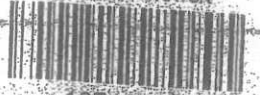


ANNEXURE "B"
13/8/49 (S)

RW & EMM BULK WATER SUPPLY CONTRACT - 2 September 2004

THE ADMINISTRATOR



10710049

BULK WATER SUPPLY CONTRACT

BETWEEN

THE MIDVAAL LOCAL MUNICIPALITY

AND

RAND WATER

[Handwritten signatures and initials]

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SECTION A: INTRODUCTION

1. RECORDAL

Whereas the MUNICIPALITY is responsible for ensuring that all residents within the jurisdictional area of the MUNICIPALITY have access to water services in accordance with the Constitution of the Republic of South Africa Act, Act 108 of 1996, the Local Government: Municipal Structures Act, Act 117 of 1998, the Local Government: Municipal Systems Act, Act 32 of 2000 and the Water Services Act, Act 108 of 1997 and at the effective date is providing water services to the residents and will continue to do.

And whereas, at the effective date, the WATER BOARD has been providing bulk water supply services to the MUNICIPALITY and has the expertise, capacity and infrastructure to continue to provide bulk water supply services to the MUNICIPALITY.

THEREFORE the parties agree that the WATER BOARD be appointed to provide bulk water services to the MUNICIPALITY on the terms and conditions as more fully set out in this contract.

2. INTERPRETATION AND PRELIMINARY

2.1 Unless a contrary intention indicates, words imparting -

2.1.1 the singular include the plural and vice versa;

2.1.2 any one gender include both genders; and

2.1.3 natural persons include created entities (corporate or unincorporated) and the Government.

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

2.2.1 "bulk water supply services" means the provision of potable water by the WATER BOARD to the MUNICIPALITY at identified customer connections;

- 2.2.2 “Department” means the Director-General of the Department of Water Affairs and Forestry ~~or any other official duly authorised by him;~~
- 2.2.3 “capital expenditure programme” means the programme of the WATER BOARD describing all capital expenditure to be incurred or investments to be made by the WATER BOARD in respect of all immovable assets, including but not limited to pipelines, reservoirs and pumping stations;
- 2.2.4 “competent authority” means collectively the Minister, all spheres of Government, any court of competent jurisdiction or any agency, authority, body or standard setting institution, established or appointed in terms of any regulatory provision to regulate and oversee or regulate or oversee, the activities of the MUNICIPALITY or the WATER BOARD pursuant to this contract or if the context is appropriate any one of them;
- 2.2.5 “contract” means this contract and any annexure or annexures hereto, as well as any subsequent amendment, notation or substitution of this contract and annexure or annexures in accordance with this contract;
- 2.2.6 “contract term” means the period defined in clause 5;
- 2.2.7 “CPIX” means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000=100) published from time to time by Statistics SA in Statistical Release PO141.1;
- 2.2.8 “customer connection” means the equipment installed by the WATER BOARD to connect the MUNICIPALITY to the WATER BOARD’s existing infrastructure, namely the connection to the existing WATER BOARD pipeline, the piping from the connection to the meter installation, the meter installation itself (that is, the meter, meter housing and the upstream and down stream isolation valves) and the 1,5 meters of piping downstream of the outer meter

housing, with the length of piping between existing WATER BOARD ~~infrastructure and the meter installation~~ limited to the minimum length necessary to ensure –

- a) the proper functioning of the meter; and
 - b) the accessibility of the meter installation and non-interference with the WATER BOARD's infrastructure or adjacent infrastructure;
- 2.2.9 "daily peak flow" means the maximum flow rate, which if maintained evenly over a day, will not exceed the annual average daily demand, multiplied by the agreed peak day factor;
- 2.2.10 "hourly peak flow" means the maximum flow rate required to meet the demand of end consumers within the municipality's area;
- 2.2.11 "effective date" means the date of last signature of this contract;
- 2.2.12 "meter" means a meter which is used to determine the volume of water provided to the MUNICIPALITY at the customer connection on which bulk water supply services charges payable by the MUNICIPALITY is calculated;
- 2.2.13 "Minister" means the Minister of Water Affairs and Forestry;
- 2.2.14 "municipal customers" means the MUNICIPALITY and all other municipalities and water services providers to whom the WATER BOARD provides bulk water supply services, individually or collectively, as the context may require;
- 2.2.15 "MUNICIPALITY" means Midvaal Local Municipality duly established in terms of section 12 and authorised in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 to exercise executive authority for water and sanitation services;

- 2.2.16 “municipal manager” means the municipal manager as defined in section 81(1)(a) of Local Government: Municipal Structures Act, Act 117 of 1998;
- 2.2.17 “normal growth” means –
- 2.2.17.1 the agreed growth in demand for water in a financial year or a number of financial years; or
- 2.2.17.2 where the growth in demand for water in a financial year or a number of financial years has not been agreed, the estimated growth in demand for water in a financial year or a number of financial years defined by the MUNICIPALITY in its Integrated Development Plan which estimate is based on social and economic development; or
- 2.2.17.3 where the growth in demand for water in a financial year or a number of financial years has not been defined by the MUNICIPALITY in its Integrated Development Plan, the estimated growth based on the best available information in respect of projected social and economic development within the municipality’s area;
- 2.2.18 “parties” means the MUNICIPALITY and the WATER BOARD, individually or collectively, as the context may require;
- 2.2.19 “regulatory provisions” means collectively, the provision of any legislation or any regulation, a notice issued pursuant to such legislation, or a policy directive or notice issued by a competent authority, any or all of which are directly related to the provision of bulk water supply services or the related activities of the MUNICIPALITY or the WATER BOARD, or if the context is appropriate, any one of them;
- 2.2.20 “SABS 241” means the South African Bureau of Standards 241: Specifications for Drinking Water 5th edition, as may be amended

from time to time;

- 2.2.21 "SALGA" means the South African Local Government Association recognised in terms of the Organised Local Government Act, Act 52 of 1999, to represent local government nationally;
- 2.2.22 "WATER BOARD" means Rand Water, a water board deemed to be or established in terms of the Act;
- 2.2.23 "water board infrastructure" means the WATER BOARD's overall bulk water supply services infrastructure and equipment including customer connections;
- 2.2.24 "water services manager" means the most senior manager in the MUNICIPALITY responsible for water supply services in the MUNICIPALITY;
- 2.3 Clause headings in this contract are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms or any clause of this contract.
- 2.4 If any provision in a definition or the recordal is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition or recordal clause, effect shall be given to it as if it were a substantive provision in the operative part of this contract.
- 2.5 When any period of days is prescribed, days shall mean calendar days and the period shall be reckoned exclusively of the first day and inclusively of the last day and shall include any Saturday or Sunday or any public holiday.
- 2.6 Where any term is defined within the context of any particular clause in this contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this contract, notwithstanding that that term has not been defined in this interpretation clause.
- 2.7 Where consent or approval of a party must be obtained or a party is required to

consider or renew something in terms of this contract, unless it is specifically provided for otherwise, it will act reasonably and within a reasonable period.

- 2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.9 Expressions defined in this contract shall bear the same meanings in schedules or annexures to this contract that do not themselves contain their own definitions.
- 2.10 The expiration or termination of this contract shall not affect such of the provisions of this contract as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.11 General words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.

3. OBJECTIVES OF THE CONTRACT

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

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

SECTION B: APPOINTMENT, SCOPE, DURATION AND REVIEW

4. APPOINTMENT AND SCOPE

The effective date of this contract is the date on which the MUNICIPALITY and the WATER BOARD enter into this contract to provide bulk water supply services to the MUNICIPALITY.

5. COMMENCEMENT AND DURATION

5.1 This contract shall commence on the effective date and shall endure for an initial period of 5 (five) calendar years thereafter.

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

5.3 Notwithstanding the duration of the initial contract period, the intention of the parties to foster a long-term relationship necessitated by the natural monopoly of the WATER BOARD in respect of access to bulk water resources and infrastructure is recognised and will inform all future contracts to be negotiated by the parties.

6. REVIEW

6.1 Notwithstanding any other provisions in this contract, this contract shall be reviewable at any time during the initial or extended contract period at the request of the MUNICIPALITY or the WATER BOARD.

