



SEKHUKHUNE DISTRICT MUNICIPALITY



BULK WATER SUPPLY SERVICE LEVEL AGREEMENT

BETWEEN

SEKHUKHUNE DISTRICT MUNICIPALITY

AND

LEPELLE NORTHERN WATER

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SECTION A:

1 PREAMBLE

Whereas SEKHUKHUNE DISTRICT MUNICIPALITY (SDM) is a Water Services Authority in accordance with Water Services Act, 108 of 1997;

Whereas Lepelle Northern Water is a Water Service Provider with its primary function in terms of the Water Service Act, 108 of 1997, as to provide bulk water services;

Whereas both parties agree that there is a need for a long term contract to enable the bulk water service provider to ensure capital infrastructure development;

Whereas the Parties agree and acknowledge that SDM owns some components within the water supply system which is operated and maintain by LNW as listed in Annexure A;

Whereas the parties formalise and record the current and continued provision of bulk water supply services by LNW to SDM in writing in accordance with the requirements of the Water Services Act, 108 of 1997 and this contract;

And provide for the rendering of bulk water supply services in an efficient, equitable, cost effective and sustainable manner; and

Set terms that are fair and equitable to both SDM and LNW , and

Make provisions for the effective management of this contract and monitoring by the parties of each other's performance in terms of the agreed key performance areas attached to this contract.

2 DEFINITIONS

Unless a contrary intention indicates, words imparting –

the singular include the plural and vice versa;

any one gender include both genders; and

persons include created entities (corporate or non-incorporated) and the Government.

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

"bulk water supply services" means the provision of potable water and management of the wastewater treatment works by the LNW to SDM at identified points;

"Department" means the Department of Water and Sanitation (DWS) or any other official duly authorised to represent it;

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

"capital contribution" shall constitute the full cost of capital associated with equipment and the installation thereof, any required alteration of the water infrastructure at the time of the application and the costs associated with the operational resources that will be required to operate and maintain the equipment;

"Designated representative of SDM" means the Municipal Manager;

"Designated representatives of LNW" means the Chief Executive;

"competent authority" means collectively the Minister, all spheres of Government, any agency, authority, body or standard setting institution, established or appointed in terms of any regulatory provision to regulate and oversee or regulate the activities of SDM or LNW pursuant to this contract or if the context is appropriate to any one of them;

"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;

"contract term" means ten(10) years agreed upon contract period including the commencement up to the expiry date.

"dispute" means when parties fail to agree upon any matter

"CPI" means the consumer price index excluding interest on mortgage bonds, for rural areas (Base 2000=100) published from time to time by Statistics SA in Statistical Release PO141.1;

"SDM connection" means the equipment to the existing bulk water pipeline, the piping from the connection to the meter installation, the meter installation itself (that is, the meter, meter housing), particularly at the inlet of the distribution reservoirs;

"effective date" means the date of last signature of this contract;

"emergency" is a situation whereby an incident, event, occurrence or natural disaster such as a burst pipe, power failure, theft, flooding and fires would severely cause a substantial variation from the agreed water quantity or quality for a period of longer than two (2) days;

"meter" means a meter which is used to determine the volume of water provided to SDM at the SDM connection on which bulk water supply services charges payable by SDM is calculated;

"Minister" means the Minister of the Department of Water and Sanitation;

"SDM" means Sekhukhune District Municipality, a municipality duly established in terms of Section 12 and authorised in terms of the Local Government: Municipal Structures Act, 117 of 1998 to exercise executive authority for water and sanitation services;

"municipal manager" means the municipal manager of SDM as defined in section 82(1) (a) of Local Government: Municipal Structures Act, 117 of 1998;

"normal growth" means the estimated growth in demand for water in a financial year or a number of financial years defined by SDM in its Integrated Development Plan or

Water Services Development Plan, which estimate is based on social and economic development;

"parties" means SDM and LNW, individually or collectively, as the context may require;

"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 and wastewater management or the related activities of SDM or LNW, or if the context is appropriate, any one of them;

"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;

"LNW" means LEPELLE NORTHERN WATER for the purposes of this contract.

"Bulk water infrastructure" means the overall bulk water supply services infrastructure and equipment including SDM connections;

"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.

"Water Services Authority" means Sekhukhune District Municipality as authorised through the Act to provide water services to all residents within the district area;

"Water Services Provider" means Lepelle Northern Water as appointed by SDM through the conclusion of a contract to provide bulk water services to SDM

"tariff" means the amount charged to SDM based on all expenses incurred for producing or providing water or sanitation services;

"Key Performance Area" obligations and responsibilities of the parties within this contract represents key performance area for each party.

"Volumetric tariff" means the charges of producing and supplying or providing water services based on quantity supplied;

Clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms or any clause of this contract.

If any provision in a definition or the recordial is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition or recordial clause, effect shall be given to it as if it were a substantive provision in the operative part of this contract.

When any period of days is prescribed, days shall mean working days and the period shall be reckoned exclusively of the first day and inclusively of the last day and shall not include any Saturday or Sunday or any public holiday.

Where any term is defined within the context of any particular clause in this contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this contract, notwithstanding that term has not been defined in this interpretation clause.

Where consent or approval of a party must be obtained or a party is required to consider or renew something in terms of this contract, unless it is specifically provided for otherwise, it will act reasonably and within a reasonable period.

Where figures are referred to in numerals and in words, and if there is any conflict between the two, the words shall prevail.

Expressions defined in this contract shall bear the same meanings in schedules or annexures to this contract which do not themselves contain their own definitions.

The expiration or termination of this contract shall not affect such of the provisions of this contract as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

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.

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3 SCOPE OF THE CONTRACT

With effect from the effective date, SDM hereby appoints LNW to provide the Municipality with bulk potable water of the agreed quantity and quality within the agreed times, supply areas and wastewater management as spelled out in the Business Plan to be provided by LNW and subject to SDM approval.

The scope of this contract shall include the provision of potable bulk water to SDM at the take-off points and wastewater management at the agreed standards as specified in the Business Plan as Annexure A.

