WATER SUPPLY AGREEMENT

entered into between:

THE DEPARTMENT OF WATER AND SANITATION

("DWS")

and

SALDANHA BAY LOCAL MUNICIPALITY

("THE USER")

IN RESPECT OF

THE BERG RIVER-VOËLVLEI AUGMENTATION SCHEME

("BRVAS" / "THE PROJECT")

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ANNEXURES:

PART 1: INTRODUCTION

1. DEFINITIONS

In this Agreement and the annexures hereto, unless the context indicates otherwise, the words and expressions set out below shall bear the meanings assigned to them and cognate words and expressions shall have a corresponding meaning:

1.1	"Agreement"	means this agreement duly signed by the Parties and all annexures hereof;
1.2	"Assurance of Supply"	means the probability, expressed as a percentage of years, that water may be available for supply to the User in the long term from the WCWSS, as set out in **Annexure C** hereto;
1.3	"BRVAS" or "Project"	means the Berg River-Voëlvlei Augmentation Scheme;
1.4	"BRVAS Administration Costs"	means the aggregate of all costs of an administrative nature, not forming part of the BRVAS Capital Costs and the BRVAS Funding Costs, reasonably and necessarily incurred or to be incurred for or in connection with the Implementation and Debt management of the BRVAS, being all costs and fees of setting up of loan facilities, the procurement of funding, the obtaining credit ratings and all operational costs of an administrative nature including the costs of any insurances and such other post-completion costs and expenditure incurred by TCTA up to Operational Declaration, by DWS and/or TCTA, in connection with the BRVAS;
1.5	"BRVAS B&R Tariff"	means the betterment and refurbishment tariff applicable to the BRVAS as determined in terms of the Pricing Strategy and paid by each User to DWS, as set out in this Agreement and **Annexure D** hereto;
1.6	"BRVAS Capital Costs"	means the aggregate of all costs of a capital nature not forming part of the BRVAS Funding Costs and BRVAS Administration Costs, reasonably and necessarily incurred or to be incurred to Implement the BRVAS, including all design and construction related professional fees, land

	acquisition and related registration costs, and such other post-completion costs and expenditure as may be regarded by TCTA in its reasonable discretion to be costs of a capital nature;
1.7 "BRVAS Capital Unit Charge ("BRVAS-CUC")	means the capital unit charge contemplated for a Project of this nature under the Pricing Strategy, in this instance comprising the aggregate of the Project Costs over the Debt Repayment Period, to represent the relevant Debt of all Users, to be charged by DWS to each User in proportion to its licensed allocation from the BRVAS, as set out in the relevant Water Supply Agreement/s and **Annexure D** hereto;
1.8 "BRVAS Funding Costs"	means the aggregate of all costs of a funding nature, not forming part of the BRVAS Administration Costs and the BRVAS Capital Costs, being all costs relating to interest, expenses, banking charges (including breakage costs where applicable) and the like, reasonably and necessarily incurred or to be incurred in connection with the raising of capital and to maintain such capital in force, to fund the Implementation of the BRVAS;
1.9 "BRVAS O&M Tariff"	means the operations and maintenance tariff applicable to the BRVAS as determined in terms of the Pricing Strategy, to be paid by each User to DWS, as set out in this Agreement and **Annexure D** hereto;
1.10 "BRVAS Project Costs/Debt"	means the aggregate of the BRVAS Capital Costs, the BRVAS Funding Costs and the BRVAS Administration Costs, representing the debt to be repaid by the User/s to DWS in accordance with this Agreement and as set out in **Annexure D** hereto;
1.11 "BRVAS Third Party Charge	means the third party capital unit charge that will be charged by DWS to all other users, other than the Users contemplated under the BRVAS, being the City of Cape Town Metropolitan Municipality, the Bergrivier Local Municipality, the Drakenstein District Municipality, the Saldanha Bay Local Municipality, the Stellenbosch Local

	Municipality, the Swartland Local Municipality and the Lower Berg Irrigation Board;
1.12 "Bulk Water Supply Agreement/s"	means the bulk water supply agreement/s to be entered into between the User and its customers;
1.13 "Business Day"	means any day other than a Saturday, Sunday or gazetted national public holiday in the RSA;
1.14 "Construction Contracts"	means any contract/s entered into by TCTA in respect of the construction of the BRVAS infrastructure, which contracts shall be based on the terms and conditions contained in the Federation Internationale des Ingenieurs-Conseils ("FIDIC") Model Agreements;
1.15 "CPI"	means the Consumer Price Index (for all urban areas), as published by Statistics South Africa (Statistical Release P0141), or any replacement thereof, from time to time;
1.16 "Debt"	means the aggregate of the BRVAS Capital Costs, the BRVAS Funding Costs and the BRVAS Administration Costs representing the debt to be repaid by the User/s to DWS in accordance with this Agreement and as set out in **Annexure D** hereto;
1.17 "Debt Repayment Period"	means a period of 20 (twenty) years following Operational Declaration or for so long as any portion of the Debt, remains outstanding whichever is the later or, such shorter period if the Debt is repaid within the 20 (twenty) year period;
1.18 "Delegated Authority"	means anyone to whom the Minister delegates a power and/or duty vested in the Minister, pursuant to the Minister's authority to do so in terms of section 63 of the NW Act or otherwise;
1.19 "Directive"	means the directive issued by the Minister on 18 May 2017 to TCTA and, where applicable, read together with all subsequent directives issued by the Minister in respect of the Project;

