



**water & sanitation**

Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

# **RBIG Funding and Implementation Agreement**

**THE DEPARTMENT OF WATER &  
SANITATION**

*(The Department)*

and

**MAKANA LOCAL MUNICIPALITY**

*(The Water Services Authority)*

and

**AMATOLA WATER BOARD**

*(The Implementing Agent)*

***James Kleynhans Bulk Water Supply Project***

*March 2015*

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## PART I: BACKGROUND AND TERMINOLOGY

### 1. BACKGROUND

- 1.1. The Regional Bulk Infrastructure Grant (RBIG) is a conditional grant in kind under the annually promulgated Division of Revenue Act (DORA).
- 1.2. The Department is nominated in DORA as being accountable for the spending of RBIG.
- 1.3. The Department has accordingly developed the Bulk Infrastructure Programme to give effect to conditions imposed by Parliament and National Treasury on the implementation of the RBIG.
- 1.4. The Municipality is the water services authority for its area of jurisdiction.
- 1.5. The Implementing Agent is the Department's nominated implementing agent for the Project.

**NOW THEREFORE** the Parties agree:

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, the following words or terms shall have the meanings assigned to them below:
  - 2.1.1. "Agreement" means this document, including the Project Sheets, as amended and/or supplemented from time to time;
  - 2.1.2. "Bulk Infrastructure Programme" means the programme managed by the Department to give effect to the RBIG;
  - 2.1.3. "CIDB Grading" means a grading allocated to a contractor in terms of Article 12(1) of the Construction Industry Development Regulations, 2004, contained in GN 692 of 9 June 2004, as amended by the Construction Industry Development Amendment Regulations, 2013 contained in GN R464 of 2 July 2013;
  - 2.1.4. "Co-Funding" means the funds disbursed from the Water Services Authority and any third parties to the Implementing Agent for the balance of any Project's cost not funded by the Funding, in terms of this Agreement and the Project Sheet;
  - 2.1.5. "Consulting Engineer" means an appropriately qualified consulting engineer registered under sections 18(1)(a)(i) or (ii) of the Engineering Professions Act No 46 of 2000 appointed by the Implementing Agent to undertake and sign off on the design of RBIG Projects, and who is responsible for verification of the completion and Sign-off Certificates for RBIG Projects;
  - 2.1.6. "Contractor" means a third party contracted by the Implementing Agent, following due process, directly related to the Project, whether by procurement or cession, including professional service providers;
  - 2.1.7. "DORA" means the Division of Revenue Act, and its annual replacement;
  - 2.1.8. "Department" means the Department of Water and Sanitation or its successor in title;

- 2.1.9. "Effective Date" means 4 March 2015 irrespective of the date of signature of the Agreement;
- 2.1.10. "Funding" means the funds disbursed from the Department to the Implementing Agent in terms of this Agreement;
- 2.1.11. "Implementing Agent" means Amatola Water Board or its successor in title;
- 2.1.1. "Implementing Agent Fee" means the fee to be earned by the implementing agent water board being 5% of the project value if the project is above R10 million; or 7.5% if the project value is less than or equal to R10 million; or 10% of the project is equal to or less than R3million (VAT inclusive);
- 2.1.2. "MFMA" means the Local Government: Municipal Finance Management Act No. 56 of 2003;
- 2.1.3. "Operator" means the mechanism that will operate and maintain the infrastructure developed under this Agreement from Project Completion;
- 2.1.4. "Parties" means the Department, the Water Services Authority and the Implementing Agent, collectively or individually as is appropriate in the context;
- 2.1.5. "PFMA" means the Public Finance Management Act No.1 of 1999;
- 2.1.6. "Project" means the James Kleynhans Bulk Water Supply Project (JKBWS) ECR047 in the jurisdiction of the Water Services Authority as more fully identified in the Project Sheet;
- 2.1.7. "Project Completion" means the date stipulated in the Sign Off Certificate being the date from which the Implementing Agent has satisfied its obligations under the Agreement and the Project Sheet;
- 2.1.8. "Project Conditions" means the specific conditions stipulated in the Project Sheet for any phase of the Project;
- 2.1.9. "Project Manager/s" means the person/s nominated by each of the Parties in terms of clause 6.3 below to manage and co-ordinate the implementation of the Agreement and the Project;
- 2.1.10. "Project Sheet" means the project sheets appended to the Agreement as Appendix A, as supplemented and updated from time to time in relation to the scope, budgets, scheduling and cash flow projections;
- 2.1.11. "RBIG" means the Regional Bulk Infrastructure Grant;
- 2.1.12. "Relevant Legislation" includes, but is not limited to, DORA, PFMA, MFMA, Water Services Act and the National Water Act No. 36 of 1998, as may be relevant to the Parties and to the Project;
- 2.1.13. "Sign-off Certificate" is the certificate reflecting the agreement of the Parties that the Project (or a phase of the Project) is complete and ready for hand over to the Water Services Authority, and in which the Project Completion date is stipulated;
- 2.1.14. "Termination Date" means the date on which this Agreement terminates as a result of a Termination Event as set out in a Termination Notice;
- 2.1.15. "Termination Event" means one or more of the following:
  - 2.1.15.1. written confirmation from the Department that all obligations in respect of the Project as set out in the relevant Project Sheet

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- and the Agreement have been completed to the reasonable satisfaction of the Department;
- 2.1.15.2. if there is no or limited funding made available to the Department in terms of the annually promulgated DORA or if the Bulk Infrastructure Programme is cancelled for any reason;
  - 2.1.15.3. unresolved Force Majeure, as set out in 19 below;
  - 2.1.15.4. unremedied material breach as set out in 20 or 21 ("unremedied" means a breach of an obligation of the Agreement which has not been corrected within the time period given and which is not the subject of a corrective action plan agreed to by the Department); and/or
  - 2.1.15.5. the Parties agree in writing.
- 2.1.16. "Termination Notice" means the notice issued in terms of this Agreement setting out the Termination Date;
  - 2.1.17. "Water Services Act" means the Water Services Act No. 108 of 1997;
  - 2.1.18. "Water Services Authority" means the Makana Local Municipality.
- 2.2. References to "Clauses" and "Project Sheets" are references to the clauses in the general terms of this Agreement and the Project Sheets appended from time to time.
  - 2.3. The headings of clauses and sub-clauses are included for convenience only and shall not affect the interpretation of this Agreement.
  - 2.4. Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
  - 2.5. Any reference to "days" in this Agreement means calendar days.
  - 2.6. All amounts stated in this agreement and any Funding invoiced by the Implementing Agent shall be inclusive of Value Added Tax (VAT), and shall comply with the Value Added Tax Act No. 89 of 1991.
  - 2.7. Conflict of Documents
    - If there is any conflict between the provisions of any of the documents making up this Agreement, then the priority of the documents shall be:
    - 2.7.1. the Relevant Legislation;
    - 2.7.2. the General Terms of Agreement;
    - 2.7.3. the Project Sheets, as amended and supplemented from time to time; and
    - 2.7.4. any RBIG studies, once accepted by the Department.

