

LONG TERM LOAN AGREEMENT

made and entered into by and between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

in respect of funding the

2018/19 Capital Expenditure Programme



Development Bank
of Southern Africa

S. MAM
M.B.

TABLE OF CONTENTS

SUMMARY.....	4
1. INTERPRETATION	5
2. RECORDAL.....	12
3. THE LOAN.....	12
4. FACILITY LAPSE DATE.....	13
5. CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT	13
6. INTEREST	14
7. COMMITMENT FEES	15
8. REPAYMENT	16
9. EARLY PAYMENT.....	16
10. PAYMENT COVENANTS.....	17
11. SUSPENSION/CANCELLATION OR REDUCTION OF DISBURSEMENTS	18
12. INCREASED COSTS AND DECREASED COSTS.....	19
13. OTHER INDEMNITIES.....	20
14. COVENANTS - POSITIVE AND NEGATIVE UNDERTAKINGS.....	21
15. REPRESENTATIONS AND WARRANTIES	24
16. RIGHTS AND REMEDIES.....	26
17. EVENTS OF DEFAULT	27
18. ILLEGALITY OF THE LOAN	28
19. SEVERABILITY	28
20. CESSION AND DELEGATION.....	28
21. COUNTERPARTS.....	29
22. GOVERNING LAW	29
23. JURISDICTION.....	29
24. CERTIFICATE OF INDEBTEDNE.....	29
25. REMEDIES AND WAIVERS.....	29
26. COSTS	29
27. NOTICES AND DOMICILIA.....	30

28. DISPUTE RESOLUTION..... 31

29. RELAXATION..... 32

30. VARIATION 32

31. WHOLE AGREEMENT..... 32

SIGNATURES..... 33

ANNEXURE 1: FORM OF REQUEST FOR DISBURSEMENT (LOAN) 34

ANNEXURE 2: DEVELOPMENT RESULT REPORT 36

Handwritten signatures and initials, including 'M-B' and 'M-B'.

SUMMARY

1	LOAN AMOUNT	:	Up to R2,000,000,000.00
2	LOAN PERIOD	:	15 years
3	INTEREST RATE FIXED	:	R2032 Government Bond Rate published two days prior to disbursement as quoted by the Johannesburg Stock Exchange (JSE) plus 220 basis points
4	INTEREST GRACE PERIOD	:	None
5	CAPITAL REPAYMENT	:	Bullet repayment on maturity of the loan.
6	INTEREST REPAYMENT	:	30 instalments, the first payment being 6 months from the date of first disbursement, thereafter, Semi-annual instalments, commencing on the first interest payment date.
7	PROGRAMME FILE NO.	:	12008128

1. INTERPRETATION

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1. "**Accounting Officer**" shall have the meaning ascribed thereto in the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;

1.1.2. "**Agreement**" means the agreement as set out in this document together with the Annexures hereto;

1.1.3. "**Authorisation**" means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;

1.1.4. "**Availability Period**" means up to 30 June 2019;

1.1.5. "**Borrower**" means the City of Ekurhuleni Metropolitan Municipality, a municipality established or deemed to be established under Government Notice no. 3585 of 2005 as published in the Gauteng Provincial Gazette Extraordinary No. 394 of 16 September 2005, in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;

1.1.6. "**Borrower's Account**" means the bank account with the following details:

Account Holder: City of Ekurhuleni Metropolitan Municipality

Bank: Nedbank Limited

Account Number: 1119114764

Branch: Nedbank Corporate Investment Banking

Branch Code: 169745

1.1.7. "**Breakage Costs**" means the amount (if any) determined by the DBSA by which:

1.1.7.1. the interest which the DBSA would have received for the period from the date of receipt of an amount repaid or prepaid in respect of the Loan to the last day of the applicable Interest Period for that Loan, if the principal received had been paid on the last day of that Interest Period, exceeds:

1.1.7.2. the amount which the DBSA would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading

bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;

- 1.1.8. "**Business Day**" means any day (other than a Saturday, Sunday or officially recognised public holiday) on which day banks generally are open for business in Johannesburg, South Africa;
- 1.1.9. "**Cancellation Fee**" means an amount equal to 0,5% (nought comma five percent) of the cancelled Capital;
- 1.1.10. "**Capital**" means an amount of up to R2,000,000,000.00 (two billion Rand);
- 1.1.11. "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations (including ordinances), published practice concession, official directive, ruling, request, notice, announcement (including but not limited to any budget speech) guideline by any government entity (whether or not having the force of law) or any change in the interpretation, or any new or different or the introduction or making of any new or further interpretation or any new or different competent authority or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;
- 1.1.12. "**Commitment Fee**" means an amount equal to 0,35% (nought comma three five percent) per annum;
- 1.1.13. "**Court**" means any court of law having jurisdiction;
- 1.1.14. "**CP**" means each condition precedent contained in clause 5 (*Conditions Precedent For First Disbursement*) of this Agreement;
- 1.1.15. "**CP Fulfilment Date**" means the date on which the DBSA notifies the Borrower pursuant to clause 5.1 (*First Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.1.16. "**DBSA**" means the Development Bank of Southern Africa Limited, a development funding institution reconstituted and incorporated in terms of the Development Bank of Southern Africa Act, No. 13 of 1997;
- 1.1.17. "**Debt Service Coverage Ratio**" means the net cash flow from operations plus finance cost minus capital grants divided by total debt service minus debt to be

redeemed from sinking fund in the next reporting period. Total debt service means current portion of long term loans plus finance cost;

