

**Memorandum of Understanding for Water Supply
Services**

between

Luapula Water Supply and Sanitation Company

and

**“Access Water For Zambia LTD”
Third-Party Service Provider**

1. Preamble

The provision of water supply in rural areas has historically been the responsibility of Local Authorities (Government of Zambia, 2019; Government of Zambia, 1997)¹², while water supply in urban and peri-urban areas has been the responsibility of commercial utilities (Government of Zambia, 1997). Section 16(2) 10(k) of the Local Government Act mandates the Local Authority (LA) to 'provide and maintain supplies of water and, for that purpose, establish and maintain waterworks and water mains' (Government of Zambia, 2019); while Section 10(1) of the Water Supply and Sanitation Act reaffirms the obligations of LAs to provide water supply services, among others, thus: '...a local authority shall provide water supply and sanitation services to the area falling under its jurisdiction...' (Government of Zambia, 1997).

The Water Supply and Sanitation Act (Section 10(2)) further compels LAs to contract a water supply service provider to supply water to localities within their jurisdiction where no such services are being provided by any service provider.

Along with these provisions pertaining specifically to water supply in rural areas, several statutory organisations and bodies have roles and responsibilities that may impact on the provision of water services in said rural areas:

The Ministry of Water Development and Sanitation (MWDS) – The statutory functions of policy, water development and management and water supply are with the Ministry of Water Development and Sanitation (MWDS).

National Water Supply and Sanitation Council (NWASCO) – The National Water Supply and Sanitation Council (NWASCO) issues licences to Water Supply and Sanitation Utilities (also called Commercial Utilities, CUs) and other Service Providers in accordance with section 11 of the Water Supply and Sanitation Act No. 28 of 1997. The Licenced CUs are allowed to engage Third-Party Service Providers (SPs) for the provision of water supply and sanitation services and urban onsite sanitation and faecal sludge management in accordance with the license conditions and regulatory frameworks developed by NWASCO.

The CU shall ensure that no SP provides water supply and sanitation services within its area of the licence without a valid permit or contract with them. CUs can, however, engage a SP to provide services on their behalf who comply with regulatory requirements provided herein. All contracts entered into between the CU License Holder and SPs shall not be executed without the prior consent of NWASCO as per License conditions. The CU shall remain responsible for the acts and omissions of the SP (including their agents and employees) for provision of such services. NWASCO shall not be a party or be liable for any contracts entered into between the CU License Holder and SPs, unless otherwise expressly agreed in line with the license conditions.

In order to guarantee that adequate and affordable water supply of good quality, and safe sanitation, are accessible to all (rural and urban populations), NWASCO in 2018 developed a framework for the regulation and provision of rural water supply and sanitation services that essentially extended its regulatory mandate to rural areas. The regulation of rural water supply and sanitation covers five main aspects (NWASCO, 2018)³: namely water quality monitoring; general monitoring and reporting; operation and maintenance; adherence to standards, and sustainability of service provision. The operationalization of these Regulations in 2019 led to the amendment of CU operating licences to include the entire boundaries of provinces.

Water Utility and Sanitation Companies (CUs) – Licenses are issued to Water Supply and Sanitation Companies (Commercial Utilities, CUs) by NWASCO. This is in accordance with Section 11 of the

¹ Government of Zambia. (1997). The Water Supply and Sanitation Act, 1997. *Act No. 28 of 1997*. Lusaka, Lusaka, Zambia: Government of Zambia.

² Government of Zambia. (2019). The Local Government Act, 2019. *Act No. 2 of 2019*. Lusaka, Lusaka, Zambia: Government of Zambia.

³ NWASCO. (2018). Rural Water Supply and Sanitation. Framework for Provision and Regulation in Zambia. Lusaka, Lusaka, Zambia: National Water Supply and Sanitation Council.

Water Supply and Sanitation Act No. 28 of 1997. CUs that are licensed can engage SPs to undertake the actual provision of services and they must ensure that all such companies or individuals adhere to all regulatory requirements. It is also a regulatory requirement that agreements between Licensed CUs must include information as required by NWASCO (Attachment A).

Water Resources Management Authority (WARMA) – Established by the Water Resources Management Act No. 21 of 2011 to enforce, inter alia, the management, development, conservation, protection and preservation of water resources and their ecological systems as well as provide for the equitable, reasonable and sustainable utilisation of the water resources. The Act further mandates WARMA to ensure the right to draw or take water for domestic and non-commercial purposes through permitting water use activities as prescribed under Part IX of the Act No. 21 of 2011. Section 71 provides for activities that require water use permits and 71 (b) is of most relevant to Small Pipe Water Supply Schemes, thus: “constructing, acquiring any water works, impounding, supplying or distributing water from any water works or borehole to any other person”.

Zambia Environmental Management Agency (ZEMA) – Established by the Environmental Management Act No. 12 of 2011, ZEMA is mandated to, inter alia, protect, conserve, and manage the environment and natural resources for posterity. ZEMA also provides for the prevention and control of pollution and environmental degradation as well as ensure that environmental impact assessment (EIA) studies are conducted for any new project that may have negative impacts on the environment. Specifically, therefore, Section 29 (1) prohibits any project that may have an effect on the environment to be undertaken without any written approval from ZEMA.

Ministry of Local Government and Rural Development – Amongst the many statutory functions and portfolios under the Ministry of Local Government and Rural Development are those of Local Government Policy, Rural Development, District Health Services and Administration of Chief's Affairs.

Traditional Leadership - Zambia is governed by a dual legal system of statutory law and customary law, and Chapter 287 (The Chief's Act) of Zambia's Constitution prescribes the customary role of traditional leaders and mandates them to discharge their traditional functions under the protection of the Constitution. Overall, Chiefs are effective change agents due to their traditional and cultural leadership influence as custodian of traditional values. Thus, harnessing these virtues would greatly contribute to the long term sustainability of the Water Services in the Rural Growth Centres.