## PART II: APPOINTMENT AND DURATION

### 3. SCOPE

- 3.1. The Department agrees to fund the Project up to the amount committed in the Project Sheets, and as confirmed by the Department annually with reference to the DORA, in accordance with the terms and conditions of this Agreement.

- 3.2. The Department nominates and appoints the Implementing Agent to implement the Projects.
- 3.3. The Water Services Authority acknowledges the appointment of the Implementing Agent by the Department to execute the Projects and undertakes to execute the Water Services Authority's responsibilities in accordance with the terms and conditions of this Agreement, the Relevant Legislation and the Project Conditions
- 3.4. The Implementing Agent undertakes to execute its responsibilities in accordance with the terms and conditions of this Agreement, the Relevant Legislation and the Project Conditions.
- 3.5. The Implementing Agent shall not be entitled to alienate, pledge or cede any of its rights, obligations and interests under this Agreement without consulting the Water Services Authority and without the prior written consent of the Department.
- 3.6. Funding disbursed in terms of this Agreement may only be utilised for the purpose stipulated and in accordance with DORA, and the Project Conditions.

#### 4. DURATION

- 4.1. Notwithstanding the date of signature, the Agreement shall be deemed to have commenced on the Effective Date and shall terminate upon the Termination Date stipulated in a Termination Notice issued in response to a Termination Event.
- 4.2. This Agreement shall super-cede all prior contractual undertakings between the parties in relation to the Projects.

### PART III: RESPONSIBILITIES

#### 5. GENERAL DUTIES

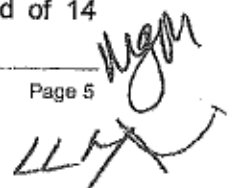
- 5.1. This agreement shall be implemented in accordance with the provisions of section 154(1) of the Constitution of the Republic of South Africa, 1996.
- 5.2. The Department shall:
  - 5.2.1. monitor and evaluate performance and compliance with the Project Conditions and implementation of the Projects; and
  - 5.2.2. support the Parties as is reasonable in the circumstances;
  - 5.2.3. disburse Funding to the Implementing Agent in accordance with the Agreement and Project Sheets;
  - 5.2.4. reflect the assets developed with the Funding in its asset register until Project Completion date.
- 5.3. The Implementing Agent warrants that:
  - 5.3.1. it has access to sufficient and adequate capacity to execute its obligations in terms of the Agreement;
  - 5.3.2. it will ring fence and report on all finances of the Project in a transparent way to the Department and to the Water Services Authority;
  - 5.3.3. it will execute its obligations in compliance with the Agreement, the Relevant Legislation and the Project Conditions; and
  - 5.3.4. prior to Project Completion, it will work with the Water Services Authority to develop a training programme for the Water Services Authority's

identified employees that will work on the Project hand-over to the Water Services Authority or the Operator.

- 5.4. The Water Services Authority warrants that:
- 5.4.1. the Project will meet the identified bulk infrastructure needs in a co-ordinated and integrated manner according to the mmunicipal plans, including the Integrated Development Plan (IDP), the Spatial Development Plan (SDP) and the Water Services Development Plan (WSDP), and any master planning and water resource planning that was used to identify Project;
  - 5.4.2. it will budget and provide for the Co-Funding requirement of the Project;
  - 5.4.3. ownership of the Project (or any phase of the Project) shall vest with the Water Services Authority with effect from Project Completion, unless otherwise directed by the Minister of Water & Sanitation;
  - 5.4.4. it will ensure that the Project (or any Phase of the Project) is operated and maintained sustainably according to the intended specification with effect from Project Completion and shall allocate sufficient budget to execute this responsibility;
  - 5.4.5. it will work with the Implementing Agent to implement a training programme for Water services Authority employees or the Operator prior to Project Completion;
  - 5.4.6. it will ensure that the reticulation aspects of the water services delivery will be implemented timeously to ensure water services delivery reach the community;
  - 5.4.7. it will constitute and chair a Project Steering Committee for the Project, which will include, inter alia, representatives from both the Department and the Implementing Agent, and arrange regular meetings for the purpose of progress monitoring, evaluation and reporting;
  - 5.4.8. it will facilitate the necessary community participation for the Project, and endeavour to resolve community-related problems in order to achieve Project objectives.

## 6. GOVERNANCE

- 6.1. The parties shall execute their respective obligations in terms of this Agreement in a co-operative and supportive way.
- 6.2. The Parties recognise their respective commitments and fiduciary duties in terms of the Relevant Legislation and shall not do anything to prevent the other Parties from complying with such obligations.
- 6.3. Each party shall nominate a Project Manager in the Project Sheet who shall act as the single point of contact between the Department, the Water Services Authority and the Implementing Agent in respect of all Project implementation requirements.
- 6.4. The Parties shall develop a meeting programme and reporting process to give effect to the Project Conditions, including the obligations of the Consulting Engineer/s.
- 6.5. The Parties shall ensure continuity in representation in meetings for each Project.
- 6.6. The Parties shall respond to any properly made request or notice given by the other Parties regarding the implementation of the Project within a period of 14

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(fourteen) days from receiving such a request. Should it be impossible to respond within the allowable period, the Parties shall, within 7 (seven) days of receiving the request, negotiate an alternative period.

- 6.7. Any information, document or other data required by this agreement to be provided by the Implementing Agent to the Department or by the Department to the Implementing Agent must at the same time be provided to the Water Services Authority.
- 6.8. The Water Services Authority shall have full and unrestricted access to all records, data, plans, specifications, contracts held by the Implementing Agent in and about any Project and to any site of any Project.