- 1.1.18. "**Default Interest**" means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.1.19. "**Default Rate**" means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.20. "**Development Result Report**" means a report submitted to the DBSA, in the form attached hereto as Annexure 2 (*Development Result Report*), in terms of which the Borrower outlines, in relation to the MTREF, information on, *inter alia*, the application of funds for the achievement of certain developmental outcomes under the 2018/2019 Capital Programme;
- 1.1.21. "**Disbursement**" means any amount disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.22. "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.23. "**Disbursement Request**" means a notice substantially in the form annexed hereto marked "**Annexure 1A**" (*Form of Request for Disbursement(Loan)*);
- 1.1.24. "**Economic Failure**" means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date;
- 1.1.25. "**Event of Default**" means any event of default as envisaged in 17 (*Events of Default*) below;
- 1.1.26. "**Facility**" means the loan facility made available under this Agreement as described in clause 2.2;
- 1.1.27. "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.1.28. "**Finance Documents**" means all the finance documents including completely without limitation:

- 1.1.28.1. this Agreement; and
- 1.1.28.2. Disbursement Request.
- 1.1.29. "**Financial Year**" means the financial year of the Borrower ending on 30 June of each year;
- 1.1.30. "**Half-yearly**" means from the first Interest Payment Date to a date falling 6 (six) months thereafter, and the consecutive 6 (six) month periods;
- 1.1.31. "**Interest Payment Date**" means the last Business Day of each Interest Period;
- 1.1.32. "**Interest Period**" means, in respect of the first interest period, the period beginning on the date of first Disbursement, ending on a date falling 6 (six) months from the date of first Disbursement and thereafter, each consecutive period of 6 (six) months commencing on the first Interest Payment Date;
- 1.1.33. "**Interest Rate (Fixed)**" means the fixed interest rate that equates to R2032 Government Bond Rate published two days prior to Disbursement as quoted by the Johannesburg Stock Exchange (JSE) plus 220 basis points. The interest rate is nominal compounded semi-annually (NACS);
- 1.1.34. "**Loan**" means any loan made under this Agreement, or as the context may require, the principal amount outstanding for the time being of that loan;
- 1.1.35. "**Loan Outstandings**" means at any time the aggregate of all amounts of principal, accrued and unpaid interest and all and any other amounts payable to the DBSA in terms of this Agreement;
- 1.1.36. "**Loan Period**" means a period of 15 (fifteen) years commencing on the date of first Disbursement;
- 1.1.37. "**Material Adverse Effect**" means an event, circumstance or matter (or combination of events, circumstances or matters) which has or is likely to have a material adverse effect on:
- 1.1.37.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- 1.1.37.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or

- 1.1.37.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
- 1.1.37.4. the right or remedies of DBSA in terms of and pursuant to this Agreement; or
- 1.1.37.5. South African or international monetary, financial, political or economic conditions or the DBSA's access to the relevant local or international capital markets;
- 1.1.38. "**Mayor**" means in relation to:
- 1.1.38.1. a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
- 1.1.38.2. a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act;
- 1.1.39. "**MTREF**" means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.1.40. "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003 as amended from time to time;
- 1.1.41. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;
- 1.1.42. "**Potential Event of Default**" means any event, envisaged in clause 17 (*Events of Default*) which will become an Event of Default:
- 1.1.42.1. after the expiry of the applicable cure period set out in respect of such event in clause 17 (*Events of Default*); or
- 1.1.42.2. if notice to remedy is given as envisaged in clause 17 (*Events of Default*) and such event is not remedied within the applicable notice period set out in clause 17 (*Events of Default*);
- 1.1.43. "**Programme**" means the long term funding provided to the Borrower in terms of section 46 of the MFMA for its 2018/19 Capex Programme;
- 1.1.44. "**Rand**" and "**R**" means the lawful currency of the Republic of South Africa;

