Memorandum of Understanding for Water Supply Services

between

Luapula Water Supply and Sanitation Company

and

"*Mwansabombwe Town Council*" 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)[1][2], 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 LA 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 Sanination Act (Section 10(2)) further compels Local Authorities to contract a water supply service provider to supply water to a localities within their jurisdiction where no such services are being provided by any service provider.

Alongwith these provisions pertaining specifically to water supply in rural areas, a number of statuatory 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 - The statutory functions of policy, water development and management and water supply are with the Ministry of Water Development and Sanitation (MWDS) Text on roles and responsibiliities as they pertain to water and sanitation services

National Water Supply and Sanitation Council (NWASCO) – The National Water Supply and Sanitation Council issues licences to Water Supply and Sanitation Utilities (also called Commercial Utilities) and other Service Providers in accordance with section 11 of the Water Supply and Sanitation Act No. 28 of 1997. The Licenced Commercial Utilities (CUs) are allowed to engage third parties 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 third party provides water supply and sanitation services within its area of the licence without a valid permit or contract with them. Commercial Utilities can, however, engage third party to provide services on their behalf who comply with regulatory requirements provided herein. All contracts entered into between the License Holder and Third parties 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 operator (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 Holder and Third Parties, 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 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 the National Water Supply and Sanitation Council

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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: Goverment 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.

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(NWASCO). This is in accordance with Section 11 of the Water Supply and Sanitation Act number 28 of 1997. Commercial Utilities that are licensed can engage third parties 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 Commercial Utilities 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 interalia 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 permiting 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 by the Act No. 12 of 2011 to, among others, protect, conserve, 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) prohibitsany 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 portifolios 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, Chief's are an effective change agents due to their traditional and cultural leadership influence as custodian of traditional values. Thus, harnessing these virtures would greatly contribute to the long term sustainability of the Water Services in the Rural Growth Centres.

This Memorandum of Understanding (MoU), therefore is a performance-based agreement and binds the Commercial Utility, Third-Party Service Provider and Community Based Organisation/s providing water service through small pipe water supply schemes to the rural communities as outlined under Section 3 to the terms and conditions as agreed by all parties as indicated by the signatures of duly authorised representatives

2. Definitions of Terms and Interpretations

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

"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;

"Community Based Organisation (CBO)" means an organisations formed by communities to carry out day to day operation and maintenance activities and provide water supply services in rural communities;

"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 CU for provision of sanitation and water supply services;

"Memorandum of Understanding (MoU)" means the agreement between parties that will implement the *"O&M Hybrid Model"* of service provision for 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)*;

"O&M Hybrid Model" means a service provision model for small pipe water supply scheme that entrusts the day-to-day operations to the community-based organization (CBO) while the CU or either a willing adequately resourced NGO provide the technical support, as agreed to and validated by partners in Luapula Province;

"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;

"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 CBOs to ensure that safe and adequate water supply services are delivered;

"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 agreement and their respective details are described below:

Table 3.1: Details of the Commercial Utility

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

Item	Detail
Name	Mwansabombwe Town Council
Names and ID of directors and chairperson	Mr Edgar Chilanzi Mulwanda
Authorised representative position	Council Secretary
Address	P.O. Box 750002
Contact details	+260977601260
Type of Organisation: CBO/ NGO/ Company by Registration/ Registered Society/ Local Authority/ Etc.	Local Authority
Constitution of organisation	Local Government Act No.2 of 2019
Certificate of registration (number)[1]	Local Government Act No.2 of 2019
Proof of registration in Zambia	Local Government Act No.2 of 2019
Business licence (number)[2]	Local Government Act No.2 of 2019
Business licence (document)	Local Government Act No.2 of 2019
Waste Transport Licence (ZEMA)	N/A
Hygiene operating license (Dept of Health)	N/A
Road traffic licences[3]	N/A

Table 3.3: Details of the Communities Receiving Water Supply Services

Item	Detail
Name of community/s: Constituency: Ward:	New Kazembe Mwansabombwe Mwansabombwe and Kazembe
Names and ID of leaders / water committee (Attach List)	N/A
Authorised representative position	N/A
Address	N/A
Contact details	N/A
Certificate of registration (number)[1]	N/A
Constitution of Community Based Organisation	N/A

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 ***Mwansabombwe*** district(s) 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 are the 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 Commercial Utilities 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 Commercial Utility operate under the license of the designated Commercial Utility, 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 Supply and Sanitation Company has developed a new strategy toward the provision of rural water services. The adopted strategy is a hybrid of community-based responsibility for day-to-day operations, with the Commercial Utility or a willing and adequately resourced third party providing technical support as a *Support Services Provider* (SSP). The *Support Services Provider* will provide the services in line with the and O&M Hybrid Operator Concept, that includes:

i) Day to day O&M operation aspects being solely a CBO responsibility.