## 7. PROJECT SHEETS

- 7.1. The Project will be executed as set out in the Project Sheets.
- 7.2. The Project Sheets shall be updated at least annually; or where change in policy or Project scope, budget or scheduling circumstances requires it. Changes shall be approved as is required by the nature of the change.
- 7.3. After consultation with the Water Services Authority, the Implementing Agent shall submit a revision of the Project Sheet as is relevant based on past performance and projected performance of each Project not yet completed, to the Department by the end of October every year. The Department shall review, and if deemed necessary, comment on the proposed revision by the end of December. The revised Project Sheet shall be finalised and signed by all parties by the end of March of every year, to be effective from 1 April.
- 7.4. The Implementing Agent's costing schedules in regard to implementation of the Project shall be made available to the Department and Water Services Authority for comment prior to the Parties agreeing to any revision to the Project Sheets.

## 8. PROJECT CONSULTING ENGINEERS AND CONTRACTORS

- 8.1. In executing its responsibilities under this Agreement, the Implementing Agent shall appoint Contractors, including where relevant, Consulting Engineers.
- 8.2. Any Contractor appointed by the Implementing Agent must -
  - 8.2.1. be appointed following due process;
  - 8.2.2. have the requisite skills and expertise and capacity to deliver on the scope of work; and
  - 8.2.3. have the requisite CIDB grading relevant to the Project.
- 8.3. Appointment following due process mentioned in 8.2.1 could at the instance of the Implementing Agent include taking cession of existing contractors of the Water Services Authority, subject to conclusion of cession agreements between the Water Services Authority, the Implementing Agent and the impacted Contractor.
- 8.4. The Implementing Agent assumes all risk for managing the Contractors and indemnifies the Department against any claims made by the Contractor.
- 8.5. Notwithstanding the appointment of Contractors, the Implementing Agent shall remain liable to the Department for the performance of this Agreement.

- 8.6. Appointment of Contractors must conform to the requirements of the Construction Industry Development Board Act No. 38 of 2000, together with its Regulations and standards including, but not limited to, the standard for Uniformity in Construction Procurement Board Notice 86 of 2010, both in terms of the levels of Contractors appointed and the requirements for a uniform standard of contracting.
- 8.7. Prior to appointing a Contractor, the Implementing Agent must provide the Department and the Water Services Authority with the proposed scope of work, terms of reference and tender documentation, and procurement process including timetable. Within 15 (fifteen) days of receiving the documentation the parties may propose reasonable changes if required, which the Implementing Agent shall give effect to.
- 8.8. All parties may elect to participate in the bid specification committees related to this project, which the Implementing Agent shall facilitate.
- 8.9. The Implementing Agent shall keep copies of all the tender documentation, evaluation reports and written contracts that it enters into relating to, or associated with its powers, rights, duties or obligations in terms of this Agreement and shall on request provide information in respect thereof to the Department and/or the Water Services Authority.
- 8.10. The conditions applied in this Agreement to the Implementing Agent must be applied, as is reasonably possible, in any contract with the Contractor appointed by the Implementing Agent.
- 8.11. The Implementing Agent must ensure that a retention is imposed on Contractors in accordance with industry guidelines.
- 8.12. The Implementing Agent must ensure that all contractors maximise the creation of decent jobs through the implementation of the Project and must, where relevant, comply with the Expanded Public Works Programme in regard to job creation on Projects and shall report monthly to the Department and the Water Services Authority.

## 9. INFORMATION, REPORTING AND DOCUMENTATION

### 9.1. Financial management

The Implementing Agent shall, in accordance with the Relevant Legislation, act in a fiduciary manner to properly manage the finances of each Project in order to ensure that the total Project cost does not exceed the budget specified in the Project Sheet, as amended.

All funding received by the Implementing Agent for the Project, from whatever source, shall be transparently disclosed to the Water Services Authority and the Department.

### 9.2. Records

The Implementing Agent shall keep proper records according to ordinary business practice, the requirements of the DORA and the Department's requirements.

These records, or portions of these records, as applicable, shall -

- 9.2.1. reflect all details separately for each phase of the Project;
- 9.2.2. include records of all funding received, and expenses incurred and disbursements made;

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- 9.2.3. be verified by the Project Managers of the parties and where relevant the Consulting Engineer as correctly reflecting expenses and disbursements; and
- 9.2.4. be distributed to the Department, Water Services Authority and any other regulator stipulated in the DORA or as required by the Department.

9.3. Progress Reporting

The Implementing Agent shall, according to the requirements of the Department and the Water Services Authority, compile regular monthly, quarterly and annual progress reports detailing the status of the Project. The reports -

- 9.3.1. shall be timeously submitted, in the digital format specified from time to time, to both the Water Services Authority and the Department and any relevant stakeholders identified in the Project Sheets;
- 9.3.2. may be subject to a revision of format from time to time as per the Department's written requirements;
- 9.3.3. shall state measurable outputs, project milestones and impact with reference to the Project Sheets;
- 9.3.4. shall, from time to time, be supplemented by any other reports requested by the Department and/or the Water Services Authority;
- 9.3.5. shall allow the Department and the Water Services Authority to evaluate the performance of the Project against the requirements of the Project Sheets; and
- 9.3.6. shall be verified by the Project Managers, and where relevant, certified by the Consulting Engineer.

9.4. Notification of Problems

The Implementing Agent shall, within 7 (seven) days of becoming aware of any problem relating to the implementation of the Project (including anticipated budget overruns), notify the Department and the Water Services Authority, and within a further 14 (fourteen) day period, provide the Department and the Water Services Authority with full details of the problem and the cause thereof. The Implementing Agent shall additionally provide a recommended solution, after consultation with the Water Services Authority, for approval by the Department.

9.5. Project Delays

The Implementing Agent must inform the Department and the Water Services Authority in writing of any significant delays in the implementation of any Project.

Should the implementation of the Project fall behind by 8 (eight) weeks of the original timetable, the Implementing Agent shall within 1 (one) week compile and submit to the Department and the Water Services Authority an acceleration report documenting the reasons for the delays and the proposed action plan to accelerate the progress; and if necessary revise and re-submit the relevant Project Sheet in accordance with 7.2.

## 10. MONITORING AND EVALUATION

- 10.1. The Implementing Agent shall ensure that all phases of the Project completed under this Agreement are included in an asset management programme acceptable to the Department and the Water Services Authority prior to Project Completion.

- 10.2. The Implementing Agent, in consultation with the Department and the Water Services Authority, must arrange and facilitate a quarterly and an annual performance evaluation of each Project according to the requirements specified by the Department and in accordance with the requirements of DORA.
- 10.3. The Department and the Water Services Authority shall monitor compliance with undertakings and conditions in Project Sheet.
- 10.4. Where the Project involves development of infrastructure, the Project must attain and maintain Blue Drop and Green Drop status as is relevant, and comply with all relevant regulations; failing which the Department's regulatory enforcement protocol may be invoked.
- 10.5. The Department and the Water Services Authority shall monitor job creation by way of reports from the Implementing Agent.
- 10.6. The Department and the Water Services Authority shall have the right of entry and inspection with regard to the Project.
- 10.7. At any reasonable time, the Implementing Agent shall grant to the Department and the Water Services Authority access to the Project and all records kept in terms of the Project.

## **11. PROJECT COMPLETION**

- 11.1. When the Implementing Agent deems that a phase of a Project is complete in accordance with the obligations of the Project Sheet, it shall submit a Sign-off Certificate from the Implementing Agent's Project Manager, and the Consulting Engineer, to the Department and the Water Services Authority.
- 11.2. Such Sign-Off Certificate shall include an operations and maintenance plan for the Project.
- 11.3. Unless the Water Services Authority objects to the Department in writing, a phase of the Project shall be complete when the Department is satisfied that all performance obligations required by this Agreement and Project Sheet in relation to that phase have been satisfied by the Implementing Agent, and where the Operator is ready to assume the Operator's responsibilities.
- 11.4. The Department shall indicate its acceptance by endorsing the Sign-off Certificate which shall state the date of Project Completion. From Project Completion, all risk in and to the infrastructure shall vest in the Water Services Authority.
- 11.5. The Department together with the Water Services Authority shall endorse the Sign-off Certificate within 28 (twenty eight days) of submission by the Implementing Agent, failing which it shall be deemed to have been given, provided that the Department or the Water Services Authority may, within 7 (seven) days, give notice to the Implementing Agent of its intention not to sign it, and within a further 14 (fourteen) days, provide reasons and full details of what is still required to be undertaken in order for the Sign-off Certificate to be signed.

## **12. ASSET MANAGEMENT & OPERATIONS AND MAINTENANCE**

- 12.1. Unless otherwise directed by the Minister of Water and Sanitation, the infrastructure funded by RBIG shall be owned by the Water Services Authority from Project Completion.

- 12.2. Until Project Completion, the risk in the Project shall lie with the Implementing Agent.
- 12.3. Where ownership of infrastructure developed under the Project lies with the Water Services Authority:
  - 12.3.1. the Water Services Authority confirms that it will ensure that the Project will be operated and maintained properly (whether by an internal or external mechanism), and that adequate budget will be allocated by the Water Services Authority to address this;
  - 12.3.2. the Department may require the Water Services Authority to appoint an Operator to operate and maintain the infrastructure developed where the Department deems it appropriate; as stipulated in the relevant Project Sheet. The signed operating agreement must be submitted to the Department prior to the Project Completion.
- 12.4. The Water Services Authority shall ensure that the Project has the outcome and impact on water services delivery as stated in the Project Sheet.
- 12.5. Conditions imposed in the Project Sheet shall be implemented by the Water Services Authority, including but not limited to, the impact on tariffs and undertakings in regard to operations and maintenance and asset management.

#### **PART IV: FUNDING APPROACH**

##### **13. MODULAR DEVELOPMENT OF SCHEMES**

Infrastructure schemes may be developed in functional modules or phases which allow for different components of the larger scheme to be developed at different times provided that:

- 13.1. each Project must be a functional module when completed. That is, the Project must be capable of achieving the stated outcomes in the relevant Project Sheet;
- 13.2. the phases of the Project must be aligned to developments in the water value chain such that it impacts water services delivery to communities effectively;
- 13.3. the phases of the Scheme must be set out in a progressive development plan which, in the view of the Department, is capable of achievement; and
- 13.4. the Department accepts no responsibility to disburse or provide any funding other than as agreed to in the Project Sheets.

##### **14. FUNDING CONDITIONS**

- 14.1. The Department's Funding commitment to the Project is limited to the scope and quantum as set out in the Project Sheet and as confirmed annually by the Department.
- 14.2. Where there is a co-funding commitment from parties including the Water Services Authority, a signed commitment from the Water Services Authority must be submitted to the Department prior to finalising the Project Sheet.
- 14.3. In addition to the cashflows projected in the Project Sheet, the Implementing Agent shall provide the Department, by the 25<sup>th</sup> of January, with an anticipated project cash-flow for a minimum period of 3 (three) consecutive national fiscal years (April

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– March) indicating utilisation of Funding allocations as advised by the Department. Project cashflows shall be revised annually by the end of September, or at such shorter intervals as the Department may require from time to time in regard to the Funding made available by the Department.

- 14.4. The Department shall advise the Implementing Agent and the Water Services Authority, by the end of January of every year, of indicative grant funding allocations for a minimum period of 3 (three) consecutive national fiscal years, including any conditions pertaining to such grant funding in regard to multi-year project.
- 14.5. If the Funding for a multi-year project is increased beyond the original allocations, the Project Sheet and associated budget must be reviewed and modified accordingly, and where relevant re-submitted to the relevant RBIG Management Committee for approval.
- 14.6. If by the 31<sup>st</sup> of August of each year, a Project has under-spent by more than 20% of its committed Funding budget allocation for that financial year, then an acceleration report must be developed and submitted to the Department and the Water Services Authority by the 15<sup>th</sup> of September detailing the reasons for the delays and how the project implementation will be accelerated to utilise the committed Funding budget during the remainder of the Department's financial year. Such an acceleration report must be signed by the Accounting Officer of the Implementing Agent. The Department may prescribe the format of such a report.
- 14.7. If the cost of any Project receiving Funding increases by more than 10% of the approved budget, and additional funding is required, an escalation report motivating for an increase in budget allocation may be submitted to the Department before the 31<sup>st</sup> of August of every year. Such escalation report must be signed by the Accounting Officer of the Implementing Agent. The Department may prescribe the format of such a report. Allocation of an increase in Funding for any Project is in the sole discretion of the Department and the Department assumes no responsibility or liability for increased Project costs beyond what it has committed to in any Project Sheet.

## 15. PROJECT CONDITIONS

- 15.1. The Project may be developed in phases. The Implementing Agent shall not proceed to the following phase until the Project Sheet for that phase is agreed to between the parties.
- 15.2. All Project Conditions stipulated in the project Sheet must be adhered to while the Project is being implemented.
- 15.3. The Implementing Agent must provide the Department and the Water Services Authority with electronic copies and hard copies of all necessary documentation regarding the Project including designs, investigation reports, and minutes of key meetings and copies of Sign-off Certificates within one month of the completion of such reports or meeting.
- 15.4. A Project must have signage indicating the nature of the Project, and the role of the Department in the Project and source/s of funding, in a form as may be prescribed by the Department from time to time.

## 16. RE-ALLOCATION, WITHHOLDING AND STOPPING OF FUNDS

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- 16.1. During the Department's financial year, the Department may need to manage the re-allocation of committed funding from certain projects within the Programmes that are not performing in accordance with the Project Criteria.
  - 16.1.1. In re-allocating funds, the Department must firstly try and re-allocate the Funds to an alternative project of the Implementing Agent, or alternatively to another project within the same Province, and only as a last resort re-allocate the Funds to another Province.
  - 16.1.2. The re-allocation or allocation of additional funds will be facilitated by the national office of the Department, after consultation with the relevant provincial office of the Department and the Implementing Agent.
- 16.2. The Department may withhold the disbursement of Funding for a Project for a period of up to 120 (one hundred and twenty) days if -
  - 16.2.1. the Implementing Agent does not comply with the provisions of applicable laws, including DORA or the Project Conditions;
  - 16.2.2. the Department is not satisfied with the performance of any Contractor or the Implementing Agent on the Project;
  - 16.2.3. roll-overs of conditional allocations from previous years have not been spent; and
  - 16.2.4. expenditure on Project during the financial year reflects significant under- or over-spending, for which no satisfactory explanation is given.
- 16.3. The Department may stop the disbursement of Funding to any Project permanently if -
  - 16.3.1. the Department's allocated budget for the Bulk Infrastructure Programme is reduced;
  - 16.3.2. the Implementing Agent has been found guilty of misappropriating funds or any illegal activities;
  - 16.3.3. the Department is not satisfied with the performance of any Contractor of the Implementing Agent and despite serving a notice of default in accordance with 20.2.2, the performance is not or cannot be remedied within a reasonable time;
  - 16.3.4. the causes that result in withholding the funds in Clause 16.2 are not adequately resolved within 120 (one hundred and twenty) days.
- 16.4. The Department must give the Implementing Agent written notice of the intention to re-allocate, withhold or stop the disbursement of Funding, stating the reasons, and give the Implementing Agent an opportunity to submit written representations, within 30 (thirty) days, as to why the Funding should not be re-allocated, withheld or stopped.
- 16.5. When the disbursement of Funding to the Implementing Agent is withheld or stopped due to the default of the Implementing Agent, the Department may, after consultation with the Water Services Authority, re-allocate the allocated funds to another entity to implement a project that is deemed implementation ready and has been approved, or to any existing current project in order to accelerate the implementation process of such a project.

## 17. DISBURSEMENT PROCESS

### 17.1. Budget and Cashflows

The Project's budget and cashflow projections shall be updated annually in accordance with Clause 7 above.

#### 17.2. Co-Funding

The Water Services Authority acknowledges its co-funding obligations and confirms that the Co-Funding for the Project as stipulated in the relevant Project Sheet will be secured and all necessary agreements put in place to give effect to the Co-Funding obligations.

#### 17.3. Invoicing

17.3.1. The Implementing Agent's claims for Funding must be verified within 10 (ten) days of submission by all parties' Project Managers, as being in accordance with the Project cashflow schedules and in compliance with the Project Conditions and for work done.

17.3.2. The Implementing Agent shall invoice the Department for work done in accordance with the Project Sheet. Such invoices shall -

17.3.2.1. be in accordance with the project cashflow projections, as revised from time to time;

17.3.2.2. justify the work done;

17.3.2.3. show the cumulative amount received up to and including the previous Funding receipts;

17.3.2.4. show the Implementing Agent Fee;

17.3.2.5. reflect an advance payment where materials are ordered but have not yet been delivered;

17.3.2.6. be in compliance with DORA and the Value Added Tax Act No.89 of 1991;

17.3.2.7. provide motivation for any deviation of more than 20% from agreed cashflow projections in the Project Sheets; and

17.3.2.8. provide motivation for any deviation from agreed Project Sheets and if relevant submit revised cashflows with clear motivation for revision, for consideration by the Department. If accepted by the Department, the Project Sheets shall be updated accordingly.

17.3.3. If there are any queries or changes to be made to an invoice the Department must inform the Implementing Agent within 5 (five) working days after receiving the invoices.

#### 17.4. Payment

17.4.1. The Department shall pay invoices submitted by the Implementing Agent for the Funding within 30 (thirty) days of receiving a valid invoice, with all required supporting documentation.

17.4.2. The Water Services Authority shall pay invoices submitted by the Implementing Agent for the Co-funding within 30 (thirty) days of receiving a valid invoice.

17.4.3. Payment shall be made into the primary bank account of the Implementing Agent.

17.4.4. The Department and the Water Services Authority shall not pay interest on any amount for whatsoever reason.

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- 17.4.5. The amount paid shall not result in total expenditure exceeding the Project budget as detailed in the Project Sheets, as revised from time to time.

## PART V: DEFAULT AND TERMINATION

### 18. COMPLIANCE WITH RELEVANT LEGISLATION

- 18.1. A failure by the Implementing Agent to comply with any provisions of DORA shall be treated as "serious or persistent non-compliance" with DORA and shall constitute financial misconduct triggering the provisions of the MFMA or PFMA which require disciplinary proceedings to be instituted against the Accounting Officer, Chief Financial Officer or senior manager or other official of the Implementing Agent, following investigation in terms of DORA.
- 18.2. Any Funding disbursed to an Implementing Agent under this Agreement which is not properly allocated to the relevant Project shall be repayable immediately by the Implementing Agent, including any interest that shall have accrued.

