

Kenya Gazette Supplement No .xxx

(Legislative Supplement No xxx)

LEGAL NOTICE NO.

THE WATER ACT, 2016
(No. 43 of 2016)

THE WATER SERVICES REGULATIONS 2019

ARRANGEMENT OF RULES

Rule

PART 1- PRELIMINARY

1. Citation.
2. Interpretation.
3. Application of Rules.

**PART II- COUNTY GOVERNMENT FRAMEWORK FOR WATER SERVICES
PROVISION**

4. Powers and Duties of County Executive Committee member.
5. County Water and Sewerage Services Strategy.
6. The Directorate of Water and Sewerage Services.
7. Annual Monitoring and Evaluation by County Executive.

**PART III: ESTABLISHMENT, OPERATION AND FINANCING OF WATER
SERVICES PROVIDERS**

8. Establishment of County Water and Sewerage Service Providers.
9. Functions of the county water services provider.
10. Governance of water service providers.
11. Meetings and Procedure of the Board.
12. Chief Executive Officer and other employees of county water services providers.
13. Finances of county water service providers.
14. County government financial support to the water services provider.
15. Ring fencing of water revenues.
16. Annual estimates of county water services provider.
17. Accounts and audit.
18. Private sector participation.
19. Register of water service providers.
20. Operation of community water projects.

PART IV-APPLICATION FOR LICENCE

21. Application for a Licence.
22. Public Consultation.
23. Application Fee.
24. Determination of an Application.
25. Objections to grant of a licence.
26. Appeal to the Water Tribunal by licensee or objector.
27. Issuance of a Licence.
28. Provisional Licence.
29. Extension of a Provisional Licence.
30. Annual License Fee.
31. Validity of License and Basic Criteria.
32. Mid-term review of the license.
33. Renewal of Licence.
34. Default of Application for Renewal.
35. Scope of a License.
36. Deposit of Guarantee or Security.
37. Register of all water service providers.
38. Maps.

PART V– SYSTEMS AND STANDARDS FOR OPERATION OF WATER SERVICES

39. Operating Systems.
40. Implementation of standards and systems.
41. Schedule of water services.
42. Execution of Works.
43. Consent for Execution of works.
44. Approval of the road authority for Execution of Works.
45. Sampling Programme.

PART VI – EFFLUENT

46. Sewerage or Sanitation Systems.
47. Sewerage System Plan.
48. Control of Trade Effluent.

PART VII – TARIFFS

49. Implementation of Tariffs by Water Service Provider.
50. Tariff Reviews.
51. Application for Tariff Reviews.
52. Extraordinary Tariff Review.
53. Tariff Adjustment.

PART VIII: CLUSTERING

54. Clustering of Water Services Providers.
55. Proposal for Clustering Water Services Providers.
56. Feasibility Study and Report.
57. Operationalization of Clustering.
58. Application for a new Service Provision Area license and new tariff.
59. Interpretation of Clustering and Commercial Viability.

PART IX – LEVIES

60. Sewerage Services Levy.
61. Water Consumption Levy.
62. Levies Bank Account.
63. Inspection of Sales Records.
64. Operation of Levies Bank Account.
65. Administration Fee.
66. Failure to remit levies.

PART X - ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

67. Raw water abstraction permits and access rights.
68. Easements, access rights etc.
69. Construction boreholes within supply area.
70. Regulation of water vending.
71. Closure of unsafe supplies of water.
72. Water Quality and Service Standards for rural and underserved areas.
73. Septic Tank Sludge Management.

PART XI - APPROVALS OF CONSTRUCTION WORKS AFFECTING INFRASTRUCTURE, ETC

74. Approval of construction works.
75. Certification of property development works connecting to water mains.

PART XII - INSPECTION, EVALUATION AND MONITORING

76. Inspectorate Service.

PART XIII - OFFENCES RELATING TO CONDUCT OF EMPLOYEES OF A WATER SERVICES PROVIDER

77. Offences by Employees.

PART XIV - GENERAL OFFENCES

- 78. Impersonation of staff of the water services provider.
- 79. Vandalism of water and sewerage services infrastructure.
- 80. Illegal connection to water services.
- 81. Contamination of water and supply to domestic premises.

PART XV - BULK WATER SUPPLY

- 82. Bulk Water Supply Services by Waterworks Development Agencies.
- 83. Establishment of works for bulk water supply.
- 84. Application for Bulk Water Supply Licence.
- 85. Public Consultation on Application for Bulk Water Supply Licence.
- 86. Determination of Application for Bulk Water Supply Licence.

PART XVI - REPORTING AND RECORD KEEPING

- 87. Annual Reports by the Regulatory Board.
- 88. National database and georeferenced information system.
- 89. Annual Reports by Water Service Provider.
- 90. Public Reporting and Transparency.
- 91. Obtaining Water Service Data.

PART XVII - COMPLAINTS

- 92. Complaints Mechanism.
- 93. Complaints to the Regulatory Board.

PART XVIII – CONSUMER ENGAGEMENT

- 94. Consumer participation through Water Action Groups.
- 95. Provision of information by Water Action Groups.
- 96. Consumer complaints and follow-up by Water Action Groups.
- 97. Supervision and Oversight of Consumer Complaints Mechanism.

PART XIX - COMPLIANCE AND ENFORCEMENT

- 98. Enforcement against licensed water service providers.
- 99. Inspection by Water Service Inspector.
- 100. Cure Notice.
- 101. Special Regulatory Regime.
- 102. Delegation by Regulatory Board.

PART XX - GENERAL PENALTY

- 103. Penalties.

SCHEDULES

First Schedule: Provisions As To The Conduct Of Business And Affairs Of Boards Of
County Water Services Providers

Second Schedule: xxx

Third Schedule: xxx

Kenya Gazette Supplement No xxx

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LEGAL NOTICE NO.

THE WATER ACT

(No. 43 of 2016)

IN EXERCISE of the powers conferred by Section 142 of the Water Act, 2016, the Cabinet Secretary responsible for matters relating to water makes the following Regulations:—

THE WATER SERVICES REGULATIONS, 2019

PART I-PRELIMINARY

- | | |
|---|-----------------------|
| 1. These Regulations may be cited as the Water Services Regulations 2019. | Citation |
| 2. In these Regulations, except where the context otherwise requires – | Interpretation |

“Act” means the Water Act 2016 (Act No. 43 of 2016);

“Authority” means the Water Resources Authority established under Section 11 of the Act;

“Agent” means a water service provider contracted as such through a service provision agreement by a water services provider to exercise and perform some or all of its functions as a licensee with respect to a part or the whole of its area of water service provision;

“Bulk water” means supply of water in bulk as defined in these Regulations;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water;

“Communal water” means water services which are supplied to more than ten households;

"Controlled volume" means that the supply of water to customer is intentionally restricted or limited to a maximum volume for a measurement period;

"County government" means a County Government as provided for under Chapter 11 of the Constitution of Kenya;

"County executive committee member" means the county executive committee member responsible for matters relating to water;

"cure notice" means a notice issued by the Regulatory Board, to a licensee or agent to correct or repair a breach, irregularity or illegality;

"customer" means a person or persons who is or are the buyer or recipient and end user of water services;

"designated person" means any person appointed or designated by the Regulatory Board for a particular purpose under the Act or these Regulations;

"director" means the Director of Water Services;

"directorate" means the Directorate of Water Services;

"easement" means the right to occupy so much of the land of another as may be necessary for or incidental to the construction or maintenance of works authorised, or the exercise of rights conferred by a permit;

"effective date" means the date that these Regulations come into force;

"Fund" means the Water Sector Trust Fund established in section 113 of the Act;

"fixed charge" means a monthly charge levied irrespective of the actual volume of water supplied or amount of effluent discharged or disposed of;

“inspector” means a person appointed by the Cabinet Secretary, the Authority, a water basin resources committee, or the Regulatory Board, to exercise the powers of an inspector under this Act;

“issuing officer” means an officer authorised to issue a license, permit or other authorization under these Regulations;

“licensed water service engineer” means a person holding a water service installation licence, and any reference in these Regulations to a water service engineer is deemed to be reference to a licensed water service engineer;

“Licence” means a licence in force under the Act;

“licensee” means a water service provider licensed by the Regulatory Board under the Act;

“limits of supply” in relation to water undertaking, means the limits within which the licensee is for the time being authorised to supply water;

“Ministry” means the Ministry of Water and Sanitation;

“peri-urban water services” means services provided in peri-urban areas as shall be defined by the Regulatory Board from time to time;

“price cap” means a methodology where the price charge for a service is allowed to change by the rate of inflation over the initial price with an adjustment factor (X) based on factors such as technological changes, need to finance development infrastructure and need to adopt efficient working systems;

"Regulatory Board" means the Water Services Regulatory Board established under section 70 of the Act;

