

**NO. 14 OF 2019**

**THE IRRIGATION ACT**

SUBSIDIARY LEGISLATION

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**IRRIGATION (GENERAL) REGULATIONS**

[Legal Notice 199 of 2021]

**PART I – PRELIMINARY PROVISIONS****1. Citation**

These regulations may be cited as the Irrigation (General) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires-

"Act" means the Irrigation Act (Cap. 347);

"agency contract" means a legal agreement between parties on irrigation matters to enable modalities of provision of services;

"association" means an irrigation water users' association established and registered in accordance with these Regulations;

"association management committee" means the body elected by the General Assembly to oversee and supervise the activities of an association;

"authorised dependant" means, in relation to a permit holder, his father and mother, wives and such of his children as are unmarried and under the age of eighteen years;

"by-laws" means the by-laws of an association or umbrella association;

"capital replacement fund" means the capital replacement fund maintained under regulation 59;

"cluster of irrigation schemes" means a group of irrigation schemes in a defined geographical area being implemented by an authorised agency;

"County Executive Committee Member" means the County Executive Committee Member responsible for matters relating to irrigation;

"county public scheme" means a public scheme constructed on public land held in trust by the County Government or land acquired by the County Government for the specific purpose of irrigation;

"designated irrigation area" means any area of land designated by the Cabinet Secretary in accordance with section 16(1) of the Act as an irrigation scheme and includes national public, county public, smallholder and private irrigation areas;

"General Assembly" means the supreme decision-making body of an association;

"good agricultural practices" means a collection of principles to apply for on-farm production and post-production processes, resulting in safe and healthy food and non--food agricultural product, while taking into account economic, social and environmental sustainability;

"irrigation development" means the conceptualization studies, designing, planning and execution of irrigation projects and programmes;

"irrigation infrastructure" means all infrastructure including water harvesting and storage structures, abstraction, conveyance,

distribution, on-farm water application facilities, drainage works and any other related accessories;

"irrigation schedule" means a plan showing the appropriate irrigation frequency and duration;

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"irrigation scheme management committee" means the committee established by the Cabinet Secretary or the respective County Governor in accordance with these Regulations;

"irrigation services" means services provided to irrigators which include those listed in regulation 16(2);

"irrigation system" means a system comprising the infrastructure, management and production components;

"land administration" means allocation, succession, transfer, boundary establishment and revocation of tenure rights;

"major irrigation infrastructure" means irrigation infrastructure that can be used to store, abstract and convey water to the service areas of two or more associations;

"Master Register" means the Master Register of associations maintained under regulations 66;

"on-farm water management" means a systems approach towards controlling water on a farm in a manner that provides for the beneficial management of water for satisfying the irrigation and drainage needs;

"public scheme" means a public irrigation scheme established on government land as provided in section 6(2)(c) of the Act;

"quality irrigation water" means water with the right physical, chemical and biological characteristics suitable for irrigated crops, aquaculture, livestock and forestry which does not pose a threat to public safety or environment;

"recycled water" means waste water that has been converted into a reusable form for irrigation;

"register" means a register required to be maintained under these Regulations;

"service area" means the defined area of land served by an irrigation system where an association or other service provider operates;

"supervising entity" means the entity exercising a supervisory role as specified under regulation 6;

"service provider" means any public or private enterprise contracted to carry out any of the irrigation services, specified under regulation 16;

"social equity" means affirmative interventions to enable irrigation development, management and regulation responsive to resource poor communities for livelihood support;

"strategic programme" means an irrigation programme being undertaken by a government agency involving a cluster of irrigation schemes to achieve a strategic national purpose;

"strategic scheme" means an irrigation scheme designated to serve a specified national or county purpose as provided under section 6(2)(c) of the Act;

"umbrella association" means an umbrella irrigation water users' associations established under regulation 70;

"unit" means a defined part of an irrigation scheme or service area;

"unit representative" means a member elected to represent an irrigation unit at a meeting of the General Assembly;

"unrestricted irrigation" means irrigation water quality allowable for production of all crops;

"water supply point" means a point at which an association or private entity takes responsibility for the management of irrigation water from a dam, a diversion weir, structure,



a gate or turn-out, a canal, a lateral, a hydrant, a well, a spring or a pumping station of a main irrigation system.

### **3. Scope of application**

These Regulations shall apply pursuant to and in the furtherance of section 3 of the Act.

### **4. Purpose of the Regulations**

The purpose of these Regulations is to ensure—

- (a) sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya;
- (b) compliance with the Constitution and the Laws of Kenya, international laws, treaties and agreements and other ratified instruments.

## **PART II – IRRIGATION DEVELOPMENT**

### **5. Guiding principles**

(1) All irrigation development shall be undertaken within the context of a national irrigation master plan, county irrigation master plan, investment plan and respective strategic plans to support sustainable food security and socio-economic development of the country.

(2) The following principles shall be adopted for the promotion of irrigation development

- (a) compliance with all relevant statutory requirements;
- (b) availability and reliability of irrigation water;
- (c) efficient utilization of irrigation water;
- (d) compliance to quality standards;
- (e) participatory development;
- (f) gender mainstreaming and social inclusion;
- (g) economic, social and environmental sustainability;
- (h) climate change resilience measures; and
- (i) integration of ecosystem services.

### **6. Supervision of schemes**

(1) All irrigation schemes shall have a supervising entity which shall be responsible for—

- (a) overseeing implementation of an irrigation scheme;
- (b) organising and facilitating the registration of associations;
- (c) training and other technical assistance to associations; and
- (d) undertaking such other activities as may be specified in these Regulations.

(2) The irrigation schemes shall be supervised as follows—

- (a) small scale, county public and county initiated irrigation schemes shall be supervised by the County Irrigation Development Unit;
- (b) medium and large scale irrigation schemes including small scale schemes which traverse or straddle more than one county, shall be supervised by the Authority.

(3) Where the Authority is the implementing agency, the Cabinet Secretary shall take up the supervisory roles.

(4) Where a government agency is implementing a strategic irrigation project or programme on public land or a community-based project, the agency shall comply with the provisions of these Regulations.

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## **7. Designation of an irrigation area**

(1) Pursuant to section 16(1) of the Act, an area that is deemed suitable for medium and large scale irrigation schemes may be designated as an irrigation area for purposes of the Act.

(2) In designating an irrigation area under paragraph (1), the following criteria shall be considered—

- (a) location and suitability of the land;
- (b) pre-feasibility assessment as set out in Part A of the First schedule;
- (c) the national government policy or strategic direction including food security and industrial crop production;
- (d) impact of the development;
- (e) number of people affected;
- (f) environmental protection and conservation; and
- (g) participatory process that is documented in case of communal land.

## **8. Establishment of a national, public or strategic scheme**

(1) Pursuant to section 6(2)(c) of the Act, the Cabinet Secretary may establish a national scheme, public scheme or strategic scheme of any category for purposes of the Act.

(2) In establishing a scheme under paragraph (1), the following criteria shall be considered—

- (a) suitable irrigable land of strategic national importance;
- (b) irrigation for food security;
- (c) industrial crop production for agro-industries;
- (d) provision of livelihood for poor and vulnerable persons and groups;
- (e) provision of security for investments in land improvements for irrigation;
- (f) foreign exchange generation or import substitution; and
- (g) regional development and employment generation.

(3) Where the establishment of a scheme under this regulation relates to a public scheme meant for settlement, the beneficiaries shall be identified before establishment.

## **9. Water for irrigation**

(1) Any individual or entity intending to carry out or is carrying out irrigation shall, where the availability and reliability of water resource is not guaranteed, implement water harvesting and storage measures capable of storing flood water sufficient to meet at least three months' water demand where practical.

(2) In addition to paragraph (1), consideration may be given to the use of recycled waste water subject to meeting water quality standards set out in Part A and Part B of the Second Schedule.

(3) Any individual, entity or agency developing bulk water storage structures for irrigation may provide water to irrigation farmers at a tariff approved from time to time by the Cabinet Secretary in consultation with the Water Resources Authority.

(4) Any individual or entity using water for irrigation shall be required to obtain water use rights and meet the attendant obligations in accordance with the Water Act (Cap. 372).

(5) For public or national irrigation schemes meant for settlement and community-based smallholder irrigation schemes, an irrigation water users association formed in accordance with these Regulations shall be the entity responsible for acquiring the water use rights.

## **10. Conceptualization of irrigation schemes**

An owner, developer or any other person intending to construct an irrigation scheme shall submit to the supervising entity the following—

- (a) pre-feasibility study report or initial project identification concept note showing viability;
- (b) minutes of resolutions of stakeholders' meetings endorsing or requesting for development of the irrigation scheme where applicable;
- (c) feasibility study report;
- (d) irrigation project design report;
- (e) an authorization for construction from the Water Resources Authority;
- (f) land use authorization from the county or national ministry responsible for land and physical planning; and
- (g) an environmental impact assessment license from the National Environmental Management Authority;
- (h) evidence of relevant easements from relevant agencies and entities;
- (i) in respect to irrigation within private and community-based smallholder schemes, provide proof of land ownership, which may consist of a certified copy of title deed or lease agreement; and
- (j) for community-based smallholder irrigation schemes, evidence of existence of an irrigation water users' association.

### **11. Feasibility study**

(1) Any entity or individual seeking to develop an irrigation scheme shall undertake a feasibility study before commencing the construction of the irrigation scheme.

(2) The feasibility study shall be planned and supervised by a qualified irrigation firm or registered professional and contain the following components—

- (a) hydrological and hydro-geological survey report;
- (b) topographical survey report of appropriate scale;
- (c) soil survey report;
- (d) agricultural development and marketing plan;
- (e) irrigation development plan;
- (f) economic and financial analysis report;
- (g) environmental and social impact assessment report;
- (h) organization, management and institutional details;
- (i) preliminary irrigation and related infrastructure design and cost estimates; and
- (j) community participation plan where applicable.

(3) The feasibility study report shall be prepared in the form set out in Part B of the First Schedule and submitted to the supervising entity for review.

(4) Where upon review under paragraph (3) the report is deemed to be satisfactory, the supervising entity shall, within thirty days of the determination, issue a "no objection" for the proposal to proceed to full design.

### **12. Design and construction of irrigation schemes**

(1) An irrigation scheme shall be designed and the subsequent construction supervised by a qualified and experienced irrigation firm or professional from appropriate category as set out in Part A of the Third Schedule.

(2) An irrigation scheme shall be constructed by the a contractor from the appropriate category as set out in Part B to the Third Schedule.

(3) A contractor undertaking irrigation works shall be registered in accordance with the section 15 of the National Construction Authority Act (Cap. 118).

### **13. Approval to construct a scheme**

(1) An application for approval to construct an irrigation scheme shall be—

- (a) made to the supervising entity depending on the category of the scheme;

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- (b) accompanied by an irrigation project design report and in case of medium and large scale irrigation schemes, a copy of a *Gazette* notice designating the area of construction as an irrigation area.

(2) The details required in the irrigation project design report shall be based on the category and size of the irrigation scheme to be constructed and infrastructure standards set out under regulation 90.

(3) Upon submission of the detailed design report in paragraph (2) as set out in Part C of the First Schedule, the Authority, County Irrigation Development Unit or other authorised agency shall ensure that it meets the technical requirements before approval.

(4) Upon approval of the proposed irrigation scheme, an authorization certificate for construction shall be issued for commencement of construction of the irrigation infrastructure in the Form 4A set out in the Fourth Schedule.

#### **14. Completion report, operation and maintenance manual**

On completion of construction, the implementing agent or agency shall submit the following properties to the supervising entity—

- (a) the irrigation scheme completion report in the form set out in Part D of the First Schedule; and
- (b) an operation and maintenance manual in the form set out in Part E of the First Schedule.

#### **15. Irrigation service providers**

(1) Any irrigation service providers shall be certified by the relevant regulatory bodies.

(2) The Cabinet Secretary shall prepare and maintain an inventory of irrigation service providers in the form set out in Part A of the Fifth Schedule.

#### **16. Irrigation services**

(1) Irrigation services include—

- (a) pre-feasibility studies;
- (b) feasibility studies and detailed design;
- (c) installation or construction of irrigation system;
- (d) construction supervision;
- (e) scheme administration and management;
- (f) capacity building for irrigation stakeholders;
- (g) irrigation extension services;
- (h) marketing of irrigated produce;
- (i) insurance and other financial services; and
- (j) any other services as may be determined by the Authority from time to time.

(2) Any person or entity providing the following irrigation services must be enlisted by the Cabinet Secretary—

- (a) pre-feasibility studies;
- (b) feasibility studies and detailed design;
- (c) installation or construction of irrigation system;
- (d) construction supervision;
- (e) scheme administration and management; and
- (f) any other services as may be designated by the Cabinet Secretary from time to time.

(3) An application for enlisting under paragraph (2) shall be made to the Cabinet Secretary in Form 4B set out in the Fourth Schedule.

(4) The irrigation development services shall be provided through the following models—

- (a) directly by Authority or the County Irrigation Development Unit or other government agencies;
  - (b) irrigation personnel at both national and county level;
  - (c) contracted and agency services;
  - (d) public private partnerships;
  - (e) irrigation water users' associations;
  - (f) small and medium enterprises or non-governmental organizations partnership financing; and
  - (g) bilateral or multilateral partnerships.
- (5) The procedure for accessing irrigation services shall include—
- (a) request to the service provider; and
  - (b) contractual arrangements where applicable.

(6) Subject to compliance with the applicable national laws, the Authority may, in an appropriate case, engage in a public private partnership or other appropriate contractual arrangement for development, operation and maintenance of irrigation infrastructure.

### 17. Irrigation development in counties

(1) Pursuant to section 14 of the Act, a County Government may by notice in the *Gazette* establish a County Irrigation Development Unit for the better carrying out of its functions with respect to irrigation development.

(2) In establishing the County Irrigation Development Unit, a County Government shall take into account the following expertise or professionals in its composition—

- (a) engineers and technicians from the fields of irrigation agriculture, civil engineering or their equivalent in related fields; and
- (b) experts in the fields of survey and mapping or cartography, agriculture, socio-economics or their equivalent in related fields.

### 18. Development of community-based smallholder schemes

Any individual or entity developing or intending to develop a community-based smallholder irrigation scheme shall comply with the provision of regulations 5, 6, 7, 9, 10, 11, 12, 13 and 14 and other relevant provisions of these Regulations.

#### PART III – LICENSING OF SCHEMES

### 19. Irrigation licence

(1) A person or entity shall not operate an irrigation scheme without obtaining an irrigation licence except where irrigation is undertaken at household level for subsistence purposes, and is by use of manual water abstraction and application.

(2) Any association intending to or currently undertaking irrigation development and management within a public scheme meant for settlement shall obtain an irrigation licence.

(3) The designation of an area as an irrigation area as provided under regulation 7 shall be a prerequisite for issuance of an irrigation licence in case of medium and large scale irrigation scheme.

### 20. Application for a licence

(1) Pursuant to section 6(2)(f) of the Act, an application for an irrigation licence shall be made to the Cabinet Secretary or such other authorised person in Form 4C set out in the Fourth Schedule and accompanied by—

- (a) the application fee set out in the Sixth Schedule;
- (b) the report of feasibility study undertaken by the professionals or firms specified under regulation 11;
- (c) a copy of the *Gazette* notice designating the area as an irrigation area under regulation 7, where applicable;

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- (d) an approved detailed design report in Form 1C set out in the First Schedule taking into account the needs of various irrigation water users, including livestock and fish producers and the impact the irrigation scheme is likely to have on the environment;
  - (e) evidence of approvals from relevant lead agencies including—
    - (i) an environmental and social impact assessment licence issued by the National Environment Management Authority;
    - (ii) an authorization to construct water abstraction works issued by the Water Resources Authority;
    - (iii) water use permit issued by the Water Resources Authority; and
    - (iv) the authority to construct by the National Construction Authority where applicable;
  - (f) evidence of relevant easements from relevant agencies and entities;
  - (g) approvals for construction from the supervising entity;
  - (h) submission of completion certificate and operation and maintenance manual; and
  - (i) in respect to irrigation within private and community-based smallholder schemes, proof of land ownership which may consist of a certified copy of title deed, lease agreement or a letter of allotment.
- (2) The application under paragraph (1) shall be made by—
- (a) an individual or legally incorporated body;
  - (b) a public officer on behalf of a public entity; or
  - (c) the authorised officials of an association, where the association possesses the requisite land rights on which the scheme is to be or is being used with lawful access to the water.
- (3) The Cabinet Secretary or the authorised person shall, within thirty days of receipt of the application under paragraph (1),—
- (a) approve the application and issue an irrigation licence in the Form 4D set out in the Fourth Schedule on such terms and conditions as may be specified in the licence; or
  - (b) reject the application and indicate the grounds for the rejection.
- (4) The Cabinet Secretary or the authorised person shall assign a unique scheme number for each licenced scheme.
- (5) Any person or entity operating an irrigation scheme without a valid irrigation licence commits an offence and shall be liable on conviction to a fine not exceeding—
- (a) ten thousand shillings or imprisonment not exceeding two months, or both, where the person operates a small scale scheme;
  - (b) twenty thousand shillings or imprisonment not exceeding six months, or both, where the person operates a medium scale scheme; or
  - (c) fifty thousand shillings or imprisonment not exceeding twelve months, or both, where the person operates a large scale scheme.

**21. Licensing Unit**

- (1) The Cabinet Secretary or such other authorised person shall put in place the necessary administrative measures to establish and maintain a Licensing Unit to—
- (a) receive and determine applications for irrigation licence; and
  - (b) monitor and verify compliance to the licence conditions; and
  - (c) enforce conditions attached to the licence for all irrigation schemes.
- (2) The Licensing Unit established under paragraph (1) shall have such number of officers, as are necessary for the proper performance of its functions.

**22. Compliance**

(1) An officer of the supervising entity, Licensing Unit and other government agencies may access any irrigation infrastructure and related sites to monitor compliance with any conditions of a licence and other provisions of these Regulations.

(2) A person or entity operating an irrigation scheme shall not deny officers of the supervising entities and other government agencies access to irrigation infrastructure and related sites to perform the functions under paragraph (1).

**23. Register of licences**

The Cabinet Secretary shall maintain a register of all irrigation licences and licensed irrigation schemes.

**24. Validity of licences**

An irrigation licence shall be valid for a period of three years and may be renewed.

**25. Revocation of licences**

An irrigation licence may be revoked where—

- (a) the licensee fails to comply with terms and conditions under which the licence was issued;
- (b) the licensee does not comply with the performance audit recommendations and corrective measures; or
- (c) there are supervening circumstances supported by documented evidence which make the irrigation development untenable in the interest of public health and safety, environmental protection and security.

**PART IV – MANAGEMENT OF IRRIGATION SCHEME****26. Management principles**

(1) All irrigation schemes shall be managed in accordance with the principles set out in the Act and these Regulations.

(2) Without prejudice to paragraph (1), the management of an irrigation scheme shall be guided by the following—

- (a) compliance with set rules of operation within an irrigation scheme;
- (b) transparency, accountability, sustainability and efficiency;
- (c) water saving practices are implemented throughout the irrigation process;
- (d) optimal utilization of resources and assets for enhanced productivity;
- (e) service orientation; and
- (f) resilience and business continuity initiatives.

**27. Irrigation management**

(1) Irrigation management shall be through continuous adoption and application of best practices in sector planning, coordination and financing.

(2) The management of a strategic, public or national irrigation schemes shall be through a framework defined at the time of establishment.

(3) A public or national irrigation schemes meant for settlement shall be managed through scheme management committees, Dispute Resolution Committees and irrigation water users' associations.

**28. Establishment of scheme management committees**

(1) Any scheme management committee shall be established in accordance with section 8(2)(c) of the Act.

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(2) Despite paragraph (1), a scheme management committee for national scheme or public scheme shall be established by the Cabinet Secretary through the Authority in accordance with section 19(1) of the Act.

(3) Despite paragraph (1), a scheme management committee for a county public scheme shall be established by the respective Governor.