1.20 "DWS"	means the Department of Water and Sanitation or any successor in title in the Government;
1.21 "Estimated CPI"	means the forecast statistics of the year-on-year CPI (headline) as published annually by the Bureau of Economic Research attached to the University of Stellenbosch ("BER") or any similar reputable institution, if statistics from BER are not available;
1.22 "Force Majeure"	means any relevant event, occurrence, circumstance or condition, excluding drought, beyond the control of the Parties which could not have been reasonably foreseen when this Agreement was entered into and which, despite the exercise of diligent efforts, could not have been prevented, limited or minimised and which results in either of the Parties not being able to fulfil its duties and obligations in terms of this Agreement;
1.23 "Funders"	means all the funders who will provide the funding for the BRVAS to TCTA;
1.24 "Government"	means the National Government of the RSA;
1.25 "Implement"	means, in relation to the Project or where applicable, any phase thereof, the entire process of planning, designing, land acquisition and registration, contract management, constructing, commissioning, project close-out, supervising and the finalisation of each of these aspects of the aforesaid processes of the BRVAS as a government waterworks in accordance with the provisions of the NW Act, and all other relevant legislation or administrative actions, and the terms "Implemented" and "Implementation" shall have corresponding meanings;
1.26 "Implementation Agreement"	means the implementation agreement to be concluded between DWS and TCTA to regulate the relationship between them in respect of the funding and implementation of the Project;

1.27 "Licence"	means the section 21(a) licence/s for water use to be granted or already granted in terms of Chapter 4 of the NW Act to each User taking water from a resource within the Project Area and conveyed through the Project;
1.28 "Minister"	means the Minister of Human Settlements, Water and Sanitation, in the Government;
1.29 "NWRS"	means the National Water Resource Strategy, as amended from time to time and published in accordance with sections 5, 6 and 7 of the NW Act;
1.30 "NW Act"	means the National Water Act 36, 1998;
1.31 "Operational Declaration"	the date on which DWS declares in writing the BRVAS to be operational, once the BRVAS is capable of performing the function for which it was designed;
1.32 "Parties"	means DWS and the User, and the term "Party", shall mean either of DWS or the User as the case may be;
1.33 "PFMA"	means the Public Finance Management Act 1, 1999;
1.34 "Pricing Strategy"	means the Pricing Strategy for Raw Water Use Charges within the framework of relevant Government policy, established by the Minister in concurrence with the Minister of Finance and published pursuant to section 56(1) of the NW Act, from time to time;
1.35 "Project" or "BRVAS"	means the Berg River-Voëlvlei Augmentation Scheme;
1.36 "Project Area"	means the project area as set out in **Annexure A** hereto;
1.37 "RSA"	means the Republic of South Africa, comprising the nine provinces identified in section 103 of the Constitution of the Republic of South Africa, 1996;
1.38 "Signature Date"	means the date of signature of this Agreement by the last signing Party hereto;

1.39 "Statutory Interest Rate"	means a rate determined from time to time by the Minister, with the concurrence of the Minister of Finance, by notice in the Government Gazette under the Prescribed Rate of Interest Act 55, 1975, as provided for in section 59(3)(a) of the NW Act which shall be charged by DWS to a water user for late payment;
1.40 "TCTA"	means the Trans-Caledon Tunnel Authority, established by Notice No. 2631 published in Government Gazette No. 10545 dated 12 December 1986, as amended by Notice No. 277 published in Government Gazette No. 21017 dated 24 March 2000, a major public entity listed in Schedule 2 of the PFMA and a water management institution in terms of the NW Act, operating in the water sector *inter alia,* in the funding and implementing of bulk raw water infrastructure development projects, as directed by the Minister from time to time;
1.41 "User"	means each user authorised to take water from the Project;
1.42 "VAT"	means value-added tax levied at the then prevailing rate in accordance with the Value-Added Tax Act 89, 1991;
1.43 "Water Use Charges"	means all charges relating to the BRVAS levied by DWS in accordance with the Pricing Strategy and/or in terms of statutory requirements, but excluding any charges provided for under the BRVAS-CUC, the BRVAS Third Party Charge, the BRVAS O&M Tariff or the BRVAS B&R Tariff;
1.44 "Water Supply Agreement/s"	means the BRVAS Water Supply Agreement/s to be concluded between DWS and each User, for the supply of bulk raw water on the terms and subject to the conditions contained therein;
1.45 "WCWSS"	means the Western Cape Water Supply System as described in **Annexure A**;

1.46 “Yield”	means the volume of water that can be abstracted annually at a specific assurance of supply.

2. INTERPRETATION

In this Agreement:

2.1 any reference to an enactment is to the relevant enactment as at the date of signature hereof, as amended or re-enacted from time to time;

2.2 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is contained in the Definitions clause, effect shall be given to it as if it is a substantive provision in the body of the Agreement;

2.3 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.4 where figures are referred to in numerals and in words, and should there be a conflict between the two, then the words shall prevail;

2.5 words importing any one gender shall include the other gender and the singular shall include the plural and vice versa;

2.6 a reference to natural persons shall include created entities (incorporated and unincorporated) and vice versa;

2.7 expressions defined in the Definitions clause shall bear the same meanings in all annexures to this Agreement which do not themselves contain their own definitions;

2.8 where any term is defined within the context of any particular clause in this Agreement, 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 Agreement, notwithstanding that the term has not been defined in the Definitions clause;

2.9 the headings have been inserted for convenience only and shall not be used for nor assist in nor affect its interpretation;

2.10 where any conflict arises between the provisions of the Agreement and the provisions of any annexure hereto, then the provisions of this Agreement will prevail;

2.11 where any references to any amount is made it shall mean that such amount is exclusive of VAT, unless the amount expressly includes VAT; and

2.12 the rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or the preparation thereof shall not apply.