### 19. FORCE MAJEURE

- 19.1. No Party shall be liable for a failure to perform any of its obligations in so far as it proves
- 19.1.1. that failure was due to an impediment beyond its control;
  - 19.1.2. that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of the Agreement; and
  - 19.1.3. that it could not reasonably have avoided or overcome the impediment or at least its effects.
- 19.2. Subject to Clause 19.3, the Party claiming relief shall be relieved from liability under this Agreement to the extent that it is not able to perform all or a material part of its obligations under this Agreement as a result of an event of Force Majeure.
- 19.3. Where a Party is (or claims to be) affected by an event of Force Majeure:
- 19.3.1. it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
  - 19.3.2. it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under Clause 19.3.1.
- 19.4. The Party claiming relief shall serve written notice on the other Parties within 15 (fifteen) days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 19.5. A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 10 (ten) days, which notice shall contain such relevant

information relating to the failure to perform (or delay in performing) as is available, including, but not limited to, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 19.3.1, the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome it and/or its effects.

- 19.6. The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 19.7. If, following the issue of any notice referred to in Clause 19.6, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.
- 19.8. The Parties shall endeavour to agree any variations to this Agreement which may be equitable having regard to the nature, extent and consequences of an event or events of Force Majeure.
- 19.9. Termination for Force Majeure

If, in the circumstances referred to in Clause 19.1, the Parties have failed to reach agreement on any modification to this Agreement pursuant to that clause, within 30 (thirty) days of the date on which the Party affected serves notice on the other Party in accordance with that clause, either Party may at any time afterwards terminate this Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any material obligation under this Agreement.

19.10. Termination Amount for Force Majeure

On termination of this Agreement as a result of a Force Majeure, the Department shall pay the Implementing Agent an amount equal to the aggregate of any Contractor's costs that have been reasonably and properly incurred as a direct result of the termination of this Agreement up until the Termination Date, but only to the extent that the proof of outstanding costs incurred up to the Termination Date are substantiated, provided that the Implementing Agent has used reasonable endeavours mitigate losses, together with the Implementing Agent's Fee and any other costs that the Implementing Agent is entitled to claim in terms of this Agreement. The Department shall not be responsible for any future costs or losses incurred by the Implementing Agent or Contractor, howsoever arising.

## 20. IMPLEMENTING AGENT DEFAULT

20.1. Definition

"Implementing Agent Default" means any of the following events or circumstances:

- 20.1.1. the Implementing Agent fails to comply with DORA and the project allocation is permanently withheld by the Department as a result;
- 20.1.2. the Implementing Agent abandons a Project (other than as a consequence of a breach by the Department or the Water Services Authority of their obligations under this Agreement);
- 20.1.3. the performance of any of the Contractors is not reasonably accepted as satisfactory by the Department or the Water Services Authority and

*Handwritten signatures and initials:*  
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despite notice, it is not remedied to the reasonable satisfaction of the Department;

- 20.1.4. the Implementing Agent fails to pay any sum or sums due to its Contractors (which sums are not in dispute) and such failure continues for 30 (thirty) days from receipt by the Implementing Agent of a notice of non-payment from the Department;
- 20.1.5. any breach of any provision of this Agreement has occurred more than once and:
  - 20.1.5.1. the Department has given an initial warning notice to the Implementing Agent describing that breach in reasonable detail and stating that if that breach persists or recurs then the Department may take further steps to terminate this Agreement; and
  - 20.1.5.2. the Department has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 30 (thirty) days after the initial warning notice, stating that if that breach persists or recurs within the period of 60 (sixty) days after the final warning notice then the Department may terminate the Agreement on 30 (thirty) days' notice to the Implementing Agent.

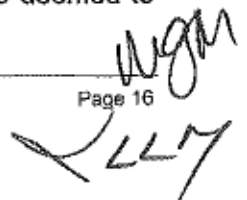
## 20.2. Department's Options

On the occurrence of an Implementing Agent Default, or within a reasonable time after the Department becomes aware of the same, the Department may:

- 20.2.1. in the case of the Implementing Agent Default referred to in Clauses 20.1.1 or 20.1.2 terminate this Agreement in its entirety by notice in writing having immediate effect;
- 20.2.2. in the case of any other Implementing Agent Default referred in Clauses 20.1.3 to 20.1.5 , serve notice of default on both the Implementing Agent and the Water Services Authority, requiring the Implementing Agent at the Implementing Agent's option either:
  - 20.2.2.1. to remedy the Implementing Agent Default referred to in such notice of default (if the same is continuing) within 30 (thirty) days of such notice of default; or
  - 20.2.2.2. to put forward within 15 (fifteen) days of such notice of default a reasonable programme for remedying the Implementing Agent Default. The programme shall specify in reasonable detail the manner in which, and the latest date by which such Implementing Agent Default is proposed to be remedied. The Implementing Agent shall only have the option of putting forward a programme in accordance with this clause if it first notifies the Department within 5 (five) working days of such notice of default that it proposes to do so.

## 20.3. Remedy Provisions

- 20.3.1. Where the Implementing Agent puts forward a programme in accordance with Clause 20.2.2.2, the Department in consultation with the Water Services Authority shall have 10 (ten) working days from receipt of the same within which to notify the Implementing Agent that it does not accept the programme, failing which the Department shall be deemed to have accepted the programme.



20.3.2. Where the Department notifies the Implementing Agent that it does not accept the programme, the Parties shall endeavour within the following 5 (five) working days to agree any necessary amendments to the programme put forward. In the absence of agreement within 5 (five) working days, the question of whether the programme (as the same may have been amended by agreement) will remedy the Implementing Agent Default in a reasonable manner and within a reasonable time period, the Department may terminate this Agreement.

20.3.3. If:

20.3.3.1. the Implementing Agent Default notified in a notice of default is not remedied before the expiry of the period referred to in the notice; or

20.3.3.2. where the Implementing Agent puts forward a programme which has been accepted by the Department and the Water Services Authority or has been determined to be reasonable, the Implementing Agent fails to achieve any element of the programme or to complete the programme by the specified end date for the programme (as the case may be); or

20.3.3.3. any programme put forward by the Implementing Agent is rejected by the Department as not being reasonable, and the dispute resolution procedure does not find against that rejection,

then the Department in consultation with the Water Services Authority may elect to terminate the Project and/or the Agreement in its entirety by written notice to the Implementing Agent and the Water Services Authority with immediate effect.

20.3.4. If the Department and the Water Services Authority disagree on any matter referred requiring joint action under this clause 20 then such disagreement shall be dealt with in terms of clause 30.

#### 20.4. Termination Amount for Implementing Agent Default

The Implementing Agent shall reimburse the Department and Water Services Authority with all reasonable costs incurred by the Department and Water Services Authority in exercising any of its rights in terms of this Clause 20. The Department and the Water Services Authority shall take reasonable steps to mitigate such costs.

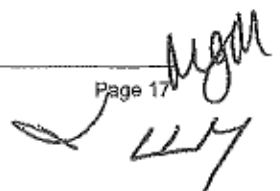
## 21. DEPARTMENT DEFAULT

### 21.1. Definition

"Department Default" means any one of the following events:

21.1.1. an expropriation of a material part of the Project by the Department or any other authority;

21.1.2. a failure by the Department to disburse any amount or amounts that are due and payable by the Department under this Agreement (which amounts are not in dispute) which, either singly or in aggregate exceeds the sum of R500 000 (five hundred thousand rand) and such failure continues for 90 (ninety) days from receipt by the Department of a notice of non-payment from the Implementing Agent;



21.1.3. a breach by the Department of its obligations under this Agreement which substantially frustrates or renders it impossible for the Implementing Agent to perform its obligations under this Agreement for a continuous period of 3 (three) months.

21.2. Termination for Department Default

21.2.1. On the occurrence of a Department Default, or within 15 (fifteen) days after the Implementing Agent or the Water Services Authority becomes aware of same, the Parties may serve notice on the Department of the occurrence (and specifying details) of such Department Default. If the relevant matter or circumstance has not been remedied or rectified within 30 (thirty) days of such notice, the Parties may serve a further notice on the Department terminating this Agreement with immediate effect.

21.2.2. The Parties shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

21.3. Termination Amount for Department Default

On termination of this Agreement as a result of a Department Default, the Department shall pay the Implementing Agent an amount equal to the aggregate of the Implementing Agent's costs, together with any other costs that the Implementing Agent is entitled to claim in terms of this Agreement, that have been reasonably and properly incurred as a direct result of the termination of this Agreement up until the Termination Date, but only to the extent that the proof of outstanding costs incurred up to the Termination Date are substantiated, provided that the Implementing Agent has used reasonable endeavours to mitigate losses. The Department shall not be responsible for any future costs or losses incurred by the Implementing Agent or Contractor, howsoever arising.

## 22. CORRUPT GIFTS AND FRAUD

22.1. Definition and Warranty

The Implementing Agent and the Water Services Authority warrant that in entering into this Agreement neither has committed any Corrupt Act and undertakes that it will not commit any Corrupt Act. Any breach of this warranty and undertaking shall entitle the Department to terminate this Agreement immediately.

22.2. "Corrupt Act" means:

22.2.1. offering, giving or agreeing to give to the Department or any other organ of state or to any person employed by or on behalf of the Department or any other organ of state any gift or consideration of any kind as an inducement or reward;

22.2.2. doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Department or any other organ of state; or

22.2.3. showing or not showing favour or disfavour to any person in relation to this Agreement or any Contractor;

22.2.4. entering into this Agreement or any other contract with the Department or any Contractor in connection with which commission has been paid or received, or has been agreed to be paid or received by the Implementing Agent, or on its behalf, or to its knowledge, unless before the relevant

contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Department;

22.2.5. committing any offence:

22.2.5.1. under any law from time to time dealing with bribery, corruption or extortion;

22.2.5.2. under any law creating offences in respect of fraudulent acts; or

22.2.5.3. at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Department or any other public body; or

22.2.5.4. defrauding or attempting to defraud or conspiring to defraud the Department or any other public body.

22.3. Termination Amount for Corrupt Gifts and Fraud

On termination of this Agreement in accordance with Clause 22, the Department shall not pay the Parties any amount.

### 23. PAYMENT OF TERMINATION AMOUNT

23.1. "Notice Date" means the date when the Termination Amount has been determined in accordance with Clauses 19, 20, 21 or 22 (if any).

23.2. The Department shall pay to the Implementing Agent the Termination Amount no later than 60 (sixty) days after the Notice Date.

23.3. The Department shall be entitled to set off against any Termination Amount any monies owed to it by the Implementing Agent at the time for payment of the Termination Amount, whether such monies are due yet or not.

### 24. EFFECTS OF TERMINATION

24.1. Termination

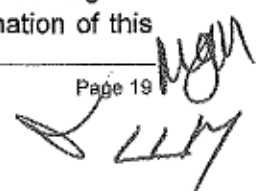
Regardless of any provision of this Agreement, on service of a Notice of Termination, this Agreement shall only terminate in accordance with the provisions of this Clause 24.

24.2. Continued Effect - No Waiver

Regardless of any breach of this Agreement by any Party, and without prejudice to any other rights which the other Parties may have in relation to it, the other Parties may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement unless and until it is terminated in accordance with its terms. The failure of any Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

24.3. Continued Performance

Subject to any exercise by the Department of its rights to perform or to procure a third party to perform the obligations of the Implementing Agent, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of this



Agreement becomes effective in accordance with the provisions of this Clause 24.

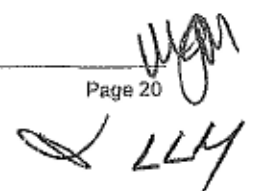
All Parties shall work together to preserve the value of any work already undertaken.

24.4. Exit Strategy on early termination

The Parties shall meet within 10 (ten) days of Notice of Termination to develop an exit strategy and determine and agree the implications of termination; and to develop a management plan to mitigate the impact of the termination of the Agreement.

If, on service of a Notice of Termination, there are still components of the Project which are not complete in accordance with this Agreement for any reason and the Department elects to take back the Project, the Implementing Agent shall:

- 24.4.1. hand over to, and there shall vest in, the Department or its nominee, free from all encumbrances, the Project including all assets and equipment purchased with the Funding;
- 24.4.2. at the request of the Department, procure that any Contractor shall (as the case may be) transfer to the Department or its nominee, free from any security interest, full and unencumbered title in and to all or any part of the Project required by the Department in connection with the Project;
- 24.4.3. procure that any Intellectual Property Rights shall be provided to the Department and the Department or its nominee shall be granted a perpetual non-exclusive, royalty-free license to use such Intellectual Property Rights;
- 24.4.4. deliver to the Department (as far as not already delivered to the Department) complete sets of:
  - 24.4.4.1. "as built drawings";
  - 24.4.4.2. any maintenance, operation and training manuals for the Project to the extent that they exist or the Implementing Agent has an obligation in terms of this Agreement to acquire or prepare them; and
  - 24.4.4.3. the historical operating data and plans of the Project, its furniture, fittings and equipment in a format acceptable to the Department;
- 24.4.5. use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by Implementing Agent under this Agreement and included in the Project are assigned, or otherwise transferred, to the Department or its nominee;
- 24.4.6. deliver to the Department any information referred to in this Agreement, except where such documents are required by Law to be retained by the Implementing Agent or any Contractor concerned, in which case complete copies shall be delivered to the Department;
- 24.4.7. ensure that provision is made in all contracts of any description whatsoever to which the Implementing Agent or any Contractor is a party to ensure that the Department will be in a position to exercise its rights, and the Implementing Agent will be in a position to comply with its obligations under this Clause 24.3;



construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Relaxation constitute a waiver of any other right (whether against that Party or any other person).

- 27.2. The waiver of any right under this Agreement shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving Party.

## 28. NOTICES

- 28.1. Any notice, request, consent or other communication made between the Parties pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to an authorised representative of the Party to whom the communication is addressed, or when sent by registered post, email or fax to such Party at the Address specified in the Special Terms of Agreement.
- 28.2. Electronic communications shall comply with the terms of the Electronic Communications Act No. 36 of 2005.
- 28.3. If the sender requires evidence of receipt, the sender shall state such requirements in the communication and, wherever there is a deadline for the receipt of the communication, the sender may demand evidence of receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.
- 28.4. A notice shall be deemed to have been received –
- 28.4.1. 14 (fourteen) days after posting, if posted by pre-paid registered post to the Party's address;
- 28.4.2. on delivery, if delivered to a responsible person during normal business hours at the Party's physical address; and
- 28.4.3. on dispatch, if sent to the Party's facsimile number and confirmed by registered letter posted no later than the next business day following the dispatch.
- 28.5. 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 address for legal service.
- 28.6. Either Party may change its address stated in Clause 34 for purposes of this clause to another address by giving the other Party 30 (thirty) days advance notice of such a change. The new address becomes effective on receipt by the addressee of such written notice. A notice shall be necessary in respect of a new or changed facsimile number.

## 29. INDEMNIFICATION

The Implementing Agent shall, at its own expense, indemnify, protect and defend the Department and the Water Services Authority from and against all actions, claims, losses and damage arising from any act or omission by the Implementing Agent or its contractors in the implementation of the Project, including any violation of legal provisions or rights of others in respect of patents, trademarks and other forms of intellectual property such as copyright.



### 30. SETTLEMENT OF DISPUTES

If the Department is of the opinion that any aspect of project implementation, including any financial aspect thereof is not compliant with any provision of this agreement, or the it declares a dispute regarding the appointment of a consulting engineer or contractor, or if any dispute of any nature arises between the parties, then, subject to section 32 of DORA and section 44 of the MFMA:

- 30.1. the Department shall engage with the Water Services Authority and the Implementing Agent to resolve such item of concern or dispute as required by Chapter 3 of the Constitution of the Republic of South Africa, 1996 and Chapter 4 of the Intergovernmental Relations Framework Act No 13 of 2005; or
- 30.2. in appropriate circumstances, the Department may act in terms of section 63 of the Water Services Act No 108 of 1997.

### 31. INVALIDITY AND SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under applicable law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

### 32. LEGISLATIVE COMPLIANCE

This Agreement shall be interpreted in accordance with the laws of the Republic of South Africa.

Each Party shall be responsible for complying with any legislative requirement that applies to it, and no party shall do or not do anything to prevent the other party from complying with any legislative requirement or fiduciary duty.

### 33. WAIVER

No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this Agreement shall constitute a waiver of the provisions of this Agreement and a party may at any time require strict compliance with the provisions of this Agreement.

### 34. DOMICILIA CITANDI ET EXECUTANDI

- 34.1. The Department chooses, as its address for the service of all legal and other documents, the following:

**Address:** Department of Water & Sanitation: Eastern Cape  
2 Hargreaves Avenue,  
King Williams Town 5600

**Facsimile:** 043 642 6032

**Attention:** Chief Director: Eastern Cape Region

34.2. The Water Services Authority chooses, as its address for the service of all legal and other documents, the following:

**Address:** Makana Local Municipality  
City Hall, High Street, Grahamstown, 6140

**Facsimile:** 046 622 9700

**Attention:** Accounting Officer: Water Services Authority

34.3. The Implementing Agent chooses, as its address for the service of all legal and other documents, the following:

**Address:** Amatola Water Board  
6 Lancaster Road, Vincent East London 5247

**Facsimile:** 043 707 3701

**Attention:** Chief Executive: Amatola Water

### 35. SIGNATURES

Signed by P. Makhaya duly authorised to represent the  
Department of Water & Sanitation

at Kwif on this 19 day of August 2015.



DEPARTMENT OF WATER & SANITATION

Witness: \_\_\_\_\_

Signed by MJ MEIRING in his/her capacity as Accounting  
Officer of the Water Services Authority

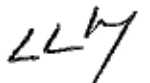
at Grahamstown on this 31 day of July 2015.




WATER SERVICES AUTHORITY

Witness: \_\_\_\_\_

Signed by LEFADI MAKIBINYANE in his/her capacity as Chief  
Executive of the Implementing Agent



at East London on this 29<sup>th</sup> day of July 2015

  
**AMATOLA WATER**  
**PLANNING & DEVELOPMENT**  
**IMPLEMENTING AGENTS -07-29**  
IF ... XS  
Witness:



