

MODEL WATER SERVICES CONTRACT



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water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

MODEL WATER SERVICE CONTRACT BETWEEN WATER SERVICE AUTHORITY AND WATER SERVICES INTERMEDIARY

SEPTEMBER 2012

PREFACE

This model water service agreement between a Water Services Authority (WSA) and a Water Services Intermediary (WSI) is a guideline which has been developed to ensure that water services is accessible and provided in a manner which is efficient, equitable and sustainable.

It is envisaged that this model contract will facilitate better cooperation between WSAs & private land owners during the negotiation of the individual water services agreements and thus will serve to further clarify and define the respective roles and responsibilities of each institution.

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

The Department is therefore pleased to release the Model Water Services Contract between a WSA and a WSI as guide for WSAs and WSIs when developing their Water Services Contract.

If there are any difficulties or uncertainties in the use of the model, enquiries may be forwarded to:

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COVERING GUIDELINE TO USING THE MODEL WATER SERVICES CONTRACT

1. INTRODUCTION

According to Section 24 of the Water Services Act, 1997, a Water Services Authority may in its bylaws, require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction, to ensure provision of water services to residents on privately owned land.

The provisions of Section 27 and 19(1) of the Act read with Section 76(b) of Municipal Systems Act, 2000, which opted for the appointment of water services intermediary is that the appointment must be done through a written contract and performance be monitored.

The Water Services Act (No. 108 of 1997) states in Section 19(7) that the Minister of Water Affairs may provide model contracts to be used as a guide for contracts between water services authorities and water services providers.

Some of the Act's primary concerns are that the contract should not be unbalanced or compromise the standards of water provision in South Africa or result in a poor service to the consumer. In respect of compulsory provisions that are the subject of regulation, the Act clarifies that water services contracts should:

- Provide for water services on an efficient, equitable, cost-effective and sustainable basis;
- Set terms that are fair and equitable to the water services authority (WSA), the water services provider (WSP), water services intermediary
- and the Consumer; and
- Comply with the Act.

2. THE MODEL CONTRACT

The attached contract is a 'model contract' provided by the Department of Water Affairs (DWA) on behalf of the Minister of Water Affairs and was developed as a tool for the Cooperative Governance Pack that aims to assist Local and District Municipalities in giving effect to the determination of the Minister of Co-operative Governance and Traditional Affairs in respect of the powers and functions relating to water services.

The model contract is based on the assumption that the WSI is responsible for providing water services holistically on behalf of the WSA.

(The parties may however decide to limit or extend the scope of the contract).

The model contract is further based on a traditional international management contract, but has been developed in line with DWA's regulations for contracts between WSAs and WSIs. *(A copy of these regulations, promulgated in terms of section 19 of the Water Services Act, can be obtained from DWA).*

It includes additional clauses based on South African best practice and lessons learnt; and are structured in a manner that focuses on the roles and responsibilities of the parties to the contract as opposed to the functions to be performed by each party.

The model contract is based on the assumption that at least the following matters will have been addressed during the different phases specified in the Cooperative governance Agreement :

- The promulgation of by-laws in compliance with but not limited to Section 21 of the Act
- The adoption of Credit Control and Debt Collection and tariff policies that include an indigent policy.
- Ensuring that all permits, licenses, exemptions, permissions and approvals that may be necessary in respect of the provisioning of water services are in place.

3. USING THE MODEL CONTRACT

- The contract is a *model contract*, which should be amended by the parties to the contract to suit their specific needs and circumstances. The model contract is intended as a guide in independently drawing up a contract suitable for the purposes of the parties.
- Those clauses that are not appropriate should be deleted, and where necessary additional clauses should be included.
- Drafting notes appear in the model contract itself that clarify drafting choices. These are purely for guidance and should not be incorporated into the contract. Where there are alternative clauses, which may be appropriate, the various alternatives are provided so that the correct clause can be utilised as appropriate. Those clauses that are not appropriate should be deleted.

4. DISCLAIMER

- The publication of this model contract is not intended as a substitute for legal advice. It is designed to provide the WSA and the WSI with a framework for the negotiation and conclusion of a water services contract.
- In all instances regard must be to the provisions of the Act and DWA's regulations for contracts between water services authorities and water services providers.
- The Government does not compel the parties to rely on the model contract, and Government is not liable for damages arising from reliance on this contract.