3. PREAMBLE

3.1 The WCWSS is an integrated and collectively managed system of dams, pump stations, pipelines and tunnels. In addition to servicing the City of Cape Town, the WCWSS supplies water to towns in the Overberg, West Coast and Cape Winelands District Municipalities as well as providing irrigation water for agriculture. The integrated system helps optimise the use of water resources by allowing water transfers between dams and catchment systems.

3.2 The major dams in the WCWSS, include the Theewaterskloof Dam in the Breede River catchment and the Voëlvlei, Berg River and Wemmershoek Dams in the Berg River catchment, and the Steenbras Upper and Lower Dams in the Steenbras River catchment.

3.3 The smaller dams and weirs in the WCWSS, include DWS's Kogelberg and Rockview Dams which service Eskom's Palmiet Pumped Storage Scheme and the water transfer scheme to the Upper Steenbras Dam and the Kleinplaas Dam in the Eerste River on the delivery route of the Riviersonderend-Berg River Tunnel System and Misverstand Weir on the lower Berg River.

3.4 The Western Cape Reconciliation Strategy Study identified the need for the augmentation of the WCWSS by 2019. In July 2008, DWS appointed the Western Cape Water Consultants Joint Venture to undertake pre-feasibility level investigations into six potential surface water development options. The BRVAS Project was found to be the most favourable surface water intervention option and recommended for implementation. It will involve:

3.4.1 the pumped abstraction of water in winter from the Berg River to increase the yield of the Voëlvlei Dam by approximately 23 (twenty three) million cubic metres per annum;

3.4.2 a low-level weir and pump station located at the Lorelei site on the Berg River; and

3.4.3 a 6.3 km long pipeline to deliver the water into the Voëlvlei Dam. The pipeline will be designed for reverse operation during summer so that releases can be made from the Voëlvlei Dam to the downstream users, including meeting the ecological water requirements of the estuary.

3.5 The BRVAS project is a commercially viable project to be funded and Implemented by TCTA in accordance with the provisions of the Pricing Strategy, which requires that such projects be funded off-budget using private sector funding and be repaid from revenue received from water tariffs to be paid by Users, so that the full financial cost of funding and implementing the BRVAS is recovered from all users thereof.

3.6 The Minister issued a directive to TCTA in May 2017 to fund and implement the BRVAS project on an off-budget basis and to facilitate the establishment of the institutional arrangements and the participation of Users through its governance structures whilst the BRVAS is being Implemented.

3.7 DWS and the User now wish to enter into this Agreement, to record and regulate the relationship between them, in respect of the funding, Implementation and water supply arrangements in respect of the BRVAS.

PART 2: WATER SUPPLY FROM BRVAS

4. COMMENCEMENT AND DURATION

This Agreement shall come into effect on the Signature Date and remain of full force for a period of 20 (twenty) years following the date of Operational Declaration or for as long as the Debt applicable to the User remains outstanding, provided that once the full amount of the Debt has been repaid, the User will cease to be liable for payment of the BRVAS-CUC.

5. ASSURANCE OF SUPPLY

5.1 The Assurance of Supply for the User shall be as set out in its relevant water use license.

5.2 Neither Party shall wilfully or negligently do anything to negatively influence the Assurance of Supply.

6. RESTRICTIONS TO SUPPLY

6.1 If on reasonable grounds it is believed that a water shortage exists or is imminent, restrictions may be applied on the water supply to the User and other users as may be appropriate at that time, in terms of the NW Act or any other applicable legislation.

6.2 DWS will use all reasonable endeavours to consult the User directly in the event of the likelihood of the imposition of water restrictions.

7. INTERRUPTIONS TO SUPPLY

7.1 DWS shall give the User at least 3 (three) months' written notice of any scheduled interruptions or restrictions on supplies of water from the BRVAS, for purposes of testing, renewing, examining, repairing or maintaining any part of the BRVAS infrastructure.

7.2 Should a Party become aware of any relevant event which has or may have a material adverse impact on the supply of water, then that Party shall immediately inform the other.

7.3 In cases of emergencies or unscheduled interruptions, DWS shall endeavour to give at least 12 (twelve) hours' notice to the User telephonically and/or by means of a telefax or electronic mail, subject to DWS' right in its sole discretion to interrupt water supplies or to lock the point/s of supply where necessary without prior notification. Notwithstanding that there may be circumstances where no prior notification has been given to the User of an interruption in water supply or locking of point/s of supply, DWS shall notify the User of such circumstances and the steps to be taken to restore water supply as soon as possible after such event.

7.4 The User shall provide sufficient piping and storage facilities as may be required by it, at its sole cost, to take water from the relevant point of supply, and store such water, to mitigate the effects of any interruptions in supply.

8. CONDITIONS OF SUPPLY

8.1 DWS shall supply all water in accordance with the terms and conditions of this Agreement and the relevant Licence/s to be issued to the User, and subject to such statutory

requirements as may be applicable from time to time.

8.2 Save and except for the connecting infrastructure to be installed by the User in terms of the BRVAS Operating Rules, no other water supply system, water services works, pipeline, connection, installation or other equipment shall be connected by the User, or any other party acting on its behalf, to any part of the BRVAS infrastructure, unless expressly authorized in writing by DWS to do so and subject to such terms and/or conditions as DWS may impose.

9. WATER QUALITY

9.1 DWS shall use its reasonable endeavours to monitor the quality of water supplied according to its monitoring programs, it being agreed that DWS does not and will not guarantee the quality of water supplied nor its fitness or suitability for any purpose whatsoever. DWS undertakes to provide such monitoring results to the User as and when requested to do so.