“rural water services” means services provided in rural areas as defined by the Regulatory Board;

“sewerage services” ,means the development and management of infrastructure for transport, storage, treatment of waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

“supply of water in bulk” means supply of water by a licensee or a private undertaker to an agent or other licensees for purposes of resale or distribution to customers;

“supply zone” means an area, determined by a licensee , within which all the customer connections are provided with water supply services from the same bulk water supply;

“urban water services” means services provided in urban areas as decided

by the Regulatory Board from time to time;

"uncontrolled volume” means that the supply of water services to a customer is not intentionally restricted or limited to any maximum volume;

“variation” means any authorized amendment made to a valid licence issued under these Regulations;

"volume based charge” means a charge levied proportionately to the amount of water supplied or effluent discharged or disposed of;

“water services” means any services of or incidental to the supply or storage of water and includes the provision of sewerage services;

“water service contractor” means any person holding a water service installation licence issued under these Regulations to carry out any water service installation work either individually or as a body corporate or incorporate for voluntary, business, training or teaching purposes in the field either for gain or reward, or at no charge at all;

“water services infrastructure and facilities” means networks, facilities, equipment, applications and assets for water production, transmission, distribution and waste water disposal facilities, and in these Regulations the terms are used inter changeably;

“water service inspector” means any water service inspector appointed in accordance with Rule 99;

“water service installation” means the pipes , machinery, apparatus, appliances, devices, material and equipment used or intended for use by a customer for receipt, distribution or use of water supply , consumption or sewerage disposal;

“water service installation licence” means any document or instrument in writing granted under these Regulations to any person authorizing the carrying out of water service installation work;

“water service installation work” means the installation, alteration, or repair, wholly or partially, of a water service installation, but excludes work upon the system of a public water service supplier or other licensee carried out by such public water service supplier or servant of such public water service supplier acting on his behalf;

“Water service provider” means an entity established in accordance with Section 77 of the Act;

“Water Strategy” means the Integrated National Water Services Strategy formulated by the Cabinet Secretary in Section 64 of the Act;

“Water Tribunal” means the Water Tribunal established under section 119 of the Act;

“water works development agencies’ means agencies established under section 65 of the Act;

3. The Regulations shall apply to and extend to the National Government and national government entities, County Governments and county government entities and other persons providing water services in Kenya.

Application of the Rules.

PART II- COUNTY GOVERNMENT FRAMEWORK FOR WATER SERVICES PROVISION

4. (1) Subject to the provisions of the Constitution and the Act, the County Executive Committee member shall be responsible for the development and provision of water and sewerage services within the county.
- (2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to:-
 - (a) formulate and periodically review county policies, strategies and plans for the development and provision of water services;

Powers and Duties of County Executive Committee member

- (b) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national law on the provision of water and sewerage services;
 - (c) coordinate and oversee the development and provision within the county of water and sewerage services;
 - (d) mobilise financial and other resources for the provision of water and sewerage services;
 - (e) put in place measures to secure the achievement of universal access to basic water and sanitation services within the county within a defined timeframe; and
 - (f) prepare a report for the County Assembly each quarter, and from time to time as may be necessary, on the state of water and sewerage services in the county.
- (3) In the performance of [his][her] functions and duties under this Act the County Executive Committee member shall –
- (a) consult and coordinate with departments, agencies and entities of the national and county government whose functions affect the development and provision of water and sewerage services of the county; and
 - (b) consult with relevant stakeholders including non-governmental organisations, the private sector and consumer groups.
- (4) In the discharge of [his] [her] duties and functions under this Act, the County Executive Committee member shall be assisted by the Directorate of Water and Sewerage Services established by the County Service Board pursuant to the County Governments Act, 2012.
5. (1) Following public consultation the County Executive Committee member shall formulate a county water and sewerage services strategy.
- (2) The County Water and Sewerage Services Strategy shall provide-

County Water and Sewerage Services Strategy.

- (a) Information on areas within the county in which access to basic water and sewerage services is inadequate;
 - (b) Plans and measures for the development and continuous improvement of water and sewerage services within the county;
 - (c) An investment programme and a timeframe for the development, expansion and improvement of water and sewerage services in the county;
 - (d) Institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
 - (e) Measures to facilitate the provision of water and sewerage services by private sector water service providers and community water service providers; and
 - (f) Criteria and procedures for the provision by the county government of financial, technical and other assistance to county owned water service providers and community water service providers.
- (3) The strategy shall be published in the Gazette after approval by the County Executive Committee.
 - (4) The county water services strategy shall be reviewed periodically and in any case not later than every five years.
 - (5) Every county public officer and every county organ shall give effect to the gazetted county water and sewerage services strategy in the discharge of [his][her] or its duties under this Act.
 - (6) Every water services provider, including private water services providers and every community water service providers operating in the county shall take account of the county water services strategy in its plans and programmes.
6. (1) The County Directorate of water and Sewerage Services shall –

**The Directorate of
Water and
Sewerage Services.**

- (a) Provide technical support and advice to the County Executive Committee member in the discharge of his or her functions;
 - (b) implement and give effect to the county water and sewerage services strategy;
 - (c) register water services providers operating within the county;
 - (d) subject to national legislation, formulate rules, standards and guidelines for the provision of water services within the county which are compliant with standards provided by the Regulatory Board;
 - (e) on the basis of a collaborative framework established between the county government and the Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county;
 - (f) gather, collate and analyse information and disseminate data on water and sewerage services in the county;
 - (g) maintain an inventory of the assets, facilities and other infrastructure of the county government for the provision of water and sewerage services;
 - (h) provide operational, technical and other support to community water service providers operating within the county; and
 - (i) on the basis of a collaborative framework established between the county government and the Regulatory Board receive and address complaints regarding the provision of water services within the county.
7. (1) The County Executive Committee member shall, on an annual basis, with the technical assistance of the Directorate and in consultation with the Regulatory Board, undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance with the county water services strategy and performance targets.
- (2) The County Executive Committee member shall, on the basis of recommendations of the monitoring and

**Annual Monitoring
and Evaluation by
County Executive.**

evaluation report, take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and or sewerage services provided by water services providers operating in the county.

PART III: ESTABLISHMENT, OPERATION AND FINANCING OF WATER SERVICES PROVIDERS

8. (1) The county government may, pursuant to section 77 of the Act and by notice in the *Gazette*, or through incorporation of a limited liability company, establish one or more county entities as a water and sewerage services provider or providers as the case may be.
- (2) A county water services provider established under this section shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:-
- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
 - (c) borrowing money;
 - (d) entering into contracts; and
 - (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.
- (3) The County Executive Committee member shall assign to each county water services provider established under this section a water supply area which may cover the whole or a portion of the area of geographical jurisdiction of the county government.
- (4) In determining the area of supply of a county water services provider the County Executive Committee member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

Establishment of County Water and Sewerage Service Providers.

- (5) Following the establishment of a county water services provider the assets, facilities and other infrastructure used for the provision of water and sewerage services within the water services provider's water supply area which belong to the county government shall be transferred or leased to the water services provider.
 - (6) Where the assets for the provision of water services in part of the supply area of the county water services provider belong to a community water services provider the county water services provider shall enter into an agreement with the community water services provider the terms of which may provide –
 - (a) for the county water services provider to take over responsibility for the provision of water services in the area of supply of the community water services provider and use and or acquire the assets and facilities of the community water services provider on terms which may include the payment of lease fees or compensation for the assets;
 - (b) that the community water services provider continues to provide water services as an agent or a sub-contractor of the county water services provider;
 - (c) that the community water services provider may purchase water in bulk from the county water services provider;
 - (d) for the provision of technical and capacity building support to the community water services provider by the county water services provider;
 - (e) other terms necessary to secure the efficient and cost effective provision of water services within the area supplied by the community water services provider.
9. (1) A county water and sewerage services provider established pursuant to section 77 of the Act shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure and facilities, within its water supply area and for this purpose it may acquire and own land, infrastructure and facilities for water services provision.
- (2) A county water and sewerage services provider established under section 77 shall –
- Functions of the county water services provider.**

- (a) be a legal person and a corporate entity managed and accounted for as an independent or separate business enterprise;
 - (b) shall have the exclusive right to provide water services within its area of supply;
 - (c) provide or put in place arrangements to provide water services to all consumers in its area of supply who desire a water service and are willing to comply with conditions for the supply of water;
 - (d) Apply for, secure and maintain a licence issued by the Regulatory Board in order to undertake the provision of water services within its area of supply;
 - (e) may, with the approval of the County Executive Committee member and the Regulatory Board, contract out the whole or aspects of its functions to a private water services provider, a community water services provider or another county entity which has the requisite capacity to provide water services.
10. (1). Each county water services provider shall have a board of directors comprising not more than eleven (11) members which shall guide and direct the performance of its functions.
- Governance of water service providers.**
- (2) The rules and procedures governing the appointment, composition and qualifications of members of the board of directors of a county water services provider shall give effect to standards and guidelines set by the Regulatory Board but shall in any case not derogate from the following minimum standards –
- (a) the members of the board of directors shall have the minimum educational qualifications and or professional experience from time to time set by the regulatory Board;
 - (b) the board of directors shall have among its members persons who represent different categories of consumer group consumer groups and other stakeholders in the area of supply of the water services provider;

