

b. BWS Rights

i. To disconnect services for non-payment for water after issue of a 14 day notice.
ii. To take legal action for breach of obligations by Service Provider and others causing damage or adversely affecting the services.
iii. To ensure that appropriate measures for the protection of the environment are adhered to in line with appropriate legislations.
iv. To maintain, exercise all statutory powers within the area, in relation to works, assets, pipe work and appurtenances of the bulk water supply systems.
v. To have access to land, property and water sources within the Service Provider 's area subject to rules on public security.

c. Service Provider obligations

i. To ensure water is supplied as per the agreement and operational manual.
ii. To pay the tariffs charged for the services supplied at the agreed intervals
iii. Maintain its assets from the bulk meter to distribution as per the standards in its License.
iv. To ensure that it possesses and retains all the necessary expertise necessary to fulfil the technical, commercial, financial and administrative, social and environmental functions as service provider.
v. To prepare studies of demand forecast in its service area and discuss them with the BWSP and any other asset developer.

11. EFFECTIVE DATE, DURATION, RENEWAL AND EXTENSION OF SPA

a. Effective Date

The SPA will become effective on the date of its approval by the regulatory board

b. Duration

This Agreement shall remain in effect it is amended or replaced.

c. Review

The agreement shall be reviewed every five years ; it may be amended or replaced at the instance of either party and the review shall be signed by each party and approved by the regulatory board.

12. REGULATORY LEVY

As per the License each party has it has an obligation to pay the regulatory levy / licensee fee to the regulatory board.

13. ACCESS TO ASSETS

a. Each organisation is to give the other sufficient access to their lands and assets to enable the other organisation to discharge their responsibilities under the agreement, Licence and any other legislation and regulatory instruments.

b. Procedures to allow access to the assets are contained in the bulk water supply operating manuals.

14. MAINTENANCE OF ADEQUATE RESERVES OF WATER BY THE BWSP

a. Optimisation of available water

The BWSPshall manage its bulk treated water storage and supply system to optimise water availability, having regard to:

i. quality of available water in individual storages;
ii. storage and catchment capacities of the water service provider supply systems;
iii. climatic variability;
iv. need to optimise its water entitlement under ……catchments area
v. environmental aspects of its use of run-of-river transfer systems.

b. Annual supply of water

The BWSP must supply bulk treated water to Service Provider in subject to:

i. any environmental and riparian flow release requirements set out in its water resource management permit , or any other licence or approval under the Water Act 2016;
ii. any other operating requirements arising out of legislation or regulatory instruments; and
iii. agreed drought response and contingency plans at a sub-system level.

c. Drought management

i. The BWSP and Service Provider will have arrangements to manage and mitigate the impact of drought, in accordance with the requirements of legislation andrelevant regulatory instruments.

ii. In the event of drought the BWSP and Service Provider are to cooperate with each other to achieve an optimal response that minimises inconvenience to Service Provider ’s customers and any other customers of the BWS.

d. Water supply planning

i. The BWSP and Service Provider are to work with each other, the regulatory board other government agencies in monitoring the demand for water and the development of future water supply strategies for the whole service area and regional catchment area.
ii. The BWSP and Service Provider are to liaise as appropriate in relation to the operational aspects of water supply planning.

15. CONTINUITY OF THE WATER SUPPLY

a. Incident management planning

i. The BWSP and Service Provider are each to prepare and maintain incident response and contingency plans for possible major incidents or emergencies, including asset failures, floods and bushfires, which have the potential to or will impact on the other organisation.These plans are to be made in accordance with:

- Water Act 2016;
- Environmental Management and Coordination Act;
- Any other relevant or appropriate legislation and regulatory instruments.

ii. Plans for incidents that have the potential to or will impact on the other organisation must be prepared in consultation with the other organisation and copies of each plan and any revisions are to be made available to the other organisation and to the Licensee.

b. Rights and obligations when an incident occurs

i. In the event of a major incident or emergency that has the potential to or will impact on the other organisation, each organisation is to act in accordance with the appropriate plans and manuals and cooperate with the other to achieve an optimal response that minimizes inconvenience to Service Provider 's customers and any other customers of the BWS.

ii. In the event of such a major incident or emergency, each organisation grants to the other, its employees and agents, the right at any time during the incident to enter its works, assets and lands to take such steps as are reasonably necessary to overcome the cause or consequences of the incident.

iii. If an incident arises out of or as a consequence of a breach of this agreement, or from any negligent or intentional act or omission, then the organisation responsible for the breach or negligent or intentional act or omission must pay the reasonable costs and expenses incurred by the other organisation.

c. Water quality planning and risk management

i. The BWSP and Service Provider will work together on water quality planning and risk management in accordance with the requirements of the Water Act 2016, regulatory board standards and guidelines and any other related laws and the regulatory instruments under these Acts.

ii. The BWSP and Service Provider will have a transparent approach to the minimisation of risk to public health, through the management of water quality from the catchment to the consumers' tap.

16. NOTICES

Every notice, consent, approval, demand or other communication of any naturewhatsoever required to be served, given or made under or arising from this agreement:

i. must be in writing in order to be valid unless some other form of notice is specifically provided for in the bulk water supply protocols; and

ii. must be:

- Left at the address of the addressee; or
- Sent by prepaid ordinary post to the address of the addressee;
- Sent by facsimile to the facsimile number notified by the addressee from time to time; or
- Sent by email to the email address notified by the addressee.