ii) Minor O&M repair aspects being solely a CBO responsibility.

iii) Major O&M repair aspects being solely a CU/ SSP responsibility.

iv) Billing and credit control O&M aspects being solely a CBO responsibility.

v) The cost of new connections O&M aspects being solely a CBO responsibility.

vi) Installation of new connections will be performed by a competent authority and/ or CU.

vii) Spare parts provision for minor operations being solely a CBO responsibility. Spare parts for major maintenance or repairs will be a CU/ SSP responsibility.

viii) Technical support of O&M aspects being solely a CU/ SSP responsibility.

ix) Provision of fuel or other energy will be solely a CBO responsibility.

x) Payment for all energy costs will be solely a CBO responsibility.

Services will be provided in compliance with the Service Level Guarantee (SLG) as guaranteed by the Third-Party Service Provider and Service Level Agreement (SLA) as proposed by LpWSC and signed by NWASCO.

At the core of the hybrid model is the principle of 'local costs to be borne at a local level'.

This Memorandum of Understanding 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.

At this initial stage of formalization of the ongoing cooperation between the parties, the provisions and statements in this Memorandum of Understanding ***are binding*** on signatories. An initial ***3-year*** period is, however, considered as a ***'trial and learning'*** period only, and no litigation or any associated legal action shall be entered into by any party to this Memorandum of Understanding during this 'trial and learning' period. The purpose of this 'trial and learning period' is to demonstrate and test the commitment of all parties to this agreement 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.

All parties to this agreement also acknowledge that this Memorandum of Understanding will 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. After the initial ***3 year*** "trial and learning period" legal action based on the provisions of this Memorandum of Understanding may be pursued.

5. Scope of work

The provisions of this Memorandum of Understanding apply to water supply services and associated infrastructure within the ***Mwansabombwe*** District of the Luapula Province, and in specific the schemes and villages mentioned in Table 4.1 below.

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

Table 4.1: List of Villages and Institutions Served

Name of Scheme	Villages Served	Population Served	Ward / Constituency	Location (Co-ord)	Water Suppy Source (Type)	Water Available from Source (yield in l/s)	Power Source	Storage Tank Type and Size (m^3)	Network Length (m)	Number of Private Connections	Number of Communal Supply Points
1	Matabishi	3800	Kazembe/ Mwansabombwe	9.81986 S 28.77121 E					2500	68	7
2	Nakabamba	1100	Mwansabombwe/ Mwansabombwe	9.81322 S 28.76507 E					1500	12	9
3	Kasao	220	Mwansabombwe/ Mwansabombwe	9.81338 S 28.75997 E					0	0	0
Total (New Kazembe SPWS)	**3 Villages**				**Groundwater**	**BH Yield: 6 l/s SWL: 51 m Pump Rating: 10 Hp Pumping Head: 102 m Pump Installation Depth: 52 m**	**ZESCO**	**60**	**4000**	**80**	**16**

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. Any operational responsibility or infrastructure creation projects within the geographic area of responsibility of the Service Provider that may be added to the scope of work will be offered to the Third-Party Service Provider on a "first refusal basis". If the Third-Party Service Provider does not wish to take on the additional scope of work the commercial utility will consider other modes of implementation and/or operation.

In the supply of water services, the Third-Party Service Provider may undertake, in consultation with the CU, any or all of the following:

i) **Design** - The design of all 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 Third-Party Service Provider 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 Third-Party Service Provider will comply with the norms and standards and good practice of the construction industry in Zambia. The approval of the Commercial Utility must be secured in writing prior to the commencement of any construction work. The Third-Party Service Provider 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 Third-Party Service Provider will submit a full set of As-Built drawings in a digital format compatible with the GIS system of the Commercial Utility. After the completion of any works the Infrastructure Asset Register created and managed by Third-Party Service Provider must also be updated and submitted to the Commercial Utility.

iii) **Operations** – Activities associated with the operation and maintenance of 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 Memorandum of Understanding.

   a) All operations will be undertaken in compliance with the laws, guidelines and provisions of the Ministry of Water Development and Sanitation (MWDS), NWASCO, Luapula Water Supply and Sanitation Company 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 and Community Based Organisations (CBO).

   a) All parties to this agreement 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 of this agreement the Third-Party Service Provider will hand over to Luapula Water Supply and Sanitation Company the infrastructure assets used to provide services.

