

**BULK WATER SUPPLY CONTRACT**  
**BETWEEN**  
**MSUNDUZI LOCAL MUNICIPALITY**  
**AND**  
**UMGENI WATER BOARD**

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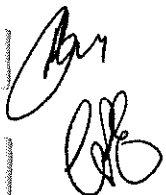
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- 2.2.1 "bulk water supply services" means the provision of potable water by the WATER BOARD to the MUNICIPALITY at identified customer connections;
- 2.2.2 "Department" means the Director-General of the Department of Water Affairs or any other official duly authorised by the Director-General;
- 2.2.3 "capital expenditure programme" means the programme of the WATER BOARD describing all significant capital expenditure to be incurred or investments to be made by the WATER BOARD in respect of all immovable assets, including but not limited to pipelines, reservoirs and pumping stations;
- 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 "contract" means this contract and any annexure or annexures hereto, as well as any subsequent amendment, notation or substitution of this contract and annexure or annexures in accordance with this contract;
- 2.2.6 "contract term" means the period defined in clause 5;
- 2.2.7 "CPIX" means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000=100) published from time to time by Statistics SA in Statistical Release PO141.1;
- 2.2.8 "customer connection" means the equipment installed by the WATER BOARD to connect the MUNICIPALITY to the WATER BOARD's existing infrastructure, namely the connection to the existing WATER BOARD pipeline, the piping from the



in section 81(1)(a) of Local Government: Municipal Structures Act, Act 117 of 1998;

2.2.15 "normal growth" means the estimated growth in demand for water in a financial year or a number of financial years defined by the MUNICIPALITY in its Integrated Development Plan or Water Services Development Plan, which estimate is based on social and economic development;

2.2.16 "parties" means the MUNICIPALITY and the WATER BOARD, individually or collectively, as the context may require;

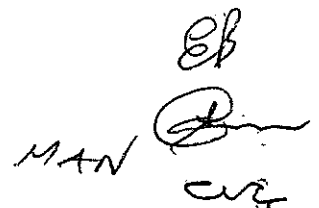
2.2.17 "regulatory provisions" means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by a competent authority, any or all of which are directly related to the provision of bulk water supply services or the related activities of the MUNICIPALITY or the WATER BOARD, or if the context is appropriate, any one of them;

2.2.18 "SALGA" means the South African Local Government Association recognised in terms of the Organised Local Government Act, Act 52 of 1977, to represent local government nationally;

2.2.19 "WATER BOARD" means Umgeni Water, a water board established in terms of Section 108(2) of the Water Act 54 of 1956 and now deemed to be established in terms of the Water Services Act 108 of 1997 Act;

2.2.20 "water board infrastructure" means the WATER BOARD's overall bulk water supply services infrastructure and equipment including customer connections;

2.2.21 "the Act" means the Water Services Act 108 of 1997, as amended.



notwithstanding that the clauses themselves do not expressly provide for this.

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

### 3. OBJECTIVES OF THE CONTRACT

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

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

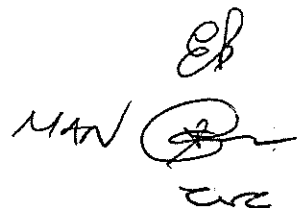
## SECTION B: APPOINTMENT, SCOPE, DURATION AND REVIEW

### 4. APPOINTMENT AND SCOPE

The effective date of this contract is as per Clause 2.2.9 hereof

### 5. COMMENCEMENT AND DURATION

- 5.1 This contract shall commence on the effective date and shall endure for an initial period of 10 (ten) calendar years thereafter.
- 5.2 The contract may be extended at the end of the initial period or during the initial period as may be necessitated by the recovery period of any



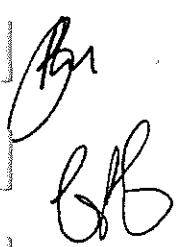
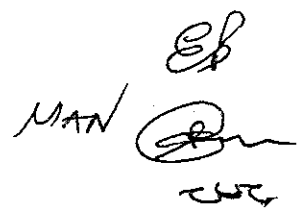
8. WATER QUALITY

- 8.1 The WATER BOARD shall provide the water at the quality standard that complies with the latest Edition of the South African National Standard (SANS) 241: Drinking Water, unless the provisions of clauses 38 and 8.3 apply. It is specifically recorded that where the WATER BOARD cannot provide the agreed quality as specified herein 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 final water stock and water supply networks on a daily and monthly basis respectively and inform the MUNICIPALITY of the results thereof on a monthly basis, except in cases where the provisions of clause 13 apply.
- 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 reasons therefore, the actions to be implemented to rectify such deviation and the period of such a deviation, in accordance with the agreed system operating standards. And the Municipality must respond within 7 (seven days), reserving its right to indicate whether it is acceptable or not.

9. FLOW RATE

9.1 Annual Average Daily Demand

- 9.1.1 The annual average daily demand for the previous period at each existing customer connection and the projected annual average daily demand for the current period 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 list of all 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.

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- 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 the parties fail to reach agreement either party may refer the matter for resolution in terms of section N of this contract. This clause shall not detract from the WATER BOARD'S obligations in terms of 9.2.1.
- 9.2.3 he MUNICIPALITY shall be responsible for meeting its hourly peak flow demands.

#### 10. WATER PRESSURE

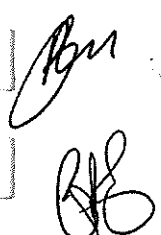
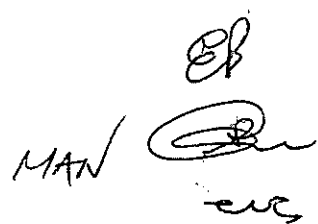
- 10.1 The WATER BOARD shall maintain the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand as recorded in Annexure A.
- 10.2 The WATER BOARD must inform the MUNICIPALITY who must agree to any planned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

### SECTION D: SYSTEM OPERATING STANDARDS

#### 11. NORMAL MAINTENANCE AND REPAIRS

##### 11.1 Interruptions in Supply

- 11.1.1 The WATER BOARD may interrupt the MUNICIPALITY's supply for the purpose of renewing, testing, examining, repairing, maintaining or rehabilitating the WATER BOARD's infrastructure. The WATER BOARD shall keep interruptions to a minimum and such interruption shall not exceed 24 hours. If it

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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 N 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

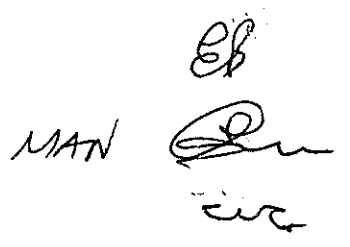
12.2.1 The WATER BOARD shall take all reasonable steps to ensure that all its meters are at all times correctly sized and that they operate under optimum conditions.

12.2.2 The MUNICIPALITY reserves the right to introduce check meters (owned by the MUNICIPALITY) as close to the WATER BOARD's meters as technically feasible in order to check the accuracy of the WATER BOARD's meters.

12.2.3 The WATER BOARD and MUNICIPALITY agree that the maximum levels of acceptable errors on meters to be installed are as set out in the table below. The maximum levels of acceptable errors must be guaranteed by the supplier prior to installation.

Mechanical meters	5 % for minimum flows (Q min to Q t) and 2% for flows between transitional and maximum flows (Q t and Q max)
Differential pressure meters	2% for the measuring range between the minimum and maximum range (Q min and Q



  
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#### 12.4 Malfunctioning meters

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

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

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

#### 12.5 Meter reading

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

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

#### 12.6 Queries

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

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

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

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

#### 12.8 New meters to be installed

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

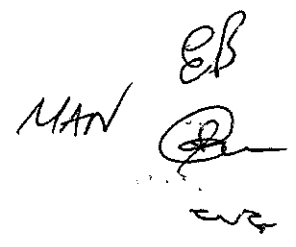
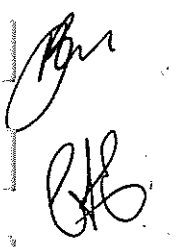
### 13. EMERGENCIES

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



WATER BOARD, where possible, in obtaining information on water quantity.

