

MEMORANDUM OF UNDERSTANDING

entered into by and between

**SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION
(SALGA)**



and

**DEPARTMENT: WATER AFFAIRS AND FORESTRY
(DWAF)**



water & forestry
Department:
Water Affairs and Forestry
REPUBLIC OF SOUTH AFRICA

and

**WATER RESEARCH COMMISSION
(WRC)**



WATER RESEARCH COMMISSION

WHEREAS the Department of Water Affairs and Forestry, the Water Research Commission, and the South African Local Government Association (hereinafter collectively referred to as "**The Parties**") agree to collaboratively *initiate and set up a national benchmarking activity for the water services sector which will support the water services sector regulatory framework.*

WHEREAS the Memorandum of Understanding represents an opportunity to bring together benchmarking practitioners that can help governments and utilities to apply appropriate benchmarking principles and recommendations governing the delivery of basic services;

WHEREAS the Memorandum of Understanding seeks to ensure that appropriate benchmarking practices inform the formulation of the DWAF Regulatory Strategy;

WHEREAS a critical outcome expected from this collaboration and understanding is a greater insight into the benchmarking mechanisms as a tool for effective regulation;

IT IS HEREBY AGREED:

1. INTERPRETATION

- 1.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used to interpret, modify or amplify the terms and conditions of this agreement.
- 1.2 Unless a contrary indication clearly appears, words importing
 - 1.2.1 any one gender includes the other gender;
 - 1.2.2 the singular includes the plural and *vice versa*; and
 - 1.2.3 person includes created entities (corporate or unincorporated) and the state.

2. DEFINITIONS

- 2.1 The following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings:
 - 2.1.1 "**Department of Water Affairs and Forestry**" ("DWAF") means the national government department responsible for the national regulation of the water

sector. It has responsibility for oversight of regulations promulgated under sections 9, 10 and 19(5) of the Water Services Act, 1997 (Act No. 108 of 1997).

- 2.1.2 **"Water Research Commission"** (WRC) means the WRC established in terms of section 2(1) of the.
- 2.1.3 **"South African Local Government Association"** (SALGA) means the national organisation, representing municipalities and recognised by the Minister of Constitutional Development in terms of section 2(1) of the Organised Local Government Act, 1997 (Act 52 of 1997).
- 2.1.4 **"Benchmarking Core Group"** means a Committee comprising at least one representative of each party, to provide leadership and oversight to this Initiative.
- 2.1.5 **"Benchmarking"** means the reiterative measurement of performance in different spheres of the operation to test against statutory compliance or for comparison with others in order to improve performance to match that of the class leaders.
- 2.1.6 **"Effective Date"** means the date whereupon all the nominated representatives from the Parties have signed the agreement.
- 2.1.7 **"Initiative"** means the set up of a national benchmarking activity for the water services sector, which will support the water services sector regulatory framework.
- 2.2 Any reference to days, months or years shall be a reference to calendar days, months or years as the case may be.
- 2.3 The rule of construction that an agreement or provision shall be construed or interpreted against the Party who was responsible for its structuring, drafting or preparation of the Agreement or such provision, shall not apply in this Agreement.
- 2.4 The *eiusdem generis* rule shall not apply and whenever the term "include" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that provision.

- 8.3.2 be duly acknowledged in the publication, presentation, release or submission for it's funding and support in realising the methods and results of the Initiative;
- 8.3.3 let the Implementing Agent have its comments, suggestions and final approval within fifteen (15) days of receipt of the draft referred to in clause; and
- 8.3.4 be furnished with a copy of the publication, presentation, release or submission within one (1) month after said publication, presentation, release or submission.

9. FORCE MAJEURE

- 9.1 Neither party shall have any liability or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement, which result from circumstances beyond the reasonable control of that party, including without limitation labour disputes involving that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 9.2 If a force majeure event prevents performance of this agreement for a continuous period of six (6) months, the parties shall meet to discuss the termination of this agreement.

10. WITHDRAWAL AND TERMINATION

- 10.1 The parties can terminate this agreement by mutual agreement.
- 10.2 Any of the parties shall, notwithstanding the aforesaid provisions, and without prejudice to the legal rights and obligations of the other party or parties, be entitled to withdraw from this agreement by giving three (3) calendar months prior written notice of such termination to the other party or parties.
- 10.3 Any of the parties shall be entitled to withdraw from this agreement by written notice to the other(s) in the event that:
 - 10.3.1 the other party commits a breach of the terms and conditions of this agreement, all of which are declared to be material, and fails to remedy the breach within fourteen (14) days from date of receipt of a written notice calling upon the other party to remedy the breach complained of;

- 10.3.2 the other party commits an act of insolvency or her/his/its estate is placed under a provisional or final sequestration or liquidation or judicial management order as the case may be;
- 10.3.3 the other party has committed a breach of a fiduciary duty relating to the Initiative; or
- 10.3.4 the other party is, by common law, guilty of any gross default or misconduct, which goes to the root of this agreement.

11. WHOLE AGREEMENT, NO AMENDMENT

- 11.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 11.2 No amendment or consensual cancellation of this agreement or any provision or term hereof and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement shall be binding unless recorded in writing and signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect of which it was made or given.
- 11.3 If any clause of this agreement is found to be invalid, unenforceable or illegal, then the remaining provisions of this agreement shall be deemed to be severable therefrom and shall continue to be in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this agreement.

12. DURATION OF AGREEMENT

This Memorandum of Understanding shall be in effect for three years from the effective date.

