



# Model Bulk Water Supply Contract

## Between a Municipality And a Water Board

**DECEMBER 2 0 0 6**

**NOTE**

Guiding Notes Are Provided Where Necessary



**water & forestry**

Department:  
Water Affairs and Forestry  
REPUBLIC OF SOUTH AFRICA



**SALGA**

South African Local Government Association





# MODEL BULK WATER SUPPLY CONTRACT BETWEEN A WATER SERVICES AUTHORITY AND A BULK WATER SERVICES PROVIDER

DECEMBER 2006

## PREFACE

This model bulk water supply agreement between Water Services Authorities (WSA) and bulk Water Services Providers (WSP) is an important building block in the regulatory framework, which is being established by the Department of Water Affairs and Forestry (DWAF) in cooperation with its sector partners to ensure that water supply and sanitation are provided by institutions in a manner which is efficient, equitable and sustainable.

This model agreement was compiled in the spirit of mutual cooperation between the South African Local Government Association (SALGA), the South African Association of Water Utilities (SAAWU) and DWAF. The undersigned firmly believe that this spirit of cooperation between the different spheres of government and organs of state will be strengthened during the negotiation of the individual bulk water supply agreements and that this negotiation process will serve to further clarify and define the respective roles and duties of each institution, and especially their mutual responsibility to protect and promote the rights of consumers.

While it is National Government's duty to provide the regulatory framework for water services, it is the water services authorities who have the authority to administer water services within their areas of jurisdiction. The undersigned strongly urge all water services authorities to take the necessary steps to ensure that the bulk water supply agreements are concluded timeously to ensure sustainable, cost effective and efficient water services to all citizens.

Should you, the potential parties to an agreement, incur any difficulties or uncertainties during the negotiation process, you are encouraged to approach DWAF, SALGA or SAAWU for assistance. We are at your service.

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DATE:

DATE:

DATE:





## INTRODUCTION

Section 22 of the Water Services Act, 1997 provides that:

- (1) no person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.
- (2) Any approval in terms of subsection (1)
  - (a) must be for a limited period; and
  - (b) may be granted subject to conditions.
- (3) Any person who, at the commencement of this Act, was acting as a water services provider without approval from the water services authority having jurisdiction in the area in question, may continue to do so until the expiry of reasonable notice, which notice must not be longer than one year, given by that water services authority—
  - (i) that it requires the provider to enter into a contract; or
  - (ii) that the continuation will be subject to approval as contemplated in subsection (1).

It is thus incumbent on municipalities, as water services authorities, and water boards, as water services providers, to enter into bulk water supply contracts, which define their respective obligations and duties.

This model water supply agreement has been approved by SALGA, SAAWU and by DWAF. The model agreement is however just that, it is a model. Common sense dictates that this model may need to be deviated from in order to accommodate the specific circumstances of each water supply area. This is acceptable, as long as alterations to the model agreement are done in a professional and cooperative manner and not in order to facilitate one party imposing unfair conditions or taking unfair advantage of the other party.

It is important for the potential parties to a water services provider agreement to also note that the minimum requirements for a water services provider agreement have been gazetted as regulations under S19 of the Water Services Act. These regulations must be consulted before concluding any water services provider agreement, including a bulk water services provider agreement.

The model agreement may promote approaches or methodologies that are different to the way that bulk services are currently being provided by a water board. If changes to approaches and methodologies are required then the agreement should allow reasonable time for the water board or water services authority to adapt its processes

It is intended that all existing bulk water supply relationships should be formalised by contract before the end of <sup>1</sup>November 2007. DWAF, as regulator, will monitor progress towards this goal.

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<sup>1</sup>Strategic Framework for Water Services set target date of 2006





## CONTENTS

<b>SECTION A: INTRODUCTION</b>	<b>1</b>
1. RECORDAL.....	1
2. INTERPRETATION AND PRELIMINARY.....	1
3. OBJECTIVES OF THE CONTRACT.....	5
<b>SECTION B: APPOINTMENT, SCOPE, DURATION AND REVIEW</b>	<b>6</b>
4. APPOINTMENT AND SCOPE.....	6
5. COMMENCEMENT AND DURATION.....	6
6. REVIEW.....	6
<b>SECTION C: WATER SUPPLY STANDARDS</b>	<b>8</b>
7. QUANTITY OF WATER AND CUSTOMER CONNECTIONS.....	8
8. WATER QUALITY.....	8
9. FLOW RATE.....	9
10. WATER PRESSURE .....	11
<b>SECTION D: SYSTEM OPERATING STANDARDS</b>	<b>12</b>
11. NORMAL MAINTENANCE AND REPAIRS.....	12
12. METERS.....	12
13. EMERGENCIES.....	15
14. DROUGHTS.....	16
<b>SECTION E: NEW OR INCREASED WATER SUPPLY REQUIREMENTS</b>	<b>17</b>
15. APPLICATION.....	17
16. INSTALLATION OF CUSTOMER CONNECTION AND RELATED CHARGES.....	17
17. OWNERSHIP OF CUSTOMER CONNECTIONS.....	18
<b>SECTION F: COMMUNICATION AND COORDINATION</b>	<b>19</b>
18. COMMUNICATION.....	19
19. COMMUNICATION WITH THE MUNICIPALITY'S END CONSUMERS.....	19
20. COORDINATION.....	19
<b>SECTION G: INFORMATION AND REPORTING</b>	<b>20</b>
21. ACCESS TO INFORMATION REQUESTED.....	20
22. FINANCIAL STATEMENTS AND ANNUAL REPORTS.....	20





<b>SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT</b>	<b>21</b>
23. PERMISSIBLE CHARGES.....	21
24. CAPITAL CONTRIBUTION CHARGES.....	21
25. PROCEDURE FOR SETTING OF BULK WATER SUPPLY SERVICES CHARGES AND ADOPTION OF CAPITAL EXPENDITURE PROGRAMME .....	22
26. ACCOUNTS FOR PAYMENT OF BULK WATER SUPPLY SERVICES CHARGES.....	26
27. SPECIAL PAYMENT ARRANGEMENTS.....	27
<b>SECTION I: PERFORMANCE MANAGEMENT</b>	<b>28</b>
28. KEY PERFORMANCE AREAS.....	28
29. FAILURE OF THE WATER BOARD TO MEET OBLIGATIONS.....	28
30. ACTION OR OMISSION OF THE MUNICIPALITY.....	29
<b>SECTION J: OTHER WATER RELATED ACTIVITIES IMPACTING ON THE PARTIES</b>	<b>30</b>
31. DIRECT SUPPLY BY THE WATER BOARD TO THE MUNICIPALITY'S CONSUMERS.....	30
32. DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS OF ANOTHER MUNICIPALITY WHICH IS NOT A CUSTOMER OF THE WATER BOARD .....	31
33. USE OF WATER FROM SOURCES OTHER THAN THE WATER BOARD .....	31
<b>SECTION K: RISK MANAGEMENT</b>	<b>33</b>
34. LIMITATION AND DISCONNECTION OF WATER SUPPLY SERVICES.....	33
35. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND APPROVALS.....	34
36. LIABILITIES AND INDEMNITIES.....	34
37. INSURANCE .....	34
38. GUARANTEES.....	34
39. WARRANTIES.....	35
<b>SECTION L: BREACH AND VIS MAJOR</b>	<b>36</b>
40. BREACH.....	36
41. VIS MAJOR.....	37
<b>SECTION M: TERMINATION</b>	<b>38</b>
42. REASONS FOR TERMINATION.....	38
43. TERMINATION PROCESS.....	38
<b>SECTION N: PROCESS FOR ADDRESSING MATTERS IMPACTING ON MUNICIPAL CUSTOMERS</b>	<b>39</b>





<b>SECTION O: DISPUTE RESOLUTION</b>	<b>41</b>
45. DISPUTE RESOLUTION.....	41
46. NEGOTIATION.....	41
47. MEDIATION.....	42
48. ARBITRATION.....	42
<b>SECTION P: GENERAL</b>	<b>44</b>
49. PREVENTION OF CORRUPT ACTION.....	44
50. CONFIDENTIALITY AND PUBLICITY.....	44
51. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION.....	45
52. SUB-CONTRACTING.....	45
53. NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI.....	45
54. WHOLE AGREEMENT, NO AMENDMENT.....	46
55. FAILURE TO REACH AGREEMENT.....	47
56. LEGISLATIVE AND REGULATORY CHANGES.....	47
57. LIABILITY FOR EXPENSES.....	47
58. RELATIONSHIP BETWEEN PARTIES.....	47
59. CONSENT TO JURISDICTION.....	47
60. PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY.....	47
61. SUPREMACY OF THIS CONTRACT.....	48
62. CONTRACT NOT BINDING ON SUCCESSORS-IN-TITLE.....	48
63. MUTUAL COOPERATION AND GOOD FAITH.....	48
64. COUNTERPARTS.....	48
65. GOVERNING LAW.....	48
66. ANNEXURES.....	49



## SECTION A: INTRODUCTION

### 1. RECORDAL

Whereas the MUNICIPALITY is responsible for ensuring that all residents within the jurisdictional area of the MUNICIPALITY have access to water services in accordance with the Constitution of the Republic of South Africa Act, Act 108 of 1996, the Local Government: Municipal Structures Act, Act 117 of 1998, the Local Government: Municipal Systems Act, Act 32 of 2000 and the Water Services Act, Act 108 of 1997 and at the effective date is providing water services to the residents and will continue to do.

And whereas, at the effective date, the WATER BOARD has been providing bulk water supply services to the MUNICIPALITY and has the expertise, capacity and infrastructure to continue to provide bulk water supply services to the MUNICIPALITY.

#### GUIDELINE:

Clause to be amended where services are not provided by the Water Board at the commencement date of the contract.

THEREFORE the parties agree that the WATER BOARD be appointed to provide bulk water services to the MUNICIPALITY on the terms and conditions as more fully set out in this contract.

### 2. INTERPRETATION AND PRELIMINARY

2.1 Unless a contrary intention indicates, words imparting-

2.1.1 the singular include the plural and vice versa;

2.1.2 any one gender include both genders; and

2.1.3 natural persons include created entities (corporate or unincorporated) and the Government.

2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

2.2.1 "bulk water supply services" means the provision of potable water by the WATER BOARD to the MUNICIPALITY at identified customer connections;

2.2.2 "Department" means the Director-General of the Department of Water Affairs and Forestry or any other official duly authorised by him;

2.2.3 "capital expenditure programme" means the programme of the WATER BOARD describing all significant capital expenditure to be incurred or investments to be made by the WATER BOARD in respect of all immovable assets, including but not limited to pipelines, reservoirs and pumping stations;





**GUIDELINE:**

The meaning of the term “significant” must be agreed between the municipality and the water board. The agreement must be reflected in the above definition. The term “significant” may be defined as specific types of assets, expenditure in excess of a specific Rand value or expenditure having a defined financial impact on the bulk water supply charges payable by the municipality in terms of this contract.