- 1.1.45. "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it;
- 1.1.46. "**Taxes**" shall mean all taxes (including VAT), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and "**Tax**" and "**Taxation**" shall be construed accordingly;
- 1.1.47. "**Total Debt**" means the total amount of all interest bearing obligations including finance lease and current portion of long term borrowing less sinking fund;
- 1.1.48. "**Total Income**" means the total amount of operational income plus non-conditional grants. Operational income Includes rates, electricity, water, sanitation, refuse, rental income, fines, licences and permits, interest received and other income; and
- 1.1.49. "**VAT**" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended.
- 1.2. A **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement.
- 1.3. **Law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law.
- 1.4. **Person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality);
- 1.5. Any reference to the singular includes the plural and *vice versa*.
- 1.6. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

- 1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this clause 1 (*Interpretation*).
- 1.9. Unless otherwise provided in this Agreement, if any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 1.10. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11. Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 1.12. A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.
- 1.13. Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.14. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 1.15. Expressions defined in this Agreement shall bear the same meanings in appendices, schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.16. Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.
- 1.17. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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.
- 1.18. Where the day on or by which a payment is due to be made or an obligation is to be performed is not a Business Day, such payment shall be made or that obligation done on or by, in the case of a payment due or thing to be done, on the next succeeding Business Day. Interest, fees and charges (if any) shall continue to accrue for the period from the due date which is not a Business Day.

1.19. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.

1.20. This Agreement shall bind the Parties' successors-in-title or in law.

2. RECORDAL

2.1. The Borrower is undertaking the Programme and seeks funding in respect thereof.

2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan of up to R2,000,000,000.00 (two billion Rand) subject to the terms and conditions set out in this Agreement. The proceeds of this Facility shall be utilised for capital expenditure as per section 46(1)(a) of the MFMA.

2.3. The Parties agree as set out below.

3. THE LOAN

3.1. The Loan shall be:

3.1.1. an amount not exceeding, in aggregate, the Capital; and

3.1.2. utilised exclusively for the Programme, but notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.

3.2. The Loan proceeds shall be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.

3.3. Disbursement Procedure

3.3.1. The Borrower shall, subject to clause 5 (*Conditions for First Disbursement*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 15 (fifteen) Business Days (or such shorter time as may be acceptable to the DBSA for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.

3.3.2. The Disbursement Request shall be irrevocable and shall create an obligation on the Borrower to borrow in accordance with such Disbursement Request.

3.3.3. The DBSA shall make the Disbursements to the Borrower only (and to no third party) in Rand to the credit of the Borrower's Account as specified by the Borrower in the Disbursement Request.

3.4. Security Package

The Loan will be unsecured

4. FACILITY LAPSE DATE

4.1. Unless otherwise agreed between the DBSA and the Borrower, the Facility will lapse in its entirety if:

4.1.1. the Finance Documents are not signed on or before 30 June 2019; and

4.1.2. the Borrower does not procure the fulfilment of all the Conditions Precedent on or before 30 June 2019.

4.2. For the avoidance of doubt, the Finance Agreements shall never become of any force and effect if the Borrower does not comply with both clauses 4.1.1 and 4.1.2.

5. CONDITIONS FOR FIRST DISBURSEMENT

5.1. First Disbursement

The obligation of the DBSA to make the first disbursement is subject to the fulfilment, in a manner satisfactory to it, of the conditions specified in the loan agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

5.1.1. a resolution of the Municipal Council of the Borrower approving the latest MTREF budget of the Borrower reflecting that money for the Programme has been appropriated in the capital budget as well as approving the Programme and the total cost thereof;

5.1.2. a resolution of the Municipal Council of the Borrower in terms of section 46(2) of the MFMA;

5.1.3. proof that the Accounting Officer has complied with the provisions of section 46(3) of the MFMA as regards public participation and information statements within prescribed timeframes;

5.1.4. all FICA documents from the Borrower as required by legislation;

5.1.5. a disbursement request from the Borrower, which shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of

a written request from the Borrower and shall notify the Borrower of its decision in writing; and

- 5.1.6. a Disbursement schedule from the Borrower which should be within the Availability Period, if applicable.

5.2. All Disbursements

The obligation of the DBSA to make any disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the conditions that on the date of the Borrower's application for such disbursement and on the Disbursement Date:

- 5.2.1. the DBSA will have received all such agreements, documents, statements and instruments as the Borrower is bound to deliver in terms of this Agreement and/or reasonably requested by the DBSA;
- 5.2.2. the representations and warranties made or confirmed by the Borrower, in this Agreement, will be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;
- 5.2.3. the Borrower will certify that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the disbursement are needed by the Borrower for the purposes of the Programme;
- 5.2.4. the Borrower will certify that to the best of its knowledge (after due enquiry) after receipt of that disbursement, the Borrower would not be in violation of:
- 5.2.4.1. any provision contained in the Finance Documents; or
- 5.2.4.2. any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow; and
- 5.2.5. the Borrower will provide the DBSA with an original Disbursement Request(s) within the Availability Period.