- 14.3 The WATER BOARD must annually, within 2 (two) months of the commencement of its financial year, provide the MUNICIPALITY with a detailed report on the security of supply to the MUNICIPALITY. The report must reflect availability concerns identified by the WATER BOARD; indicate which measures will be implemented by the WATER BOARD to address or alleviate concerns and make recommendations as to actions that may be taken by the MUNICIPALITY to address or alleviate concerns.
- 14.4 The WATER BOARD must issue a written drought warning to the MUNICIPALITY within 7 (seven) days of it being notified by the Department that it will be implementing water restrictions. The WATER BOARD must withdraw a drought warning issued within 7 (seven) days of the Department lifting water restrictions.
- 14.5 The WATER BOARD shall convene a forum with all affected municipalities within 14 (fourteen) days after a drought warning is issued.

#### SECTION E: NEW WATER SUPPLY REQUIREMENTS

##### 15. APPLICATION

- 15.1 The MUNICIPALITY may, in its discretion, apply to the WATER BOARD for new bulk water supply requirements. An application in terms of this clause must specify when the new supply is required, the required quantity, estimated quantity for future years, flow rate and pressure.
- 15.2 The WATER BOARD will provide the increased bulk water supply requirements if sufficient water is available and within the quantity authorised for abstraction in any relevant license.

agreement either party may refer the matter for resolution in terms of section N 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 N of this contract.

#### 17. OWNERSHIP OF CUSTOMER CONNECTIONS

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

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

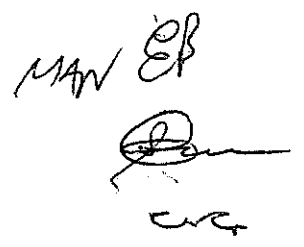
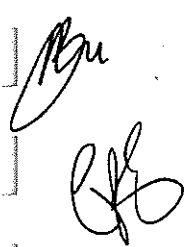
### SECTION F: COMMUNICATION AND COORDINATION

#### 18. COMMUNICATION

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

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

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



for each financial year to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act. The reports must comply with all regulatory provisions and include complete audited financial statements and the auditor's report.

- 22.3 The annual report of the WATER BOARD prepared in accordance with the regulatory provisions referred to in clause 22.1 must provide details of any penalties incurred by the WATER BOARD in terms of this contract and a copy thereof must be submitted to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act.

#### SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT

##### 23. PERMISSABLE CHARGES

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

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

##### 24. CAPITAL CONTRIBUTION CHARGES

- 24.1 The WATER BOARD must charge a new or existing customer, on application for a new or increased water supply, a capital contribution for all equipment required to provide the customer's required quantity, quality, pressure and flow rate of water, which is not part of the customer connection.
- 24.2 A capital contribution shall constitute the full cost of capital associated with equipment and the installation thereof, any required alteration of

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24.9 Capital contribution charges may be recovered by way of a method agreed between the WATER BOARD and the MUNICIPALITY, which may be by means of –

24.9.1 an once-off payment;

24.9.2 an availability charge;

24.9.3 a minimum quantity to be purchased;

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

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

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

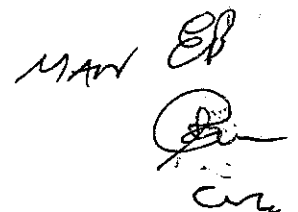
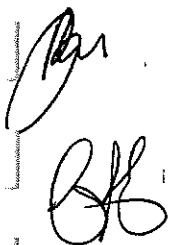
**25. PROCEDURE FOR SETTING OF BULK WATER SUPPLY SERVICES CHARGES AND ADOPTION OF CAPITAL EXPENDITURE PROGRAMME**

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 its 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 Water Services Act, Act 108 of 1997, are dealt with by the WATER BOARD; and



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

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

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

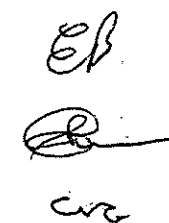

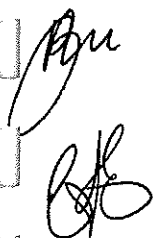
25.6 Where not all the municipal customers accept or dispute the proposed charges and capital programme, the WATER BOARD must, within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to above, notify all municipal customers accordingly and provide each municipal customer with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