9.2 The User shall be responsible for treating all water supplied to it by DWS, to such standards as may be necessary for any usage requiring treated water.

10. MEASUREMENT OF WATER SUPPLY

10.1 DWS, its Delegated Authority and their authorised officers, employees and agents shall be entitled to unrestricted access to any component of the supply or abstraction control mechanisms, abstraction meters, control meters, point(s) of supply or any other works as may be required in the performance of their duties within the User's property or servitude area, including but not limited to the reading and checking of meters and taking of water quality samples. All such access shall be in accordance with applicable legislation.

10.2 The supply of water to the Users shall be measured by DWS in terms of the metering procedures set out in **Annexure F** hereto and such measurements shall be used by DWS to verify the quantity of water actually drawn by the Users so as to reconcile actual use against the Licenced volume allocated to the User on an annual basis, taking account of water restrictions when enforced under the NW Act.

10.3 The meter readings shall be taken by DWS on the nearest Business Day to the 20th (twentieth) day of each calendar month as provided for in **Annexure F** hereto.

10.4 The User hereby agrees and undertakes to indemnify and hold harmless each of DWS and/or any Delegated Authority against any and all claims, suits, losses, damages, which may be claimed, brought or threatened against either of them in the event of, and to the extent that, either of DWS or a Delegated Authority is unable to meet its Assurance of Supply levels to any other User/s arising as a direct result of the User taking more water, as calculated annually, than it is authorised to take.

11. INTEGRATED WATER SUPPLY PLANNING AND OTHER SYSTEM RELATED ISSUES

The Parties record that system planning or operating issues pertaining to the reduction in the yield of the WCWSS and its over-allocation, the reduced City of Cape Town allocation

from the Berg Water Project and other compulsory licence discrepancies will be addressed expeditiously.

PART 3: THE BRVAS INFRASTRUCTURE

12. THE BERG RIVER-VOËLVLEI AUGMENTATION SCHEME

The Parties acknowledge and record that:

12.1 the BRVAS involves the Implementation of the Project within the Project Area, as described in **Annexure A** hereto;

12.2 the water infrastructure of the BRVAS shall be developed, operated, utilised and managed with the objective of benefiting, directly or indirectly, all users in the BRVAS project area, in the context the WCWSS;

12.3 the Minister issued the Directive to TCTA directing it to fund and Implement the BRVAS. As part of TCTA's Implementation Program, a Project Implementation Plan and a Project Charter will be compiled after consultation with the relevant Users for approval by TCTA;

12.4 the BRVAS Project Charter will set out inter alia, the mandate, description, governance structure, scope, implementation strategies for funding, public relations, engineering, environmental, health and safety, land acquisition processes, project management, procurement, strategies that support government goals, key risks, resource plans, milestones and budget, including contingency amounts related thereto; and

12.5 the Project Implementation Plan will set out inter alia, timelines for the tender processes for pre-qualification (if required) and appointment of design engineers, approvals of designs (including optimisation measures), tender processes for pre-qualification and appointment of construction contractors, land acquisition processes, appointment of relevant panels of experts for social, business, environmental and engineering matters, commissioning dates, handover dates and water delivery dates.

13. REVIEW OF WATER AVAILABILITY FROM THE BRVAS

In terms of section 49 of the NW Act, the Minister is entitled to undertake periodic reviews of the Total Water Availability and Capacity Allocated, based on information obtained from the WCWSS Model and hydrological studies undertaken from time to time, and where necessary, adjustments to the licensed volume of water to each User may be made in terms of the NW Act, as considered appropriate by the Minister after consultation with the User.

14. ACCESS TO THE BRVAS

Both during and after the Implementation of BRVAS:

14.1 the User and its authorised officers, employees and agents may request DWS or a designated official at a Delegated Authority, for reasonable access to any component of the BRVAS and any works associated with the supply of water from the BRVAS including without being limited to, any relevant documentation; and

14.2 any request to gain access to any documentation, shall be directed by the User to DWS or

to a designated official at a Delegated Authority in writing, provided that neither DWS nor a Delegated Authority shall be obliged to disclose any document to the User which it is not obliged to disclose in terms of the Promotion of Access to Information Act, 2000.

15. OPERATIONS AND MAINTENANCE

15.1 Notwithstanding that DWS shall be responsible for the operations and maintenance of the Project according to relevant best practice, standards and guidelines in an integrated, cost effective, consultative and efficient manner, taking into consideration all relevant Users, DWS may sub-contract its operations and maintenance obligations to any third party and conclude an appropriate operations and maintenance agreement with it, to record the terms and conditions entailed in such arrangements.

15.2 The BRVAS operations and maintenance costs will be charged by DWS as the BRVAS O&M Tariff as provided for in terms of **Annexure D** and the Pricing Strategy.

16. BETTERMENTS AND REFURBISHMENTS

16.1 DWS shall be responsible for the betterment and refurbishment of the Project infrastructure or any component thereof and shall recover the costs associated with the betterment and refurbishment of the Project infrastructure, in terms of the Pricing Strategy.

16.2 The BRVAS betterment and refurbishment costs will be charged by DWS as the BRVAS B&R Tariff as provided for in terms of **Annexure D** and the Pricing Strategy.

