



Bulk Potable Water Supply Agreement

between

MAGALIES WATER

Hereinafter referred to as " the Water Board"

Duly represented by _____

Ms S J Sekgobela in her capacity as the Chief Executive Officer

&

THABAZIMBI LOCAL MUNICIPALITY

Hereinafter referred to as " the Municipality"

Duly represented by _____

Mr. T S R Nkhumise in his capacity as Municipal Manager

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SECTION A: INTRODUCTION

1. RECORDAL

WHEREAS the **MUNICIPALITY** as Water Services Authority 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 Systems Act, Act 32 of 2000 and the Water Services Act, Act 108 of 1997, including amendments to the these Acts; and

WHEREAS, the **WATER BOARD** is currently providing bulk water supply services to the **MUNICIPALITY** to enable it to fulfil its obligations and is also operating as a water services provider to other consumers in the **MUNICIPALITY's** area of jurisdiction and has the expertise, capacity and infrastructure to continue to provide bulk water supply services to the **MUNICIPALITY** and to continue to operate as water services provider to other consumers in the **MUNICIPALITY's** area of jurisdiction.

THEREFORE the parties agree that the **WATER BOARD** shall act as water services provider as per section 22(1) Of the Act to provide bulk water supply services to the **MUNICIPALITY** and operate as water services provider to other consumers in the **MUNICIPALITY's** area of jurisdiction subject to 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 juristic persons”.

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;

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- 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 purification plants, pipelines, reservoirs and pumping stations and other incidental matters related thereto;
- 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 or regulate or 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 “**consumer**” means any end user who receives water services from the **WATER BOARD**; including an end user in an informal settlement.
- 2.2.6 “**contract**” means this contract and any annexures thereto, as well as any subsequent amendment, notation or substitution of this contract and annexure or annexures in accordance with this contract;
- 2.2.7 “**contract area**” means the supply area;
- 2.2.8 “**contract term**” means the period defined in clause 5;
- 2.2.9 “**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;
- 2.2.10 “**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 down stream 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
 - c) non-interference with the **WATER BOARD**’s infrastructure or adjacent infrastructure;

- 2.2.11 "**effective date**" means the date of last signature of this contract;
- 2.2.12 "**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; which meter will comply with the SANBS, Trade Metrology Act, No. 77 of 1973, of a size regulated under this Act;
- 2.2.13 "**Minister**" means the Minister of Water Affairs and Forestry
- 2.2.14 "**Municipal customers**" means the **MUNICIPALITY**, consumers in the **MUNICIPALITY**'s area of jurisdiction 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;
- 2.2.15 "**MUNICIPALITY**" means the Thabazimbi Local Municipality duly established in terms of section 12 and authorised in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 and its amendments, to exercise executive authority for water supply services and sanitation services;
- 2.2.16 "**municipal manager**" means the municipal manager as defined in section 81(1)(a) of Local Government: Municipal Structures Act, Act 117 of 1998 as amended;
- 2.2.17 "**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;
- 2.2.18 "**parties**" means the **MUNICIPALITY** and the **WATER BOARD**, individually or collectively, as the context may require;
- 2.2.19 "**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 the **MUNICIPALITY** or the **WATER BOARD**, or if the context is appropriate, any one of them;
- 2.2.20 "**SALGA**" means the South African Local Government Association recognised in terms of the Organised Local Government Act, Act 52 of 1977, as amended, to represent local government nationally;

- 2.2.21 "supply area" means the jurisdictional area of the **MUNICIPALITY** where water is provided to consumers by the **WATER BOARD** acting as a water services provider to the **MUNICIPALITY**.
- 2.2.22 "the Act" means the Water Services Act, Act 108 of 1997, as amended and any word or expression to which a meaning has been assigned in the Act shall bear the same meaning in this Contract, unless this Contract indicates otherwise;
- 2.2.23 "**WATER BOARD**" means Magalies Water, a water board deemed to be or established in terms of the Act;
- 2.2.24 "water board infrastructure" means the **WATER BOARD's** overall bulk water supply services infrastructure and equipment including the customer connection;
- 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 provide 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.
- 2.12 Where reference is made to a financial year, the latter will, unless it is specifically stated to be the municipal financial year, be taken as referring to the financial year of the water board.

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 Act 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**.

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** and/or to operate as water services provider to consumers in the **MUNICIPALITY**'s area of jurisdiction.

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5. **COMMENCEMENT AND DURATION**

- 5.1 This contract shall replace the current contract on the effective date and shall endure for an initial period of 10 (ten) years.
- 5.2 This 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, or such other mutually acceptable reason, provided that the parties reach agreement on the terms and conditions of the extension and it becomes an annexure to this contract.

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 request of the **MUNICIPALITY**.
- 6.2 The objectives of any review shall be to measure the performance of the **WATER BOARD** against the key performance areas implied in clause 28 and to consider any 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; CUSTOMER CONNECTIONS**

- 7.1 It is hereby recorded that, on the effective date, the **WATER BOARD** provided 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.
- 7.2 The **WATER BOARD** may only adjust the estimated quantity of water specified in Annexure A with the prior written 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** shall apply in writing to the **WATER BOARD** for an increased supply in accordance with clause 15.

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7.4 The **WATER BOARD** shall 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 95% 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.

8.2 The **WATER BOARD** shall monitor the water quality within its water supply networks on a monthly basis and provide the **MUNICIPALITY** with a written analyses report of the results thereof.

8.3 The **WATER BOARD** must inform the **MUNICIPALITY**, at least 14 (fourteen) days in advance, of any planned deviation in the quality of water at any customer connection, 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 year at least 6 (six) months prior to the commencement of its financial year, provide the **MUNICIPALITY** with a written list of 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** shall within 1 (one) month of receipt of the list referred to in clause 9.1.2 in writing provide the **WATER BOARD** with projected demands at set intervals, for each customer connection, based on expected growth, over the contract period.

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 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-utilized 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 the **WATER BOARD** at least 1 (one) year in advance of any anticipated reduction of more than 15% (fifteen percent) in the projected annual average daily demands due to water demand management initiatives or any other reason. The **WATER BOARD** must within 2 (two) months of receiving a notice from the **MUNICIPALITY** notify the **MUNICIPALITY** and its other municipal customers of the projected financial implications of such a reduction and initiate the process set out in clause 44.
- 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 demand 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 take all reasonable measures, including the provision of adequate storage, to ensure that this demand is met at all times.

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 based on existing and projected annual average daily demand as set out in Annexure A.

10.2 The **WATER BOARD** shall inform the **MUNICIPALITY** timeously and in writing of any planned reduction or increase in water pressure at any customer connection, the reasons therefore, 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 500 mm	Within 24 hours

11.2.2 If it becomes clear that it will not be possible to adhere to the time 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. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.

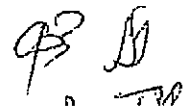
12.1.2 The **WATER BOARD** must annually, 2 (two) months prior to the commencement of the forthcoming financial year, submit a summary report detailing all meters and maintenance conducted in respect of meters for the preceding year and maintenance planned for the forthcoming year, including meters replaced or to be replaced.

12.2 Accuracy of meters

12.2.1 The **WATER BOARD** shall do all that it reasonably can to ensure that all its meters are at all times correctly sized and that they operate under optimum conditions.

12.1.1 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 installed meters are 3% (three percent).



12.2 Meter testing

- 12.2.1 The **WATER BOARD** must regularly 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 (one) month of the end of the relevant financial year.
- 12.2.2 If a test indicates that a meter is registering outside the maximum levels of acceptable errors as provided for in clause 12.2.3, such meter must be repaired or replaced.
- 12.2.3 When a meter is removed from site for testing, it must be replaced by an alternative calibrated meter.
- 12.2.4 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.
- 12.2.5 Where a check meter has been installed by the **MUNICIPALITY** and the difference between the meters at any time varies more than 5% (five percent) both meters will be tested.

12.3 Malfunctioning meters

- 12.3.1 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.
- 12.3.2 The **WATER BOARD** must give written 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.

12.3.3 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 three months after repair or replacement of the meter has been effected.

12.4 Meter reading

12.4.1 The **WATER BOARD** must read all meters monthly on a date agreed with the Municipality annually.

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

12.5 Queries

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

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

12.5.3 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.

12.5.4 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.

12.5.5 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.

12.6 Adjustment and calculation of consumption where meter malfunctions

12.6.1 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.

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

12.6.3 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.

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

12.7 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** and record such notification.

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- 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.

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**; indicating which measures will be implemented by the **WATER BOARD** 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 and/or 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 affected municipality 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 raw water is available and within the quantity authorised for abstraction in any relevant license.
- 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 CO-ORDINATION

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 organization mandated to provide water services to them.

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 will 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** shall comply with all relevant legislation in respect of audited financial statements and annual reporting.
- 22.2 The **WATER BOARD** must submit a copy of its audited financial reports and annual report for each financial year to the **MUNICIPALITY** on submission thereof to the Minister as provided for in the Act including 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.

SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT

23 PERMISSABLE CHARGES

The **WATER BOARD** may impose the following bulk water supply service 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 12; 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** shall 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 alteration 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 such a customer.

24.4 Where any alteration or alteration to the **WATER BOARD's** existing infrastructure will serve 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 shall 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 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 its relevant municipal customer will be affected and all municipal customers have agreed to the capital contribution to be charged in these circumstances.

- 24.7 The **WATER BOARD** shall therefore notify the **MUNICIPALITY** and its 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
 - 24.9.5 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

- 25.1 The **WATER BOARD** must annually, before or on 31 January of each year, submit its proposed bulk water supply services charges and capital expenditure programme for the forthcoming year to the **MUNICIPALITY** and its other municipal customers for acceptance, together with –
- 25.1.1 A 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 Act, are dealt with by the **WATER BOARD**; and
 - 25.1.4 A 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 30 April for implementation on 1 July of the forthcoming financial year.

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

25.4 Where all its 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 its municipal customers for acceptance; or

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

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

25.5 Where not all its 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 its 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 within 14 (fourteen) days of receiving notice in terms of clause 25.5, it discusses the proposed charges and capital expenditure programme with the other municipal customers of the **WATER BOARD** to agree to accept or dispute the proposed charges and capital expenditure programme and notify the **WATER BOARD** of its decision accordingly. 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 30 April for implementation on 1 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 its municipal customers for acceptance; or
- 25.7.2 refer the matter to the Department for mediation and notify its municipal customers of such referral. In the event that the **WATER BOARD** submits revised charges and a revised capital expenditure programme to its 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 municipal customers 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.
- 25.9 Where the matter is referred to SALGA for mediation, SALGA must request all the 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 and 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 30 April for implementation on 1 July of the forthcoming financial year.
- 25.11 Where all its 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 its 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

25.12.1 refer the matter to the Department for mediation and notify all its municipal customers of such referral.

In the event that the **WATER BOARD** submits revised charges and a revised capital expenditure programme to its municipal customers for acceptance the process as provided for in this clause 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 14 (fourteen) day period or before 30 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, which percentage may not exceed CPIX, pending the resolution of the dispute by the Department. Where the **WATER BOARD** and its 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 its municipal customers 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 clause 25.16 will result in the **WATER BOARD** not being able to submit its tariffs to the Department for tabling in Parliament before or on 15 March of each year in accordance with the relevant legislation, both parties, SALGA and the Department 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 1 July of that year, notwithstanding the fact that the tariff to be set will only be tabled in Parliament after 15 March of that year.

25.18 Where a dispute in respect of tariffs is resolved after 1 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 1 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 its other municipal customers in accordance with the process set out in clauses 25.2 to 25.12 and 25.14.

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 or on the last day 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 a 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**).

26.5 Queries relating to consumption will be settled in accordance with the provisions of clause 12.6. All other queries in terms of which the parties fail to reach agreement 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, if any such interest was imposed.

27 SPECIAL PAYMENT ARRANGEMENTS

The **MUNICIPALITY** and the **WATER BOARD** may agree in writing 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 incentivized 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

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** in writing 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**;

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.

SECTION J: OTHER WATER RELATED ACTIVIES IMPACTING ON THE PARTIES

31 DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS WITHIN THE JURISDICTION AREA OF THE MUNICIPALITY

31.1 It is hereby recorded that, at the commencement date, the **WATER BOARD** is providing bulk and/or retail 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.

31.2 The **MUNICIPALITY** hereby grants temporary approval to the **WATER BOARD** in terms of section 22(1) of the Water Services Act to continue providing such bulk and retail 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** shall provide the **MUNICIPALITY** with an updated list (update of Annexure D) of such services detailing the names, contact details, physical addresses, quantity, quality, duration and type of services provided by the **WATER BOARD**, within 14 (fourteen) days after the effective date; and
- 31.2.2 the **MUNICIPALITY** may, 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 31.2.2, in terms of section 8 of the 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 its other municipal customers of the projected financial implications of the **MUNICIPALITY**'s intention.
- 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 **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 the **MUNICIPALITY** in this regard.

32. DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS WHICH ARE NOT CUSTOMERS OF THE MUNICIPALITY

- 32.1** It is hereby recorded that, at the commencement date, the **WATER BOARD** is providing bulk and/or retail 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** that are not customers of the **MUNICIPALITY**, with approval as required in terms of sections 6,7 and 30(2)(d) of the Water Services Act.
- 32.2** It is hereby agreed that the **WATER BOARD** will continue with such supply until alternative arrangements have been made by the **MUNICIPALITY**, if required. It is agreed between the parties that such alternative arrangements will be negotiated between them.
- 32.3** It is hereby agreed that the **WATER BOARD** will enter into agreements for providing a water supply service to the customers that are not customers of the **MUNICIPALITY** to the satisfaction of the **MUNICIPALITY**.

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 contract.
- 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 its 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 reductions, irrespective 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 percent) within 30 (thirty) days of such notice if at least 50% (fifty percent) 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 the **WATER BOARD** has reduced the bulk water supply services by 20% (twenty percent) in accordance with clause 34.2.1, it shall again give the **MUNICIPALITY** a written 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 percent).

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%, 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 and the Member of the Executive Committee responsible for local government in the Limpopo 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 Limpopo 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. **ERMITTS, LICENSES, 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, licenses or permits, where required.

35.2 The **WATER BOARD** guarantees that on the effective date all permits, licenses, exemptions, permissions and approvals that may have been required in terms of legislation in respect of providing bulk water supply services were 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 of 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 obligations 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 MAJEURE

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 in addition to any 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 contact 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 breach did not occur as a result of the **WATER BOARD's** failure.

41. **VIS MAJEURE**

- 41.1 No party shall be liable for any failure to fulfill 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.
- 41.5 Provided that nothing in this clause shall preclude the operation of the emergency procedure provided for in clause 13.
- 41.6 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.



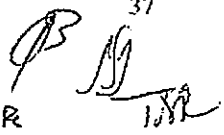
- 43.2 When termination is initiated in terms of clause 43.1 the **WATER BOARD** must within 2 (two) months of receiving a notice from the **MUNICIPALITY** notify the **MUNICIPALITY** and its other municipal customers of the projected financial implications of termination of this contract for it and each municipal customer and initiate the process set out in clause 44.
- 43.3 The 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 43.2 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 **WATER BOARD** must within 14 (fourteen) days of receiving a notice from the **MUNICIPALITY** based on any one of the circumstances as referred to in clauses 9.1.7, 31.4.1, 33.2 and 43.2 or a decision of its own in respect of clause 24.7 provide all its municipal customers with a notice referring to its proposed actions including any projected financial implications thereof for its municipal customers.
- 44.2 The notice of the **WATER BOARD** must request a response within 14 (fourteen) days of each of its municipal customers indicating whether it accepts or disputes the proposed actions of the **WATER BOARD**. Where a municipal customer fails to inform the **WATER BOARD** of its acceptance or dispute within the specified period, the **WATER BOARD** may accept that the municipal customer disputes the proposed actions.
- 44.3 Where not all the municipal customers accepted or disputed the proposed actions the **WATER BOARD** must within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to above, notify all its municipal customers accordingly and provide each municipal customer with the decisions of the other municipal customers.
- 44.4 The **WATER BOARD** must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving a notice in terms of clause 44.3, discuss the proposed actions amongst each other, agree to accept or dispute the 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 proposed actions.

- 44.5 Where the municipal customers cannot agree amongst each other to accept or dispute the proposed actions the **MUNICIPALITY** must, acting on behalf of all municipal customers, 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.
- 44.6 Where the matter was referred to **SALGA** for mediation, **SALGA** must request all the municipal customers to participate in the mediation and inform the **WATER BOARD**, within 14 (fourteen) days of the matter being referred to it, that all the municipal customers accept or dispute the proposed actions. Where **SALGA** fails to inform the **WATER BOARD** of the municipal customers acceptance or dispute within 30 (thirty) days of initial referral by the **MUNICIPALITY**, the **WATER BOARD** may assume that the municipal customers disputes the proposed actions.
- 44.7 Where all the municipal customers dispute or some of the municipalities dispute or accepts the proposed actions 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.
- 44.8 Where the matter was referred to the Department for mediation, the Department must request all municipal customers to participate in the mediation.
- 44.9 Where the Department fails to resolve the dispute within 14 (fourteen) days the **WATER BOARD** 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.
- 44.10 Where all the municipal customers accept the proposed actions, the **WATER BOARD** must implement the actions or facilitate the implementation thereof, provided that, where any proposed action relates to the termination of this contract the action must be referred to the Department, with a proposal to –
- 44.10.1 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

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44.10.2 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, the **MUNICIPALITY** 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 24 and 25 and all operational expenditure associated with the infrastructure.

44.11 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 The parties recognize their obligations to comply with the provisions of the Constitution of South Africa, 108 of 1996 and in particular sections 40 and 41 thereof. Irrespective, 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, 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 within 2 (two) working days after anyone of the parties informed the other in writing thereof including the events preceding it. 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 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. 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 cannot be settled through negotiation, any of the parties may request the Institute for Mediation and Arbitration of South Africa to appoint a mediator and will submit such an application in writing within 2 (two) working days, copying the other party thereon.
- 47.2 The mediator shall in his sole direction 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. Failure on the part of anyone of the parties to fully implement the negotiated settlement within a reasonable period not exceeding 14 (fourteen) days, shall constitute a failure of the negotiated agreement. In the event of which anyone of the parties as agreed, must within a reasonable period not exceeding 7 (seven) days refer the dispute to be finally resolved through 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 Pretoria, at a convenient location as agreed to by the parties.
- 48.2 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.
- 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 Pretoria 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 Supreme 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.

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 responsible 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.

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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-contract 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 *domilia 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: 7 Rietbok Street, Thabazimbi, 0380

Postal: Private Bag X530, Thabazimbi, 0380

Facsimile: 014 777 1531

Contact person: Mr R Nkhumise

53.1.2 the WATER BOARD:

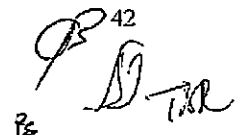
Physical: 38 Heystek Street, Rustenburg, 0299

Postal: Private Bag X82327, Rustenburg, 0300

Facsimile: 014-5974635

Contact person: Ms. S J Sekgobela

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.

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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 dispatch, 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 change 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 change 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.

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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.

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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 Pretoria 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 BINDING ON SUCCESSORS-IN-TITLE

This contract shall be binding on any successor in title of the **MUNICIPALITY** and 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.

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65. GOVERNING LAW

This contract shall be governed by and construed and interpreted in accordance with the laws 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 **Limpopo** Province shall prevail.

66. ANNEXURES

The following annexures form part of this contract:

- 66.1 Annexure A - Recordal of bulk water supply services provided by the Water Board on the effective date;
- 66.2 Annexure B - Water Quality Standards
- 66.3 Annexure C - Maps of both organizations
- 66.4 Annexure D - List of consumers within the jurisdictional area of the Municipality

[Handwritten signatures]
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IN WITNESS WHEREOF, the parties have executed this contract on this 23rd DAY
OF JANUARY 2009 AT THABAZIMBI

WITNESSES:

I. [Signature] Booyesen CG

II. [Signature]
SC NGOMA

[Signature]
Maabana

[Signature]

the MUNICIPALITY

IN WITNESS WHEREOF, the parties have executed this contract on this 23rd DAY
OF JANUARY 2009 AT THABAZIMBI

WITNESSES:

I. P-s Lobono [Signature]

II. [Signature]
SC NGOMA

[Signature]
Maabana

[Signature]

MAGALIES WATER