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

25.8 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 –

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

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





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

- 25.14 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.
- 25.15 Where the matter was referred to the Department for mediation, the Department must request all municipal customers, to participate in the mediation.
- 25.16 Where the Department fails to resolve the dispute within the 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 in terms of this clause with a percentage agreed by it and the municipal customers, which percentage may not exceed CPIX, pending the resolution of the dispute by the Department. Where the WATER BOARD and municipal customers fail to reach agreement on the percentage increase the WATER BOARD may increase the charges by CPIX.
- 25.17 Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 25.18 Where a referral to mediation by any party in terms of this clause will result in the WATER BOARD not being able to submit its tariffs to the Department of Water Affairs for tabling in Parliament before or on 15 March of each year in accordance with the Municipal Finance

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

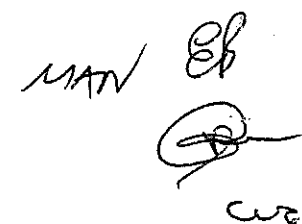
26.3.8 the final date for payment.

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 any amount due and payable must be accompanied by payment of an average amount of the previous three months' amounts.

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

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

## 27. SPECIAL PAYMENT ARRANGEMENTS



the MUNICIPALITY may deduct R100 000 (one hundred thousand rand) from the account payable for water supply services provided by the WATER BOARD, in the month within which such failure occurred or the month following such failure.

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

29.3.1 demonstrate to the reasonable satisfaction of the MUNICIPALITY that the failure referred to in clause 29.2 did not take place; or

29.3.2 justify to the reasonable satisfaction of the MUNICIPALITY why the failure referred to in clause 29.2 could not have been prevented.

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

29.4.1 the seriousness and repetitive nature of a failure;

29.4.2 the degree of impairment to public interest;

29.4.3 the degree of negligence of the WATER BOARD; and

29.4.4 the diligence displayed by the WATER BOARD in rectifying the effects of the failure.

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

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

- 29.7 The MUNICIPALITY shall refund any deduction to the WATER BOARD

31.2.2 Where a water board has reduced the bulk water supply services by 5 % (five per cent) in accordance with clause 31.2.1, it shall again give the MUNICIPALITY notice in a manner similar to that stated in clause 31.2.1 that the bulk water supply services will be limited by a further 5 % (five per cent).

31.2.3 The phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 31.2.1, exceed 10% (ten per cent), provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing customer connections by a percentage that will limit the provision of basic water supply services to the MUNICIPALITY's consumers. The parties shall agree on the quantity of water required for basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section N of this contract.


31.2.4 Copies of the notices given in terms of clauses 31.2.1 and 31.2.2 shall be sent to the Minister of Water Affairs , the Minister of Co-operative Governance and Traditional Affairs, the Member of the Executive Committee responsible for local government in the KwaZulu Natal 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 KwaZulu Natal Province, the Minister and any other national organ of state that has legislated intervention authority to intervene in accordance with relevant regulatory provisions.

31.2.5 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.

## 32. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND APPROVALS

32.1 The parties shall be responsible for complying with all legislation



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




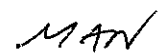
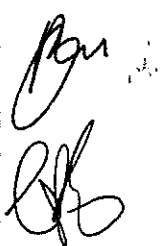
### 35. GUARANTEES

- 35.1 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.
- 35.2 The WATER BOARD may, in lieu of a deposit, accept a bank guarantee for an amount calculated in accordance with clause 35.1 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.
- 35.3 The WATER BOARD may use this deposit to cover any outstanding amount payable on termination of this contract or any arrears.
- 35.4 Any deposit or guarantee shall be refunded or cancelled, after deducting any amount due and payable, within 30 (thirty) days after termination of this contract.

### 36. WARRANTIES

The parties warrant that -

- 36.1 they are entities duly created pursuant to legislation and have full legal right, and authority to enter into this contract and perform the obligation hereunder;
- 36.2 this contract has been duly authorised and executed and constitutes a legal, valid and binding obligation;
- 36.3 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.



37.5 Upon any termination of the contract in terms of clause 37.4, 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.

37.6 For purposes of this clause, damages specifically include but are not limited to –

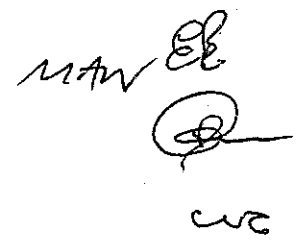
37.6.1 any amount which the MUNICIPALITY is required to pay in relation to loss or damage suffered by a person to whom the MUNICIPALITY provides water supply services; or

37.6.2 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.

### 38. VIS MAJOR

38.1 No party shall be liable for any failure to fulfil its duties and obligations in terms of this contract where such failure is caused by any event, occurrence, circumstance or condition beyond the reasonable control of such party (including, but not limited to *casus fortuitus*, landslides, lightning, earthquakes, tornados, floods, other acts of God, acts of military or third-party civil authorities or public enemies, war blockade, sabotage, fire, explosion, bombing, insurrection, riot or civil disobedience), the occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimised, that affects the powers, rights, duties or obligations of the parties under this contract. It is specifically recorded that failure by the Department to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.

38.2 The party affected by an event, occurrence, circumstance or condition referred to in clause 38.1 shall promptly notify the other party in



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39.4 due to vis major; or

39.5 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.

#### 40. TERMINATION PROCESS

40.1 Termination shall be initiated by a notice from either party who has the right to deliver such notice in accordance with clauses 37 and 38, or 6 (six) months prior to the expiry of the contract term, or on the date agreed.

40.2 When termination is initiated in terms of clause 40.1 the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of termination for it and each municipal customer.

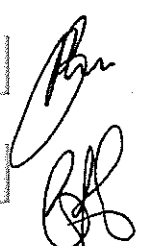
40.3 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 41.


40.4 This notice referred to in clause 40.1 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 40.3 is completed and any outcome thereof has been reduced to writing as an amendment to this contract, which contract only terminates on the fulfilment of all obligations in terms of such an amendment.

#### SECTION M: PROCESS FOR ADDRESSING MATTERS IMPACTING ON MUNICIPAL

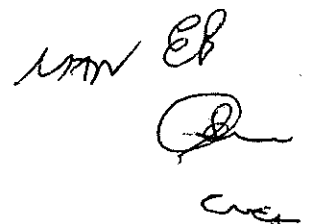

#### 41. CUSTOMERS

41.1 The provisions of this section apply to circumstances as set out in clauses 24 and 40.



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- 41.7 Where the matter was referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.
- 41.8 Where the matter was referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, that all the municipal customers accept or dispute the actions and proposed actions. Where SALGA fails to inform the WATER BOARD of the municipal customers acceptance or dispute within 30 (thirty ) days of initial notice by the WATER BOARD, the WATER BOARD may assume that the municipal customers disputes the actions and proposed actions.
- 41.9 Where all the municipal customers dispute or some of the municipalities dispute or accepts the action or proposed action the WATER BOARD may refer the matter to the Department for mediation, and the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.
- 41.10 Where the matter was referred to the Department for mediation, the Department must request all municipal customers to participate in the mediation.
- 41.11 Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 41.12 Where all the municipal customers accept the actions and proposed actions, the WATER BOARD must implement the action or facilitate the implementation thereof, provided that, where the action relates to the termination of this contract the action must be referred to the Department, with a proposal to -
- 41.12.1 either sell the water board infrastructure dedicated to the





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.

42.3 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.

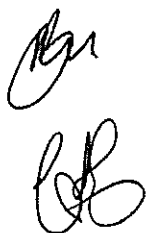
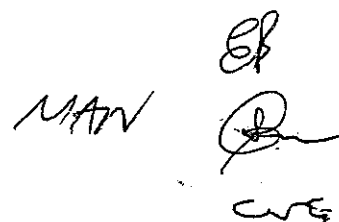
42.4 Notwithstanding the above, or anything to the contrary in terms of this agreement, any dispute between the Parties may be dealt with in terms of Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), upon mutual agreement by the Parties.

#### 43. NEGOTIATION

The Municipal Manager of the MUNICIPALITY and the Chief Executive of the WATER BOARD shall deal with any dispute between the parties. The said representatives shall endeavour 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.

#### 44. MEDIATION

44.1 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 can not be settled through negotiation, any of the parties may request the Institute for Mediation and Arbitration of South Africa to appoint a mediator.

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by the Chairman for the time being of the Pietermaritzburg Bar Council.