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SECTION A: INTRODUCTION

1 RECORDAL

- 1.1 Whereas the WSA is responsible for ensuring that all residents within its jurisdictional area have access to water services in accordance with the Constitution of the Republic of South Africa (Act 108 of 1996), the Local Government: Municipal Structures Act (Act 117 of 1998); Local Government: Municipal Systems Act (Act 32 of 2000) and Water Services Act (Act 108 of 1997).
- 1.2 And whereas the WSA does not currently provide services to residents on privately owned land.
- 1.3 And whereas, at the effective date, the WSI has been providing water services in the jurisdiction of the WSA to its employees/lessees (*delete whichever is not applicable*) as an adjunct to the contract of employment/lease and has the expertise, capacity and infrastructure to continue to provide these water supply services.
- 1.4 And whereas, in terms of Section 22(1) of the Water Services Act (Act 108 of 1997), no person may operate as a WSP without the approval of the WSA having jurisdiction in the area;
- 1.5 And whereas the Water Services Act provides for;
1. the enrolment or registration of WSI's by WSA's
 2. the duties of water services authorities
 3. norms and standards in respect of tariffs for water services provision by WSI's
 4. monitoring of and default by WSI's; and
 5. step in by the municipality in water provision by WSI's
- 1.6 Therefore the parties agree that the WSI will provide water services to the consumers situated on the property owned by the WSI, as described in **Annexure A** on terms and conditions as more fully set out in the contract.

2 INTERPRETATION

- 2.1 Unless a contrary intention indicates, words imparting –
- 2.1.1 any one gender includes both genders;
 - 2.1.2 the singular include the plural and *vice versa*; and
 - 2.1.3 natural persons include created entities (corporate or unincorporated) and the Government.
- 2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
- 2.2.1 **“Act”** means the Water Services Act (Act 108 of 1997);

- 2.2.2 **"Approval"** means approval as contemplated in Section 22 of the Act, and approves has a corresponding meaning
- 2.2.3 **"competent authority"** means collectively the Minister of Water Affairs, all spheres of Government, any Court of competent jurisdiction or any agency, authority, body or standard setting institution appointed by such entities to regulate and/or oversee the activities of the WSI pursuant to this contract, and in terms of any regulatory provision, or if the context is appropriate any one of them;
- 2.2.4 **"Contract"** the word contract and service level agreement will be used interchangeable to mean this agreement and annexures hereto;
- 2.2.5 **"Contract term"** means the period defined in clause 6
- 2.2.6 **"consumer"** the word consumer and customer will be used interchangeable to imply a household situated on land owned by the WSI, *(in which at least 1 member is employed by WSI, or leased by household)* and to whom the WSI provides water services on the effective date and to whom the WSI may provide water services and/or must provide water services in accordance with this contract;
- 2.2.7 **"corrupt action"** means –
- (a) 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
 - (b) solicitation, offering, participation, conspiracy and attempt to bring about the circumstances mentioned in clause 2.2.7(a)
- 2.2.8 **"effective date"** means the date of last signature of this contract;
- 2.2.9 **"emergency situations"** includes without limitation fires, floods, water pollution, restrictions in respect of raw water, droughts, operational emergencies such as pipe bursts, and any other situation that may create danger to the consumers or to the normal provision of water services in the water services area;
- 2.2.10 **"employees"** means the employees of the WSI as employed by the WSI on the effective date;
- 2.2.11 **"material adverse government action"** means any action of competent authority of whatsoever nature, including but not limited to the introduction, application or change of any law, order, regulation or by-law after the effective date, the effect of which is to discriminate against or has a material adverse effect on the rights, interest or obligations of the WSI under the contract and results in any actual or prospective change in the WSI's costs and/or revenues, provided that there shall not be deemed to be a material adverse government action to the extent that the WSA's or competent authority's action is required following a *v/s major* event provided that such action is reasonable in relation thereto;
- 2.2.12 **"Monitoring"** means monitoring as contemplated in Section 27 of the Act