This Memorandum of Understanding (MoU), therefore, is an agreement between a Licensed Commercial Utility (CU) and a qualified Third-Party Service Provider (SP) (collectively, the Parties) for the provision of water supply services using a Small Pipe Water Scheme to the rural communities set forth in Section 6, Table 6.1, below, and binds the CU and SP, as designated in Section 3, below, to the terms and conditions as agreed by all Parties as indicated by the signatures of their duly authorised representatives. This MoU is duly executed in accordance with the legal and institutional framework summarized above, and in accordance with the Applicable Law. The above legal provisions specifically provide for and regulate the execution of agreements for the provision of water supply services using a Small Pipe Water Scheme by a SP and pre-empt and supersede all other Applicable Law governing the broader provision of infrastructure facilities and services more generally, including the Public-Private Partnership Act No. 14 of 2009.

2. Definitions of Terms and Interpretations

In the context of this MoU, the following definitions and interpretations apply:

“Applicable Law” means the laws and any other legal instruments having the force of law in the Republic of Zambia, including any applicable statute, ordinance, decree, regulation or by-law or any rule, circular, directive or any license, consent, permit, authorization, concession or other approval issued by any Government authority with appropriate jurisdiction, or any binding interpretation thereof.

“Commercial Utility (CU)” means a water supply and sanitation utility established by a local authority in accordance with section nine of the Water Supply and Sanitation Act, No. 28 of 1997 and as specifically designated in Section 3, Table 3.1, herein;

"Effective Date" means the date on which all the conditions precedent contained in this Memorandum of Understanding (MoU) are fulfilled or waived, marking the start of the Term, and the Parties may pursue litigation or any associated legal action arising from or in connection with this MoU;

"Guideline" means guidelines issued by the National Water Supply and Sanitation Council (NWASCO);

"Local Authority (LA)" means a Council established under the Local Government Act, Cap 281;

"Licence" means a licence issued by the National Water Supply and Sanitation Council (NWASCO) to a CU for provision of sanitation and water supply services;

"Memorandum of Understanding (MoU)" means this agreement between the Parties that will implement the provision of water supply services by a Third-Party Service Provider (SP) using a small pipe water supply scheme;

"Non-Government Organisation (NGO)" means any not-for-profit organisation that provides services or performs functions that may otherwise be carried out by government departments; and such an organisation may play the role of *Support Services Providers (SSP)*;

"Parties" means the legal entities bound by and signatory to this MoU as designated in Section 3, below, and as indicated by the signatures of their duly authorised representatives;

"Rural Growth Centre (RGC)" means a service centre within the rural area with potential for further development and conceived as a point of economic, social and cultural development;

"Service Level Agreement (SLA)" means a three year progressive movement towards meeting the set targets in an agreement proposed by the CU and signed with NWASCO;

"Service Level Guarantee (SLG)" means a guaranteed and defined level of service for a specified price provided by the Third-Party Service Provider (SP) to users, thus ensuring "value for money";

"Third-Party Service Provider (SP)" means any third party providing water supply or sanitation services and operating under the CU licence and as specifically designated in Section 3, Table 3.2, herein;

"Small Pipe Water Supply Scheme (SPWS)" means a water supply infrastructure providing pipe water supplies to a rural growth centre (RGC);

"Standard Operating Procedures (SOPs)" means written instructions describing the steps in Water Services, including the materials and methods to be used and the expected end quality of the portable water supplied;

"Support Services Provider (SSP)" means an organisation that provides technical, financial and administrative support to ensure that safe and adequate water supply services are delivered;

"Term" has the meaning set forth in Section 5, herein;

"Water Services" means the abstraction, conveyance, treatment and distribution of portable water through small pipe water supply scheme;

"Water Supply Infrastructure" means all structures, systems, pipes, appurtenances and any plant and equipment, whether located on private or public premises or on private or public land, necessary to provide water supply or sanitation services by any person providing the service, or which is used by any consumer of water supply;

3. Parties to this agreement

The Parties to this Memorandum of Understanding (MoU) and their respective details are described below:

Table 3.1: Details of the Commercial Utility (CU)

Item	Detail
Name	Luapula Water Supply and Sanitation Company (LpWSC)
Names and ID of directors and chairperson	Eng. David Ngenda
Authorised representative position	Statutory Manager
Address	Plot No. 106, Chitimukulu Road, P.O. Box 710594, Mansa
Contact details	+260972603601
Certificate of registration (number) ¹	120080076582
Proof of registration in Zambia	See Attached PACRA Scanned Copy
Business licence (number) ²	1001989316 (ZRA LpWSC TPIN No)
Business licence (document)	See Attached ZRA LpWSC TPIN Scanned Copy
Hygiene operating license (Dept of Health)	N/A
Road traffic licences ³	N/A

Table 3.2: Details of the Third-Party Service Provider (SP)

Item	Detail
Name	ACCESS WATER FOR ZAMBIA LTD
Names and ID of directors and chairperson	FRANCIS MUSUNGA 167410/32/1 CARMEN BRUBACHER 460603/99/3 HIPOLITO PETER TEMBO 234319/52/1 PHILIP DEAL 505642572
Authorised representative position	DIRECTOR OR ADMINISTRATOR
Address	PLOT 166 LUPILI P.O. BOX 720150 SAMFYA, ZAMBIA
Contact details	0979698148
Type of organisation:	COMPANY LIMITED BY GUARANTEE
Constitution of organisation	(See Attachments B)
Certificate of registration (number) ¹	128377
Proof of registration in Zambia	(See Attachments B)
Business licence (number) ²	12637

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Item	Detail
Business licence (document)	(See Attachments B)
Waste Transport Licence (ZEMA)	N/A
Hygiene operating license (Dept of Health)	N/A
Road traffic licences ³	(See Attachments B)

4. Background and Purpose

This Memorandum of Understanding (MoU) describes the relationship between the Commercial Utility (Luapula Water Supply and Sanitation Company), the provider of Water Supply Services in **Luapula Province** and other stakeholders that have an interest in ensuring safe water supply service to the residents of Luapula Province.

Water Supply and Sanitation Commercial Utilities (CUs) are designated as the license holder for all domestic water supply and sanitation services across the respective areas of jurisdiction of all Provinces of the Republic of Zambia. Therefore, the CUs have ultimate responsibility for the supply of water supply and sanitation services to all citizens within their geographical area of jurisdiction; notwithstanding the Local Authority's (LA) responsibility of providing water supply and sanitation services as provided by the Water Supply and Sanitation Act No. 28 of 1997 and the Local Government Act No. 2 of 2019. It is a regulatory requirement that all organisations, or individuals, providing water supply and sanitation services within the geographical area of jurisdiction of the CU operate under the license of the designated CU, and that the roles and responsibilities and points of cooperation in the provision of services be described in an agreement between the parties.