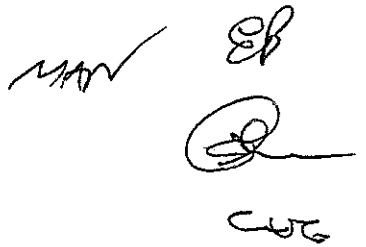
- 45.5 The arbitrator appointed shall not be obliged to follow the strict principles of law in determining the dispute, but shall be entitled, in his sole discretion to determine the dispute with due reference to the equities prevailing in respect of the dispute. The arbitrator shall have the power to 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.
- 45.6 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.
- 45.7 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.
- 45.8 Each party shall bear its own arbitration costs.

#### SECTION 0: GENERAL

##### 46. PREVENTION OF CORRUPT ACTION

46.1 For purposes of this clause "corrupt action" means –

- 46.1.1 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

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47.3.2 take reasonable measures to ensure that the confidentiality of the information is protected.

47.4 A party must not make any public statement relating to this contract unless –

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

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

47.5 This clause survives the termination of this contract.

#### 48. 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.

#### 49. SUB-CONTRACTING

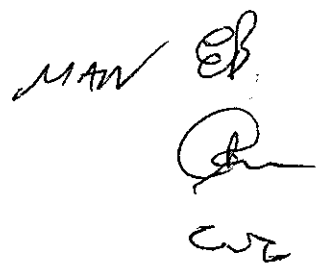
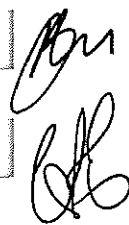
The parties may sub-contract its powers, rights, duties and obligations in terms of this contract. The appointment of any sub-contractor shall not release the parties of their duties or obligations in terms of this contract or in any way affect their responsibility in respect of fulfilling such duties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

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

50.1 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

50.1.1 the MUNICIPALITY:

Physical: CITY HALL



delivered by hand, transmitted by facsimile or sent by prepaid registered post.

50.3 A notice shall be deemed to have been received:

50.3.1 14 (fourteen) days after posting, if posted by registered post to the party's address in terms of clause 50.1;

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

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

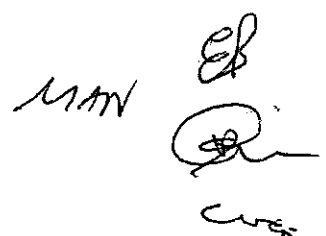
50.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen *domicilium citandi et executandi*.

50.5 Either party may change its address for purposes of this clause to another address by notice in writing in terms of clause 50.2 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.

## 51. WHOLE AGREEMENT, NO AMENDMENT

51.1 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.

51.2 No amendment or consensual cancellation of this contract or any provision or term hereof or of any agreement, bill of exchange or other



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.

**54. LIABILITY FOR EXPENSES**

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

**55. 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.

**56. CONSENT TO JURISDICTION**

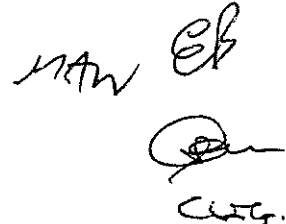
The parties agree that any legal action or proceeding arising out of any proceedings in terms of arbitration or in respect of any interdict or urgent relief in terms thereof may be brought in the KwaZulu-Natal High Court, Pietermaritzburg (or any successor to that court) and irrevocably submit to the 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.

**57. 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.

**58. SUPREMACY OF THIS CONTRACT**

58.1 In the event that any provision of any other agreement entered into between the Municipality and the Water Board, conflicts with provisions of this agreement, the provisions of this agreement shall prevail subject to clauses 58.2 and 58.3 hereunder.



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 KwaZulu Natal Province shall prevail.

**63. ANNEXURES**

The following annexure form part of this contract -

63.1 Annexure A - Recordal of bulk water supply services provided on the effective date;

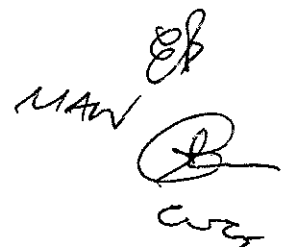
**64. SPECIAL CONDITION**

64.1 Taking cognizance of the fact that this agreement creates obligations for the South African Local Government Association (SALGA) and the Department of Water Affairs (DWA), the WATER BOARD and the MUNICIPALITY agree as follows:

64.1.1 The Parties acknowledge the crucial role that SALGA and DWA will play in the resolution of disputes, such role having been recorded in the agreement;

64.1.2 The Parties further acknowledge that whilst this agreement is based on a model agreement proposed by SALGA and DWA in a spirit of mutual co-operation and for the benefit of Water Boards and municipalities at large, SALGA and DWA are not parties to this specific agreement.