16.3 The betterment and refurbishment costs include, in the case of:

16.3.1 betterments, any costs of any improvement to the Project's infrastructure or any component thereof, which would result in an increase in its capacity and/or functionality beyond its original standard of performance, and costs incurred to increase the yield of the Project or meet safety, statutory and/or best practice requirements; and

16.3.2 refurbishments, any costs incurred to restore the capacity and/or functionality of the Project, and/or to extend the useful economic life of the Project's infrastructure or any component thereof, arising from the potential loss of capacity or assurance of supply and/or functionality arising due to age, wear and tear, decay, inadequacy and obsolescence.

PART 4: OBLIGATIONS AND INSTITUTIONAL ARRANGEMENTS

17. OBLIGATIONS OF DWS

DWS undertakes:

17.1 to assume responsibility for the preparation of all relevant applications for obtaining all necessary environmental authorisations required to Implement the BRVAS;

17.2 to ensure the Implementation of the Project using engineering principles, philosophies, procedures and standards employed by governments and water utilities, in accordance with prevailing international standards under comparable circumstances, from time to time;

17.3 the Project shall be Implemented by TCTA in a consultative manner with the participation of all relevant stakeholders through the Project Committee as may be reasonably practicable.

17.4 to consider and where appropriate, recommend to the Minister, its approval for the grant of a Licence to the User, with due regard to the requirements of the NW Act;

17.5 to confirm Operational Declaration of the BRVAS within 60 (sixty) days of receipt of the taking-over certificate from TCTA.

18. OBLIGATIONS OF THE USER

The User undertakes:

18.1 to take up its licensed/allocated volume of water from the BRVAS;

18.2 to accept and make payment of the BRVAS-CUC, the BRVAS O&M Tariff and the BRVAS B&R Tariff set out in this Agreement and **Annexure D** hereto, and all Water Use Charges as may be charged from time to time in terms of the Pricing Strategy;

18.3 to take water from any alternative water source (where applicable) identified by the Minister in her sole discretion after consultation with the Users, in terms of the Licence issued to it;

18.4 to provide DWS with a certified copy of the relevant extract of the authorising resolution passed by its council or board of directors or chairman of a water board/water user association approving its entry into this Agreement in specific terms, and authorising the nominated signatory hereof to conclude this Agreement on behalf of the User, to evidence its authority to enter into this Agreement and be bound to the terms and conditions hereof, nothing at all excepted.

19. BRVAS INSTITUTIONAL ARRANGEMENTS

The Parties record that the following agreements will be concluded as part of the institutional and contractual arrangements under the Project:

19.1 an Implementation Agreement between the DWS and TCTA to record and regulate the funding and Implementation of the Project;

19.2 a Water Supply Agreement between DWS and each User, in terms of which DWS will supply bulk raw water from the WCWSS which shall be deemed to be supplied from the BRVAS to the User, which will take such water and pay to DWS, the BRVAS-CUC, all other applicable water tariffs and the Water Use Charges in respect thereof;

19.3 one or more Bulk Water Supply Agreements between the User and its customers; and

19.4 such other agreements as may be necessary to give effect to the Project.

PART 5: BRVAS FUNDING, BRVAS-CUC, WATER USE CHARGES, INVOICING AND PAYMENT

20. BRVAS FUNDING

20.1 DWS shall annually obtain and provide to TCTA the project preparatory funding in line with the Implementation programme determined by TCTA, as required in the Directive.

20.2 TCTA shall raise the off-budget funding for the Implementation of the BRVAS Project.

21. THE BRVAS-CUC

21.1 This Agreement makes provision for the BRVAS-CUC to be charged by DWS on all the Users taking water from the BRVAS.

21.2 The User will commence paying the BRVAS-CUC applicable to it as provided for in **Annexure D**, on Operational Declaration. Such repayments will continue for as long as any portion of the Debt of the User remains outstanding.

21.3 Adjustments to the BRVAS-CUC from time to time shall be undertaken as provided for in this Agreement, **Annexure D** hereto and the Pricing Strategy.

22. WATER USE CHARGES

22.1 DWS is entitled to levy various Water Use Charges on Users in terms of the Pricing Strategy and such charges will be deemed to include any charges, levies or costs as may be contained in relevant statutory requirements.

22.2 The Water Use Charges will be charged to the Users on a monthly basis (or annually, if and where applicable) separately from the BRVAS-CUC and will be determined in terms of the prevailing Pricing Strategy and/or other statutory requirements in force at the time and will be applicable both during and after the period of repayment of the Debt.

23. INVOICING AND PAYMENT PROCEDURES

23.1 DWS shall at the end of each month in which the meter readings are taken, in accordance with clause 10 above, send a copy tax invoice to the User. Such copy tax invoice will contain details of the date, applicable amount payable under the BRVAS-CUC, applicable amount payable for the Water Use Charges, VAT, VAT registration number, due date for payment, bank account details of DWS and such other details required in terms of applicable legislation.

23.2 DWS shall ensure that the original tax invoice is posted (or otherwise delivered) to the User by not later than the end of the month in which the meter readings are taken to ensure that the User receives the tax invoice by not later than the 15th (fifteenth) calendar day of the month following the month in which such meter readings are taken as set out in sub-clause 10.3 above. The User will make payment of the full amount of each tax invoice by the due date reflected on each tax invoice, provided that such due date shall not be less than 30 (thirty) days after the invoice date reflected on such tax invoice, into a bank account nominated in writing by DWS from time to time.

23.3 Any delay in the rendering of a tax invoice will not relieve the User of its obligation to make payment to DWS for all amounts outstanding. In the event of the User not receiving any tax invoices timeously or at all, the User undertakes to notify DWS thereof in writing by no later than 5 (five) Business Days after the 15th (fifteenth) calendar day referred to in sub-clause 23.2 above. In such event payment will be made within 30 (thirty) days after receipt

of a tax invoice from DWS, provided that where such notification has been given to DWS, it shall not be entitled to charge any interest on such late payment.