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

SECTION C: WATER SUPPLY STANDARDS

7. QUANTITY OF WATER AND CUSTOMER CONNECTIONS

7.1 It is hereby recorded that, on the commencement date, the WATER BOARD provided and shall continue to provide at all times, unless the provisions of

clauses 14 and 41 apply, the quantities and estimated quantities of water for future years at the existing customer connections to the MUNICIPALITY as set out in Annexure A.

- 7.2 The WATER BOARD may only adjust the estimated quantity of water specified in Annexure A with the agreement of the MUNICIPALITY.
- 7.3 If the MUNICIPALITY, at any time, requires the WATER BOARD to provide water in excess of the maximum quantity of water determined or estimated in Annexure A or a new customer connection, the MUNICIPALITY must apply to the WATER BOARD for an increased supply in accordance with clause 15.
- 7.4 The WATER BOARD must notify the MUNICIPALITY, at least 14 (fourteen) days in advance, of any planned reduction in the quantity of water at any customer connection in circumstances other than those provided for in clause 11, the reasons therefore, the actions to be implemented to rectify the reduction and the duration of such a reduction, in accordance with the agreed system operating standards.

8. WATER QUALITY

8.1 Minimum standard

8.1.1 The WATER BOARD, unless the provisions of clause 41 apply, shall provide water that complies with SABS 241, as may be amended from time to time, as follows:

8.1.1.1 Class 1 for physical, organoleptic and chemical requirements as shown in Table 1; and

8.1.1.2 the microbiological requirements as shown in Table 2.

8.1.2 It is specifically agreed, subject to clause 8.2.1, that only deviations from the microbiological requirements as shown in Table 2 of SABS 241 that may pose a health risk to the MUNICIPALITY's consumers will incur penalties in accordance with clause 29. A deviation will only be regarded as constituting a health risk where the parties so agreed and it can reasonably be proven that the source of the



health risk has its origins in water provided by the WATER BOARD.
Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.

8.1.3 The WATER BOARD must inform the MUNICIPALITY, at least 14 (fourteen) days in advance, of any planned deviation in the quality of water at any customer connection in circumstances other than those provided for in clause 11, the reasons therefore, the actions to be implemented to rectify such deviation and the period of such a deviation, in accordance with the agreed system operating standards.

8.2 Microbiological determinants – *protozoan parasites*

8.2.1 It is specifically agreed that, in the event that any of the *protozoan parasites* as shown in table 2 of SABS 241 is detected in a WATER BOARD water quality sample, the WATER BOARD shall take and analyse a confirmation / check test sample. If the *protozoan parasites* are present in the confirmation / check test sample in the concentrations as reflected in SABS 241 the WATER BOARD shall immediately inform the MUNICIPALITY. The WATER BOARD and MUNICIPALITY must agree on the appropriate action to be taken and if an emergency should be declared. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.

8.2.2 On the detection of *protozoan parasites* in a confirmation / check test sample in the concentrations as reflected in SABS 241 the WATER BOARD shall –

8.2.2.1 as soon as reasonably possible take all necessary measures to determine the origin and source of the *protozoan parasites*;

8.2.2.2 as soon as reasonably possible take all necessary measures to isolate the origin and source and prevent the source from contaminating water supplies;

- 8.2.2.3 report to the MUNICIPALITY on the measures taken in respect of clauses 8.2.2.1 and 8.2.2.2.

8.3 Disinfection

- 8.3.1 The parties shall, within 1 (one) year of the effective date, undertake a detailed investigation and agree a detailed action plan as to the measures that may be taken by the parties to facilitate a total chlorine level of between 0,2 and 0,3 mg/l (milligrams per litre) throughout the MUNICIPALITY's network.

8.4 Taste and odour

The WATER BOARD shall on becoming aware of taste or odour problems within its water supply network (including water resources used), such as may be caused by the presence of *Geosmin* in the water supplied, immediately take the necessary reasonable measures to eliminate such problems and inform the MUNICIPALITY of the measures taken. A taste or odour problem shall be deemed to exist when:

- 8.4.1 the WATER BOARD through its normal testing detects a problem; or
- 8.4.2 in the opinion of the MUNICIPALITY, an unusual number of complaints are reported by its end consumers over a period of 7 (seven) consecutive days.

8.5 Particulates

- 8.5.1 The WATER BOARD will endeavour to resolve issues relating to the presence of particulates, in particular bitumen, arising from deterioration of pipe linings. The WATER BOARD is planning the re-lining, and, if necessary, partial replacement, of its bitumen-lined pipelines. This is a long-term process, but the WATER BOARD will prioritise and take further intervention measures in the case of problematic lines. The WATER BOARD shall reimburse the MUNICIPALITY for cost incurred by it resulting from the accumulation of bitumen debris in equipment and appliances provided that the MUNICIPALITY can reasonably demonstrate that such costs are

necessary, reasonable and solely due to the accumulation of bitumen originating within the WATER BOARD's network.

- 8.5.2 The WATER BOARD, on becoming aware of any problems caused by or exacerbated by the presence of particulates, shall immediately take the necessary measures to eliminate such problems and inform the MUNICIPALITY of the measures taken.

8.6 Water quality monitoring

- 8.6.1 The WATER BOARD shall, on a monthly basis, monitor the water quality within its water supply networks using an agreed program and inform the Water Services Manager electronically of the results thereof, by no later than the 15th day of the following month or, in the event that the 15th day is a Saturday, Sunday or any public holiday, the first working day thereafter. A paper copy of the results must be delivered to the MUNICIPALITY's offices by the 21st day of the month.

- 8.6.2 The MUNICIPALITY shall make the results of all water quality tests undertaken by it available to the WATER BOARD as soon as reasonably possible after the results have been obtained.

9. FLOW RATE

9.1 Annual Average Daily Demand

- 9.1.1 The annual average daily demand at each existing customer connection and the projected annual average daily demand are as recorded in Annexure A.
- 9.1.2 The WATER BOARD will every 2 (two) years in August, provide the MUNICIPALITY with a list of all the MUNICIPALITY's customer connections and the annual average daily demand of the last full year of supply at each of the customer connections.
- 9.1.3 THE MUNICIPALITY must within 2 (two) months of receipt of the list referred to in clause 9.1.2 provide the WATER BOARD with projected demands at set intervals, for each existing or planned customer

connection, based on expected normal growth, for the forthcoming 15 (fifteen) financial years.

- 9.1.4 The WATER BOARD may only adjust the normal growth at each customer connection with the agreement of the MUNICIPALITY.
- 9.1.5 In the event that the MUNICIPALITY fails to provide the information required in terms of clause 9.1.3, the WATER BOARD may determine the projected demands for each customer connection, based on expected normal growth, for the forthcoming 15 (fifteen) financial years and shall not be liable for any increased costs (in the form of capital contributions or water services supply charges because of capital costs incurred or committed and operational resources required to operate and maintain under-utilised water board infrastructure) that may be incurred by the MUNICIPALITY due to incorrect estimates.
- 9.1.6 The WATER BOARD shall at all times meet the annual average daily demand projections as increased by normal growth at each customer connection, unless the provisions of clause 14 and 41 apply.
- 9.1.7 The MUNICIPALITY shall notify the WATER BOARD at least 1 (one) year in advance of any anticipated reduction of more than 15% (fifteen per cent) in the projected annual average daily demands at any customer connection that supplies or exceeds 10 (ten) mega litres (Mℓ) per day due to water demand management initiatives or any other similar circumstances.
- 9.1.8 The MUNICIPALITY shall further notify the WATER BOARD and all other municipal customers at least 1 (one) year in advance of any anticipated reduction of more than 15% (fifteen per cent) in the MUNICIPALITY's total projected annual average daily demands to be met by the WATER BOARD due to water demand management initiatives or any other similar circumstances. The WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal

customers of the projected financial implications of such a reduction.

9.1.9 The MUNICIPALITY must, on receipt of a notice referred to in clause 9.1.8, initiate the process set out in clause 44.

9.1.10 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 9.1.8 or fails to initiate the process referred to in clause 9.1.9 the MUNICIPALITY shall remain liable for all costs associated with its projected annual average daily demand prior to any reduction, irrespective of whether it uses lower quantities of water or not.