### **29. Functions of a scheme management committee**

The functions of a national, public or county public scheme management committee shall include the following—

- (a) provide oversight on scheme development and management;
- (b) land administration;
- (c) facilitate access rights to land for all irrigation farmers on the respective scheme;
- (d) facilitate scheme administration and management of scheme by the Authority or County Irrigation Development Unit;
- (e) in consultation with the Authority and other stakeholders, promote the production, marketing, safe storage and processing of crops, animal and fish products grown or produced on national irrigation schemes;
- (f) undertake dispute resolution at the scheme level involving various actors; and
- (g) promote good governance and efficient management of the scheme.

### **30. Management committees for national or public schemes**

(1) The scheme management committee for a national or public scheme shall consist of—

- (a) the County Commissioner of the respective County or his representative who shall be the chairperson;
- (b) the Chief Executive officer of the Authority or his representative who shall be the secretary;
- (c) the County Executive Committee Member or his representative;
- (d) the County Executive Committee Member responsible for matters relating to agriculture or his representative;
- (e) chairperson of the dispute resolution committee of the scheme;
- (f) two representatives of the association or the umbrella association; and
- (g) two representatives from other relevant farmer organizations in the scheme.

(2) Where a scheme straddle two or more counties, each county shall constitute a scheme management committee established pursuant to paragraph (1) and a joint scheme committee established pursuant to paragraph (3).

(3) A joint scheme committee shall consist of—

- (a) the County Commissioners of the respective Counties who shall be co-chairs;
- (b) one representative of the Authority; and
- (c) four other persons from each individual county committees, of which one member shall be a farmer.

### **31. Management Committees for county public schemes**

(1) A scheme management committee for a county public scheme shall consist of—

- (a) the County Executive Committee Member who shall be the chairperson;
- (b) the County Executive Committee Member responsible for matters relating to county administration;
- (c) the officer in-charge of the County Irrigation Development Unit who shall be the secretary;
- (d) the County Commissioner of the respective County or his representative;



- (e) the Chief Executive officer of the Authority or his representative;
- (f) two representatives of the irrigation water users' association or the umbrella association; and
- (g) two representatives from other relevant farmer organizations in the scheme.

(2) The scheme management committee constituted under paragraph (1) shall be in the county in which the scheme is situated.

### **32. Conduct of business of a scheme management committee**

(1) The scheme management committee shall—

- (a) develop a schedule of their meetings and conduct of business;
- (b) meet on a quarterly basis; and
- (c) hold their meetings at the premises of the scheme.

(2) The scheme management committee may invite any professional, expert or stakeholder from a relevant field or entity to attend any of its deliberations.

(3) Every scheme management committee shall constitute a land administration sub-committee and such other special purpose sub-committees for the proper performance of its functions.

(4) The land administration sub-committee constituted under paragraph (3) shall comprise of not more than seven members who shall include—

- (a) the County Commissioner or his representative;
- (b) County Lands Officer;
- (c) the area Chief;
- (d) two farmer representatives from the respective irrigation units;
- (e) a representative of the Authority or County Irrigation Development Unit, as the case may be, managing the scheme who shall be the secretary; and
- (f) the Ward Administrator of the respective administrative area.

### **33. Powers in relation to crops at the scheme**

The Authority or a County Irrigation Development Unit shall, in consultation with the scheme management committee, have power to—

- (a) order the destruction of any crops planted in contravention of the irrigation schedule, designated cropping area or the provisions of these Regulations;
- (b) recover the expenses incurred from the permit holder on destruction of crops under paragraph (a); or
- (c) treat any crops or stocks against diseases, pests or damage of any kind if in its opinion it would be beneficial to a permit holder's crops or to all the permit holders in the scheme and recover the costs thereof from the permit holder.

### **34. Powers in relation to use of land**

Where a permit holder has been negligent in the use of his or her land, the use of irrigation water or the cultivation of his crops, the scheme management committee may—

- (a) direct him to take such steps as the scheme management committee may specify to remedy the effects of such negligence; or
- (b) take such measures as it considers necessary to safeguard the crop and to preserve the holding and irrigation water where a permit holder contravenes its directions and recover the costs of any such measures from the permit holder.

### **35. Land user permit**

(1) A person seeking to reside, occupy or carry out irrigation or related business in any part of a national scheme, public scheme or county public scheme meant for settlement

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shall apply for a land user permit from the Authority or County Irrigation Development Unit, as the case may be.

(2) Where a person resides, carries out irrigation or related business or occupies an existing national scheme or public scheme, the tenant holding a licence shall be issued with a permit to occupy the land.

(3) The holder of a permit issued under this regulation shall be a *bona fide* member of the registered association of the irrigation scheme.

(4) Every permit issued under this regulation shall be—

- (a) in the Form 4E set out in the Fourth Schedule;
- (b) prepared in duplicate with the original issued to the permit holder and the duplicate retained by the Authority or County Irrigation Development Unit.

### 36. Conditions for grant of a permit

(1) Prior to issuing a permit under regulation 34, the Authority or County Irrigation Development Unit shall—

- (a) cause these Regulations to be read and explained to the applicant in a language which the applicant understands;
- (b) give the applicant a copy of these Regulations; and
- (c) obtain from the applicant, in Form 4F set out in the Fourth schedule, an acknowledgement that the applicant understands these Regulations and undertakes to observe them.

(2) A permit shall be granted subject to the following conditions on the permit holder—

- (a) devoting his time and attention to the cultivation and improvement of his holding;
- (b) not allowing, without the written permission of the Authority or County Irrigation Development Unit, any other person to occupy his holding or to cultivate it on his behalf;
- (c) maintaining the boundaries of his holding in a manner satisfactory to the Authority or County Irrigation Development Unit;
- (d) maintaining, at all times, his holding and all water distribution, application and drainage infrastructure to the satisfaction of the Authority or County Irrigation Development Unit;
- (e) participating to the satisfaction of the Authority or County Irrigation Development Unit, in maintenance of the irrigation system on or serving his holding;
- (f) cultivating his holding to the satisfaction of, and in accordance with the irrigation schedule laid down by the Authority or County Irrigation Development Unit in consultation with the responsible association;
- (g) complying with all instructions given by the Authority or County Irrigation Development Unit relating to the cultivation and irrigation of his holding; and
- (h) upholding good agricultural practices on his holding.

### 37. Successor of a permit holder

(1) A permit holder may, within reasonable time of being granted a permit and in writing to the Authority or County Irrigation Development Unit, nominate another person to succeed him as permit holder in the event of his death.

(2) A person shall not be nominated as a successor of a permit holder under paragraph (1) unless—

- (a) the person has attained the age of eighteen years and if he has not attained that age, his guardian may, within one month of the permit holder's death and with approval of the Authority or County Irrigation Development Unit, appoint a person to act on his behalf until the successor is of age; and

- (b) the permit holder obtains the approval of the scheme management committee.

(3) A permit holder may, at any time and in writing to the Authority or County Irrigation Development Unit, revoke or alter the nomination issued under this regulation.

(4) Where a permit holder dies without nominating a successor in accordance with paragraph (1), the authorised dependant shall, within one month of the death of the permit holder and in writing to the Authority or County Irrigation Development Unit, nominate a successor who must be approved by the scheme management committee.

(5) Within thirty days of the death of a permit holder, an authorised dependant of the deceased permit holder may appeal to the Court against the nomination of a successor under paragraph (4).

(6) Where an appeal under paragraph (5) is successful, the authorised dependant shall, within one month of the determination of the appeal, nominate a successor in writing to the Authority or County Irrigation Development Unit.

(7) Where—

- (a) no successor is appointed within the time specified under this regulation;
- (b) the person nominated or appointed under this regulation rejects the nomination or appointment;
- (c) the nominated or appointed person fails to assume the responsibilities inherent in such nomination or appointment within a period of three months from the death of the permit holder; or
- (d) the nominated successor is not acceptable to the scheme management committee, the holding shall be deemed to be vacated.

(8) Where a holding is vacated under paragraph (7)—

- (a) the permit in respect of such holding shall be revoked, and a fresh permit may be granted;
- (b) the Authority or the County Irrigation Development Unit may make provision for the cultivation of any such holding and where appropriate recover the costs from the incoming permit holder; and
- (c) reasonable compensation may be paid to the authorised dependant of a permit holder in respect of any improvement to the holding effected by the permit holder.

### **38. Register of permits**

(1) The Authority or the County Irrigation Development Unit shall maintain a register of all permits issued under these Regulations.

(2) The Register maintained under paragraph (1) shall specify the particulars of—

- (a) every permit holder, the number of his holding and the name of the authorised dependant; and
- (b) any successor nominated by the permit holder pursuant to regulation 36(1) and the number of the holding in respect of which the successor has been nominated.

### **39. Validity and renewal of a permit**

(1) The validity period of permit issued under these Regulations shall be—

- (a) perpetual for permit holders under settlement schemes; and
- (b) as per the contract for permit holders under lease agreement.

(2) Subject to regulation 35, every permit may be renewed based on the defined validity period.

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#### **40. Revocation of a permit**

(1) Before revoking a permit, the Authority or County Irrigation Development Unit shall serve a written notice on the permit holder requiring him to—

- (a) comply with the condition or obligation within a reasonable period of time; or
- (b) show cause, within the period specified in the notice, why the permit should not be revoked.

(2) A permit may be revoked where—

- (a) a permit holder—
  - (i) is imprisoned for a term exceeding six months; or
  - (ii) gives a six months' written notice of his intention to surrender his permit;
  - (iii) fails to comply or show cause as required under paragraph (1);
- (b) a holding is vacated pursuant to regulation 36(7).

(3) Where a permit is revoked due to imprisonment of the permit holder under paragraph (1)(a)(i), a successor may be nominated or appointed in accordance with regulation 36.

(4) A person who is dissatisfied with the revocation of a permit under this regulation may appeal, in writing, to the Cabinet Secretary or the respective County Executive Committee Member, as the case may be.

#### **41. Procedure upon revocation of a permit**

(1) Where a permit is revoked under these Regulations, the scheme management committee shall constitute an ad-hoc sub-committee consisting of a representative of the Authority or County Irrigation Development Unit and one representative of both the outgoing and the incoming permit holder.

(2) The ad-hoc sub-committee constituted under paragraph (1) shall assess the amount, if any, due to the outgoing permit holder or his authorised dependant in respect of capital and labour expended by him in improving the holding.

(3) The Authority or County Irrigation Development Unit shall make arrangements for the payment of the amount assessed under paragraph (2) by the incoming permit holder within such time as the Authority or County Irrigation Development Unit considers reasonable.

#### **42. Service fee**

(1) A permit holder shall pay to the Authority or County Irrigation Development Unit through the association, an irrigation service fee in respect of irrigation services on his holding.

(2) The fee charged under this regulation shall be at the rate determined by the Authority or County Irrigation Development Unit and approved by the Cabinet Secretary or County Executive Committee Member, as the case may be, from time to time.

(3) The fee under this regulation may be varied by the Cabinet Secretary or County Executive Member responsible for irrigation in consultation with county governments and other relevant stakeholders.

#### **43. Access pass**

(1) A person shall not drive a motor vehicle over any road, other than a public road, within a public scheme unless he possesses a valid access pass issued by the Authority or County Irrigation Development Unit.

(2) A person who fails to comply with any condition of the access pass issued under this regulation commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding one month, or to both.

**44. Housing within a scheme**

(1) The Authority or County Irrigation Development Unit may, where applicable, allocate to a permit holder a house to be occupied by him within the designated area in the scheme, or may authorise a permit holder to erect his own house.

(2) A permit holder shall maintain his house and precincts to the satisfaction of the Authority or County Irrigation Development Unit and relevant agencies.

(3) A permit holder shall not construct any building or undertake any other works of on his holding or elsewhere in the scheme without the prior written consent of the Authority or County Irrigation Development Unit.

(4) Any person who erects a structure or building without the written consent of the Authority or County Irrigation Development Unit commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

**45. Control of livestock**

A permit holder shall not allow any of his livestock on any Part of the scheme which is closed to livestock or to cause damage to any crops, water installations, communications or other property.

**46. Emergency situations**

In the event of an emergency, the Authority or County Irrigation Development Unit, in consultation with the association, may order all permit holders to undertake emergency repair work in any part of the scheme.

**47. Management by associations**

(1) The management of a scheme by an association shall apply to community-based smallholder schemes and public schemes meant for settlement except where the schemes are owned and managed by individual farmers.

(2) Where an association has inadequate capacity to manage the major works of the irrigation infrastructure, such services may be provided by the Authority, County Irrigation Development Unit or other entity under agency contract as an irrigation water service provider.

(3) Pursuant to section 8(1)(c) of the Act, the modalities for agency contracts shall include the following—

- (a) third party beneficiary contract;
- (b) express contract; and
- (c) best effort contract.

(4) An agency contracted under paragraph (3) shall comply with the provision of regulation 76, 77, 78, 79 and 80.

**48. Functions of an association in management**

The functions of the association relating to management of a scheme shall include the following—

- (a) manage an irrigation scheme wholly or partly in its service area and provide irrigation services equitably and timely to members of the association;
- (b) maintain, renovate and improve the irrigation scheme within its service area and to undertake construction and reconstruction works;
- (c) take appropriate measures to combat erosion, salinity, siltation and pollution encroachment;
- (d) make internal rules for the use of irrigation water and collect fees from its members for the services provided;
- (e) procure, maintain and operate irrigation equipment; and

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- (f) develop an irrigation schedule informed by agricultural enterprise plan.

#### **49. Formation of an association**

(1) Pursuant to section 20 (1) of the Act, the residents of a catchment area who are crop farmers, livestock producers, fish pond users, small industry entrepreneurs or otherwise use water for irrigation purposes serviced by a public or community-based smallholder irrigation scheme may form an association which covers an entire scheme or that specific service area.

(2) Without prejudice to paragraph (1), persons who qualify to form an association must

- (a) possess land or have access rights to land on the basis of land holding system; and
- (b) use the land with water supplied from a public or community-based smallholder irrigation scheme developed by the National government, a County Government, private or other entities.

(3) The procedure for formation of an association shall be as set out in Part A of the Seventh Schedule.

(4) Where the residents are unable or fail to establish an association within twelve months after the coming into force of these Regulations or after commencement of operation of an irrigation scheme, the supervising entity may compel the residents to form the association.

#### **50. Service area of an association**

(1) The service area of an association shall comprise of a distinct irrigation system with a defined area of land that can receive irrigation water through the system operated by that association.

(2) Each association shall operate within a defined service area.

(3) The service area of an association shall not overlap with the service area of another association.

#### **51. Name of association**

(1) Each association shall have a name and the phrase "irrigation water users' association" shall be included in the name of the association.

(2) The name of every association shall be written boldly and be placed where the association conducts its activities.

(3) The name of an association shall be written or stamped on every notice, letter or document signed on behalf of that association.

#### **52. Legal personality and liability**

(1) An association formed in accordance with these Regulations shall be duly registered as a legal entity under the Societies Act Cap. 108.

(2) An association formed in accordance with the Societies Act, Cap. 108 or the Cooperative Societies Act, Act No. 12 of 1997 prior to the coming into force of these Regulations, shall be recognised as an association under these Regulations.

(3) Any existing group of farmers owning or managing an irrigation scheme, but registered as a "self-help group" shall register the group as an association in accordance with this regulation.

#### **53. Membership of an association**

(1) A person who has the user rights over land which is located within the service area of an association in accordance with the appropriate land holding system shall qualify to be a member of the association.

(2) A person who acquires user rights over land located within the service area of an association by succession or any other legal means shall become a member of that

association upon payment of any outstanding contributions and fees due to the association from the previous user of that land.

(3) The rights and duties of a member of an association shall—

- (a) be inseparable from the parcel of land located within the service area of an association;
- (b) be transferred with the plots; and
- (c) cease to exist where a plot ceases to lie within the service area as a result of an amendment to the service area of that association.

(4) A person who leases out land located within the service area of an association shall continue to be a member of that association but the lessee shall—

- (a) comply with the by-laws; and
- (b) be responsible for paying the irrigation service fee.

#### **54. Management bodies of an association**

(1) The management bodies of an association shall be—

- (a) the General Assembly;
- (b) the Executive Committee;
- (c) the irrigation water users' association management committee; and
- (d) the Dispute Resolution Committee.

(2) An association may provide for the establishment of other committees or special purpose sub-committee in its by-laws.

(3) The powers and duties of management bodies of an association shall be as specified in these Regulations and the by-laws.

#### **55. General Assembly**

(1) The General Assembly shall be the supreme organ of an association.

(2) The General Assembly shall consist of—

- (a) all members of the association; or
- (b) the representatives of the units as provided in the by-laws.

(3) The powers, duties and procedures of operation of the General Assembly shall be as specified in the by-laws.

#### **56. Association management committees**

(1) Every association shall constitute an association management committee elected in accordance with the by-laws.

(2) The association's management committee shall consist of not less than seven members including the chairperson, vice chairperson, secretary, assistant secretary and the treasurer.

(3) The term of office of the association management committee shall be as specified in the by-laws but the period shall not exceed three years.

(4) A member of the association management committee shall not be elected for more than two consecutive terms.

#### **57. By-laws of the association**

(1) Every association shall develop its by-laws which shall contain—

- (a) the name and address of the association;
- (b) the objects and functions of the association;
- (c) the service area of the association which shall be supported with a plan or map;
- (d) the requirements for membership of the association;

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- (e) the rights and duties of the members of the association;
- (f) the powers, responsibilities, and duties of the management bodies and any other employee of the association;
- (g) the procedures for calling and holding meetings of the General Assembly of the association;
- (h) conditions for the election, term of office, suspension and removal of elected officers and members of other bodies of the association;
- (i) provisions on the setting of fees, fines and penalties; and
- (j) conditions for the termination of the activities of the association.

(2) Any by-laws may be amended by a special resolution of two-thirds majority of the General Assembly at a meeting attended by at least seventy percent of the members.

(3) An amendment to by-laws shall be effective from the date it is approved and registered by the supervising entity, and filed with the entity conferring legal status.

(4) Every association shall comply with the Code of Conduct for officials and members set out in Part B of Seventh Schedule.

**58. Funds of an association**

(1) The funds of an association shall consist of—

- (a) the annual membership fee, dues and levies payable by members of that association;
- (b) the irrigation service charge for the association that consisting of the cost for the provision of service and the profit margin agreed upon by the members of the association;
- (c) gifts or grants;
- (d) loans;
- (e) interest on outstanding fees, due to the association;
- (f) interest on moneys deposited in a bank account opened by that association;
- (g) moneys that accrue to the association from investments made by the association;
- (h) the proceeds of fines or any other sanction imposed on members; and
- (i) payments for services provided by the association.

(2) The association's management committee shall be responsible for collection of the association funds in accordance with the by-laws.

**59. Application of funds**

(1) The funds of an association shall be used—

- (a) to cover the cost of operation and maintenance of the irrigation system and cleaning any drainage components;
- (b) to pay the service provider for the operation and maintenance of the irrigation system, where applicable;
- (c) to pay the salaries of the staff of the association and other administrative costs incurred by the association;
- (d) to maintain a capital replacement fund in accordance with regulation 59;
- (e) for loan repayment under cost-sharing arrangements where applicable; and
- (f) any other expenditure as may be approved by the General Assembly.

(2) Where a scheme is developed on cost-sharing or cost-recovery basis, a repayment schedule shall be prepared and each member levied a fee as contemplated in paragraph (1)(e).

**60. Capital replacement fund**

(1) Every association shall maintain a capital replacement fund for—



- (a) emergency repairs;
- (b) improvement or renovation of the irrigation and drainage system of the service area; and
- (c) replacing machinery and equipment.

(2) The capital replacement fund shall be maintained in an interest-yielding bank account or other acceptable account.

(3) The capital replacement fund shall be at least ten per cent of the association's annual budget.

(4) The association shall formulate by-laws to guide the management of the capital replacement fund.