Luapula Water and Sanitation Company has developed a new strategy toward the provision of rural water services. The adopted strategy is cooperation with a qualified Third-Party Service Provider (SP), which shall be responsible for the day-to-day provision of water supply services using a small pipe water supply scheme in the jurisdictions agreed to by the Parties as set forth herein. The SP will provide the services in line with the Third-Party Service Provider concept, to include:

- i) Major operation and maintenance (O&M) repair aspects being solely a SP responsibility.
- ii) Billing and credit control O&M aspects being solely a SP responsibility.
- iii) The cost of new connections O&M aspects being solely a SP responsibility.
- iv) Installation of new connections will be performed by the SP.
- v) Spare parts provision for minor operations and major maintenance or repairs will be a SP responsibility.
- vi) Technical support of O&M aspects being solely a SP responsibility.
- vii) Provision of fuel or other energy will be solely a SP responsibility.
- viii) Payment for all energy costs will be solely a SP responsibility.

Services will be provided in compliance with the Service Level Guarantee (SLG) as guaranteed by the SP and Service Level Agreement (SLA) as proposed by the CU and signed by NWASCO, or as agreed to separately between the SP and NWASCO.

This MoU also describes the roles and responsibilities of other organisations and government departments that have an interest in the provision of water supply and sanitation services, but which are not signatories to this MoU.

5. Effectiveness and Term

At this initial stage of formalization of the ongoing cooperation between the Parties, the provisions and statements in this MoU **are binding** on the Parties as of the date of its execution by all Parties. As a condition precedent to the effectiveness of this MoU, however, the Parties agree to complete an initial

3-year period, considered as a 'trial and learning' period only, during which time the Parties agree not to pursue litigation, or any associated legal action based on any cause of action or claim arising from or in connection with this MoU. The purpose of this 'trial and learning period' is to demonstrate and test the commitment of all Parties to this MoU in creating and realizing an enabling environment for the development of infrastructure and support to operation and maintenance activities for safe water supply services that comply with national guidelines, standards, and regulations. The SP shall not be required to hand over any infrastructure assets used to provide services in the event of early termination of this MoU prior to the completion of this 'trial and learning period.'

The 'trial and learning period' shall be a period of three (3) calendar years from the date of signing of this MoU, unless terminated earlier or extended in accordance with the provisions of this MoU. At the conclusion of this 'trial and learning period' this MoU shall enter into full force and effect (the Effective Date) and shall remain in full force and effect for a period of thirty (30) years starting from the Effective Date (the Term), subject to mutual consent of the Parties, acting reasonably and in good faith, and agreement on any additions, deletions or other modifications of any terms and conditions applicable under this MoU. As of the Effective Date, legal action arising from or in connection with this MoU may be pursued, including for any dispute, claim, or cause of action arising from or relating to any act or omission that occurred during the 3-year 'trial and learning period.'

All Parties to this agreement also acknowledge that this MoU may be amended from time to time. Such amendments will be in accordance with experiences and lessons learnt during the first **3** years of its tenure and be formalized through written agreement signed by the duly authorized representatives of the Parties.

6. Scope of work

The provisions of this MoU apply to water supply services and associated infrastructure within **Luapula Province**, and in specific the schemes and villages mentioned in Table 6.1 below.

It is estimated that the population served by the schemes provided for within this MoU are as follows:

Table 6.1: List of Villages Served

Piped Water Scheme (Area)	District	Chiefdom	Estimated Population served	Water Supply Source	Lat	Lon	Design Water production capacity (m³/day)	Actual Water Production (m³/day)	Source of power	Elevated storage capacity (m³)	Diameter of distribution network (mm)	Total estimated pipe length (km)	Total number of connections	Number of Private Connections	Number of public supply points
Kakote	Chifunabuli	Chitembo	800	groundwater	29.6194051	-10.798902	24	3	solar	5	50, 32, 20	1.5	10	9	1 school
Lubwe	Chifunabuli	Chitembo	8904	groundwater	29.6505523	-11.108942	144	61	solar	40	75, 50, 32, 20	30	260	255	3 school*, 1 hospital, 1 market ablation
Mashitolo	Chifunabuli	Chitembo	1500	groundwater	29.6194051	-10.798902	24	3	solar	5	50, 32, 20	4	20	19	1 school*
Chitembo	Chifunabuli	Chitembo	2100	groundwater	29.6194051	-10.798902	24	6	solar	5	50, 32, 20	1.5	10	9	1 school
Mundubi	Chifunabuli	Chitembo	1500	groundwater	29.6194051	-10.798902	24	11	solar	5	50, 32, 20	4	32	30	1 school*, 1 clinic
Chishi	Chifunabuli	Mbulu	1724	groundwater			24	6	solar	5	50, 32, 20	4	34	32	1 school*, 1 clinic*
Mbabala	Chifunabuli	Mulongwe	7952	groundwater	29.7833514	-11.258809	96	23	solar	20	50, 32, 20	25	142	137	4 school*, 1 clinic*
Kasuba	Chifunabuli	Mwansa Kombe	800	groundwater	29.7062492	-11.576409	24	3	solar	5	50, 32, 20	3	18	15	2 school*, 1 clinic*
Mwansa Kombe	Chifunabuli	Mwansa Kombe	1352	groundwater	29.6194051	-10.798902	24	7	solar	5	50, 32, 20	2	12	11	1 school
Mwewa	Chifunabuli	Mwewa	2138	groundwater	29.643456	-10.940109	24	7	solar	5	50, 32, 20	5	33	33	
Lubwe W**	Chifunabuli	Chitembo	2000	groundwater	29.6194051	-10.798902	24	NA	solar	5	50, 32, 20	4	35		
Shimalingu**	Chifunabuli	Chitembo	1700	groundwater	29.5962754	-10.867127	24	NA	solar	5	50, 32, 20	3	15		
Chibingila**	Chifunabuli	Mwansa Kombe	1500	groundwater	29.6703442	-10.941528	24	NA	solar	5	50, 32, 20	3	15		
Filipo**	Chifunabuli	Mwansa Kombe	1500	groundwater	29.5265465	-10.989762	24	NA	solar	5	50, 32, 20	3	15		
Kafwimbi**	Chifunabuli	Mwansa Kombe	2106	groundwater	29.5759383	-11.065657	24	NA	solar	5	50, 32, 20	4	20		
Kasaba**	Chifunabuli	Mwansa Kombe	3000	groundwater	29.6150336	-11.005393	24	NA	solar	5	50, 32, 20	10	35		
Mwita**	Chifunabuli	Mwansa Kombe	1500	groundwater	29.6150336	-11.005393	24	NA	solar	5	50, 32, 20	3	15		
Nambale**	Chifunabuli	Mwansa Kombe	1000	groundwater	29.6623684	-10.856384	24	NA	solar	5	50, 32, 20	2	15		