23.4 Each User will be invoiced monthly by DWS for:

23.4.1 the BRVAS-CUC calculated on the basis set out in **Annexure D** hereto;

23.4.2 any other BRVAS water tariffs such as BRVAS O&M Tariff and BRVAS B&R Tariff as applicable in terms of the Pricing Strategy; and

23.4.3 any Water Use Charges as payable in terms of the Pricing Strategy.

23.5 The User will make payment of the BRVAS-CUC as invoiced by DWS directly to TCTA as provided for in clause 24 below.

23.6 In the event of the User failing to make payment of the BRVAS-CUC, the BRVAS O&M Tariff, the BRVAS B&R Tariff or Water Use Charges in accordance with this Agreement, then in addition to all other remedies available to it in terms of the NW Act, DWS shall be entitled:

23.6.1 on notice, to suspend or withdraw a water use entitlement, provided that the User has been directed to take specific steps to rectify the failure within a specified period, in terms of section 54(3) of the NW Act and the User has had an opportunity to make representations within a reasonable period in terms of section 54(4) thereof; and/or

23.6.2 on notice, to restrict or suspend the supply of water to the User from this government waterworks until such charges together with interest in respect of the default period have been paid, provided that DWS has given the User an opportunity to make representations within a reasonable period on any proposed restrictions or suspensions in terms of section 59(4) of the NW Act; and/or

23.6.3 to charge interest at the prescribed Statutory Interest Rate on all outstanding amounts, such interest to be calculated from the due date for payment until the date that payment is actually made.

24. ASSIGNMENT OF RIGHTS TO REVENUE BY DWS TO TCTA

In consideration of the Debt to be incurred by TCTA, in the funding and Implementation of the BRVAS, and the revenue to be collected by DWS from the User under the BRVAS-CUC and the BRVAS Third Party Charge (where applicable), the Parties hereby agree as follows:

24.1 DWS will assign to TCTA, its rights to receive payment of the BRVAS-CUC and the BRVAS Third Party Charge directly from the User/s, in terms of the Deed of Assignment attached as **Annexure E** hereto;

24.2 the User hereby consents to the assignment of rights contemplated in sub-clause 24.1 above;

24.3 in consideration of the assignment of rights contemplated in this clause, TCTA shall apply all such revenue received by it from the User under the BRVAS-CUC and the BRVAS Third Party Charge, firstly in reduction of its portion of the BRVAS costs that have been pre-funded by DWS as the Project is intended to be funded on an off-budget basis, and then to

its portion of the Debt applicable to it;

24.4 DWS undertakes to incorporate the assignment of rights contemplated under this clause in all Water Supply Agreements concluded in future with the users under the BRVAS;

24.5 For the avoidance of doubt, DWS shall continue to receive payment of the BRVAS O&M Tariff, the BRVAS B&R Tariff and Water Use Charges as may be applicable, directly from the User;

24.6 the assignment of rights contemplated under this clause does not affect or detract from any of DWS' remaining rights and obligations under the Agreement, all of which continue in full force and effect, nothing at all excepted.

PART 6: LIABILITY AND BREACH

25. LIABILITY

25.1 Neither Party shall be liable nor assume liability under any circumstances whatsoever for any special, indirect or consequential loss or damages of whatsoever nature and howsoever arising whether in contract, delict or otherwise, suffered as a result of any Party's actions or omissions, arising either in terms of this Agreement or being a delictual claim or action, whether foreseen or unforeseen and/or having been reasonably foreseeable, which includes any claim, indirect, extrinsic, special, penal, exemplary or consequential loss or damage pertaining to a loss of profits, a loss of operational time, any loss of information or for claims for losses or damages based on contracts with third parties.

25.2 The liability of each Party to the other in all instances shall be limited to all direct loss or damage as may be sustained or incurred by a Party and which is directly attributable to the wilful or negligent actions and/or omissions of the other Party, its employees and agents.

25.3 DWS shall under no circumstances whatsoever be liable nor assume liability:

25.3.1 for any loss or damage of whatsoever nature and howsoever arising, suffered or claimed, to any property or injury to any person whomsoever resulting either directly or indirectly, consequentially or otherwise from any emergencies or unscheduled interruptions, including variations or deficiencies in the water supply;

25.3.2 for any loss or damage to the User arising out of any water supply system or water services works or connection or installation connected with or made to any waterworks of DWS by the User;

25.3.3 for any loss or damage of whatsoever nature and howsoever arising, suffered or claimed, to any property or injury to any person whomsoever or for the loss of production or the loss of income or profit resulting either directly or indirectly, consequentially or otherwise, from the quality of water supplied.