   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 Memorandum of Understanding.

   b) The assets will be returned 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 Memorandum of Understanding for whatsoever reason the following will apply:

      i) The Commercial Utility will pay the asset owner fair compensation for the infrastructure being transferred.

ii) Fair compensation will be calculated based on the depreciated value of the 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.

6. Start date and duration

This Contract shall become effective on the date of signature of this document by all parties and shall remain in full force for ***3 years*** unless prematurely terminated for reasons justified in law and with due consideration of the beneficiaries of the service.

If any of the parties wishes to terminate the agreement for reasons other than breach of any provision of this agreement, 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 attract 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.

It is noted that the duration of this Memorandum of Understanding may be extended upon terms agreed to by all parties on condition that:

i) At least 90 days' notice before the expiry of this Memorandum of Understanding is given of the intention to extend the duration.

ii) All parties that are signatory to this Memorandum of Understanding sign the agreement of extension

7. Role of the Commercial Utility

In the implementation of the terms and provisions of this Memorandum of Understanding, the Commercial Utility will:

i) Provide permission to the Third-Party Service Provider (SP) to operate under the license of Luapula Water Supply and Sanitation Company.

ii) Oversee, monitor, and evaluate the operations of the Third-Party Service Provider (SP) with a view to ensuring the provision of safe water supply services:

   a) A reporting template will be developed together with the Service Provider (SP).

   b) The Commercial Utility (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 infrastructure under the custodianship of the Third-Party Service Provider (SP).

iii) Provide technical assistance as the Support Services Provider (SSP) to the Third-Party Service Provider (SP) as and when required.

iv) Ensure that a Sector Wide Approach (SWaP) is implemented across the province in the supply of water, through Third-Party Service Providers, that complies with the NWASCO guidelines:

a) Mobilize finance for and carry out major repair and maintenance work as and when required.

b) Such major maintenance work will be identified and motivated for by the Third-Party Service Provider.

c) Action to be taken and work to be done will be negotiated between the parties that are signatory to this agreement.

d) In the event of any emergency that requires major maintenance or repairs the Commercial Utility will support the Third-Party Service Provider in raising funds for undertaking any work that is required, or equipment that must be purchased.

e) As far as is required the Commercial Utility will also assist the Third-Party Service Provider in the implementation of any procurement or work that may be required.

v) Monitor the quality, availability and sustainability of surface and ground water sources within the area.

vi) Monitor the quality of water produced and distributed by the Third-Party Service Provider and advise their management on remedial action to be taken.

vii) The Commercial Utility will develop tariff proposals for water supply services and submit them to NWASCO for consideration:

a) The Third-party Service Provider 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.

viii) Inform the Third-Party Service Provider of the tariffs to be applied.

ix) Provide capacity building to the Third-Party Service Provider and beneficiary communities, as far as is possible within existing programmes and available funding.

x) Assist in carrying out community water supply sensitization workshops for both new projects and where services are already being provided.

xi) Nominate a senior manager from the Commercial Utility to be part of the recruitment process of any person considered for a management role within the Third-Party Service Provider.

xii) Participate in all the Annual General Meeting of the Third-Party Service Provider.

xiii) Secure abstraction permits for all sources utilized by the Third-party Service Provider.

xiv) Facilitate the availability of land for operational activities of the Third-party Service Provider.

xv) Where required, facilitate the carrying out of Environmental Impact Assessments.

xvi) Review the annual audits of the accounts and financial statements of the Third-party Service Provider for the water supply systems being managed.

The Commercial Utility undertakes to not interfere in the day-to-day operations of the Third-Party Service Provider. However, the Commercial Utility 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 Third-Party Service Provider and the Community.

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iii) Failure of the Third-Party Service Provider to provide services at satisfactory level.

8. Role of the Third-Party Service Provider

In terms of the provisions of this Memorandum of Understanding, the Third-Party Service Provider will:

i) Provide water services that are efficient, affordable, and sustainable to residents within the geographic service area that forms the jurisdiction of the Third-Party Service Provider.

ii) Supply portable pipe water that complies with the NWASCO Guidelines.

iii) Ensure that the portable pipe water supplies comply with any other regulatory requirements or guidelines of the license conditions that apply to the Commercial Utility and comply with general directives issued by NWASCO through the Commercial Utility.

iv) At all times strive to provide a safe water supply service and implement good customer care practices.

v) 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 costs, including but not limited to, energy, staff costs, chemicals, and spare parts for minor maintenance.

vi) Apply the tariff approved by NWASCO.

vii) 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 Third-Party Service Provider 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.

viii) Operate in accordance with existing standards, laws and regulations related to water supply services.

ix) Adhere to any Standard Operating Procedures (SOP) developed collectively with the Commercial Utility.