- (c) the board of directors shall not have among its members a person who, at the time of nomination for appointment, was serving as an elected member of a county government; held office in a political party, or was a serving member of Parliament or of the county assembly;
 - (d) the county government shall be represented on the board of directors by not more than two officials of the county government; and
 - (e) the members of the board of directors – other than public officers representing the county government on the board, shall be appointed following a process of open competition but so as to ensure that not more than two thirds of the members are of the same gender.
- (3) The term of the Board of the county water and sewerage services provider shall be three years renewable once which term shall not be affected by the expiry of the term of office of the county government.
11. The First Schedule shall have effect in relation to the meetings and procedures of the Board.
12. (1) A county water services provider shall employ a chief executive officer and other staff necessary for performing its functions as a licensed water services provider on terms and conditions of employment approved by its Board of directors which terms and conditions shall be compliant with guidelines of the Salaries and Remuneration Commission.
- (2) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.
13. (1) The funds and assets of a county water services provider shall consist of:
- (a) such monies as may be appropriated by the County Assembly for the purposes of the county water services provider;
 - (b) any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions;
- Meetings and Procedure of the Board.**
- Chief Executive Officer and other employees of county water services providers.**
- Finances of county water service providers.**

(c) such monies as may become payable to the County water services provider by way of tariffs, fees and other charges in respect of services rendered by or through it; and

(d) all monies from any other sources whatsoever donated, lent or granted to the county water services provider.

14. (1) Pursuant to regulation 12(1)(a) the county government may, in appropriate cases, provide financial assistance to enable a water services provider which satisfies the criteria stipulated in the county water services strategy meet a portion of its operation and maintenance costs.

County government financial support to the water services provider.

(2) The County Executive Committee may additionally set up a dedicated fund into which the county government and others may place funds for supporting the provision of water services to underserved areas.

(3) The rules governing the operation of the fund shall be prescribed by the County Executive Committee in consultation with the Regulatory Board.

15. (1) All funds of a county water services provider and all revenues arising from provision of water services by a county water services provider shall not form part of the general revenues of the county government but shall be retained by the water services provider for its purposes.

Ring fencing of water revenues.

(2) Any excess of revenue over expenditure at the end of the financial year shall not be paid over to the county government but shall be retained by the county water services provider to be used for the improvement of water services within the area of supply of the county water services provider.

(3) Every water services provider shall establish and maintain a contingency fund into which it shall pay a portion of its revenues to be used to pay for emergency repairs and meet the costs arising from unforeseen occurrences which can disrupt the provision of water services.

- (4) A water service provider shall not make payments out of its revenues to the county government or otherwise provide other financial support that may be inconsistent with its core mandate of water services provision unless as provided in these Regulations.

- 16. (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year.

Annual estimates of county water services provider.

- (2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider for the financial year concerned.
- (3) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal and or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure and or facilities and or acquiring equipment and other assets for the provision of water services.
- (4) The Board shall submit the estimates to the County Executive Committee member for approval.
- (5) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved as provided under these Regulations.

- 17. (1) The board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities.

Accounts and audit.

- (2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with –
 - (a) a statement of the income and expenditure during that year; and
 - (b) a statement of the assets and liabilities on the last day of that financial year

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with the provisions of Article 226 and 229 of the Constitution and applicable national and county government legislation.

18. (1) Subject to compliance with the requirements of applicable national law a county water services provider may, in an appropriate case, engage in a public private partnership for development of water services infrastructure and or the provision of water and or sewerage services.

Private sector participation.

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water and or sewerage services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement shall be vested in and be owned by the county government or county water services provider as appropriate.

19. (1) For purposes of the register of water service providers maintained by the Directorate each water services provider shall, within 12 months of the coming into effect of these Regulations or, in respect to water service providers established after the coming into effect of the Regulations, of its establishment or such longer period as the Executive Committee member may allow, the water services provider shall submit to the Directorate and to the Regulatory Board information on-

Register of water service providers.

- (a) the area it actually supplies with water services;
- (b) the number and location of customers served;
- (c) an inventory of the facilities and infrastructure available to it for the provision of water services;
- (d) particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (e) the tariff and other fees it charges;
- (f) particulars of its liabilities;

- (g) the status of its application for a licence and, if licensed, a copy of the licence;
 - (h) plans and programmes for the improvement of water services it provides; and
 - (i) such other information as the Executive Committee member or the Regulatory Board may reasonably require.
- (3) By the end of March of each calendar year the water services provider shall notify the Directorate and the Regulatory Board of material changes to the information provided in the previous year and the Directorate and the Regulatory Board shall as soon as practicable thereafter update the register.
- (4) The register shall be posted on the website of the Regulatory Board and additionally open to inspection by members of the public at the offices of the County Government and the Regulatory Board during normal working hours.
20. (1) The County Executive Committee member shall facilitate the development and operation of community water service providers in rural areas within which the county water service providers do not provide adequate water services.
- (2) Where, following viability studies, it is recommended that certain community water service providers should cluster into bigger associations in order to better achieve viability, the County Executive Committee member shall put in place appropriate measures to encourage such community water service providers to cluster.
- (3) For purposes of enhancing the efficiency and cost effectiveness of the water services provided by community water services the county executive committee member may put in place measures to encourage community water service providers to, inter alia, consolidate and outsource to a common services including billing services, pump maintenance services and other similar services; or engage the services of a contractor to provide professional management services.

**Operation of
community water
projects.**

- (4) A community water services provider which takes steps to enhance efficiency and cost effectiveness through clustering, outsourcing of services and or engagement of professional management services among other measures shall be eligible to financial, technical and other support from the county government during the period before it achieves financial viability.

PART IV-APPLICATION FOR LICENCE

21. (1) Within 12 months of the coming into force of these Regulations or such extended period as the Regulatory Board may, on a case to case basis, allow persons providing or intending to provide water services shall apply to the Regulatory Board for the issuance of a license in accordance with Section 74 of the Act.

Application for a Licence.

- (2) A complete water services provision licence application shall comprise:-
- (a) an application form substantially in the format of Form 1;
 - (b) a map of the proposed service area;
 - (c) documents of incorporation of the water services provider including evidence that its board is compliant with section 79 of the Act;
 - (d) a capability statement evidencing the applicant's administrative, technical and financial capacity to provide services and perform the functions authorized by the licence;
 - (e) a documented plan for the provision of efficient, affordable and sustainable water services including as appropriate details of planned infrastructure improvements;
 - (f) the proposed tariff structure which may differentiate between different classes of consumers and different categories of water use (whether domestic,

industrial, commercial, institutional, agricultural and others);

(g) a letter of support from the county government within whose area of jurisdiction the water services are to be provided;

(h) required permits and authorisations including a business licence, water use permits, an EIA licence, where required, county government planning permission for planned infrastructure projects where practicable;

(i) evidence of stakeholder consultation; and

(j) any other information as may be required by the Regulatory Board.

22. Prior to determining an application the Regulatory Board shall, in accordance with Section 74 and 87 of the Act-

Public Consultation.

(a) publicise the application; and

(b) take into consideration the views of the County Government within whose area of jurisdiction the applicant intends to provide water services and other stakeholders.

23. The Regulatory Board shall charge an application fee towards processing of the license, as set out in the Second Schedule.

Application Fee.

24. (1) The Regulatory Board shall make a determination on an application within six months after the water service provider lodges a complete application.

Determination of an Application.

(2) The Regulatory Board shall refund any fee paid by the water service provider if it does not make a determination on the application within six months of receipt of the application.

25. (1) Any person opposed to the grant of a licence may object in writing to the Regulatory Board.

Objections to grant of a licence.

(2) The Regulatory Board shall notify the water service provider and the objector of its decision, and in the event of rejection of an application or objection, of the reasons for the decision.