Piped Water Scheme (Area)	District	Chiefdom	Estimated Population serviced	Water Supply Source	Lat	Lon	Design Water production capacity (m³/day)	Actual Water Production (m³/day)	Source of power	Elevated storage capacity (m³)	Diameter of distribution network (mm)	Total estimated pipe length (km)	Total number of connections	Number of Private Connections	Number of public supply points
Nsengalla**	Chitunabuli	Mwansa Kombe	950	groundwater	29.7523681	-10.83091	24	NA	solar	5	50, 32, 20	2	15		
Chamalawa**	Chitunabuli	Mwewa	1458	groundwater	29.7833514	-11.258809	24	NA	solar	5	50, 32, 20	3	15		
Chimanda**	Chitunabuli	Mwewa	1500	groundwater	29.7833514	-11.258809	24	NA	solar	5	50, 32, 20	3	15		
Cholansenga**	Chitunabuli	Mwewa	1000	groundwater	29.6703442	-10.941528	24	NA	solar	5	50, 32, 20	2	15		
Kandolo**	Chitunabuli	Mwewa	977	groundwater	29.6681965	-11.038502	24	NA	solar	5	50, 32, 20	2	10		
Masanta**	Chitunabuli	Mwewa	1800	groundwater	29.6823684	-10.856384	24	NA	solar	5	50, 32, 20	3	15		
Mbilima Mwenge**	Chitunabuli	Mwewa	1500	groundwater	29.6703442	-10.941528	24	NA	solar	5	50, 32, 20	3	15		
Miponda**	Chitunabuli	Mwewa	1300	groundwater	29.7523681	-10.83091	24	NA	solar	5	50, 32, 20	3	15		
Shikamushile**	Chitunabuli	Mwewa	1818	groundwater	29.5427776	-11.061892	24	NA	solar	5	50, 32, 20	4	20		
Chitundwa	Samfya	Kalasa Mukoso	1500	groundwater	29.6077653	-11.839319	24	8	solar	5	50, 32, 20	3	10	9	1 school
Yongolo	Samfya	Kalasa Mukoso	2041	groundwater	29.5030643	-12.040725	24	7	solar	5	50, 32, 20	4	48	47	1 school*
Katubashi	Samfya	Kalasa Mukoso	1200	groundwater	29.4821592	-12.092153	24	7	solar	5	50, 32, 20	3	20	19	1 school
Kalasa Mukoso	Samfya	Kalasa Mukoso	2302	groundwater	29.5380487	-11.588027	24	4	solar	5	50, 32, 20	5	20	19	1 school
Kasanka East	Samfya	Kalasa Mukoso	2912	groundwater	29.4876599	-12.005062	24	7	solar	5	50, 32, 20	5	17	15	2 school
Kasanka West	Samfya	Kalasa Mukoso	2020	groundwater	29.4876599	-12.005062	24	3	solar	5	50, 32, 20	3	10	10	
Chimembe	Samfya	Kasoma Bangweulu	2580	groundwater	29.775501	-11.534148	24	2	solar	5	50, 32, 20	4	22	20	2 school*
Chinweshiba	Samfya	Kasoma Bangweulu	1200	groundwater	29.5960151	-11.539719	24	2	solar	5	50, 32, 20	3	10	8	1 school, 1 clinic
Chipako	Samfya	Kasoma Bangweulu	1830	groundwater	29.7529355	-11.574871	24	6	solar	5	50, 32, 20	6	35	33	1 school*, 1 clinic*
Katanshya	Samfya	Kasoma Bangweulu	2182	groundwater	29.775501	-11.534148	24	4	solar	5	50, 32, 20	4	12	11	2 school