64.2 The Parties therefore agree that any clause that creates obligations for SALGA and DWA in terms of this agreement shall be suspended pending written confirmation from SALGA and DWA that they agree to their obligations created by this agreement, provided that the parties hereto agree to jointly take immediate steps to obtain such written confirmation from SALGA and DWA upon signature of this agreement.

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## Annexure A

MSUNDUZI METERS										
W Reference Number	LOCATION	Meter Serial Number	Meter Type	Co-Ordinates		Meter Size (mm)	Annual Flow (MI)	AADD (KI)	Pressure (kPa)	
	Meter Point			X	Y				Max	Min
048242	Almond Bank	70048828	MEKE	0	0	80	17714	49	0.0	0
610351	Ambleton	AMBT0503401	MEKE	0.000	0	100	470652	1289	843.5	0
016171	Ashburton Council	V89534/4/1	ABB	54117.906	3284111.261	150	451095	1236	662.8	0
016173	Ashburton Council	V30076/1/3	ABB	54093.031	3284250.808	050	4559	12	662.8	0
060011	Belfort	PMB BEL	ABB	65267.764	3271004.161	250	14589613	39972	344.5	0
778706	Bishopstowe	UW-BJA228	KENT	0	0	25	20961	57	0.0	0
650105	Bisley	P/61553/1/1	ABB	64074.421	3278356.449	150	7584684	20780	64.0	0
650108	Blackridge Outlet	BLACKRIDGE1	MAG	66356.422	3277203.583	150	392127	1074	36.7	0
016001	Clarendon Res Outlet	P/61553/1/2	ABB	0.000	0	400	6690317	18330	315.6	0
061051	ED1	PMBED1	ABB	63858.063	3279271.928	350	1153301	3160	2519.6	0
061052	ED2	PMBED2	FIER	62580.119	3280577.165	250	11123800	30476	2298.4	0
061053	ED3	P/61553/4/2	ABB	64319.761	3278305.754	250	5072980	13899	457.4	0
786844	ED4	1528541	SafMag	0.000	0	300	4088017	11200	0.0	0
778703	Ephayiphini Bulk Meter (Upper)	9865624-06	MEKE	66356.219	3277237.945	080	509265	1395	0.0	0
778701	Ephayiphini Bulk Meter(Lower)	1112556	MEKE	68932.569	3275872.289	050	385313	1056	4.5	0
060013	Ferncliff	PMBFERN	ENER	65270.659	3271006.394	150	616866	1690	371.3	0
016113	Foxhill Emergency	FoxHill	ABB	0.000	0	150	114499	314	0.0	0
016114	Foxhill	UWCLJB771	MEKE	59206.487	3283475.241	025	545	1	843.5	0
782883	Foxhill	9524053-02	KENT	59206.487	3283475.241	80	11790	32	843.5	0
650104	Haythorns	HAYTHORNS	ABB	64156.241	3278275.998	400	4410404	12083	64.2	0
650106	Imbali	P/61553/5/4	ABB	64075.396	3278355.346	200	71193	195	64.2	0
060014	Lower Glenn Lyn Buy Back	9759873	MEKE	0.000	0	200	-264310	-724	0.0	0
650101	Mason Industrial	P/57703/8/1	ABB	64077.345	3278353.141	300	2692973	7378	96.0	0
650107	Masons	P/61553/5/1	ABB	64074.421	3278356.449	200	1387976	3803	64.2	0
60012	Ottos Bluff Buy Back	Ottosbluff	MEKE	0	0	150	-3131520	-8580	36.8	0
780957	Sweetwaters	8027843	MEKE	0.000	0	25	315101	863	4.5	0
784231	Sweetwaters Upper	9561487	SENSUS	0.000	0	50	22746	62	4.5	0