26. A water service provider or objector may, if aggrieved by the decision of the Regulatory Board, appeal to the Water Tribunal within thirty days of the date of notification of the decision. **Appeal to the Water Tribunal by licensee or objector.**
27. The Regulatory Board may, upon consideration of an application for a license, issue to the water service provider:- **Issuance of a Licence.**
- (a) a provisional license; or
 - (b) a full license.
28. (1) A provisional licence shall be issued to newly created water service providers established in accordance with Section 77 of the Act and shall be valid for a period of one year. **Provisional Licence.**
- (2) A provisional licence shall contain the following conditions to be met by the water service provider within one year-
- (a) the attainment of technical and financial capability to provide the services and perform functions authorised by the license or by any agent by whom its functions are to be performed;
 - (b) a five year business plan for the provision of efficient, affordable and sustainable water services;
 - (c) performance targets identified in a consolidated minimum service level for the licensee area;
 - (d) details of planned financial and water network and sewerage network improvements on a yearly basis;
 - (e) a proposed tariff structure.
29. (1) The Regulatory Board may extend the provisional license for a further period of one year if the water service provider has been unable to meet the stipulated conditions. **Extension of a Provisional Licence.**
- (2) Where a water service provider has not met the conditions after an extension, the Regulatory Board shall not issue a full license and the existing operations of the concerned licensee shall be transferred to a willing and capable licensee.

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| 30. A provisional licensee shall pay an annual license fee which shall be published in the <i>Gazette</i> from time to time by the Regulatory Board. | Annual Licence Fee. |
| 31. (1) A full license issued by the Regulatory Board shall be valid for ten years. | Validity of Licence and Basic Criteria. |
| (2) The Regulatory Board may issue a full license to an applicant if it is satisfied that the applicant has – | |
| (a) a demarcated service area; | |
| (b) appropriate skills and capacities to provide the licensed services; | |
| (c) commitment from the County Government and other financiers to support the costs of infrastructure development and network expansion as outlined in the licensee’s business plan and, to the extent necessary, recurrent expenditure to attain sustainability; | |
| (d) possession of water permits from identified sources from the Authority and sewage discharge permits from the Authority and National Environment Management Authority; | |
| (e) possession of infrastructure, networks and facilities for water production, transmission, distribution and waste water disposal facilities; | |
| (f) an initial draft five year business plan showing resources of water, capital outlays, estimates of water to be sold and revenue projections to attain sustainability; | |
| (g) a framework for engagement with community and other water service providers providing water services in the licensee’s service area; and | |
| (h) the population to be served and growth projections as well as a strategy and a timeframe for achieving universal access to a basic water supply and sanitation; | |

32. The Regulatory Board shall undertake a mid-term review of the license after five years and evaluate performance on all the conditions of the licence and the targets set and shall issue any orders and impose any conditions and targets to ensure efficient and economical supply of water in the licensee's area of supply.
- Mid-term Review of the Licence.**
33. A full license may be renewed upon expiry provided that the licensee shall have made an application for renewal of the license at least six months before its expiry according to the provisions of section 74 of the Act.
- Renewal of Licence.**
34. Where a water service provider, without due cause, fails to submit an application for renewal of a license, the Regulatory Board shall issue a daily penalty prescribed by the Regulatory Board in the license and the amount shall continue to accrue for sixty days and, if the failure by the licensee persists, the Regulatory Board may transfer the operations of the licensee as prescribed by the Act.
- Default of Application for Renewal.**
35. (1) A license issued by the Regulatory Board to a water service provider shall empower the licensee to –
- Scope of a Licence.**
- (a) develop and maintain infrastructure and networks for the provision of water within its area;
 - (b) develop and maintain infrastructure and networks for the safe reuse, recycling or disposal of waste water or effluent within its area;
 - (c) purchase, lease or acquire, premises, plant, equipment and facilities for provision of water services within its area of water service provision in the county;
 - (d) purchase, lease or otherwise acquire land or request for its compulsory acquisition in accordance with Section 110 of the Act and the Land Act 2012;
 - (e) impose a tariff on consumers for the water supplied;
 - (f) impose a charge for accepting into its sewerage system and treating wastewater from industrial and other trade premises within its supply area and, where it provides desludging and or exhauster services, impose a charge for treating the sludge and or wastewater.

- (g) enter into agreements with any person, whether in the form of a public private partnership, sub-contract, agency or otherwise for the provision of the licensed services or a part of them;
 - (h) undertake works which are necessary or required for the protection of or collection, conveyance or treatment of the water resources which the water service provider is authorised to abstract water, impound or divert for the purposes of providing the licensed services;
 - (i) with the approval of the Regulatory Board, prohibit or restrict with respect to the whole or any part of the licensee's area of supply, the use for such purposes as it may specify of water where, and during periods which, in the licensee's opinion there is a serious deficiency or threat of deficiency of water available for distribution and supply;
 - (j) approve, authorise, restrict or prohibit acts or omissions which pose a risk of damaging, destroying or compromising the integrity of the infrastructure, works or facilities used by the licensee for the provision of the licensed water services;
 - (k) take appropriate enforcement action against persons who damage, destroy or compromise the integrity of infrastructure, works or facilities used by the licensee for the provision of the licensed water services; and
 - (l) provide services which are necessary and incidental to the provision of the licensed water services.
- (3) A license issued by the Regulatory Board to a water service provider shall not:-
- (a) confer any rights of proprietorship over water services infrastructure;
 - (b) be capable of being sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered.
36. The Regulatory Board may require a water service provider to deposit a guarantee or other acceptable security for the purpose of securing payment of any expenses recoverable
- Deposit of Guarantee or Security.**

from the licensee, for or towards the costs incurred in discharging the functions of the licensee in case of default.

37. (1) The Regulatory Board shall establish a comprehensive register of all the water service providers indicating –

Register of all water service providers.

- (a) the location and address of each water service provider;
- (b) in the case of a registered association, or public benefit organization, the nature of the association or organization and the particulars of its registration;
- (c) the conditions if any attached to the license;
- (d) the daily yield of the source used by each water service provider;
- (e) the volume of water sold by each water service provider;
- (f) the quality of water sold by each water service provider;
- (g) the quality and quantity of effluent; and
- (h) the price charged by the water service provider.

(4) The register shall be a public document accessible for inspection at no charge and shall be publicized, or posted on the Regulatory Board's website and placed at such places as the Regulatory Board shall determine.

38. (1) On the basis of information provided by the water services provider the Regulatory Board shall maintain and update on a biannual basis the following maps of each licensee's license area-

Maps.

- (a) The service area map showing the licensee's network of the water and sewerage facilities;
- (b) A map showing the areas in which the licensee provides services through an agreement or other arrangement with a community or other water services provider; and
- (c) an un-serviced areas map showing unserviced areas;

- (5) The maps shall be stored in digital and hard copy format and shall be available on the Regulatory Board's website.

**PART V- SYSTEMS AND STANDARDS FOR
OPERATION OF WATER SERVICES**

39. A water service shall be managed on a commercial basis and in accordance with sound business principles.

Operating Systems.

40. A licensed water services provider shall implement-

Implementation of standards and systems.

- (a) a tariff which:

(i) in an urban area enables the water services provider to meet the capital and operational costs of providing the licensed water services without recourse to public funds; and

(ii) in a rural, low income urban or peri-urban area enables the water services provider to meet the operational costs of providing the licensed water services without recourse to public funds.

- (b) a non-revenue water management system which is compliant with standards established by the Regulatory Board including water metering and enforcement of tariff collection;

- (c) financial, commercial, management and administrative systems to enable it operate an efficient and cost effective water service;

- (d) a workplace occupational health and safety systems compliant with legal standards;

- (e) consumer satisfaction monitoring and customer complaints handling procedures and systems; and

- (f) legal compliance and compliance monitoring systems.

41. (1) A water service provider shall establish, publicise and implement a schedule of water supply according to which it supplies water services.

Schedule of water services.

- (2) On each occasion of a planned interruption in the schedule a water services provider shall notify customers

who are likely to be affected by the interruption not less than 24 hours prior to the planned interruption and shall indicate the expected duration of the interruption.

- (3) Where an unplanned interruption occurs to water services, the water services provider shall notify customers as soon as reasonably practicable and in any event not less than 12 hours after the discovery of the interruption, and keep customers fully apprised on the progress being made to redress the cause of the interruption and the expected time and or day of resumption of normal service.
- (4) Where an interruption in services extends for a period longer than 14 [or other appropriate period] days the water services provider shall take remedial measures to the extent practicable to provide consumers with a basic supply of water through bowsers and other mobile means.
- (5) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works the contractor shall repair the damaged pipes or infrastructure within such time as the water service provider stipulates and, pending the restoration of the water supply, the contractor shall meet the costs of providing an alternative water supply to the affected consumers.

42. A water service provider may, on any land belonging to it or on land over which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise preventing water belonging to the water service provider or which it is for the time being authorised to abstract, from being polluted.

Execution of Works.

43. Prior to construction of any such works the water services provider shall obtain consent of the Authority if the proposed work will affect or is likely to affect any water resource.

Consent for Execution of works.

44. A water services provider, may, with the consent of the road authority or other state organ concerned and subject to such conditions imposed by such road authority state organ, carry the drain, sewer or other work under, across, or along any road or road reserve or public place, whether within or outside the area of water service of the licensee.