6. INTEREST

- 6.1. From the first Disbursement Date the Loan shall bear interest at the Interest Rate.
- 6.2. Interest on the Loan under this Agreement shall:
- 6.2.1. subject to clause 6.3 (*Default Interest*), accrue from day to day;

DBSA
Development Bank
of Southern Africa

MAM G
M.B

- 6.2.2. be calculated on the amount of the Loan Outstandings from time to time on the basis of the actual number of days elapsed and a 365 day year;
- 6.2.3. be calculated and payable on an Interest Payment Date;
- 6.2.4. be calculated on a nominal annual compounded Half-yearly basis;
- 6.2.5. Interest repayment(s) shall commence on a date falling 6 (six) months from the date of first Disbursement; and
- 6.2.6. accrue from date of first disbursement.

6.3. **Default Interest**

- 6.3.1. If the Borrower fails to pay an amount payable by it in terms of this Agreement on an Interest Payment Date (any such amount being an Overdue Amount), interest shall accrue on the Overdue Amount from the due date up to the date of actual payment of such Overdue Amount (both before and after judgment (if any)) at the Default Rate.
- 6.3.2. Default Interest due in a particular Interest Period shall be calculated in accordance with the following formula:

$$D1 = \frac{OM \times DR \times d}{365}$$

Where:

- D1 = the Default Interest amount;
- OM = the Overdue Amount;
- DR = the Default Rate;
- d = the number of days from the due date of an Overdue Amount to the date of actual payment of such Overdue Amount.

- 6.3.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.
- 6.3.4. The provisions of this clause 6.3 are without prejudice to any other rights which the DBSA may have as a result of the failure by the Borrower to pay amounts whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

7. COMMITMENT FEES

- 7.1. If the Borrower draws down the Loan in accordance with the Disbursement schedule, no Commitment Fee shall be payable. In the event that the Borrower deviates (on both amount and date) from the Disbursement schedule, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled.
- 7.2. In the event that the Parties have not agreed upon a Disbursement schedule in terms of this Agreement, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled.
- 7.3. The Commitment Fee shall:
- 7.3.1. commence to accrue from the Signature Date;
 - 7.3.2. be pro-rated on the basis of a 365 (three hundred and sixty five) day year irrespective of whether it is a leap year or not, for the actual number of days elapsed; and
 - 7.3.3. be payable Half-Yearly, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

8. REPAYMENT

- 8.1. The Borrower shall, subject to clause 9 (*Early Payment*) repay:
- 8.1.1. Capital will be repaid by means of a once-off bullet repayment at maturity of the loan;
 - 8.1.2. Interest will be repaid in 30 Half-Yearly instalments, commencing on the last day of the Half-year during which first disbursement was made.
- 8.2. The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.
- 8.3. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings that have been repaid.
- 8.4. Repayments shall be:
- 8.4.1. applied to the Loan in inverse order of maturity; and

8.4.2. made together with accrued interest on the amount paid (together with other amounts due to DBSA).

9. EARLY REPAYMENT

- 9.1. At any time, the Borrower may, by giving the DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Loan Outstandings on any Interest Payment Date and no other.
- 9.2. At any time, the Borrower may, by giving the DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Loan Outstandings on any Interest Payment Date and no other.
- 9.3. Any notice of prepayment pursuant to clause 9.2 shall:
- 9.3.1. be irrevocable;
 - 9.3.2. specify a date (the "**Prepayment Date**") upon which prepayment is to be made;
 - 9.3.3. specify the amount of the Loan Outstandings to be prepaid; and
 - 9.3.4. oblige the Borrower to make such prepayment on the Prepayment Date.
- 9.4. The Borrower will not be entitled to make more than 1 (one) prepayment in any calendar month.
- 9.5. The Borrower will not be entitled to re-borrow any of the Loan Outstandings prepaid.
- 9.6. Any prepayment will be:
- 9.6.1. applied to the Loan being prepaid in inverse order of maturity;
 - 9.6.2. made together with accrued interest on the amount prepaid (together with other amounts than due to the DBSA); and
 - 9.6.3. subject to Breakage Costs.
- 9.7. The Borrower will not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided in this Agreement.

10. PAYMENT COVENANTS

- 10.1. All payments to be made by the Borrower in terms of this Agreement shall be made in Rand, in same day funds, free of exchange and bank commission and without deduction or set-off into such bank account as the DBSA may nominate from time to time.
- 10.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement.
- 10.3. All payments made in terms of this Agreement shall be made free and clear of any Taxes and, to the extent that Taxes are payable, the amount to be paid will be increased to the extent necessary such that, after deduction or withholding of Taxes, the DBSA receives the amount that it would have received, but for the Taxes.
- 10.4. If the DBSA at any time receives less than the full amount then due and payable to it under this Agreement, the DBSA may allocate and apply such payment as follows notwithstanding any instruction from the Borrower:
- 10.4.1. firstly, in or towards payment or satisfaction of all properly evidenced costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing any Security;
- 10.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and
- 10.4.3. thirdly, in or towards repayment of the Loan.
- 10.5. Neither Party may set off any obligation due under this Agreement against any other obligation the Parties might have outside of this Agreement.

11. SUSPENSION/CANCELLATION OR REDUCTION OF DISBURSEMENT

11.1. By the DBSA

- 11.1.1. The DBSA may, by notice to the Borrower at any time after the receipt of a Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the making of the Disbursement if an Economic Failure has occurred.
- 11.1.2. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.

- 11.1.3. The DBSA may suspend or cancel the right of the Borrower to Disbursements if an Event of Default or Potential Event of Default has occurred or is continuing.
- 11.1.4. Upon the happening of an Event of Default or Potential Event of Default the right of the Borrower to any further Disbursement shall be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of suspension shall not preclude the DBSA from exercising its right of cancellation, as provided for in this clause 11 (*Suspension/Cancellation of Disbursements*), either for the same or any other reason, and shall not limit any other rights of the DBSA under this Agreement or in law.
- 11.1.5. Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled.

11.2. Cancellation by the Borrower

- 11.2.1. The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to cancel all or a portion of the undisbursed portion of the Capital on the date specified in such request.
- 11.2.2. If, after having received a notice in accordance with clause 11.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available, on terms satisfactory to the DBSA, to complete the Programme (whilst complying with the provisions of this Agreement); then the DBSA shall, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.
- 11.2.3. Should the Borrower cancel the Facility, any portion thereof or undisbursed portion of the Capital in terms of this clause 11.2, or otherwise in terms of this Agreement, a Cancellation Fee shall be payable by the Borrower to the DBSA within 30 (thirty) days from the earlier of the date of written notice of cancellation of the facility by the Borrower or the expiry of the Availability Period.

11.3. Reinstatement

Unless otherwise provided in this Agreement, no amount of the Capital cancelled under this Agreement may be reinstated.

12. INCREASED COSTS AND DECREASED COSTS

12.1. Increased Costs

Except as provided in clause 12.3 below, the Borrower must pay to the DBSA the amount of any increased cost incurred by the DBSA as a result of:

- 12.1.1. a Change in Law;
- 12.1.2. compliance with any law or regulation made after the date of this Agreement;
- 12.1.3. the introduction of a new law or requirement by any statutory or tax authority which obliges the Borrower to make any Tax deduction in respect of any amounts which the Borrower must pay to the DBSA in respect of the Loan; or
- 12.1.4. any other event, which did not exist at the Signature Date, attributable to a statutory or tax authority in the Republic of South Africa which is beyond the control of DBSA, with the result that DBSA is subject to any VAT, duty or other charge in respects of any payment received or receivable (or deemed to be received or receivable) in terms of this Agreement.

12.2. Economic Failure

- 12.2.1. If an Economic Failure occurs within the Availability Period, which in the opinion of the DBSA may reduce the rate of return which the DBSA may receive on the Capital under any Finance Documents then, at the DBSA's sole discretion the DBSA shall be entitled to increase the Interest Rate. The increase in Interest Rate shall take effect from the date specified in a written notice delivered by the DBSA to the Borrower but in any event not less than 30 (thirty) days after the date of such written notice.
- 12.2.2. If in the reasonable opinion of the Borrower, the revised funding terms referred to in clause 12.2.1 shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to reject such revised terms and cancel the Facility without incurring a Cancellation Fee.

12.3. Exceptions

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- 12.3.1. attributable to a Tax deduction required by law to be made by the Borrower;

12.3.2. compensated for under clause 12.2; or

12.3.3. attributable to the DBSA failing to comply with any law or regulation.

13. OTHER INDEMNITIES

13.1. Indemnities

The Borrower will, within 30 (thirty) days of demand, indemnify the DBSA against any loss, liability or properly evidenced cost which the DBSA directly or indirectly incurred, including legal fees on an attorney and own client scale, as a result of:

- 13.1.1. the occurrence of any Event of Default;
 - 13.1.2. investigating or taking any other action in connection with any event that it reasonably believes is an Event of D;
 - 13.1.3. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
 - 13.1.4. any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the Programme contemplated or financed under this Agreement failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result thereof;
 - 13.1.5. funding, or making arrangements to fund a Loan requested by the Borrower in a Disbursement Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the DBSA);
 - 13.1.6. a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;
 - 13.1.7. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or
 - 13.1.8. acting or relying on any notice, request or instruction from the Borrower which the DBSA reasonably believes and which on the face thereof appears to be genuine, correct and appropriately authorised.
- 13.2. The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under Finance Document or this Loan.

14. COVENANTS – POSITIVE AND NEGATIVE UNDERTAKINGS

- 14.1. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in this clause 14.3 (*Positive Undertakings*).
- 14.2. Each undertaking is a continuous undertaking and the Borrower shall comply with each undertaking for the entire period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.
- 14.3. **Positive Undertakings/Warranties**
- 14.3.1. The Borrower undertakes and warrants that in the event that a project under the Programme is abandoned or suspended for any reason whatsoever, it shall promptly submit to the DBSA a copy of the report submitted to the Municipal Council in respect of such suspended or abandoned projects.
- 14.3.2. The Borrower warrants that it has obtained and in future will or cause to be obtained from the relevant government authorities any Authorisation(s) and/or permit(s)/licences which are or may be required in terms of the relevant environmental, waste and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such authorisation(s) and/or license(s) as received.
- 14.3.3. The Borrower will comply with acceptable environmental management principles as contained in the National Environmental Management Act, No. 107 of 1998 and to ensure that an agreed upon system is in place, which adheres to environmental requirements throughout the lifetime of the Programme, and to ensure compliance with all environmental legal requirements and water use licence requirements.
- 14.3.4. The Borrower will ensure proper maintenance of the assets created through this loan in line with National Treasury Municipal Finance Management Act Circular number 55 and 66.
- 14.3.5. The Borrower undertakes to the implement its approved supply chain management policies in accordance with the MFMA to promote the utilisation of local labour, small local contractor participation and gender equity.
- 14.3.6. The Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the Programme funded by the DBSA.

- 14.3.7. The Borrower will ensure that all construction work and all engineering services comply with the highest standards applicable to it in terms of the laws of the Republic of South Africa (including standards relating to building, occupational health and safety and the provision of bulk electricity and electrical reticulation).
- 14.3.8. The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.
- 14.3.9. The Borrower shall, within 3 (three) months from the Signature Date, provide the DBSA with a detailed Development Result Report in the form attached hereto as Annexure 2 (*Development Result Report*) and the substance satisfactory to the DBSA and the DBSA shall be entitled, subject to 14.5.3 above to engage the representatives of the Borrower and/or any of its stakeholders as regards the developmental outcomes provided for in the Development Result Report.

14.4. Financial Covenants

- 14.4.1. The Borrower shall ensure that the Total Debt to Total Income does not exceed 55% (fifty five percent).
- 14.4.2. If at any time during the term of this Agreement, the Borrower wishes to incur additional debt and the incurrence of such debt will result in the Borrower's Total Debt to Total Income exceeding 55% (fifty five percent), the Borrower undertakes to request the DBSA's written consent (which consent shall not be unreasonably withheld or delayed) before taking up any additional debt.
- 14.4.3. The Borrower undertakes to:
- 14.4.3.1. maintain a Debt Service Cover Ratio of 1.3:1 for the duration of this Loan; and
- 14.4.3.2. at each Interest Payment Date, submit to the DBSA a certificate confirming that the Debt Service Cover Ratio is not less than 1.3:1 (a "**Financial Ratio Certificate**").
- 14.4.4. If at time during the term of this Agreement the Borrower notifies the DBSA, or without any such notification, the DBSA becomes aware that the Borrower has breached the undertakings set out in clause 14.4.3.1 above (the "**Notification Date**"), the Parties undertake to within 10 (ten) Business Days from the Notification Date meet to analyse the Borrower's financial situation and attempt negotiate an acceptable remedy to the breach.

- 14.4.5. If no agreement is reached between the Parties within 30 (thirty) days following the Notification Date, the DBSA shall notify the Borrower of the termination of this Agreement and the provisions of clause 17.3 below shall immediately apply.

14.5. The Borrower and the Programme

The Borrower undertakes to:

- 14.5.1. comply with all law applicable to it;
- 14.5.2. fully and punctually comply with all the terms of this Agreement and any other agreement to which it is a party that is material in the context of the Programme and take all necessary action or enforce prompt and proper performance and discharge by the other parties of their respective obligations under this Agreement and such agreements in a manner consistent with the Borrower's obligations under this Agreement;
- 14.5.3. permit representatives or nominees of the DBSA, at reasonable times, access to the Programme sites, subject to compliance with normal safety procedures. The DBSA shall make reasonable efforts to give prior notice to and co-ordinate such visits and to minimise any disruption to the business and operations of the Borrower;
- 14.5.4. provide the DBSA, when requested, with the reports detailing the progress of the Programme;
- 14.5.5. as soon as may reasonably be possible after receipt of a written request from the DBSA, institute an environmental review/audit in respect of the Programme to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report;
- 14.5.6. promptly upon becoming aware thereof inform the DBSA of any occurrence which might have a Material Adverse Effect and/or of any Potential Event of Default and/or Event of Default; and/or
- 14.5.7. use the proceeds of the Loan exclusively for the Programme.

14.6. Financial Statements

The Borrower shall deliver its audited annual financial statements to the DBSA within 30 (thirty) days after it has been tabled at Council as per the requirement of the MFMA.


 DBSA
 Development Bank
 of South Africa
 [Handwritten signatures: M. M. M., M.B.]

15. REPRESENTATIONS AND WARRANTIES

15.1. In addition to any representation and warranties given elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the warranties contained in this clause 15 (*Representations and Warranties*) to the DBSA. Each such warranty:

- 15.1.1. is a separate and distinct warranty;
- 15.1.2. is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;
- 15.1.3. has induced the DBSA to enter into this Agreement; and
- 15.1.4. is given, save where otherwise indicated, a continuing warranty in the sense that such warranty shall irrefutably be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.

15.2. **The Borrower**

The Borrower represents and warrants that:

- 15.2.1. it is a legal entity duly established and validly existing under the laws of South Africa;
- 15.2.2. it has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken to authorise the execution, delivery and performance of the same, and no limit on the powers of the Borrower to borrow or to create security will be exceeded as a result of borrowings under this Agreement;
- 15.2.3. the execution, delivery and performance of the obligations of the Borrower under, and compliance with the provisions of, this Agreement by the Borrower does not and will not violate or conflict with, or result in any breach of, any law or Court order or judgment or any contractual obligations binding on the Borrower or affecting the Borrower or any of the Borrower's assets;
- 15.2.4. any factual information contained in or provided by the Borrower was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

- 15.2.5. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding, which exceeds 3% (three percent) of the Borrower's Total Revenue, and to the knowledge of the Borrower, no litigation, arbitration or administrative proceeding is pending or threatened against it or any of its assets which if adversely determined, would have a Material Adverse Effect;
- 15.2.6. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 15.2.7. the Programme conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 15.2.8. the Borrower has, all Authorisations required in connection with the Programme and is in compliance with such Authorisations;
- 15.2.9. the Borrower is not aware of any facts or circumstances which could lead to the revocation, suspension or variation of the terms of any Authorisation in connection with the Programme;
- 15.2.10. to the best of the Borrower's knowledge and belief (having made due enquiry) no Potential Event of Default or Event of Default has occurred and/or is continuing and no such event will occur as a result of its entering into performing its obligations under this Agreement;
- 15.2.11. the Borrower is not party to any agreement that has or could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to comply with its obligations in terms of this Agreement;
- 15.2.12. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 15.2.13. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 15.2.13.1. ensure that the Programme is undertaken and completed in a good and workmanlike manner with good and suitable materials, and in compliance with all applicable technical, safety and environmental regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;

- 15.2.13.2. obtain and maintain all further requisite planning consents, building regulation approvals and other matters to enable it to commence, continue with and complete the Programme;
- 15.2.13.3. comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made there under and all by-laws, regulations and codes of practice of any local or competent authority in relation to the Programme and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Programme is situated and obtain all necessary consents in respect of the Programme upon reasonably satisfactory terms; and
- 15.2.13.4. the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

15.3. Disclosure

The Borrower has disclosed to the DBSA all such information as is material to the granting of the Loan and all information disclosed by the Borrower to the DBSA, whether in writing or otherwise, is true, correct and complete in every material respect.

16. RIGHTS AND REMEDIES

The rights and remedies of the DBSA in relation to any misrepresentations or breach of warranty on the part of the Borrower are not prejudiced:

- 16.1. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or
- 16.2. by any other act or thing which may be done by or on behalf of the DBSA in connection with this Agreement and which might, apart from this clause 16 (*Rights and Remedies*), prejudice such rights or remedies.

17. EVENTS OF DEFAULT

- 17.1. An Event of Default shall occur if any one of the following events occur:
 - 17.1.1. the Borrower fails to pay to the DBSA any amount due pursuant to this Agreement and/or any other agreement it has entered into with the DBSA strictly on due date and fails to remedy such failure within 30 (thirty) days after its due date;

- 17.1.2. the Borrower breaches any of the undertakings, representations and/or warranties given by it pursuant to this Agreement and/or any other agreement it has entered into with the DBSA if such representation and/or warranty is capable of being remedied, fails to remedy it within 30 (thirty) days of receipt of written demand from the DBSA; and
- 17.1.3. If any of the following events occur and the event is capable of being remedied and the Borrower fails to remedy the event within 30 (thirty) days of receipt of written notice from the DBSA:
- 17.1.3.1. Authorisations in respect of the Programme are modified in a manner unacceptable to the DBSA or are not granted or are revoked or terminated or expire and are not renewed or otherwise cease to be in full force and effect; and
- 17.1.3.2. any third party loan, debt, guarantee or any other obligations constituting indebtedness of the Borrower, whether or not the DBSA is concerned therewith, becomes due and payable prior to its specified maturity by reason of default by the Borrower the Borrower is unable to pay its debts as and when they fall due for payment, threatens to stop or suspend payment thereof or commences negotiations with its creditors with a view to rescheduling or otherwise compromising its indebtedness.
- 17.2. An event occurs which the DBSA reasonably determines to have a Material Adverse Effect.
- 17.3. If an Event of Default occurs, the DBSA shall, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law, be entitled without further notice to:
- 17.3.1. accelerate or place on demand payment of all amounts owing by the Borrower to the DBSA (whether in respect of principal, interest or otherwise) and all such amounts shall immediately become due and payable; and/or
- 17.3.2. cancel any undrawn amount of the Capital; and/or
- 17.3.3. require the Borrower to indemnify the DBSA in respect of any loss, claim expense or similar costs incurred as a result of the Event of Default; and/or
- 17.3.4. charge Default Interest.