9.2 Daily and Hourly Peak Flows

9.2.1 Notwithstanding the provisions of clause 9.1, the WATER BOARD shall at all times meet the MUNICIPALITY's agreed estimated daily peak flows and must take all reasonable measures to ensure that this demand is met at all times. Where the parties fail to reach agreement on the estimated daily peak flows or the method of calculating the estimated daily peak flows either party may refer the matter for resolution in terms of section O of this contract.

9.2.2 The WATER BOARD shall at all times from the effective date until completion of the assessment in terms of clause 9.2.4, meet the MUNICIPALITY's estimated daily peak flows as calculated in accordance with the following formula where Q equals mega litres per day (Mℓ) –

$$\text{Peak day factor} = 1,25 + \frac{1}{0,21 \times Q^2 + 1}$$

9.2.3 On completion of the assessment in terms of clause 9.2.4 the peak flows to be met by the WATER BOARD shall be agreed by the parties. Where the parties fail to reach agreement on the estimated daily peak flows or the method of calculating the estimated daily peak flows either party may refer the matter for resolution in terms of section O of this contract.

- 9.2.4 The WATER BOARD shall, within 1 (one) year of the effective date, undertake a detailed assessment of its ability to meet the MUNICIPALITY's daily peak flows and agree with the MUNICIPALITY a detailed action plan, with identified priorities, for meeting the MUNICIPALITY's daily peak flow demand, where it was unable to do so on the effective date. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.
- 9.2.5 On completion of the assessment in terms of clause 9.2.4 and when the WATER BOARD can demonstrate to the satisfaction of the MUNICIPALITY that it is able to meet the MUNICIPALITY's agreed daily peak flow demand, the parties will agree on a suitable management framework, that may include surcharges or the installation of flow limiting devices, to limit or prevent the MUNICIPALITY from exceeding the agreed daily peak flow demand. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.
- 9.2.6 The MUNICIPALITY shall be responsible for meeting its hourly peak flow demands, except that where storage in respect of which the MUNICIPALITY had made a capital contribution as recorded in Annexure B, is provided by the WATER BOARD on the effective date the WATER BOARD shall be responsible for meeting the MUNICIPALITY's hourly peak flow demands.

10. WATER PRESSURE

- 10.1 The WATER BOARD shall at all times maintain pressures between the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand.
- 10.2 The WATER BOARD shall, within 1 (one) year of the effective date, undertake a detailed assessment of the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand and agree with the

MUNICIPALITY a detailed action plan, with identified priorities, for maintaining the pressure, where it was ~~unable to do so on the effective date~~. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.

- 10.3 On completion of the assessment in terms of clause 10.3, the minimum and maximum supply pressure per customer connection under normal operating conditions based on existing and projected annual average daily demand shall be agreed by the parties. Where the parties fail to reach agreement on the estimated daily peak flows or the method of calculating the estimated daily peak flows either party may refer the matter for resolution in terms of section O of this contract.
- 10.4 The WATER BOARD must inform the MUNICIPALITY timeously of any planned reduction or increase in water pressure at any customer connection, the reasons therefore, and the actions implemented to rectify such reduction or increase and the period thereof, in accordance with the system operating standards.

SECTION D: SYSTEM OPERATING STANDARDS

11. NORMAL MAINTENANCE AND REPAIRS

11.1 Interruptions in Supply

- 11.1.1 The WATER BOARD may interrupt the MUNICIPALITY's supply for the purpose of renewing, testing, examining, repairing, maintaining or rehabilitating the WATER BOARD's infrastructure. The WATER BOARD shall endeavour to keep interruptions to a minimum.
- 11.1.2 The WATER BOARD shall give 21 (twenty-one) days written notification of its intention to interrupt a supply and the estimated duration of such an interruption. The WATER BOARD may proceed with a planned interruption unless the MUNICIPALITY indicates that the interruption may not take place. Where the MUNICIPALITY indicates that an interruption may not take place, it must propose alternative dates for such an interruption.

11.2 Failures and Leaks

11.2.1 The WATER BOARD shall repair unexpected failures and leaks in its infrastructure causing a deviation in the agreed quantity, quality, flow rate or pressure within the following times –

Pipe diameters	Time to repair
Up to 1 000 mm	within 12 hours
Larger than 1 000 to 1 800 mm	within 15 hours
Larger than 1 800 to 2 100 mm	within 18 hours
Larger than 2 100 mm	within 24 hours

11.2.2 If it becomes clear that it will not be possible to adhere to the times specified in clause 11.2.1 the WATER BOARD shall immediately notify the MUNICIPALITY. It is specifically recorded that all repairs that exceeds 24 (twenty-four) hours will be treated as an emergency by both parties and that the provisions of section 13 will therefore apply.

12. METERS

12.1 Maintenance of meters

12.1.1 The WATER BOARD must develop and agree with the MUNICIPALITY on a meter testing and calibration program for all meters. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.

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



12.2 Accuracy of meters

- 12.2.1 The WATER BOARD shall do all that it can reasonably do ensure that all its meters are at all times correctly sized and that they operate under optimum conditions.
- 12.2.2 The MUNICIPALITY reserves the right to introduce check meters (owned by the MUNICIPALITY) as close to the WATER BOARD's meters as technically feasible in order to check the accuracy of the WATER BOARD's meters.
- 12.2.3 The WATER BOARD and MUNICIPALITY agree that the maximum levels of acceptable errors on meters to be installed are as set out in the table below. The maximum levels of acceptable errors must be guaranteed by the supplier prior to installation.

Mechanical meters	5 % for minimum flows (Q min to Q t) and 2% for flows between transitional and maximum flows (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 0.5meters 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 meters per second

- 12.2.4. The WATER BOARD and MUNICIPALITY agree that the maximum levels of acceptable errors on installed meters are 3% (three percent).

12.3 Meter testing

Mechanical meters

12.3.1 The WATER BOARD will test all mechanical meters as part of a planned change out programme. The change out interval for all meter sizes will be 5 years.

12.3.2 In terms of the change out programme, the water board will submit the following to the MUNICIPALITY:

12.3.2.1 at the start of each financial year, a list of the meters scheduled for change out during each month of that year;

12.3.2.2 on a monthly basis, the results of each meter test undertaken during the proceeding month, together with the location from which each meter was removed; and

12.3.2.3 confirmation of the test or calibration results for each re-installed meter.

12.3.3 Where any meter tested is found to be operating outside the allowable accuracy tolerance, the principles of clause 12.7 shall be applied in determining any adjustment to calculated consumption and billing.

12.3.4 Within 3 (three) months of the effective date -

12.3.4.1 the WATER BOARD shall submit a plan, programme and timeframe for achieving accreditation of its meter testing facilities with the South African National Accreditation System; and

12.3.4.2 agree with the MUNICIPALITY, a protocol for verifying the accuracy and repeatability of results obtained from its current meter testing facilities, pending accreditation. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.

12.3.5 In the event that accreditation is not granted to the WATER BOARD within the timeframe provided in terms of clause 12.3.4.1 the WATER BOARD must submit all meters to be tested to an accredited laboratory for testing.

Magnetic flow meters

12.3.6 The WATER BOARD shall carry out in-situ testing of each magnetic flow meter on a bi-monthly basis. Testing shall make use of best available engineering practice, with diagnostic verification of instrumentation as a minimum, which practice must be agreed with the municipality. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract. All test results will be submitted to the MUNICIPALITY on a monthly basis.

12.4 Malfunctioning meters

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

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

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

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

12.5 Meter reading

- 12.5.1 The WATER BOARD must read all meters monthly, within 7 (seven) days of the end of the preceding month.
- 12.5.2 The WATER BOARD must provide the MUNICIPALITY with a meter-reading schedule and the MUNICIPALITY may be present at any meter reading.

12.6 Queries

- 12.6.1 The MUNICIPALITY may query the consumption reflected on an account. Where a query is not lodged with the WATER BOARD prior to the payment date of an account in accordance with clause 26.5, the MUNICIPALITY must query the consumption reflected on the account within 60 (sixty) days of receiving the account, subject to clause 26.6.
- 12.6.2 The WATER BOARD must investigate the query and, at the request of the MUNICIPALITY, test the relevant meter or meters within 14 (fourteen) days of a query having been made.
- 12.6.3 The methods of testing must be agreed by the WATER BOARD and the MUNICIPALITY. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.
- 12.6.4 If a meter is tested and found to be registering outside the agreed accuracy levels, the WATER BOARD shall be liable for the cost of testing the meter and shall repair or replace the meter at its own cost.
- 12.6.5 If a meter is tested and found to be registering within the agreed accuracy levels, the MUNICIPALITY shall be liable for the cost of testing the meter.