Approval of the road authority for Execution of Works.

45. (1) A licensee must include a suitable programme as prescribed by the Regulatory Board for sampling the quality of potable water provided by it to its customers in its business plan.
- (2) The water quality sampling programme must specify the points at which potable water provided to customers will be sampled, the frequency of sampling and for which substances and determinants the water will be tested.
- (3) A licensee shall compare the results obtained from the testing of the samples with standards as established or approved from time to time by the Kenya Bureau of Standards.
- (4) Should the comparison of the results indicate that the water supplied poses a health risk the licensee shall inform the Regulatory Board and the local officer in charge of public health and it shall also take steps to inform customers—
- (a) that the quality of water it supplies poses a health risk;
 - (b) of the reasons of the health risk;
 - (c) of any precautions to be taken by customers; and
 - (d) of the time frame, if any, within which it may be expected that water of a safe quality will be provided;
 - (e) that sampling records shall be kept for a period of not less than three years and the same shall be available on request by any customer.
- (5) It shall be an offence should the licensee fail to comply with this Rule punishable by such penalties as are prescribed in these Regulations.

Sampling Programme.

PART VI – EFFLEUNT

46. It is the responsibility of a licensed water services provider shall provide, operate and maintain in each urban centre, township or market or trading centre or other locality with a concentration of population exceeding such numbers as the Regulatory Board may from time to time, following

Sewerage or Sanitation Systems.

consultation with the county government, set, appropriate sewerage or sanitation systems for the disposal of wastewater.

47. (1) A licensed water service provider shall, within two years of the issue of its licence, or such extended period as the Regulatory Board may approve, formulate and submit to the Regulatory Board and the county government a plan for the progressive improvement of infrastructure for sewerage systems in its area of service.

Sewerage System Plan.

(2) The plan shall propose a time frame for the development of the infrastructure, a budget and a resource mobilisation plan.

48. (1) A person shall obtain consent from a licensee to discharge any trade effluent from any trade premises in to the sewers of a licensee.

Control of Trade Effluent.

(2) An application for consent under paragraph (1) shall state-

(a) the nature and composition of the trade effluent;

(b) the maximum quantity of the effluent which it proposes to discharge on any one day;

(c) the highest rate at which it is proposed to discharge the effluent; and

(d) any other information required by the licensee.

(3) The consent in paragraph (2) shall be subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges of the discharge.

(4) Any person aggrieved by the decision of the licensee on an application under this Rule, may within thirty (30) days of the decision appeal to the Water Tribunal.

(5) Any tap or point of access through which effluent or non-potable water can be accessed must be clearly marked with a durable notice and signs indicating that effluent or the non-potable water is a public health risk.

(6) A licensee shall only be obliged to accept the quality and quantity of industrial effluent of any other substance into a sewerage system that the sewerage treatment plant linked to

that system is capable of purifying or treating to ensure that any discharge complies with any standards prescribed by the Authority.

- (7) For purposes of exercising its mandate to receive effluent into its sewerage system a licensee may, in collaboration with the National Environment Management Authority, inspect pre-treatment facilities handling industrial effluents.
- (8) A licensee may, in collaboration with National Environment Management Authority, enter into appropriate agreements with industries discharging industrial effluents concerning standards or quality and quantities of industrial effluents discharged into the sewerage system.
- (9) It shall be an offence to discharge industrial effluents beyond the standards or quality or quantities prescribed, and the penalty thereof shall be a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months or both such fine and term of imprisonment.
- (10) Any person who contravenes the provisions of this Rule commits an offence.

PART VII – TARIFFS

49. A water service provider shall implement the tariff approved and *gazetted* by the Regulatory Board until such time as a new or revised tariff has been approved by the Regulatory Board following a tariff review.

Implementation of Tariffs by Water Service Provider.

50. (1) An approved tariff may be replaced by a new or revised tariff following a Regular Tariff Review or an Extraordinary Tariff Review.

Regular Tariff and Extraordinary Tariff Reviews.

(2) The Regulatory Board shall undertake a Regular Tariff Review every five years.

51. (1) Not less than six months before the fifth anniversary of the date of *gazettement* of the tariff being applied by water services provider the water services provider shall make an application to the Regulatory Board for a regular tariff review.

Application for Tariff Reviews.

(2) The application shall be on Form xxx appearing in Schedule xxx to the Regulations and shall attach the water services provider's-

- (a) a status report of the water services using the reporting format attached as Schedule;
 - (b) 5 year business plan detailing the applicant's customer base and growth projections and infrastructure development programme;
 - (c) the proposed tariff;
 - (d) minutes of stakeholder consultations undertaken on the proposed new tariff; and
 - (e) any other information it considers relevant to the application.
- (2) The Regulatory Board shall consider the application and take into account –
- (a) the cost effectiveness of the water service;
 - (b) the optimality of the water service by reference to relevant national and international benchmarks;
 - (c) affordability of the proposed tariff, including proposals on cushioning consumers who, on account of poverty, cannot afford the proposed tariff;
 - (d) willingness to pay among the consumers;
 - (e) the views of the county government;
 - (f) the feedback from stakeholder consultations; and
 - (g) other relevant considerations.
- (3) Before determining the application the Regulatory Board shall, following consultations with the county government within whose area of jurisdiction licensee operates, hold at least one public hearing in the area of supply of the water service provider.
- (4) The Regulatory Board may approve the proposed tariff either as proposed or with amendments and or conditions and, upon approval, shall issue a notice in the Gazette setting a date from which the new tariff will apply.

52. (1) At any time before the its regular tariff review a water services provider may, for good cause shown to the Regulatory Board, apply for an Extraordinary Tariff Review.

Extraordinary Tariff Review.

(2) An application for an Extraordinary Tariff Review shall, in addition to meeting the requirements for a Regular Tariff Review, satisfy the Regulatory Board that, due to a change in circumstances which could not have been foreseen during the last Regular Tariff Review or for some other justifiable reason, a tariff review is necessary to ensure a sustainable water service.

53. (1) The Regulatory Board may, at the request of the water services provider as part of the Regular Tariff Review or of the Extraordinary Tariff Review, and for good cause shown, permit the water services provider to automatically adjust the approved tariff once each year by reference to the officially published annual inflation index.

Tariff Adjustment.

(2) Permission to adjust the approved tariff by reference to the annual inflation index shall be gazetted and shall apply only until the next Regular or Extraordinary Tariff Review.

(3) The Regulatory Board's decision on a tariff application may be appealed to the Water Tribunal by the water services provider, a consumer within the area of the water services provider or any other person likely to be affected by the decision.

PART VIII: CLUSTERING

54. The Regulatory Board may, for purposes of securing a commercially viable water service, require two or more water service boards to cluster for purposes the provision of the licensed water services.

Clustering of Water Services Providers.

55. A proposal for clustering may be initiated by a water service provider or two or more water service providers acting jointly, the county government, the Regulatory Board, a consumer group or consumer groups acting jointly, or a stakeholder group within the area of supply of the water services to be clustered through a letter to the County Government within whose area of jurisdiction at least one of the water services providers to be clustered operates.

Proposal for Clustering Water Services Providers.

56. As soon as practicable following receipt of the proposal to undertake clustering the county executive committee member shall prepare a feasibility study on the proposal which shall address:-

Feasibility Study and Report.

- (a) The financial, technical, operational, socio-economic, environmental, legal and other relevant implications of the proposed clustering;
- (b) the type of clustering that is appropriate in the circumstances;
- (c) the financial support if any required of the county government to bridge funding gaps if any of the clustering;
- (d) the clustering process including milestones and benchmarks;
- (e) an awareness programme;
- (f) the governance arrangements under the new clustered service provider;
- (g) transitional arrangements; and
- (h) other relevant considerations.

57. (1) If, on the basis of the recommendations of the report of the feasibility study, the proposal to undertake clustering is approved by the county executive committee and the Regulatory Board the clustering process shall be overseen by a joint committee comprising members of the board of directors of the water service providers participating in the clustering and three other persons appointed by the county executive committee member on the basis of their knowledge and experience of the water sector.

Operationalization of Clustering.

- (2) The joint committee shall continue on as a transitional mechanism and upon conclusion of the clustering and appointment of the new Board of Directors it shall stand dissolved.
- (3) Where the clustering involves a merger or a takeover of the licensed corporate entity upon conclusion of the clustering process the water service provider ceasing to exist shall be dissolved by a resolution of an Annual

General Meeting (AGM) or Extraordinary General Meeting (EGM) and compliance with the requirements under the Companies Act, 2015 and other applicable laws.

58. (1) A water service provider providing water services as a clustered service shall make an application for a new service provision area license and a new tariff in accordance with the procedure for applying for a tariff review under regulation 50.