### **61. Irrigation service fee**

(1) An association shall levy an irrigation service fee on each member in proportion to—

- (a) the volume of irrigation water used by that member; or
- (b) the size of the plot of land used by that member for irrigation purposes.

(2) The fee levied under paragraph (1) shall be used in accordance with regulation 58.

### **62. Support services**

(1) The supervising entity may provide support services to associations by—

- (a) providing training and create awareness on the establishment and operation of associations;
- (b) providing technical assistance and support to associations on water management, accounting, financial planning, irrigation techniques and practices, maintenance, social inclusivity and gender mainstreaming;
- (c) assisting in the formation of new associations in accordance with these Regulations;
- (d) establishing and maintaining a register of irrigation water users' associations; and
- (e) conducting legal and financial supervision in accordance with regulation 63.

(2) The legal and financial supervision under paragraph (1) (e) shall be limited to the activities of the association for which it is the supervising entity.

(3) The supervising entity may delegate any of the powers and duties specified in paragraph (1)(a), (b), and (d) to another appropriate entity.

### **63. Legal and financial supervision**

(1) The supervising entity shall inspect the records of an association where—

- (a) a written request is filed by half of the members of that association alleging mismanagement of or impropriety in the operations of the association; or
- (b) there is *prima facie* evidence of financial malpractice.

(2) Where the supervising entity finds evidence of financial malpractice or non-compliance with the provisions of these Regulations or the by-laws, the supervising entity shall—

- (a) require that association's management committee to call an extraordinary meeting of the General Assembly within thirty days of its findings;
- (b) present the findings to the members of the association during the meeting; and
- (c) guide the general assembly to take corrective measures in accordance with their by-laws.

(3) Where the association's management committee fails to call the extraordinary meeting of the General Assembly in accordance with paragraph (2), the supervising entity shall—

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- (a) call the extraordinary meeting;
- (b) present the findings of the investigation to the General assembly;
- (c) facilitate the removal of members of the association management committee involved in the malpractice; and
- (d) ensure the election of new members of the management committee at the meeting.

(4) Where the malpractices constitute a criminal offence, the supervising entity shall report to the relevant state agencies.

#### **64. Reporting by associations**

(1) Within ninety days after the end of each financial year, an association shall submit an annual report to the supervising entity.

(2) The report under paragraph (1) shall be in the approved format and accompanied by a copy of the audited accounts of the association.

(3) The financial year of an association shall be determined by the association and specified in the by-laws.

(4) The statement of assets and liabilities and the income and expenditure statement of the association shall be subject to approval by the General Assembly.

#### **65. Concurrence by supervising entity**

(1) An association shall seek the written concurrence of the supervising entity before that association—

- (a) amends its by-laws;
- (b) modifies the service area of an association;
- (c) forms an association of irrigation farmers; or
- (d) pledges or mortgages assets of that association.

(2) An association seeking concurrence under paragraph (1) shall submit a written request to the supervising entity.

(3) The supervising entity shall, within thirty days of receipt of the application under paragraph (2), determine the application and inform the applicant of its decision.

#### **66. Records of an association**

Every association shall maintain the following records—

- (a) a plan showing the service area of the association;
- (b) a register of fees paid and owed by members;
- (c) a register containing the minutes of the meetings of the General Assembly, association's management committee and other committees or sub-committees where applicable;
- (d) a record of all transactions and contracts entered into by the association;
- (e) an inventory of assets;
- (f) a register containing inspections, studies and surveys conducted on the irrigation system used by the association;
- (g) an operation and maintenance plan;
- (h) records of water supply and distribution;
- (i) a record of operation and maintenance activities;
- (j) complete and accurate books of accounts and financial documents; and
- (k) any other records specified in the by-laws of that association.

#### **67. Register of associations**

(1) The Cabinet Secretary shall maintain a Master Register of all associations registered under these Regulations and the Master Register shall be updated annually.

(2) Every County Executive Committee Member shall maintain a register of all associations within their respective county.

(3) The registers maintained under this regulation shall contain the following information

- (a) the name and address of the association;
- (b) the date of registration of the association;
- (c) the size and location of the service area of the association;
- (d) the number of members of the association;
- (e) the names, addresses, email and telephone numbers of the members of the association's management committee;
- (f) the inventory and condition of the irrigation system managed by the association; and
- (g) any other relevant information as the Cabinet Secretary may determine.

(4) All *bona fide* associations shall apply to the respective County Executive Committee Member for inclusion in the register established under paragraph (2) in the Form 4G set out in the Fourth Schedule.

(5) Upon enlisting into the register under paragraph (5), the respective County Executive Committee Member shall forward the inventory to the Cabinet Secretary for inclusion in the master register.

(6) Any person may, upon request in writing, access the register within office hours.

### **68. Dissolution of an association**

The General Assembly may, by two-thirds majority vote and upon approval of the supervising entity, dissolve their association on any of the following grounds—

- (a) the purpose for which the association was formed no longer exists;
- (b) the purpose for which the association was formed is no longer practically implementable; or
- (c) the existence of the association is no longer required.

### **69. Liquidation of an association**

(1) Where an association is dissolved under regulation 67, the supervising entity, in consultation with the association's management committee, shall appoint a licenced liquidator.

(2) A liquidator appointed under paragraph (1) shall—

- (a) receive records and documents in respect of the properties of the association and protect them from damage;
- (b) keep custody of the assets and properties of the association;
- (c) call on creditors of the association;
- (d) distribute the assets and properties of the association in accordance with the decision of the General Assembly approved by the supervising entity;
- (e) carry out the necessary activities of the association for the proper liquidation of the affairs of the association; and
- (f) represent the association in legal proceedings.

(3) These Regulations and the relevant by-laws shall continue to apply to each association and its members until liquidation proceedings are concluded.

(4) The remuneration of the liquidator shall be paid from the funds of the association.

### **70. De-registration of association**

(1) The supervising entity shall, upon conclusion of the liquidation process, notify the respective County Executive Committee Member to delete the name of the association from

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the register of associations maintained by that county and inform the Cabinet Secretary on the deletion.

(2) An association shall be deemed dissolved on the date the details of that association are all deleted from the Master Register.

### **71. Umbrella association**

(1) Where several distinct service areas managed by individual associations are served by or share common major irrigation infrastructure, the areas may establish an umbrella association.

(2) The establishment of an umbrella association shall be by a decision of the supervising entity or by a majority of members of the associations using irrigation water from the major irrigation infrastructure.

(3) The functions of an umbrella association shall include—

- (a) safeguarding common interests of the respective association;
- (b) administering the whole or part of the major irrigation infrastructure; and
- (c) supplying irrigation water to user associations.

(4) An association that receives water from the major irrigation infrastructure managed by an umbrella association shall be a member of that umbrella association.

(5) An umbrella association shall not—

- (a) supply irrigation water to a person other than a member of the association; or
- (b) undertake an activity within the service area of a member association except by the written permission of that association.

### **72. Name, powers and duties of an umbrella association**

(1) Every umbrella association shall have a unique name which shall consist of the name of the place that umbrella association manages or some other distinctive name followed by the words "umbrella irrigation water users' association".

(2) An umbrella association shall be responsible for—

- (a) managing, operating and maintaining a major irrigation system and undertake construction works so as to upgrade its operations;
- (b) issuing by-laws in respect of irrigation water allocation, consumption and collection of fees for the services provided to the member associations;
- (c) procuring, substituting, operating and maintaining irrigation infrastructure on behalf of the members of that umbrella association; and
- (d) supporting its members in capacity building activities.

(3) An umbrella associations within or operating in public national irrigation schemes meant for settlement shall undertake the activities under paragraph (2) in consultation with the supervising entity.

(4) The members of an umbrella association may provide in the by-laws of that umbrella association that—

- (a) each association may nominate a specified number of members of the association's management committee of that association to serve in the umbrella association; and
- (b) the members nominate under paragraph (4)(a) shall assume the functions of the General Assembly of the umbrella association.

(5) All umbrella associations shall be subject to the provisions of these Regulations.

### **73. Formation of association of irrigation farmers**

(1) An association of irrigation farmers may be constituted at the county level or the national level by the associations or umbrella associations.

(2) The membership of an association of irrigation farmers shall consist of—

- (a) the associations or umbrella association for associations at county level; or
  - (b) the respective county for associations at the national level.
- (3) The purposes of the association of irrigation farmers shall be to—
- (a) promote of good governance and management of irrigation schemes;
  - (b) capacity building of the respective irrigation water users' associations;
  - (c) participate in research, innovation and technology development;
  - (d) disseminate of irrigation research information; and
  - (e) participate in the formulation of irrigation standards.
- (4) An association shall seek prior approval of the General Assembly and consult with the relevant supervising entity before joining the association of irrigation farmers.
- (5) An association of irrigation farmers at county level or national level shall prepare by-laws to guide its membership and operations, and shall be registered as a society under the Societies Act Cap. 108.

#### **74. Transfer of management in public schemes**

(1) The supervising entity, in agreement with an association, may transfer the management and water use rights of the entire or part of the irrigation system in a national, public or strategic scheme meant for settlement to an association.

(2) A transfer under paragraph (1) shall only take place after both parties have conducted a joint inspection exercise.

(3) Notwithstanding paragraph (1), where the irrigation system lies within the service area of an association, the association may apply to the appropriate supervising entity to transfer to that association, for an indefinite period, the management and water user right of the part of the irrigation scheme.

(4) Where the service area of an association lies in the water supply point of a dam, weir, diversion structure, pump station, or any other type of infrastructure to which water is abstracted from a river, stream, reservoir, pond, or any other natural source, the management of that infrastructure may be transferred to that association.

(5) An irrigation management transfer agreement of an irrigation system shall contain—

- (a) the description of the condition of irrigation system to be transferred;
- (b) the rights, roles and responsibilities of the parties to the agreement in terms of the maintenance of the infrastructure;
- (c) the format for the irrigation management transfer agreement shall be in the form set out in Part A of the Eighth Schedule.

(6) The supervising entity shall ensure the protection and maintenance of the part of an irrigation system that has not been transferred to any association.

(7) Without prejudice to the foregoing, the irrigation management transfer process shall be carried out in accordance with Part B of the Eighth Schedule.

#### **75. User right certificate**

(1) Upon conclusion of the irrigation management transfer process, an association may apply to the supervising entity for a user right certificate in respect of a national, public or strategic scheme meant for settlement that lies within the service area of that association.

(2) The supervising entity shall, within thirty days of receipt of the application, determine the application and inform the applicant of the decision made.

(3) Where the supervising entity approves the application, it shall issue to the applicant a user right certificate in Form 4H set out in the Fourth Schedule.

(4) A user right certificate issued under paragraph (3) shall—

- (a) contain a description of the irrigation system; and
- (b) establish the rights and obligations of that association including acquisition of a water permit and other statutory requirements.

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**76. Obligation relating to information on transferred irrigation system**

(1) An association shall provide to the supervising entity current information relating to the maintenance and condition of a transferred irrigation system.

(2) A duly authorised officer of the supervising entity may enter into the service area of an association and inspect the condition of the irrigation system transferred to that association.

(3) The authorised officer of the supervising entity may, after the inspection, require the association to undertake specified works, where necessary to—

- (a) prevent damage to the irrigation system in order to ensure the quality of irrigation water supplied; or
- (b) prevent damage to government or third party property due to the usage of the irrigation system.

(4) Where an association fails to comply with a directive given under paragraph (3), that association shall be subject to the appropriate sanctions specified on the agreement.

(5) Where an association fails to successfully carry out the management of the transferred responsibilities, the Authority or County Irrigation Development Unit, as the case may be, shall terminate the transfer agreement and cause the withdrawal of user rights.

(6) The supervising entity shall assume the management responsibilities in the interim, and thereafter take necessary steps for remedial action within a period not exceeding six months.

**77. Irrigation water service provision**

(1) An association may provide irrigation water services or, with the approval of the General Assembly, contract other entities to provide the services.

(2) A water service provider responsible for the operation and maintenance of the main irrigation system of an association shall provide that association with irrigation water and other related services where the water supply point of the service area of the association is—

- (a) a gate, a turnout, a pumping station; or
- (b) any other infrastructure on the main irrigation system that is not managed by the association or umbrella association as the case may be.

(3) The conditions to be satisfied by a public agency or a licensed private entity established in respect of the supply of irrigation water and any other related services to an association shall be as specified under Part C set out in the Third Schedule.

(4) A service provider shall provide irrigation water and any other related services referred to in paragraph (2) to an association on the basis of a service agreement signed with the association.

**78. Irrigation water service agreement**

(1) An irrigation water service agreement shall be valid for at least five years except where the association requests for a shorter period of service agreement.

(2) Where an association requests for a shorter period under paragraph (1), the term of irrigation water service agreement shall be at least three years.

(3) An irrigation water service agreement shall be made in the form set out in Part C of the Eighth Schedule and include—

- (a) information on the water supply point;
- (b) the season of the year in which irrigation water is to be supplied;
- (c) the procedure for requesting water supply during irrigation season;
- (d) the maximum volume of water the association requires during each irrigation season in accordance with a monthly schedule subject to any restriction on the service provider to supply the water by any appropriate body;
- (e) measures to be taken to reduce water wastage, pollution and salinity;
- (f) charges and payment conditions;

- (g) liabilities and limitations on the use of water;
- (h) penalties for non-compliance with the conditions of the contract; and
- (i) any other condition necessary to promote the effective use of water or to implement any legal provisions of the service provider concerning the provision of water as stipulated in the relevant enactment.

#### **79. Variation of irrigation water service agreement**

(1) An irrigation water service agreement may be varied or amended with the consent of the association and the concerned service provider.

(2) An irrigation water service provider shall not suspend the supply of water or any other service under a service agreement except where that association delays in payment of any outstanding charges for more than ninety days.

(3) An irrigation water service agreement concluded in accordance with these Regulations may be terminated—

- (a) where one of the parties persistently fails to comply with the terms of the agreement; or
- (b) on the dissolution of the association.

#### **80. Liability of an irrigation water service provider**

(1) An association or irrigation water service provider that fails to supply water to a service area—

- (a) in the agreed quantity; or
- (b) in accordance with a time schedule stipulated in the irrigation water service agreement,

is liable to pay to that association a compensation equitable to the damage suffered by the association.

(2) A member of an association who has suffered a loss as a result of the inability of the service provider to provide irrigation water to that association is deemed to be a party to the contract for the purpose of calculating the amount of compensation to be claimed from the service provider.

(3) For purposes of paragraphs (1) and (2), the supervising entity is responsible for assessing the damage or loss suffered by the association or a member of the association.

(4) A service provider shall not pay compensation in cases of *force majeure*.

#### **81. Determination of irrigation water use and other service charges**

(1) The amount of irrigation service charge payable by an association to a member or an association to an irrigation water service provider for the supply of water, shall be determined in a transparent manner and through an agreement between the association, the service provider and the supervising entity.

(2) The costs of a service provider shall be determined by the service provider in consultation with the supervising entity.

(3) In determining the amount of irrigation service fee chargeable to association members, the following shall be taken into account—

- (a) the costs of the service provider;
- (b) the costs of the association in the provision of irrigation services;
- (c) the water use charges;
- (d) provisions for the capital replacement fund; and
- (e) loan repayment in cost-sharing arrangements where applicable.

(4) The costs of the association in the provision of irrigation services shall be determined by the association in consultation with the members of the association and approved by the General assembly.

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## **82. Relationship with public administration**

(1) Subject to the prevailing statutory obligations of an association, a ministry, department or agency of the national government or a County Government shall not—

- (a) interfere in the formation of an association; or
- (b) obstruct an association in performance of its functions.

(2) Despite paragraph (1), the management committee of an association may, in writing, request for support from a national government Ministry or agency and a County Government for the operation of the association.

(3) Where an association requests for support under paragraph (2), the entity providing support shall respect the autonomy of the association while providing that support.

(4) Where the service area of an association transcends regions, counties or other administrative levels due to the natural flow of a river, each county or other administrative level shall assign committee members to appraise the local administrator concerned on the affairs of that association.

## **83. Dispute resolution**

(1) Any complaint arising out of irrigation and scheme development, management, water allocations and delivery, financing, operation and maintenance and any other justifiable cause shall be lodged at the irrigation unit level in the first instance.

(2) The irrigation unit leadership shall determine the dispute within thirty days of receiving the complaint.

(3) Where the dispute is not resolved or the complainant is dissatisfied by the decision of the unit leadership, the matter shall be referred to a Dispute Resolution Committee.

## **84. Dispute Resolution Committee**

(1) Every association shall establish a Dispute Resolution Committee consisting of not less than three and not more than five members of the association who are persons of high reputation, integrity and have the requisite competence.

(2) The General Assembly of an association shall elect members of the Dispute Resolution Committee for that association.

(3) A member of a Dispute Resolution Committee shall hold office for a period of three years and shall be eligible for re-election for one further term.

(4) A member of a Dispute Resolution Committee shall not be elected for more than two consecutive terms.

(5) The members of a Dispute Resolution Committee shall elect one of their members as chairperson, who shall preside over the proceedings of the committee.

(6) The Dispute Resolution Committee may invite not more than two members of the community or society of high moral standing to assist in its deliberations.

## **85. Duties of Dispute Resolution Committee**

(1) A Dispute Resolution Committee shall hear and determine—

- (a) disputes relating to water use and distribution of water between members of the association;
- (b) disputes relating to the determination and payment of an irrigation service charge;
- (c) matters relating to contravention of the by-laws of an association;
- (d) matters relating to non-observance of the watering schedule of an association; and
- (e) appeals lodged against the administrative decisions of the association management committee.

(2) Any appeals from the irrigation unit level shall be lodged at the Dispute Resolution Committee within fourteen days from the date of determination.



(3) A Dispute Resolution Committee shall, upon receiving a written or oral complaint on the grounds specified under paragraph (1)—

- (a) promptly conduct investigations into the complaint;
- (b) in cases where the allegation is lodged in writing, issue a summons on the respondent to respond to the allegations and appear before the Committee for the hearing; and
- (c) hear both parties, examine their evidence and undertake a site inspection where necessary.

(4) A Dispute Resolution Committee shall—

- (a) hear the matter within fourteen days of receipt of a complaint; and
- (b) inform the parties of the decision made on the matter not more than seven days after the hearing.

## 86. Execution

A determination made by the Dispute Resolution Committee under these Regulations shall be considered as the decision of a judicial body and shall be executed unless reversed on appeal.

## 87. Appeals

(1) In case of disputes on an irrigation scheme, a dissatisfied party may appeal to the relevant supervising entity.

(2) In case of disputes within public or national irrigation schemes meant for settlement, dissatisfied party may appeal to the scheme management committee.

(3) Where a person is dissatisfied with the decision of the Dispute Resolution Committee and the scheme management committee as the case may be, the person shall exhaust the procedures specified in these Regulations before resorting to court of law.

## PART V – IRRIGATION STANDARDS AND QUALITY CONTROL

## 88. Irrigation quality standards

Any person who intends to undertake irrigation development shall adhere to the quality standards for water, infrastructure, on-farm water management and discharge of water from schemes as set out in these Regulations.

## 89. Irrigation water quality standards

(1) Any water for irrigation purposes shall meet the applicable quality standards set out in Part A and Part B of the Second Schedule.

(2) Residual irrigation water attached to vegetables and fruits at the time of harvest shall comply with domestic water quality limits set out in Part C of the Second Schedule.

(3) For public lawns with which the public may come into direct contact, irrigation water shall have less than or equal to two hundred faecal coliforms per one hundred milliliters, as set out in Part A of the Second Schedule.

(4) The irrigation water quality for unrestricted irrigation shall have less than or equal to one thousand faecal coliforms per one hundred milliliters as set out in Part A of the Second Schedule.

(5) Any person or entity using water for irrigation shall carry out water quality testing in accredited laboratories upon direction by supervising entity or other agency.

(6) Any person or entity using water for irrigation that does not meet the standards set out under these Regulations commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

## 90. Discharge of water from schemes

(1) All discharge of water from irrigation schemes shall meet the quality standards as set out in Part A of the Second Schedule.

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(2) Pursuant to paragraph (1), a person or entity discharging water from irrigation schemes shall ensure that—

- (a) ground water is not polluted through unprotected wells, by ensuring that unused wells are sealed by removing pumps, piping and debris, and filling the hole with slurry of cement or bentonite chips;
- (b) surface water is not polluted for adequacy protection of aquatic life and other ecosystem services.

(3) Any person or entity discharging water from an irrigation scheme that does not meet the water quality standards provided under these Regulations commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

### **91. Irrigation infrastructure standards**

(1) Irrigation infrastructure which includes components for water harvesting and storage structures, abstraction, conveyance, distribution, on-farm application and drainage shall meet the standards set out in these Regulations and other applicable laws.

(2) The irrigation infrastructure standards for water harvesting and storage structures, applicable under these Regulations shall be based on the Practice Manual for Small Dams, Pans and Other Water Conservation Structures in Kenya, 2015, and other applicable laws.

(3) The design criteria shall observe the guidelines as provided in the National Construction Authority Facilities design Criteria Guidelines of 2016 on irrigation development.

(4) A person who erects or installs any component of an irrigation system shall—

- (a) ensure that it is erected or installed in a manner that makes it efficient, safe and not a risk to the safety and health of persons, livestock, wildlife and the environment; and
- (b) maintain the irrigation infrastructure through observance of safe work procedures in line with the Occupational Safety and Health Act (Cap. 236A).

(5) The safe work procedures anticipated under paragraph (1) include—

- (a) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (b) informing all persons employed of—
  - (i) any risks from new technologies; and
  - (ii) imminent danger; and
- (c) ensuring that every irrigation farmer participates in the application and review of safety and health measures.

### **92. Schemes near wildlife conservation areas**

Where irrigation is undertaken within or near a wildlife conservation area, the person or entity undertaking irrigation shall put in place the necessary measures to use the scheme and conserve, protect and manage the wildlife conservation area in accordance with the Wildlife Conservation and Management Act No. 47 of 2013.

### **93. Safety and maintenance of irrigation infrastructure**

(1) Every irrigation farmer shall report to the association's management committee or the supervising entity any situation which he reasonably believe presents an imminent or serious danger to the safety or health of that farmer or other farmers in the same scheme.

(2) A person who, by virtue of a permit, licence or otherwise, has an obligation in relation to irrigation infrastructure within a scheme shall—

- (a) conduct maintenance or repair; and
- (b) prevent risks to safety and health that may arise from the use of any machinery or substance in the scheme.

(3) A person who designs, manufactures, imports or supplies any Article for use in an irrigation scheme shall ensure—

- (a) ensure that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) carry out, or arrange for the carrying out of such testing and examination as may be necessary to ensure that the article is safe and without risk to health when properly used;
- (c) take such necessary steps to ensure that there is available, in connection with the use of the article at the scheme, adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that, when put to that use, it shall be safe and without risks to health.

(4) A person who designs or manufactures any article for use at work shall undertake the necessary research to identify, eliminate or minimize any risks to safety or health to which the design or article may give rise.

(5) Without prejudice to the foregoing, a person may not repeat any undertaken test, examination or research in so far as it is reasonable for him to rely on the results thereof for the purposes of this regulation.

#### **94. Water harvesting and storage for irrigation**

(1) A person who constructs a water harvesting and storage structure for irrigation shall comply with the standards set by the Water Harvesting and Storage Authority.

(2) The ancillary structures needed for a particular scheme shall be site specific as specified in the Practice Manual for Small Dams, Pans and Other Water Conservation Structures in Kenya, 2015.

#### **95. Erection and construction of irrigation infrastructure**

The erection and construction of irrigation infrastructure shall comply with the approved list of standards set out by the Kenya Bureau of Standards of 5<sup>th</sup> April, 2018 including—

- (a) KS IEC 61557-2:2007 Kenya Standard on Electrical safety in low voltage distribution systems up to 1000 V A.C. and 1500 V D.C. — Equipment for testing, measuring or monitoring of protective measures Part 2: Insulation resistance, Second Edition;
- (b) KS ISO 7749-1:1995 Kenya Standard on Agricultural irrigation equipment — Rotating sprinklers Part 1: Design and operational requirements, First Edition; and
- (c) KS 1555-4:2018 Kenya Standard — Gully tops and manhole tops for vehicular and pedestrian areas Part 4: Gully tops and manhole tops made of steel reinforced concrete, First Edition.

#### **96. Standards for irrigation firms and professionals**

(1) Any firm or professional qualified for purposes of undertaking irrigation development shall be registered and licensed by the relevant professional bodies and enlisted by the Cabinet Secretary in the register of enlisted firms and professionals.

(2) The register maintained under paragraph (1) shall be published on the Ministry's website.

(3) The categories of qualified firms and professionals for purposes of undertaking irrigation development shall be as set out in Part A - of the Third Schedule.

(4) The conditions for enlisting with the Cabinet Secretary and information required for the same may change from time to time.

(5) A firm or professional may be delisted by the Cabinet Secretary upon recommendation by a relevant professional body or a technical advisory committee.

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**97. Establishment and role of a technical advisory committee**

(1) The Cabinet Secretary may establish a technical advisory committee for the purpose of enlisting and determination of all matters regarding the quality of works or services carried out by the qualified professionals, firms and contractors under these Regulations.

(2) The technical advisory committee shall comprise of—

- (a) the Principal Secretary responsible for matters relating to irrigation, who shall be the chairperson; and
- (b) not more than eight other technical persons appointed by the Cabinet Secretary.

(3) A decision on the application for enlisting of qualified professionals, firms and contractors under these Regulations shall be—

- (a) made on the recommendation of the Technical Advisory Committee; and
- (b) communicated to the concerned party within fourteen days from the date of the decision.

**98. Enlisting of professional irrigation service providers**

A person may apply for enlisting as a qualified professional or service provider upon meeting the following conditions—

- (a) has a degree or a diploma from any recognized university;
- (b) at least five year's practical experience in a profession or discipline relevant to irrigation services; and
- (c) be a registered member of the respective professional body where the relevant profession is governed by a professional body.

**99. Enlisting of foreign irrigation service providers**

(1) Every foreign qualified professional, firms or contractors seeking to provide a service or engaged by an entity to carry out any works shall apply for a permit from the National Construction Authority and then be enlisted by the Cabinet Secretary before undertaking their works.

(2) Upon enlisting under paragraph (1), the foreign qualified professionals, firms or contractors shall be deemed as a qualified professional, firms or contractor for purposes of its operations under the Act and these Regulations.

(3) Upon completion of the service or works, the Cabinet Secretary shall delist the foreign professional, firms or contractors.

(4) Where a complaint is made in respect of foreign qualified professionals, firms or contractors, the Cabinet Secretary may immediately suspend the registration and enlisting of such foreign professional, firm or foreign contractor from performing any tasks in Kenya pending the making of a final determination.

**100. Application for enlisting as irrigation service provider**

(1) A person who offers or proposes to provide professional services relating to irrigation shall apply to the Cabinet Secretary for enlisting in the Form 4B in the Fourth Schedule.

(2) The conditions for enlisting under paragraph (1) and information required for registration may change from time to time.

(3) Upon receipt of an application under this regulation, the Cabinet Secretary shall require the attendance before the technical advisory committee of the applicant, to validate the evidence provided with the application.

(4) In case of firms or contractors, the Cabinet Secretary shall require the firm or contractor to provide evidence of qualified professionals in their employment.

(5) If, on the basis of the recommendations of the Technical Advisory Committee, the Cabinet Secretary is satisfied that the applicant is qualified to be enlisted, a certificate of

recognition shall be issued in Form 41 set out in the Fourth Schedule for such period and on such conditions, as it may deem desirable.

(6) The list of enlisted professionals shall be available to any person during office hours upon request in writing.

### **101. Standards for on-farm water management**

(1) A person who undertakes irrigation shall practice good on-farm water management under sustainable economic and environmentally sound conditions as per these Regulations and other relevant laws.

(2) Pursuant to paragraph (1), the person planning and managing the farm activities shall take into account the following—

- (a) availability and quality of water resources, crop and soil type and based on these, plan water harvesting and storage units if necessary;
- (b) potential pollutants including but not limited to nutrient and pesticide management, soil erosion, animal feeding operations, grazing management and irrigation water management;
- (c) soil moisture conserving technologies to enhance water saving, minimise the delivery and transport of agriculturally derived pollutants, control diffuse pollution, minimise pollutants, slow the transport or delivery of pollutants;
- (d) reduction of soil erosion to prevent surface water pollution and improve water infiltration by ploughing along contours, use of conservational tillage where appropriate, blocking runoff pathways and establishing infield grass strips;
- (e) use of best available technologies or new innovative ideas that optimise water use including new ideas, technologies, methodologies, crop plan and processes;
- (f) consider any conflicting water use demands and the communities' dependency on water resources and or conservation requirements that may exist in the area;
- (g) assess the impact of the water use by local communities;
- (h) protection of water quality by—
  - (i) avoiding runoff and careful use of effluents;
  - (ii) repair damaged guttering and check for leaks;
  - (iii) consider installing reed beds for dealing with lightly contaminated yard runoff;
  - (iv) ensure any effluent from silage clamps is collected, stored and spread in an appropriate way;
  - (v) separate clean and dirty water, recycle the clean water or divert to ditch, on-farm water reservoir or watercourse; and
- (i) adoption of salinity management guidelines and practices, which include irrigation water quality testing, soil salinity assessment and undertake consequent corrective salinity leaching and amendment.

(3) A person planning and managing farm activities shall ensure that runoff liquid from manure yards should be contained where there is risk of water pollution.

### **102. Capacity building**

A person or entity managing an irrigation scheme shall ensure that their employees and workers are trained on a continuous basis to—

- (a) increase awareness on efficient water use and management;
- (b) conserve and not to pollute water courses during their duties;
- (c) operate and optimize irrigation system performance;
- (d) understand any conflicting water use demands; and

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- (e) apply good agricultural practices.

### **103. Irrigation water scheduling**

(1) The scheme management shall adopt irrigation water based on crop type and stage of growth, soil types, drainage, prevailing climatic conditions and other factors to ensure the irrigation system is operated as designed.

(2) Pursuant to paragraph (1), before adopting any irrigation, an assessment of the relevant factors shall be carried out before commissioning of the irrigation scheme or upon change of crop type.

### **104. Guidelines for maintenance of irrigation infrastructure**

(1) A person or entity that who undertakes irrigation shall maintain and upgrade infrastructure to improve the performance of in-field application systems, check constantly the condition of the irrigation system, pumps, mains and hydrants periodically and repair worn items such as seals.

(2) Pursuant to paragraph (1), the irrigation system components for in-field water application shall be continuously and routinely assessed to—

- (a) ensure irrigation uniformity;
- (b) check of sprinkler heads for wear or drip lines for blockages;
- (c) check the system's operating pressures and the differential pressure across any filtration system and the system's flow rates; and
- (d) ensure the pump is operating at its optimum performance.

(3) In order to prevent and reduce water losses, the following activities or measures shall be undertaken—

- (a) insulating pipes properly;
- (b) covering all exposed pipe work within seven hundred and fifty millimeters of ground level;
- (c) ensure all hoses, hand lances and washing equipment have trigger controls;
- (d) have appropriate maps or plans of water pipes and structures to avoid damage and water loss.
- (e) position of pipes, fittings and type of material should be noted and clearly marked on the ground surface;
- (f) check taps, drinkers, troughs and nozzles for leaks as part of a regular six-month audit;
- (g) replace washers when necessary;
- (h) install a control valve to reduce pressure in the system;
- (i) maps of yard structures should be available in the event of a pollution incident to control the runoff water;
- (j) review water use quarterly and check out for any increase in use that may indicate leaks; and
- (k) conduct a water-use inventory to manage and optimize water use in farm.

### **105. Use of agro and non-agrochemicals in irrigation schemes**

Any person or entity undertaking irrigation shall adhere to the following requirements—

- (a) use only agro-chemicals permitted under the relevant legislation;
- (b) handle and manage agro-chemicals in a way not to contaminate irrigation water, soil or related environment; and
- (c) handle, store and dispose non-agrochemicals in a manner to avoid any risks to food safety and the environment.

## PART VI – IRRIGATION RESEARCH, INNOVATION AND TRAINING

**106. Role of irrigation research, innovation and training**

(1) Pursuant to section 18 of the Act, the purpose of irrigation research, innovation and training includes—

- (a) generating and validating appropriate irrigation technologies and innovations;
- (b) harmonizing and domestication of quality standards for irrigation infrastructure, irrigation water and on-farm water management; and
- (c) building capacity of technical staff, irrigation farmers, irrigation water users associations, irrigation service providers and other irrigation sub-sector stakeholders.

(2) Pursuant to paragraph (1) all irrigation research, innovation and training shall adopt the following criteria—

- (a) ensure efficiency and sustainability of the irrigation sector;
- (b) ensure environmental safety;
- (c) address a felt need in the irrigation sector;
- (d) should be cost-effective and ensure returns on investment; and
- (e) impart appropriate irrigation skills, knowledge and attitude to ensure use of efficient technologies and compliance to quality standards and practices.

(3) All technologies and innovations in irrigation shall be registered by the Cabinet Secretary and in accordance with the Industrial Property Act (Cap. 509) before they are allowed to be used in the country.

(4) Without prejudice to paragraph (3), the Cabinet Secretary shall maintain a register of irrigation technologies and innovations.

(5) A request for registration of a new technology or innovation shall be accompanied by technical specifications including drawings and any other evidence, where applicable.

(6) Any person or entity that introduces new irrigation technologies or innovations for mass consumption or commercial purposes without registering them with the Cabinet Secretary commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

**107. Administrative measures by the Cabinet Secretary**

Pursuant to section 18(1) of the Act, the Cabinet Secretary may take the following administrative measures to facilitate research, innovation and training—

- (a) establish facilities, projects and programs on irrigation research, innovation and training;
- (b) collaborate with relevant stakeholders in conducting irrigation research and training;
- (c) participate in curriculum development for irrigation and drainage courses;
- (d) promote information sharing with relevant stakeholders on new and emerging technologies within the irrigation sub-sector; or
- (e) develop a catalogue of new technologies within the irrigation sub-sector for information purpose.

## PART VII – FINANCING OF IRRIGATION DEVELOPMENT

**108. Financing irrigation development**

(1) Any individual, entity or agency undertaking or intending to undertake development of an irrigation scheme may source funds through an appropriate modality including the following—

- (a) private investments;
- (b) financial institutions;

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- (c) loans and grants from government and development partners;
- (d) public-private partnerships;
- (e) cost-sharing; and
- (f) cost-recovery.

(2) All agreements for financing irrigation development using public funds shall be approved by the Cabinet Secretary or the Governor, as applicable, with concurrence of the National Treasury.

#### **109. Financing irrigation development using public funds**

(1) The Authority and county governments shall ensure return on investment when using public funds as envisaged in the Act during the initial appraisal of the scheme.

(2) Pursuant to paragraph (1), the Authority and the county governments shall undertake economic and financial analysis of the proposed investments using internal rate of return, cost-benefit analysis or any other such parameters where applicable.

(3) Where public funds are used in irrigation development, management and other related activities the Authority, county governments and other agencies shall be subject to the Public Procurement and Asset Disposal Act (Cap. 412C) and other relevant laws.

#### **110. Cost-sharing in irrigation scheme development**

(1) The Cabinet Secretary may, with concurrence of the National Treasury, enter into financing agreements to support development of smallholder irrigation schemes through the Authority, county governments and other stakeholders.

(2) Any cost-sharing in irrigation scheme development shall take the form of beneficiaries offsetting part of the total project cost informed by a negotiated financing agreement having taken note of the contributions from the various partners.

(3) The minimum beneficiaries' contribution shall not be less than five per cent of the infrastructure development cost.

(4) The Cabinet Secretary or County Executive Committee Member may waive the minimum cost-sharing contribution for schemes developed on social equity basis for resource poor communities.

#### **111. Irrigation development through loan**

(1) Where a scheme is developed or is to be developed on cost-sharing or cost-recovery basis, a repayment schedule shall be prepared.

(2) Any irrigation scheme developed on cost-recovery or cost-sharing through provision of a loan under bilateral agreements shall have the loan amortized over a period of not less than five years.

(3) The approval process for projects under loans or grants shall require submission of a financing agreement or commitment securing funds for infrastructure construction prior to issuance of approval to construct.

(4) In case of phased irrigation scheme development, due consideration shall be made to ensure that the first phase covers abstraction and conveyance for the entire system and in-field system of at least one irrigation unit is completed and functional.

(5) The Cabinet Secretary shall take administrative action to provide for re-investment of any recovered public funds under cost-recovery mode of financing in irrigation development.

### **PART VIII – MONITORING, PERFORMANCE AUDIT AND REPORTING**

#### **112. Irrigation and drainage management information system**

(1) The Cabinet Secretary shall develop and maintain an irrigation and drainage management information system to perform the functions of monitoring and reporting.

(2) The information management system developed and maintained under paragraph (1) shall have functionality for planning, monitoring, recording transactions, performance measurement and decision making.



(3) The irrigation and drainage management information system shall serve the following purposes—

- (a) establishment of data and information needs for irrigation sub-sector;
- (b) establishment of formats and protocols for geo-referenced data capture, processing and sharing disaggregated data up to the county government level;
- (c) capture of accurate, reliable, timely and verifiable data and information for the subsector;
- (d) capture of data on inputs, immediate outcomes and impacts in irrigation development activities
- (e) organize the irrigation and drainage data and information in a structured manner to facilitate accessibility and sharing amongst stakeholders for effective and efficient planning, coordination, monitoring and evaluation of the sub-sector; and
- (f) establishment of a decision support platform for policy, management and investment decisions.

(4) The irrigation and drainage management information system shall be web-based and shall include information on—

- (a) all areas identified, mapped, delineated and designated as suitable for irrigation;
- (b) all water harvesting and storage structures;
- (c) all licensed irrigation schemes;
- (d) all registered irrigation professional service providers and contractors;
- (e) all registered irrigation water users' associations, umbrellas and irrigation farmers' associations;
- (f) performance status of the licensed irrigation schemes, registered associations and umbrella associations;
- (g) complaints register for all registered irrigation service providers and contractors;
- (h) data on irrigation sector investments; and
- (i) irrigation schemes annual reports.

(5) The format and details of the information under paragraph (3) shall be as set out in Part B of the Fifth Schedule.

(6) The irrigation and drainage information system shall have a public platform giving access to aggregated information and reports about the irrigation sector in Kenya.

(7) Irrigation stakeholders may be granted, upon request, limited access rights subject to the provisions of the Data Protection Act, 2019 No. 4 of 2019.

(8) The Cabinet Secretary and county governments shall be responsible for data input into the irrigation and drainage information system but may delegate input functions to the Authority or other relevant agencies.

### **113. Monitoring, evaluation and performance audits**

(1) Any individual or entity carrying out irrigation or providing irrigation services shall be subjected to, monitoring, evaluation and performance audits by the Cabinet Secretary or a County Government in accordance with these Regulations.

(2) The Cabinet Secretary or other authorized person shall carry out periodic monitoring, evaluation and performance audits in all irrigation schemes under its jurisdiction for purposes of—

- (a) ensuring compliance to these Regulations and other relevant laws
- (b) issuing registration certificate and other relevant certifications.

*Irrigation*

[Subsidiary]

- (c) ensuring efficient irrigation schemes and good on-farm water management; and
- (d) encouraging sustained economic productivity through promotion of marketing.

(3) The Authority, county governments, County Irrigation Development Unit and other authorised agency shall carry out periodic monitoring, evaluation and performance audits in all irrigation schemes under its jurisdiction and submit reports to the Cabinet Secretary semi-annually or as may be required.

**114. Monitoring, evaluation and performance guidelines**

The procedure and standards for carrying out monitoring, evaluation and performance audits and subsequent reports shall be in accordance with guidelines developed by Cabinet Secretary.