- 2.2.13 **"parties"** means the WSA and the WSI, or if appropriate in the context, any of them;
- 2.2.14 "privately **owned** land" includes, but is not limited to commercial farms; mine owned land; church owned land; industrial owned land including privately owned enterprises; sectional title/residential complexes and estates and game parks
- 2.2.15 **"regulatory provisions"** means collectively, the provision of any legislation, regulation, policy directive or notice issued by a competent authority in respect of the provision of water services or the activities of the WSA or the WSI, or if the context is appropriate, any one of them;
- 2.2.16 "residents on privately owned land" means all persons residing permanently on privately owned land but excludes the owner and/or his/her household
- 2.2.15 **"sanitation services"** means the collection, removal, disposal or purification of human excreta and domestic waste water, and the collection, treatment and disposal of industrial waste water.
- 2.2.16 **"water services"** means collectively water supply services and sanitation services
- 2.2.17 **"water supply services"** means the abstraction from a water resource, conveyance, treatment, storage and distribution of potable water, water intended to be converted to potable water and water for industrial or other use, to consumers or other water services providers.
- 2.2.18 **"water services area"** means the area in which the WSI provides water services on the effective date, being the geographical areas of _____(*insert description of area*), as demarcated on the map attached as **Annexure A**;
- 2.2.19 **"water services system"** means all immovable and movable assets and property owned by the WSI or used by the WSI as at the effective date and any new assets or properties which are acquired, built, installed or used after the effective date to provide water services within the water services area, consisting of amongst others without any limitation any reservoir, dam, well, pump house, borehole, any waste water treatment work, purification work, pumping installation, office or structure, electricity transmission line, pipeline, meter, vehicles, fittings, apparatus or equipment (if the context is appropriate any one of them) which are used or to be used for the effective rendering of the water services;
- 2.2.20 **"Water Services Intermediary"** means any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the main object of the contract,
- 2.2.21 **"WSA"** means theduly established in terms of Section 12 and authorized in terms of the Local Government: Municipal Structures Act (Act 117 of 1998) to exercise executive authority for water and sanitation services, or its successor(s) in title;

- 2.2.22 **"levels of Service"** means the various methods and quantities, where applicable, for the provision of water services to consumers;
- 2.2.23 **"Local Government Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000);
- 2.2.24 **"publish"** means the dissemination, through media such as newspaper and radio, of information among consumers taking into account-
- (a) Language preferences and usages in the water services area; and
 - (b) The special needs of people who cannot read or write and of other disadvantaged groups;
- 2.2.25 **"standards of service"** means the operational performance of the service as measures against the relevant compulsory national norms and standards as contemplated in section 9 of the Act, as well as any additional standards specifically provided for in the contract
- 2.3 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 otherwise, it will act reasonably and within a reasonable period;
- 2.4 clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms of this contract or any clause hereof;
- 2.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the contract;
- 2.6 when any number of days is prescribed in this contract, same shall be working days reckoned exclusively of the first, Saturday, Sunday and/or any public holiday, and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.8 expressions defined in this contract shall bear the same meanings in schedules or annexure to this contract that do not themselves contain their own definitions;
- 2.9 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;
- 2.10 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

- 2.11 notes in this contract are to be used as guidelines only and shall not form part of the contract
- 2.12 emergencies -An incident, event, or occurrence will be considered to be an emergency when there is substantial variation (in the opinion of either of the contracted parties) from:-
 - 2.12.1 Agreed quantity and quality of water for a period of at least 24 hours or
 - 2.12.2 The agreed repair times referred exceed 24 hours.

3 OBJECTIVES OF THE CONTRACT

- 3.1 Recognizing the executive authority of the WSA to water services within its area of jurisdiction; the parties agree that this contract should be concluded to –
 - 3.1.1 grant ***approval*** to **WSI**, to provide water services to the consumer as provided for in Section 22 of the Act
 - 3.1.2 formalize and record in writing the provision of water services by the WSI to consumers residing within the jurisdiction of the WSA; in accordance with the requirements of the Act.
 - 3.1.3 provide for the rendering of the water services in an efficient, equitable, cost effective and sustainable manner; and
 - 3.1.4 set terms that are fair and equitable to the WSA, the WSI and the consumers.

SECTION B: APPROVAL, SCOPE and DURATION

4 APPROVAL

With effect from the effective date the WSA –

- 4.1 approves the provision of water services by the WSI to the consumers on the property described as *(Insert full property description as appearing in title deed)*
- 4.2 delegates and assigns to the WSI all powers, rights, duties and obligations capable of being delegated and assigned in terms of law, subject to the provisions of this contract, necessary for or incidental to the effective, efficient, sustainable and affordable –
 - 4.2.1 Provision of the water services to the consumers.
 - 4.2.3 discharge, compliance, exercise, or fulfillment of any powers, rights, duties and obligations in terms of this contract. *(delete clauses which are not applicable)*

5 SCOPE OF THE APPROVAL

- 5.1 The rights, duties and obligations of the parties in terms of this contract are limited to the provision of water services.
- 5.2 The territorial scope of this contract is limited to the area described in clause 4.1
- 5.3 Extension of the scope
 - 5.3.1 The scope of the water services and/or the water services area may only be amended by agreement in writing between the WSA and WSI.