17. REPORTING AND RECORD KEEPING

a. Annual reports by BWS

The BWSP shall prepare each year an Annual Report according to the reporting guidelines of the Regulatory Board in its license. A copy of the reportshall, be submitted to the Regulatory Board. The Annual Report shall be submitted within three months of the end of the year to which it relates.

b. Daily reports

The BWSP shall submit daily water volume reports to the Service provider. The reports shall also include where relevant any incidents on the infrastructure likely to affect the delivery of services.

c. Record Keeping and Inspections

i. The BWSP and Service Provider shall keep records in accordance with set regulations, standards and guidelines in their licenses.
ii. BWSP and Service Provider shall use or create registers, books and records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of this agreement, for providing information to the Licensee and third parties about service quality and performance.
iii. The BWSP and the Service Provider shall establish and maintain suitable accounting records in accordance with best international practice and relevant WSRB guidelines. All registers, books, records and other recorded information shall be in English.
iv. For the purposes of this agreement the BWSPand Service Provider shall allow the Licensee and the Regulatory Board access to its records at any time for inspection.
v. The BWS and service provider shall respond to requests for information within 2 weeks or within the time specified by the request.

18. DEFAULT AND FORCE MAJEURE

a. Notification of Default and Cure Plan

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

b. Failure to Cure

If the default has not been cured or remedied as agreed in the Cure Plan, or the defaulting party does not submit an acceptable Cure Plan or does not implement any cure plan diligently, the party not in default may, without prejudice to any of its other Rights with respect to the default, seek civil remedies in a court of law claiming damages and all the undertakings given under this SPA shall be enforced.

c. Damages

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

d. Force Majeure

i. Force Majeure means circumstances arising and completely outside of the control and beyond the contemplation of the parties to this SPA which renders its Performance impossible and frees the parties hereto from respective Obligations under this SPA, these shall include but shall not be limited to:
    a. Any act of war, declaration of hostilities or belligerence, blockade or revolution;

b. Insurrection, public disorder or riot;

c. Explosion, fire, earthquake, excessive and extraordinary floods and volcanic eruption;

d. Pollution of Raw Water where such pollution has not been caused by an act or omission of the party invoking such an event and where such pollution cannot be rectified by the exercise of sound water and sewerage engineering practices;

e. With respect to the BWSP, any significant shortage of Raw water where such shortage is caused by circumstances outside of the reasc of the BWS; and

ii. The party encountering an event of Force Majeure shall as soon as it appears, give written notice to the other party of the occurrence of the event and also promptly inform the Regulatory Board. The said notice shall include information about the circumstances, if known, the extent to which the affected party will be prevented from or impeded in carrying out any of its Obligations under this Agreement and a statement of steps necessary to remedy such an occurrence.

iii. Each Party shall at all times use all reasonable endeavours to minimize any delay in the Performance of the SPA as a result of Force Majeure. This Agreement may be terminated in the event of a Force Majeure but only with the prior written approval of the Regulatory Board. The affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19. DISPUTE RESOLUTION PROCESS

a. Dispute Resolution

Disputes between the parties that cannot be resolved amicably or through orders issued by the Regulatory Board or mediation by an independent person appointed by the parties shall be referred to the Water Tribunal.

A dispute shall be declared as such in writing after giving a notice of 30 days.

The Decision of the Tribunal over the dispute shall be final but in the event that the Tribunal shall be considered to have erred in law, an appeal on its decision may be made to the High Court of Kenya.

b. Severability

The provisions of this clause stand alone (are severable) from the rest of this agreement and shall remain in effect even after this agreement is terminated for any reason.

c. 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 litigation procedures in respect of a dispute arising in terms of this contract.

d. Continuing of obligations

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

e. 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 Agreement and they shall continue to be observed as binding conditions.

20. INSURANCE

Each party shall be responsible for the insurance of its own assets.

21. OWNERSHIP OF INFORMATION

Unless the BWSP and Service Provider otherwise agree in writing, the ownership of information (including data) which is legally capable of being owned:

i. Vests in the organisation which has created that information; and
ii. If the information has been jointly created, vests in the BWSP and Service Provider equally.

The sharing of information does not of itself confer or vest ownership in an organisation.

AGREEMENT FORM

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

Sealed, Signed and Delivered by……...**BWSP**

Common Seal

Name and Signature: …….

Managing Director

In the presence of

Name and Signature: …….

Chairman

Sealed, Signed and Delivered by……...**WSP**

Common Seal

Name and Signature: ……..

Managing Director

In the presence of

Name and Signature: …….

Chairman

APPROVED BY THE WATER SERVICES REGULATORY BOARD

Name and Signature: ……
Chief Executive Officer

Seal

Schedule A: **Service Provider s Data Sheet & Registration Details**

Conditions	Sub-Clause	Data
BWSPaddress for communication		
Service Provider ’s address for communication		
BWSs Representative		
Service Provider ’s Representative		
Effective Date		

Schedule B: **Placement of Bulk Meter**

Schedule C BWS service obligations

- Water quality standard table
- Water volume per day (m3)
- Hours of supply

Schedule D **Agreed Water Tariff**

Schedule E: **Copy of Water Permit**

Schedule F: Copy of Undertaking to provide the bulk water by managing director of BWSP