PART IX – MISCELLANEOUS PROVISION

**115. Recovery or compensation for damage to irrigation infrastructure**

(1) Any individual or entity who owns or manages an irrigation scheme may institute legal proceedings for purpose of recovery or compensation for damage to irrigation infrastructure.

(2) Pursuant to paragraph (1) the process shall entail—

- (a) report of the offence to the relevant supervising entity and the police;
- (b) assessment of the alleged damages by the supervising entity or registered professional service provider and a report of the same; and
- (c) filing a case with the relevant court of law for redress in accordance with the Act.

**116. General penalties**

Any person who commits an offence under these Regulations for which no specific penalty is provided shall be liable, on conviction, to the penalty provided under section 34(3) of the Act.

**117. Revocation**

The Irrigation (National Irrigation Schemes) Regulations (L.N. No. 68/1977) are revoked.

FIRST SCHEDULE

CONTENT AND FORMAT OF TECHNICAL REPORTS

**PART A - PRE-FEASIBILITY ASSESSMENT CHECKLIST**

(r. 7(2)(b))

NO.	ASPECT	STATUS	REMARKS
1.	Project proponent Background and purpose of project Location of site		
2.	Land availability Land suitability Land tenure (communal, private, public)		
3.	Topography (Slopes, Plateau etc.)		

- 
4. Water resources  
(river, lake, dam,  
etc.)  
Adequacy of water  
resources and  
sediment load  
Number of other  
users for same  
resource(upstream  
and downstream)
  5. Soils and geology  
Suitability and  
variability
  6. Environmental  
status  
Likely impact on  
environment
  7. Institutional  
arrangements  
Stakeholders and  
their roles  
Possible  
organisational  
arrangements
  8. Irrigation  
technological  
options  
Abstraction  
Conveyance  
Distribution  
Application
  9. Project  
Construction  
Complexity  
Construction  
materials (source +  
availability)
  10. Overall project  
viability

**PART B - IRRIGATION SCHEME FEASIBILITY STUDIES REPORT**

(r. 11(3))

1. Introduction
  - Project background
  - Project justification
  - Project location and area
2. Physical Environment
  - Topography
  - Agro ecological zones

[Subsidiary]

Main economic activities

Land tenure

Communication/ accessibility

**3. Water Resource**

Water Source

Hydrological Assessment

Hydrogeological assessment (for ground water Use)

**4. Soils**

Soil mapping

Soil suitability

**5. Agriculture**

Agricultural development plan

Agricultural marketing plan

**6. Irrigation development Plan**

Preliminary scheme layout

Preliminary structures design

Analysis of options to meet project objectives

**7. Institutional arrangements**

Scheme Organisation

Scheme Management

**8. Project financing**

Preliminary project cost estimates

Financing arrangements

**9. Economic and financial analysis (Internal Rate of Return/Cost-Benefit Analysis)**

**10. Environment**

Environmental and social impacts assessment

**11. Conclusions**

Legal, social and environmental feasibility

Technical feasibility

Financial feasibility

Economic feasibility

**12. Recommendations and Way forward**

**PART C - IRRIGATION SCHEME DETAILED DESIGN REPORT FORMAT**

(r. 13(3), r. 20(1)(d))

**1. Introduction**

Project background

Project justification

Project location and Area

- 
2. Hydrology and water resources
    - Surface water resources
    - Groundwater resources
    - Water balance
  3. Agriculture
    - Agricultural soils (mapped)
    - Agronomic suitability
    - Existing Agriculture
    - Production status
    - Social economic status
  4. Proposed agricultural development plan
    - Size of the proposed irrigation area
    - Selected crops and area allocation
    - Cropping pattern and Rotation
  5. Irrigation development plans
    - Proposed scheme layout
    - Proposed Irrigation method(s)
    - Crop water requirements
    - Irrigation scheme water requirements
    - System design flow
  6. Irrigation development technology option analysis and selection
    - Identification and analysis of technologic options
    - Headworks
    - Water conveyance
    - Water distribution
    - Water application
  7. Features of Irrigation Facilities
    - Head works
    - Main canals/pipelines
    - Sub-main canals /pipelines
    - In-field system
  8. Design of Irrigation Facilities
    - Scheme design components
    - Design of head works
    - Design of conveyance system
    - Design of distribution system
    - Design of hydraulic structures
    - Design of drainage system

[Subsidiary]

Design Auxiliary structures

9. Cost Estimates

Criteria for cost estimates

Bill of Quantities

10. Implementation Plans.

Overall work plan

Works by the implementing agency

Work by farmers / irrigation water users' association (for community-based systems)

**PART D - SCHEME COMPLETION REPORT**

(r. 14)



*(To be submitted in triplicate)*

Scheme Category	Small Scale Scheme	Medium Scale Scheme	Large Scale Scheme	Irrigation Technology to be employed
-----------------	--------------------	---------------------	--------------------	--------------------------------------

Tick Box

**PARTICULARS OF PROPONENT**

1. Full name of applicant(s) (In Block Letters)
  2. Category of Applicant – (Private/Individual, community or public)
  3. Identity Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups, Associations or Companies
  4. Personal Identification Number (where applicable)
- Physical Address where Irrigation scheme is located

**DETAILS**

Address of Contact Person and Designation

Gazette Notice Number <i>(Under Section 16(1) of the Act)</i>	Box Number
Village(s)/Ward(s)	Town
Sub-County(s) County(s)	Post Code
	Telephone Contact (Landline)
	Telephone Contact (Mobile)
	Email Contact

**WATER RESOURCE DETAILS**

5. Name of the water source

6. Water storage Capacity (m<sup>3</sup>)Nil if Non is  
constructed

7. Class of Water Resource

**(As classified by Water Resources Authority based on  
water permit)**EVIDENCE OF RELEVANT APPROVALS/  
AUTHORIZATIONSEnvironmental Impact Assessment Licence (Issued by  
National Environment Management Authority under  
Environmental Management Coordination Act (Cap. 387))If NIL, state "Nil",  
if YES, indicate  
Licence Number  
and attach copy of  
the Licence.Authority to Construct (issued by Water Resources Authority,  
under the Water Act (Cap. 372))If NIL, state "Nil",  
if YES, indicate  
Permit Number and  
attach copy of the  
Permit.

Approval

*(Approval by National Construction Authority)*If NIL, state "Nil",  
if YES, indicate  
Approval Number  
and attach copy of  
the approval.Approval for construction by Supervising Entity(National  
Irrigation Authority/County Irrigation Development Unit/Other  
Entity – Specify)

## PARTICULARS OF CONTRACTOR

Name of Contractor

Licence Number

Box number

Registration No.

Town

Name of Site Agent

Post code

Period of  
construction  
(Months)

Tel

Contact(Landline)

Tel Contact (Mobile)

## IRRIGATION SCHEME DESCRIPTION

Number of households to be served

Number of connections

Total Irrigated Area (ha)

Scheme Water Requirements (litres/sec)

## PARTICULARS OF SCHEME INFRASTRUCTURE

Water

Capacity

Dimensions Status

Storage

Dam

Water pan

Farm Ponds

Abstraction

Weir

Length

Height

*Irrigation*

[Subsidiary]					
	Pump	Size		(HP) Pump capacity (m <sup>3</sup> /sec)	
Conveyance	Pipeline Canal	Size (mm) Bed width	Top width	Length Depth (including freeboard)	
Distribution system	Pipeline	Segment 1 Segment 2 Segment 3 Segment 4 Segment 5	Size	Length	Status
	Canal	Segment 1 Segment 2 Segment 3 Segment 4 Segment 5	Size	Length	Status
Application system	Type  Micro irrigation Sprinkler Basin Furrow	Tick as appropriate	Particulars		Status
ATTACHMENTS			Attached (Yes/No)	Comments/Remarks	
Copy of Identification documents Copy of Land Documents (where applicable) Copy of Agreements on Land Use Relevant Maps As built drawings Copy Water Use Permit Approval from National Construction Authority (Where applicable) Design Report Construction completion certificate. Letter of Authority to sign as agent Comments by Supervising Entity I agree to supply any further information which may be required by the Supervising entity. SIGNATURE Signature of Project Proponent or duly authorised Agent Name Date of Application SIGNATURE OF OFFICIAL RECEIVING					



Signature of NIA/ County  
 Official  
 Name  
 Position  
 Date Received

*All approvals from Government Agencies must be attached*

OFFICIAL SECTION – Recommendation for Licencing

*(To be filled by Supervising Entity)*

	Tick	Date	Officer
Submission			
County Irrigation			
Development Unit			
comments			
received			
Recommended			
Rejected			
Conditional			
Recommendation			
Authority			
Recommendations			
received			
Recommended			
Rejected			
Conditional			
recommendation			
<b>PART E - SCHEME OPERATION AND MAINTENANCE MANUAL</b>			
			(r. 14)
Chapter 1			Introduction
			Justification for the manual
			How to use the Manual
			Introduction to the irrigation development
Chapter 2			Irrigation System
			Components and Design
			Summary
			Basic irrigation system and components
			Water storage facility
			Water abstraction facility
			Water Conveyance/ Distribution Facility
			Infield System
Chapter 3			Institutional arrangements for irrigation system management
			Organizational structure
			Operation and maintenance structure

[Subsidiary]

Chapter 4	Operation and maintenance activities Agriculture planning Soil and Water Sampling and Testing Crop Calendar, Crop pattern/ rotation
Chapter 5	Crop production System Operation Organizational Structure for System Operation Basic Operation of the Irrigation System Irrigation Water Requirement Standard Water Distribution Water Scheduling Management of Water Shortage Water Storage Water drainage
Chapter 6	System Maintenance Target Components Maintenance Operations Maintenance planning and implementation Emergency Preparedness Plan
Chapter 7	Environmental Management Introduction to Environmental Management and Monitoring Plan (EMMP) Implementation of Environmental Management and Monitoring Plan
Chapter 8	O&M fee Management (for communal systems) O&M Budgeting
Chapter 9	O&M fee collection System monitoring and evaluation Monitoring parameters & indicators Monitoring tools & procedures
Chapter 10	Evaluation and Reporting Irrigation records

Operation and  
maintenance records  
Production record

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SECOND SCHEDULE

WATER QUALITY STANDARDS

**PART A - MICROBIOLOGICAL QUALITY GUIDELINES FOR WASTE WATER USE IN IRRIGATION**

Reuse Conditions	Exposed Group	(rr. 9(2) & 88(2))	
		Intestinal nematodes (MPN/L)*	Coliforms (MPN/100 ml)
Unrestricted irrigation (crops likely to be eaten uncooked, sports fields, public parks)	Workers, consumers, public	< 1	< 1000**
Restricted irrigation (cereal crops, industrial crops, fodder crops, pasture and trees***)	Workers	< 1	No standard recommended

\**Ascaris lumbricoides*, *Trichuris trichiura* and human hook worms.

\*\* A more stringent guideline (<200 coliform group of bacteria per 100 ml) is appropriate for public lawns, such as hotel lawns, with which the public may come into direct contact.

\*\*\* In the case of fruit trees, irrigation should cease two weeks before fruit is picked and fruit should be picked off the ground. Overhead irrigation should not be used.

**PART B - STANDARDS FOR IRRIGATION WATER**

Parameter	(r. 9(2) r. 88(2)) Permissible Level
pH	6.5-8.5
Aluminium	5 (mg/L)
Arsenic	0.1 (mg/L)
Boron	0.1 (mg/L)
Cadmium	0.5 (mg/L)
Chloride	0.01 (mg/L)
Chromium	1.5 (mg/L)
Cobalt	0.1 (mg/L)
Copper	0.05(mg/L)
<i>E.coli</i>	Nil/100ml
Iron	1 (mg/L)
Lead	5 (mg/L)
Selenium	0.19 (mg/L)
Sodium Absorption Ratio (SAR)	6 (mg/L)
Total Dissolved Solids	1200 (mg/L)
Zinc	2 (mg/L)

**PART C - QUALITY STANDARDS FOR SOURCES OF DOMESTIC WATER**

Parameter	Permissible Level
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*Irrigation*

[Subsidiary]

pH	6.5-8.5
Aluminium	5 (mg/L)
Arsenic	0.1 (mg/L)
Boron	0.1 (mg/L)
Cadmium	0.5 (mg/L)
Chloride	0.01 (mg/L)
Chromium	1.5 (mg/L)
Cobalt	0.1 (mg/L)
Copper	0.05(mg/L)
<i>E. coli</i>	Nil/100ml
Iron	1 (mg/L)
Lead	5 (mg/L)
Selenium	0.19 (mg/L)
Sodium Absorption Ratio (SAR)	6 (mg/L)
Total Dissolved Solids	1200 (mg/L)
Zinc	2 (mg/L)

Nil means less than limit of detection using prescribed sampling and analytical methods and equipment.

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 THIRD SCHEDULE

## IRRIGATION PROFESSIONALS AND FIRMS

**PART A - QUALIFIED IRRIGATION PROFESSIONALS**

(r. 12 (1), r. 94(3))

Professionals for irrigation projects depending on the scale of the project shall include:

- (a) Irrigation/Bio systems/Agricultural Engineer - Lead expert/Team leader
- (b) Agronomist
- (c) Agribusiness specialist
- (d) Civil/Dam design engineer
- (e) Hydrologist
- (f) Hydro-geologist
- (g) Soil scientist
- (h) Surveyor/cartographer
- (i) Geotechnical engineer
- (j) Geologist
- (k) Electromechanical engineer
- (l) Environmental specialist
- (m) Sociologist/socio-economist

**PART B - CATEGORIES OF IRRIGATION CONTRACTORS**

(r. 12(2))

<i>Category of Scheme</i>	<i>Scheme Description</i>	<i>Category of Contractor</i>	<i>Description of Contractor</i>
Micro Irrigation Scheme	Irrigation schemes less than 10 acres	C4, C5, C6 and C7.	Up to Ksh. 200, 000, 000

	using manual and other energy sources in water abstraction and application		
Small Scale Irrigation Scheme	Irrigation schemes covering less than 100 acres	C3 and C2	Up to Ksh. 300, 000, 000 for C3 and Up to 500, 000, 000 for C2
Medium Scale Irrigation Scheme	Irrigation schemes covering between 100 and 3000 acres	C2 and C1	Up to Ksh. 500, 000, 000 for C2 and Unlimited contract value for C1
Large Scale Irrigation Schemes	Irrigation schemes exceeding 3000 acres	C1	Unlimited contract value

(r. 76(3))

### **PART C - CONDITIONS FOR IRRIGATION WATER SUPPLY AND RELATED SERVICES**

1. The Cabinet Secretary shall register irrigation water providers based on technical and commercial capability to—

- (a) promote commercial sustainability of irrigation water service providers;
- (b) ensure that the irrigation water providers are capable of meeting routine operation and maintenance costs; and
- (c) have in place proper management for the provision of the irrigation water services.

2. The following shall be the criteria for determining capability of a Water Service Provider—

- (a) legal Status: must be a legal entity
- (b) Meet all the necessary statutory requirements:
  - (i) Registered with Water Services Regulatory Board
  - (ii) National Environment Management Authority licences
- (c) Availability of business plan:
 

Detailing provision of efficient, affordable and sustainable services
- (d) Financial Capability:
  - (i) Capable of meeting operation and maintenance costs for at least two seasons.
  - (ii) Demonstrate positive Cash flow capabilities.
  - (iii) Three to five years financial projections
- (e) Technical Capability:
 

Have sufficient technical staff such as engineers, hydrologists, water guards, agronomists etc.
- (f) Organisational and Managerial capability:
  - (i) Have the necessary and qualified staff i.e. accountants, human resource managers, procurement.
  - (ii) Properly delineated roles
- (g) Registration with the Cabinet Secretary as a Service provider

Irrigation

[Subsidiary]

- (h) Possess the necessary equipment and machinery for operation and maintenance

FOURTH SCHEDULE

[r. 13(4)]

FORMS

**FORM 4A:  
AUTHORIZATION CERTIFICATE TO CONSTRUCT A SCHEME**



REPUBLIC OF KENYA

THE IRRIGATION (GENERAL) REGULATIONS, 2021  
**APPROVAL FOR CONSTRUCTION**

This is to certify that M/S ..... is hereby granted approval to construct the above named Irrigation Project in accordance with the submitted Irrigation Design Document and conditions accompanying this approval. This approval is granted under Section ..... of the Irrigation (General) Regulations, 2020

Dated at ..... this ..... day of ....., 20 .....

.....  
*Supervising Entity /  
Authorized Agent*

**FORM 4B**

(r. 16(3), r. 98(1))



REPUBLIC OF KENYA

THE IRRIGATION (GENERAL) REGULATIONS, 2021  
**APPLICATION FOR REGISTRATION AS AN IRRIGATION SERVICE PROVIDER**

*(To be submitted in triplicate)*

PARTICULARS OF APPLICANT

DETAILS

Full name of applicant(s) (In Block Letters)  
Identity Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies  
Personal Identification Number (where applicable)  
Physical Address

Contact  
Address of Applicant  
Box Number  
Town  
Post Code  
Telephone  
Contact (Landline)

Building:                      Street /Road:  
Ward  
Sub-County  
County

Telephone Contact (Mobile)	Email Contact
Nature of irrigation service (s) to be provided	Choose as appropriate
Pre- feasibility studies	
Feasibility studies	
Detailed design	
Installation or construction of irrigation system	
Construction supervision	
Scheme administration and management	
Other irrigation services (specify)	

Conditions of registration:

This registration is given on the ground that the applicant is competent in provision of the indicated irrigation service(s). if this is proved otherwise, can lead to de registration

Dr/Eng./Mr/Ms. ....

For: CABINET SECRETARY

**FORM 4C** (r. 20(1))  
**APPLICATION FOR IRRIGATION LICENCE**



*(To be submitted in triplicate)*

Scheme Category	Small Scale Scheme	Medium Scale Scheme	Large Scale Scheme	Irrigation technology to be employed
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Tick Box

PARTICULARS OF APPLICANT Full name of applicant(s) (In Block Letters) Category of Applicant – (Private/ Individual, community or public) ID Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies PIN Number (where applicable) Physical Address where water is to be used <i>Gazette</i> Notice Number (Under Section 16(1) of the Act) Village(s)/Ward(s) County(s)	DETAILS  Contact Address of Applicant  Box Number  Town Post Code Telephone Contact (Landline)
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## Irrigation

[Subsidiary]

Telephone  
Contact  
(Mobile)  
Email Contact

## WATER RESOURCE DETAILS

Name of Basin of the water resource  
(As Gazetted under the Water Act (Cap. 372))  
Name of the water source

Capacity of storage (m<sup>3</sup>)

Class of Water Resource

(As classified by Water Resources Authority)

Type of drainage (based on type of irrigation)

EVIDENCE OF RELEVANT APPROVALS/  
AUTHORIZATIONS

Environmental Impact Assessment Licence (Issued by National Environment Management Authority under Environmental Management Coordination Act (Cap. 387))

If NIL, state "Nil", if YES, indicate  
Licence Number and attach copy of the Licence.

Water Use Permit  
(issued by Water Resources Authority, under the Water Act (Cap. 372))

If NIL, state "Nil", if YES, indicate  
Permit Number and attach copy of the Permit.

Approval  
(Approval by National Construction Authority)

If NIL, state "Nil", if YES, indicate  
Approval Number and attach copy of the approval.

## LAND

Does applicant own all the land related to the licence application? Yes/No

If No, have easement(s) been attached (Yes = 1, no = 0)

## OWNERSHIP OF WORKS

Will the applicant own all the works related to the licence application?