Pipes Water Scheme (Area)	District	Chieftom	Estimated Population serviced	Water Supply Source	Lat	Lon	Design Water production capacity (m³/day)	Actual Water Production (m³/day)	Source of power	Elevated storage capacity (m³)	Diameter of distribution network (mm)	Total estimated pipe length (km)	Total number of connections	Number of Private Connections	Number of public supply points
Mpania	Samfya	Kasoma Bangweulu	2310	groundwater	29.775501	-11.534148	24	2	solar	5	50, 32, 20	4	10	9	1 school
Mungulube	Samfya	Kasoma Bangweulu	1524	groundwater	29.5360839	-11.392372	24	5	solar	5	50, 32, 20	3	10	8	1 school, 1 clinic
Nkungu	Samfya	Kasoma Bangweulu	1200	groundwater	29.4858067	-11.464085	24	3	solar	5	50, 32, 20	3	10	9	1 school
Njipi	Samfya	Kasoma Bangweulu	1584	groundwater	29.7529355	-11.574871	24	3	solar	5	50, 32, 20	3	10	8	1 school, 1 clinic
Chinsanka	Samfya	Mulakwa	8000	groundwater	29.775501	-11.534148	96	37	solar	20	50, 32, 20	25	98	95	1 school*, 1 clinic, 1 market abution
Mloke	Samfya	Mulakwa	2000	groundwater	29.6795596	-11.660359	24	3	solar	5	50, 32, 20	4	10	9	1 school
Kapata	Samfya	Mulakwa	1910	groundwater	29.6795596	-11.660359	24	3	solar	5	50, 32, 20	4	10	9	1 clinic
Kaminsa	Samfya	Mulakwa	1547	groundwater	29.6795596	-11.660359	24	2	solar	5	50, 32, 20	3	10	10	0
Chisakana**	Samfya	Kalasa Mukoso	900	groundwater	29.5147897	-11.974798	24	NA	solar	5	50, 32, 20	2	15		
Fwaka E8**	Samfya	Kalasa Mukoso	700	groundwater	29.5077425	-11.976187	24	NA	solar	5	50, 32, 20	2	15		
Kaisha**	Samfya	Kalasa Mukoso	2000	groundwater	29.3642913	-11.39114	24	NA	solar	5	50, 32, 20	5	20		
Musenga**	Samfya	Kalasa Mukoso	750	groundwater	29.5837465	-11.774882	24	NA	solar	5	50, 32, 20	3	15		
Maho Kunda**	Samfya	Kalasa Mukoso	2700	groundwater	29.616975	-11.736661	24	NA	solar	5	50, 32, 20	5	25		
Sakala**	Samfya	Kalasa Mukoso	2000	groundwater	29.616975	-11.736661	24	NA	solar	5	50, 32, 20	5	25		
Mupita**	Samfya	Kalasa Mukoso	1500	groundwater	29.6143858	-12.01984	24	NA	solar	5	50, 32, 20	3	15		
Pwele/ Malawi**	Samfya	Kalasa Mukoso	3000	groundwater	29.5445661	-12.099041	24	NA	solar	5	50, 32, 20	8	30		
Ninge**	Samfya	Kalasa Mukoso	1500	groundwater	29.616975	-11.736661	24	NA	solar	5	50, 32, 20	3	15		
Chikuny**	Samfya	Kasoma Bangweulu	1000	groundwater	29.6922276	-11.46618	24	NA	solar	5	50, 32, 20	2	15		

Piped Water Scheme (Area)	District	Chieftom	Estimated Population serviced	Water Supply Source	Lat	Lon	Design Water production capacity (m ³ /day)	Actual Water Production (m ³ /day)	Source of power	Elevated storage capacity (m ³)	Diameter of distribution network (mm)	Total estimated pipe length (km)	Total number of connections	Number of Private Connections	Number of public supply points
Mano**	Samfya	Kasoma Bangweulu	700	groundwater	29.55152	-11.496214	24	NA	solar	5	50, 32, 20	2	15		
Mulisha**	Samfya	Kasoma Bangweulu	3000	groundwater	29.5360839	-11.392372	24	NA	solar	5	50, 32, 20	8	30		
Chipundu**	Samfya	Mulakwa	1310	groundwater	29.6795596	-11.660359	24	NA	solar	5	50, 32, 20	4	20		
Chabwe	Mansa	Kalasa Lukangaba	2000	groundwater	28.816238	-11.412285	24	5	solar	5	50, 32, 20	6	30	30	
Fimpulu Center	Mansa	Kalasa Lukangaba	1500	groundwater	28.830387	-11.409498	24	4	solar	8	50, 32, 20	4	27	25	1 school, 1 clinic
Nsambo	Mansa	Kalasa Lukangaba	1700	groundwater	28.825951	-11.38726	24	3	solar	5	50, 32, 20	5	26	26	
Chilindi	Mwansabombe	Mwata Kazembe	3000	groundwater	28.786192	-9.739693	24	7	solar	5	50, 32, 20	6	20	20	

*Indicates plumbed clinic or school with 4 tap handwashing station

**Indicates planned scheme

The scope of work, whether geographic or infrastructural in nature may be extended subject to mutual agreement of all Parties that are signatory to this agreement and as set forth in a written agreement signed by the duly authorized representatives of the Parties. Any operational responsibility or infrastructure creation projects within the geographic area of responsibility of the SP, here meaning all areas of Samfya and Chifunabuli Districts within Luapula Province except for the CUs urban water supply system serving Samfya Town, that may be added to the scope of work will be offered to the SP on a "right of first refusal basis". If the SP does not wish to take on the additional scope of work the CU will consider other modes of implementation and/or operation.

In the supply of water services, the SP may undertake, in consultation with the CU, any or all of the following:

- i) **Design** – The design of all Water Supply Infrastructure and equipment associated with either new areas of service, or upgrades and extension in areas where services already exist.
 - a) All design and component sizing will be undertaken in compliance with the provisions of the Domestic Water Supply Design Guidelines of Zambia. Design reports will be prepared by the SP and submitted to all signatories to this agreement for evaluation and approval, which will not be unreasonably withheld.
- ii) **Construction and Refurbishment** – Construction and refurbishment work associated with either new areas of service, or upgrades and extension in areas where services already exist.
 - a) Work undertaken by the SP will comply with the norms and standards and good practice of the construction industry in Zambia. The approval of the CU must be secured in writing prior to the commencement of any construction work, which will not be unreasonably withheld. The SP will adhere to all laws of Zambia that are relevant to construction activities, especially law on Occupational Health and Safety, Environmental Protection, and the engagement of Labour. Upon completion of any construction work the SP will submit a full set of As-Built drawings in a digital format compatible with the GIS system of the CU. After the completion of any works the Infrastructure Asset Register created and managed by SP must also be updated and submitted to the CU.
- iii) **Operations** – Activities associated with the operation and maintenance of Water Supply Infrastructure to ensure water supply to beneficiary communities. This will include both day to day activities and major maintenance as outlined and agreed in this MoU.
 - a) All operations will be undertaken in compliance with the laws, guidelines and provisions of the Ministry of Water Development and Sanitation (MWDS), NWASCO, the CU and the District Council.
- iv) **Training** – The development of capacity of skills of own staff as well as officials and staff of the Commercial Utility, Local Authorities (LAs) and Community Based Organisations (CBO), as appropriate.
 - a) All Parties to this MoU will provide support and training to other Parties wherever they may have expertise or are running programmes that may be useful to the realisation of safe water supply services.
- v) **Transfer** – At the termination or expiry of this MoU, the SP will hand over to the CU the Water Supply Infrastructure assets used to provide services; provided, however, that no such hand over shall be required in the event that this MoU is terminated prior to, or allowed to expire on, the completion of the 3-year 'trial and learning period' (Section 5, above).
 - a) An assessment of the condition and fair valuation of all assets must be undertaken and be agreed to at the commencement of the term of this MoU.
 - b) The assets will be handed over in the condition in which they were received, with due consideration and allowance for fair wear and tear.
 - c) In the event of early termination this MoU, here meaning after the Effective Date but before the conclusion of the Term, for whatsoever reason the following will apply:

- i) The CU will pay the SP fair compensation for the Water Supply Infrastructure being transferred.
- ii) Fair compensation will be calculated based on the depreciated value of the Water Supply Infrastructure concerned, and a portion of revenues lost due to the early termination. These values will be assessed at the time of termination by a recognized accounting firm that is agreed to by both Parties.