12.7 Adjustment and calculation of consumption where meter malfunctions

12.7.1 ~~The quantity of water consumed and the bulk water supply charges~~
The quantity of water consumed and the bulk water supply charges charged during a period that the meter registered incorrectly shall be adjusted in accordance with the degree of error found, provided that where a check meter has been installed by the MUNICIPALITY the reading of the MUNICIPALITY's meter shall be used to determine the quantity of water consumed.

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

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

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

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

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

12.8 New meters to be installed

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

13. EMERGENCIES

13.1 An incident, event or occurrence will be considered an emergency when there is, in the opinion of either the MUNICIPALITY or the WATER BOARD, a substantial variation from -

13.1.1 the agreed quantity, flow rate and pressure for a period longer than 24 (twenty four) hours;

13.1.2 the agreed quality and such variation constitutes an agreed health risk; or

13.1.3 the agreed repair times referred to in clauses 11.1.2 and 11.2.1 exceeds 24 (twenty-four) hours.

13.2 Notification

13.2.1 The WATER BOARD or MUNICIPALITY shall within 1 (one) hour of becoming aware of an emergency or possible emergency immediately notify the persons identified in Annexure C.

13.2.2 On notification the parties identified in Annexure C must -

13.2.2.1 confirm that the incident, event or occurrence is an emergency;

13.2.2.2 agree on a process for addressing the emergency; and

13.2.2.3 nominate the persons from each party that will be responsible for addressing the emergency.

13.2.3 The parties agree to immediately inform the other party of any changes to the information reflected in Annexure C.

13.3 Communication

13.3.1 All communications in respect of an emergency shall be approved by both parties and jointly undertaken.

13.4 Resources

13.4.1 The parties agree to make the necessary resources for addressing the emergency available.

13.4.2 Each party must ensure that maps detailing its infrastructure and area are available at all times.

13.5 Debriefing

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

13.6 Alternative water supplies

Notwithstanding the provisions of clause 13.2.2, the WATER BOARD must in the event of an emergency resulting from an incident, event or occurrence other than provided for in clause 41, provide an alternative basic water supply service at the existing customer connections, where at all possible, or be liable for all reasonable costs incurred by the MUNICIPALITY in securing an alternative water supply. The parties shall agree the quantity of water required to provide an alternative basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.

13.6 Emergencies affecting more than one municipal customer

Where an emergency arises that affects more than one municipal customer the WATER BOARD must immediately call a meeting with all affected municipal customers to address the emergency. The procedures as set out in this clause shall *mutatis mutandis* apply to such an emergency, in as far as reasonable.

14. DROUGHTS

14.1 For the purposes of this clause a drought is defined as any event, series of events or changes in water allocation which impact or impacts on the availability of raw water to the WATER BOARD and consequently on the agreed quantity of water to be provided to the MUNICIPALITY in terms of this contract.

- 14.2 The WATER BOARD is responsible for obtaining all information required to monitor and forecast all factors influencing the quantity of water available. The MUNICIPALITY agrees to assist the WATER BOARD, where possible, in obtaining information on water quantity.
- 14.3 The WATER BOARD must annually, within 2 (two) months of the commencement of its financial year, provide the MUNICIPALITY with a detailed report on the security of supply to the MUNICIPALITY. The report must reflect availability concerns identified by the WATER BOARD; indicate which measures will be implemented by the WATER BOARD to address or alleviate concerns and make recommendations as to actions that may be taken by the MUNICIPALITY to address or alleviate concerns.
- 14.4 The WATER BOARD must issue a written drought warning to the MUNICIPALITY within 7 (seven) days of it being notified by the Department that it will be implementing water restrictions. The WATER BOARD must withdraw a drought warning issued within 7 (seven) days of the Department lifting water restrictions.
- 14.5 The WATER BOARD shall convene a forum with all affected municipalities within 1 (one) month after a drought warning is issued.

SECTION E: NEW OR INCREASED WATER SUPPLY REQUIREMENTS

15. APPLICATION

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

MUNICIPALITY an installation charge calculated in terms of clause 16, and a capital contribution, if applicable.

- 15.4 The WATER BOARD and the MUNICIPALITY shall agree on the number and position of customer connections on the existing water board infrastructure from which the new or increased water supply requirements will be supplied. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.
- 15.5 The WATER BOARD shall use the estimated quantity of water in the planning and design of the water board infrastructure.
16. INSTALLATION OF CUSTOMER CONNECTION AND RELATED CHARGES
- 16.1 The WATER BOARD shall be responsible for the supply and installation of equipment necessary for the agreed customer connection or connections.
- 16.2 The MUNICIPALITY shall pay the WATER BOARD an installation charge for the customer connection or connections and a capital contribution charge, where applicable.
- 16.3 Prior to the supply or installation of the consumer connection or connections, the WATER BOARD must –
- 16.3.1 provide the MUNICIPALITY with the specifications of the equipment to be installed;
 - 16.3.2 provide the MUNICIPALITY with a fixed price quote for the equipment and the installation thereof; and
 - 16.3.3 demonstrate to the MUNICIPALITY that the quote represents a reasonable cost for the equipment and installation.
- 16.4 In the event that the MUNICIPALITY considers the quote referred to in clause 16.3.2 unreasonable the parties must agree on a reasonable cost and revised specification. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.

- 16.5 The WATER BOARD shall install the customer connection or connections within a period agreed to between the parties. Where the parties fail to reach an agreement either party may refer the matter for resolution in terms of section O of this contract.

17. OWNERSHIP OF CUSTOMER CONNECTIONS

- 17.1 The ownership of the customer connection or connections vest in the WATER BOARD and the WATER BOARD is responsible for all maintenance, rehabilitation or modification associated with the equipment and is responsible for insuring such equipment against loss or damage.
- 17.2 Apart from the downstream isolating valve, the MUNICIPALITY may not operate or interfere with the customer connection. Nothing in this clause may be construed as limiting the MUNICIPALITY's access to the customer connection for meter-reading purposes.
- 17.3 The MUNICIPALITY must inform the WATER BOARD in the event that it closes the downstream isolating valve for any reason.

SECTION F: COMMUNICATION AND COORDINATION

18. COMMUNICATION

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

19. COMMUNICATION WITH THE MUNICIPALITY'S END CONSUMERS

- 19.1 The WATER BOARD commits to only communicate with the MUNICIPALITY's end consumers in a manner that will not in any way create doubt or uncertainty in the minds of the MUNICIPALITY's consumers as to the organisation mandated to provide water services to them. The WATER BOARD, where appropriate, shall indicate its role as the bulk water supply services provider in communications to the MUNICIPALITY's end consumers.

19.2 Where the WATER BOARD, in the opinion of the MUNICIPALITY communicates with the MUNICIPALITY's end consumers in a manner other than recorded in clause 19.2, the MUNICIPALITY may request the WATER BOARD to take all reasonable measures to rectify such communications and clarify any doubt or uncertainty that may have been created in the minds of the MUNICIPALITY's end consumers.

19.3 The WATER BOARD shall, where it agrees with the MUNICIPALITY's opinion -

19.3.1 as soon as reasonably possible take all reasonable measures referred to in clause 19.2; and

19.3.2 report to the MUNICIPALITY on the measures taken in respect of clauses 19.3.1.

19.4 In the event that the WATER BOARD disagrees with the opinion of the MUNICIPALITY, the WATER BOARD must within 3 (three) days of receiving a request in terms of clause 19.2 notify the MUNICIPALITY that it disagrees with the opinion. The MUNICIPALITY, on receipt of the notification, may refer the matter for resolution in terms of section O of this contract.

20. COORDINATION

20.1 The parties shall, at least, meet on a quarterly basis to discuss all matters relating to or affecting this contract, provided that in respect of water quality matters the parties shall meet on a monthly basis.

20.2 The WATER BOARD shall be responsible for calling the first meetings and schedules of future meetings will be agreed at the first meetings.

SECTION G: INFORMATION AND REPORTING

21. ACCESS TO INFORMATION REQUESTED

21.1 The parties shall timeously provide each other with all information in whatever form reasonably required for compliance or monitoring of compliance with obligations in terms of this contract.

21.2 All information must be requested in writing and must be provided within 1

(one) month of the date of a request, unless another period has been set in terms of this contract or agreed to by the parties, in writing. Where the parties need to agree on a period within which information must be provided, both parties must act reasonably and agree on a reasonable period. Where the parties cannot agree on a period, the period for providing such information will be 1 (one) month.

22. FINANCIAL STATEMENTS AND ANNUAL REPORTS

- 22.1 The WATER BOARD must comply with the Water Services Act, Act 108 of 1997 and Public Finance Management Act, Act 1 of 1999 in respect of audited financial statements and annual reporting.
- 22.2 The WATER BOARD must submit a copy of its audited financial reports for each financial year to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act. The reports must comply with all regulatory provisions and include complete audited financial statements and the auditor's report.
- 22.3 The annual report of the WATER BOARD prepared in accordance with the regulatory provisions referred to in clause 22.1 must provide details of any penalties incurred by the WATER BOARD in terms of clause 29 and a copy thereof must be submitted to the MUNICIPALITY on submission thereof to the Minister in accordance with the Water Services Act.

SECTION H: BULK WATER SUPPLY CHARGES AND PAYMENT

23. PERMISSIBLE CHARGES

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

- 23.1.1 volume based charges in respect of water consumed;
- 23.1.2 installation charges for new customer connections determined in accordance with clause 16; and

- 23.1.3 capital contribution charges where a new or increased water supply requires capital expenditure as set out in clause 24.

24. CAPITAL CONTRIBUTION CHARGES

- 24.1 The parties acknowledge that this clause has been identified as a non-negotiable clause by SALGA and the South African Association of Water Utilities; the latter being the organisation representing water boards collectively. The WATER BOARD has indicated that the implementation of this clause may not be in the collective interest of the MUNICIPALITY and the other municipal customers of the WATER BOARD and requested an opportunity to approach SALGA and the South African Association of Water Utilities to request the amendment of this clause. The parties therefore agree to defer the implementation of this clause for a period of 6 (six) months from the effective date to afford the WATER BOARD the opportunity to approach SALGA and the Association of Water Utilities. In the event that the WATER BOARD fails to approach SALGA and the Association of Water Utilities or to affect amendments to the clause, within the 6 (six) month period, the clause will be implemented by the parties on the termination of the said period. In the event that the WATER BOARD succeeds in affecting amendments to the clause, the parties will amend the provisions of this clause to give effect to the amendments, in accordance with clause 54.
- 24.2 The WATER BOARD must charge a new or existing customer, on application for a new or increased water supply, a capital contribution for all equipment required to provide the customer's required quantity, quality, pressure and flow rate of water, which is not part of the customer connection.
- 24.3 A capital contribution shall constitute the full cost of capital associated with equipment and the installation thereof, any required alteration of the WATER BOARD's infrastructure at the time of the application and the costs associated with the operational resources that will be required to operate and maintain the equipment.
- 24.4 Where any alteration or alteration to the WATER BOARD's existing infrastructure will serve only one of the WATER BOARD's customers directly, the full capital costs associated therewith shall be recovered from those customers.

- 24.5 Where any alteration or alteration to the WATER BOARD's existing infrastructure will serve more than one but not all the WATER BOARD's customers directly, the full capital costs associated therewith shall be proportionately recovered from those customers.
- 24.6 Where any alteration or alterations to the WATER BOARD's existing infrastructure will serve all the WATER BOARD's existing customers at the time of the alteration/s the full capital costs associated therewith shall be for the WATER BOARD's own cost and must be recovered as a fixed fee payable by all customers as part of the water supply services charges.
- 24.7 Where the WATER BOARD is of the opinion that the sustainability and viability of a municipal customer in respect of providing water services as defined in the Water Services Act will be negatively affected by the implementation of this clause, it may charge a municipal customer a capital contribution less than that stated in clause 24.3, provided that the WATER BOARD is able to motivate and demonstrate how the sustainability and viability of the relevant municipality will be affected and all municipal customers have agreed to the capital contribution to be charged in these circumstances.
- 24.8 The WATER BOARD must notify the MUNICIPALITY and its other municipal customers of its intention to charge a municipal customer a capital contribution less than that stated in clause 24.32.
- 24.9 The MUNICIPALITY must on receipt of a notice referred to in clause 24.8 initiate the process set out in clause 44.
- 24.10 Capital contribution charges may be recovered by way of –
- 24.10.1 a once-off payment;
 - 24.10.2 an availability charge;
 - 24.10.3 a minimum quantity to be purchased;
 - 24.10.4 a differential tariff payable by the WATER BOARD's customers benefiting from the capital expenditure;

- 24.10.5 a uniform tariff payable by all the WATER BOARD's customers; or
- 24.10.6 any other method as ~~may be agreed to by the parties~~ because of their specific circumstances, provided that such a method does not detract from the WATER BOARD's obligation to impose and the MUNICIPALITY's obligation to pay capital contribution charges in accordance with clause 24.3.
25. PROCEDURE FOR SETTING OF BULK WATER SUPPLY SERVICES CHARGES AND ADOPTION OF CAPITAL EXPENDITURE PROGRAMME
- 25.1 The WATER BOARD must annually, before or on 31 January of each year, submit its proposed bulk water supply services charges and capital expenditure programme for the forthcoming year to its municipal customers for acceptance, together with –
- 25.1.1 A five-year projection for bulk water supply services charges;
- 25.1.2 A detailed cost breakdown of the proposed charges, including all variable and fixed costs;
- 25.1.3 A clear indication as to how the costs associated with other activities as defined in the Water Services Act, Act 108 of 1997, are dealt with by the WATER BOARD; and
- 25.1.4 a five-year capital expenditure programme specifying –
- (a) the manner in which the demand projections of the municipal customers informed the programme;
 - (b) all proposed capital projects relating to immovable assets;
 - (c) the costs associated with operational resources that will be required to operate and maintain the immovable assets on completion of the construction thereof; and
 - (d) the manner in which each proposed capital project will be funded.

25.2 The MUNICIPALITY must take all reasonable actions to ensure that all municipal customers, within 14 (fourteen) days after submission to it in terms of clause 25.1, notify the WATER BOARD if they accept or dispute the proposed charges and capital expenditure programme. Where the proposed charges and capital programme is disputed the MUNICIPALITY must take all reasonable actions to ensure that reasons are provided. Where all the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before or on 30 April for implementation on 1 July of the forthcoming financial year.

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

25.4 Where all municipal customers dispute the proposed charges and capital programme, the WATER BOARD must within 7 (seven) days after the expiry of the 14 (fourteen) day period referred to in clause 25.2 notify each municipal customer accordingly and simultaneously –

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

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

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

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

25.6 The MUNICIPALITY must take all reasonable actions to ensure that the municipal customers, within 14 (fourteen) days of receiving notice in terms of clause 25.5, discuss the proposed charges and capital expenditure programme amongst each other, agree to accept or dispute the proposed charges and capital expenditure programme and notify the WATER BOARD accordingly. Where the municipal customers fail to inform the WATER BOARD of their acceptance or dispute within the specified period, the WATER BOARD may set the charges and capital expenditure programme before or on 30 April for implementation on 1 July of the forthcoming financial year.

25.7 Where all the municipal customers agree to dispute the proposed charges and capital expenditure programme the WATER BOARD must within 7 (seven) days of receiving such notification –

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

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

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

25.8 Where the municipal customers cannot agree amongst each other to accept or dispute the proposed charges and capital programme, the MUNICIPALITY must, within 3 (three) days of the expiry of the 7 (seven) day period, refer the matter to SALGA for mediation and must inform the WATER BOARD of such referral.

25.9 Where the matter is referred to SALGA for mediation, SALGA must request the other municipal customers to participate in the mediation.

25.10 Where the matter is referred to SALGA for mediation, SALGA must inform the WATER BOARD, within 14 (fourteen) days of the matter being referred to it, if all the municipal customers accept or dispute the proposed charges and capital programme. Where SALGA fails to inform the WATER BOARD of the municipal customers' acceptance or dispute within 30 (thirty) days of notice by

the WATER BOARD in terms of clause 25.2, the WATER BOARD may set the charges and capital expenditure programme before or on 30 April for implementation on 1 July of the forthcoming financial year.