- 2.2.4 “competent authority” means collectively the Minister, all spheres of Government, any court of competent jurisdiction or any agency, authority, body or standard setting institution, established or appointed in terms of any regulatory provision to regulate and oversee the activities of the MUNICIPALITY or the WATER BOARD pursuant to this contract or if the context is appropriate any one of them;
- 2.2.5 “contract” means this contract and any annexure or annexures hereto, as well as any subsequent amendment, notation or substitution of this contract and annexure or annexures in accordance with this contract;
- 2.2.6 “contract term” means the period defined in clause 5;
- 2.2.7 “CPIX” means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000=100) published from time to time by Statistics SA in Statistical Release PO141.1;
- 2.2.8 “customer connection” means the equipment installed by the WATER BOARD to connect the MUNICIPALITY to the WATER BOARD’s existing infrastructure, namely the connection to the existing WATER BOARD pipeline, the piping from the connection to the meter installation, the meter installation itself (that is, the meter, meter housing and the upstream and downstream isolation valves) and the 1,5 meters of piping downstream of the outer meter housing, with the length of piping between existing WATER BOARD infrastructure and the meter installation limited to the minimum length necessary to ensure-
- a) the proper functioning of the meter; or
  - b) the accessibility of the meter installation and non-interference with the WATER BOARD’s infrastructure or adjacent infrastructure;
- 2.2.9 “effective date” means either the date of last signature of this contract or another date as agreed between the parties in writing. (Which date could be earlier than the last date of signature of the contract);
- 2.2.10 “meter” means a meter which is used to determine the volume of water provided to the MUNICIPALITY at the customer connection on which bulk water supply services charges payable by the MUNICIPALITY is calculated;
- 2.2.11 “Minister” means the Minister of Water Affairs and Forestry;





- 2.2.12 “municipal customers” means the MUNICIPALITY and all other municipalities and water services providers to whom the WATER BOARD provides bulk water supply services, individually or collectively, as the context may require;
- 2.2.13 “MUNICIPALITY” means the \_\_\_\_\_ Metropolitan, Local or District Municipality (delete as appropriate) duly established in terms of Section 12 and authorised in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 to exercise executive authority for water and sanitation services;

**GUIDELINE:**

Where a municipality has appointed a retail water services provider and has delegated the procurement of bulk water supply services to that water services provider, the water board must enter into a bulk water supply services agreement with that provider.

This is critical as the municipality’s ability to effectively regulate and ensure accountability of its provider will be substantially diminished where the municipality takes decisions and provide information relating to its retail and bulk water supply services. These matters are the responsibility of its appointed water services provider. The agreement with the appointed water services provider should be similar to any other bulk water supply agreement with the water board relying on the contractual remedies to ensure performance by the appointed provider.

The payment risk for water boards is however recognised and a need for some assurance that its payment risk is addressed or provided for elsewhere is therefore understood. The situation may be equated with security that may be required from a holding company in respect of the debt of a subsidiary. A request for assurance that the payment risk is adequately covered may thus be required by water boards under certain circumstances. The assurance need not take the form of a guarantee or surety but may be addressed by granting insight into the Service Delivery Agreement between the municipality and its appointed service provider to assess if the step-in-rights that must be provided for therein in accordance with the Municipal Systems Act No 32 of 2000 also extends to liabilities of the service provider at the time of the municipality exercising its step in rights.

- 2.2.14 “municipal manager” means the municipal manager as defined in section 81(1)(a) of Local Government: Municipal Structures Act, Act 117 of 1998;
- 2.2.15 “normal growth” means the estimated growth in demand for water in a financial year or a number of financial years defined by the MUNICIPALITY in its Integrated Development Plan or Water Services Development Plan, which estimate is based on social and economic development;
- 2.2.16 “parties” means the MUNICIPALITY and the WATER BOARD, individually or collectively, as the context may require;





- 2.2.17 “regulatory provisions” means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by a competent authority, any or all of which are directly related to the provision of bulk water supply services or the related activities of the MUNICIPALITY or the WATER BOARD, or if the context is appropriate, any one of them;
- 2.2.18 “SALGA” means the South African Local Government Association recognised in terms of the Organised Local Government Act, Act 52 of 1977, to represent local government nationally;
- 2.2.19 “WATER BOARD” means \_\_\_\_\_ Water, a water board deemed to be or established in terms of the Water Services Act, Act 108 of 1997;
- 2.2.20 “water board infrastructure” means the WATER BOARD’s overall bulk water supply services infrastructure and equipment including customer connections;
- 2.2.21 “commencement date” means either the date of last signature of this contract or another date as agreed between the parties in writing. (Which date could be earlier than the last date of signature of the contract)
- 2.3 Clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms or any clause of this contract.
- 2.4 If any provision in a definition or the recordal is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition or recordal clause, effect shall be given to it as if it were a substantive provision in the operative part of this contract.
- 2.5 When any period of days is prescribed, days shall mean calendar days and the period shall be reckoned exclusively of the first day and inclusively of the last day and shall include any Saturday or Sunday or any public holiday.
- 2.6 Where any term is defined within the context of any particular clause in this contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this contract, notwithstanding that, that term has not been defined in this interpretation clause.
- 2.7 Where consent or approval of a party must be obtained or a party is required to consider or renew something in terms of this contract, unless it is specifically provided for otherwise, it will act reasonably and within a reasonable period.
- 2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.9 Expressions defined in this contract shall bear the same meanings in schedules or annexures to this contract which do not themselves contain their own definitions.
- 2.10 The expiration or termination of this contract shall not affect such of the provisions of this contract as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.



2.11 General words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.

### 3. OBJECTIVES OF THE CONTRACT

Recognising the executive authority of the MUNICIPALITY to provide water services within its area of jurisdiction the parties agree that this contract should be concluded to -

- 3.1 formalise and record the current and continued provision of bulk water supply services by the WATER BOARD to the MUNICIPALITY in writing in accordance with the requirements of the Water Services Act, Act 108 of 1997 and this contract; and
- 3.2 provide for the rendering of bulk water supply services in an efficient, equitable, cost effective and sustainable manner; and
- 3.3 set terms that are fair and equitable to the MUNICIPALITY and the WATER BOARD.

**GUIDELINE:**

Clause 3.1 to be amended where services are not provided by the water board at the commencement date of the contract.





## SECTION B: APPOINTMENT, SCOPE, DURATION AND REVIEW

### 4. APPOINTMENT AND SCOPE

The effective date of this contract is the date on which the MUNICIPALITY and the WATER BOARD enter into this contract to provide bulk water supply services to the MUNICIPALITY.

### 5. COMMENCEMENT AND DURATION

5.1 This contract shall commence on the effective date and shall endure for an initial period of \_\_\_\_ (\_\_\_\_\_) calendar years thereafter.

5.2 The contract may be extended at the end of the initial period or during the initial period as may be necessitated by the recovery period of any capital contribution agreed by the parties, provided that the parties reach agreement on the terms and conditions of the extension.

#### GUIDELINE:

- a. A Municipal Council resolution is required prior to a municipality entering into a contract with a water board. One may pre-date the effective date to recognise the fact that a water board has been providing services to the municipality in terms of the contract where the contract has been negotiated but not yet signed by the Municipality. However, the contract will only become lawful and enforceable once all required processes and procedures have been followed and a person has been delegated by the Municipal Council to sign the contract on behalf of the Municipality as the executive authority of municipalities vests in the Municipal Council.
- b. The duration of the contract must be informed by-
  - the capital expenditure incurred or to be incurred by the water board for the direct or indirect benefit of the municipality;
  - the manner in which the expenditure was or will be funded; and
  - the manner in which the expenditure will be recovered from the municipality, that is, up front payment, differential tariffs or uniform tariffs.

The water board should provide sufficient information to the municipality to enable the latter to make an informed decision.

### 6. REVIEW

6.1 Notwithstanding any other provisions in this contract, this contract shall be reviewable at any time during the initial or extended contract period at the written request of the MUNICIPALITY, subject to clauses 6.2 and 6.3.



- 6.2 The objectives of any review shall be to measure the performance of the WATER BOARD against the key performance areas as determined in accordance with clause 28 and to consider any reasonable amendments to the contract that may be necessitated by the review.
- 6.3 Any amendments resulting from any review contemplated in this clause shall be reduced to writing and signed by both parties.





## SECTION C: WATER SUPPLY STANDARDS

### 7. QUANTITY OF WATER AND CUSTOMER CONNECTIONS

- 7.1 It is hereby recorded that, on the commencement date, the WATER BOARD provides and shall continue to provide at all times, unless the provisions of clauses 14 and 41 apply, the quantities and estimated quantities of water for future years at the existing customer connections to the MUNICIPALITY as set out in Annexure A.

**GUIDELINE:**

- a. Clause to be amended where services are not provided by the water board at the commencement date of the contract.
- b. Annexure A must record the status quo on the commencement date.

- 7.2 The WATER BOARD may only adjust the estimated quantity of water specified in Annexure A with the agreement of the MUNICIPALITY.
- 7.3 If the MUNICIPALITY, at any time, requires the WATER BOARD to provide water in excess of the maximum quantity of water determined or estimated in Annexure A or a new customer connection, the MUNICIPALITY must apply to the WATER BOARD for an increased supply in accordance with clause 15.
- 7.4 The WATER BOARD must notify the MUNICIPALITY in writing, at least 14 (fourteen) days in advance, of any planned reduction in the quantity of water at any customer connection, the reasons therefore, the actions to be implemented to rectify the reduction and the duration of such a reduction, in accordance with the agreed system operating standards.

### 8. WATER QUALITY

- 8.1 The WATER BOARD shall \_\_\_ % of the time provide the water at the quality standard as specified in Annexure B unless the provisions of clause 41 apply. It is specifically recorded, that where the WATER BOARD cannot provide the agreed quality as specified in Annexure B because of the quality of raw water abstracted by the WATER BOARD for purification the provisions of clause 13 will apply.

**GUIDELINE:**

- a. Quality standards have to be agreed on, taking into consideration water resource quality and must be at least equal to one of the classes identified in SABS 241.
- b. The % of time at which the quality standard as specified in Annexure B will be provided must be negotiated prior to signing of the contract. The % agreed may have a financial implication for the bulk water supply charges payable by the municipality. The % of time, quality standard and financial implication of the foregoing must be negotiated.



c. The need for an integrated planning approach between the development of water services and water resources is recognised. However the responsibilities and role of the Department of Water Affairs and Forestry (DWAF) in ensuring integrated planning, cannot be addressed in this document. A separate process is underway to address these matters. The responsibilities of the water board that may be impacted on by actions of DWAF has in as far as possible been mitigated in the contract.

- 8.2 The WATER BOARD shall monitor the water quality within its water supply networks on a monthly basis and inform the MUNICIPALITY of the results thereof.
- 8.3 The WATER BOARD must inform the MUNICIPALITY in writing, at least 14 (fourteen) days in advance, of any planned deviation in the quality of water at any customer connection, the reasons therefore, the actions to be implemented to rectify such deviation and the period of such a deviation, in accordance with the agreed system operating standards.