7. Termination and Expiry

If any of the Parties wishes to terminate this MoU prior to the conclusion of the 'trial and learning period' for reasons other than breach of any provision of this MoU, they must approach all other Parties to the agreement and negotiate a practical exit plan that will not compromise services to consumers.

In all cases both Parties shall give 90 days' notice of intention to terminate the agreement. Such a notice will:

- i) State the reason for the desire to terminate the agreement, and the relevant clause of the agreement which has been breached.
- ii) Specify the steps that must be taken to remedy the breach.
- iii) Specify the effective date of the notice and the time limit within which the steps described above must be taken.

Early withdrawal without notice shall attach a penalty equivalent to **3 months' Operational Cost of the Small Pipe Water Supply Scheme**. The operation cost will be calculated based on the following costs factors:

- i) Cost of energy;
- ii) Cost of chemicals;
- iii) Cost of maintenance;
- iv) Cost of wages, and
- v) Any other projected cost to be incurred.

As of the Effective Date, this MoU will terminate only on the conclusion of the Term unless terminated earlier in accordance with Section 12 or Section 14, below. It is noted that the Term of this MoU may be extended upon terms agreed to by all Parties on condition that:

- i) At least 90 days' notice before the expiry of this MoU is given of the intention to extend the duration.
- ii) All Parties that are signatory to this MoU, acting reasonably and in good faith, sign the agreement of extension.

8. Role of the Commercial Utility

In the implementation of the terms and provisions of this MoU, the CU will:

- i) Provide permission to the SP to operate under the License of Luapula Water Supply and Sanitation Company.
- ii) Oversee, monitor, and evaluate the operations of the SP, with a view to ensuring the provision of safe water supply services:
 - a) A reporting template will be developed together with the SP.
 - b) The CU will have the right, after giving of fair notice, to visit and inspect any of the schemes where water is supplied, and/or the Water Supply Infrastructure under the custodianship of the SP.
- iii) Provide technical assistance as the Support Services Provider (SSP) to the SP as and when required.

Handwritten signatures and initials.

- iv) Ensure that a Sector Wide Approach (SWaP) is implemented across the province in the supply of water, through SPs, that complies with the NWASCO guidelines.
- v) Validating the quality, availability and sustainability of surface and ground water sources within the area.
- vi) Validating the quality of water produced and distributed by the SP and advise their management on remedial action to be taken.
- vii) The CU will develop tariff proposals for water supply services and submit them to NWASCO for consideration:
 - a) The SP will be invited to have input to the process of cost analysis and tariff setting.
 - b) The process of tariff setting will be carried out in compliance with the provisions, requirements, and guidelines of NWASCO.
 - c) In the event that the SP's operations become or are forecasted to become financially non-viable, meaning revenues are or will be insufficient to pay for necessary operation and maintenance costs at the prevailing tariffs, the SP shall be entitled to apply directly to NWASCO for a special tariff rate applicable to the SP's operations.
- viii) Inform the SP of the tariffs to be applied.
- ix) Provide capacity building to the SP and beneficiary communities, as far as is possible within existing programmes and available funding.
- x) Attend the Annual General Meetings of the SP.
- xi) Facilitate the availability of land for operational activities of the SP.
- xii) Where required, facilitate the carrying out of Environmental Impact Assessments.
- xiii) Review the annual audits of the accounts and financial statements of the SP for the water supply systems being managed.

The CU undertakes not to interfere in the day-to-day operations of the SP. However, the CU reserves the right to intervene when:

- i) Water supply services are not deemed to be reliable or safe.
- ii) There are misunderstanding or disputes between the SP and a beneficiary community being served by the SP.
- iii) Failure of the SP to provide services at satisfactory level.

The CU, as the sole License Holder for Luapula Province, undertakes to ensure the SP has and maintains the exclusive right to provide Water Supply Infrastructure services within the geographic area of responsibility of the SP throughout the duration of this MoU.

9. Role of the Third-Party Service Provider

In terms of the provisions of this MoU, the SP will:

- i) Secure abstraction permits for all sources utilised by the SP.
- ii) Provide water services that are efficient, affordable, and sustainable to residents within the geographic service area that forms the jurisdiction of the SP.
- iii) Supply potable pipe water that complies with the NWASCO Guidelines.
- iv) Ensure that the potable pipe water supplies comply with any other regulatory requirements or guidelines of the license conditions that apply to the CU and comply with general directives issued by NWASCO through the CU.
- v) At all times strive to provide a safe water supply service and implement good customer care practices.