Application for a new Service Provision Area license and new tariff.

(2) If satisfied that the applicant meets the licensing requirements under section 86 of the Act and regulation 20 of these Regulations the Regulatory Board may issue the licence.

(3) Provided that where the applicant has not met the licensing requirements under section 86 of the Act and regulation 20 of these Regulations, the Regulatory Board may issue the applicant with a provisional licence conditional on the Applicant satisfying any outstanding requirements within a defined timeframe.

59. (1) In this Part “clustering” means a formal arrangement between two or more licensed water service providers involving the merger of two or more water service providers, a takeover of one water service provider of another water service provider, the joint provision of water services, the transfer of the whole or part a water service from one licensee to another, a variation in the area of supply of two or more licensees, provision by a water services provider of water services in the whole or part of the area of supply of another, an extension by a county water services provider of its services to rural or underserved areas of the county or other similar arrangement.

Clustering and Commercial Viability.

(2) Where clustering involves the provision of water services in more than one county by a water services provider, the proposal to undertake clustering shall require the approval of the county executive committees of both or all counties within whose area of jurisdiction the water services are to be provided.

(3) “Commercial viability” means, in respect to an urban water service, the ability to meet capital and operational costs out of the water revenue and, in respect to a rural

water service or a water service serving a low income urban area, the ability to meet operating costs out of the water revenue year on year taking account of the input costs of providing the licensed service; the extent of non-revenue water, the consumer base, the efficiency of the service, applicable national and international benchmarks for a sustainable water service and other relevant considerations.

PART IX – LEVIES

60. (1) Pursuant to section 109 of the Act, Regulatory Board imposes approves a levy of [...%] of the monthly water consumption bill of each consumer as a sewerage services levy.
- (2) The sewerage services levy shall be used to cover part of the costs of disposing of waste water within the area of supply of the water services provider.
61. Pursuant to section 117(2) of the Act, the Cabinet Secretary imposes a levy of [...%] of the monthly water consumption bill of each consumer as a water consumption levy payable into a Fund maintained by the Water Services Trust Fund and to be used in accordance with its objects under section 114 of the Act.
62. (1) A levy imposed under this section shall be collected by licensed water service providers and maintained in a separate bank account established for the purpose.
- (2) A licensed water service provider shall keep books of account and other books and records in relation to its “levies bank account” and submit an annual audit of such books and records to the Regulatory Board.
63. The Regulatory Board shall have to right to inspect the records of the sales of water services by a licensed water services provider to verify that there is a monthly deposit into the separate bank account of the levies collected.
64. The levies bank account shall be operated in accordance with rules set by the Regulatory Board provided however that the rules shall require that within 15 days of the end of each month the water services provider shall remit to the Water Sector Trust all of the monies collected as a water services consumption levy and distribute the sewerage services levy
- Sewerage Services Levy.**
- Water Consumption Levy.**
- Levies Bank Account.**
- Inspection of Water Service Providers Sales Records.**
- Operation of Levies Bank Account.**

to licensed water services providers in accordance with rules set by the Regulatory Board.

65. A licensed water services provider shall charge an administration fee of not more than 0.1% of the proceeds of each levy to cover the costs of collecting and administering the levy.

Administration fee.

66. (1) Where a water services provider fails without good cause for more than thirty (30) days beyond the remission date the Regulatory Board may impose a penalty on the water services provider based on the deposit interest rate payable by a commercial bank for a deposit of the amount of levies not remitted.

Failure to remit levies.

(2) A water services provider which repeatedly fails to remit the levies collected timeously shall be liable to the imposition of a special regulatory regime.

PART X – ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

67. (1) A licensed water services provider shall ensure the availability and development of sources of water for abstraction as necessary to enable it supply adequate quantities and quality of water to consumers.

Raw water abstraction permits and access rights.

(2) A water services provider shall apply for and secure an abstraction permit from the Water Resources Authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the approval of the Regulatory Board, make arrangements for the purchase of water in bulk.

68. (1) A water services provider desiring access for purposes of performing the licensed functions may acquire the easement in accordance with the provisions of the Third Schedule of the Act.

Easements, access rights etc.

(2) A water services provider which acquires easements, access rights and or property rights over land on or over

which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant title documents.

(3) A water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, geo-referenced maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(4) Where the access rights to point water sources are enjoyed by community members on traditional or other non-statutory basis the water services provider shall take steps to document the nature and extent of the access rights.

69. (1) A water services provider within whose area of supply a borehole is to be drilled shall be entitled to be consulted on the permit application and to issue a “no-objection.”

Construction of boreholes within supply area.

(2) In considering its “no-objection” a water services provider shall take account of its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, it shall decline the request for a “no-objection.”

(3) A water services provider shall maintain an inventory of boreholes constructed within its area of supply and as soon as it is able to provide water services to the owner of the borehole it shall require the owner of the borehole to discontinue the use of the borehole and take a supply of water from the water services provider.

(4) Where a water services provider wishes to take water from the borehole for supply to its customers it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over the use of the borehole by the water services provider for the provision of water to the water service provider’s customers shall be submitted to the Water Tribunal for determination.

70. (1) A water services provider shall introduce rules for regulating, within its area of supply, water vending through kiosks or mobile means including water tankers.
- (2) Rules made by the water services provider shall require water vendors, among other things, to:-
- (a) acquire a permit from the water services provider;
 - (b) source water for vending only from approved sources;
 - (c) charge rates approved by the water services provider;
 - (d) operate vending kiosks or water tankers at approved locations; and
 - (e) file annual reports according to a reporting format approved by the water services provider.
- (3) A water services provider shall put in place measures to ensure that the staff of the water services provider do not operate water vending businesses within its area of supply.

Regulation of water vending.

71. (1) Where there exists within the area of supply of a water services provider a source of supply of water other than that supplied by the water services provider which, in the opinion of the water services provider, does not provide a suitable supply of water for drinking and domestic purposes, the licensee may, in collaboration with the Authority and the public health officer, order such source of supply to be closed, and shall by order, compel users of such water to take a supply from the water services provider.
- (2) A person who disobeys an order of the water services provider given under this rule shall be liable to prescribed penalties and in any case the water services provider shall be entitled to close the source of supply either temporarily until remedial measures are implemented or permanently and recover its costs from the owner or operator of the source of supply as a civil debt.

Closure of unsafe supplies of water.

72. (1) A water services provider shall ensure that water services in rural areas and underserved areas which are supplied by community water service providers or private water service

Water Quality and Service Standards for rural and underserved areas.

providers under an arrangement with the county water services provider meet water quality and service quality standards set by the regulatory Board for rural and underserved areas.

(2) Where a community service provider or small scale private water services provider is unable to meet the set water quality or service standards and such failure poses a public health risk the water services provider with the approval of the Regulatory Board and the County Executive Committee member may require the community water services provider or private water services provider as the case may be to cease further supply and the licensed water services provider shall henceforth assume responsibility for the provision of water services in the area.

73. (1) As reasonably practicable after being licensed a licensed water services provider shall make rules governing the receipt of septic tank sludge into the sewerage system operated by the water services provider.

Septic Tank Sludge Management.

(2) Rules made under this regulation may-

(a) require that persons providing exhauster services within the area of supply of a water services provider register with the water services provider using a form of registration to be provided by the water services provider;

(b) impose fees for the use of the sewerage system of the water services provider to dispose of septic tank sludge;

(c) require persons operating exhauster services to comply with standards set by the water services provider for the acceptance of septic tank sludge into its sewerage system.

(3) Where it is of the opinion that there is inadequate provision in its area of supply for the management and exhaustion of septic tank sludge a county water service provider may, with the consent of the Regulatory Board and the county executive committee member establish and operate an exhauster service in its area of supply.

**PART XI – APPROVALS OF CONSTRUCTION
WORKS AFFECTING INFRASTRUCTURE, ETC**

74. (1) In all cases where a person is undertaking construction works which affect water and sewerage infrastructure operated by a water services provider the approval of the water services provider shall be obtained on terms and conditions set by the water services provider, which may include the payment of a fee.
- (2) It is an offence for a person to undertake the works contemplated in this rule without the approval of the water services provider and upon conviction, such person will be liable to a fine of not less than Twenty Shillings or imprisonment for a term not exceeding six months or both such fine and such imprisonment.
- (3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works the person responsible for the construction works shall, in addition to any other prescribed penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defence to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.
- (4) The provisions of this regulation shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

**Approval of
construction works.**

75. (1) In every case where a developer of property is undertaking plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider –
- (a) The developer shall present the plans for such plumbing and sewerage works to the water services provider for inspection and approval, prior to commencement of construction; and
- (b) Upon completion of the works, the water services provider shall inspect the works and if the works comply with the approved plans, certify the works as approved for connection to the mains.