The scope of this contract may be amended at the written request by SDM and when the need to do so arise even if it implies introducing additional connection points, and a mutual agreement thereto reached during the course of the initial period.

Any proposal for the amendment of the scope of this contract by SDM shall be based on and supported by the water demand projections developed and submitted to LNW by SDM as defined in this contract. However LNW may respond contrary to the request by SDM considering the availability of water and the capacity of the infrastructure to accommodate the demand.

LNW will operate, maintain and refurbish the bulk water services infrastructure belonging to SDM and would in the course of procurement of goods and services include and invite service providers on the SDM database.

LNW will operate, maintain and refurbish the bulk water services infrastructure belonging to SDM and the Department of Water and Sanitation and those owned by LNW as identified in the Business Plan in Annexure A to provide potable bulk water as per the required demand projected by SDM in an efficient, equitable, cost effective and sustainable manner.

The scope will also include water and sanitation capital infrastructure investment as well as project implementation whenever is required subject to approval by SDM.

SDM will cede some of its assets identified in Annexure A to LNW that will be utilised for the purpose of the duration of this contract to operate, maintain and refurbish subject to approval by SDM.

LNW will develop an Asset Management Strategy and Asset Management Plan detailing how is it going to operate and maintain the bulk water infrastructure immediately after the effective date and submit to SDM for approval.

LNW must inform or notify SDM in writing about the alterations or replacement undertaken on SDM assets on a quarterly basis to afford SDM an opportunity to update its asset register.

LNW will under no circumstance compromise the lifespan and capability of SDM bulk water infrastructure components by replacing or refurbishing by substandard material during maintenance as compared to the original design material.

Water infrastructure belonging to SDM and ceded to LNW, will remain the asset of SDM, hence alterations made on any of the assets is subject to SDM approval and should be recorded in the SDM asset register.

LNW will operate and maintain SDM water services infrastructure in accordance with the Water Use Licence requirements issued to SDM.

4 COMMENCEMENT AND DURATION

This contract shall commence on the 1st February 2020 and shall endure for a period of ten (10) years until the 30th January 2030.

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

Notwithstanding any other provisions in this contract, the terms of this contract shall be reviewable annually at the end of June each year.

The objectives of the review shall be to measure the overall performance of the parties against the key performance areas as determined in the contract.

Parties may consider amending the contract as may be necessitated by the review.

Any amendments resulting from any review contemplated in this clause shall be reduced to writing and signed by both parties.

5 MONITORING AND MANAGEMENT OF THE CONTRACT

Parties shall, in terms of Section 19(5) Regulations, published as Notice No.R980 in the Government Gazette No.23636 dated 19 July 2002 establish a Contract Management Committee.

Parties shall determine the Terms of Reference of the committee, including members constituting the committee and schedule of monthly meetings in their first meeting, which will be reviewed annually.

SDM as the Water Service Authority (WSA) will be responsible to convene and chair the monthly contract management meetings.

Representatives of SDM and LNW shall meet on a monthly basis, or as frequently as agreed between the parties, to receive reports for bulk water services on the quantity and quality, including interruptions and breakdowns experienced by LNW on a particular month and address any matter as may be relevant to the provision of water services in the contract area.

The designated officials representing the two parties shall upon receiving updates and advise from the committee ensure that matters or issues raised are attended to without delay.

6 WATER DEMAND AND MANAGEMENT

LNW shall undertake a detailed assessment of its ability to meet SDM's bulk water supply annual daily demand immediately after the effective date and shall prepare and agree with SDM on a detailed action plan, with identified priorities, for meeting its daily peak flow demand, where it was unable to do so on the effective date.

SDM shall before the final date of signature to this contract provide in writing their water demand schedule which constitute the projected total required quantity of water per day.

LNW shall at all times meet SDM's estimated daily water supply demand as agreed and recorded in Annexure A and must take all reasonable measures, including the provision of adequate storage, to ensure that this demand is met.

LNW shall at all times provide the quantity of bulk potable water as per the agreed volume as measured at the bulk meters of the off-take points, which are the distribution reservoirs of the bulk water system as shown in Annexure A.

In the event that LNW fails to meet the daily demand as a result of its own negligence, then LNW will inform SDM in writing thereof and provide an alternative bulk water supply such as tankering at its own expenses.

LNW may only adjust the estimated quantity of water agreed upon by the two parties only after a written request detailing reasons for deviation, which will be subject to SDM approval in writing.

Should SDM, at any time, requires LNW to provide water in excess of the maximum quantity of water determined or in case of a new SDM connection, SDM must notify LNW of the need for an increased supply in writing which will be subject to the approval by LNW.

LNW must notify SDM at least fourteen (14) days in advance, of any planned reduction in the quantity of water at any SDM connection and the reasons thereafter, the actions to be implemented to rectify the reduction and the duration of such a reduction, in accordance with the agreed system operating standards.

SDM will every year at least six (6) months prior to the commencement of its financial year, provide LNW with a list of SDM's most recent connections and the projections for the annual average daily demand of the coming full year of supply at each of the SDM connections.

LNW will within two (2) months of receipt of the list of the projection of the incoming annual average daily demand, confirm to SDM the availability of the required projected demands for each SDM connection, based on expected growth over the contract period.

SDM will provide demand projections for normal growth at its connections.

Where SDM fails to provide the demand projections for the incoming financial year, LNW may utilize the annual average daily demand for each SDM connection of the past financial year.

LNW shall at all times meet the annual average daily demand projections as increased by normal growth at each SDM connection on provision that SDM will inform LNW in advance of the annual average daily demand of any planned development in their area of jurisdiction subject to the availability of water resources and LNW 's capacity.

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

Where such notice will result in infrastructure of LNW becoming redundant or under-utilised LNW must within 2 (two) months of receiving a notice from SDM, notify SDM of the projected financial implications of SDM's intention.

7 SYSTEMS OPERATING AND MAINTENANCE STANDARDS

Each party has a responsibility to ensure that all the systems input or infrastructure operated by each are fully accounted for and to put measures in place to manage water losses in their systems.

Each party shall by no means be held accountable for any form of water losses that occur in the system that is operated by the other, however parties may cooperatively work together to minimise water losses and improve the efficiency and water conservation.

LNW may interrupt SDM's water supply at a minimal level that will not compromise the annual daily demand, for the purpose of renewing, testing, examining, repairing, maintaining or rehabilitating the bulk infrastructure.

LNW shall give twenty one (21) days written notice of intention to interrupt water supply for the purpose of a planned maintenance and the estimated duration of such an interruption.

LNW may not proceed with a planned interruption unless SDM approves the interruption.

Where SDM disapprove an interruption, it must provide genuine reasons and propose alternative dates for such an interruption.

In the case of an unplanned interruption due to a breakdown in the running of the system e.g. pipe burst, pumps theft etc., LNW shall inform SDM within three hours (3 hours) of discovery, and further indicate the estimated period for repair.

LNW shall repair unexpected failures and leaks if they are causing a deviation in the agreed quantity, quality, flow rate or pressure within the following times –

Pipe diameters	Time to repair
Up to 150 mm	within 12 hours
151 to 300 mm	within 15 hours
301 – 500 mm	within 18 hours

Pipe diameters	Time to repair
Up to 800 mm	within 24 hours

PUMP SIZE	TIME TO REPAIR
Hi-lift Water Pumps <160kw	2 Days
Hi-lift Water Pump >160kw	5 Days
Motors	2 Days
Motors	5 Days

If it becomes evident that LNW will not be able to adhere to the timeframe stipulated above, LNW shall immediately notify SDM.

All repairs that exceed twenty four (24) hours will be declared as emergencies by both parties and that the provisions of emergency as provided in clause 12 will therefore apply.

8 MAINTENANCE OF WATER QUALITY STANDARDS

LNW shall at all times supply bulk water to SDM at the quality standard as specified in the SANS 241 as annexed (Annexure C) and must achieve green and blue drop status unless the provisions of the clause on *vis major* apply.

It is specifically recorded in this contract that where LNW fails to provide the agreed water quality as specified by SANS 241 and green and or blue drop requirements due to raw water quality from the abstraction, then LNW must declare an emergency otherwise it constitutes a material breach of this contract.

In case of water quality failure due to poor raw water quality caused by occurrences beyond LNW's control such as flooding, upstream activities, LNW must conduct raw water quality tests at an accredited laboratory and avail the results to SDM as soon as they become available and provide actions to be implemented to rectify the situation.

LNW shall conduct onsite water quality test at each and every plant as per SANS 241 prescription (requirements) and keep records.

Onsite water quality test records shall always be made available for SDM inspections.

LNW must conduct monthly water quality tests of all determinants at an accredited laboratory and provide SDM with the water quality results on a monthly basis.

LNW must upload monthly water quality results in the blue drop system

LNW must inform SDM, at least fourteen (14) days in advance, of any planned deviation in the quality of water at any SDM connection, the reasons thereof, and actions to be implemented to rectify such deviation and the period of such a deviation, in accordance with the agreed system operating standards.

SDM shall at any time take water samples at any point of its choice within its water infrastructure systems to monitor water quality supplied by LNW.

In case of any disputes regarding water quality, the two parties will jointly take water samples to an independent laboratory for testing at the expense of the aggrieved party, SDM. On testing, if the water quality is found to be non-compliant with SANS 241, LNW shall be liable for the costs of testing water samples.

9 MAINTENANCE OF WATER METERS

LNW must develop and agree with SDM on a meter testing and calibration program for all meters in the premise that the testing and calibration of all the meters shall be done once every year.

LNW shall submit a copy of calibration certificate and bulk meter testing report to SDM as soon as these become available but not later than June of each year.

LNW must annually, two (2) 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.

When a meter is removed from site for testing, it must be replaced by an alternative calibrated meter or alternatively the parties agree to average the consumption for the previous three (3) months to measure the consumption in the absence of a meter.

LNW shall ensure that all bulk meters are at all times correctly sized and that they operate under optimum conditions.

SDM reserves the right to introduce with consent from LNW check meters as close to the bulk meters as technically feasible in order to check the accuracy of the bulk water meters

LNW and SDM 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 Qt) and 2% for flows between transitional and maximum flows (Qt and Q max)
Differential pressure meters	2% for the measuring range between the minimum and maximum range (Q min and Q max)
Electromagnetic flow meters	0.5% for flow velocities of 0.5 meters per second to 10 meters per second (in the operational range of the meter) where the velocity is through the restricted section
Ultrasonic flow meters	2% for flow velocities of 0.5 meters per second to 10 meter per second

LNW and SDM agree that the maximum levels of acceptable errors on installed meters is three percent (3%).

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, LNW shall repair or replace the meter within seven (7) days of discovery of the malfunctioning.

Should parties not reach an agreement on a measuring device to be installed on a temporary meter, SDM's water consumption for that period will be determined by the average monthly water consumption over a period of three months after the repair or placement of such a meter.

LNW must read all meters on a monthly basis, within 7 (seven) days of the end of the preceding month.

LNW must provide SDM with a meter reading schedule and all amendments to the schedule in advance.

SDM must be present at any meter reading session, with their absence not hindering LNW from reading the meters whatsoever.

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

LNW must investigate the query and, at the request of SDM, test the relevant meter or meters within fourteen (14) days of a query having been lodged.

The method of testing maybe agreed upon by the parties.

Where the parties fail to reach an agreement on the method of testing, either party may refer the matter for dispute resolution.

If a meter is tested and found to be registering outside the agreed accuracy levels, LNW shall be liable for the cost of testing the meter and shall repair or replace the meter.

On testing, if the meter is found to be registering within the agreed accuracy levels, SDM shall be liable for the cost of testing the meter. However SDM's debt in this regard shall not be liable for interest levied on the outstanding amount as a result of the query.

The quantity of water consumed and the bulk water supply charges during a period that the meter registered incorrectly shall be adjusted in accordance with the degree of error found.

However it is hereby agreed that where a check meter has been installed by SDM, the readings of the check meter shall be used to determine the quantity of water consumed.

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

9.22(a) the average monthly consumption of water during the three months prior to the last registration;

or

9.22 (b) the average monthly water consumption over a period of three months after repair or replacement of the meter has been effected.

In the event provided for in clause 9.18 is found to have prevailed for more than one month, it is hereby agreed that the maximum retrospective adjustment period is three (3) months.

It is hereby agreed that no new meters may be installed by LNW unless the type, make and location of the meter on the bulk infrastructure has been agreed with SDM, and such installations shall be in accordance with regulatory provisions and the specifications of the manufacturer of the meters, provided the meters are installed within the scope of this contract.

LNW shall prepare and submit a monthly water balance report to SDM indicating the water losses within the system.

10 TARIFF SETTING, CHARGES, PAYMENTS AND CAPITAL EXPENDITURE PROGRAMME

LNW may impose the following bulk water supply services charges only volume based charges in respect of bulk water supplied to SDM connections;

Installation charges for new SDM connections based on a written request;

capital contribution may be charged where a new or increased water supply requires capital expenditure, which has been approved in writing by SDM

Capital contribution charges may be recovered by way of –

an once-off payment;

an availability/basic charge;

an instalment distributed over the duration period of the contract

any other method as may be agreed to by the parties because of their specific circumstances.

Upon confirmed receipt of invoices from LNW, SDM will effect payment within thirty (30) days of receipt thereof, subject to verification:

The invoice will reflect at least –

the volume of bulk water supply services provided by LNW at each SDM connection;

the period for bulk water supplied to SDM;

the applicable charges;

the amount due (excluding value added tax payable);

value added tax;

the arrears, if any;

the final date for payment.

SDM may query, in writing within seven (7) days of the receipt of the invoice, the accuracy of an amount due and payable or an amount paid for bulk water supply services rendered. Such query must be resolved by both parties within fourteen (14) days or within such period as the parties may agree.

Queries relating to the quantity of bulk water supplied to SDM, will be settled through validation of readings and testing of meters.

Once a query referred to in clause 10.6 is settled, any amount paid in excess of what was due and payable as per the outcome of a query must be credited to SDM account.

Once a query referred to in clause 10.6 is settled, if less amount was paid relative to what was supposed to be paid, any amount outstanding in respect of what is due and payable as per the outcome of a query must be paid to LNW without interests.

In the event SDM is unable to settle an account related to bulk water services by LNW in full on the due date, SDMs may arrange to settle the account in instalments.

The tariff charges for water services shall be valid until the 30th June of every year and must be reviewed annually by both parties.

LNW must, in accordance with Section 42 of the Municipal Finance Management Act (No. 56 of 2003) annually, before or on 30th September of each calendar year, submit its proposed bulk water supply services charges and capital expenditure programme for the forthcoming year to SDM for consideration, together with –

A five-year projection for bulk water supply services charges;

A detailed cost breakdown of the proposed charges, including all variables and fixed costs such as:- raw water, energy (electricity), overheads and operational, capital costs (replacement and refurbishment).

a five-year capital expenditure programme specifying:

- (a) the manner in which the demand projections of SDM informed the programme;
- (b) all proposed capital projects relating to immovable assets;
- (c) the costs associated with operational resources that will be required to operate and maintain the immovable assets on completion of the construction thereof; and
- (d) the manner in which each proposed capital project will be funded.

a copy of financial reports for its bulk water provision for each financial year.

SDM must within ninety (90) days after LNW presented the proposed tariff and capital expenditure programme for the incoming financial year, notify LNW in writing if it approves or dispute the proposed charges and capital expenditure programme.

Where the proposed charges and capital expenditure programme is disputed, SDM must provide reasons thereof.

In case SDM fails to inform LNW of their approval or dispute within ninety (90) days, LNW may set the charges and capital expenditure programme before or on 31st March for implementation on 1st July of the forthcoming financial year.

Where SDM approves the proposed charges and capital expenditure programme, LNW may set the charges and capital expenditure programme by 31st March for implementation on 1st July of the forthcoming financial year.

Where SDM dispute the proposed charges and capital expenditure programme, LNW must within fourteen (14) days after the expiry of the ninety (90) days period referred to in clause 10.11 notify SDM accordingly and simultaneously –

submit revised charges and a revised capital expenditure programme to SDM for acceptance; or

refer the matter to the Department for mediation and notify SDM of such referral.

Where the Department fails to resolve the dispute within twenty (20) days after the referral, either party 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(1) of the Constitution of the Republic of South Africa Act, 108 of 1996.

It shall remain the responsibility of LNW to supply and install new equipment necessary for the agreed SDM connection or connections.

SDM shall be liable to pay LNW an installation charge for the SDM connection or connections where applicable if it is necessary to recover the costs of such installations in a once off payment.

Prior to the supply or installation of the SDM connection or connections LNW must – provide SDM with the specifications of the equipment to be installed;

provide SDM with a firm price quote for the equipment and the installation thereof; and the impact of the cost in the tariff to provide sufficient information for the cost recovery method which is efficient.

demonstrate to SDM that the quote represents a reasonable and market related cost for the equipment and installation.

In the event that SDM considers the quote referred to in clause 10.20.2 to be unreasonable or above market related cost, SDM will negotiate with LNW to revise the cost or specification.

Where the parties fail to reach an agreement about the costs for equipment and installations, dispute resolution process will be followed as stipulated within the contract.

11 WATER SUPPLY RESTRICTIONS

In the event that SDM fails to pay invoices of bulk water services account for LNW on the due date for three consecutive months without written notice to LNW advancing reasons for SDM's failure and without making arrangements to settle the account, LNW shall:

give SDM written notice that the account is outstanding and that it intends to reduce the bulk water supply services to SDM by 20% (twenty per cent) within 30 (thirty) days of such notice,

if 50% (fifty per cent) of the account is not paid within 30 (thirty) days after the notice is issued or SDM fails to enter into an agreement with LNW for the payment of the account in instalments, LNW will reduce the bulk water supply services by 20% (twenty per cent).

thirty (30) days after LNW has reduced the bulk water supply services by 20% (twenty per cent) in accordance with clause 11.1.2, it shall again give SDM notice in a manner similar to that stated in clause 11.1.1 that the bulk water supply services will be limited by a further 20% (twenty per cent).

The phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 11.1.2, exceed 40%, provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing SDM connections by a percentage that will limit the provision of basic water supply services to SDM'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 dispute resolution process of this contract.

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Copies of the notices given in terms of clauses 11.1.1 and clause 11.1.3 shall be sent to the Minister of Water and Sanitation, the Minister of Provincial and Local Government, the Member of the Executive Committee responsible for local government in the Limpopo.

LNW will, together with the copies of the notices to be sent, send a request to the Member of the Executive Committee responsible for local government in the Limpopo Province, the Minister and any other national organ of state that has legislated intervention authority to intervene in accordance with relevant regulatory provisions.

Where possible, LNW will provide reasonable assistance to SDM in respect of the payment of its bulk water supply account by agreeing to a settlement of SDM's account in instalments.

12 EMERGENCY

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

- a) the agreed quantity, quality, flow rate and pressure for a period longer than two (2) days; or
- b) the agreed repair times referred to in clauses 7.8 and 7.10 exceeds twenty-four (24) hours.

Each party shall within three (3) hours of becoming aware of an emergency or possible emergency immediately notify the office of the designated official of the other party.

LNW shall notify SDM about measures to be taken in addressing an emergency and provide an alternative means for bulk water supply.

Parties shall meet within the same day of the occurrence of an emergency and agree on mechanisms to deal with such.

Parties will undertake to jointly communicate the resolutions agreed upon on addressing an emergency.

Where an emergency has been addressed by the parties, a debriefing meeting may be requested by either party to review the process and procedure employed to address the emergency and a formal report will be prepared by LNW in respect thereof.

Parties shall agree on the quantity of water required to provide an alternative basic water supply services.

13 TERMINATIONS

Each party has the right to terminate this contract

The termination of this agreement may occur –

at the expiry of the contract term;

if the parties agree thereto in writing;

by reason of an unremedied material breach;

due to vis major; or

when either party 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 each is changed subsequent to any institutional reform process undertaken by the Minister.

Termination shall be initiated by a notice from either party who has the right to deliver such notice whenever the other party is unable to remedy the breach after a reasonable period agreed upon by the two parties has lapsed or if the contract is about to lapse with reasons of termination accompanying the notice.

SDM shall twelve (12) months prior to the expiry of the contract term, notify LNW in writing about its intentions regarding the contract.

When cancellation of the contract is initiated by SDM in terms of clause 13.3, LNW must within two (2) months of receiving a notice, notify SDM whether it accepts or disputes the termination with reasons accompanying their decision including the projected financial implications of cancellation.

Where LNW fails to inform SDM of its acceptance or dispute within sixty (60) days after receiving the notice, SDM may regard that the actions or proposed actions of termination is accepted by LNW.

Where LNW did not indicate whether it accept or dispute the actions or proposed actions, SDM must within 7 (seven) days after the expiry of the 60 (sixty) day period referred to above, notify LNW accordingly and provide LNW with the decision.

Where LNW dispute the actions and proposed actions, LNW must within 7 (seven) days of the expiry of the 60 (sixty) day period, refer the matter to DWS for mediation and must inform SDM of such referral.

The notice referred to in clause 13.3 sets in motion a transitional phase, during which LNW shall continue to provide bulk water supply services in accordance with this

contract until such time as the process referred to in clause 13.11 and clause 11.12 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.

Where the Department of Water and Sanitation fails to resolve the dispute within a further 14 (fourteen) days, LNW or SDM 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(1) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.

Where LNW accept the actions and proposed actions, LNW 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 DWS, with a proposal to:

either sell LNW infrastructure dedicated to supply bulk water supply services to SDM and recover all operational expenditure associated with the infrastructure from SDM;
or

where LNW infrastructure used by LNW to provide bulk water supply services to SDM is partially dedicated to the supply of such services, SDM shall pay LNW any capital investment outstanding in respect of the remaining contract period, where appropriate, as agreed to in terms of clause 10.1; clause 10.2; clause 10.12; clause 10.15 and clause 10.19, of this contract, which approves the charges and capital expenditure programme of LNW and all operational expenditure associated with the infrastructure.

The Department must approve any sale of assets and capital contribution to be collected by LNW on cancellation of this contract prior its initial agreed upon expiry date.

14 COMMUNICATION

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

Parties shall timeously provide each other with all information in whatever form reasonably required for compliance and monitoring with obligations in terms of the contract.

Parties shall recognise communication authorised by designated representatives; the Municipal Manager of SDM and Chief Executive of LNW as official.

The following shall be accepted as communication means between the two parties; email, letters, smses, whatsapp, twitter through the following devices; telephones, cell phones, internet, courier, post office.

Official communication between the two parties shall always be in writing.

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

The parties may agree jointly to communicate with SDM's consumers on matters of mutual concerns whereby the costs of such communications will be shared by the parties.

Any notice, request, consent, or other communication made between the parties pursuant to this contract 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, telex, internet, telegram or facsimile to such party at the address specified in this contract.

15 PENALTIES

LNW will be charged penalties in the event that it fails to-

meet any of its obligation in terms of this contract; or fails to notify, inform or submit reasons to SDM within the specified time.

implement actions or exceed the duration for the completion of actions LNW undertook in terms of any notice or submission to SDM stipulated in this contract, without informing SDM of its failure with reasons and remedial actions

LNW shall be liable to pay a penalty of 10% of a total monthly SDM account in case LNW fails on each of the following :-

If LNW fails to meet the daily water demand of the agreed quantity of water supply for three consecutive days without a written notice as stipulated in clause 6.3; clause 6.4 and clause 6.5.

When LNW fails to submit copies of the calibrated certificates and bulk meter testing report to SDM as soon as these become available but not later than June of each year.

If LNW fails to supply SDM with the agreed water quality as specified by SANS 241 without notifying SDM in writing advancing reasons for such failure and providing actions to rectify the poor water quality within a day.

If LNW fails to notify SDM in writing, at least fourteen (14) days in advance, of any planned deviation in the supply of the approved water quality as per SANS 241 or any planned reduction in the agreed daily water demand at any SDM connection.

SDM shall immediately realising a failure by LNW as identified in clause 15.2.1; clause 15.2.2; clause 15.2.3 & clause 15.2.4 , notify LNW within fourteen (14) in writing about the nature of the breach and penalty to be effected.

If SDM fails to pay LNW for the bulk water invoices account without notifying LNW in writing advancing reasons thereof, within thirty working days or without making arrangements for the payments, LNW shall impose penalties on the affected invoices in the form of interests.

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

16 MECHANISM FOR DROUGHT PERIOD

LNW is responsible for obtaining and generating all information required to monitor and forecast all factors influencing the quantity of water availability.

The parties agree to assist each other and work together in obtaining information on water availability for SDM.

LNW must annually, within two (2) months of the commencement of its financial year, provide SDM with a detailed report on the security of water supply to SDM .

The security of water supply report as stipulated in clause 12.3, must present the water availability concerns that LNW has identified; the provisional measures that will be taken by LNW to address the concerns and the recommendations of actions that SDM is expected to take in response to or in supporting on (or both) the measures by LNW.

LNW must issue a written water restriction warning to SDM within seven (7) days of it being notified by the Department that it will be implementing water restrictions.

LNW must withdraw a drought warning issued within seven (7) days of the Department lifting water restrictions.

LNW shall convene a special forum with SDM within one (1) month after a water restriction warning is issued.

LNW must comply with all and any legislation, guidelines and policies of National Government relating to the limitation and disconnection of bulk water supply services.

17 COMPLIANCE WITH LEGISLATIONS

Parties shall be responsible for complying with all legislation applicable to their duties and obligations in terms of this contract, including, but not limited to, applying for the necessary approvals, consents, licences or permits, where required.

Both parties guarantee that on the effective date all permits, licences, exemptions, permissions and approvals that may have been required in terms of legislation in respect of providing bulk water supply services were obtained in the required manner.

Both parties will cooperate in obtaining abstraction licence as Water Use Licence or discharge licence as Waste Water Use Licence for all Water Treatment Works and Waste Water Treatment Works on written request from SDM.

LNW will assist SDM to achieve the green drop and blue drop status on schemes operated by SDM.

LNW shall achieve green drop and blue drop status on commencement of this contract unless on good cause shown to SDM a reasonable extension of time is requested which approval shall not be unreasonably withheld.

18 LIABILITIES AND INDEMNITIES

Subject to terms stated in this contract, LNW undertakes and assumes the responsibility for the provision of the bulk water supply services at its own technical risk and will be liable to SDM for the fulfilment and discharge of its obligations and requirements in respect of providing bulk water supply services with effect from the effective date.

LNW shall, with effect from the effective date, take all the requisite precautions for the protection of life and property on and about or in any way connected with the whole or any part of providing bulk water supply services and shall indemnify and not hold SDM accountable for any losses, claims, demands, proceedings, damages, costs (including all legal fees), charges and expenses of whatsoever nature in respect of injury to or death of any person or loss of or damage to any part of the bulk water supply services system or any person or property arising from or attributable to any act or omission of LNW, its employees or agents, unless such injury, death, loss or damage was caused in whole or in part due to any act or omission of SDM, its employees or agents, contractors or any other person for whom it may be liable in law.

19 INSURANCE

LNW shall be responsible for the costs of insuring all SDM infrastructure assets ceded to and operated by LNW subject to prior approval of the quoted premium by SDM which approval shall not be unreasonably withheld.

20 WARRANTIES

The parties warrant that –

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

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

the execution of this contract does not violate any legislation, judgement 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.

21 BREACH

Any party has the right to claim for damages in addition to penalties, in case of a breach on certain commitments or obligations within this contract

If any party commits a breach of this contract and the other party wishes to claim specific performance or damages from the defaulting party in respect of such breach in addition to any penalty, it is permissible in terms of this contract.

Prior to the latter application of the right mentioned in clause 21.1, a party exercising such a right, shall deliver a written notice to the defaulting party notifying it of the breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a period of twenty (20) days or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within twenty (20) days period.

And should the defaulting party fail to remedy the breach within such period then the party giving notice may institute a civil claim for specific performance or damages as the case may be.

If the defaulting party commits the same breach in respect of which the other party has successfully claimed damages or specific performance in terms of clause 21.2, the breach shall be deemed to be a material breach if the party fails to remedy the breach

within the 20 (twenty) day notice period given in terms of clause 21.3 and the party shall be entitled to cancel the contract.

Prior to the party evoking any right to terminate this contract in terms of clause 21.5, it shall deliver a further written notice to the defaulting party notifying it of the material breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a further period of 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period).

Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice issued in terms of clause 21.3 the contract shall terminate in accordance with clause 13.

Upon any termination of the contract in terms of clause 21.7, 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.

For purposes of this clause, damages specifically include but are not limited to: -

any amount which the aggrieved party is required to pay in relation to loss or damage suffered by the affected third party; or

the difference between the revenue lost by the aggrieved party and all direct and indirect costs that the aggrieved party would have incurred if the breach did not occur as a result of the defaulting party's failure.

22 VIS MAJOR

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 fortuitous, 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 such party to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.

The party affected by an event, occurrence, circumstance or condition referred to in clause 22.1 shall promptly notify the other party in writing of the event, occurrence, circumstance or condition and the estimated extent and or duration of such party's inability to perform its duties and obligations.

Upon the cessation of the event, occurrence, circumstance or condition referred to in clause 22.1 the party affected thereby shall notify the other party of such cessation.

If, as a result of the event, occurrence, circumstance or condition referred to in clause 22.1, the performance of a party's duties and obligations is only partially affected, such party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition; provided that nothing in this clause shall preclude the operation of the emergency procedure provided for in clause 13.

If an event, occurrence, circumstance or condition referred to in clause 22.1 causes material and unavoidable physical damage or destruction to all or any of the parties infrastructure or materially delays or prevents the performance of any duties and obligations in terms of this contract, or interrupts services and continues for more than 90 (ninety) consecutive days after any notification thereof the affected party may initiate the termination of the contract in accordance with clause 13.

23 DISPUTE RESOLUTION MECHANISMS

Should any difference or questions at any time arise between the parties as to the construction, meaning or effect of this contract or the rights or obligations of the parties hereunder, or should the parties fail to agree upon any matter (hereinafter referred to as "the dispute"), formal intergovernmental dispute may be declared by the aggrieved Party in terms of section 41 of the Intergovernmental Relations Framework of 2005 (Act 13 of 2005), unless an alternative process for resolving a specific type of dispute has been provided for elsewhere in this contract. If a formal intergovernmental dispute is

declared, the procedures in terms of section 42 to 45 (inclusive) of the Intergovernmental Relations Framework shall apply.

The parties irrevocably consent to comply with the provisions of dispute resolution mechanism and neither party shall be entitled to withdraw from or claim at any such proceedings that it is not bound by these provisions or by any ruling or procedure laid down in terms of such provisions.

The parties agree that they shall not commence any litigation procedures in respect of any dispute arising in terms of this contract.

An interdict may be sought or urgent relief obtained from a court of competent jurisdiction only after available dispute resolution mechanism has been exhausted.

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.

All statements or representations made during the dispute resolution process shall be made without prejudice.

The designated officials of the parties shall deal with any dispute between the parties subject thereto that:

In the event of any difference between the parties escalating into a dispute, the parties shall inform the Department of Water and Sanitation for guidance and assistance, immediately prior to any attempts by the parties to settle the dispute.

The Department shall have the right to attend the meeting between the parties and assist with the negotiation for a settlement.

To this effect the parties shall timeously either request the Department to convene the meeting or alternatively inform the Department of the details of the meeting to be convened by the parties.

The said representatives shall endeavour to settle the matter amicably through a process of negotiation.

In the event parties fail to settle the dispute by negotiation within a period of thirty (30) days, any of the parties may refer the dispute for mediation.

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.

The parties may request the Department to assist in the negotiations to appoint a suitable mediator.

Should the parties fail to reach agreement on the choice of the mediator within fourteen (14) working days from the day on which it has become apparent that the matter cannot be settled through negotiation, any of the parties may request the Institute for Mediation and Arbitration of South Africa to appoint a mediator.

The mediator shall in his/ her sole discretion determine the form of representations to be made, provided that in making this determination, the mediator shall consult the disputing parties and may be guided by their common reasonable desire on the form in which the said representations are to be made. All representations by the parties shall be made without prejudice.

The mediator shall within a period of 10 (ten) working days after receipt of the representations of the parties endeavour to facilitate an agreement between them or determine a procedure or framework within which they can negotiate to resolve the dispute or difference.

Any agreement reached during mediation shall be reduced to writing, both parties must sign and they will be bound by such an agreement.

The parties agree that each one of them will pay their own costs for mediation proceedings and that the question of costs will lie at the discretion of the Arbitrator should the dispute remain unresolved through mediation proceedings and/or alternatively arbitration proceedings.

If the dispute is not resolved during mediation, the parties shall comply with arbitration processes.

The arbitration proceedings shall be held at a neutral venue to be decided by an arbitrator, at a convenient location as endorsed by the parties.

Subject thereto that the Department must be informed of all arbitration proceedings and shall have the right to attend such as an observer.

The parties shall be represented by their legal representatives and a maximum of two other representatives of each of the parties to the dispute. This clause relates only to the limitation in respect of the representation of the parties during arbitration and in no way shall be interpreted to limit any of the parties' rights to call witnesses and present evidence substantiating its case to the arbitrator.

The proceedings shall be in terms of the Arbitration Act, 42 of 1965 (as amended) subject to the provisions of clause 23.20 below.

The arbitrator shall be, an independent person agreed to by the parties. Should the parties fail to agree on the arbitrator within 5 (five) working days after having submitted the matter to arbitration, an arbitrator shall be appointed at the request of any party to the dispute by DWS.

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.

The parties irrevocably agree and undertake that any award or order or whatsoever made by the arbitrator shall be final and binding upon them and may at the option of either party be made an order of any division of the High Court of South Africa to which jurisdiction the parties are subject.

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.

24 PREVENTION OF CORRUPT ACTION

For purposes of this clause "corrupt action" means –

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

solicitation, offering, participation, conspiracy and attempt to bring about the circumstances mentioned above.

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

25 CONFIDENTIALITY AND PUBLICITY

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

Neither party may disclose any confidential information of the other party excluding participating organs of state without the prior written approval of the other party or require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party, other than confidential information:

reasonably required by an employee, contractor or consultant of a party to enable that party to exercise its rights or perform its obligations under this contract; or

a party is required by legislation to disclose; or

a party is required to disclose in dispute resolution or court proceedings.

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

immediately give written notice of that fact to the other party; and

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

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

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

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

This clause survives the termination of this contract.

26 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.

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.

27 NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI

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 –

27.1.1 SDM:

Physical : 3 West Street, GROBLERSDAL, 0470
Postal : Private Bag X 8611, GROBLERSDAL, 0470
Tel : (013) 262 7312
Contact person : Mr Mpho Mofokeng

27.1.2 LNW:

Physical : 1 Landros Mare Street, POLOKWANE, 0700
Postal : Private Bag X 9522, POLOKWANE, 0700
Tel : (015) 295 1905
Contact person : Mr PK LEGODI

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

A notice shall be deemed to have been received:

within 14 (fourteen) days after posting, if posted by registered post to the party's address in terms of clause 27.1.1 and 27.1.2;

on delivery, if delivered to a responsible person during normal business hours at the party's physical address in terms of clause 27.1.1 and 27.1.2;

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.

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.

Either party may change its address for purposes of this clause to another address by notice in writing in terms of clause 27.1.2 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.

28 WHOLE AGREEMENT, NO AMENDMENT

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.

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

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

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

29 LEGISLATIVE AND REGULATORY CHANGES

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

30 LIABILITY FOR EXPENSES

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

31 RELATIONSHIP BETWEEN PARTIES

Nothing in this contract creates a relationship of partnership, principal and agent or trustee and beneficiary between SDM and LNW.

32 CONSENT TO JURISDICTION

The parties agree that any legal action or proceeding arising out of any proceedings in terms of arbitration or in respect of any interdict or urgent relief in terms thereof may be brought in the High Court of South Africa at relevant Local Court Division which is accessible to all parties 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.

33 PRESERVATION OF THE POWERS AND DUTIES OF SDM

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

34 SUPREMACY OF THIS CONTRACT

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

35 CONTRACT BINDING ON SUCCESSORS-IN-TITLE

This contract shall be binding on any successor-in-title of SDM or any successor-in-title of LNW.

36 MUTUAL CO-OPERATION AND GOOD FAITH

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

37 GOVERNING LAW

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

38 ANNEXURES

The following annexure form part of this contract –

- Annexure A - Business Plan
- Annexure B - List of off-takes
- Annexure C - Maps
- Annexure D - Water Quality Standards
- Annexure E - Flag Boshielo WTW 12ML/d
- Annexure F - Marble Hall WTW 3ML/d
- Annexure G - Marble Hall WWTW 1.5 ML/d
- Annexure H - Groblersdal WWTW 5ML/d
- Annexure I - Hlogotlou WTW 2,5ML/d
- Annexure J - Nkadimeng WTW 2,5ML/d
- Annexure K - Malekane WTW 10ML/d
- Annexure L - Kutullo Package Plant 0.3ML/D
- Annexure M - Tsakane Package plant 0.1ML/d
- Annexure N - Mahlokoena Package plant 0.1ML/d
- Annexure O - Steelpoort WTW 3 ML/d
- Annexure P - Steelpoort WWTW 0.2ML/d

- Annexure Q - Steelpoort Boreholes 0.75ML/d
- Annexure R - Burgersfort WTW 5ML/d
- Annexure S - Mooihoek WTW 10ML/d
- Annexure T - Ohrigstand Boreholes 0.3 ML/d
- Annexure U - Olifantspoort WTW NS7 6 ML/d

39 OBLIGATIONS AND RESPONSIBILITIES

RESPONSIBILITIES OF BOTH THE WATER SERVICE AUTHORITY (WSA) AS SEKHUKHUNE DISTRICT MUNICIPALITY (SDM) AND WATER SERVICE PROVIDER (WSP) AS LEPELLE NORTHERN WATER (LNW)

1. LEPELLE NORTHERN WATER'S RESPONSIBILITIES

LNW has a responsibility to supply bulk water services to SDM under the following conditions:

- 1.1. LNW as a WSP, operate and maintain the entire Western Highveld Regional Bulk Scheme, including the pump stations belonging to SDM.
- 1.2. Provide a certain quantity of water on a daily basis as per the agreed demand
- 1.3. Provide the required quality of water as per the legislation
- 1.4. Set tariffs for bulk water supply
- 1.5. Notify SDM of any emergency regarding water supply interruptions
- 1.6. Consult with SDM through presentations in terms of tariff setting well in advance
- 1.7. Implement Water Conservation and Water Demand Management on the bulk water system
- 1.8. Submit monthly water quantity and quality reports to SDM
- 1.9. Notify SDM of the water availability in times of drought and actions to be taken
- 1.10. Inform SDM in writing about any refurbishment or repairs to be undertaken

- 1.11. Notify SDM about a breakdown on the water supply system and the time to be taken to fix
- 1.12. Participate actively during the review of the contract
- 1.13. Ensure that there is constant communication with SDM
- 1.14. Comply with the SLA requirements all the time
- 1.15. Calibrate (mechanical meters) or verify (electromagnetic meters) of bulk water meters
- 1.16. Operate valves that controls the flow of water
- 1.17. Develop a business plan for the operation and maintenance of the water systems which comprises all water components and its values, personnel operating the assets, energy, water conservation and water demand management and tariff setting.

2. SEKHUKHUNE DISTRICT MUNICIPALITY'S RESPONSIBILITIES

Sekhukhune District Municipality as a Water Service Authority has a responsibility to ensure that its consumers constantly receives water services as per the legislation.

SDM has a responsibility to pay for water services according the measured quantity supplied

- 2.1. Submit its water demand in writing annually based on the population growth
- 2.2. Monitor the activities, performance and compliance of the LNW in accordance with this contract and take any action as is necessary to ensure performance where necessary;
- 2.3. Facilitate and chair monthly meeting to hold LNW accountable
- 2.4. Receive reports on the water services provide
- 2.5. Notify LNW a year in advance in case of a reduction in water demand
- 2.6. Communicate with its customers and consumers in relation to water supply issues
- 2.7. Implement Water Conservation and Water Demand Management within its reticulation network to ensure water sustainability

2.8. Monitor the quantity and quality of water supplied on a monthly meeting

2.9. Attend to issues of illegal connections by its consumers on the bulk water supply system

2.10. Comply with the SLA requirements all the time

2.11. Input and comment on a business plan for the operation and maintenance of the water system which comprises all water components and its values, personnel operating the assets, energy, water conservation and water demand management, tariff setting.

IN WITNESS WHEREOF, the parties have executed this contract on this

31 DAY OF January 2020 at Groblersdal

WITNESSES:

I.

II.

SDM

IN WITNESS WHEREOF, the parties have executed this contract on this

31 DAY OF January 2020 at Groblersdal

WITNESSES:

I.

II.

LNW