- vi) Design and implement systems for the collection of user fees from customers on a regular basis:
 - a) These user fees from customers will be utilized for the payment of operational and capital expenditures, including but not limited to: energy, staff costs, chemicals, spare parts for minor maintenance, and reinvestment of proceeds in new or expanded Water Supply Infrastructure services.
- vii) Apply the tariff approved by NWASCO.
 - a) In the event that the SP's operations become or are forecasted to become financially non-viable, meaning revenues are or will be insufficient to pay for necessary operation and maintenance costs at the prevailing tariffs, the SP shall be entitled to apply directly to NWASCO for a special tariff rate applicable to the SP's operations.
- viii) Ensure that customer agreements with all customers are established and documented:
 - a) These agreements will describe the service that will be provided, including the right of the SP to cut off supply to customers that do not pay their user fees, as well as penalties for illegal connections, and other misuse of the installed infrastructure.
- ix) Operate in accordance with existing standards, laws and regulations related to water supply services.
- x) Adhere to any Standard Operating Procedures (SOP) developed collectively with the CU.
- xi) Adopt and implement the standard institutional arrangements (Hybrid Model) between Third-party Service Providers and beneficiary communities as described in the O&M Plan of the CU:
 - a) At all schemes the SP must establish a representative Community Based Organisation (CBO) for the management and governance of the water supply services which are the subject of this MoU.
 - b) A Water Supply Service Level Agreement (SLA) between the SP and the beneficiary communities must be developed, documented, and implemented.
 - c) This SLA will describe the roles and responsibilities of the SP and "The Community", as represented by the afore-mentioned CBO.
- xii) The SP will employ qualified, experienced, and competent staff, and ensure that regular training and skills development programmes are implemented for their own staff, as well as those of CBOs.
- xiii) The SP will be liable to the actions of CU for failure to comply with license conditions.
- xiv) Implement suitable performance monitoring systems and submit reports on Financial, Technical, Administrative and any other matters to the CU as prescribed in the NWASCO Guidelines.
- xv) The SP will keep financial records and ensure that audits are undertaken and submitted to the CU as prescribed in the NWASCO Accounting Reports Guidelines.
- xvi) Ensure that good Occupational Health and Safety (OSH) practices are adhered to in all matters of Water Services, and in particular that all staff (including scheme level operatives) are registered with the National Health Insurance Authority, and where necessary immunized against Cholera, Typhoid, Hepatitis B, and other relevant infections.
- xvii) Issue all staff with appropriate personal protective equipment (PPE).
- xviii) Ensure adherence to the Financial Management Act and other relevant laws.
- xix) At all times work closely with the mandated Local Authority (LA) and Traditional Leadership to keep them fully informed of all activities.

- xx) Ensure that all waste from Water Services is disposed of in a responsible manner at sites designated for the receipt of such waste.

10. Asset Management

All Water Supply Infrastructure assets associated with the provision of water supply services will remain the property of the SP until lawful termination or expiry of this MoU. At that time, the CU will be required to pay fair compensation to the SP, after which the assets will become the property of the Commercial Utility; provided, however, that no such sale of assets shall be required in the event that this MoU is terminated prior to, or allowed to expire on, the completion of the 3-year 'trial and learning period' (Section 5, above). Fair compensation will be determined through negotiations between the parties to this agreement, and fair depreciation as calculated through accepted accounting practice.

The CU and SP undertake to implement Infrastructure Asset Management practices as described in the guidelines provided by NWASCO (Attachment D). Within one month of signing this agreement the SP is required to draw up a register of all Water Supply Infrastructure assets used in the provision of water supply services. This register will be attached to this MoU and will form an important part of what is agreed between the Parties.

The Infrastructure Asset Register (Attachment D) must include information on the infrastructure and equipment associated with:

- i) Water sources.
- ii) Abstraction rates.
- iii) Transmission (pipelines, pump stations, energy sources).
- iv) Water treatment equipment and infrastructure
- v) Storage tanks.
- vi) Distribution networks.
- vii) Points of supply to customers (private and public connections).

The following information (attributes) on each item (asset) will be included:

- i) Name.
- ii) Position (latitude and longitude).
- iii) Rated capacity.
- iv) Make, type, model, serial number.
- v) Supplier or service agent.
- vi) Current performance.
- vii) Current condition.
- viii) Current depreciated value.
- ix) Replacement value.
- x) Expected life from new.
- xi) Remaining useful life.

The SP may not pledge or otherwise encumber any of the Water Supply Infrastructure assets described in this MoU, or any other items that may be created during the term of this MoU. The SP will ensure that all infrastructure assets acquired during the Term of the MoU are placed on an amended version of the official infrastructure asset register and reported to the CU. The amended infrastructure asset register will be attached as an amendment to this MoU.

All operational assets, such as vehicles, tools, equipment, buildings, offices, furniture, software, and computers will remain the property of the SP upon termination or expiry of this MoU. The CU will be

given a right of first refusal to acquire such operational assets from the SP if offered for sale at a reasonable market price.

11. Business Plan

Within the first year from the date of signing of this MoU, the SP will develop a 5-year business plan for the services they are providing. The business plan will be updated annually and submitted for review by the signatories to this MoU. The topics to be covered in the business plan must align with the requirements of NWASCO and at least include:

- i) Information on the SP – form of organisation, registration, history.
- ii) Services offered – location, population, level of service.
- iii) Operations – strategies, business processes, performance indicators, health, and safety.
- iv) Investments required – plans for new areas of service, new connections.
- v) Finance – financial targets, projections, and strategies (including tariffs, fees, charges, donations, investments), sources of funding, forecast of revenues, expenses and cash flow.
- vi) Resources required – staff and organogram, vehicles, equipment, offices, stores, workshops, supply chains.
- vii) Asset Management – asset management plans, infrastructure asset registers, data management.

If required, the CU will assist the SP and CBOs in the preparation of their business plans.

12. Failure to Perform

If any Party feels they are prejudiced by or becomes aware of the failure to perform in terms of their roles and responsibilities of any other Party to this MoU, the Party recognizing the default of others may take action to ensure that corrective action is put in place. The following procedure will apply:

- i) In the first instance, a meeting will be called within 30 days of all contracting Parties during which the nature of the "failure to perform" will be discussed and a jointly agreed plan of corrective action will be agreed and documented. This plan will include reasonable activities and timeframes.
- ii) If the specific failure to perform persists, and is not resolved by the approach described above, a further meeting may be called within 30 days, with NWASCO and the Ministry of Water Development and Sanitation in attendance to offer assistance and plan for corrective action.
- iii) If the steps described above do not resolve the matter within 90 days of the initial failure to perform then renegotiation of the MoU must be undertaken. Such renegotiation to be completed within 60 days of any Party calling for such renegotiation.
- iv) In the event of continued failure to perform, and no successful corrective action being implemented, and failure to renegotiate terms agreeable to all Parties, this MoU will be terminated.
 - a) In such an event the termination must be implemented in such a way as to always limit any disruption to services and to protect the value of Water Supply Infrastructure assets.
 - b) Nonetheless, Water Services will be assured to users and with the same levels of services.
 - c) The CU and/ or the Support Services Provider, where different from the CU, will take over the full operations and maintenance of the scheme until a suitable Third-Party Service Provider is outsourced.