x) 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 Commercial Utility:

   a) At all schemes the Third-Party Service Provider must establish a representative Water Based Committee (WBC) for the management and governance of the water supply services which are the subject of this Memorandum of Understanding.

   b) A Water Supply Service Level Agreement (SLA) between the Third-Party Service Provider and the beneficiary communities must be developed, documented, and implemented.

   c) This Service Level Agreement will describe the roles and responsibilities of the Third-Party Service Provider and "The Community", as represented by the afore-mentioned WBC.

xi) The Third-Party Service Provider will be liable to the actions of NWASCO for failure to comply with license conditions.

xii) Implement suitable performance monitoring systems and submit reports on Financial, Technical, Administrative and any other matters to the Commercial Utility as prescribed in the NWASCO Guidelines.

xiii) The Third-Party Service Provider will keep financial records and ensure that audits are undertaken and submitted to the Commercial Utility.

xiv) 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 were necessary immunized against Cholera, Typhoid, Hepatitis B, and other relevant infections.

xv) Ensure adherence to the Financial Management Act and other relevant laws.

xvi) At all times work closely with the mandated Local Authority (LA) and Traditional Leadership to keep them fully informed of all activities.

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

9. Role of the Local Authority

In support of the roles and responsibilities of the Third-Party Service Provider under this agreement, Local Authorities (LA) will:

i) Provide financial support for the construction of new water supply infrastructure and rehabilitation of old water supply infrastructure.

ii) Maintain supply chain for spare parts shops.

iii) Formation of the community-based organizations and provision of capacity building for WASH stakeholders and community-based organisations.

iv) Conduct community mobilization, engagement, and sensitization on WASH.

v) Conduct performance monitoring of delegated water supply systems.

vi) Coordinate stakeholders implementing WASH activities in the district.

vii) Maintain and update WASH database in the district.

viii) Enforce all statutes related to Water Supply, Sanitation, and Public Health.

10. Role of the Community and Community Based Organisations

Community Organisations/ Structures at each scheme will:

i) Establish an organisation/ committee that will be responsible for Liaison and communication with all stakeholders that have an interest in the provision of water supply services in the community.

ii) Sign a Community Water Supply Charter with the Third-Party Service Provider and undertake to work within the provisions of the Charter.

iii) Cooperate with the Third-Party Service Provider in all aspects of operation and maintenance of installed infrastructure at the scheme.

iv) Adhere to Service Level Guarantees (SLGs) signed between the Commercial Utility and the Regulator (NWASCO).

v) Perform all day-to-day operations and maintenance of the infrastructure and equipment that is utilized to supply water to consumers within the community:

   a) A detailed programme of work will be established between the Community Based Organisation and the Service Provider.

   b) The responsibility of each Community Based Organisation will be limited to the management of a maximum of 10 km of pipeline and/ or 3No. water abstraction facilities (pump stations).

vi) Provide advice to consumers on the use of water in relation to the quantity, quality, and continuity of service.

vii) Adhere to the NWASCO Water Quality Monitoring Guidelines.

viii) Implement the tariff approved by NWASCO.

ix) Collect user fees from consumers of water within the community:

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a) The collected funds will be kept in a dedicated bank account held with the Third-Party Service Provider.

b) Follow-up on defaulters and provide feedback to the Third-Party Service Provider.

x) Ensure that water users are bind by the rules in the use and access to the Water Services.

a) Collectively with the water users, develop the rules for the use and access to Water Services.

b) Enforce the rules for the use and access to Water Services by water users.

11. Asset Management

All infrastructure assets associated with the provision of water supply services will remain the property of the Third-Party Service Provider until lawful termination of this agreement. At that time the Commercial Utility will be required to pay fair compensation to the Third-Party Service Provider, after which the assets will become the property of the Commercial Utility. Fair compensation will be determined through negotiations between the parties to this agreement, and fair depreciation as calculated through accepted accounting practice.

Luapula Water Supply and Sanitation Company and the Third-Party Service Provider undertake to implement Infrastructure Asset Management practices as described in the guidelines provided by NWASCO (Attachment C). Within one month of signing this agreement the Third-Party Service Provider is required to draw up a register of all infrastructure assets used in the provision of water supply services. This register will be attached to this Memorandum of Understanding and will form an important part of what is agreed between the parties.

The Infrastructure Asset Register (Attachment C) 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.

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The Third-Party Service Provider may not pledge or otherwise encumber any of the Infrastructure Assets described in this Memorandum of Understanding, or any other items that that may be created during the term of this agreement. The Third-Party Service Provider will ensure that all infrastructure assets acquired during the term of the agreement are placed on an amended version of the official infrastructure asset register and reported to Luapula Water Supply and Sanitation Company. The amended infrastructure asset register will be attached as an amendment to this agreement.

All operational assets, such as vehicles, tools, equipment, buildings, offices, furniture, software, and computers will remain the property of the Third-Party Service Provider upon termination of this agreement. Luapula Water Supply and Sanitation Company will be given first refusal to acquire such operational assets from the Third-Party service provider if offered for sale at a reasonable market price.

12. Business Plan

Within the first year of the term of this agreement the Third-Party Service Provider 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 agreement. The topics to be covered in the business plan must align with the requirements of NWASCO and at least include:

i) Information on the Third-Party Service Provider – 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 Commercial Utility will assist the Third-Party Service Provider and Community Based Organisations in the preparation of their business plans.

13. 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 Memorandum of Understanding, 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 Memorandum of Understanding 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 Memorandum of Understanding will be cancelled.

   a) In such an event the cancellation must be implemented in such a way as to always limit any disruption to services and to protect the value of infrastructure assets.

   b) Nonetheless, Water Services will be assured to users and with the same levels of services.

c) The Commercial Utility and/ or the Support Services Provider, where different from the Commercial Utility, will take over the full operations and maintenance of the scheme until the 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.

14. Finance

i) All revenues collected by the Third-Party Service Provider for water supply services will be used for the payment of operational costs at a local scheme level.

a) If a surplus is generated through the collection of tariffs, the Third-Party Service Provider together with the community structures (CBOs) will have authority to suggest how these funds should be used.

ii) Costs associated with major maintenance and repairs will be provided for through:

a) Budget allocations

b) Supplementary budgets

c) Partnerships

d) Emergency or Disaster grants.

iii) All funding received over-and-above tariffs collected, and the work undertaken with such funds, will be reported on in monthly reports. Where there is prior knowledge of such funds becoming available, this must be included in the annual update of the Business Plan of the Third-Party Service Provider.

iv) Any funds from development partners or other donors offered to any of the signatories to this agreement must be communicated to all other signatories. Such transparent communication of available resources will facilitate equitable and rational planning, leading to a Sector Wide Approach being in place for Luapula Water Supply and Sanitation Company.

v) Sourcing of the external funds for any project relating to water and sanitation services in the area shall be in line with the Government policy which entails that all resources for the improvement of water and sanitation shall be channelled through the mandated Third-Party Service Provider – in this case the License holder.

vi) If debt financing for the development of any infrastructure is considered, this must be presented to the signatories of this agreement for their consideration and approval; and no such debt should be secured, and no project may begin until the approval of the terms and conditions of such debt are agreed to by all the signatories.

15. Dispute Resolution

It is noted that all parties have entered into this agreement 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.

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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 relevant law.

b) Natural phenomenon impacting the ability of the Third-Party Service Provider to continue to provide Water Services, i.e., Force majeure.

c) Failure of any party to perform in terms of the provisions of this agreement.

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.

16. General

i) It is further recorded that:

a) The Third-Party Service Provider warrants that they are not insolvent at the time of signing this MoU.

b) The language of correspondence will be English

c) Laws and statutes of Zambia will apply.

d) Confidentiality between parties will be respects, including documents and communications, proprietary information, and financial records.

e) All variations/ amendments of this agreement will be in writing and signed by all parties.

ii) This Agreement 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 Memorandum of Understanding, thus signed:

Luapula Water Supply and Sanitation Company (LpWSC)	**Witness:**
Signed:	Signed:
Name: DAVID MGENDA	Name: Mary Zgambo
Designation: STATE TORY MANAGER	Designation: Commercial Officer
Date: 01/12/2022	Date: 01/12/2022

LUAPULA WATER AND SEWERAGE COMPANY
02 DEC 2022
MANAGING DIRECTOR
P O BOX 710594 MANSA
TELEFAX 821564

Mwansabombwe Town Council	Witness:
Signed:	Signed:
Name: EDGAR C. MULWANDA	Name: REGGIE KAMUPICA
Designation: COUNCIL SECRETARY	Designation: CHIEF ADMIN OFFICER
Date: 17/11/2022	Date: 17. 11. 2022

Attachments A

Documents Required from the Commercial Utility

Attachments B

Constitution of Community Based Organisations.

Attachments C

Infrastructure Asset Register.

REPUBLIC OF ZAMBIA
MINISTRY OF LOCAL GOVERNMENT
COUNCIL SECRETARY
17 NOV 2022
MWANSABOMBWE TOWN COUNCIL
P. O. BOX 750002,
MWANSABOMBWE.