If No, have agreement(s) been obtained from owner(s) of all works and these agreements are adequate and are attached (Yes/no)

## PERIOD OF CONSTRUCTION OF IRRIGATION INFRASTRUCTURE

16. State the estimated period of construction of the works (months)

17. State the period for which the licence is required (year – maximum 3 years)

## SCHEME DESCRIPTION

## I. SUBSISTENCE IRRIGATION –Irrigation for Household Food Security

Irrigable area in hectares

Number of households to be served

Number of connections

Total Irrigated Area (ha)



Scheme water demand (litres/day/hectare)

II. COMMERCIAL IRRIGATION

Type of Crop (hectares)	Type of Production System (Outdoor, Green house, hydroponics)	Type of Irrigation Technology (overhead, micro-sprinkler, drip)	Scheme water demand (litres/hectare)	Total Expected Water Requirements m <sup>3</sup> /day
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FEES SUBMITTED

Category of Application (Small, medium and Large) Fees for Examination of Application

AMOUNT PAID

Receipt Number

ATTACHMENTS

*Attached (Yes/No)*

*Comments/Remarks*

Copy of Identification Documents

Documents

Copy of Land Documents (where applicable)

Copy of Agreements on Land Use

Relevant Maps

Copy of Environmental and social Impact Assessment Report and License

Copy Water Use Permit Approval from National Construction Authority

Site Assessment Report

Technical Reports

Feasibility Assessment Report

Design Report

Soil and Water Conservation Plan

Copy of Receipt for Payment

Letter of Authority to sign as agent

County Irrigation Development Unit

Comments

SIGNATURE

Signature of Applicant or duly authorised Agent

Name

Date of Application

SIGNATURE OF OFFICIAL RECEIVING APPLICATION

Signature of Ministry/County Official

Name

Position

Irrigation

[Subsidiary]

Date Application Received

Note: Shaded areas to be filled in by Ministry/County Officials

All approvals from Government Agencies must be attached OFFICIAL SECTION

(To be filled by Ministry/County officials)

	Tick	Date	Officer
Submission			
County Irrigation			
Development			
comments received			
Recommended			
Rejected			
Conditional			
Recommendation/			
County Irrigation			
Development Unit			
Authority Regional			
Office			
Recommended			
Rejected			
Validity Period			
(months)			
Extension of Validity			
Period (months)			
Revised Expiry			
Date			
Inspection of Final			
Completion			
Date of Issue of			
Licence			

Note: Shaded Areas to be filled in by Ministry/County Officials

All approvals from Government Agencies must be attached Approval to commence construction shall be issued by the Authority or County Irrigation

Development Unit or other authorised entity in writing.

FORM 4D:  
IRRIGATION LICENCE

(r. 20(3)(A))



Licence No. ....

This License is issued to ..... of (address) ..... in the ..... Sub-county of ..... County, for the Irrigation Scheme on LR. No ..... for the period from the ..... day of ....., 20 ..... to the ..... day of ....., 20 ..... unless sooner terminated, subject to the

conditions prescribed by the regulation number ..... of the Irrigation (General) Regulations, 2020.

Dated this ..... day of ....., 20 .....

.....  
Cabinet Secretary/Authorized Person

**CONDITIONS ATTACHED TO IRRIGATION LICENCE**

1. This irrigation licence is exclusively issued for the irrigation scheme stated and locality described overleaf.
2. This irrigation licence is not transferrable to any other person or entity other than that stated herein.
3. The boundaries of the irrigation service area are as described on the topographical map in the design report submitted with this application. Any alteration to the service area will make this licence null and void and shall require application of a new licence.
4. The licensee is required to adhere to the provisions of the Environmental Management Plan, submitted with the application; failure to do so is a violation of this licence.
5. The licensee is required to comply with the water quality standards, operate and maintain the irrigation infrastructure and practice good on-farm water management and other provisions in accordance with Irrigation (General) Regulations, 2020, failure of which is a violation of this licence.
6. The licensee shall on notification grant access to an authorised officer of the supervising entity to enter their irrigation scheme/premises for purposes of inspection and monitoring of adherence to licence conditions in accordance with Irrigation (General) Regulations, 2020.
7. In the event the entity granted this license ceases to exist, this licence becomes null and void; in the case of a deceased licence holder the licence will become null and void at its expiry and cannot be renewed but will require a new application.

**FORM 4E** (r. 34(4)(a))  
**PERMIT TO OCCUPY A HOLDING IN A PUBLIC SCHEME**



**NATIONAL IRRIGATION AUTHORITY / COUNTY IRRIGATION DEVELOPMENT UNIT**  
**PERMIT TO OCCUPY HOLDING**

Permit No. .... son of ..... of the ..... Sub-county of the ..... County, is hereby authorized to occupy holding No. .... of the ..... National Irrigation Scheme for the period from the ..... day of ....., 20 ..... to the ..... day of ....., 20 ..... and from year to year thereafter unless sooner terminated in accordance with the provisions of the above Regulations, and to keep thereon not more than the following number of stock—

..... bovines, ..... goats, ..... sheep, ..... mules, ..... donkeys, ..... (other stock),

Irrigation

[Subsidiary]

subject to the conditions prescribed by the above Regulations. In accordance with Section 6 of the Irrigation (General) Regulations 2020, I have caused the Regulations to be read and explained to the above-named permit holder in the ..... language, which he understands.

Dated this ..... day of ....., 20 .....

Manager

**FORM 4F** (r. 35 (1)(c))  
**ACKNOWLEDGEMENT FOR RECEIPT OF IRRIGATION (GENERAL) REGULATIONS, 2021**



**NATIONAL IRRIGATION AUTHORITY**  
**ACKNOWLEDGEMENT FOR RECEIPT OF IRRIGATION (GENERAL) REGULATIONS, 2021**

I ..... son of ..... of the ..... Sub-county of the ..... County, hereby acknowledge receipt of a copy of the Irrigation (General) Regulations, 2020, I have had these Regulations explained to me and I fully understand them and I undertake to observe them and to pay all sums of money payable by me.

.....  
Signature or thumb-print  
of Permit Holder Witness

Date .....

**FORM 4G** (r. 66(4))  
**APPLICATION FOR ENLISTING IN THE REGISTER OF IRRIGATION WATER USERS' ASSOCIATIONS**



We, being the members of the Irrigation Water Users' Association Management Committee of the registered ..... Irrigation Water Users Association hereby apply to be enlisted pursuant to the Irrigation (General) Regulations, 2020.

Association Data  
Name of the Association  
Address (Postal)  
Physical location

.....  
Ward  
.....  
Sub-County

.....  
County

Telephone Contact (If any)

Size of Service area

No of Members of the

Association

Date of Application

Chairperson

Name

Date of birth

Gender

Address (Postal)

P.O. Box

Mobile phone (If any)

+254

Signature

Date

Secretary

Name

Date of birth

Gender

Address (Postal)

Mobile phone (If any)

Signature

Date

Member of Management Committee

Name

Date of birth

Gender

Address (Postal)

P.O. Box

Mobile phone (If any)

+254

Signature

Date

Member of Management Committee

Name

Date of birth

Gender

Address (Postal)

P.O. Box

Mobile phone

+254

(If any)

Signature

Date

We attach the following documents:

\*\* Minutes of the Inaugural General Assembly Meeting of the Association (1 copy)

\*\* The by-laws of the association (1 copy)

\*\* The Budget and work plan for the first year of operation (1 copy)

\*\* The Establishment Petition (1 copy)

\*\* Inventory of the irrigation system

\*\* Registration certificate of legalising agency.

*Please tick to confirm that the following documents are enclosed.*

Irrigation

[Subsidiary]

IRRIGATION WATER USERS' ASSOCIATION ESTABLISHMENT PETITION

We the undersigned hereby apply for the establishment of the proposed Irrigation Water Users' Association to operate the ..... [Name]

Irrigation Scheme located at .....

[Names of Ward, Sub-county and County].

No	Name	Size of land Holding (Ha)	Date	Signature
1				
2				
3				

Add additional sheets for this petition as necessary.

FORM 4H CERTIFICATE OF USER RIGHTS (r. 74(3))



REPUBLIC OF KENYA

THE IRRIGATION (GENERAL) REGULATIONS, 2021 CERTIFICATE OF USER RIGHTS NO. ....

This is to certify that

M/S ..... has been granted user rights in respect of ..... Public Scheme in accordance with the Irrigation (General) Regulations 2020, under Irrigation Management Transfer.

Dated at ..... this ..... day of ....., 20 .....

Authorized Person/Supervising Entity

FORM 4I CERTIFICATE OF RECOGNITION (r. 98 (5))



REPUBLIC OF KENYA

THE IRRIGATION REGULATIONS, 2021 CERTIFICATE OF RECOGNITION NO. ....

This is to certify that ..... has been registered as an Irrigation Professional/Irrigation Contactor under the Irrigation (General) Regulations, 2020.

Dated at ..... this ..... day of ....., 20.....

Cabinet Secretary/Authorized Person

## FIFTH SCHEDULE

## MONITORING, EVALUATION AND PERFORMANCE AUDIT TOOLS

**PART A - INVENTORY OF IRRIGATION SERVICE PROVIDERS**

(r. 15(2))

**(a) Irrigation professional**

<i>Serial No.</i>	<i>Name of individual or entity</i>	<i>Contacts</i>	<i>Area of specialisation</i>	<i>Remarks</i>
-------------------	-------------------------------------	-----------------	-------------------------------	----------------

**(b) Irrigation Contractors**

<i>Serial No.</i>	<i>Name of individual or entity</i>	<i>Contacts</i>	<i>Area of specialisation</i>	<i>Remarks</i>
-------------------	-------------------------------------	-----------------	-------------------------------	----------------

**PART B - FORMAT AND DETAILS OF INFORMATION IN THE IRRIGATION AND DRAINAGE INFORMATION MANAGEMENT SYSTEM**

FORMAT AND DETAILS OF AREAS IDENTIFIED, MAPPED, DELINEATED AND DESIGNATED SUITABLE FOR IRRIGATION

(r. 110(4)(a))

Name of Scheme

Category of Scheme

Grid Reference for Scheme (UTM, based on ARC1960 Datum, Zone 36/37)

Easting

Northing

Altitude (m above sea level)

Map Sheet

Details of Site Datum

Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)

Easting

Northing

Altitude (m above sea level)

Map Sheet

Description of Datum

Irrigation Area (km<sup>2</sup>)

Irrigation Design

**PART C - FORMAT AND DETAILS OF WATER HARVESTING AND STORAGE STRUCTURES**

(r. 110(4)(b))

Storage Dams

Name of dam

Class of Dam (A, B or C)

Grid Reference for Dam (UTM, based on ARC1960 Datum, Zone 36/37)

Easting

Northing

Altitude (m above sea level)

Map Sheet

Details of Site Datum

Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)

[Subsidiary]

Easting  
 Northing  
 Altitude (m above sea level)  
 Map Sheet  
 Description of Datum  
 Spillway  
 Catchment Area (km<sup>2</sup>)  
 Design Flood (m<sup>3</sup>/s)  
 Return Period for Spillway Design (1 in ... years)  
 Material of outflow channel  
 Dimensions at control  
 Width (m)  
 Length (m)  
 Height (m)  
 Embankment  
 Material (earth, concrete, masonry, others)  
 Dimensions  
 Width at Crest (m)  
 Length at Crest (m)  
 Upstream slope (1 to ...)  
 Downstream slope (1 to .....)  
 Maximum Depth of Water (Measured from bed to normal water level) (m)  
 Maximum Height of Embankment (m)  
 Gross Freeboard (m)  
 Net Freeboard (m)  
 Impoundment  
 Estimated Area at Normal Water Level (m<sup>2</sup>)  
 Estimated Impounded Volume (m<sup>3</sup>)  
 Other Details  
 Maximum Draw off Capacity (m<sup>3</sup>/day)  
 Maximum Compensation Flow capacity (m<sup>3</sup>/day)

**FORMAT AND DETAILS OF LICENSED IRRIGATION SCHEMES**

(r. 110(4)(c))

Name of Scheme  
 Scheme Identification number  
 Category of Scheme  
 Location or County  
 Registered Owner  
 Date of registration or licensing  
 Ownership (public or private)  
 Grid Reference for Scheme (UTM, based on  
 ARC1960 Datum, Zone 36/37)  
 Easting  
 Northing  
 Altitude (m above sea level)  
 Map Sheet  
 Details of Site Datum  
 Grid Reference for Datum (UTM , based on  
 ARC1960 Datum, Zone 36/37)



Easting  
 Northing  
 Altitude (m above sea level)  
 Map Sheet  
 Description of Datum  
 Irrigation Area (Hectares)  
 Irrigation Design  
 Type of Irrigation (Surface, sprinkler or drip)  
 Major enterprises

**FORMAT AND DETAILS OF REGISTERED ASSOCIATIONS, UMBRELLAS AND ASSOCIATIONS OF IRRIGATION FARMERS**

(r. 110(4)(d))

Name of Irrigation Water Users' Association, Umbrella or Federation  
 Registration number (irrigation)  
 Registration number (society or cooperative)  
 Name of scheme served or service area  
 Number of members  
 Category of Scheme  
 Location or County  
 Contacts (contact person(s), address, Telephone Number and email)  
 Date of registration or licensing (irrigation)  
 Date of registration or licensing (society or cooperative)  
 Grid Reference for Scheme (UTM, based on ARC1960 Datum, Zone 36/37)  
 Easting  
 Northing  
 Altitude (m above sea level)  
 Map Sheet  
 Details of Site Datum  
 Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)  
 Easting  
 Northing  
 Altitude (m above sea level)  
 Map Sheet  
 Description of Datum  
 Irrigation Area (Hectares)  
 Type of irrigation ( Surface, sprinkler or drip)  
 Irrigation Design  
 Major enterprises

**FORMAT AND DETAILS OF PERFORMANCE STATUS OF THE LICENSED IRRIGATION SCHEMES, REGISTERED IRRIGATION WATER USER ASSOCIATIONS AND UMBRELLA ASSOCIATIONS**

(r. 110(4)(f))

[Subsidiary]



**CRITERIA FOR IRRIGATION WATER USER  
ASSOCIATION PERFORMANCE ASSESSMENT**

Name of scheme  
 Name of Irrigation Water  
 User Association  
 Assessment Period      Start                              End  
    DD/MM/YYYY                      DD/MM/YY  
 Location of project  
 County                      Sub-County                      Ward  
 Type of scheme(National  
 Public./County Public/  
 National Strategic/Other)  
 Supervising entity  
 Date Assessment carried  
 out  
 Officer Responsible--  
 Name & Signature

CRITERIA	SCORE		Actual Points	Actual Score	REMARKS
	Max sub-- criterion points	Max sub, sub- criterion points			
<b>1. IRRIGATION &amp; IWUA MANAGEMENT INDICATORS</b>					
<b>A. OPERATION &amp; MAINTENANCE PERFORMANCE (40 Points)</b>					
1. Planning	15				Plans should be written in proper format. However, there are some plans that are written in memory though not written and which are long practiced by farmers. Such plans which are agreed upon but not put in proper plans can also be
a. Cropping calendar		4			
- With plans			4		
- Without plans			2		
b. Water delivery and distribution		4			
- With plans			4		
- Without plans			2		
c. Maintenance & repairs		4			
- With plans			4		
- Without plans			2		

Irrigation

[Subsidiary]

d. Waters users fee collection	3		considered as unwritten
- With plans		3	
- Without plans		1.5	
Sub-total			
2. Implementation	15		
a. Cropping calendar	4		If delays in implementing the cropping calendar and water delivery are due to natural forces, then the planned dates cab be adjusted to reflect the new dates
- At least 90% of the farmers followed		4	
- 50 - 89% of farmers followed		3	
- Less than 50% followed		1	
b. Water delivery and distribution	4		This is the percentage of scheduled maintenance and repair works done by the IWUA based on plan
- At least 90% of the farmers followed		4	
- 50 - 89% of farmers followed		3	
- Less than 50% followed		1	
c. System maintenance	4		
- At least 90% of the works were done		4	
- 50 - 89% of the works were done		3	
- Less than 50% works were done		1	
d. Waters users fee collection	3		
- At least 90% of the farmers paid		3	

*Irrigation*

[Subsidiary]

- 50 -89% of farmers paid	2	
- Less than 50% of farmers paid	1	
Sub-total		
3.	10	
Operation & Maintenance performance		
a.	3	This is the area that is currently supplied with water for irrigation
Percentage of the scheme that is under irrigation		
- 80 – 100%	3	
- 60 – 79%	2.5	
- 50 – 59%	2	
- Below 50%	1	
b. Status of irrigation facilities & structures	3	
- Scale 5 -- (Excellently maintained)	3	Excellent maintenance means that the facilities and structures are well kept,
- Scale 4 (Satisfactorily maintained)	2.5	grasses are cut to specified height, embankment are free cuts and holes, canals are free of debris etc.
- Scale 3 (Good)	1.5	
- Scale 2 (Fairly maintained)	1	
- Scale 1 (Poorly maintained)	0	

## Irrigation

[Subsidiary]

c. Current Production compared with expected yields	2		
- 80 – 100%		2	If the production has been affected by natural causes beyond IWUA control then the point given should be 0.75
- 60 – 79%		1.5	
- 50 – 59%		1	
- Below 50%		0.5	
d. Water User's fee collection efficiency	2		
- 80 – 100%		2	For schemes that are being rehabilitated, the higher the percentage of efficiency the easier the O&M becomes
- 60 – 79%		1.5	
- 50 – 59%		1	
- Below 50%		0.5	
Sub-total			
B. ORGANIZATIONAL PERFORMANCE (30 POINTS)			
1. IWUA legal status	3		
-- Registration as a Society/ SACCO		3	This is an indication of the legal recognition of IWUA and its legal powers and
- Registration as a self-help group		2	

*Irrigation*

[Subsidiary]

- Not registered	1	mandate to transact businesses as a recognized institution
2. IWUA Membership	3	
- 100% membership	3	Proof of membership should be
- 80 – 99%	2	signatures,
- 60 – 79%	1	ID numbers,
- 50 – 59%	0.5	Telephone numbers
- Below 50%	0	and receipts numbers of membership payments against their names
3. Block/lateral group meeting	3	
- Monthly or more often	3	Proof is the record of attendance and
- Once every 2 months	2	minutes of meetings
- Once every quarter	1	
- Once per season or less	0.5	
4. Committee meetings	3	
- Monthly or more often	3	Proof is the record of attendance and
- Once every 2 months	2	minutes of meetings
- Once every quarter	1	
- Once per season or less	0.5	
5. General Assembly Meetings	3	
- Monthly or more often	3	Proof is the record of attendance and
- Once every 2 months	2	

*Irrigation*

[Subsidiary]

- Once every quarter		1	minutes of meetings
- Once per season or less		0.5	
6. Records & files			
a. Other O&M records, master list of farmers/irrigation fee payment record	1		Proper record keeping should be centralized. This means that they are easily accessible to members.
- With records		1	
- Without records		0	
b. Minutes of meetings	1		A file for minutes should be available
- With records		1	
- Without records		0	
c. Financial records	1		Cash book, income and expenses, bank statements, stocks of items e.g. pipes etc.
- With records		1	
- Without records		0	
d. By laws and O&M policies	1		Existing means that they
- Existing		1	By-laws are comprehensive and all important clauses for an IWUA are included
- Non-existing		0	
e. Filing system and quality of files	2		Proper record keeping should be centralized. This means that they are easily
- Excellent		2	
- Good		1	
- Fair		0.5	

*Irrigation*

[Subsidiary]

			accessible to members.
- Poor		0	
7. Holding of Regular Elections	3		A clear period of tenure should be in place. 2years is an optimum period
- Conducted according to by-laws		3	
- Conducted but not as per the by-laws		2	
- Not conducted at all		0	
8. Conflict resolution	4		
- No conflict occurred/ all conflicts resolved by IWUA without assistance		4	Best conflict resolution is when IWUA is able to solve all its conflicts
- All conflicts are resolved with the aid of local officials		3	
- All conflicts are resolved by other persons/ organizations		2	
- Some conflicts are not resolved		1	
9. Attendance in BOD meetings	3		
- 95 – 100% attendance		3	Records of attendees and minutes are proof
- 75 – 94% attendance		2	
- 50 – 74% attendance		1	
- Below 50% attendance		0	
10. Attendance in General	3		



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[Subsidiary]

Assembly meetings			
- 95 – 100% attendance	3		Records of attendees and minutes are proof
- 75 – 94% attendance	2		
- 50 – 74% attendance	1		
- Below 50% attendance	0		
11. Attendance in Block/lateral meetings	3		
- 95 – 100% attendance	3		Records of attendees and minutes are proof
- 75 – 94% attendance	2		
- 50 – 74% attendance	1		
- Below 50% attendance	0		
12. Attendance in community group works	3		
- 95 – 100% attendance	3		Records of attendees and work done are proof
- 75 – 94% attendance	2		
- 50 – 74% attendance	1		
- Below 50% attendance	0		
Sub-total			
<b>C. FINANCIAL PERFORMANCE (20 POINTS)</b>			
1. Financial plan for the year	3		
- With plan	3		Financial budget is proof
- Without plan	1		Bank statement is proof
2. Bank Account	1		
- Existing	1		
- Not existing	0		
3. Bank Account Balances	2		The higher bank balance is proof of members compliance to water fees and other dues
- Above Kes. 500,000	2		
- 250,000 – 499,999	1.5		

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[Subsidiary]

- 100,000 – 249,999		1	
- Below Kes.100,000		0.5	
Sub-total			
Financial accomplishment			
a. Income collected from Water users fee, IWUA dues and penalties	3		The higher the achievement of the targeted income the better the IWUA is
- 80 – 100% of target income attained		3	
- 60 –79% of target income attained		2.5	performing
- 50 –59% of target income attained		2	
- Below 50% of target income		1	
b. Income from other sources	2		Other sources may be from donors, membership dues, penalties imposed on violation of by- laws etc.
- 80 – 100% of target income attained		2	
- 60 –79% of target income attained		1.5	
- 50 –59% of target income attained		1	
- Below 50% of target income attained		0	
c. Fund utilization for O&M	3		Expenses record will show how he

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[Subsidiary]

- 80 – 100% of expenses are for O&M	3	funds are utilized. Most expenditure is
- 60 – 79% of expenses are for O&M	2.5	expected to go to O&M
- 50 – 59% of expenses are for O&M	2	
- Below 50% of expenses are for O&M	1	
e. Financial control	3	
IWUA conducts audit at least 2 times a year	3	An engagement letter to the auditor and an audit report are proof
IWUA conducts audit at least once a year	2.5	
IWUA audit has no definite schedule	2	
No audit at all	1	
f. Viability Index (Income divided by Expenses)	3	A better rating for an IWUA whose income exceeds expenses
- Income is more than expenses by 50%	3	
- Income is more than	2.5	

Irrigation

[Subsidiary]

expenses  
by 25%

- Income is more than expenses  
2

by small margin

- Income is less than expenses  
1

Sub-total

TOTAL FOR IRRIGATION AND IWUA MANAGEMENT RELATED INDICATORS

II. ADDITIONAL INDICATORS (10 POINTS)

The Irrigation Water User Association has the following ventures

a. Credit assistance to members for agricultural production e.g. fertilizers, seeds, agrochemicals etc.

1

The cropping calendar can aid IWUA planning on purchase of inputs collectively and giving the members on credit for better produce

b. Marketing assistance to members

1

This reduces exploitation by middlemen

c. Agricultural machineries/ equipment for use by members e.g. Knapsack sprayers

1

IWUA owns the farm implements and hires to members on "need" basis

d. Livelihood programs (handicraft production, animal production, seed production etc.)

1

1. The IWUA has an office

1

An office and personnel signifies organization and growth

*Irrigation*

[Subsidiary]

2. The IWUA has tie-ups with NGOs & other organized groups	1	Ability to network and collaborate with other important stakeholders
3. The IWUA involvement of women groups and youth groups in their activities	1	Appreciation of gender issues including women and youth involvement in the IWUA activities
4. The IWUA officers/ leaders are rendering services for free	1	Leaders acknowledge their part ownership in the IWUA and so do not require to be paid for offering leadership services
5. The IWUA have done physical improvement of their system using their own resources e.g. extension of the scheme	1	Level of independence or ability of IWUA to operate without the direction, intervention or assistance from an outside agency
6. The IWUA is providing aids to its members (credit for purposes other than	1	Personal loans to members signify financial stability

*Irrigation*

[Subsidiary]

agriculture,  
education  
scholarships,  
hospitalizations,  
mortuary  
etc.)

TOTAL ADDITIONAL INDICATORS 10

TOTAL FUNCTIONALITY SCORE (I + II)

ADJECTIVE

RATING

Based on the Total Functionality Score, the equivalent Adjective rating are as follows:

Total Functionality Score      Adjective rating

95 points and above      Outstanding

85 to 94 points      Very satisfactory

75 – 84 points      Satisfactory

65 – 74 points      Fair

Below 65 points      Poor

Based on the Total Functionality Score, the equivalent Adjective rating are as follows:

Total Functionality Score      Adjective rating

95 points and above      Outstanding

85 to 94 points      Very satisfactory

75 – 84 points      Satisfactory

65 – 74 points      Fair

Below 65 points      Poor

**FORMAT AND DETAILS OF COMPLAINTS ON REGISTERED IRRIGATION SERVICE PROVIDERS AND CONTRACTORS (r. 110(4)(g))**

Item	Description	Remarks
Serial Number		
Date received		
Nature of complaint		
Name of scheme or area affected		
Name of service provider or contractor concern		
Action taken and date		
Responsible officer		
Signature of responsible officer and official stamp		

**FORMAT AND DETAILS OF DATA ON IRRIGATION SECTOR INVESTMENTS (r. 110(4)(h))**

Name of investor	Category of investment	Nature of investment	Value in Kshs	Beneficiary Irrigation area Licensing ID No
------------------	------------------------	----------------------	---------------	---

*Category denotes:* Private, Public, Public- Private and Foreign Direct Investment

*Nature of investment denotes:* Infrastructure, Capacity building and Research and technology

**FORMAT AND DETAILS OF IRRIGATION SCHEMES ANNUAL REPORTS (r. 110(4)(i))**

**IRRIGATION SCHEME ANNUAL REPORT**

Name of Scheme

Name of IWUA

Reporting Period

Start

DD/MM/YYYY

End

DD/MM/YYYY

Location of project

County

Sub-County

Ward

Type of scheme(National

Public/ County

Public/National Strategic/  
Other)

Supervising entity

Date of Submission

Officer Responsible--

Name &amp; Signature

Scheme Identification

GPS Location

Number

No.

Aspect

Status Remarks

1.

Was the  
scheme  
operational in  
the reporting  
Period? (Yes/  
No)

2.

What acreage  
was under  
irrigation (ha)

3.

How many  
seasons did  
you have in the  
reporting period  
(1/2/3)

4.

What crops  
were grown?

5.

Give % acreage  
if more than  
one

6.

Rate the yield  
achieved  
in terms of  
percentage  
(optimum )Expected

7.

Does the  
scheme have  
a valid water  
permit (Yes/No)

*Irrigation*

[Subsidiary]

- 
8. If No state the reasons  
Was the Water resource adequate? (Yes/No)
9. If No state the reasons  
Does the scheme have water storage facilities? (Yes/No)
10. State the various components of the irrigation infrastructure and their condition
11. Abstraction-Distribution-Application-  
Was maintenance carried out in the reporting period? (yes/no)
12. If No what are the reasons?  
Was the IWUA registration valid for the period? (Yes/No)
13. If No give reasons  
Did the IWUA have an AGM during this period (Yes/No) if yes give date?
14. If No state the reason  
Were IWUA elections scheduled during the reporting



Irrigation

[Subsidiary]

- 15. period ? (Yes/No)  
IF Yes, Were IWUA elections held?  
If No give reasons
- 16. Did the IWUA management present Audited accounts to the members? (Yes/No)  
If No state the reasons
- 17. Did the IWUA meet its financial obligations during the period?  
Operations (Yes/No)  
Maintenance (Yes/No)  
Water charges (Yes/No)  
Employees (Yes/No)
- 18. Does the IWUA have Employees? (Yes/No)if Yes, state Number
- 19. Did the IWUA engage a service provider during the Period? (Yes/No)  
If Yes, state the name of provider and nature of service(s) provided
- 20. Any Other information

N/B: Attach IWUA Audited accounts for the period.

*Irrigation*

[Subsidiary]

## SIXTH SCHEDULE

[r. 20(1)(a)]

## APPLICATION FEES FOR IRRIGATION SCHEME LICENCES

<b>Category of scheme</b>	<b>Description</b>	<b>**Fees Payable (Kshs.)**</b>
Small scale irrigation scheme	Irrigation schemes covering less than 100 acres	1,000
Medium scale irrigation scheme	Irrigation schemes covering between 100 and 3000 acres	3000
Large scale irrigation schemes	Irrigation schemes exceeding 3000 acres	5,000

## SEVENTH SCHEDULE

## FORMATION OF ASSOCIATIONS AND CODE OF CONDUCT

## PART A - PROCEDURE FOR FORMATION OF IRRIGATION WATER USERS' ASSOCIATION (r. 48(3))

## 1. Objectives for the formation of an Irrigation Water Users' Association

The objects of an association are -

a) to manage an irrigation scheme wholly or partly in its service area and provide irrigation services equitably and timely to members of the association;

b) to maintain, renovate and improve the irrigation scheme within its service area and to undertake construction and reconstruction works which may be delegated to the association by the Authority or County government in the case of national, public and strategic schemes;

c) to take appropriate measures to combat erosion, salinity, siltation, pollution encroachment;

d) to make internal rules for the use of irrigation water and collect fees from its members for the services provided; and

e) to procure, maintain and operate irrigation equipment.

## 2. Guiding principles of an Association

Each association shall:

a) act fairly and equitably in making decisions and allocating resources including irrigation water

b) prevent wastage and pollution of water, combat erosion and salinity of soil, and protect an irrigation and drainage system within the operation area so as to promote the protection of the environment

c) avoid discrimination on the basis of ethnicity, gender, religion, political opinion or any other similar grounds in its dealing with members in the utilization of water

d) apply a transparent and participatory approach in decision making processes.

## 3. Procedure for the formation of an association

(1) Persons who use irrigation water and are not less than fifteen in number may form an association after those persons have set up an interim team to identify the service area of

the proposed association and an interim committee which may not exceed twelve potential members of the association.

(2) The interim committee shall be composed of persons representing different units of the proposed service area so as to ensure fair representation of potential members of the proposed association.

(3) The interim committee shall elect a chairperson, treasurer and secretary and adopt its own rules of procedure to carry out activities preceding the formation of the association.

(4) The interim committee for the service area in consultation with the supervising entity, shall, in respect of the proposed association, prepare:

- a) rules and by-laws;
- b) a plan of the proposed service area that shows the size and location of the units, if any;
- c) application forms for the potential members, which shall include the name, address and signature of each potential member, a description of the landholding of each potential member and the land registration number; and
- d) a draft budget and work plan.

(5) The interim committee shall:

- a) distribute the application forms to potential members to fill and execute;
- b) supervise the filling and signing of the application forms by the potential members of the association; and
- c) give the potential members an opportunity to comment on the documents listed in part (4) above.

(6) The interim committee shall, when at least half of the potential members in the service area for the proposed association have filled and signed the application forms, convene an inaugural general assembly meeting to:

- a) approve the by-laws, budget and work plan of the proposed association taking into consideration the comments made on these documents by prospective members; and
- b) elect interim Irrigation Water Users' Association management committee and other officers of the association.

(7) The quorum for the inaugural general assembly meeting is half of the potential members of the proposed association.

(8) Matters that require decision at a meeting shall be decided by the majority vote of the members present and voting at the meeting.

(9) The interim Irrigation Water Users' Association management committee shall submit to the supervising entity, an application for registration of the association together with:

- a) the minutes of the inaugural general assembly meetings;
- b) three copies of the regulations and by-laws of the association;
- c) the plan of the proposed service area and the location of the units, if any;
- d) the applications of potential members of the association; and
- e) the draft budget and work-plan.

(10) The supervising entity shall submit the application to the Cabinet Secretary within fourteen days with recommendations

(11) The Cabinet Secretary shall, within thirty days after the submission of the application, if satisfied with the application and the required documents, register the association in the Register of Irrigation Water Users' Associations and issue a certificate of registration to the association.

(12) If the application for the registration of an association is rejected, the Cabinet Secretary shall give a written explanation to the interim Irrigation Water Users Association management committee within thirty days after the decision to reject the application is made.

[Subsidiary]

Part B - CODE OF CONDUCT FOR IRRIGATION WATER USERS'S ASSOCIATION OFFICIALS AND MEMBERS (r.56(5))

WHEREAS, under the constitution of Kenya, a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, loyalty and efficiency, act with patriotism and justice and should have modest lives;

WHEREAS, in addition to the foregoing constitutional and legal principals and consistent with the policy of the government to foster a transparent and effective governance, there is a need to adopt norms of conduct that are specific to personnel of irrigation water users' associations.

NOW, THEREFORE, the code of conduct for officials and members of Irrigation water user's associations it is hereby promulgated as follows:

**RULE I - APPLICATION OF CODE**

SECTION 1. This code of Conduct for officials and members of associations shall be applicable to all officials and members of irrigation water users' associations irrespective of the office they hold.

**RULE II - FIDELITY TO DUTY**

SECTION 1. Association's officials and employees shall not use their official positions to secure unwarranted benefits, privileged or exemptions for themselves or for others.

SECTION 2. Association's officials and employees shall not discriminate by dispensing special favours to anyone. They shall not allow kinship, tribalism, clanism, rank, position, creed or religion or favours from any party to influence their official acts, duties and functions.

SECTION 3. Association's official and employees shall not accept any fee or remuneration other than what they receive or are entitled to in their official capacity, unless otherwise authorised by the association's by-laws.

SECTION 4. Associations officials and employees shall use resources, property and funds of the respective associations in their custody in an official matter and in a judicious manner and solely in accordance with the associations constitution and by- laws and regulatory guidelines or procedures.

**RULE III- CONFLICT OF INTEREST**

SECTION 1. Association's officials and employees shall avoid conflict of interest in performing their official duties. Every personnel is required to exercise utmost diligence in being aware of conflicts of interest, disclosing conflicts of interest to the designated authority, and terminating them as they arise.

SECTION 2: A conflict of interest arises when;

- (a) The ability or independence of judgement in performing official duties is impaired or may reasonably appear to be impaired o; or
- (b) Financial gain by the association official or employee, their immediate family, their common-law relations of their businesses or other financial interest would be derived because of the personnel's official act.

SECTION 3. Association's officials and their employees shall not:

- (a) Enter into any contract with the Association for services, lease or sale of property apart from employment contract relating to the personnel's position nor use that position to assist any member of the personnel's immediate family in securing a contract with the association.
- (b) Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings in any office within the Association
- (c) Knowingly employ or recommend for employment any member of his/her immediate family in the association. The term immediate family shall include the following, whether related by blood or adoption

- (i) spouse;
- (ii) children;
- (iii) brother;
- (iv) sister;
- (v) parent;
- (vi) grandparent;
- (vii) grandchildren;
- (d) Solicit or accept any gift, loan, gratuity, discount, favour, hospitality, service or benefit under any circumstances from any person who has transaction with the association or any person acting for and on behalf of any entity transacting business with the association.

SECTION 3. Nothing in section 2 above shall prohibit any associations official or employee from (a) accepting invitations to or attending social functions in relation to the personnel's official duties (b) accepting a public award presented in recognition of public services; (c) receiving a commercially reasonable loan made as part of the ordinary transaction of the lenders business; (d) donating to the association for the benefit of the group, provided that the award , loan or donation is from a person or entity other than that mentioned in section 2 (e) above.

SECTION 4. To ensure compliance with the provision of this rule on conflict of interest, associations officials who have authority to enter into or approve contracts on behalf of the Association shall file a financial disclosure statement with the supervising entity (Cabinet Secretary, National Irrigation Authority or County Irrigation Development Unit) at the beginning and upon termination of engagement or employment in such position, and annually while so engaged or employed. The disclosure shall follow the guidelines established by the designated authority, and shall include all sources of personal and business income, including investments in personal or real property as well as all income received by their spouses or dependent children.

**RULE IV- PERFORMANCE OF DUTIES**

SECTION 1. All association employees' shall at all times perform official duties properly and with diligence.

SECTION 2. Association's official and employees shall carry out their responsibilities as public officials in a courteous manner.

SECTION 3. Associations official and employees shall not alter falsify, destroy or mutilate any association record in their control.

SECTION 4. In performing official duties, association's officials and employees shall not discriminate nor manifest, by word or conduct, bias or prejudice based on race, religion, national or ethnic origin, perceived status, gender or political affiliation.

SECTION 5. Association's officials and employees shall expeditiously enforce rules and implement lawful orders of the constituted authorities within the limits of their authority.

SECTION 6. Association's official and employees shall act on and dispose of a request, whether verbal or written, immediately and in no case beyond fourteen days from receipt of the request, petition or motion

**RULE V - INCORPORATION OF OTHER RULES**

SECTION 1. All provisions of law and administrative issuances governing the conduct of business of irrigation water users' associations are deemed incorporated into this code.

In case of conflict between this code and the existing provision of law and administrative issuances governing the conduct of associations and their personnel, the latter shall prevail and this code shall be applied in supplementary character.

**RULE VI - FILING OF COMPLAINT**

Irrigation

[Subsidiary]

SECTION 1. Any complaint against any association’s official or employee regarding any violation of this code shall be subject to disciplinary action pursuant to the association’s constitution and by-laws.

EIGHTH SCHEDULE

PART A - IRRIGATION MANAGEMENT TRANSFER AGREEMENT (r. 73(5)(c))



Agreement for Irrigation Management Transfer

This agreement dated \_\_\_\_\_ [day/month/year] is between:

\_\_\_\_\_ ‘the Transferor’ [Supervising entity] the address of which is and \_\_\_\_\_ Irrigation Water User Association (‘the Transferee’) the address of which is \_\_\_\_\_

WHEREAS

(a) The Transferee is an Irrigation Water User Association established pursuant to Irrigation regulations 2020;

(b) The Transferee wishes to take responsibility for the operation and maintenance of the Irrigation System within its Service Area;

(c) The Transferor is a Supervising entity within the meaning of the Irrigation regulations pursuant to the Irrigation regulations;

the Transferor is required to transfer Management to the Irrigation Water Users Association the Irrigation System serving the Service Area of the Association.

THE PARTIES AGREE AS FOLLOWS:

1. Terms of Agreement

This Agreement shall enter into effect on the above written date and shall continue in force for a period of [.....] years, ending on [day/month/year] .....

2. Transfer of the Irrigation Infrastructure

(1) The Transferor transfers to the Transferee the use, operation and maintenance of the Irrigation Infrastructure (hereafter the ‘Irrigation Infrastructure’) that is more particularly described in Schedule 1, in accordance with the provisions of this Agreement.

(2) The Irrigation Infrastructure includes the land immediately beneath and adjacent to the

(3) irrigation infrastructure.

(4) In consideration of the transfer described in sub-paragraph 2 (a) the Transferee shall operate and maintain the Irrigation Infrastructure in accordance with the provisions of this Agreement.

3. Condition of the Irrigation Infrastructure

(1) The Irrigation Infrastructure is transferred in the condition jointly identified and agreed by the Parties, which is described in Schedule 2 of this Agreement.

(2) The transferor must ensure the condition of the irrigation infrastructure will allow the transferee to fulfil its obligations mentioned in articles 5, 6 and 9 and if necessary undertake the relevant rehabilitation or modernization work.

**4. Use of the Irrigation Infrastructure by Transferee**

The Transferee shall use the Irrigation Infrastructure only for the purpose of supplying irrigation water to its members.

**5. General operating rules for the Irrigation Infrastructure**

The Transferee shall:

- (a) Operate the Irrigation Infrastructure in a safe and responsible manner so as to prevent or minimise the risk of over-watering land, causing damage to the component parts of the Irrigation Infrastructure or harm to property or human life;
- (b) Operate the Irrigation Infrastructure in a fair and equitable manner so as to ensure that each of its members receives a fair and timely supply of water;
- (c) Obtain and comply with any licences or permits necessary to operate and maintain the
- (d) Irrigation Infrastructure or any component element, including the abstraction of water in
- (e) accordance with the applicable legislation.

**6. Specific operating rules for the Irrigation Infrastructure**

In addition to the general operating rules for the Irrigation Infrastructure described in Article 7 of this Agreement, the Transferee shall comply with the specific operating rules that are contained in Schedule 4 of this Agreement.

**7. Measurement obligations of the Transferee**

(1) The Transferee shall measure the quantities of water abstracted, impounded or pumped and/or used at the points specified in Schedule 5 of this Agreement and in accordance with the technical means specified.

(2) The Transferee shall maintain a written record of the measurements referred to in paragraph 7a) for a period of 10 years and shall promptly makes such records available to the Transferor for inspection at the written request of the latter.

**8. Irrigation Infrastructure maintenance and investment plans**

(1) The Transferee shall each year prepare an annual Maintenance and Investment Plan that indicates the physical maintenance and investment works that it proposes to undertake to the Irrigation Infrastructure during the following year.

(2) Works of the type described in paragraph 8a) shall include activities intended to enable the Transferee to comply with its obligations to maintain the Irrigation Infrastructure as well as to improve its functionality and effectiveness.

(3) The Transferee shall submit the draft Maintenance and Investment Plan to the Transferor by ..... [day/month] each year for its approval or such other date as is agreed by the parties, together with a copy of its most recent financial statements.

**9. The substantive obligations of the Transferee regarding the maintenance of the Irrigation Infrastructure**

(1) The Transferee shall maintain the Irrigation Infrastructure with the general objective of ensuring that the Irrigation Infrastructure is in a sound and usable condition such that it will enable the Transferee to provide water in a fair and equitable manner to its members in a sustainable manner.

(2) To comply with the objective described in paragraph (a) the Transferee shall:

- (a) Preserve the carrying-capacity and water-tightness of water conveyances (canals, drains and pipelines) by cleaning sediment deposits and vegetation,

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maintaining embankments, repairing cracks and joints and replacing damaged and leaking sections of canal lining or pipe-work;

- (b) Preserve the operational capacity and water-tightness of water control structures and valves by greasing, protecting from corrosion, repairing and replacing seals and control mechanisms as necessary and repairing structural elements;
- (c) Maintain adequate vehicular access routes to all infrastructure elements for routine operation as well as for attendance at emergencies;
- (d) Undertake routine maintenance, as specified by the manufacturer, of electrical-mechanical equipment (including pump stations), and shall repair or replace worn and damaged components as necessary to ensure effective continued operation;
- (e) Maintain buildings and other structures in a sound weather proof and functional condition and shall paint exposed woodwork at no less than five yearly intervals as well as maintaining fences and boundary walls relating to the Irrigation Infrastructure;
- (f) Maintain and provide measures to secure the safety of operators and users of all
- (g) components of the Irrigation Infrastructure, with particular attention to the health and safety aspects of electro-mechanical equipment and electrical wiring.

(3) The Transferee shall, in addition, undertake the Irrigation Infrastructure specific maintenance tasks specified in Schedule 6 of this Agreement.

(4) In undertaking maintenance works the Transferee shall comply with all applicable legislation including environmental protection legislation.

(5) The Transferee shall maintain a full record of maintenance undertaken in respect of the irrigation Infrastructure and shall provide information concerning to the maintenance of the Irrigation Infrastructure to the Transferor at the written request of the latter.

#### **10. Prevention of encroachment**

The Transferee shall take all reasonable measures to prevent unauthorised encroachment on the irrigation infrastructure including any adjacent land, as described in Schedule 5.

#### **11. Costs of operating and maintaining the Irrigation Infrastructure**

The Transferee is entirely responsible for paying the costs of operating and maintaining the irrigation infrastructure.

#### **12. Inspection of the Irrigation Infrastructure**

(1) The Transferor through its duly authorized officers may inspect the Irrigation Infrastructure Periodically to ensure that it is correctly operated and maintained.

(2) The Transferor acting through a duly authorized officer may order the Transferee to undertake specific works where this is necessary, including -

- (a) ensure the proper maintenance of the irrigation infrastructure;
- (b) prevent damage or harm to the irrigation infrastructure; and
- (c) prevent damage to state property or the property of third persons;
- (d) all in the public interest.

(3) The Transferee shall promptly comply with a notice under the previous clause 12 (a).

#### **13. Modification of the Irrigation Infrastructure**

The Transferee shall not modify, reconstruct or improve the irrigation infrastructure without the written agreement of the Transferor, such agreement not to be unreasonably withheld.



**14. Improvements to the Irrigation Infrastructure**

The Transferor will as far as practicable assist the Transferee in rehabilitating or improving the irrigation infrastructure, either through the direct provision of funding and technical support or by facilitating the provision of such funding and support by non-governmental, national or international organisations and/or other supporting agencies or bodies.

**15. Notices**

Any notices required to be given under this Agreement shall be in writing and shall be sent by mail or delivered by hand to the address of the relevant Party set out at the head of this Agreement.

**16. Amendment of the Agreement**

This Agreement may only be amended in writing signed by the duly authorised representatives of the Parties.

**17. Termination of the Agreement**

This Agreement may only be terminated on the basis of a decision of the Supervising entity on the grounds that:

- (a) The Transferee has consistently breached the provisions of this Agreement thereby causing a risk of serious harm to the Irrigation Infrastructure, property and/or human life;
- (b) The Transferee has been placed in liquidation; or
- (c) On other grounds provided by law.

**18. Dispute resolution**

Disputes between the Transferor and Transferee, including those that relate to amendment and termination of the Agreement shall be resolved by the mutual agreement of the Parties. In case mutual agreement cannot be achieved, disputes shall be resolved by the courts in accordance with the procedure provided for by law.

**19. Renewal of the Agreement**

Not less than twelve months before the expiry of this Agreement the Transferee may request the Transferor to enter into a new Agreement which shall be in substantially the same terms as this Agreement.

**20. The status of the Schedules**

The Schedules to this Agreement form an integral part of this Agreement.

Agreed by the Parties through their authorised signatories

For and on behalf of the Transferor	For and on behalf of the Transferee
Name of Representative	Name of Representative
Signature	Signature
(Seal)	(Seal)

Attachments:

Schedule 1 : Full description of the irrigation infrastructure and plan

Schedule 2: Inventory of condition

Schedule 3: Irrigation Infrastructure Specific Operating Rules (operational and maintenance Manual) (if any)

Schedule 4: Irrigation Infrastructure Specific Maintenance Rules (if any)

**PART B: PROCESS FOR IRRIGATION MANAGEMENT TRANSFER**

(r. 73(7))

[Subsidiary]

**PROCESS FOR IRRIGATION MANAGEMENT TRANSFER**

1. Participatory approaches to irrigation management and irrigation management transfer (IMT) Programmes are significant elements in improving irrigation performance.
2. An irrigation management transfer programme aims at appropriate, successful and sustainable devolution of roles from the irrigation agency (National Irrigation Authority) in the case of public, national and strategic schemes to Irrigation water users' associations to fosters equitable development.
3. The supervising entity shall be responsible for implementing the Irrigation management transfer process
4. The following is the envisaged procedure under these regulations;

Step 1 – Mobilisation of Public Support through Preparation and Adoption of a Transfer Policy

- (a) A transfer policy statement shall be prepared and should include the following elements:
  - objectives and justification for the IMT;
  - brief description of what kinds of irrigation systems or sub-systems will be transferred;
  - brief description of what management functions will be transferred;
  - brief description of what new entities (If any) will take over management;
  - brief description of what changes will be made in public agencies relative to IMT;
  - identification of the organization to direct implementation if its is not the supervising entity as the case may be for regional development Authorities;
- (b) This transfer policy shall be subject to public participation, involving the key stakeholders. Upon consensus with the stakeholders then step 2 may be undertaken

**STEP 2- Preparation of a Strategic Plan**

The supervising entity or implementation agency shall prepare a strategic plan for the transfer process and it should contain the following elements:

- Objectives and justification for IMT;
- proposed organizational structure for the transfer(change) process;
- expected stakeholder participation;
- expected key issues for policy and programme formulation; and
- Time-frame and financing plan.

**STEP 3: Resolution of Key Policy Issues**

- (a) The strategic plan shall be presented to the stakeholders to resolve the following

issues and prepare for implementation

Resolving what service elements should be transferred

Ensuring Organisational accountability

Addressing Legal issues such as ownership of infrastructure to be transferred Water rights etc.

Issues to consider after transfer i.e. maintenance, operations and the water service provider

- (b) At the end of this step the Supervising entity shall seek authority from the regulatory authority i.e. (Cabinet Secretary) for implementation approval.
- (c) Three pre-conditions should be met prior to approval;
  - a) The irrigation infrastructure must be in functional condition.
  - b) Funds for the transfer process must be secured.
  - c) Evidence of Public participation

STEP 4: Implementation

The final stage of the Irrigation management transfer is the development of the implementation plan and its subsequent execution. The following are the key issues to be included;

Implementation plan including timeline and financing;

Restructuring the Irrigation agency, mission, roles, support services to IWUA after transfer;

the IWUA through capacity building thus preparing it to govern;

Improving irrigation infrastructure prior to the actual transfer;

Application and Issuance of user right certificate thus concluding the transfer process.

**PART C - IRRIGATION WATER SERVICE AGREEMENT**

(r. 77(3))

**AGREEMENT FOR PROVISION OF IRRIGATION WATER SERVICES**

This agreement dated \_\_\_\_\_ [day/month/year] is between: \_\_\_\_\_ 'the Service Provider' the address of which is \_\_\_\_\_; and \_\_\_\_\_ Irrigation Water User Association ('the client') the address of which is \_\_\_\_\_.

WHEREAS

The Client is an Irrigation Water User Association established pursuant to Irrigation (General) Regulations, 2020.

The Service provider wishes to take responsibility for the operation and maintenance of the Irrigation System within the Service Area of the Client as defined herein;

THE PARTIES AGREE AS FOLLOWS:

1. Terms of Agreement

This Agreement shall enter into effect on the above written date and shall continue in force for a period of [.....] years, ending on .....[day/month/year]. This shall constitute the seasons as defined in the cropping calendar schedule 2 of this agreement.

2. Transfer of the Operation and Maintenance of Irrigation Infrastructure

- (a) The Client transfers to the Service provider, operation and maintenance responsibilities of the Irrigation Infrastructure (hereafter the 'Irrigation Infrastructure') that is more particularly described in Schedule 1 and 2, in accordance with the provisions of this Agreement.
- (b) In consideration of the transfer described in sub-paragraph 2(a) the Service provider shall operate and maintain the Irrigation Infrastructure in accordance with the provisions of this Agreement.

3. Condition of the irrigation infrastructure

The Client must ensure the condition of the Irrigation Infrastructure will allow the Service provider to fulfil its obligations mentioned in articles 5, 6 and 9.

4. Use of the irrigation infrastructure by Service provider

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The service provider shall use the Irrigation Infrastructure only for the purpose of supplying irrigation water to members of the Client.

**5. General operating rules for the Irrigation Infrastructure**

The Service provider shall:

- (a) Operate the Irrigation Infrastructure in a safe and responsible manner so as to prevent or minimise the risk of over-watering land, causing damage to the component parts of the Irrigation Infrastructure or harm to property or human life;
- (b) Operate the Irrigation Infrastructure in a fair and equitable manner so as to ensure that the client’s members receive a fair and timely supply of water at the supply points as defined in schedule 3;
- (c) Obtain and comply with any licences or permits necessary to operate and maintain the Irrigation Infrastructure or any component element, including the abstraction of water in accordance with the prevailing legislation.

**6. Specific operating rules for the Irrigation Infrastructure**

In addition to the general operating rules for the Irrigation Infrastructure described in Article of this Agreement, the Service provider shall comply with the specific operating rules that are contained in Schedule 4 of this Agreement.

**7. Measurement obligations of the Service provider**

- (a) The Service provider shall measure the quantities of water abstracted, impounded or pumped and/or used at the points specified in Schedule 3 of this Agreement and in accordance with the technical means specified.
- (b) The Service provider shall maintain a written record of the measurements referred to in paragraph 7(a) for a period of ..... years and shall promptly makes such records available to the Client for inspection at the written request of the latter.

**8. Irrigation Infrastructure maintenance and investment plans**

- (a) The Service provider shall each year prepare an annual Maintenance and Investment Plan that indicates the physical maintenance and investment works that it proposes to undertake to the Irrigation Infrastructure during the following year.
- (b) Works of the type described in paragraph 8(a) shall include activities intended to enable the Service provider to comply with its obligations to maintain the Irrigation Infrastructure as well as to improve its functionality and effectiveness.
- (c) The Service provider shall submit the draft Maintenance and Investment Plan to the client by .....[day/month] each year for its approval or such other date as is agreed by the parties, together with a copy of its most recent financial statements.

**9. The substantive obligations of the Service provider regarding the maintenance of the Irrigation Infrastructure**

- (a) The Service provider shall maintain the Irrigation Infrastructure with the general objective of ensuring that the Irrigation Infrastructure is in a sound and usable condition such that it will enable the Service provider to provide water in a fair and equitable manner to its members in a sustainable manner.
- (b) To comply with the objective described in paragraph 9(a) the Service provider shall:
  - (i) Preserve the carrying-capacity and water-tightness of water conveyances (canals, drains and pipelines) by cleaning sediment deposits and vegetation, maintaining embankments, repairing cracks

- and joints and replacing damaged and leaking sections of canal lining or pipe-work;
- (ii) Preserve the operational capacity and water-tightness of water control structures and valves by greasing, protecting from corrosion, repairing and replacing seals and control mechanisms as necessary and repairing structural elements;
  - (iii) Maintain adequate vehicular access routes to all infrastructure elements for routine operation as well as for attendance at emergencies;
  - (iv) Undertake routine maintenance, as specified by the manufacturer, of electrical-mechanical equipment (including pump stations), and shall repair or replace worn and damaged components as necessary to ensure effective continued operation;
  - (v) Maintain buildings and other structures in a sound weather proof and functional condition and shall paint exposed woodwork at no less than five yearly intervals as well as maintaining fences and boundary walls relating to the Irrigation Infrastructure;
  - (vi) Maintain and provide measures to secure the safety of operators and users of all components of the Irrigation Infrastructure under its operation, with particular attention to the health and safety aspects of electro-mechanical equipment and electrical wiring.
- (c) In undertaking maintenance works the Service provider shall comply with all applicable legislation including environmental protection legislation.
  - (d) The Service provider shall maintain a full record of maintenance undertaken in respect of the Irrigation Infrastructure and shall provide information concerning the maintenance of the Irrigation Infrastructure to the Client at the written request of the latter.

#### **10. Prevention of encroachment**

The Service provider shall take all reasonable measures to prevent unauthorised encroachment on the Irrigation Infrastructure including any adjacent land, as described in Schedule.

#### **11. Costs of operating and maintaining the irrigation infrastructure**

The Service provider is entirely responsible for paying the costs of operating and maintaining the Irrigation infrastructure but the client shall reimburse the service provider the full cost of operating and maintaining the Irrigation infrastructure as described in the Schedule.

#### **12. Costs Determination**

The costs reimbursed to the service provider shall be set out in schedule 4 of this agreement arrived at by a tripartite agreement between the association, the Service provider and the supervising entity.

#### **13. Costs payment**

The Client shall promptly pay the Service provider the costs of operating the infrastructure within Thirty (30) days of submission of invoice.

#### **14. Suspension of Services**

The service provider shall not suspend the supply of water or any other service under this agreement to the client except where the Client delays payment of any outstanding charges for more than ninety days

#### **15. Liability of Service provider**

*Irrigation*

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[Subsidiary]

- (a) If the service provider fails to supply water to the client in the agreed quantities and in accordance with the time schedule stipulated in this agreement, then the service provider is liable to pay the client compensation equitable to the damage suffered by the client.
- (b) For purposes of sub rule (a) above the supervising entity is responsible for assessing the damage or loss suffered by the Client.
- (c) The service provider shall not pay compensation in case of force majeure.

**16. Inspection of the Irrigation Infrastructure**

- (a) The Client through its duly authorized officers may inspect the Irrigation Infrastructure Periodically to ensure that it is correctly operated and maintained.
- (b) The Client acting through a duly authorized officer may order the Service provider to undertake specific works where this is necessary, including:
  - (i) ensure the proper maintenance of the irrigation infrastructure;
  - (ii) prevent damage or harm to the irrigation infrastructure; and
  - (iii) prevent damage to state property or the property of third persons, all in the public interest.
- (c) The Service provider shall promptly comply with a notice under the previous clause 12a).

**17. Modification of the Irrigation Infrastructure**

The Service provider shall not modify, reconstruct or improve the Irrigation Infrastructure without the written agreement of the Client, such agreement not to be unreasonably withheld.

**18. Maintenance of Infrastructure under management of the Client**

- (a) The Client shall take all necessary measures to ensure that the Irrigation Infrastructure under its management is properly maintained and is capable of receiving water supplied by the Service provider
- (b) The client shall ensure the irrigation infrastructure employs efficient utilisation of water, reduces water wastage, pollution and salinity and complies with the relevant prevailing legislation.

**19. Notices**

Any notices required to be given under this Agreement shall be in writing and shall be sent by mail or delivered by hand to the address of the relevant Party set out at the head of this Agreement.

**20. Amendment of the Agreement**

This Agreement may only be amended with the consent of both the Client and Service provider and in writing signed by the duly authorised representatives of the Parties.

**21. Termination of the Agreement**

This Agreement may only be terminated on the basis of a decision of the Supervising entity on the grounds that:

- (a) The Service provider fails to supply water to the client in the agreed quantity or schedule stipulated in this agreement
- (b) The Service provider has consistently breached the provisions of this Agreement thereby causing a risk of serious harm to the Irrigation Infrastructure, property and/or human life;
- (c) The Service Provider has been placed in liquidation;
- (d) On dissolution of the association; or
- (e) On other grounds provided by law.

**22. Dispute resolution**

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[Subsidiary]

Disputes between the Client and Service Provider, including those that relate to amendment and termination of the Agreement shall be resolved by the mutual agreement of the Parties. In case mutual agreement cannot be achieved, disputes shall be resolved by the courts in accordance with the procedure provided for by law.

23. Renewal of the Agreement

Not less than twelve months before the expiry of this Agreement the Service provider may request the Client to enter into a new Agreement which shall be in substantially the same terms as this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives there unto duly authorized, have caused this Agreement to be signed in the respective names, as of the date first above written.

The Schedules to this Agreement form an integral part of this Agreement.

Duly authorized for and on behalf of Service Provider M/s .....

SIGNED BY:

Address..... Title .....

Name ..... Signature .....

Duly authorized for and on

Behalf of the irrigation water users' association

Address .....

SIGNED BY IRRIGATION WATER USERS' ASSOCIATION OFFICIALS:

The Chairman

1. Name ..... Signature.....

Secretary ()

2. Name ..... Signature.....

Treasurer ()

3. Name ..... Signature.....

Rep. of Members ()

4. Name ..... Signature.....

Witnessed by:

(1) Supervising entity [Authority/County Irrigation Development Unit]

.....

Address ..... Title .....

Name ..... Signature.....

(2) Ward Representative:

Address .....

Name .....

Signature .....

Countersigned by the County Director

For Irrigation/Agriculture ..... Address .....

Name ..... Signature .....

ATTACHMENTS:

*Irrigation*

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[Subsidiary]

Schedule 1a:	Full description of the Irrigation Infrastructure and Layout Map
Schedule 1b:	Description of Specific infrastructure Components transferred to Service provider for Operation and Maintenance.
Schedule 2:	The Cropping calendar
Schedule 3:	The Water Distribution schedule (including water supply points)
Schedule 4:	Costs reimbursement and Payment schedule
Schedule 5:	Irrigation Infrastructure Specific Operating Rules (operation and maintenance Manual) (if any)

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