In all instances of failure to perform and implementation of corrective measures, due consideration will be given to:

- i) The seriousness of the failure.

- ii) The repetitive nature of the failure.
- iii) The degree to which customers and the public are affected.
- iv) The degree of negligence on the part of any signatory to this MoU.
- v) The efforts made by Parties to rectify the situation.

13. Dispute Resolution

It is noted that all Parties have entered into this MoU in good faith, and the Parties agree to make a good faith effort to informally resolve any dispute before submitting the dispute to arbitration in accordance with the following procedures:.

- i) In any instance of disagreement, the Parties agree to convene, discuss, and negotiate amicable solutions in the best interests of ensuring continued safe water supply to customers.
- ii) If resolution of disputes cannot be resolved through negotiations of the parties to this MoU, NWASCO will be asked to assist in mediation between the Parties if circumstances do arise and give rise for discussion and agreements, including:
 - a) Any changes of Applicable Law.
 - b) Natural phenomenon impacting the ability of the SP to continue to provide Water Services, i.e., Force majeure.
 - c) Failure of any Party to perform in terms of the provisions of this MoU.
- iii) If no agreement can be reached on any dispute through negotiation, such matters will be resolved by means of arbitration.
 - a) Such arbitration will be undertaken in accordance with the Arbitration Act, Cap 40 of the Laws of Zambia.
- iv) During the period of any dispute resolution process no Party may suspend the execution of their roles and responsibilities as contained in this MoU, except where such performance is not reasonably possible due to breach or default of any other Party to this MoU or an event of Force Majeure.





14. Termination due to Force Majeure

- i) No party shall be liable for any failure to fulfil its duties and obligations in terms of this contract where such failure is caused by any event, occurrence, circumstance or condition beyond the reasonable control of such party; the occurrence of which could not have been reasonably foreseen on the date of execution of this MoU and which, despite the exercise of diligent efforts could not have been prevented, limited or minimized; thereby, causing material and unavoidable physical damage or destruction to all or any of the Water Supply Infrastructure and/ or materially delays or prevents the performance of any duties and obligations in terms of this MoU, thus affecting the powers, rights, duties or obligations of the Parties under this MoU, provided that if it is not material the *Water Services* shall be obliged to continue rendering the services and its obligations under this MoU. Such events, occurrences, circumstances, or conditions may include but are not limited to:
 - a) landslide, lightning, earthquake, cyclone, floods, or other acts of God.
 - b) the acts of civil or military authority, the acts of a public enemy, war, blockade, sabotage, fire, explosion, bombing, insurrection, riot, or civil disturbance.
 - c) consumer boycotts resulting from the performance of any powers, rights, duties, or obligations of either party in terms of this contract.
- ii) The Party affected by an event, occurrence, circumstance, or condition referred to shall promptly notify the other Party in writing of the event, occurrence, circumstance or condition and the estimated extent and or duration of such Party's inability to perform its duties and obligations.

- iii) Upon the cessation of the event, occurrence, circumstance or condition referred to the Party affected thereby shall notify the other Party of such cessation.
- iv) If, as a result of the event, occurrence, circumstance or condition referred to, the performance of a Party's duties and obligations is only partially affected, such Party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition.
- v) If an event, occurrence, circumstance, or condition referred to continues for more than 90 (ninety) or more consecutive days after any notification thereof the affected Party may with immediate effect terminate this MoU.

15. General

- i) It is further recorded that:
 - a) The SP warrants that they are not insolvent at the time of signing this MoU.
 - b) The CU warrants that the execution, delivery and performance of this MoU and the transactions contemplated hereby do not and will not infringe and are not and will not be contrary to any laws or regulations of any Government, administrative or regulatory body, and that the CU has taken all necessary action for the authorization of its entering into this MoU and the performance of its obligations.
 - c) This MoU is made in the English language and any amendment to this MoU shall be drafted in the English language. The language of correspondence will be English
 - d) This MoU shall be governed by and construed in accordance with the laws of the Republic of Zambia.
 - e) Confidentiality between Parties will be respected, including documents and communications, proprietary information, and financial records.
 - f) All variations/ amendments of this MoU will be in writing and signed by all Parties.
 - g) This MoU, including the Attachments hereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements, communications or arrangements, whether oral or written, between the Parties.
 - h) If any term or partial term of this MoU is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of the MoU or any other term or partial term of the MoU.
 - i) No Party shall assign or transfer all or any part of its rights or obligations under this MoU without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed
- ii) This MoU shall not be deemed as a form of financial commitment on the part of any Party, unless as expressly agreed by the Parties from time to time.
- iii) All Parties acknowledge that they have reviewed, understood, and agreed to the content of this MoU, thus signed:

Luapula Water Supply and Sanitation Company (LpWSC)	Witness:
Signed:  Name: <u>DAVID NGENYA</u> Managing Director Date: <u>12/12/2022</u>	Signed:  Name: <u>Mary Zgambo</u> Designation: <u>Commercial Officer</u> Date: <u>12/12/2022</u>
Third-Party Service Provider	Witness:
Signed:  Name: <u>FRANCIS MUBONGA</u> Authorised Representative: <u>DIRECTOR</u> Date: <u>09/12/2022</u>	Signed:  Name: <u>HIPOLITO TEMBO</u> Designation: <u>DIRECTOR</u> Date: <u>09/12/2022</u>

Attachments A

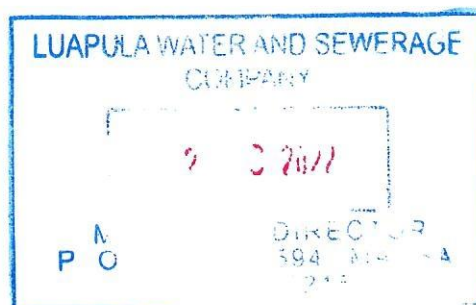
Documents Required from the Commercial Utility

Attachments B

Documents Required from the Third-Party Service Provider

Attachments C

Infrastructure Asset Register



Water4

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Zambia