**Certification of
property
development works
connecting to
water mains.**

- (2) A developer who undertakes plumbing, sewerage and related works for connection of the private property to the mains operated by a water services provider without presenting the plans for certification as required under this section shall be guilty of an offence and on conviction shall be liable to imprisonment for up to six months or a fine or not more than twenty Thousand Shillings or to both such fine and imprisonment.

PART XII – INSPECTION, EVALUATION AND MONITORING

76. (1) A water services provider shall establish and maintain an inspectorate service with adequate resources and staff.
- (2) An inspector employed by the water services provider may enter any premises to which it provides water and or sewerage services in order to inspect and monitor –
- (a) the distribution system;
 - (b) the water metre(s);
 - (c) water storage systems;
 - (d) the sewerage system;
 - (e) such other elements of the water and sewerage services as it may deem appropriate.
- (3) An inspection may only be undertaken between the hours of 8 am and 6 pm except in an emergency.
- (4) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector.
- (5) Where the water and sewerage services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and or sewerage services in any premises, it shall apply to the appropriate court for a warrant to enter and search the premises.

Inspectorate Service.

- (6) Nothing in this sub-rule shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question.

**PART XIII – OFFENCES RELATING TO CONDUCT
OF EMPLOYEES OF A WATER SERVICES
PROVIDER**

77. (1) Employees of a licensed water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

**Offences by
Employees.**

Cap 63.

Cap 65.

Cap 183.

(2) Notwithstanding (1) above, any actions of employees of a licensed water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment.

(3) It is an offence for a employee of the water services provider to wilfully fail to–

(a) read a metre when it is [his] [her] duty to do so;

(b) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;

(c) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services.

(4) It is an offence for an employee of a water services provider to collude with other persons to allow or assist such persons illegally to access and use water services contrary to rules set by the water services provider.

(5) Upon conviction for an offence under this section the person shall be liable to a sentence of not less than three months imprisonment or a fine not exceeding Twenty Thousands shillings, or both such fine and imprisonment.

(6) For purposes of this section, an employee of a water services provider includes a person engaged on casual

terms of service, as well as a contractor when performing duties falling within the scope of this section.

PART XIV – GENERAL OFFENCES

78. Any person who impersonates an employee of a water services provider shall be guilty of an offence and, upon conviction, be liable to a sentence of not less than six months imprisonment, or a fine not less than Twenty Thousands shillings, or both such fine and imprisonment.
- Impersonation of staff of the water services provider.**
79. (1) Any person who wilfully vandalizes, damages, or destroys infrastructure or a facility of a water and sewerage services provider shall be guilty of an offence and, on conviction, shall be liable to a sentence of not less than six months imprisonment or a fine of not less than twenty thousand shillings or both such fine and imprisonment.
- Vandalism of water and sewerage services infrastructure.**
- (2) Upon conviction for a second or subsequent offence involving the wilful destruction or vandalism of infrastructure or facilities belonging to a water services provider the offender shall be liable in addition to any other prescribed penalty a surcharge of an amount equivalent to the value of the vandalized infrastructure which surcharge shall be recoverable as a civil debt.
80. (1) Any person who illegally connects to, diverts and utilizes for any purpose, water and or sewerage services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term of not less than six months a fine of not less than Twenty Thousand Shillings or both such fine and imprisonment.
- Illegal connection to water services.**
- (2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.
81. (1) Any person who wilfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty an
- Contamination of water and supply to domestic premises.**

offence and upon conviction shall be liable to imprisonment for a period of not less than six months or to a fine of not less than Twenty thousand shillings or both such fine and imprisonment.

- (2) Any person who supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable on conviction to imprisonment for six months or a fine of not less than Twenty Thousand shillings of both such fine and such imprisonment.

PART XV – BULK WATER SUPPLY

82. Bulk water supply services which are intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by Waterworks Development Agencies established under section 65 of the Act.

Bulk Water Supply Services by Waterworks Development Agencies.

83. A licensed water services provider may establish works for bulk water supply where the works originate and terminate in the county in which the bulk water is to be supplied.

Establishment of works for bulk water supply.

84. (1) A person desiring to supply water in bulk shall make an application to the Regulatory Board for a bulk water supply licence.

Application for Bulk Water Supply Licence.

(2) A complete bulk water supply application shall be accompanied by, in respect to the proposed bulk water supply-

(a) a feasibility study;

(b) A business plan;

(c) A proposed framework for the collaborative managing the bulk water works with a committee of the county governments within whose area of jurisdiction the bulk water works are to be located;

(d) where the county governments concerned have by a resolution of the county assemblies, agreed to

assume responsibility for the payment of the liabilities associated with the bulk waterworks, a draft agreement for the handover of the ownership of the bulk water works to a joint authority established by the county governments within whose area of jurisdiction the bulk water works are to be located;

- (e) required permits and authorisations including a water use abstraction permit, an EIA licence, physical planning permission and other applicable authorisations;
- (f) a proposed bulk water supply tariff;
- (g) a draft bulk water supply agreement with the water services providers to be supplied in bulk drawn on the basis that the capital and operational costs of the bulk water supply shall be met fully out of the revenues of the bulk water service without resort to public funds;
- (h) where resort to public funds is necessary in order to provide the bulk water service, evidence of the commitment of the county national government to offset part or the whole of the capital and or operational costs out of public funds;
- (i) Evidence of stakeholder consultations including the feedback of the county governments within whose area of jurisdiction the bulk water works are to be developed; and
- (j) Any other information relevant to the application.

85. Following the receipt of the application the Regulatory Board shall undertake public consultation in respect to the application.

Public Consultation on Application for Bulk Water Supply Licence.

86. (1) Within six months of receiving a complete application the Regulatory Board shall determine the application and may approve, approve with conditions or refuse the application.

Determination of Application for Bulk Water Supply Licence.

(2) The decision of the Regulatory Board on a bulk water supply application shall be subject to appeal to the Water tribunal.

PART XVI – REPORTING AND RECORD KEEPING

87. (1) The Regulatory Board shall prepare an annual report of its work and activities within three months after the end of the each financial year.
- (2) The Regulatory Board shall publish and publicise the annual report in paragraph (1).
88. (1) The Regulatory Board shall maintain a national database and geo-referenced information system on water services.
- (2) For purposes of paragraph (1) each water service provider and its agents shall maintain equipment, accurate records and accounts relating to all aspects of its operations as shall be prescribed in the license.
89. (1) Each water service provider shall, using a format provided by the Regulatory Board, submit to the Regulatory Board annual reports showing the status of-
- (a) The water service;
- (b) network expansion and rehabilitation;
- (c) commercial and business growth;
- (d) progress towards financial sustainability and viability; and
- (e) any other information specified by the Regulatory Board in its format of reporting.
- (2) Each licensee shall submit to the Regulatory Board an audited financial report within six months of the end of the financial year and shall endeavour to have all accounts of its agents audited on an annual basis, and if so requested by the Regulatory Board, submit the audited financial report of any of its agents.
90. Each licensee shall provide information to the public on plans and operations in the form, substance and frequency determined by the Regulatory Board.
91. (1) Any person requiring water service data maintained in the national monitoring and georeferenced information system on water services maintained by the Regulatory
- Annual Reports by the Regulatory Board.**
- National database and georeferenced information system.**
- Annual Reports by Water Service Provider.**
- Public Reporting and Transparency.**
- Obtaining Water Service Data.**

Board shall make an application in a standard form as may be prescribed.

- (2) The applicant shall pay a prescribed fee to be published in the *Gazette* for the data, unless the Regulatory Board is satisfied that the data is to be used for research or non-commercial purposes.
- (3) Data provided by the Regulatory Board to an applicant shall not be transferred to a third party and the Regulatory Board shall not be liable for any errors or omission in the data.

PART XVII – COMPLAINTS

92. (1) Each water service provider shall establish a mechanism for handling complaints which meets the standards in Schedule XXX.
- (2) For the purposes of paragraph (1) the water services provider shall:-
- (a) provide easy access to information and where applicable contact details of the local Water Action Groups;
 - (b) maintain a customer service centre with qualified staff for the purpose of addressing and resolving consumer applications, consumer service requests and complaints.
- (3) A Water Action Group, a customer or other member of the public may lodge complaints concerning the licensed water services through the consumer complaints mechanism established by the water services provider.
- (4) Notwithstanding the generality of paragraph (1), the procedures for lodging complaints shall provide for-
- (a) notification to customers of the right to complain;
 - (b) availability of a complaint form or any other written method for raising complaints;
 - (c) maintenance of a log of customer complaints.

**Complaints
Mechanism.**

(5) Each licensee shall file its complaint handling procedures with the Regulatory Board, within sixty days after the issue of the licence.

93. (1) A person who is not satisfied with the handling of his or her complaint by the water services provider may submit a written complaint to the Regulatory Board providing the details of the nature of complaint.