26. BREACH

26.1 In the event of any breach of any of the terms or conditions of this Agreement by either Party hereto, including any failure to comply with any of the material terms and/or conditions of this Agreement and/or the drawing of water by the User in excess of the Licenced annual

volumes which it is authorised to take, but excluding those material breaches specifically identified in sub-clause 26.3 below, then the aggrieved Party may either claim specific performance or cancel the Agreement, provided that:

26.2 time has been made of the essence by the aggrieved Party to the defaulting Party by the giving of written notice detailing the nature of the alleged breach by the defaulting Party and demanding that such breach be remedied within a period of 14 (fourteen) Business Days of date of such initial written notice to the defaulting Party;

26.2.1 if the defaulting Party fails to remedy such breach within the 14 (fourteen) day notice period, then the aggrieved Party shall determine a date, after expiry of such notice period, for purposes of a meeting to be held between the aggrieved Party and the defaulting Party and shall give written notice of the date and place of such meeting to be held. The purpose of such meeting shall be for the Parties to meet in good faith and discuss ways and means to remedy such breach and/or to mitigate the extent of the loss and/or damage suffered or to be suffered by the aggrieved Party and/or to identify an acceptable solution in the best interests of the Parties, without having to resort to cancellation;

26.2.2 if within 7 (seven) Business Days of the holding of the meeting, either the defaulting Party fails to remedy the breach or within such time as may be agreed during the said meeting, or if no agreement is reached between the defaulting Party and the aggrieved Party during the meeting referred to in sub-clause 26.2.1 above on the remedying of such breach, then the aggrieved Party shall give a final written notice to the defaulting Party, demanding that the breach be remedied within a further period of 14 (fourteen) Business Days of date of such written notice, failing which the aggrieved Party shall be entitled at its election, to either:

26.2.2.1 claim specific performance from the defaulting Party, with or without a claim for damages as set out in clause 25 above; or

26.2.2.2 cancel the Agreement forthwith by giving written notice to that effect to the defaulting Party, provided that where the aggrieved Party is DWS, it will not have the right to cancel the Agreement where there is a dispute pending between the Parties and the User has paid and continues to pay all charges or other amounts due and payable under this Agreement to DWS.

26.3 The following events of default shall be regarded as material breaches of contract on the part of the User and in the event of any such breach, DWS shall be entitled to cancel this Agreement by giving written notice to that effect to the User on:

26.3.1 the failure of the User to pay any amount due under the BRVAS-CUC and/or the Water Use Charges on due date and such failure is not remedied by payment of the amount due within 14 (fourteen) Business Days after date of a written notice from DWS demanding payment thereof from the User;

26.3.2 the winding up or placing under liquidation (whether provisionally or finally), or the

placing under judicial management or under administration, of the User;

26.3.3 any attempt by the User to compromise or enter into a scheme of compromise, composition or arrangement with any of its creditors.

26.4 Any cancellation of this Agreement shall be without prejudice to any right of the aggrieved Party to recover, *inter alia*, any direct loss or damage suffered, subject to clause 25 above.

27. CONSEQUENCES OF CANCELLATION

Upon cancellation of this Agreement due to a breach by the User, prior to full repayment of the BRVAS Project Costs, the User shall be obliged to:

27.1 make payment to DWS of the full amount outstanding in respect of the Debt applicable to it arising under the BRVAS-CUC, calculated as set out in **Annexure D** hereto;

27.2 make payment to DWS of all amounts outstanding in respect of the Water Use Charges applicable to it, calculated up to the date on which it ceased to take water from the BRVAS;

27.3 forthwith cease taking water from the BRVAS, until and unless all outstanding amounts have been paid in full to DWS in terms of sub-clause 27.1 and sub-clause 27.2 above (for the avoidance of doubt such water will thereafter be taken in terms of the Users' Licence); and

27.4 at its sole cost forthwith disconnect all connections, installations or other equipment owned by it and which has been connected to the BRVAS infrastructure, until and unless it has complied with sub-clauses 27.1, 27.2 and 27.3 above and the Agreement has been reinstated.

28. RISK AND INSURANCE

The Parties record that:

28.1 no Party will bear any risks which have been allocated to the other Party in terms of this Agreement and each of them shall be entitled to take out and maintain in force such insurance policies as it may deem appropriate to cover any risks to be borne by it under this Agreement;

28.2 DWS will assume the risk of loss or damage to the Project as a government waterworks, with effect from Operational Declaration, and may elect to bear such risk itself on a self-insurance basis or insure against such risk with insurers appointed by it;

28.3 the costs of any insurance policies taken out by DWS and/or TCTA before Operational Declaration will form part of the BRVAS Project Costs and the costs of any insurance policies taken out after Operational Declaration by DWS and/or TCTA will form part of the operations and maintenance costs;

28.4 the proceeds of claims made under the relevant insurance policy will be applied to repair the damage to the BRVAS infrastructure;

28.5 subject to the institutional framework applicable to the Parties from time to time, they may agree on such additional insurance requirements as may be required from time to time.

29. DISPUTE RESOLUTION

29.1 During the Implementation phase, the dispute resolution provisions set out in **Annexure B** hereto will be applicable, except for disputes relating to the interpretation of this Agreement which will be dealt with in terms of this clause. With effect from Operational Declaration, all disputes will be dealt with in terms of this clause.

29.2 The Parties shall endeavour to resolve any dispute arising out of this Agreement amicably through good faith negotiations to be held between them by senior representatives of the Parties.

29.3 In the event that the Parties are unable to resolve such dispute or difference as provided for in 29.2 above, then either Party shall be free to utilise the mechanisms set out in the Intergovernmental Relations Framework Act 13 of 2005 to facilitate settlement of the dispute and matters connected therewith, in accordance with the procedures set out thereunder.

29.4 In the event that the Parties are unable to resolve the dispute between them within 6 (six) months of a referral in terms of the Intergovernmental Relations Framework Act 13 of 2005, then either of the Parties shall be free to refer the matter to arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA").

