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WATER SERVICES ACT 108 OF 1997

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WATER SERVICES PROVIDER CONTRACT REGULATIONS

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The Minister of Water Affairs and Forestry has, after consultation with the National Minister responsible for Local Government, under section 19(5) of the Water Services Act, 1997 (Act No. 108 of 1997), made the regulations in the Schedule.

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1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context indicates otherwise -

“**contract**” means an agreement or renegotiated agreement in writing between a water services authority and a water services provider in terms of which the water services provider is to provide water services with or without capital investment;

“**contract area**” means the area within the jurisdictional boundaries of the water services authority or such other area as may be defined by a water services authority in which the water services are to be rendered by a water services provider;

“**corrupt action**” means the following -

- (a) giving or accepting any undue payment, bribe, gift gratuity or any other undue benefit in exchange for performing or forbearing to perform any action in connection with a contract; and
- (b) solicitation, offering, participation, conspiracy and attempt to bring about the circumstances mentioned in subregulation (a).

“**employment law**” includes, but is not limited to, any provision of the following Acts -

- (a) Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
- (b) Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (c) Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- (d) Labour Relations Act, 1995 (Act No. 66 of 1995);
- (e) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); and
- (f) Skills Development Act, 1998 (Act No. 97 of 1998);

“**levels of service**” means the various methods and quantities, where applicable, for the provision of water services to consumers;

“**Local Government: Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**publish**” means the dissemination, through media such as newspapers and radio, of information among consumers taking into account -

- (a) language preferences and usage in the contract area; and
- (b) the special needs of people who cannot read or write and of other disadvantaged groups;

“**standards of service**” means the operational performance of the services as measured against the relevant compulsory national norms and standards as contemplated in section 9 of the Act, as well as any additional standards specifically provided for in the contract; and

“**the Act**” means the Water Services Act, 1997 (Act No. 108 of 1997).

2. Objects of contract

The contents of a contract must be consistent with -

- (a) the main objects of the Act as determined in section 2 of the Act; and
- (b) provisions of the Local Government: Municipal Systems Act.

3. Scope of contract

A contract must describe the scope of the water services to be provided by the water services provider and must -

- (a) set forth the manner in and the means by which any relevant portion of the water services development plan will be implemented;
- (b) designate the contract area in which the water services are to be provided and determine a procedure by means of which the contract area may be changed;
- (c) determine the conditions under which other water services providers, both within and outside the jurisdictional boundaries of the water services authority, may have access to and utilise any part of the water services works;
- (d) describe the levels of service and standards of service to be provided which, if variable, shall be defined for different geographic areas in the contract area accompanied by specific requirements, including time frames and where appropriate, accompanied by a capital development plan to achieve the target levels of the service; and

- (e) identify the water services works which shall form part of the contract and the process by which the water services provider gains access to such water services works.

4. Water use licence

A contract must set forth the obligations of each party to obtain any licence required for the use of water under section 22(1) of the National Water Act, 1998 (Act No. 36 of 1998).

5. Performance targets and indicators

A contract must provide for -

- (a) performance targets and indicators developed after consultation with consumers, including those relating to the levels of service and standards of service to be achieved by the water services provider over fixed periods;
- (b) periodic performance reviews; and
- (c) a process whereby performance targets and indicators may be renegotiated in consultation with consumers.

6. Obligations of the Water Services Authority

A contract must set forth the obligations of the water services authority that are a necessary condition for the achievement by the water services provider of any performance target, including those relating to the achievement of any level of service or standard of service.

7. Cession

A contract must include a provision in terms of which the water services provider is prohibited from ceding any of its rights or assigning any of its obligations under the contract to any person without the prior permission of the water services authority.

8. Arrangements in respect of existing employees

A contract must provide for an arrangement in terms of which the existing employees of the water services authority involved in water services affected by the contract are to be managed in accordance with the employment law.

9. Commencement, amendment, breach and termination

A contract must provide for -

- (a) the duration of the contract, which may not exceed a maximum of 30 years calculated from the date of signature of the contract;
- (b) the manner and means by which the contract will be reviewed as part of the Integrated Development Planning process required in terms of Chapter 5 of the Local Government: Municipal Systems Act;
- (c) a procedure for earlier termination of the contract;
- (d) notification by an aggrieved party to the other party of any breach of contract within a specified period and the legal remedies available to the aggrieved party where such breach of contract is not rectified within the period stated by the aggrieved party in its notification to the other party;
- (e) a procedure upon the termination of the contract -
 - (i) for the efficient and orderly return of the water services works and any other assets, rights and obligations held by the water services provider under the contract, to the water services authority; and
 - (ii) for the settlement of all outstanding debts between the parties;
- (f) the effect on the contractual rights and obligations of the parties in the event of force majeure;
- (g) a procedure, should clearly prescribed circumstances have changed materially -
 - (i) for effecting an amendment to tariffs, remuneration or a modification of levels of service or standards of service; and
 - (ii) that includes public disclosure of the amendments or modifications contemplated in subparagraph (i); and
- (h) any specified penalties which may be applied by either party, for non-performance.

10. Property rights

A contract must require that any plan, manual, data base, inventory, survey, financial and other record, and all other information compiled in terms of the contract shall remain the property of the water services authority.

11. Assets

A contract must -

- (a) prohibit the disposal, alienation, or encumbrance of any existing or future immovable asset of a water services authority, including any component of the water services works, unless such disposal, alienation, or encumbrance is -
 - (i) provided for in the water services authority's development plan; or
 - (ii) approved by a council resolution of the water services authority;
- (b) provide for the furnishing of asset management and maintenance plans to demonstrate; that the water services works are being maintained in a reasonable condition in accordance therewith; and
- (c) provide procedures for the procurement, disposal, alienation, and encumbrance of assets.

12. Financial

A contract must provide for a method by which the water services provider shall receive payment for its performance in terms of the contract and that method must

- (a) provide an incentive for the water services provider to perform efficiently and effectively;
- (b) take into account the requirement for a reasonable rate of return on any investment made by the water services provider in terms of the contract and that rate of return must -
 - (i) be commensurate with the risks involved;
 - (ii) be based on information provided during the procurement process; and
 - (iii) when based on a price index or on a cost of capital, be specified and based on one that is readily available from a reputable source and regularly published;
- (c) provide for the periodic financial review of the method; and
- (d) provide for the sharing of any financial benefit to be achieved by the efficient and effective performance of the water services provider.

13. Consumer charter

Where the contract provides for the water services provider to provide services directly to consumers, a contract must -

- (a) require a water services provider to prepare and publish a consumer charter that at least -
 - (i) fulfils the requirements for conditions for provision of water services as contemplated in section 4 of the Act;
 - (ii) provides a system for dealing with consumers' complaints;
 - (iii) sets out a consumer's right to redress; and
- (b) provide for procedures to enable consumers in the contract area to participate in the preparation of the consumer charter, and must for that purpose provide for-
 - (i) public meetings and hearings that take into account the language preferences and usage in the contract area; and
 - (ii) the receipt, processing and consideration of comments and other inputs on the proposed charter by consumers.

14. Disclosure and monitoring

A contract must provide for the manner in and the means by which the water services authority must monitor the performance of the water services provider in order to comply with the provisions of section 27 of the Act.

15. Information required by authority

A contract must provide for the water services provider to provide the water services authority with such information as may be reasonably required for the water services authority to monitor the contract and to comply with its obligations to report to the Minister and the Province on compliance by the water services provider with the Act and these Regulations.

16. Financial records

A contract must require the water services provider to -

- (a) prepare and maintain financial records and statements in accordance with the Generally Accepted Accounting Practice publication adopted in the Republic of South Africa or, in the case of a sphere of government, in accordance with the relevant financial management legislation; and

- (b) allow the water services authority access to all financial records and statements reasonably required for the monitoring and regulation of the contract.

17. Operational records

A contract must require a water services provider to prepare and maintain -

- (a) a record of all existing and past consumers of water services dealt with in terms of the contract;
- (b) an asset inventory including the condition and geographical location of all water services works covered by the contract; and
- (c) a record of operations, maintenance, inspections and technical auditing.

18. Access to information by consumers

A water services provider must be required in terms of the contract to ensure access to such information as may be reasonably called for by a consumer or a potential consumer.

19. Annual reports

A contract must require a water services provider to annually publish at least –

- (a) a report on performance against targets and indicators required under regulation 5;
- (b) a situation report in respect of the appropriate sections of the water services development plan;
- (c) details of any penalties levied by either party for non-performance by the other party in terms of the contract or disputes that have arisen due to the alleged non-performance of either party;
- (d) audited contract accounts of the water services provider; and
- (e) the tariff rates and structure.

20. Warranties

A contract must set out any warranties or performance guarantees to be furnished by the water services provider in respect of its ability to fulfil its contractual obligations.

21. Insurance

A contract must set forth the nature and the level of insurance to be taken by the parties.

22. Dispute resolution

A contract must provide for a dispute resolution process.

23. Prevention of corruption

A contract must require each party to identify corrupt action and to take all reasonable steps to prevent either party, its employees, its sub-contractors its agents or anybody under its control from involvement in corrupt action.

24. General

Should any of the provisions of subsections 19(2), 19(3) or 19(4) of the Act apply, a contract must indicate which of these subsections are applicable and record that there has been due compliance.

25. Law of the contract

A contract must require that the contract shall be governed and interpreted by the law of South Africa.