- 5.9 decide and approve any amendments and changes to this agreement, as well as to the contractual arrangements of the implementing agents;
- 5.10 ensure that the costs associated with participation of the representatives of the Benchmarking Core Group, will be covered by their respective organisations; report to the parties on progress of the Initiative; and
- 5.11 receive project reports from the nominated project manager.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Parties must endeavour to ensure that the Implementing Agent identify, record and disclose to the Core Benchmarking Group, in writing, all Background Intellectual Property vesting in itself, or any other third party involved in the Initiative, as well as any pre-emptive or other existing rights vesting in any of the abovementioned parties, which relate to the undertaking of the Initiative, prior to the Effective Date of this agreement or as soon as the Implementing Agent becomes aware of the existence of any of the abovementioned rights.
- 6.2 The Core Benchmarking Group shall treat the background intellectual property disclosed in terms of Clause 6.1 confidentially.
- 6.3 The State shall have copy rights to all documents, data and computer programmes, as well as draft document, data and computer programmes, relating to the meeting of water services regulatory requirements in South Africa, produced or developed during and within the scope of this Initiative.
- 6.4 Notwithstanding clause 6.3 above, any of the parties shall have the right to use the intellectual property so produced for their own research purposes.
- 6.6 The Implementing Agent shall deposit computer data and/or a complete machine-readable source code of computer programmes in accordance with a written request by the Core Benchmarking Group.
- 6.7 DWAF shall become the custodian of the intellectual property rights referred to in clause 6.3.

7. COMMERCIALY EXPLOITABLE INTELLECTUAL PROPERTY

- 7.1 Notwithstanding the provisions of Clause 6 above, should any one of the parties deem the intellectual property generated and/or created by an Implementing Agent within the scope of the Initiative, including intellectual property disclosed in terms of clause 6.4 above, to be commercially exploitable or in need of further development, such party shall notify DWAF promptly, in writing, of this potential for commercial exploitation or further development of the intellectual property.
- 7.2 The parties may collaborate in the protection, commercial exploitation or further development of such intellectual property. The parties may enter into a separately negotiated written agreement defining the relationship, roles and responsibilities in said collaboration.
- 7.3 Should any of the parties decide against participating in said collaboration, DWAF shall have the right to veto the protection, commercial exploitation or further development of the intellectual property.

8. DISCLOSURE AND PUBLICATION

- 8.1 The right to publish any research results or other information resulting from the Initiative, in form or medium, is reserved by the DWAF as the copy right holder.
- 8.2 The Parties must ensure that any agreement entered into with the Implementing Agent must include provision for obtaining prior written permission from the DWAF or any successors in title if they wish to present methods and results of the Initiative at symposia or at national, regional or international professional meetings, and/or to publish in journals, or to submit the methods and results in theses or dissertations, or in other formats of their own choosing at least one (1) month prior to any such presentation, publication, release or submission.
- 8.3 Where permission has been duly obtained in writing from the DWAF in terms of clause 8.2 above, the parties shall -
- 8.3.1 be furnished with copies of the proposed publication, presentation or release at least one (1) month, or as soon as possible thereafter, in advance of the intended submission of such proposed publication, presentation, release or submission to a journal, editor or other third party;

3. PURPOSE

The purpose of this Memorandum of Understanding is to -

- 3.1 set up a national benchmarking initiative for the water services sector, which will support the water services sector regulatory framework;
- 3.2 initiate a collaborative process of developing and encouraging benchmarking in the water services sector in South Africa via mutual learning and information exchange about benchmarking practices, processes and current and future projects related to benchmarking;
- 3.3 enter into a process of developing a set of water services definitions and benchmarks for South Africa and of communicating and collaborating with the South African water services sector with the sector about these;
- 3.4 collaborate and exchange information regarding benchmarking projects, and practices being carried out by the Parties; and
- 3.5 set up a Benchmarking Core Group, which will nominate a Project Manager for the duration of the project.

4. RESPONSIBILITIES OF PARTIES

4.1 Responsibilities of DWAF

- 4.1.1 DWAF shall nominate 1 (one) representative as a standing member of the Benchmarking Core Group.
- 4.1.2 DWAF shall make a commitment of time or resources that it will dedicate towards the Initiative for the duration of the Memorandum of Understanding. and
- 4.1.3 DWAF will appoint and contractually engage Ethekeweni Metro Water Services to be the implementing agent for the Initiative.

4.2 Responsibilities of SALGA

- 4.2.1 SALGA shall nominate 1 (one) representative as a member of the Benchmarking Core Group.
- 4.1.4 SALGA shall be willing to make a commitment of time or resources that it will dedicate towards the Initiative for the duration of the Memorandum of Understanding.

4.3 Responsibilities of WRC

- 4.3.1 WRC shall nominate 1 (one) representative as a member of the Benchmarking Core Group.
- 4.3.2 WRC shall make a commitment of time or resources that they will dedicate toward the Initiative for the duration of the Memorandum of Understanding.
- 4.3.3 WRC shall provide research support and funding as and when the need is identified during the duration of the project, in accordance with the published WRC criteria and guidelines.
- 4.3.4 WRC shall provide resources to establish and develop the WRC Benchmarking software platform for the benefit of the Initiative. and
- 4.3.5 WRC shall assist with information dissemination of the Initiative.

5. RESPONSIBILITIES OF THE BENCHMARKING CORE GROUP

The responsibilities of the Benchmarking Core Group are to –

- 5.1 meet quarterly to exchange information and developments in the benchmarking sector as the Benchmarking Core Group;
- 5.2 review and approve the business plan of the implementing agent;
- 5.3 evaluate and approve progress reports of the implementing agent;
- 5.4 provide strategic direction to the implementing agent;
- 5.5 set any rules and criteria for and in the interest of the Initiative;
- 5.6 ensure the production of an annual report on progress of the Initiative for reporting to the participants;
- 5.7 assist with the sharing and dissemination of the information and knowledge generated from the Initiative;
- 5.8 ensure that the Initiative supports and meets the requirements of the water services sector regulatory framework;