6 DURATION OF THE CONTRACT

- 6.1 This contract shall commence on the effective date.
- 6.2 The contract shall endure for an initial period of financial years following the effective date
- 6.3 The contract shall endure for the period agreed to between the WSA and WSI

SECTION C: WATER SERVICES STANDARDS

7. PROVISION OF WATER SERVICES

The WSI shall, from the effective date, be responsible for the provision of the water services to consumers in accordance with the conditions as set out in this contract

7.1 Water Supply Standards

7.1.1 The water services provided shall be of such standard to ensure its continuity, regularity, quality and sustainability, and the basic allocation of potable water to all consumers within the water services area.

7.1.2 The standard and/or the level of water services shall comply with regulatory provisions related to the standard or level of water services including but not limited to regulations under section 9 of the Act.

7.2 Water Quality

In respect of effluent standards, water quality(SANS 2.4.1), quantity and pressure, the WSI shall comply with any regulatory provisions relating to the supply of water services, including but not limited to, the regulations enacted under section 9(1) of the Act.

7.3 Sanitation Services Standards

In respect of the basic sanitation standard, WSI shall provide:

- 7.3.1 a sanitation facility which is easily accessible to a household,
- 7.3.2 the sustainable operation of the facility,
- 7.3.3 for the safe removal of human waste and wastewater from the premises where this is appropriate and necessary,
- 7.3.4 the communication of good sanitation, hygiene and related practices.

8. INTERRUPTIONS IN SUPPLY

8.1 The WSI is specifically authorized to impose reasonable water restrictions or limit the provision of water services –

- 8.1.1 in emergency situations; or
- 8.1.2 for a limited time in order to undertake maintenance and/or repairs subject to advance notification to affected consumers.

9. DROUGHTS, WATER CONSERVATION AND WATER DEMAND MANAGEMENT

The WSI may, with the approval of the WSA and in accordance with the provisions of any regulatory provision, impose a surcharge upon consumers pertaining to the provision of water services during a drought period should a consumer fail to adhere to any water service restrictions imposed upon them by the WSI in respect of the provision of water services, in compliance with By-Laws of the WSA.

SECTION D: MANAGEMENT OF THE WATER SERVICES SYSTEM

10 OPERATIONS AND MAINTENANCE

10.1 Operation and Maintenance

- 10.1.1 The WSI shall be responsible for the management of the water services system
- 10.1.2 The WSI shall take all steps to protect the water services system in accordance with the operations manual.
- 10.1.3 The WSI shall be responsible for maintaining the water services system and shall be responsible for all costs associated with such assets including maintenance costs, insurance, licensing and running costs.
- 10.1.4 Any maintenance, rehabilitation and/or modification of the water services system undertaken by the WSI shall conform to all relevant regulatory provisions.

10.2 Legal Compliance

- 10.2.1 The WSI shall comply with the regulatory provisions relating to the supply of water services, employees and /or health and safety necessary for the protection of persons or property.
- 10.2.2 In respect of the environment, the WSI acknowledges that South Africa is a semi-arid country and that managing the supply of water services and demand therefore requires advanced planning for drought and water shortages.
- 10.2.3 The WSI shall fully comply with all environmental Regulatory Provisions and the environmental aspects of the water services development plan adopted by the WSA.

11. CUSTOMER CARE AND RELATIONS

- 11.1 The WSI undertakes to interact with consumers concerning matters related to the provision of water services, in particular to provide information about the provision of water services as requested and communicate with consumers about the conditions for provision of water services.
- 11.2 The WSI shall undertake educational and awareness programmes in the communities within the water services area in respect of water demand management, water conservation, health and hygiene, user education and other matters related to water services.

12. INSURANCE

- Without limiting the responsibilities and liabilities of the WSI in respect of the provision of water services in terms of this contract and any regulatory provisions,
- 12.1 the WSI shall be responsible for the costs of insuring any assets, rights and obligations of the WSI in respect of the water services.
- 12.2 The WSI shall be obliged to ensure that insurance is effected and maintained from the effective date.

13. BY-LAWS AND POLICIES

- 13.1 The WSI shall be responsible for compliance with and must discharge and comply with all of the WSA obligations under by-laws, policies and consumer charter which obligations the WSI has assumed under this contract.
- 13.2 The WSI undertakes to participate, assist and advise the WSA in respect of the development of municipal water by-laws and policies, on the request of the WSA or of its own volition.

14. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND/OR APPROVALS

The WSI shall (unless specifically otherwise provided in this contract), from the effective date be responsible for complying with all regulatory provisions applicable to its duties and obligations in terms of this contract, including but not limited to applying for the necessary approvals, consents, licenses or permits, where required.

- 14.1 The WSI is required to obtain any license required for the use of water under section 22(1) of the National Water Act, 1998 (Act No.36 of 1998)

SECTION E: RESPONSIBILITIES AND RIGHTS OF THE WSA

15. BYLAWS AND POLICIES

The WSA undertakes to timeously, promulgate all by-laws and adopt all policies in accordance with National Legislation, Provincial Legislation and Municipal Code.

16. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND/OR APPROVALS

- 16.1 The WSA undertakes, on request, to assist the WSI in complying with all applicable regulatory provisions and where such compliance requires any action on the part of the WSA to undertake such action timeously.
- 16.2 The WSA guarantees that on the effective date all permits, licenses, exemptions, permissions and approvals that may have been required in terms of regulatory provisions in respect of the provision of water services were obtained in the required manner.

17. MONITORING

- 17.1 The WSA shall, in accordance with Section 27 of the Act and subject to the provisions of the contract and applicable regulatory provisions –
- 17.1.1 monitor the activities, performance and compliance of the WSI with legislation, standards and by-laws in accordance with this contract and take any action as is necessary to ensure performance where necessary;
 - 17.1.2 perform inspections of the water services and monitor any impact which the supply of services may have on the environment;
- 17.2 If the WSA is of the opinion that the WSI is not complying or only partially complying with any provision of this contract or any legislation, the WSA may proceed in accordance with the breach provisions or termination provisions of this contract, as is appropriate.

18. DEFAULT BY THE WSI

- 18.1 If the WSI fails to comply with these conditions or its duties as an Intermediary under the Water Services Act, the Regulations to the Act or the by-laws of the WSA, the WSA may direct the WSI to rectify such failure
- 18.2 A directive in terms of clause 18.1 above must set out;
- 18.2.1 the nature of the failure
 - 18.2.2 the steps which must be taken to rectify the failure; and
 - 18.2.3 a reasonable period within which those steps must be taken
- 18.3 If the WSI continues to fail to comply with its duties as a WSI under the Act, Regulation of the Act or the by-laws, the WSA must exercise its powers under section 26 of the Act

SECTION F: LIABILITY, BREACH, TERMINATION AND VIS MAJOR

19. LIABILITY

- 19.1 Subject to terms stated in this contract, the WSI undertakes and assumes the responsibility for the provision of the water services at its own technical risk and will be liable to the WSA for the fulfillment and discharge of its obligations and requirements in respect of the provision of water services.
- 19.2 The WSI shall 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 water services and shall indemnify and not hold the WSA 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 water services system or any person or property arising from or attributable to any act and/or omission of the WSI, its employees or agents, prior to the termination of the contract unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of the WSA its employees or agents, contractors or any other person for whom it may be liable in law and provided that the WSI shall not incur any liability in respect of any part of the water services system controlled or utilised by third parties in

terms of a written contract with the WSA. The WSI shall report all material occurrences to the WSA within 2 (two) business days of such occurrence.

- 19.3 The WSA shall not be liable to third parties for the discharge of any obligations which the WSI is responsible for in terms of the contract. The WSI will be responsible to the WSA and third parties for all risks and obligations pertaining to the provision or failure to provide water services, and shall be responsible for the payment of any damages, claims and/or losses due to any act or omission of the WSI and shall indemnify and not hold the WSA responsible for any losses, damages, penalties, legal fees and costs (including reasonable expert's fees) due to a breach of this undertaking. The WSI will be obliged to intervene and shall assume responsibility in respect of any action or right that is instituted against the WSA in respect of any acts or omissions of the WSI or any person for whom it may be liable in law in respect of the failure to provide water services that may occur.

20 EXCLUSION OF CONSEQUENTIAL LOSS FOR DIRECT DAMAGES

Under no circumstances whatsoever shall either party be liable for any indirect, special or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable), sustained by the other party, including but not limited to any loss of profits, loss of operation time, loss of information and/or loss of contracts.