**9. FLOW RATE**

**9.1 Annual Average Daily Demand**

- 9.1.1 The annual average daily demand at each existing customer connection and the projected annual average daily demand are as recorded in Annexure A.
- 9.1.2 The WATER BOARD will every 2 (two) years at least 6 (six) months prior to the commencement of its financial year, provide the MUNICIPALITY with a list of all the MUNICIPALITY’s customer connections, setting out separately the MUNICIPALITY’s most recent customer connections, and the annual average daily demand of the last full year of supply at each of the customer connections.
- 9.1.3 THE MUNICIPALITY, taking cognisance of clause 24, must within 2 (two) months of receipt of the list referred to in clause 9.1.2 provide the WATER BOARD with projected demands at set intervals, for at least each of the most recent customer connections, based on expected growth, over the contract period and may provide amended projected demands in respect of all the remaining customer connections.

**GUIDELINE:**

Where projected demands require capital expenditure the water board should inform the municipality of the time implications thereof as well as the capital contribution charge that will be payable in accordance with clause 24 over the remaining period of the contract. The municipality must thereafter assess if it is able to pay the capital contribution charge within the remaining period of the contract or if a longer contract period is required. If the latter, the amendment of the contract duration must be negotiated and the contract amended accordingly.

- 9.1.4 Normal growth at each customer connection will be defined by the demand projections provided by the MUNICIPALITY.





- 9.1.5 In the event that the MUNICIPALITY fails to provide the information relating to the most recent customer connections required in terms of clause 9.1.3, the WATER BOARD may determine the projected demands for each customer connection, based on expected growth, over the contract period and shall not be liable for any increased costs (in the form of capital contributions or water services supply charges because of capital costs incurred or committed and operational resources required to operate and maintain under-utilised water board infrastructure) that may be incurred by the MUNICIPALITY due to incorrect estimates.
- 9.1.6 The WATER BOARD shall at all times meet the annual average daily demand projections as increased by normal growth at each customer connection, unless the provisions of clause 14 and 41 apply.
- 9.1.7 The MUNICIPALITY shall notify in writing the WATER BOARD and all other municipal customers at least 1 (one) year in advance of any anticipated reduction of more than 15% (fifteen per cent) in the projected annual average daily demands due to water demand management initiatives or any other similar circumstances. The WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify in writing the MUNICIPALITY and other municipal customers of the projected financial implications of such a reduction.
- 9.1.8 The MUNICIPALITY must on receipt of a notice referred to in clause 9.1.7 initiate the process set out in clause 44.
- 9.1.9 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 9.1.7 or fails to initiate the process referred to in clause 9.1.8 the MUNICIPALITY shall remain liable for all costs associated with its projected annual average daily prior to any reduction, irrespective of whether it uses lower quantities of water or not.

## 9.2 Daily and Hourly Peak Flows

- 9.2.1 Notwithstanding the provisions of clause 9.1, the WATER BOARD shall at all times meet the MUNICIPALITY's agreed estimated daily peak flows as recorded in Annexure A and must take all reasonable measures, including the provision of adequate storage, to ensure that this demand is met at all times. Where the parties fail to reach agreement on the estimated daily peak flows or the method of calculating the estimated daily peak flows either party may refer the matter for resolution in terms of Section O of this contract.
- 9.2.2 The WATER BOARD shall undertake a detailed assessment of its ability to meet the MUNICIPALITY's daily peak flows immediately after the effective date and shall prepare and agree with the MUNICIPALITY a detailed action plan, with identified priorities, for meeting the MUNICIPALITY's daily peak flow demand, where it was unable to do so on the effective date. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 9.2.3 The MUNICIPALITY shall be responsible for meeting its hourly peak flow demands.





## 10. WATER PRESSURE

- 10.1 The WATER BOARD shall maintain the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand as set out in Annexure A.
- 10.2 The WATER BOARD must inform the MUNICIPALITY timeously of any planned reduction or increase in water pressure at any customer connection, the reasons therefore, and the actions implemented to rectify such reduction or increase and the period thereof, in accordance with the system operating standards.





## SECTION D: SYSTEM OPERATING STANDARDS

### 11. NORMAL MAINTENANCE AND REPAIRS

#### 11.1 Interruptions in Supply

- 11.1.1 The WATER BOARD may interrupt the MUNICIPALITY's supply for the purpose of renewing, testing, examining, repairing, maintaining or rehabilitating the WATER BOARD's infrastructure. The WATER BOARD shall endeavor to keep interruptions to a minimum.
- 11.1.2 The WATER BOARD shall give 21 (twenty one) days written notification of its intention to interrupt a supply and the estimated duration of such an interruption. The WATER BOARD may proceed with a planned interruption unless the MUNICIPALITY indicates that the interruption may not take place. Where the MUNICIPALITY indicates that an interruption may not take place, it must propose alternative dates for such an interruption.

#### 11.2 Failures and Leaks

- 11.2.1 The WATER BOARD shall repair unexpected failures and leaks in its infrastructure causing a deviation in the agreed quantity, quality, flow rate or pressure within the following times -

Pipe diameters	Time to repair
Up to 1 000 mm	within 12 hours
Larger than 1 000 to 1 800mm	within 15 hours
Larger than 1 800 to 2 100 mm	within 18 hours
Larger than 2 100 mm	within 24 hours

- 11.2.2 If it becomes clear that it will not be possible to adhere to the times specified in clause 11.2.1 the WATER BOARD shall immediately notify the MUNICIPALITY. It is specifically recorded that all repairs that exceeds 24(twenty four) hours will be treated as an emergency by both parties and that the provisions of Section 13 will therefore apply.

### 12. METERS

#### 12.1 Maintenance of meters

- 12.1.1 The WATER BOARD must develop and agree with the MUNICIPALITY on a meter testing and calibration program for all meters within \_\_\_ months of the effective date. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 12.1.2 The WATER BOARD must annually, 2 (two) months prior to the commencement of the forthcoming financial year, submit a summary report detailing all meters and maintenance conducted in respect of meters for the preceding year and maintenance planned for the forthcoming year, including meters replaced or to be replaced.



## 12.2 Accuracy of meters

- 12.2.1 The WATER BOARD shall do all that it can reasonably do to ensure that all its meters are at all times correctly sized and that they operate under optimum conditions.
- 12.2.2 The MUNICIPALITY reserves the right to introduce check meters (owned by the MUNICIPALITY) as close to the WATER BOARD's meters as technically feasible in order to check the accuracy of the WATER BOARD's meters.
- 12.2.3 The WATER BOARD and MUNICIPALITY agree that the maximum levels of acceptable errors on meters to be installed are as set out in the table below. The maximum levels of acceptable errors must be guaranteed by the supplier, prior to installation, as set out in the table below:

Mechanical meters	5 % for minimum flows ( $Q_{min}$ to $Q_t$ ) and 2% for flows between transitional and maximum flows ( $Q_t$ and $Q_{max}$ )
Differential pressure meters	2% for the measuring range between the minimum and maximum range ( $Q_{min}$ and $Q_{max}$ )
Electromagnetic flow meters	0.5% for flow velocities of 0.5meters per second to 10 meters per second (in the operational range of the meter) where the velocity is through the restricted section
Ultrasonic flow meters	2% for flow velocities of 0.5meters per second to 10 meters per second

- 12.2.4. The WATER BOARD and MUNICIPALITY agree that the maximum levels of acceptable errors on installed meters are 3% (three percent).

## 12.3 Meter testing

- 12.3.1 The WATER BOARD must regularly, but no less than annually, test all meters in accordance with the meter testing and calibration program agreed in terms of clause 12.1.1. The results of such tests must be submitted to the MUNICIPALITY within 1 (month) of the end of the relevant financial year.
- 12.3.2 If a test indicates that a meter is registering outside the maximum levels of acceptable errors on meters as established in clause 12.2.3, such meter must be repaired or replaced.
- 12.3.3 When a meter is removed from site for testing, it must be replaced by an alternative calibrated meter.
- 12.3.4 The methods of testing may be agreed by the WATER BOARD and the MUNICIPALITY. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.





12.3.5 Where a check meter has been installed by the MUNICIPALITY and the difference between the meters at any time varies more than 5% (five per cent) both meters will be tested.

#### 12.4 Malfunctioning meters

12.4.1 In the event of a meter malfunctioning either by way of not registering at all or by registering outside of the agreed levels of accuracy, the WATER BOARD must repair or replace the meter within 7 (seven) days of the malfunction.

12.4.2 The WATER BOARD must give notice to the MUNICIPALITY in the event that the repair or replacement of the meter is likely to take longer than the stated period and indicate the reason or reasons therefore and the period within which the repair or replacement will be completed. The WATER BOARD must, in these circumstances, install a temporary meter or any other measuring device as agreed with the MUNICIPALITY where the installation of a temporary meter is impractical.

12.4.3 If the MUNICIPALITY and the WATER BOARD cannot agree on a measuring device where the installation of a temporary meter is impractical, the MUNICIPALITY's consumption during the period for which no measuring through an agreed device could take place will be determined by the average monthly water consumption over a period of 3 (three) months after repair or replacement of the meter has been effected.

#### 12.5 Meter reading

12.5.1 The WATER BOARD must read all meters monthly, within 7 (seven) days of the end of the preceding month.

12.5.2 The WATER BOARD must provide the MUNICIPALITY with a meter-reading schedule and the MUNICIPALITY may be present at any meter reading.

#### 12.6 Queries

12.6.1 The MUNICIPALITY may query the consumption reflected on an account, within 14 (fourteen) days of receiving an account.

12.6.2 The WATER BOARD must investigate the query and, at the request of the MUNICIPALITY, test the relevant meter or meters within 14 (fourteen) days of a query having been made.

12.6.3 The methods of testing may be agreed by the WATER BOARD and the MUNICIPALITY. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

12.6.4 If a meter is tested and found to be registering outside the agreed accuracy levels, the WATER BOARD shall be liable for the cost of testing the meter and shall repair or replace the meter at its own cost.

12.6.5 If a meter is tested and found to be registering within the agreed accuracy levels, the MUNICIPALITY shall be liable for the cost of testing the meter.

#### 12.7 Adjustment and calculation of consumption where meter malfunctions

12.7.1 The quantity of water consumed and the bulk water supply charges charged during a period that the meter registered incorrectly shall be



adjusted in accordance with the degree of error found, provided that where a check meter has been installed by the MUNICIPALITY the reading of the MUNICIPALITY's meter shall be used to determine the quantity of water consumed.

12.7.2 Where a test meter was not installed by the MUNICIPALITY, the period that the meter registered incorrectly will be assumed to be 30 (thirty) days if the actual period is not known and the quantity of water consumed, during a period within which a meter was found to be registering outside the agreed accuracy levels, shall be calculated as in accordance with one of the following methods as agreed by the MUNICIPALITY and WATER BOARD –

- (a) the average monthly consumption of water during the 3 (three) months prior to the last registration; or
- (b) the average monthly water consumption over a period of 3 (three) months after repair or replacement of the meter has been effected.

12.7.3 If the MUNICIPALITY and the WATER BOARD cannot agree on a method referred to in clause 12.7.2, clause 12.7.2(b) will be used.

12.7.4 The maximum retrospective adjustment period is 3 (three) months.

**12.8 New meters to be installed**

No new meters may be installed by the WATER BOARD unless the type, make and location of the meter on the WATER BOARD's infrastructure has been agreed with the MUNICIPALITY, and such installations shall be installed in accordance with regulatory provisions and the specifications of the manufacturer of the meter. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

**13. EMERGENCIES**

13.1 An incident, event or occurrence will be considered an emergency when there is, in the opinion of either the MUNICIPALITY or the WATER BOARD, a substantial variation from –

- 13.1.1 the agreed quantity, quality, flow rate and pressure for a period longer than 24 (twenty four) hours; or
- 13.1.2 the agreed repair times referred to in clauses 11.1.2 and 11.2.1 exceeds 24 (twenty-four) hours.

13.2 The WATER BOARD or MUNICIPALITY shall within 1 (one) hour of becoming aware of an emergency or possible emergency immediately notify the office of the Municipal Manager of the MUNICIPALITY or the Chief Executive of the WATER BOARD.

**GUIDELINE:**

The parties may agree on specific individuals to be notified.





- 13.3 The parties shall agree on a process for addressing the emergency. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 13.4 All joint communications will be undertaken in accordance with Section F.
- 13.5 Where an emergency has been addressed by the parties, a debriefing meeting may be requested by either party to review the process and procedure employed to address the emergency and a formal report will be prepared by the WATER BOARD in respect thereof.
- 13.6 Notwithstanding the provisions of clause 13.3, the WATER BOARD must in the event of an emergency resulting from an incident, event or occurrence other than provided for in clause 41, provide an alternative basic water supply service at the existing customer connections, where at all possible, or be liable for all reasonable costs incurred by the MUNICIPALITY in securing an alternative water supply. The parties shall agree the quantity of water required to provide an alternative basic water supply services. Where the parties fail to reach agreement, either party may refer the matter for resolution in terms of Section O of this contract. Provided that until resolution is reached in terms of Section O, the WATER BOARD shall supply the quantity as required by the MUNICIPALITY in order to ensure the provision of water supply. Should it be decided in terms of Section O that the MUNICIPALITY required an unreasonable basic water quantity, a decision in terms of Section O will determine whether the MUNICIPALITY should compensate the WATER BOARD for the actual costs incurred in providing the excess quantity provided over and above the required basic quantity that would have been reasonable in the specific emergency.

#### 14. DROUGHTS

- 14.1 For the purposes of this clause a drought is defined as any event, series of events or changes in water allocation which impact or impacts on the availability of raw water to the WATER BOARD and consequently on the agreed quantity of water to be provided to the MUNICIPALITY in terms of this contract.
- 14.2 The WATER BOARD is responsible for obtaining and generating all information required to monitor and forecast all factors influencing the quantity of water available. The MUNICIPALITY agrees to assist the WATER BOARD, where possible, in obtaining information on water quantity.
- 14.3 The WATER BOARD must annually, within 2 (two) months of the commencement of its financial year, provide the MUNICIPALITY with a detailed report on the security of supply to the MUNICIPALITY. The report must reflect availability concerns identified by the WATER BOARD; indicate which measures will be implemented by the WATER BOARD to address or alleviate concerns and make recommendations as to actions that may be taken by the MUNICIPALITY to address or alleviate concerns.
- 14.4 The WATER BOARD must issue a written drought warning to the MUNICIPALITY within 7 (seven) days of it being notified by the Department that it will be implementing water restrictions. The WATER BOARD must withdraw a drought warning issued within 7 (seven) days of the Department lifting water restrictions.
- 14.5 The WATER BOARD shall convene a forum with all affected municipalities within 1 (one) month after a drought warning is issued.



## SECTION E: NEW OR INCREASED WATER SUPPLY REQUIREMENTS

### 15. APPLICATION

- 15.1 The MUNICIPALITY may, in its discretion, apply to the WATER BOARD for new or increased bulk water supply requirements. An application in terms of this clause must specify when the new or increased supply is required, the required quantity, estimated quantity for future years, flow rate and pressure.
- 15.2 The WATER BOARD will provide the increased bulk water supply requirements if sufficient water is available and within the quantity authorised for abstraction in any relevant licence.
- 15.3 If the new or increased water supply requirements require a new, altered or upgraded customer connection, the WATER BOARD may charge the MUNICIPALITY an installation charge calculated in terms of clause 16, and a capital contribution, if applicable.
- 15.4 The WATER BOARD and the MUNICIPALITY shall agree on the number and position of customer connections on the existing water board infrastructure from which the new or increased water supply requirements will be supplied. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 15.5 The WATER BOARD shall use the estimated quantity of water in the planning and design of the water board infrastructure.

### 16. INSTALLATION OF CUSTOMER CONNECTION AND RELATED CHARGES

- 16.1 The WATER BOARD shall be responsible for the supply and installation of equipment necessary for the agreed customer connection or connections.
- 16.2 The MUNICIPALITY shall pay the WATER BOARD an installation charge for the customer connection or connections and a capital contribution charge, where applicable.
- 16.3 Prior to the supply or installation of the consumer connection or connections the WATER BOARD must -
- 16.3.1 provide the MUNICIPALITY with the specifications of the equipment to be installed;
  - 16.3.2 provide the MUNICIPALITY with a fixed price quote for the equipment and the installation thereof; and
  - 16.3.3 demonstrate to the MUNICIPALITY that the quote represents a reasonable cost for the equipment and installation.
- 16.4 In the event that the MUNICIPALITY considers the quote referred to in clause 16.3.2 unreasonable the parties must agree on a reasonable cost and revised specification.





Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

16.5 The WATER BOARD shall install the customer connection or connections within a period agreed to between the parties. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

## 17. OWNERSHIP OF CUSTOMER CONNECTIONS

17.1 The ownership of the customer connection or connections vest in the WATER BOARD and the WATER BOARD is responsible for all maintenance, rehabilitation or modification associated with the equipment and is responsible for insuring such equipment against loss or damage.

17.2 Apart from the downstream isolating valve, the MUNICIPALITY may not operate or interfere with the customer connection. Nothing in this clause may be construed as limiting the MUNICIPALITY's access to the customer connection for meter-reading purposes.





## SECTION F: COMMUNICATION AND COORDINATION

### 18. COMMUNICATION

For purposes of this Section F, “communication” means any form of communication whatsoever, including but not limited to sponsorships, advertisements, campaigns, education, brochures, media statements, broadcasts, marketing, meetings, forums, web-pages and liaison.

### 19. COMMUNICATION WITH THE MUNICIPALITY’S END CONSUMERS

19.1 The WATER BOARD shall not communicate directly with the MUNICIPALITY’s end consumers where such communication will in any way create doubt or uncertainty in the minds of the MUNICIPALITY’s consumers as to the organisation mandated to provide water services to them.

#### GUIDELINE:

National programmes executed by water boards on behalf of National Government such as the ‘working for water’ programme and National Water Week, and other programmes aimed at water resource conservation or education do not fall in the ambit of this provision provided that the water board indicates its status as a bulk water supply services provider to the municipality.

19.2 The parties may agree jointly to communicate with the MUNICIPALITY’s consumers. The costs of such communications will be shared by the parties.

### 20. COORDINATION

20.1 The parties shall, at least, meet on a quarterly basis to discuss all matters relating to or impacting on this contract.

20.2 The WATER BOARD shall be responsible for calling the first meeting and a schedule of future meetings shall be agreed at the first meeting.





## SECTION G: INFORMATION AND REPORTING

### 21. ACCESS TO INFORMATION REQUESTED

- 21.1 The parties shall timeously provide each other with all information in whatever form reasonably required for compliance or monitoring of compliance with obligations in terms of this contract.
- 21.2 All information must be requested in writing and must be provided within 1 (one) month of the date of a request, unless another period has been set in terms of this contract or agreed to by the parties, in writing. Where the parties need to agree on a period within which information must be provided, both parties must act reasonably and agree on a reasonable period. Where the parties cannot agree on a period, the period for providing such information will be 1 (one) month.

### 22. FINANCIAL STATEMENTS AND ANNUAL REPORTS

- 22.1 The WATER BOARD must comply with the Water Services Act, Act 108 of 1997 and Public Finance Management Act, Act 1 of 1999 in respect of audited financial statements and annual reporting.
- 22.2 The WATER BOARD must submit a copy of its audited financial reports for each financial year to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act. The reports must comply with all regulatory provisions and include complete audited financial statements and the auditor's report.
- 22.3 The annual report of the WATER BOARD prepared in accordance with the regulatory provisions referred to in clause 22.1 must provide details of any penalties incurred by the WATER BOARD in terms of this contract and a copy thereof must be submitted to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act.

#### GUIDELINE:

The Public Finance Management Act No 1 of 1999 and the regulations issued in terms thereof do not *specifically* require public entities to provide details of any penalties it may have incurred due to non-performance in their annual reports. The disclosure of penalties incurred adds to the incentive value of penalties specifically in light of the fact that the monetary value of penalties that may be imposed by the municipality will be a token amount that would serve as an acknowledgement of non-compliance and not a substantial financial deterrent to non-performance.



## SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT

### 23. PERMISSIBLE CHARGES

The WATER BOARD may impose the following bulk water supply services charges only –

- 23.1.1 volume based charges in respect of water consumed;
- 23.1.2 installation charges for new customer connections determined in accordance with clause 16; and
- 23.1.3 capital contribution charges where a new or increased water supply requires capital expenditure as set out in clause 24.

### 24. CAPITAL CONTRIBUTION CHARGES

- 24.1 The WATER BOARD must charge a new or existing customer, on application for a new or increased water supply, a capital contribution for all equipment required to provide the customer's required quantity, quality, pressure and flow rate of water, which is not part of the customer connection.
- 24.2 A capital contribution shall constitute the full cost of capital associated with equipment and the installation thereof, any required alteration of the WATER BOARD's infrastructure at the time of the application and the costs associated with the operational resources that will be required to operate and maintain the equipment.
- 24.3 Where any alteration or alterations to the WATER BOARD's existing infrastructure will serve only one of the WATER BOARD's customers directly, the full capital costs associated therewith shall be recovered from those customers.
- 24.4 Where any alteration or alterations to the WATER BOARD's existing infrastructure serves more than one but not all the WATER BOARD's customers directly, the full capital costs associated therewith shall be proportionately recovered from those customers.
- 24.5 Where any alteration or alterations to the WATER BOARD's existing infrastructure will serve all the WATER BOARD's existing customers at the time of the alteration/s the full capital costs associated therewith shall be for the WATER BOARD's own cost and must be recovered as a fixed fee payable by all customers as part of the water supply services charges.
- 24.6 Where the WATER BOARD is of the opinion that the sustainability and viability of a municipal customer in respect of providing water services as defined in the Water Services Act will be negatively affected by the implementation of this clause, it may charge a municipal customer a capital contribution less than that stated in clause 24.2, provided that the WATER BOARD is able to motivate and demonstrate how the sustainability and viability of the relevant municipality will be affected and all municipal customers have agreed to the capital contribution to be charged in these circumstances.





24.7 The WATER BOARD must notify the MUNICIPALITY and other municipal customers of its intention to charge a municipal customer a capital contribution less than that stated in clause 24.2.

24.8 The MUNICIPALITY must on receipt of a notice referred to in clause 24.7 initiate the process set out in clause 44.

24.9 Capital contribution charges may be recovered by way of -

24.9.1 an once-off payment;

24.9.2 an availability charge;

24.9.3 a minimum quantity to be purchased;

24.9.4 a differential tariff payable by the WATER BOARD's customers benefiting from the capital expenditure;

24.9.5 a uniform tariff payable by all the WATER BOARD's customers; or

24.9.6 any other method as may be agreed to by the parties because of their specific circumstances, provided that such a method does not detract from the WATER BOARD's obligation to impose and the MUNICIPALITY's obligation to pay capital contribution charges in accordance with clause 24.2.

**25. PROCEDURE FOR SETTING OF BULK WATER SUPPLY SERVICES CHARGES AND ADOPTION OF CAPITAL EXPENDITURE PROGRAMME**

**GUIDELINE:**

The Municipal Finance Management Act in section 42 provides as follows -

“(5) Unless approved otherwise by the Minister, an amendment to a pricing structure which is tabled in Parliament or the relevant provincial legislature -

- (a) on or before 15th March in any year, does not take effect for the affected municipalities or municipal entities before 1st July in that year; or
- (b) after 15th March in any year, does not take effect for the affected municipalities or municipal entities before 1st July the next year.”

The timeframe's provided for in this clause commences on 31st January (at the latest) and should be completed by 30th April of each year. The timeframe was agreed to enable water boards to undertake their business planning processes and to enable municipalities to plan their budgets. The 15th March deadline can be reached provided no dispute arises that are referred to SALGA or DWAF. In light of the foregoing it was agreed that clause 25.17 be included in the contract.



25.1 The WATER BOARD must annually, before or on 31st January of each year, submit its proposed bulk water supply services charges and capital expenditure programme for the forthcoming year to its municipal customers for acceptance, together with –

- 25.1.1 A 5 (five) year projection for bulk water supply services charges;
- 25.1.2 A detailed cost breakdown of the proposed charges, including all variable and fixed costs;
- 25.1.3 A clear indication as to how the costs associated with other activities as defined in the Water Services Act, Act 108 of 1997, are dealt with by the WATER BOARD; and
- 25.1.4 A 5 (five) year capital expenditure programme specifying –
  - (a) the manner in which the demand projections of the municipal customers informed the programme;
  - (b) all proposed capital projects relating to immovable assets;
  - (c) the costs associated with operational resources that will be required to operate and maintain the immovable assets on completion of the construction thereof;and
  - (d) the manner in which each proposed capital project will be funded.

25.2 The MUNICIPALITY must take all reasonable actions to ensure that all municipal customers, within 14 (fourteen) days after submission to it in terms of clause 25.1, notify the WATER BOARD if they accept or dispute the proposed charges and capital expenditure programme. Where the proposed charges and capital programme is disputed the MUNICIPALITY must take all reasonable actions to ensure that reasons are provided. Where all the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before or on 30th April for implementation on 1st July of the forthcoming financial year.

25.3 Where all municipal customers accept the proposed charges and capital programme, the WATER BOARD may set the charges and capital expenditure programme by 30th April for implementation on 1st July of the forthcoming financial year.

25.4 Where all municipal customers dispute the proposed charges and capital programme, the WATER BOARD must within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to in clause 25.2 notify each municipal customer accordingly and simultaneously –

- 25.4.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or
- 25.4.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.





In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance the process as provided for in this clause applies.

25.5 Where not all the municipal customers accept or dispute the proposed charges and capital programme, the WATER BOARD must, within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to above, notify all municipal customers accordingly and provide each municipal customer with the decisions of the other municipal customers.

25.6 The MUNICIPALITY must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving notice in terms of clause 25.5, discuss the proposed charges and capital expenditure programme amongst each other, agree to accept or dispute the proposed charges and capital expenditure programme and notify the WATER BOARD accordingly. Where the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before or on 30th April for implementation on 1st July of the forthcoming financial year.

25.7 Where all the municipal customers agree to dispute the proposed charges and capital expenditure programme the WATER BOARD must within 7 (seven) days of receiving such notification –

25.7.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or

25.7.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.

In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance, the process as provided for in this clause applies.

25.8 Where the municipal customers cannot agree amongst each other to accept or dispute the proposed charges and capital programme, the MUNICIPALITY must, within 3 (three) days of the expiry of the 7 (seven) day period, refer the matter to SALGA for mediation and must inform the WATER BOARD of such referral. Any referral by a MUNICIPALITY of a matter as envisaged herein must also inform SALGA of the obligations imposed on SALGA in terms of this agreement and the implications thereof for the MUNICIPALITY, should SALGA fail to inform the WATER BOARD timeously as required in terms of Clause 25.10.

25.9 Where the matter is referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.

25.10 Where the matter is referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, if all the municipal customers accept or dispute the proposed charges and capital programme. Where SALGA fails to inform the WATER BOARD of the municipal customers' acceptance or dispute within 30 (thirty) days of notice by the WATER BOARD in terms of clause 25.2, the WATER BOARD may set the charges and capital expenditure programme before or on 30th April for implementation on 1st July of the forthcoming financial year.



25.11 Where all the municipal customers accept the proposed charges and capital programme, the WATER BOARD may set the charges and capital expenditure programme before or on the 30th of April for implementation on the 1st of July of the forthcoming financial year.

25.12 Where all the municipal customers agree to dispute the proposed charges and capital expenditure programme, the WATER BOARD must within 3 (three) days of receiving such notification –

25.12.1 submit revised charges and a revised capital expenditure programme to the municipal customers for acceptance; or

25.12.2 refer the matter to the Department for mediation and notify the municipal customers of such referral.

In the event that the WATER BOARD submits revised charges and a revised capital expenditure programme to the municipal customers for acceptance the process as provided for in clause 25 applies.

25.13 Where the WATER BOARD refers the matter to the Department for mediation, the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.

25.14 Where the matter was referred to the Department for mediation, the Department must request all municipal customers, to participate in the mediation.

25.15 Where the Department fails to resolve the dispute within the 14 (fourteen) day period or before 30th April of the year preceding the forthcoming financial year, whichever is the latest, the WATER BOARD may increase the most recent charges set by the WATER BOARD prior to the effective date of the contract in respect of the first financial year of the WATER BOARD following the effective date or the most recent charges accepted by the municipal customers in terms of this clause with a percentage agreed by it and the municipal customers, which percentage may not exceed CPIX, pending the resolution of the dispute by the Department. Where the WATER BOARD and municipal customers fail to reach agreement on the percentage increase the WATER BOARD may increase the charges by CPIX.

25.16 Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.

25.17 Where a referral to mediation by any party in terms of this clause will result in the water board not being able to submit its tariffs to the Department of Water Affairs and Forestry for tabling in Parliament before or on 15th March of each year in accordance with the Municipal Finance Management Act, both parties, SALGA and DWAF must collectively request the Minister of Finance to approve that the tariff that will be set by the water board on completion of the mediation may take effect on 1st July of that year, notwithstanding the fact that the tariff to be set will only be tabled in Parliament after the 15th March of that year.



25.18 Where a dispute in respect of tariffs is resolved after 1st July of any financial year and the tariff that may be set by the WATER BOARD exceeds the percentage agreed in terms of clause 25.15 or CPIX the WATER BOARD may apply the tariff retrospectively from 1st July of that financial year.

25.19 The capital expenditure programme may at any time be amended by the WATER BOARD after acceptance thereof by the MUNICIPALITY and other municipal customers in accordance with the process set out in clauses 25.2 to 25.12 and 25.14, has been secured.

25.20 The provisions of this clause shall apply in full until such time as legislation regulating the approval of tariffs and capital expenditure programmes by National Government, including legislation that gives effect to the national water services regulatory function as reflected in the Strategic Framework for Water Services as adopted by the Cabinet in September 2003, is promulgated. On promulgation of such legislation the provisions of this clause shall apply to the extent that this clause is not inconsistent with such legislation.

## **26. ACCOUNTS FOR PAYMENT OF BULK WATER SUPPLY SERVICES CHARGES**

26.1 The WATER BOARD must issue accounts to the MUNICIPALITY at least 30 (thirty) days prior to the last date for payment specified in such account and is payable before on the last date for payment. Accounts must be paid by the method agreed between the parties. Where the parties cannot reach agreement accounts must be paid by electronic transfer to the WATER BOARD's bank account.

26.2 Interest may be levied on arrears at the prevailing prime interest rate.

26.3 Accounts will reflect at least –

26.3.1 the volume of bulk water supply services provided by the WATER BOARD at each customer connection;

26.3.2 the period addressed in the account;

26.3.3 the applicable charges;

26.3.4 the amount due (excluding value added tax payable);

26.3.5 value added tax;

26.3.6 the arrears, if any;

26.3.7 the interest payable on arrears, if any; and

26.3.8 the final date for payment.

26.4 The MUNICIPALITY may query the accuracy of an amount due and payable or an amount paid for bulk water supply services rendered. A query in respect of an amount due and payable must be accompanied by payment of fifty percent (50%) of the queried amount (the amount of the invoice queried by the MUNICIPALITY).





#### GUIDELINE:

The accuracy of an amount queried should relate to a specified customer connection. The queried amount is the amount billed for consumption that exceeds the actual consumption of the total number of persons served by from that customer connection as determined by the municipality.

#### EXAMPLE

EXAMPLE: An account indicates that the consumption for a specific month at customer connection X was recorded as 4000Kl at a cost of R 80. The municipality's records show that the actual consumption of total number of persons served from that customer connection was 2000Kl at a cost of R 40. The municipality may query the amount payable in respect of 2000Kl (consumption from customer connection reflected on account minus the actual consumption of the total number of persons served from that customer connection) and when submitting a query only pays 50% (R 20) of the amount stated as due and payable in respect of the 2000 Kl. This means that the MUNICIPALITY must pay R 60 in respect of the account.

26.5 Queries relating to consumption will be settled in accordance with the provisions of clause 12.6. All other queries will be settled by applying the dispute resolution mechanisms provided for in Section O.

26.6 On settlement of a query any amount paid in excess of what was due and payable as per the outcome of a query must be refunded to the MUNICIPALITY together with interest calculated at the same rate imposed by the WATER BOARD on arrears and any amount outstanding in respect of what is due and payable as per the outcome of a query must be paid to the WATER BOARD together with interest imposed by the WATER BOARD on arrears.

#### 27. SPECIAL PAYMENT ARRANGEMENTS

The MUNICIPALITY and the WATER BOARD may agree to the settlement of the MUNICIPALITY's account in installments where the MUNICIPALITY is not able to settle an account in full on the due date.





## SECTION I: PERFORMANCE MANAGEMENT

### 28. KEY PERFORMANCE AREAS

- 28.1 Each obligation of the WATER BOARD in terms of this contract represents a key performance area of the WATER BOARD for the duration of the contract.
- 28.2 The performance of the WATER BOARD shall be monitored and measured by the MUNICIPALITY.
- 28.3 The bulk water supply services provided by the WATER BOARD shall be of such a standard to ensure its affordability, continuity, regularity, quality and sustainability, and the basic allocation of potable water by the MUNICIPALITY to its end consumers at all times.

### 29. FAILURE OF THE WATER BOARD TO MEET OBLIGATIONS

- 29.1 The parties agree that the WATER BOARD should be incentivised to achieve the key performance areas.

- 29.2 In the event that the WATER BOARD –

- 29.2.1 fails to meet any of its obligation in terms of this contract; or
- 29.2.2 fails to notify, inform or submit to the MUNICIPALITY such matters within the specified time periods as the WATER BOARD is obliged to do in terms of this contract; or
- 29.2.3 fails to implement any actions or exceed the duration for the completion of actions the WATER BOARD undertook in terms of any notice or submission to the MUNICIPALITY in terms of this contract;

the MUNICIPALITY may deduct R ----- [AMOUNT TO BE AGREED BETWEEN NEGOTIATING PARTIES] from the account payable for water supply services provided by the WATER BOARD, in the month within which such failure occurred or the month following such failure.

- 29.3 The MUNICIPALITY must notify the WATER BOARD of any proposed deduction at least 10 (ten) days in advance of such a deduction being made and must grant the WATER BOARD an opportunity to:

- 29.3.1 demonstrate to the reasonable satisfaction of the MUNICIPALITY that the failure referred to in clause 29.2 did not take place; or
- 29.3.2 justify to the reasonable satisfaction of the MUNICIPALITY why the failure referred to in clause 29.2 could not have been prevented.



29.4 The justification of the WATER BOARD referred to in clause 29.3.2 shall be evaluated by the MUNICIPALITY in accordance with the following criteria:

- 29.4.1 the seriousness and repetitive nature of a failure;
- 29.4.2 the degree of impairment to public interest;
- 29.4.3 the degree of negligence of the WATER BOARD; and
- 29.4.4 the diligence displayed by the WATER BOARD in rectifying the effects of the failure.

29.5 Any deduction imposed in terms of this clause shall not in any way limit either party's right to any other remedies provided for in this contract or in any law.

29.6 In the event that the WATER BOARD disputes a deduction in terms of this clause it may refer the matter for resolution in terms of Section O of this contract. The application of Section O will not suspend the implementation and effect of such a deduction.

29.7 The MUNICIPALITY shall refund any deduction to the WATER BOARD where a dispute is settled in favour of the WATER BOARD.

29.8 The application of a penalty will not release the WATER BOARD from its obligations pursuant to this contract and pursuant to any regulatory provisions.

### 30. ACTION OR OMISSION OF THE MUNICIPALITY

30.1 Both parties recognise that in order for either of them to achieve their objectives or fulfil their responsibilities, there is significant reliance on the proper and timeous performance of each of them at all times.

30.2 The WATER BOARD shall not be liable for any penalty if its failure arises as a direct result of the action or failure to act of the MUNICIPALITY as is required in accordance with this contract.

#### GUIDELINE:

The municipality has two primary obligations in terms of the contract that is to provide adequate information and to pay for bulk water supply services provided. Where the municipality fails to do so specific remedies have been provided for by the relevant clauses.





## SECTION J: OTHER WATER RELATED ACTIVITIES IMPACTING ON THE PARTIES

### 31. DIRECT SUPPLY BY THE WATER BOARD TO THE MUNICIPALITY'S CONSUMERS

31.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users, including mines, within the jurisdictional area of the MUNICIPALITY, with or without approval as required in terms of Sections 6, 7 and 30(2)(d) of the Water Services Act.

**GUIDELINE:**

Clause to be amended by the negotiating parties to reflect actual position.

31.2 The MUNICIPALITY hereby grants temporary approval to the WATER BOARD to continue providing such bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users, subject to the following conditions -

31.2.1 the WATER BOARD must provide the MUNICIPALITY with a list of such services detailing the names, contact details, quantity, quality and type of services provided by the WATER BOARD, within 14 (fourteen) days after the commencement date; and

31.2.2 the MUNICIPALITY may at any time, on 12 (twelve) months notice to the WATER BOARD, give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from the MUNICIPALITY.

31.3 Where a person receiving bulk water supply services or water for industrial use from the WATER BOARD appeals against a notice issued by the MUNICIPALITY, in terms of clause 31.2, in terms of section 8 of the Water Services Act the WATER BOARD must continue to render such services pending the completion of the appeal.

31.4 The WATER BOARD shall on expiry of any notice period given in terms of clause 31.2.2 or on the conclusion of an appeal in terms of clause 31.3, immediately discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages suffered by such persons and the MUNICIPALITY specifically indemnifies the WATER BOARD against any such claims, provided that -

31.4.1 where the above actions of the MUNICIPALITY will result in infrastructure or operational resources required to operate and maintain infrastructure of the WATER BOARD becoming redundant or under-utilised the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of the MUNICIPALITY's intention.

31.4.2 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.



31.5 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 31.2.2 or fails to initiate the process referred to in clause 31.4 the MUNICIPALITY the WATER BOARD may not discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages incurred by MUNICIPALITY in this regard.

**32. DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS OF ANOTHER MUNICIPALITY WHICH IS NOT A CUSTOMER OF THE WATER BOARD**

**GUIDELINE:**

Clause to be amended by the negotiating parties to reflect actual position.

32.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users including mines, within the jurisdictional area of municipalities that are not municipal customers of the WATER BOARD, with or without approval as required in terms of Sections 6, 7 and 30(2)(d) of the Water Services Act.

32.2 It is further recorded that such municipalities may at any time give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from those municipalities.

32.3 Where any notice referred to in clause 32.2 results in the infrastructure of the WATER BOARD becoming redundant or under-utilised, the WATER BOARD must, on becoming aware that a notice was given to a person or persons receiving bulk water supply services or water for industrial use from the WATER BOARD, as soon as reasonably possible notify the MUNICIPALITY and all other municipal customers of the projected financial implications of such a notice.

32.4 The MUNICIPALITY may on receipt of a notice from the WATER BOARD issued in terms of clause 32.3 initiate a process similar to that set out in clause 44 to address any projected financial implications.

**33. USE OF WATER FROM SOURCES OTHER THAN THE WATER BOARD**

33.1 The MUNICIPALITY must give the WATER BOARD at least 12 (twelve) months advance notice of its intention to obtain water from an alternative source, where such activity will result in a reduction of the quantity of water provided by the WATER BOARD in terms of this contact.

33.2 Where such notice will result in infrastructure of the WATER BOARD becoming redundant or under-utilised the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of the MUNICIPALITY's intention.

33.3 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.





33.4 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 33.1 or fails to initiate the process referred to in clause 33.3, the MUNICIPALITY shall remain liable for all costs associated with its projected annual average daily demand prior to any reduction, irrespective of whether it uses a lesser quantity.



## SECTION K: RISK MANAGEMENT

### 34. LIMITATION AND DISCONNECTION OF WATER SUPPLY SERVICES

- 34.1 The WATER BOARD must comply with all and any legislation, guidelines and policies of National Government relating to the limitation and disconnection of bulk water supply services. The provisions of clause 34.2 must be applied to the extent that it is consistent with any legislation, guidelines and policies of National Government.
- 34.2 In the event that the MUNICIPALITY fails to pay its account on the due date, the WATER BOARD shall: -
- 34.2.1 give the MUNICIPALITY written notice that the account is outstanding and that it intends to reduce the bulk water supply services to the MUNICIPALITY by 20% (twenty per cent) within 30 (thirty) days of such notice if at least 50% (fifty per cent) of the account is not paid within this period or the MUNICIPALITY fails to enter into an agreement with the WATER BOARD for the payment of the account in installments.
- 34.2.2 Where a water board has reduced the bulk water supply services by 20% (twenty per cent) in accordance with clause 34.2.1, it shall again give the MUNICIPALITY notice in a manner similar to that stated in clause 34.2.1, that the bulk water supply services will be limited by a further 20% (twenty per cent).
- 34.2.3 The phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 34.2.1, exceed 40% (forty per cent), provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing customer connections by a percentage that will limit the provision of basic water supply services to the MUNICIPALITY's consumers. The parties shall agree on the quantity of water required for basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of Section O of this contract.
- 34.2.4 Copies of the notices given in terms of clauses 34.2.1 and 34.2.2 shall be sent to the Minister of Water Affairs and Forestry, the Minister of Provincial and Local Government, the Member of the Executive Committee responsible for local government in the \_\_\_\_\_ Province. The WATER BOARD will, together with the copies of the notices to be sent, send a request to the Member of the Executive Committee responsible for local government in the \_\_\_\_\_ Province, the Minister and any other national organ of state that has legislated intervention authority to intervene in accordance with relevant regulatory provisions.
- 34.2.5 The WATER BOARD, where possible, should provide reasonable assistance to the MUNICIPALITY in respect of the payment of its bulk water supply account, including agreements referred to in clause 27.



## 35. PERMITS, LICENCES, EXEMPTIONS, PERMISSION AND APPROVALS

- 35.1 The parties shall be responsible for complying with all legislation applicable to their duties and obligations in terms of this contract, including, but not limited to, applying for the necessary approvals, consents, licence's or permits, where required.
- 35.2 The WATER BOARD guarantees that on the effective date all permits, licence's, exemptions, permissions and approvals that may have been required in terms of legislation in respect of providing bulk water supply services are obtained in the required manner.

## 36. LIABILITIES AND INDEMNITIES

- 36.1 Subject to terms stated in this contract, the WATER BOARD undertakes and assumes the responsibility for the provision of the bulk water supply services at its own technical risk and will be liable to the MUNICIPALITY for the fulfillment and discharge of its obligations and requirements in respect of providing bulk water supply services with effect from the effective date.
- 36.2 The WATER BOARD shall, with effect from the effective date, take all the requisite precautions for the protection of life and property on and about or in any way connected with the whole or any part of providing bulk water supply services and shall indemnify and not hold the MUNICIPALITY accountable for any losses, claims, demands, proceedings, damages, costs (including all legal fees), charges and expenses of whatsoever nature in respect of injury to or death of any person or loss or damage to any part of the bulk water supply services system or any person or property arising from or attributable to any act or omission of the WATER BOARD, its employees or agents, unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of the MUNICIPALITY, its employees or agents, contractors or any other person for whom it may be liable in law.

## 37. INSURANCE

Each party shall be responsible for the costs of insuring infrastructure and assets owned by it and its own third party liability insurance.

## 38. GUARANTEES

- 38.1 The WATER BOARD may require the MUNICIPALITY to deposit with the WATER BOARD as security for the due payment by it of any amounts that may be due and payable in terms of this contract, a sum of money equal to the estimated maximum quantity of water that the MUNICIPALITY is likely to use during a calendar month, where the MUNICIPALITY has defaulted on payment.
- 38.2 The WATER BOARD may, in lieu of a deposit, accept a bank guarantee for an amount calculated in accordance with clause 38.1 as security for payment of any amount that may be due and payable by the MUNICIPALITY for, or in respect of, the provision of water.





38.3 The WATER BOARD may use this deposit to cover any outstanding amount payable on termination of this contract or any arrears.

38.4 Any deposit or guarantee shall be refunded or cancelled, after deducting any amount due and payable, within 60 (sixty) days after termination of this contract.

### 39. WARRANTIES

The parties warrant that -

39.1 they are entities duly created pursuant to legislation and have full legal right, and authority to enter into this contract and perform the obligation hereunder;

39.2 this contract has been duly authorised and executed and constitutes a legal, valid and binding obligation;

39.3 the execution of this contract does not violate any legislation, judgment order, regulation, regulatory provision, right or obligation, or rule of any Court or other authority applicable in relation to them, or the provision of services rendered in terms of this contract.





## SECTION L: BREACH AND VIS MAJOR

### 40. BREACH

- 40.1 If any party commits a breach of this contract and should the other party wish to claim specific performance or damages or both specific performance and damages from the defaulting party in respect of such breach in addition to any penalty it may apply in terms of this contract, then prior to the latter party exercising such a right, it shall deliver a written notice to the defaulting party notifying it of the breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a period of 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period, and should the defaulting party fail to remedy the breach within such period then the party giving notice may institute a civil claim for specific performance or damages or both, as the case may be.
- 40.2 If the defaulting party again commits a breach in respect of which the other party has successfully claimed damages or specific performance in terms of clause 40.1, the breach shall be deemed to be a material breach if the party fails to remedy the breach within the 20 (twenty) day notice period given in terms of clause 40.1 and the party shall be entitled to cancel the contract.
- 40.3 Prior to the party evoking any right to terminate this contract in terms of clause 40.2, it shall deliver a further written notice to the defaulting party notifying it of the material breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a further period of 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period).
- 40.4 Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice issued in terms of clause 40.3 the contract shall terminate in accordance with clause 43.
- 40.5 Upon any termination of the contract in terms of clause 40.4, the defaulting party shall compensate the party terminating the contract for damages suffered as a result of such termination and all other costs and expenses incurred by the party terminating the contract in connection with or relating to such termination.
- 40.6 For purposes of this clause, damages specifically include but are not limited to,-
- 40.6.1 any amount which the MUNICIPALITY is required to pay in relation to loss or damage suffered by a person to whom the MUNICIPALITY provides water supply services; or
  - 40.6.2 the difference between the revenue lost by the MUNICIPALITY and all direct and indirect costs that the MUNICIPALITY would have incurred if the did not occur as a result of the WATER BOARD's failure.



**GUIDELINE:**

This clause intends to specifically include damages that may be payable or incurred by the municipality in respect of its customers where the water board failed to perform. It can only relate to the municipality; it cannot relate to the water board.

**41. VIS MAJOR**

- 41.1 No party shall be liable for any failure to fulfil its duties and obligations in terms of this contract where such failure is caused by any event, occurrence, circumstance or condition beyond the reasonable control of such party (including, but not limited to *casus fortuitus*, landslides, lightning, earthquakes, tornados, floods, other acts of God, acts of military or third-party civil authorities or public enemies, war blockade, sabotage, fire, explosion, bombing, insurrection, riot or civil disobedience), the occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimised, that affects the powers, rights, duties or obligations of the parties under this contract. It is specifically recorded that failure by the Department to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.
- 41.2 The party affected by an event, occurrence, circumstance or condition referred to in clause 41.1 shall promptly notify the other party in writing of the event, occurrence, circumstance or condition and the estimated extent and or duration of such party's inability to perform its duties and obligations.
- 41.3 Upon the cessation of the event, occurrence, circumstance or condition referred to in clause 41.1 the party affected thereby shall notify the other party of such cessation.
- 41.4 If, as a result of the event, occurrence, circumstance or condition referred to in clause 41.1, the performance of a party's duties and obligations is only partially affected, such party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition; provided that nothing in this clause shall preclude the operation of the emergency procedure provided for in clause 13.
- 41.5 If an event, occurrence, circumstance or condition referred to in clause 41.1 causes material and unavoidable physical damage or destruction to all or any of the parties infrastructure or materially delays or prevents the performance of any duties and obligations in terms of this contract, or interrupts services and continues for more than 90(ninety) consecutive days after any notification thereof the affected party may initiate the termination of the contract in accordance with clause 43.





## SECTION M: TERMINATION

### 42. REASONS FOR TERMINATION

The termination of this agreement may occur –

- 42.1 at the expiry of the contract term;
- 42.2 if the parties agree thereto in writing;
- 42.3 by reason of an unremedied material breach;
- 42.4 due to vis major; or
- 42.5 the WATER BOARD ceases to be a statutory organisation deemed to be established in terms of the Water Services Act, Act 108 of 1997 or the institutional structure of the WATER BOARD is changed subsequent to any institutional reform process undertaken by the Minister.

### 43. TERMINATION PROCESS

- 43.1 Termination shall be initiated by a notice from either party who has the right to deliver such notice in accordance with clauses 40 and 41, or 6 (six) months prior to the expiry of the contract term, or on the date agreed.
- 43.2 When termination is initiated in terms of clause 43.1 the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of termination for it and each municipal customer.
- 43.3 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.
- 43.4 This notice referred to in clause 43.1 sets in motion a transitional phase. During the transitional phase the WATER BOARD shall continue to provide bulk water supply services in accordance with this contract until such time as the process referred to in clause 43.3 is completed and any outcome thereof has been reduced to writing as an amendment to this contract, which contract only terminates on the fulfillment of all obligations in terms of such an amendment.



## SECTION N: PROCESS FOR ADDRESSING MATTERS IMPACTING ON MUNICIPAL CUSTOMERS

- 44.1 The provisions of this section apply to circumstances as set out in clauses 9.1.7 to 9.1.9, 24, 31, 33 and 43.
- 44.2 The MUNICIPALITY must on receipt of a notice referred to in clauses 9.1.8, 24.7, 31.4.2, 33.3 and 43.3 notify all municipal customers of its reasons for the actions or proposed actions that gave rise to the notice.
- 44.3 The MUNICIPALITY must take all reasonable actions to ensure that each municipal customer within 14 (fourteen) days of receipt of a notice from the MUNICIPALITY notify the MUNICIPALITY and WATER BOARD, if it accepts or disputes the actions or proposed actions of the MUNICIPALITY. The MUNICIPALITY must take all reasonable actions to ensure that where the actions or proposed actions are disputed reasons are provided. Where a municipal customer fails to inform the MUNICIPALITY and WATER BOARD of its acceptance or dispute within the specified period, the WATER BOARD may accept that the municipal customer disputes the actions or proposed actions.
- 44.4 Where not all the municipal customers accepted or disputed the actions or proposed actions the MUNICIPALITY must within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to above, notify all municipal customers accordingly and provide each municipal customer with the decisions of the other municipal customers.
- 44.5 The MUNICIPALITY must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving a notice in terms of clause 44.4, discuss the actions and proposed actions amongst each other, agree to accept or dispute the actions and proposed actions and notify the WATER BOARD accordingly. Where the municipal customers fail to inform the WATER BOARD of its acceptance or dispute within the specified period, the WATER BOARD may accept that the municipal customers dispute the actions and proposed actions.
- 44.6 Where the municipal customers cannot agree amongst each other to accept or dispute the actions and proposed actions the MUNICIPALITY must, within 7 (seven) days of the expiry of the 14 (fourteen) day period, refer the matter to SALGA for mediation and must inform the WATER BOARD of such referral.
- 44.7 Where the matter was referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.
- 44.8 Where the matter was referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, that all the municipal customers accept or dispute the actions and proposed actions. Where SALGA fails to inform the WATER BOARD of the municipal customers acceptance or dispute within 30 (thirty) days of initial notice by the WATER BOARD, the WATER BOARD may assume that the municipal customers disputes the actions and proposed actions.



- 44.9 Where all the municipal customers dispute or some of the municipalities dispute or accepts the action or proposed action the WATER BOARD may refer the matter to the Department for mediation, and the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.
- 44.10 Where the matter was referred to the Department for mediation, the Department must request all municipal customers to participate in the mediation.
- 44.11 Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 44.12 Where all the municipal customers accept the actions and proposed actions, the WATER BOARD must implement the action or facilitate the implementation thereof, provided that, where the action relates to the termination of this contract the action must be referred to the Department, with a proposal to -
- 44.12.1 either sell the water board infrastructure dedicated to the supply of bulk water supply services to the MUNICIPALITY and recover all operational expenditure associated with the infrastructure from the MUNICIPALITY; or
  - 44.12.2 where the water board infrastructure used by the WATER BOARD to provide bulk water supply services to the MUNICIPALITY is partially dedicated to the supply of such services, to pay to the WATER BOARD any capital contribution outstanding in respect of the remaining contract period, where appropriate, as agreed to in terms of this contract by the approval of the charges and capital expenditure programme of the WATER BOARD in terms of clauses 25 and 26 and all operational expenditure associated with the infrastructure.
- 44.13 The Department must approve any sale of assets and capital contribution to be collected by the WATER BOARD on termination of this contract.



## SECTION O: DISPUTE RESOLUTION

### 45. DISPUTE RESOLUTION

- 45.1 Should any difference or questions at any time arise between the parties as to the construction, meaning or effect of this contract or the rights or obligations of the parties hereunder, or should the parties fail to agree upon any matter (hereinafter referred to as “the dispute”), the parties shall resolve the dispute in accordance with this Section O: Dispute Resolution, unless an alternative process for resolving a specific type of dispute has been provided for elsewhere in this contract.
- 45.2 The parties irrevocably consent to comply with the provisions of this clause and neither party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions. The parties agree that they shall not commence any litigation procedures in respect of a dispute arising in terms of this contract save where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction on reasonable grounds.
- 45.3 No dispute arising from this contract shall entitle the other party to discontinue or suspend the execution of any of its powers, rights, duties or obligations in terms of this contract, pending the settlement of the dispute, unless specifically provided for elsewhere in this contract.

### 46. NEGOTIATION

The Municipal Manager of the MUNICIPALITY and the Chief Executive of the WATER BOARD shall deal with any dispute between the parties subject thereto that:

- (i) In the event of any difference between the parties escalating into a dispute, the parties will inform the Department: Water Affairs and Forestry for guidance and assistance, immediately prior to any attempts by the parties to settle the dispute.
- (ii) The Department: Water Affairs and Forestry shall have the right to attend the meeting of the Municipal Manager and the Chief Executive Officer of the water Board and to assist with the negotiation for a settlement. To this effect the parties shall timeously either request the Department: Water Affairs and Forestry to convene the meeting or alternatively inform the Department of the details of the meeting to be convened by the parties.