18. ILLEGALITY OF THE LOAN

If, after the Signature Date, there is any Change in Law that makes it unlawful for either Party to continue to maintain or to fund the Loan then the Borrower shall, upon request by the DBSA, repay the disbursed portion of the Capital and Interest in terms of this Agreement or in terms of any relevant, law, regulation or applicable directive in full. In addition, upon receipt of such notification from the DBSA, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

19. SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

20. CESSION AND DELEGATION

20.1. The Borrower shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

20.2. The DBSA shall be entitled, after notifying the Borrower but without the Borrower's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party, either absolutely or as collateral security, and on any such cession, assignment and/or delegation taking place, the Borrower shall, if so required make all payments to any specified cessionary.

21. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of South Africa.

23. JURISDICTION

The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria (or any successor to that division) in regard to all matters arising from this Agreement.

24. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager of the DBSA (whose appointment and/or designation and/or authority need not be proved) as to the existence of and the amount of indebtedness by the Borrower to the DBSA, that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the borrower's indebtedness to the DBSA in terms of this Agreement, shall be sufficient proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other Court proceedings, shall be valid as a liquid document for such purpose and shall in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by the DBSA arising therefrom.

25. REMEDIES AND WAIVERS

Neither failure by the DBSA to exercise, nor any delay by the DBSA in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

26. COSTS

- 26.1. The Borrower undertakes to pay to the DBSA within 14 (fourteen) days from written demand, the amount of all properly evidenced costs and expenses (including legal fees) reasonably incurred by the DBSA in connection with the negotiation and preparation, of this Agreement and any other documents referred to in this Agreement.
- 26.2. If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a Court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any Court award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

27. NOTICES AND DOMICILIA

- 27.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

27.2. For purposes of this Agreement the Parties' respective addresses shall be as follows:

27.2.1. **DBSA:**

Physical: Development Bank of Southern Africa Limited
 1258 Lever Road
 Headway Hill
 Midrand
 Postal: PO Box 1234, Halfway House, 1685
 Facsimile: (011) 313 3086
 Attention: Group Executive – Client Coverage; General Legal Counsel; and

27.2.2. **Borrower:**

Physical: Corner of Rose and Cross Streets, Germiston, 1400
 Postal: Private bag X69, Germiston, 1400
 Email: City.Manager@ekurhuleni.gov.za
 Attention: City Manager,

or at such other address in the Republic of South Africa of which the party concerned may notify the other in writing provided that no street address shall be changed to a post office box or post restante.

27.3. Any notice given in terms of this Agreement shall be in writing and shall:

- 27.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 27.3.2. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

27.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

28. DISPUTE RESOLUTION

28.1. In the event of there being any dispute or difference between the Parties arising out of this Agreement (including but not limited to any dispute or difference as to the validity or


 DBSA
 Development Bank
 of Southern Africa




otherwise of this Agreement, or as to the enforceability of this Agreement), the said dispute or difference shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the AFSA rules, which arbitration shall be administered by AFSA.

- 28.2. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, or should AFSA refuse to accept the particular request for arbitration for whatever reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) Business Days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- 28.3. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 28.4. Any arbitration in terms of this clause 28 (*Dispute Resolution*) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 28.5. This clause 28 (*Dispute Resolution*) will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 28.6. The Parties agree that the written demand by a party to the dispute in terms of clause 28.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

29. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this Agreement. No single or partial exercise of any right by any party under this Agreement, shall in any circumstances be

construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

30. VARIATION


No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

31. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

SIGNATURES

For: **THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

Signature: 
who warrants that he / she is duly authorised thereto

Name: MOTALE BEN MOKHESENS

Date: 15 MARCH 2019.

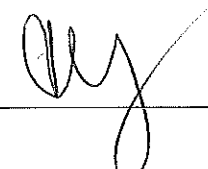
Place: MIDRAND

Witness: 

Witness: 

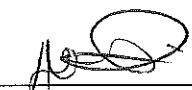
For: **CITY OF EKURHULENI METROPOLITAN MUNICIPALITY**

Signature: DR. MABOLANDI FLOREN MASHAZI
in his/her capacity as Accounting Officer

Name: 

Date: 19/03/2019

Place: GERMISTON

Witness: 

Witness: 