21 BREACH AND TERMINATION AS A RESULT OF MATERIAL BREACH

- 21.1 If any party commits a breach of this contract and should the other party wish to claim specific performance or damages or both from the defaulting party in respect of such breach, then prior to the latter party exercising such 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 claim specific performance or damages or both, as the case may be. If any damages are claimed the defaulting party shall be absolved from performing such acts.
- 21.2 If the defaulting party again commits a breach in respect of which the other party has successfully claimed damages or specific performance, 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 and the party shall be entitled to cancel the contract.
- 21.3 Prior to the party evoking any right to terminate this contract, it shall deliver a further written notice to 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).
- 21.4 Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice the contract shall terminate at the expiry of the period stated in the notice.

- 21.5 Upon any termination of the contract, 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.

22. TERMINATION

The contract will automatically terminate –

- 22.1 at the expiry of the contract term; or
- 22.2 if the WSI and the WSA agree in writing.
- 22.3 Material breach
- 22.4 Vis Major
- 22.5 Changes in institutional arrangements (WSI ceasing to exist)

SECTION G: DISPUTE RESOLUTION

23. DISPUTE RESOLUTION

- 23.1 Any differences at anytime between the WSA and WSI as to the construction , meaning or effect of this contract or to their respective rights, liabilities or obligations shall be settled by mutual contract
- 23.2 In the event that urgent or interim relief is sought by either parties the party seeking relief is entitled to use the judicial process notwithstanding the fact that arbitration process has become operative.
- 23.3 The WSA shall act as a mediator in the event of any dispute arising between the WSI and its consumers.

SECTION H: MISCELLANEOUS PROVISIONS

24. SUCCESSOR IN TITLE

This contract shall be binding on any successor in title of the WSA.

SECTION I: GENERAL

25. SEVERABILITY

Any provision in this contract which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this contract shall, as to such jurisdiction, be ineffective to the extent of such prohibition or un-enforceability and 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 provision.

26. CONSENT TO JURISDICTION

The parties agree that any legal action or proceeding arising out of any proceedings in terms of arbitration or in respect of any interdict or urgent relief in terms thereof may be brought in the High Court of South Africa (_____ Local Division) (*insert name*) (or any successor to that court) and irrevocably submit to the exclusive jurisdiction of such court. Each appoints a person (at the address chosen as its *domicilium citandi et executandi*) to receive for and on its behalf service of process in such jurisdiction in any legal action or proceedings with respect to this contract. The parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. Nothing herein shall affect the right to serve process in any manner permitted by law.

27. PRESERVATION OF THE POWERS AND DUTIES OF THE WSA

Nothing in this contract shall curtail the statutory powers of the WSA in its capacity as the water services authority in respect of the provision of water services or responsibility for revenue services in any manner whatsoever.

28. 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.

29. GOOD FAITH

The parties shall in their dealings with each other display the utmost good faith 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.

The WSA and WSI both undertake to identify corrupt action and to take all reasonable steps to prevent either party, its employees and its subcontractors, its agents or anybody under its control from involvement in corrupt action.

30. PREVENTION OF CORRUPTION

The WSA and WSI both undertake to identify corrupt action and to take all reasonable steps to prevent either party, its employees and its subcontractors, its agents or anybody under its control from involvement in corrupt action

31. DOMICILIUM CITANDI ET EXECUTANDI

31.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this

contract, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

WSA:

Physical:

Postal:

Telefax:

Contact person:

WSI:

Physical:

Postal:

Telefax:

Contact person:

- 31.2 Any notice or communication required or permitted to be given in terms of this contract shall be valid and effective only if in writing, but it shall be competent to give notice by telefax.
- 31.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chose *domicilium citandi et executandi*.

32. WHOLE AGREEMENT, NO AMENDMENT

- 32.1 This contract including the annexures constitutes the whole agreement 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.
- 32.2 No amendment or consensual cancellation of this contract or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this contract and no settlement of any disputes arising under this contract and no extends of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this contract or of any agreement, bill of exchange or other document issued pursuant to or in terms of this contract shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 32.3 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 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.

32.4 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 and/or whether it was negligent or not.

33. COUNTERPARTS

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

34. GOVERNING LAW

This contract shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa

35. ANNEXURES

Annexure A - Copy of title deed

IN WITNESS WHEREOF, the WSA have executed this agreement on this __ **day**
of _____ **2011** at _____.

WITNESSES:

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WSA (MUNICIPALITY)

IN WITNESS WHEREOF, the WSI have executed this agreement on this __ **day**
of _____ **2011** at _____.

WITNESSES:

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WSI