Complaints to the Regulatory Board.

(2) The Regulatory Board shall reply to the complainant within twenty one days of receiving the complaint, stating what action is being taken, the decision of the Regulatory Board on the matter and any recommendation to the water services provider for resolving the matter.

(3) If a party is dissatisfied with the decision of the Regulatory Board, he may appeal to the Water Tribunal.

PART XVIII – CONSUMER ENGAGEMENT

94. (1) A water services providers and the Regulatory Board shall adopt a mechanism of engagement with consumer groups that are registered as community based organizations actively involved in water issues within the counties.

Water Action Groups.

(2) Consumer groups who have entered into a recognition agreement with the water services provider shall be referred to as Water Action Groups.

(3) The modalities of engagement with water action groups shall be elaborated by the Regulatory Board in guidelines issued from time to time.

95. The Water Action Groups shall be responsible for the provision of information to consumers and shall act as a liaison between the water services provider and consumers.

Provision of information by Water Action Groups.

96. Water Action Groups shall follow up on resolution of consumer complaints by water service providers and submit unresolved complaints to the Regulatory Board as part of the Water Action Group's operational reports, detailing the complaints and feedback on water service providers.

Consumer complaints and follow-up by Water Action Groups.

97. The Regulatory Board shall supervise and oversee the operation of the mechanism relating to consumer engagement and the protection of consumer interests.

Supervision and Oversight of Consumer Complaints Mechanism.

PART XIX – COMPLIANCE AND ENFORCEMENT

98. (1) The Regulatory Board may take enforcement action against a licensed water services provider for any of the following reasons-

Enforcement against licensed water service providers.

- (a) serious and or repeated breach of the license conditions;
 - (b) discovery of intentional misrepresentation by the licensee in its application for the license;
 - (c) operating in breach of legal requirements;
 - (d) cessation of the licensee to meet the requirements to hold such licence;
 - (e) failure to pay the prescribed fees for licensee or other obligation to the Regulatory Board; or
 - (f) other sufficient cause.
- (2) Where it intends to take enforcement action against a licensee the Regulatory shall issue a notice to show cause specifying the breach, a time frame for the required response and the consequences of failure to provide a response.
- (3) After due consideration of such representations, the Regulatory Board may-
- (a) Make a finding on the offending act and prescribe the time during which the licensee may remedy the offending act or conduct; or
 - (b) require the payment of a penalty or fee as specified in the Act or these Rules;
 - (c) place the licensee under a special regulatory regime for a defined period of time.

- (4) Where a licensee continues in default despite being placed under special regulatory regime the Regulatory Board may, upon the expiry of the stipulated period-
- (a) transfer the licence for a specified period of time to another water series provider or the a waterworks development agency.
 - (b) make variations to the licensed area;
 - (c) cancel the licence.
- (5) A person aggrieved by the decision of the Regulatory Board under this Rule may within fifteen (15) days from the date on which the decision is received appeal to the Water Tribunal.
99. (1) Subject to Regulation 97 (2) the Regulatory Board may, from time to time, by notice in the *Gazette*, appoint any person or class of persons to be water services inspectors for the purposes of these Rules.
- Inspection by Water Service Inspector.**
- (2) An inspector shall have power of entry, inspection and apprehension, during normal working days and hours, for any offence under the Act.
- (3) A person who obstructs or hinders or knowingly makes false or misleading statements to an inspector who is carrying out duties under paragraph (2), commits an offence.
100. (1) Where it appears to the Regulatory Board that a licensee or an agent has-
- Cure Notice.**
- (a) failed to adhere to a compliance programme agreed to without there being mitigating circumstances for that failure;
 - (b) failed to adhere to agreed standards of improved services in the water quality, service delivery, facilities maintenance and capital works expansion and rehabilitation;
 - (c) failed to adhere to the approved tariff without any mitigating circumstances;
 - (d) neglected sound business principles and good governance as stipulated in its licence;

- (e) failed to deal with the levies account as required;
- (f) sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered a licence, or assets used for the provision of water services without authority;

The Regulatory Board shall give an order for the licensee or agent to remedy that breach, specifying the action required to remedy the breach and a timeframe.

- (2) The Regulatory Board may, in addition to orders issued under paragraph (1), direct-
 - (a) a member of staff of the Regulatory Board or any agent of the Regulatory Board, or a licensee, as the case may be, to sit in the licensee's or agent's board or committee meeting to monitor the implementation of the order and the decisions being made in the licensee or the agent, as the case may be;
 - (b) the licensee or the agent transmit weekly reports of billings received and expenditures on operations and transactions to the Regulatory Board or the licensee as the case may be, and bank certificates for all its accounts;
 - (c) an official from the Regulatory Board or an agent appointed for that purpose be placed in the concerned licensee or agent to monitor the day to day operations of the licensee or agent and to provide direction and technical assistance to the staff and board of directors of the licensee or agent for any length of time, that is deemed necessary to effect the cure.
- (3) Regular inspections shall be conducted at random by the Regulatory Board to ensure that the service provision agreement or the licence is being adhered to and the cure plan is implemented by the concerned licensee or agent as the case may be.
- (4) The costs of the special regulatory measures under this Rule shall be to the account of the concerned licensee or agent as the case may be.
- (5) If after six months of the special regulatory measures being undertaken it still appears to the Regulatory Board

that a licensee or agent is still unable or unwilling to meet obligations or continues to be in breach of obligations, the Regulatory Board may in addition to the measures above-

- (a) mandate that an agent of the Regulatory Board appointed to enhance financial discipline shall become a mandatory signatory to the accounts of the concerned licensee or agent;
- (b) direct the commencement of disciplinary or other punitive process against key office staff responsible for network expansion and maintenance, billing, meter reading and disconnection or financial matters, subject to their right to be heard , and take steps to integrate the billing system with the financial management system at the cost of the concerned licensee or agent.
- (c) direct the concerned licensee or agent, as the case may be, to take measures to review and rationalize its staff complement to ensure efficiency ratios if the staff size and capacity is contributing to the breach and implement a time plan to execute it;
- (d) direct or recommend to the relevant board or appointing authority the suspension of chief officers of the concerned licensee or agent, as the case may be, on tangible grounds identified, and subject to the concerned chief officers' right to be heard;
- (e) recommend to the Cabinet Secretary the taking of measures against the board of directors of the concerned licensee, or take remedial or punitive measures against the board of directors or management committee of the concerned agent, subject to their right to be heard;
- (f) implement all other recommendations that have emerged from the regular inspections conducted.

101. (1) The special regulatory measures provided for in the Regulations shall be-

Special Regulatory Regime.

- (a) for a particular duration, not exceeding six (6) months in the first instance, and subject to extension by a further period not exceeding six months;
- (b) intended to achieve improved results in the licensee and the agent;

(c) funded from the operations of the concerned licensee and or agent performance guarantee which shall have been issued;

(d) an integral part of the licence and the service provision agreement.

(2) Where the special regulatory regime fails, the Regulatory Board shall by order effect the transfer of licence as envisaged in Section 103 of the Act.

102. (1) The Regulatory Board may delegate to any person the exercise of any of the powers or performance of its function under these Rules.

**Delegation by
Regulatory Board.**

(2) The person to whom power is delegated under paragraph (1) shall have the power to carry out inspection and enforcement functions of the Regulatory Board, and all other functions except the licensing and prosecutorial function.

PART XX - GENERAL PENALTY

103. A person who commits an offence under these regulations for which no express penalty is provided shall on conviction be liable to imprisonment for a term not exceeding six months or a fine of twenty thousand shillings or to both such term of imprisonment and fine.

Penalties.

FIRST SCHEDULE

(Rule 11)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF BOARDS OF COUNTY WATER SERVICES PROVIDERS

1. Meetings

The Board shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairman shall appoint:

Provided that the Board shall meet not less than four times in any financial year.

2. Special meetings

The Chairman or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

3. Notice of meetings

Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

4. Quorum

The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.

5. Chairperson

The Chairperson shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, the Vice Chairperson shall chair, and if both absent, the directors present, if a quorum, may choose one of their number to act as chairperson during the Chairperson's absence from that meeting.

6. Voting

Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.

7. Minutes

The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.

8. Other procedures

Subject to the provisions of this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

9. Disclosure of interest

(1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

10. The common seal

The affixing of the common seal of the Corporation[company] shall be authenticated by the signatures of the Chairperson or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Corporation [company] authorized generally or specially by the Board to act for the purpose.

11. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation [company] by any person generally or specially authorized by it for that purpose.

12. Proof of documents

Any document purporting to be a document duly executed or issued under the seal of the Corporation [company] or on behalf of the Corporation [company] shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

SECOND SCHEDULE

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THIRD SCHEDULE

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