The said representatives shall endeavor to settle the matter amicably through a process of negotiation. Failing the settlement of the dispute between the parties by negotiation within a period of 7 (seven) working days, any of the parties may submit the dispute to mediation. All statements or representations made during the negotiation process shall be made without prejudice.





## 47. MEDIATION

- 47.1 Each party shall submit a list with 3(three) names of knowledgeable persons, with expertise relating to the particular field in which the dispute arose, as potential mediators from which one mediator shall be selected by agreement between the parties. The parties may request the Department: Water Affairs and Forestry to assist in the negotiations to appoint a suitable mediator. Should the parties fail to reach agreement on the choice of the mediator within 5 (five) working days from the day on which it has become apparent that the matter can not be settled through negotiation, any of the parties may request the Institute for Mediation and Arbitration of South Africa to appoint a mediator.
- 47.2 The mediator shall in his sole discretion determine the form of representations to be made, provided that in making this determination, the mediator shall consult the disputing parties and may be guided by their common reasonable desire on the form in which the said representations are to be made. All representations by the parties shall be made without prejudice.
- 47.3 The mediator shall within a period of 10 (ten) working days after receipt of the representations of the parties endeavor to facilitate an agreement between them or determine a procedure or framework within which they can negotiate to resolve the dispute or difference. All representations by the parties shall be made without prejudice.
- 47.4 Any such negotiated agreement shall be in writing, signed by both parties and be binding on the parties. Failing agreement between the parties the dispute shall be resolved by the submission thereof to arbitration.
- 47.5 The parties agree to contribute equally to the cost of the mediator and each party shall bear any other costs separately regardless of the outcome of the mediation.

## 48. ARBITRATION

- 48.1 The arbitration proceedings shall be held at \_\_\_\_\_, at a convenient location as agreed to by the parties.
- 48.2 Subject thereto that the Department: Water Affairs and Forestry must be informed of all arbitration proceedings and shall have the right to attend such as an observer, the only persons present at the arbitration shall be the legal representatives and a maximum of two other representatives of each of the parties to the dispute. This clause relates only to the limitation in respect of the representation of the parties during arbitration and in no way shall be interpreted to limit any of the parties' rights to call witnesses and present evidence substantiating its case to the arbitrator.
- 48.3 The proceedings shall be in terms of the Arbitration Act, Act 42 of 1965 (as amended) subject to the provisions of clause 48.5.
- 48.4 The arbitrator shall be, an independent person agreed to by the parties. Should the parties fail to agree on the arbitrator within 5 (five) working days after having submitted the matter to arbitration, an arbitrator shall be appointed at the request of any party to the dispute by the Chairman for the time being of the \_\_\_\_\_ Bar.





- 48.5 The arbitrator appointed shall not be obliged to follow the strict principles of law in determining the dispute, but shall be entitled, in his sole discretion to determine the dispute with due reference to the equities prevailing in respect of the dispute. The arbitrator shall have the power to give default judgment if any party fails to make submissions on due date or fails to appear at the arbitration, provided that reasonable notice has been given to parties to make their submissions or appearances.
- 48.6 The parties irrevocably agree and undertake that any award or order or whatsoever made by the arbitrator shall be final and binding upon them and may at the option of either party be made an order of any division of the High Court of South Africa to which jurisdiction the parties are subject. The parties hereby exclude all rights of appeal, which might otherwise be conferred upon them by law.
- 48.7 This clause shall not prevent any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 48.8 The parties agree to contribute equally to the cost of the arbitrator and each party shall bear any other costs separately regardless of the outcome of the arbitration.





## SECTION P: GENERAL

### 49. PREVENTION OF CORRUPT ACTION

49.1 For purposes of this clause "corrupt action" means -

- 49.1.1 giving or accepting any undue payment, bribe, gift, gratuity or any other undue benefit in exchange for performing or forbearing to perform any action in connection with a contract; and
- 49.1.2 solicitation, offering, participation, conspiracy and attempt to bring about the circumstances mentioned above.

49.2 Each party undertakes to identify corrupt action and to take all reasonable steps to prevent either party, its employees, its sub-contractors its agents or anybody under its control from involvement in corrupt action.

### 50. CONFIDENTIALITY AND PUBLICITY

50.1 For the purposes of this clause, "confidential information" means any knowledge, information or know-how relating to a party's business, systems, customers, property, assets or affairs which has been or is disclosed, communicated, delivered or has come to the knowledge of the other party under or in connection with this contract.

50.2 Neither party may disclose any confidential information of the other party without the prior written approval of the other party or require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party, other than confidential information -

- 50.2.1 reasonably required by an employee, contractor or consultant of a party to enable that party to exercise its rights or perform its obligations under this contract; or
- 50.2.2 a party is required by legislation to disclose; or
- 50.2.3 a party is required to disclose in dispute resolution or court proceedings.

50.3 If a party is required or compelled to disclose confidential information of the other party it must -

- 50.3.1 immediately give written notice of that fact to the other party; and
- 50.3.2 take reasonable measures to ensure that the confidentiality of the information is protected.

50.4 A party must not make any public statement relating to this contract unless -

- 50.4.1 the other party has previously agreed to the form and content of the statement; or



50.4.2 the statement is required to be made by legislation and the other party was consulted in respect of the public statement to be made.

50.5 This clause survives the termination of this contract.

#### 51. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION

No party shall be entitled to assign, transfer, cede or delegate any of its rights and obligations in terms of this contract without the prior written consent of the other party.

#### 52. SUB-CONTRACTING

The parties may sub-contract its powers, rights, duties and obligations in terms of this contract. The appointment of any sub-contractor shall not release the parties of their duties or obligations in terms of this contract or in any way affect their responsibility in respect of fulfilling such duties and obligations.

#### 53. NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI

53.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this contract, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

53.1.1 the MUNICIPALITY:

Physical:

Postal:

Facsimile:

Contact person:

53.1.2 the WATER BOARD:

Physical:

Postal:

Facsimile:

Contact person:

53.2 Any submission, notice, communication or information required or permitted to be given and any obligation to submit to, notify or inform a party in terms of this contract shall, unless specifically provided for otherwise, be valid and effective only if in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post.





53.3 A notice shall be deemed to have been received:

53.3.1 14 (fourteen) days after posting, if posted by registered post to the party's address in terms of clause 53.1;

53.3.2 on delivery, if delivered to a responsible person during normal business hours at the party's physical address in terms of clause 53.1;

53.3.3 on despatch, if sent to the Party's facsimile number and confirmed by registered letter posted no later than the next Business Day following the dispatch.

53.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen *domicilium citandi et executandi*.

53.5 Either party may change its address for purposes of this clause to another address by notice in writing in terms of clause 53.2 to the other party, such address being effective on receipt by the addressee of such written notice. A notice shall be necessary in respect of a new or changed facsimile number.

#### 54. WHOLE AGREEMENT, NO AMENDMENT

54.1 This contract including the annexures constitutes the whole contract between parties relating to the subject matter hereof and supersedes, all previous contracts or arrangements, whether oral or written, between the parties. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

54.2 No amendment or consensual cancellation of this contract or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this contract and no settlement of any disputes arising under this contract and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this contract shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

54.3 No extension of time or waiver or relaxation of any of the provisions or terms of this contract, bill of exchange or other document issued or executed pursuant to or in terms of this contract, shall operate as an estoppel against any party in respect of its rights under this contract, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this contract.

54.4 To the extent permissible by law, no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract or whether it was negligent or not.



**55. FAILURE TO REACH AGREEMENT**

Where it is specified in this contract that certain matters are to be agreed between the parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the whole or any part of this contract and were the parties fail to reach an agreement either party may refer the matter for resolution in terms of Section O of this contract.

**56. LEGISLATIVE AND REGULATORY CHANGES**

Any provisions of this contract which may become inconsistent with legislation due to amendments to that legislation shall be deemed, insofar as possible, to be amended accordingly, provided that, where such legislative amendments render any provisions illegal, invalid, unenforceable or ineffective, the parties shall renegotiate such provisions in good faith, having due regard to such amendments and to the principles contained herein. If any provision cannot be renegotiated it shall be treated *pro non scripto* and severed from the balance of this contract, without invalidating the remaining provisions of this contract or affecting the validity or enforceability of such provisions.

**57. LIABILITY FOR EXPENSES**

Each party must pay its own expenses incurred in negotiating and executing this contract.

**58. RELATIONSHIP BETWEEN PARTIES**

Nothing in this contract creates a relationship of partnership, principal and agent or trustee and beneficiary between the MUNICIPALITY and the WATER BOARD.

**59. CONSENT TO JURISDICTION**

The parties agree that any legal action or proceeding arising out of any proceedings in terms of arbitration or in respect of any interdict or urgent relief in terms thereof may be brought in the High Court of South Africa (..... Local Division) (or any successor to that court) and irrevocably submit to the exclusive jurisdiction of such court. The parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum.

**60. PRESERVATION OF THE POWERS AND DUTIES OF THE MUNICIPALITY**

Nothing in this contract shall curtail the statutory powers of the MUNICIPALITY in its capacity as the water services authority as provided for in the Water Services Act.





**61. SUPREMACY OF THIS CONTRACT**

In the event that any provision of any other agreement entered into between the MUNICIPALITY and the WATER BOARD, conflicts with the provisions of this contract, the provisions of this Contract shall prevail.

**62. CONTRACT NOT BINDING ON SUCCESSORS-IN-TITLE**

This contract shall not be binding on any successor in title of the MUNICIPALITY or any successor in title of the WATER BOARD.

**63. MUTUAL COOPERATION AND GOOD FAITH**

The parties shall in their dealings with each other display the utmost good faith, consult each other from time to time with regard to any assistance or advice which they may require in connection with fulfilling any of its obligations in terms of this contract and undertake to do all such things, perform all necessary acts and procure the taking of all necessary steps and sign all such other documents that may be necessary or incidental or conducive to give effect to the intention and the terms and conditions of the contract.

**64. COUNTERPARTS**

This contract, together with its annexures, may be executed in several counterparts, each of which shall together constitute one and the same document.

**65. GOVERNING LAW**

This contract shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as interpreted and applied in the \_\_\_\_\_ Province shall prevail.



**66. ANNEXURES**

The following annexure form part of this contract: -

- 66.1 Annexure A - Recordal of bulk water supply services provided on the effective date;
- 66.2 Annexure B - Water Quality Standards

IN WITNESS WHEREOF, the parties have executed this contract on this ..... DAY OF .....200\_ AT .....

WITNESSES:

- I. ....
- II. ....

-----  
the MUNICIPALITY

IN WITNESS WHEREOF, the parties have executed this contract on this ..... DAY OF .....200\_ AT .....

WITNESSES:

- I. ....
- II. ....

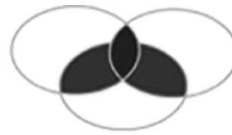
-----  
the WATER BOARD





# water & forestry

Department:  
Water Affairs and Forestry  
**REPUBLIC OF SOUTH AFRICA**



# SALGA

*South African Local Government Association*