29.5 The arbitration shall be conducted subject to the following provisions:

29.5.1 the arbitration shall be held in a summary manner before a single arbitrator with a view to it being completed as soon as possible;

29.5.2 the decision of the arbitrator shall be final and binding on the Parties and of immediate effect;

29.5.3 either Party shall be entitled to apply to the High Court of South Africa to make such decision an order of court;

29.5.4 the cost of the arbitration proceedings shall be borne by the Parties as determined by the arbitrator, provided that where the arbitrator's decision is silent as to costs, the Parties shall each bear their own costs;

29.5.5 nothing contained in this clause shall preclude any Party from applying to any court of competent jurisdiction for a temporary interdict or other relief of an urgent nature, pending the award of the arbitrator; and

29.5.6 throughout the period between the declaration of a dispute and the making of a final ruling by the arbitrator, none of the obligations of the Parties shall be suspended and all obligations shall continue to be discharged in accordance with their tenor, as if such arbitration proceedings had not been initiated.

29.6 Notwithstanding the termination or cancellation of this Agreement for whatsoever reason, this dispute resolution provision will survive such termination or cancellation and may be invoked by either of the Parties.

PART 7: GENERAL PROVISIONS

30. CONFIDENTIALITY

30.1 Each Party shall keep confidential and not disclose any trade secrets, confidential documentation, proprietary information, technical know-how and data, systems, methods,

commercial, financial and technical information which may be disclosed to it by the other Party to this Agreement, to any other party, other than to persons employed by them and/or authorised by them and who are required to have such information for purposes of fulfilling their respective obligations under this Agreement.

30.2 Each Party hereby acknowledges that the confidential documentation and/or information is of substantial value and each Party undertakes not to disclose any confidential information to any other party, except for the purposes contemplated under this Agreement.

30.3 The confidentiality obligations will not apply to information which:

30.3.1 is public knowledge, or becomes public knowledge at any time through no fault of the Party receiving such confidential information; or

30.3.2 is disclosed to any of the Parties by a third party with the lawful right to make such disclosure and which did not obtain such information directly or indirectly from the disclosing Party; or

30.3.3 was known to the receiving Party prior to the date of disclosure by the disclosing Party as it is able to prove through documentary material in its possession; or

30.3.4 is disclosed by the receiving Party with the consent of the disclosing Party; or

30.3.5 is required to be disclosed in terms of an order of court, law, regulation or any forum or regulatory authority (including without limitation, a stock exchange body).

30.4 The Parties record that the confidentiality obligations set out herein shall remain in force indefinitely notwithstanding termination of this Agreement.

31. DOMICILIUM CITANDI ET EXECUTANDI

31.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

31.1.1 DWS: Sedibeng Building
185 Francis Baard Street
Pretoria
0002
Fax No: (012) 336-7309
e-mail:
Attention: Deputy Director-General: National Water Resource Infrastructure

31.1.2 The User:

Fax No:
e-mail:
Attention:

31.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective if reduced to writing and sent to the other Party.

31.3 Any notice to a Party:

31.3.1 sent by pre-paid registered post in a correctly addressed envelope to it at its domicilium address shall be deemed to have been received on the 5th (fifth) Business Day after posting;

31.3.2 delivered by hand to a responsible person during ordinary business hours at its domicilium address shall be deemed to have been received on the day of delivery; or

31.3.3 sent by telefax to its chosen telefax numbers as stipulated above, during normal business hours, shall be deemed to have been received on the date of dispatch.

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

32. GENERAL

32.1 This agreement constitutes the whole of the Agreement between the Parties relating to the matters dealt with herein.

32.2 No prior representations, warranties, undertakings or other terms and conditions of whatever nature shall be valid and binding unless recorded herein and signed by the Parties.

32.3 No amendment or addition to, deletion from or consensual cancellation of this Agreement or any provision hereof or of any other Agreement shall be valid and binding unless recorded in writing and signed by the Parties.

32.4 Any extension of time or waiver or relaxation of any of the terms or conditions of this Agreement which either Party may grant to the other shall not prejudice such Party in respect of its rights under this Agreement nor preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement. Any such extension, waiver or relaxation so given shall be construed as relating strictly to the matter for which it was given.

32.5 Nothing in this Agreement shall fetter, or be deemed to fetter, the Minister's discretion as provided for in the NW Act or any other applicable legislation, including but not limited to the grant of Licences to any parties wishing to take water from the BRVAS.

32.6 Where it is specified in this Agreement that certain matters are to be agreed between the Parties, any failure to reach agreement in respect of such matter will not affect the validity and enforceability of the remaining provisions of this Agreement.

32.7 Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or un-enforceability and shall be treated as *pro non scripto* and severed from this Agreement, without invalidating the remaining provisions of this Agreement which will remain of full force and effect. In such cases, the Parties undertake to negotiate with each other in good faith and shall use all reasonable endeavours to redraft

the void provisions to render such provisions enforceable.

32.8 This Agreement shall be binding on any successor in title of DWS and any successor in title of the User.

32.9 Should any functions relevant to this Agreement be assigned by DWS to a water management institution in terms of the NW Act, DWS undertakes to incorporate the relevant provisions of this Agreement in any such assignment so as to bind such institution as a successor in title.

32.10 This Agreement will at all times be governed by, interpreted and construed in accordance with the laws of the Republic of South Africa.

32.11 Each Party shall be liable for its own costs in respect of the preparation, drafting, negotiation and settling of this Agreement.

THE SIGNATORIES HEREUNDER WARRANT THEIR AUTHORITY TO SO SIGN:

THUS DONE AND SIGNED AT_____ON THIS_____DAY OF_____2021

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF OF:
THE DEPARTMENT OF WATER AND SANITATION
NAME:
CAPACITY:

THUS DONE AND SIGNED AT_____ ON THIS_____DAY OF _____2021

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF OF:
SALDANHA BAY LOCAL MUNICIPALITY
NAME:
CAPACITY: