



# NON-DISCLOSURE AGREEMENT

## ["NDA" / "Agreement"]

*Improving lives through water*

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**Between**

LEBALELO WATER USER ASSOCIATION established on 1 February 2002 in terms of Chapter 8 of the National Water Act of 1998 (Act 36 Of 1998) Section 92 (1)(f) and 94 (2), Schedule 4 (Management and Planning of Water Management Institutions) and Schedule 5 sections 79(2) and 84(1) of the Act, represented herein by Ms Anisje van Kaam-Obrholster in her capacity as Commercial Manager of the Association, she being duly authorised hereto;

(hereafter referred to as the '**Disclosing Party**') –

**and**

(hereafter referred to as the '**Receiving Party**').

1. In consideration for the provision of access by the Disclosing Party to the Receiving Party, its employees, directors and officers of confidential information, which Information is / shall be disclosed or made available to the Receiving Party (hereinafter referred to as "Information"), the Receiving Party hereby agrees to hold in trust and confidence and not to disclose to any unauthorised third party or to use for any purpose other than as authorized in writing, in advance, by the Disclosing Party, any and all Information disclosed to it by the Disclosing Party, or obtained through access to the facilities and/or systems of the Disclosing Party **except Information which:**
  - a) at the time of disclosure is in the public domain, or after disclosure becomes part of the public domain by publication or otherwise through no fault of the Receiving Party; or
  - b) was in the lawful possession of the Receiving Party prior to the time of disclosure hereunder, and which was not acquired directly or indirectly from the Disclosing Party; and



- c) was lawfully received by the Receiving Party, after the time of disclosure hereunder from a third party under no obligation of confidentiality to the Disclosing Party and who did not acquire any such Information directly or indirectly from the Disclosing Party.

The onus of proving any one of the exceptions contained in clauses 1a) to 1c) rests with the Receiving Party.

- 2. This Agreement shall not be construed as granting the Receiving Party any claim of any nature to such Information, nor any license rights or any proprietary rights relating to the Information and the Disclosing Party retains all right, title and interest in and to such Information. The Receiving Party shall not copy, reproduce, publish or circulate any of the Information unless the Disclosing Party provides its prior written consent in such instance.
- 3. The Receiving Party agrees to assume responsibility for the compliance with the terms of this Agreement by all of its employees and affiliates who may be given access to Information and shall be responsible for any breach of the provisions of this Agreement by such employees and affiliates. The Receiving Party agrees to inform an employee of the confidential nature of the Information and shall only disclose the Information to an employee who has a legitimate interest therein.
- 4. The Receiving Party may also disclose Information to its insurers, auditors, agents, consultants and/or professional advisors to the extent necessary for the purpose of this Agreement. The Receiving Party may also disclose Information as required in terms of any law or regulations or by any judicial, governmental, supervisory or regulatory body, court of law or legal process.
- 5. The Parties undertake to comply with the law including the Protection of Personal information Act ("POPIA") and to process all personal information in accordance with the provisions of POPIA and not to use the Information for any purpose other than for the purpose of this Agreement. Each Party shall be liable to the other for any losses, claims or damages suffered by the other Party as a direct result of such breach of laws and POPIA, which is finally and judicially determined by a court of competent jurisdiction, unless caused by the gross negligence, wilful misconduct or fraud on the part of the aggrieved party.



6. Subject to the exceptions in clause 1, the provisions of this agreement shall commence on signature of this Agreement and shall continue indefinitely thereafter. On termination of the underlying agreement between PwC and the Disclosing Party, the Receiving Party shall deliver to the Disclosing Party all documents and/or material containing Information of the Disclosing Party in its possession or control, including any such documents and/or material that an employee may have become privy to or be in possession of.
7. The Receiving Party undertakes and shall be liable to the Disclosing Party, including any of its employees and/or contractors ("Claiming Party") against any claim for loss or damage of whatever nature or kind, which may arise as a direct result of breach of contract, the unauthorised disclosure of the Information to a third party, which is finally and judicially determined by a court of competent jurisdiction, or arbitrator as the case may be.
8. No amendment, alteration, addition, variation, or consensual cancellation of this Agreement will be valid unless in writing and signed by both the Disclosing and Receiving Parties. The Agreement may be signed in counterparts.
9. Any disputes arising out of or in connection herewith shall be referred to the respective authorised signatories of the Disclosing Party and Receiving Party or their successors in title, who shall meet within **5 days** of such referral to attempt to resolve the dispute and should they fail to resolve the dispute within **10 days** of such meeting, either of the Parties shall be entitled to request the Chairperson for the time being of the Arbitration Foundation of Southern Africa to make the appointment of the arbitrator to arbitrate the dispute in accordance with the rules of the arbitration foundation of Southern Africa who, in making his appointment, shall have regard to the nature of the dispute. The arbitrator shall have the powers conferred upon an arbitrator under the Rules. The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the South Gauteng High Court, Republic of South Africa should any other Party wish to make the arbitrator's decision an order of Court.
10. The Parties choose as their *domicilium citandi et executandi* for court, arbitration or any other legal processes, the address specified in this Agreement.



10.1 Disclosing Party: Sanlam Building, Floor 2, 4 Davenport Street, Lynnwood Bridge Office Park, Pretoria.

10.2 Receiving Party:

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed by their duly authorized representatives on the date written below.

<p>For and on behalf of the Receiving Party:</p>   <p>Signature: .....</p> <p>Name:</p>  <p>Witness Signature .....</p> <p>Witness Name:.....</p> <p>Date:</p>  <p>Place:.....</p>	<p>For and on behalf of the Disclosing Party:</p>   <p>Signature: .....</p> <p>Name: Mduduzi Luthuli</p>  <p>Witness Signature .....</p> <p>Witness Name:</p>  <p>Date:</p>  <p>Place: Pretoria</p>
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