25.11 Where all the municipal customers accept the proposed charges and capital programme, the WATER BOARD may set the charges and capital expenditure programme before or on the 30th of April for implementation on the 1st of July of the forthcoming financial year.

25.12 Where all the municipal customers agree to dispute the proposed charges and capital expenditure programme the WATER BOARD must within 3 (three) days of receiving such notification -

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

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

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

25.13 Where the WATER BOARD refers the matter to the Department for mediation, the Department must, within 14 (fourteen) days of the matter being referred to it, take all reasonable measures to resolve the dispute.

25.14 Where the matter was referred to the Department for mediation, the Department must request all municipal customers, to participate in the mediation.

25.15 Where the Department fails to resolve the dispute within the 14 (fourteen) day period or before 30 April of the year preceding the forthcoming financial year, whichever is the latest, the WATER BOARD may increase the most recent charges set by the WATER BOARD prior to the effective date of the contract in respect of the first financial year of the WATER BOARD following the effective date or the most recent charges accepted by the municipal customers in terms of this clause with a percentage agreed by it and the municipal customers,

which percentage may not exceed CPIX, pending the resolution of the dispute by the Department. Where the WATER BOARD and municipal customers fail to reach agreement on the percentage increase the WATER BOARD may increase the charges by CPIX.

- 25.16 Where the Department fails to resolve the dispute within a further 14 (fourteen) days the WATER BOARD or the MUNICIPALITY must refer the matter to the Minister of Finance for mediation in accordance with any applicable intergovernmental relations legislation or legislation enacted to give effect to section 41(2) of the Constitution of the Republic of South Africa Act, Act 108 of 1996.
- 25.17 Where a referral to mediation by any party in terms of this clause will result in the water board not being able to submit its tariffs to the Department of Water Affairs and Forestry for tabling in Parliament before or on 15 March of each year in accordance with the Municipal Finance Management Act, both parties, SALGA and DWAF must collectively request the Minister of Finance to approve that the tariff that will be set by the water board on completion of the mediation may take effect on 1 July of that year, notwithstanding the fact that the tariff to be set will only be tabled in Parliament after 15 March of that year.
- 25.18 Where a dispute in respect of tariffs is resolved after 1 July of any financial year and the tariff that may be set by the WATER BOARD exceeds the percentage agreed in terms of clause 25.15 or CPIX the WATER BOARD may apply the tariff retrospectively from 1 July of that financial year.
- 25.19 The capital expenditure programme may at any time be amended by the WATER BOARD after acceptance thereof by the MUNICIPALITY and other municipal customers in accordance with the process set out in clauses 25.2 to 25.12 and 25.14, has been secured.
- 25.20 The provisions of this clause shall apply in full until such time as legislation regulating the approval of tariffs and capital expenditure programmes by National Government, including legislation that gives effect to the national water services regulatory function as reflected in the Strategic Framework for Water Services as adopted by the Cabinet in September 2003, is promulgated. On promulgation of such legislation, the provisions of this clause shall apply to

the extent that this clause is not inconsistent with such legislation.

26. ACCOUNTS FOR PAYMENT OF BULK WATER SUPPLY SERVICES CHARGES

- 26.1 The WATER BOARD must issue accounts to the MUNICIPALITY at least 30 (thirty) days prior to the last date for payment specified in such account and is payable within 30 (thirty) days of the receipt of the account. Accounts must be paid by the method agreed between the parties. Where the parties cannot reach agreement, accounts must be paid by electronic transfer to the WATER BOARD's bank account.
- 26.2 Interest may be levied on arrears at the prevailing prime interest rate.
- 26.3 Accounts will reflect at least –
- 26.3.1 the volume of bulk water supply services provided by the WATER BOARD at each customer connection;
 - 26.3.2 the period addressed in the account;
 - 26.3.3 the applicable charges;
 - 26.3.4 the amount due (excluding value added tax payable);
 - 26.3.5 value added tax;
 - 26.3.6 the arrears, if any;
 - 26.3.7 the interest payable on arrears, if any;
 - 26.3.8 the final date for payment; and
 - 26.3.9 any other information as may be required by law.
- 26.4 The MUNICIPALITY may query the accuracy of an amount due and payable or an amount paid for bulk water supply services rendered.
- 26.5 Where a query is lodged with the WATER BOARD at least 7 (seven) days prior to the payment date of an account and the query is not settled prior to such date,

only fifty percent (50%) of the queried amount (the amount of the invoice queried by the MUNICIPALITY) is payable on the payment date.

- 26.6 Where a query is not lodged with the WATER BOARD prior to the payment date of an account the full amount of the account is payable on the payment date, pending the settlement of the query.
- 26.5 Queries relating to consumption will be settled in accordance with the provisions of clause 12.6. All other queries will be settled by applying the dispute resolution mechanisms provided for in Section O.
- 26.6 On settlement of a query any amount paid in excess of what was due and payable as per the outcome of a query must be refunded to the MUNICIPALITY together with interest calculated at the same rate imposed by the WATER BOARD on arrears and any amount outstanding in respect of what is due and payable as per the outcome of a query must be paid to the WATER BOARD together with interest imposed by the WATER BOARD on arrears.

27. SPECIAL PAYMENT ARRANGEMENTS

The MUNICIPALITY and the WATER BOARD may agree to the settlement of the MUNICIPALITY's account in instalments where the MUNICIPALITY is not able to settle an account in full on the due date.

SECTION I: PERFORMANCE MANAGEMENT

28. KEY PERFORMANCE AREAS

- 28.1 Each obligation of the WATER BOARD in terms of this contract represents a key performance area of the WATER BOARD for the duration of the contract.
- 28.2 The performance of the WATER BOARD shall be monitored and measured by the MUNICIPALITY.
- 28.3 The bulk water supply services provided by the WATER BOARD shall be of such a standard to ensure its affordability, continuity, regularity, quality and sustainability, and the basic allocation of potable water by the MUNICIPALITY to its end consumers at all times.

29. FAILURE OF THE WATER BOARD TO MEET OBLIGATIONS

29.1 The parties agree that the WATER BOARD should be incentivised to achieve the key performance areas.

29.2 Token Penalties

In the event that the WATER BOARD -

29.2.1 fails to meet any of its obligation in terms of this contract; or

29.2.2 fails to notify, inform or submit to the MUNICIPALITY such matters within the specified time periods as the WATER BOARD is obliged to do in terms of this contract; or

29.2.3 fails to implement any actions or exceeds the duration for the completion of actions the WATER BOARD undertook in terms of any agreement, notice or submission in terms of this contract;

the MUNICIPALITY may, after complying with clauses 29.4, deduct an amount of R 500,00 (five hundred Rand) from the account payable for water supply services provided by the WATER BOARD, in the month within which such failure occurred or the month following such failure.

29.3 Substantive Penalties

29.3.1 In the event that the WATER BOARD -

29.3.1.1 fails to comply with any operational obligation in terms of this contract for which a deduction was made in accordance with clause 29.2 within a period of 12 (twelve) months preceding the failure, and the failure may:

29.3.1.1.1 notwithstanding the provisions of clause 36, result in any claim against the MUNICIPALITY for losses, damages, costs, or expenses, or any charges of whatever nature by an end consumer of the MUNICIPALITY; or

29.3.1.1.2 impact on the health of the MUNICIPALITY's end
~~consumers or their access to water supply~~
services; or

29.3.1.2 fails to comply timeously with its obligations in terms of
clause 25.1;

the MUNICIPALITY may, after compliance with clause 29.4 and failure by
the Municipal Manager of the MUNICIPALITY and the Chief Executive of
the WATER BOARD to settle the dispute through negotiation in
accordance with clause 46, where the WATER BOARD indicated that it
disputes the penalty, and subject to clause 29.3.2:

- (i) in the event of a failure in terms of clause 29.3.1.1, deduct
2% (two percent) of the total amount due in respect of the
account payable for water supply services provided by the
WATER BOARD, in the month within which such failure
occurred or the month following such failure; or
- (ii) in the event of a failure in terms of clause 29.3.1.2, deduct
2% (two percent) of the total amount due in respect of the
account payable for water supply services provided by the
WATER BOARD, in each month during which the failure
continues; and
- (iii) publish and make known the WATER BOARD's non-
compliance in accordance with a joint statement issued by
both parties setting out the events that lead to the penalty
being imposed and, where the WATER BOARD disputes the
actions of the MUNICIPALITY, the different positions of the
parties in respect of the penalty imposed. Were the parties
cannot agree on the joint statement to be issued, the
MUNICIPALITY may issue a statement in respect of the penalty
imposed, provided that where the WATER BOARD disputes the
actions of the MUNICIPALITY, the MUNICIPALITY must indicate
this in the statement.

29.3.2 Where a MUNICIPALITY has failed to pay an account on time or in full on ~~the due date in~~ accordance with clause 26, twice within a period of 12 (twelve) months preceding the event that lead to a penalty being imposed, the MUNICIPALITY must pay the amount of the penalty into a trust account held by a reputable bank or financial institution of the MUNICIPALITY's choice. The MUNICIPALITY must on payment of the penalty amount into the trust account provide proof thereof to the WATER BOARD. In the event that the matter is referred to mediation or arbitration in terms of section O of this contract, and:

29.3.2.1 the dispute is settled in favour of the MUNICIPALITY it may withdraw the amount from the trust account and apply it in any manner it deems appropriate;

29.2.3.2 the dispute is settled in favour of the WATER BOARD the MUNICIPALITY must, within 3 (three) days of the dispute being settled, instruct the bank or financial institution with whom the account is held to transfer the penalty amount to the WATER BOARD.

29.4 Process

29.4.1 The MUNICIPALITY must notify the WATER BOARD of any proposed deduction at least 14 (fourteen) days in advance of such a deduction being made and must grant the WATER BOARD an opportunity to:

29.4.1.1 demonstrate to the reasonable satisfaction of the MUNICIPALITY that the failure referred to in clauses 29.2 or 29.3 did not take place; or

29.4.1.2 justify to the reasonable satisfaction of the MUNICIPALITY why the failure referred to in clauses 29.2 or 29.3 could not have been prevented.

29.4.2 The representations of the WATER BOARD referred to in clause 29.4.1 shall be evaluated by the MUNICIPALITY in accordance with the following criteria:

- 29.4.2.1 the seriousness and repetitive nature of a failure;
- 29.4.2.2 the degree of impairment to public interest;
- 29.4.2.3 the degree of negligence of the WATER BOARD; and
- 29.4.2.4 the diligence displayed by the WATER BOARD in rectifying the failure and any effects of the failure.

29.4.3 In the event that the WATER BOARD disputes the actions of the MUNICIPALITY in terms of this clause, it may refer the matter for resolution in terms of section O of this contract. The application of section O will not, subject to clause 29.7, suspend the implementation and effect of such action.

29.4.4 In the event of the MUNICIPALITY wanting to impose a penalty in accordance with clause 29.3:

- 29.4.4.1 the WATER BOARD must within 3 (three) days after receiving notification in terms of clause 29.4.1 make representations to the MUNICIPALITY in accordance with that clause;
- 29.4.4.2 in the event that the WATER BOARD makes such representations the MUNICIPALITY must within 3 (three) days of receiving or hearing such representations apply clause 29.4.2 and inform the WATER BOARD if it intends to impose the penalty and afford the WATER BOARD the opportunity to refer the matter for dispute resolution in terms of clause 46.

29.4.5 In the event that the WATER BOARD fails to make representations and refer the matter to dispute resolution in accordance with clause 29.4.4 the MUNICIPALITY may deduct the penalty amount in accordance with clause 29.3.1 or pay the penalty amount into the trust account in accordance with clause 29.3.2.

29.4.6 The MUNICIPALITY shall refund any deduction to the WATER BOARD

where a dispute is settled in favour of the WATER BOARD.

29.5 Any action by the MUNICIPALITY in terms of this clause shall not in any way limit either party's right to any other remedies provided for in this contract or in any law.

29.6 Any action by the MUNICIPALITY in terms of this clause shall not release the WATER BOARD from its obligations pursuant to this contract and pursuant to any regulatory provisions.

30. ACTION OR OMISSION OF THE MUNICIPALITY

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

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

SECTION J: OTHER WATER RELATED ACTIVITIES IMPACTING ON THE PARTIES

31. DIRECT SUPPLY BY THE WATER BOARD TO THE MUNICIPALITY'S CONSUMERS

31.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users, including mines, within the jurisdictional area of the MUNICIPALITY, with or without approval as required in terms of sections 6, 7 and 30(2)(d) of the Water Services Act.

31.2 The MUNICIPALITY hereby grants temporary approval to the WATER BOARD to continue providing such bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users, subject to the following conditions -

31.2.1 the WATER BOARD must provide the MUNICIPALITY with a list of such services detailing the names, contact details, quantity, quality

and type of services provided by the WATER BOARD, within 14 (fourteen) days after the commencement date; and

- 31.2.2 the MUNICIPALITY may at any time, on 12 (twelve) months notice to the WATER BOARD, give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from the MUNICIPALITY.
- 31.3 Where a persons receiving bulk water supply services or water for industrial use from the WATER BOARD appeals against a notice issued by the MUNICIPALITY, in terms of clause 31.2, in terms of section 8 of the Water Services Act the WATER BOARD must continue to render such services pending the completion of the appeal.
- 31.4 The WATER BOARD shall on expiry of any notice period given in terms of clause 31.2.2 or on the conclusion of an appeal in terms of clause 31.3, immediately discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages suffered by such persons and the MUNICIPALITY specifically indemnifies the WATER BOARD against any such claims, provided that –
- 31.4.1 where the above actions of the MUNICIPALITY will result in infrastructure or operational resources required to operate and maintain infrastructure of the WATER BOARD becoming redundant or under-utilised the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other municipal customers of the projected financial implications of the MUNICIPALITY's intention.
- 31.4.2 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.
- 31.5 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 31.2.2 or fails to initiate the process referred to in clause 31.4 the WATER BOARD may not discontinue bulk water supply services to such persons and shall not in any way whatsoever incur liability for damages incurred by MUNICIPALITY in this regard.

32. DIRECT SUPPLY BY THE WATER BOARD TO CONSUMERS OF ANOTHER MUNICIPALITY WHICH IS NOT A CUSTOMER OF THE WATER BOARD

- 32.1 It is hereby recorded that, at the commencement date, the WATER BOARD is providing bulk water supply services or water for industrial use directly to individuals, businesses or industrial water users including mines, within the jurisdictional area of municipalities that are not municipal customers of the WATER BOARD, with or without approval as required in terms of sections 6, 7 and 30(2)(d) of the Water Services Act.
- 32.2 It is further recorded that such municipalities may at any time give notice to persons receiving bulk water supply services or water for industrial use from the WATER BOARD that such services must be accessed from those municipalities.
- 32.3 Where any notice referred to in clause 32.2 will result in infrastructure of the WATER BOARD becoming redundant or under-utilised the WATER BOARD must, on becoming aware that a notice was given to a person or persons receiving bulk water supply services or water for industrial use from the WATER BOARD, as soon as reasonably possible notify the MUNICIPALITY and all other municipal customers of the projected financial implications of such a notice.
- 32.4 The MUNICIPALITY may on receipt of a notice from the WATER BOARD issued in terms of clause 32.3 initiate a process similar to that set out in clause 44 to address any projected financial implications.
33. USE OF WATER FROM SOURCES OTHER THAN THE WATER BOARD
- 33.1 The MUNICIPALITY must give the WATER BOARD at least 12 (twelve) months advance notice of its intention to obtain water from an alternative source, where such activity will result in a reduction of the quantity of water provided by the WATER BOARD in terms of this contract.
- 33.2 Where such notice will result in infrastructure of the WATER BOARD becoming redundant or under-utilised the WATER BOARD must within 2 (two) months of receiving a notice from the MUNICIPALITY notify the MUNICIPALITY and other

municipal customers of the projected financial implications of the MUNICIPALITY'S intention.

- 33.3 The MUNICIPALITY must on receipt of a notice from the WATER BOARD initiate the process set out in clause 44.
- 33.4 Where the MUNICIPALITY fails to inform the WATER BOARD in accordance with clause 33.1 or fails to initiate the process referred to in clause 33.3 the MUNICIPALITY shall remain liable for all costs associated with its projected annual average daily demand prior to any reduction, irrespective of whether it uses a lesser quantity.

SECTION K: RISK MANAGEMENT

34. LIMITATION AND DISCONNECTION OF WATER SUPPLY SERVICES

- 34.1 The WATER BOARD must comply with all and any legislation, guidelines and policies of National Government relating to the limitation and disconnection of bulk water supply services. The provisions of clause 34.2 must be applied to the extent that it is consistent with any legislation, guidelines and policies of National Government.
- 34.2 In the event that the MUNICIPALITY fails to pay its account on the due date the WATER BOARD shall –
- 34.2.1 give the MUNICIPALITY written notice that the account is outstanding and that it intends to reduce the bulk water supply services to the MUNICIPALITY by 20% (twenty per cent) within 30 (thirty) days of such notice if at least 50% (fifty per cent) of the account is not paid within this period or the MUNICIPALITY fails to enter into an agreement with the WATER BOARD for the payment of the account in instalments.
- 34.2.2 Where a water board has reduced the bulk water supply services by 20% (twenty per cent) in accordance with clause 34.2.1, it shall again give the MUNICIPALITY notice in a manner similar to that stated in clause 34.2.1 that the bulk water supply services will be limited by a further 20% (twenty per cent).

- 34.2.3 The phased reduction in bulk water supply services may, on further notice in a manner similar to that stated in clause 43.2.1, exceed 40%, provided that bulk water supply services shall under no circumstances whatsoever be reduced at the existing customer connections by a percentage that will limit the provision of basic water supply services to the MUNICIPALITY's consumers. The parties shall agree on the quantity of water required for basic water supply services. Where the parties fail to reach agreement either party may refer the matter for resolution in terms of section O of this contract.
- 34.2.4 Copies of the notices given in terms of clauses 34.2.1 and 34.2.2 shall be sent to the Minister of Water Affairs and Forestry, the Minister of Provincial and Local Government, the Member of the Executive Committee responsible for local government in the Gauteng Province. The WATER BOARD will, together with the copies of the notices to be sent, send a request to the Member of the Executive Committee responsible for local government in the Gauteng Province, the Minister and any other national organ of state that has legislated intervention authority to intervene in accordance with relevant regulatory provisions.
- 34.2.5 The WATER BOARD, where possible, should provide reasonable assistance to the MUNICIPALITY in respect of the payment of its bulk water supply account, including agreements referred to in clause 27.
35. PERMITS, LICENSES, EXEMPTIONS, PERMISSION AND APPROVALS
- 35.1 The parties shall be responsible for complying with all legislation applicable to their duties and obligations in terms of this contract, including, but not limited to, applying for the necessary approvals, consents, licences or permits, where required.
- 35.2 The WATER BOARD guarantees that on the effective date all permits, licences, exemptions, permissions and approvals that may have been required in terms of legislation, except for the accreditation of its meter testing facility, in respect of providing bulk water supply services were obtained in the required

manner.

36. LIABILITIES AND INDEMNITIES

- 36.1 Subject to terms stated in this contract, the WATER BOARD undertakes and assumes the responsibility for the provision of the bulk water supply services at its own technical risk and will be liable to the MUNICIPALITY for the fulfilment and discharge of its obligations and requirements in respect of providing bulk water supply services with effect from the effective date.
- 36.2 The WATER BOARD shall, with effect from the effective date, take all the requisite precautions for the protection of life and property on and about or in any way connected with the whole or any part of providing bulk water supply services and shall indemnify and not hold the MUNICIPALITY accountable for any losses, claims, demands, proceedings, damages, costs (including all legal fees), charges and expenses of whatsoever nature in respect of injury or health risk to or death of any person or loss of or damage to any part of the bulk water supply services system or any person or property arising from or attributable to any act or omission of the WATER BOARD.

37. INSURANCE

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

38. GUARANTEES

- 38.1 The WATER BOARD may require the MUNICIPALITY to deposit with the WATER BOARD as security for the due payment by it of any amounts that may be due and payable in terms of this contract, a sum of money equal to the estimated maximum quantity of water that the MUNICIPALITY is likely to use during a calendar month, where the MUNICIPALITY has defaulted on payment.
- 38.2 The WATER BOARD may, in lieu of a deposit, accept a bank guarantee for an amount calculated in accordance with clause 38.1 as security for payment of any amount that may be due and payable by the MUNICIPALITY for, or in respect of, the provision of water.

38.3 The WATER BOARD may use this deposit to cover any outstanding amount ~~payable on termination of this contract~~ or any arrears.

38.4 Any deposit or guarantee shall be refunded or cancelled, after deducting any amount due and payable, within 60 (sixty) days after termination of this contract.

39. WARRANTIES

The parties warrant that –

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

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

39.3 the execution of this contract does not violate any legislation, judgment order, regulation, regulatory provision, right or obligation, or rule of any Court or other authority applicable in relation to them, or the provision of services rendered in terms of this contract.

SECTION L: BREACH AND VIS MAJOR

40. BREACH

40.1 If any party commits a breach of this contract and should the other party wish to claim specific performance or damages or both specific performance and damages from the defaulting party in respect of such breach in addition to any penalty it may apply in terms of this contract, then prior to the latter party exercising such a right, it shall deliver a written notice to the defaulting party notifying it of the breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a period of 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period), and should the defaulting party fail to remedy the breach

within such period then the party giving notice may institute a civil claim for specific performance or damages or both, as the case may be.

- 40.2 If the defaulting party again commits a breach in respect of which the other party has successfully claimed damages or specific performance in terms of clause 40.1, the breach shall be deemed to be a material breach if the party fails to remedy the breach within the 20 (twenty) day notice period given in terms of clause 40.1 and the party shall be entitled to cancel the contract.
- 40.3 Prior to the party evoking any right to terminate this contract in terms of clause 40.2, it shall deliver a further written notice to the defaulting party notifying it of the material breach giving rise to such right and requesting the defaulting party to remedy the breach in question within a further period of 20 (twenty) days (or such longer period stipulated in the notice if the breach in question cannot reasonably be remedied by the defaulting party within a 20 (twenty) day period).
- 40.4 Should the defaulting party fail to remedy the material breach in question within the period reflected in the notice issued in terms of clause 40.3 the contract shall terminate in accordance with clause 43.
- 40.5 Upon any termination of the contract in terms of clause 40.4, the defaulting party shall compensate the party terminating the contract for damages suffered as a result of such termination and all other costs and expenses incurred by the party terminating the contract in connection with or relating to such termination.
- 40.6 For purposes of this clause, damages specifically include but are not limited to,
- 40.6.1 any amount which the MUNICIPALITY is required to pay in relation to loss or damage suffered by a person to whom the MUNICIPALITY provides water supply services; or
 - 40.6.2 the difference between the revenue lost by the MUNICIPALITY and all direct and indirect costs that the MUNICIPALITY would have

incurred if the breach did not occur as a result of the WATER BOARD's failure.

41. VIS MAJOR

- 41.1 No party shall be liable for any failure to fulfil its duties and obligations in terms of this contract where such failure is caused by any event, occurrence, circumstance or condition beyond the reasonable control of such party (including, but not limited to *casus fortuitus*, landslides, lightning, earthquakes, tornados, floods, other acts of God, acts of military or third-party civil authorities or public enemies, war blockade, sabotage, fire, explosion, bombing, insurrection, riot or civil disobedience), the occurrence of which could not have been reasonably foreseen and which, despite the exercise of diligent efforts could not have been prevented, limited or minimised, that affects the powers, rights, duties or obligations of the parties under this contract. It is specifically recorded that failure by the Department to effectively manage water resources constitutes an event, occurrence, circumstance or condition for purposes of this clause.
- 41.2 The party affected by an event, occurrence, circumstance or condition referred to in clause 41.1 shall promptly notify the other party in writing of the event, occurrence, circumstance or condition and the estimated extent and or duration of such party's inability to perform its duties and obligations.
- 41.3 Upon the cessation of the event, occurrence, circumstance or condition referred to in clause 41.1 the party affected thereby shall notify the other party of such cessation.
- 41.4 If, as a result of the event, occurrence, circumstance or condition referred to in clause 41.1, the performance of a party's duties and obligations is only partially affected, such party shall remain liable for the performance of those duties and obligations not affected by the event, occurrence, circumstance or condition; provided that nothing in this clause shall preclude the operation of the emergency procedure provided for in clause 13.
- 41.5 If an event, occurrence, circumstance or condition referred to in clause 41.1 causes material and unavoidable physical damage or destruction to all or any