

**FACILITY AGREEMENT**

made and entered into by and between

**THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

and

**GREATER TZANEEN LOCAL MUNICIPALITY**

In respect of funding the

**2016/17 & 2017/18 INEP PROGRAMME TO UPGRADE AND EXPAND EXISTING AND NEW  
ELECTRICITY INFRASTRUCTURE**



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M.S.

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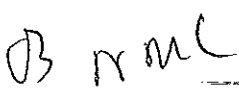
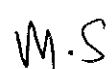

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## SUMMARY

1. FACILITY AMOUNT : R 31 300 000.00 (INEP funding).
2. TERM : No later than 30 June 2018.
3. INTEREST RATE FIXED : 9.00%.
4. GRACE PERIOD FOR INTEREST PAYMENT : Nil.
5. GRACE PERIOD FOR CAPITAL PAYMENT : Nil.
6. CAPITAL REPAYMENT : Repayments will be effected through the transfer of funds from the Primary Account into the Ceded Account within 7 (seven) days from the payment dates of INEP grants to Municipalities as they are published in the Government Gazette in terms of the applicable Division of Revenue Act. **The Capital, together with Interest, shall be repaid in full on or before 30 June 2018.**
7. INTEREST REPAYMENT : Repayments will be effected through the transfer of funds from the Primary Account into the Ceded Account within 7 (seven) days from the payment dates of INEP grants to Municipalities as they are published in the Government Gazette in terms of the applicable Division of Revenue Act.
8. PROJECT FILE NO. : 12007191.

## 1. INTERPRETATION

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

- 1.1 "Account Bank" means ABSA Bank;
- 1.2 "Accounting Officer" will have the meaning ascribed thereto in the Municipal Finance Management Act, No. 56 of 2003, as may be amended from time to time;
- 1.3 "Agreement" means the agreement as set out in this document together with the Annexures hereto;
- 1.4 "Applicable Interest Rate" means a fixed interest rate of 9.00% (nine percent).
- 1.5 "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;
- 1.6 "Authority" means the Government of South Africa and any province or municipality therein and any organ of state as contemplated in section 239 of the Constitution of the Republic of South Africa Act, No. 108 of 1996, including without limitation, any ministry, department, board, agency, court, tribunal, commission, entity or any other authority, subdivision or instrumentality of the Government of South Africa, or of any province or municipality therein;
- 1.7 "Availability Period" means 12 (twelve) months from Fulfilment Date;
- 1.8 "Borrower" means the Greater Tzaneen Local Municipality, a municipality established or deemed to be established in terms of section 12 of the Local Government: Municipal Structures Act, as amended from time to time;
- 1.9 "Borrower's Account" means the bank account with the following details:

Account Holder : Greater Tzaneen Local Municipality

Bank : ABSA

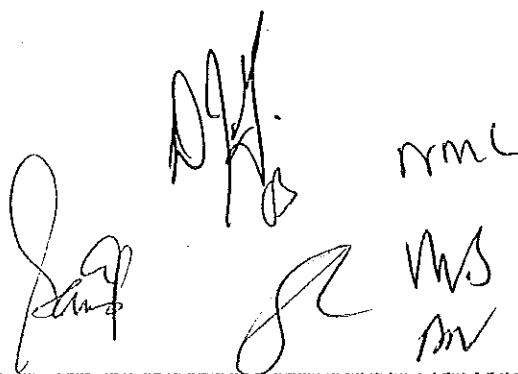
Account Number : 1260850527

Branch : Tzaneen



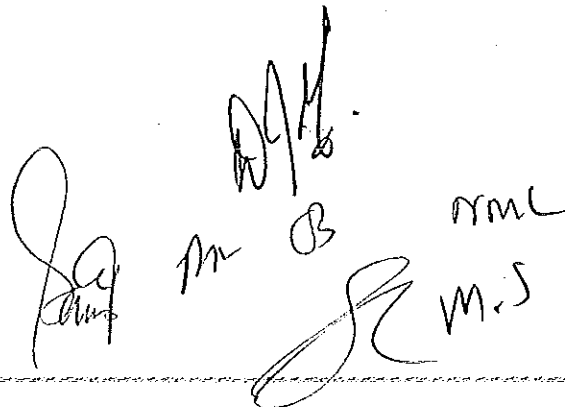
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- 1.10 "Business Day" means any day (other than a Saturday, Sunday or officially recognised public holiday) on which day banks generally are open for business in Johannesburg, South Africa;
- 1.11 "Breakage Costs" means the amount (if any) determined by the Lender by which:
- 1.11.1 the interest (but excluding the Margin) which the Lender would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a Facility to the last day of the applicable Interest Period for that Facility, if the principal received had been paid on the last day of that Interest Period,
- exceeds:
- 1.11.2 the amount which the Lender 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;
- 1.12 "Breakage Gains" means the amount (if any) by which the amount of interest contemplated in 1.11.2 above exceeds that in 1.11.1 above;
- 1.13 "Cancellation Fee" means a fee in an amount equal to 0,5% (nought comma five percent) of the amount of the Capital or a portion of the Capital being cancelled, which is payable by the Borrower to the DBSA in accordance with clause 11.4 of this Agreement;
- 1.14 "Capital" means an amount which shall not exceed in aggregate a total maximum amount of R31,300,000.00 (thirty one million three hundred thousand Rand);
- 1.15 "Capital Payment Date" means the payment dates of INEP grants to Municipalities as they are published in the Government Gazette in terms of the applicable Division of Revenue Act.
- 1.16 "Ceded Account" means the account held by the Borrower with ABSA under account number 9312434237, for the Facility Outstandings, which will be ceded to the DBSA in accordance with the Cession Agreement.
- 1.17 "Cession Agreement" means the agreement entered into by and between the DBSA and the Borrower in terms of which all rights, title and interest in and to the Ceded Account is ceded to the DBSA, attached hereto as Annexure C;



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- 1.18 "Change in Law" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.19 "CoGTA" means the Cooperative Governance and Traditional Affairs;
- 1.20 "Commitment Fee" means an amount equal to 0,5% (nought comma five percent) per annum;
- 1.21 "Conditions Precedent" means the conditions precedent contained in clause 5 (*Conditions Precedent to Disbursement*);
- 1.22 "Council" means the municipal council as detailed in Chapter 3 of the Municipal Structures Act;
- 1.23 "Default Interest" means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.24 "Default Rate" means the Applicable Interest Rate plus 200 (two hundred) basis points;
- 1.25 "Disbursement" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.26 "Disbursement Date" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.27 "Disbursement Request" means a notice substantially in the form of Annexure A;
- 1.28 "Disbursement Schedule" means the schedule to be provided by the Borrower in terms of clause 5.2.4 which sets out the amounts to be disbursed by the DBSA to the Borrower and the dates on which such amounts will be disbursed to the Borrower, under this Agreement;
- 1.29 "Discharge Date" means the date on which the Borrower has fully and finally discharged all of its obligations of any nature whatsoever (other than the contingent obligations in respect of which no claim has been made) under and in terms of the Finance Documents, including the payment in full of the Facility Outstandings;
- 1.30 "DoE" means the Department of Energy;



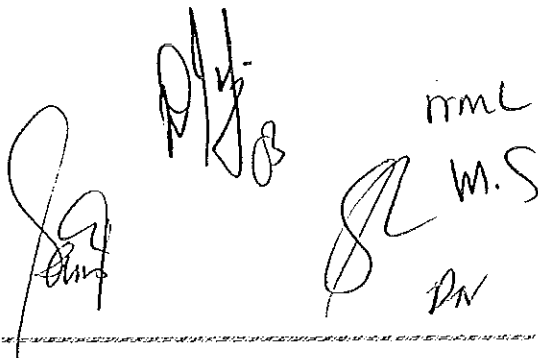
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- 1.31 "Economic Failure" means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date. In the case of the Borrower, 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 renders it impossible for the Borrower to request a disbursement as it will be financially unsustainable and will have a severe impact on the sustainability of the Borrower;
- 1.32 "Event of Default" means an event of default as defined in clause 17 (*Events of Default*) below;
- 1.33 "Facility" means the term loan facility in an amount not exceeding the Capital, to be made available by the DBSA to the Borrower under this Agreement, plus all the Interest capitalised in accordance with this Agreement;
- 1.34 "Facility Outstandings" means at any time, the aggregate of all amounts of principal and capitalised of whatsoever nature (whether in respect of the Interest, Capital or otherwise) then owing by the Borrower to the DBSA under the Finance Documents on account of the Facility;
- 1.35 "FICA" means the Financial Intelligence Centre Act, No. 38 of 2001, as may be amended from time to time;
- 1.36 "Finance Documents" means all the finance documents including completely without limitation:
- 1.36.1 this Agreement;
  - 1.36.2 Security Documents;
  - 1.36.3 Disbursement Request(s); and
  - 1.36.4 All material documents in respect of the Programme as identified by the DBSA in its sole discretion as Finance Documents.
- 1.37 "Financial Year" means the financial year of the Borrower ending on 30 June of each year;

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- 1.38 "Fulfilment Date" means the date on which the DBSA notifies the Borrower pursuant to clause 5 (*Conditions Precedent to Precedent to Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.39 "INEP" means the Integrated National Electrification Programme;
- 1.40 "Interest" means the interest calculated, at the Applicable Interest Rate, on the amount of the Facility Outstandings, from time to time in accordance with clause 6.2 below;
- 1.41 "Interest Payment Date" means the last Business Day of each Interest Period;
- 1.42 "Interest Period" means the payment dates of INEP grants to Municipalities as they are published in the Government Gazette in terms of the applicable Division of Revenue Act.
- 1.43 "Mayor" means in relation to:
- 1.43.1 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
- 1.43.2 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;
- 1.44 "Margin" means 203 basis points, expressed as a percentage rate, per annum;
- 1.45 "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:
- 1.45.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- 1.45.2 the ability of the Borrower to perform its obligations in terms of this Agreement; or
- 1.45.3 the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
- 1.45.4 the right or remedies of the DBSA in terms of and pursuant to this Agreement;



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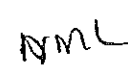
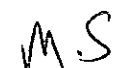

- 1.50.2.5 guidance and/or assistance with the formulation of operations and maintenance strategy for the new infrastructure; and
- 1.50.2.6 any other solutions, which may assist the Borrower, in conjunction with other stakeholders (Municipal Infrastructure Support Agent, South African Local Governance Association, etc.) in reaching projects milestones in a timeous and efficient manner and to improve service delivery in general.
- 1.51 "Potential Event of Default" means any event which would, with the giving of notice, lapse of time or the fulfilment of any other applicable requirement or any combination thereof, if not remedied or waived, become an Event of Default:
- 1.52 "Primary Account" means the account of the Borrower held with ABSA under account number: 1260850527 in terms of section 8 of the MFMA;
- 1.53 "Programme" means the Borrower's 2016/17 & 2017/18 INEP Programme as more fully described in Annexure B (*Programme/Project Description*);
- 1.54 "Project" means the upgrading and expansion of existing and new electricity infrastructure as more fully described in Annexure B (*Programme/Project Description*);
- 1.55 "Project Steering Task Team" means the task team consisting of representatives from the Parties, Department of Energy and Eskom;
- 1.56 "Rand" means the South African Rand, the lawful currency of South Africa.
- 1.57 "Security Documents" means all the Security Documents including completely without limitation:
- 1.57.1 Cession Agreement (attached hereto as Annexure C); and
- 1.57.2 Tripartite Agreement (attached hereto as Annexure E).
- 1.58 "Signature Date" means the date on which this Agreement is signed by the last Party signing it;





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- 1.59 "Taxes" will 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" will be construed accordingly;
- 1.60 "Term" means a period commencing from Signature Date and ending on the Discharge Date (being, 30 June 2018);
- 1.61 "the 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;
- 1.62 "Total Debt" means the total amount of all interest bearing obligations including finance lease and current portion of long term borrowing;
- 1.63 "Total Income" means the total amount of operational income plus equitable share. Operational income Includes rates, electricity, water, sanitation and refuse;
- 1.64 "Tripartite Agreement" means the written agreement to be entered into and between the Account Bank, the Borrower and the DBSA in terms of which, *inter alia*: (i) the Ceded Account is established; (ii) the Borrower grants the DBSA a first ranking cession in *securitatem debiti* over the Ceded Account; (iii) certain administrative arrangements for the sweeping of cash from the Borrower's Primary Account into Ceded Account are irrevocably established; and (iv) the DBSA is granted certain rights in respect of the Ceded Account, all on the terms and conditions satisfactory to the DBSA, attached hereto as Annexure E (*Tripartite Agreement*);
- 1.65 "Unwinding Costs" means any and all costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position, closing out, settling or unwinding any hedge transaction deposits or funding transactions that may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued by the DBSA, in respect of funding any part or all of the Facility; and
- 1.66 "VAT" means value added tax payable in terms of the Value-Added Tax Act, No. 89 of 1991, as may be amended from time to time.
- 1.67 Any reference to the singular includes the plural and vice versa;

- 1.68 Any reference to natural persons includes legal persons and vice versa;
- 1.69 Any reference to gender includes the other genders.
- 1.70 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in its interpretation.
- 1.71 Words and expressions defined in any sub-clause will, 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.
- 1.72 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect will be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.73 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 will 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 will be the next succeeding Business Day.
- 1.74 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
- 1.75 Appendices, schedules or annexures to this Agreement will be deemed to be incorporated in and form part of this Agreement.
- 1.76 A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.
- 1.77 Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.78 Expressions defined in this Agreement will bear the same meanings in appendices, schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.79 Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.
- 1.80 The expiration or termination of this Agreement will 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.

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- 1.81 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 will 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) will continue to accrue for the period from the due date which is not a Business Day.
- 1.82 This Agreement will be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.83 This Agreement will 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 Borrower approached the DBSA with a request for funding. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's request to make available an amount of R31 300 000.00 (thirty one million three hundred thousand Rand) subject to the terms and conditions contained in this Agreement.
- 2.3 The Parties wish to record their agreement in writing and to regulate matters related thereto.

## 3. THE FACILITY

- 3.1 The Facility will 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 will be under no obligation to monitor or verify the application of any amount borrowed hereunder.
- 3.2 The Facility proceeds will 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 will, subject to clause 5 (*Conditions Precedent to Disbursement*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) 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 first disbursement will be limited to a maximum of 5% (five percent) of the total project cost or the amount invoiced by Eskom for upfront fees that include provision of infrastructure (meters), and other services articulated in the Framework for creation of the Network Assets by municipalities not having an Electricity Distribution licence, NEAC meeting no. 2 dated 16 August 2007.
- 3.3.3. The Disbursement Request will be irrevocable and will create an obligation on the Borrower to borrow in accordance with such Disbursement Request.
- 3.3.4. The DBSA will 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. Terms and Conditions for Disbursement

The DBSA will disburse to the Borrower the facility as required by the Programme of the Borrower and such disbursements will be effected on projects which comply with the norms and criteria contained in Annexure B (*Programme/Project Description*).

#### 3.5. Collateral Package

The Borrower will open the Ceded Account which will be ceded to the DBSA. Capital and Interest transfers will be made into the Ceded Account in accordance with the Tripartite Agreement, attached hereto as Annexure D.

### 4. FACILITY LAPSE DATE

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

- 4.1. The Finance Documents are not signed on or before **31 December 2015**; and
- 4.2. The Borrower does not procure the fulfilment of all the Conditions Precedent within 6 (six) months from the Signature Date.

For the avoidance of doubt, the Finance Documents will never become of any force and effect if the Borrower does not comply with both clauses 4.1 and 4.2 above.



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## 5. CONDITIONS PRECEDENT TO DISBURSMENT

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 this Agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

### 5.1. First Disbursement

- 5.1.1 a certified copy of the latest approved MTREF budget of the Borrower reflecting that money for the Programme has been appropriated in the capital budget, approving the Programme and the total cost thereof. In this regard the Borrower's Chief Financial Officer will in writing confirm to the DBSA the authentication of the copies of the budget;
- 5.1.2 a certified copy of the Borrower's Council resolution in terms of sections 46 and 48 of the MFMA:
  - 5.1.2.1 signed by the Mayor as defined in the MFMA;
  - 5.1.2.2 approving the terms of the Facility;
  - 5.1.2.3 approving the cession of the 2016/17 & 2017/18 INEP allocations; and
  - 5.1.2.4 authorising the Accounting Officer to execute this Agreement and the Security Documents on its behalf.
- 5.1.3 proof from the Accounting Officer that the Borrower has, in compliance with the provisions of section 46(3) of the MFMA read with section 21(a) of the Municipal Systems Act, No. 32 of 2000, advertised the Borrower's intention to incur long-term debt;
- 5.1.4 the Borrower shall provide the DBSA with a copy of the approval from National Treasury in terms of the relevant Division of Revenue Act read with section 74 of the MFMA;
- 5.1.5 the Borrower shall provide the DBSA with all FICA documents as required by legislation;
- 5.1.6 the Borrower shall provide proof to the DBSA that they have opened the Ceded Account and the Borrower shall have ceded the account to the DBSA;

- 5.1.7 the DBSA, the Borrower and the Account Bank shall have entered into the Account Bank Agreement;
- 5.1.8 the Borrower shall provide written confirmation from Eskom indicating the availability of capacity (bulk) to accommodate the planned connections; and
- 5.1.9 the Borrower shall have concluded a memorandum of understanding with the Department of Energy for the transfer of the INEP Grants for the financial years 2016/17 & 2017/18. DBSA shall be provided with a copy of such agreement.

## 5.2. Second Disbursement

- 5.2.1 The Borrower shall provide the DBSA with a copy of the signed Service Level Agreement between itself and Eskom for the implementation of the infrastructure on behalf of the Borrower.
- 5.2.2 The Borrower shall provide proof of payment of the upfront project fees due to Eskom for the following:
  - 5.2.2.1 Acquisition of meters for all the households that are identified as beneficiaries of the funding advanced through this Agreement;
  - 5.2.2.2 Any other fees due in support of project activities outlined in the Service Level Agreement or similar in line with the provisions of the Framework for the creation of Network Assets by municipalities not having an Electricity Distribution licence, NEAC meeting no. 2 dated 16 August 2007;
- 5.2.3 The Borrower will submit an updated list of projects to be implemented under the Programme.
- 5.2.4 the Borrower shall provide the DBSA with the Disbursement Schedule which should be within the Availability Period.

## 5.3. Conditions Precedent to 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:

- 5.3.1 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;
- 5.3.2 the representations and warranties made or confirmed by the Borrower, in this Agreement, shall 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;
- 5.3.3 the Borrower shall 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;
- 5.3.4 the Borrower shall certify that to the best of its knowledge (after due enquiry) after receipt of that disbursement, the Borrower would not be in violation of:
- 5.3.4.1 any provision contained in any document to which the Borrower is a party (including this Agreement) or by which the Borrower is bound; or
- 5.3.4.2 any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow,
- 5.3.5 the DBSA shall have received an original of the Borrower's Disbursement Request.
- 5.3.6 the Borrower shall provide the DBSA with a Disbursement Request. The Disbursement Request 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
- 5.3.7 all fees, charges and expenses due and payable to the DBSA will have been paid in full.

## 6. INTEREST

- 6.1. From the first Disbursement Date, the Facility shall bear interest at the Applicable Interest Rate.
- 6.2. Interest on the Facility under this Agreement will:
- 6.2.1. subject to clause 6.3 below, accrue from day to day;






  
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- 6.2.2. be calculated on the amount of the Facility Outstandings from time to time on the basis of the actual number of days elapsed and a 365 (three hundred and sixty five) day year;
- 6.2.3. be calculated and payable on an Interest Payment Date;
- 6.2.4. be calculated on a nominal compounded basis on the last day of each Interest Period; and
- 6.2.5. accrue and be payable before any court judgment is taken.

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 will accrue on the overdue amount, subject to clause 6.3.5, 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 will 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; and
- 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 will 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.

6.3.5. Should National Treasury illegally withhold the payment of INEP transfers due to the Borrower, the DBSA will reverse any Default Interest accrued on the overdue amount, provided that the Borrower demonstrates that the INEP transfers were illegally delayed or withheld by National Treasury and informs the DBSA in writing as soon as it becomes aware of the Default Interest charge raised.

## 7. COMMITMENT FEES

7.1. If the Borrower draws down the Facility in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.

7.2. In the event that the Borrower deviates (on both amount and date) from the draw-down 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. The Commitment Fee shall:

7.2.1. commence to accrue from the first day after the date of deviation from the Disbursement Schedule.

7.2.2. 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

7.2.3. be payable within 7 (seven) days from receipt of written demand from the DBSA.

## 8. REPAYMENT

### 8.1. Capital Repayments

8.1.1. Capital will be repaid in accordance with the Tripartite Agreement on each Capital Payment Date;

8.1.2. The DBSA will invoice the Borrower no less than 7 (seven) days prior to each Capital Payment Date, the capital amount that is due on that Capital Payment Date.

- 8.1.3. The Borrower will receive its INEP transfers into the Primary Account on each Capital Payment Date, upon which the relevant amount invoiced by the DBSA will be transferred into the Ceded Account within 7 (seven) days from that Capital Payment Date.
- 8.1.4. Failure to transfer the invoiced amount into the Ceded Account in accordance with clause 8.1.3, will amount to an Event of Default.


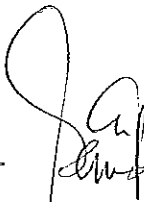


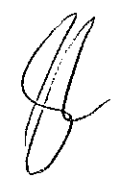


## 8.2. Interest Repayments

- 8.2.1 Interest will be repaid in accordance with the Tripartite Agreement on each Interest Payment Date;
- 8.2.2 The DBSA will invoice the Borrower no less than 7 (seven) days prior to each Interest Payment Date, the interest amount that is due on that Interest Payment Date;
- 8.2.3 The Borrower will receive its INEP transfers into the Primary Account on each Interest Payment Date, upon which the relevant amount invoiced by the DBSA shall be transferred into the Ceded Account within 7 (seven) days from that Interest Payment Date.
- 8.2.4 Both Capital and Interest payments to the DBSA will be made from the Ceded Account on the respective Capital and Interest Payment Dates on the terms provided in clause 8 (*Repayment*) of this Agreement;
- 8.2.5 Failure to transfer the invoiced amount into the Ceded Account in accordance with clause 8.2.3, will amount to an Event of Default.
- 8.2.6 The Facility Outstandings will be repaid in full by no later than the last day of the Term.

## 9. EARLY PAYMENT

- 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 Facility Outstandings on any Interest Payment Date and no other.



- 9.2. Any notice of prepayment pursuant to clause 9.1 will:
- 9.2.1. be irrevocable;
  - 9.2.2. specify a date (the "Prepayment Date") upon which prepayment is to be made;
  - 9.2.3. specify the amount of the Facility Outstandings to be prepaid; and
  - 9.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.
- 9.3. The Borrower will not be entitled to make more than 1 (one) prepayment in any calendar month.
- 9.4. The Borrower will not be entitled to re-borrow any of the Facility Outstandings prepaid.
- 9.5. Any prepayment will be:
- 9.5.1. applied to the Facility being prepaid in inverse order of maturity;
  - 9.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to the DBSA); and
  - 9.5.3. subject to Breakage Costs and/or Unwinding costs.
- 9.6. The Borrower will not prepay all or any of the Facility Outstandings except at the times and in the manner expressly provided in this Agreement.
- 9.7. If any prepayment of all or any part of the Facility Outstandings is made from funds other than the INEP allocations received from National Treasury and otherwise than on an Interest Payment Date, then the Borrower will pay the DBSA within 3 (three) Business Days of demand by the DBSA a sum equal to the Breakage Costs and/or Unwinding costs applicable thereto.

## 10. PAYMENT COVENANTS

- 10.1. All payments to be made by the Borrower in terms of this Agreement will 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 from time to time direct in writing.

- 10.2. The Borrower will 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 will 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 costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement and the Security Documents 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 Facility; and
- 10.4.3. thirdly, in or towards repayment of the Facility.
- 10.5. The DBSA may set off any obligations due under this Agreement from the Borrower against any obligations owed by the DBSA to the Borrower.
- 10.6. The Borrower will not set off any obligations due under this Agreement from the DBSA against any obligations owed by the Borrower to the DBSA.

## 11. SUSPENSION/CANCELLATION OF DISBURSEMENTS

### 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 will 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 will be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of suspension will 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 will 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 will be automatically cancelled.

#### 11.2. 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.

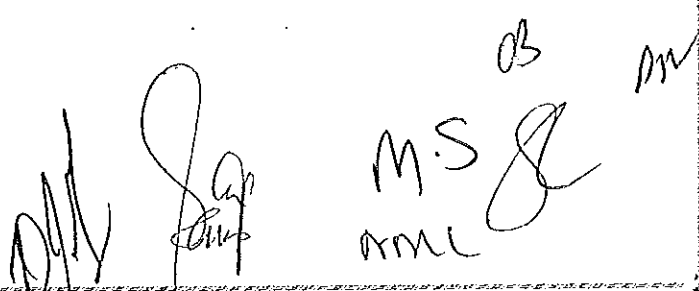
11.2.2. If, after having received a notice in accordance with clause 11.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available on terms satisfactory to the DBSA, to complete the Programme (whilst complying with the provisions of this Agreement), then the DBSA will, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.

11.2.3. Any such reduction will be made pro rata across the Capital.

11.2.4. A Cancellation Fee will be paid in the event of such cancellation as detailed in clause 11.4 below.

#### 11.3. Reinstatement

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

  
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#### 11.4. Cancellation Fee

Should the Borrower cancel the Facility or fail to request advances on the Facility once this Agreement has been executed by both Parties, a Cancellation Fee will 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.

#### 11.5. Other requirements

- 11.5.1. Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Facility Outstandings or cancel all or any part of the Capital, except at the times and in the manner expressly provided for in this Agreement.
- 11.5.2. A notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date or dates on which the proposed cancellation or prepayment is to be made, and the amount of the proposed cancellation or prepayment.
- 11.5.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- 11.5.4. A prepayment by the Borrower of the Facility Outstandings in full under this Agreement must be made with accrued (but unpaid) interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment, except for Breakage Costs (if applicable).

### 12. INCREASED 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 Facility; 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 the DBSA, with the result that the 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 and/or Material Adverse Effect occurs during 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:
- 12.2.1.1. the DBSA may demand in writing that the Borrower will pay to the DBSA an additional amount as will be sufficient to compensate the DBSA for such reduction in return;
- 12.2.1.2. the DBSA will be entitled to increase the Margin by such percentage as will be necessary to compensate the DBSA for such reduction in return. The increase in the Margin pursuant to this clause 12 (*Increased Costs*) will 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; or
- 12.2.1.3. if an Economic Failure occurs that in the opinion of the DBSA affects the DBSA's ability to make any advance or to maintain any funding previously advanced, including, but not limited to the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further Disbursements and make demand for repayment of advances made prior to such Economic Failure, if any.
- 12.2.2. If in the reasonable opinion of the Borrower, an event of Economic Failure has occurred which shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to reject and cancel the facility within the Availability Period, 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; or
- 12.3.2. attributable to the DBSA failing to comply with any law or regulation.

## 13. OTHER INDEMNITIES

### 13.1. Indemnities

13.1.1. The Borrower indemnifies the DBSA against any direct cost, loss or liability (including legal fees on an attorney and own client scale) which the DBSA directly or indirectly incurs as a result of:

- 13.1.1.1 the occurrence of any Event of Default, including legal fees on an attorney and own client scale;
- 13.1.1.2 funding, or making arrangements to fund the Facility which, after a Disbursement Request has been delivered, is not made (other than by reason of the gross negligence or wilful conduct by the DBSA);
- 13.1.1.3 the Facility (or part of the Facility) not being prepaid in accordance with this Agreement.

13.1.2. The Borrower indemnifies the DBSA against any direct loss or liability directly or indirectly incurred by the DBSA as a result of:

- 13.1.2.1 investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or
- 13.1.2.2 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.

13.1.3. The Borrower's liability in each case includes any direct loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under this Agreement or any Facility, but excludes any form of indirect or consequential loss.

## 14. POSITIVE AND NEGATIVE UNDERTAKINGS

14.1 Each undertaking is a continuous undertaking and the Borrower will comply with each undertaking for the entire period which, unless otherwise provided, commences on the Signature Date and which terminates on the Discharge Date.

14.2 In the Finance Documents, the Borrower will furnish customary covenants (subject to customary qualifications and exceptions, including materiality qualifications) for this type of transaction, and deemed to be repeated on each date on which funds are advanced and on each Interest Payment Date, including but not limited to the following:

### a. Positive Undertakings

14.2.1 The Borrower hereby undertakes to comply with acceptable environmental management principles as contained in the National Environmental Management Act, No. 107 of 1998 and to ensure that an Environmental Management System is in place, as agreed to by the Parties, which adheres to environmental requirements throughout the lifetime of the project, and to ensure compliance with all environmental requirements.



14.2.2 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 legislation. The Borrower agrees to provide the DBSA with copies of any such authorisation(s) and/or license(s) as received.

14.2.3 The Borrower will ensure that the Facility proceeds are used solely for the funding of this Programme. Should the Facility be used for any other purpose other than to finance the Programme, then the pledge of any future conditional transfer as security for the Facility shall be null and void and the Borrower will repay the Facility from its own resources.

14.2.4 The Borrower will repay the DBSA within 7 (seven) days from receipt of the INEP allocations from National Treasury failing which the DBSA will be entitled to charge Default Interest from the Borrower, subject to clause 6.3.5 above.

14.2.5 The Borrower will appoint an Implementation Service Provider within 2 (two) months from Signature Date to create the necessary capacity for the implementation of the prioritised projects in line with its supply chain management process.

  
DBSA  
Development Bank of South Africa

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- 14.2.6 The Project Steering Task Team shall be established before implementation of the Programme to monitor and guide the overall implementation of the Programme and will meet on a monthly basis.
- 14.2.7 The Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the Projects funded by the DBSA.
- 14.2.8 The Borrower will ensure that all construction work to be as per standards: SABS 1200; National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SANS approved.
- 14.2.9 The Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities and that all Eskom standards for the provision of bulk electricity and electrical reticulation are complied with.
- 14.2.10 The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with the MFMA.
- 14.2.11 The Borrower will ensure proper maintenance of the assets created through this Facility in line with National Treasury Municipal Finance Management Act Circular No. 66, dated 11 December 2012.
- 14.2.12 The Borrower will appoint an Eskom approved Turnkey Contractor for detail design and implementation within 2 (two) months Signature Date of this Agreement.
- 14.2.13 The Borrower will on request from the DBSA, provide its Asset Management Plan in accordance with Circular 55 and 66.

## 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.
- 15.2. The Borrower acknowledges that it makes the representations and gives the warranties in this clause 15 (*Representations and Warranties*) with the intention of inducing the DBSA to enter into this Agreement and that the DBSA enters into this Agreement on the basis of, and in full reliance on, each such representation and warranty.
- 15.3. Each such representation and warranty set out below:



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- 15.3.1. is separate and distinct;
- 15.3.2. is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;
- 15.3.3. is given, save where otherwise indicated, a continuing warranty in the sense that such warranty will be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates on the Discharge Date;
- 15.3.4. insofar as it is promissory or relates to a future event, shall be deemed to have been given as at and with reference to the circumstances prevailing as at the due date for fulfilment of such promise or happening of the event (as the case may be); and
- 15.3.5. shall not be qualified by or limited with reference to any other warranty or representation contained in this clause 15 (*Representations and Warranties*).
- 15.4. The Borrower represents and warrants that:
- 15.4.1. 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;
- 15.4.2. 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;
- 15.4.3. applicable and adequate insurance in respect of the Project is in full force and effect;
- 15.4.4. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding 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;

- 15.4.5. the rights of the DBSA under this Agreement will rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 15.4.6. the Projects conforms in all material respects with the detailed descriptions forwarded to the DBSA from time to time;
- 15.4.7. the Borrower has, all Authorisations required in connection with the Projects and is in compliance with such Authorisations;
- 15.4.8. 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 Projects;
- 15.4.9. 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;
- 15.4.10. 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;
- 15.4.11. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 15.4.12. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 15.4.12.1 ensure that the Projects are 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;
- 15.4.12.2 obtain and maintain all further requisite planning consents, building regulation approvals and other matters to enable it to commence, continue with and complete the Projects; and



15.4.12.3 comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made thereunder and all by-laws, regulations and codes of practice of any local or competent authority in relation to the Projects and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Projects are situated and obtain all necessary consents in respect of the Projects upon reasonably satisfactory terms; and

15.4.13. the Borrower is carrying out the Programme and its operations in compliance with the laws of the Republic of South Africa.

#### 15.5. Disclosure

The Borrower has disclosed to the DBSA all such information as is material to the granting of the Facility 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 will occur if any one of the following events, each of which shall be several and distinct from each other, occur (whether or not caused by any reason whatsoever outside the control of the Borrower):

17.1.1. the Borrower fails to pay to the DBSA any amount which becomes due and payable pursuant to the Facility and/or pursuant to any agreement that the Borrower has entered into with the DBSA strictly on due date for such payment and fails to remedy such breach within 7 (seven) Business Days after its due date;

- 17.1.2. the Borrower breaches any representation and/or warranty given by it pursuant to this Agreement and/or any other agreement it has entered into with the DBSA, if such breach is capable of remedy, fails to remedy such breach within 10 (ten) days of receipt of written demand from the DBSA;
- 17.1.3. the Borrower fails to comply with any undertaking given by it to the DBSA pursuant to clause 14 (*Positive Undertakings and Negative Undertakings*) and/or any other agreement it has entered into with the DBSA, if such breach is capable of being remedied, fails to remedy such breach within 10 (ten) days of receipt of written demand from the DBSA;
- 17.1.4. the Borrower fails to comply with any obligations imposed on it pursuant to this Agreement, any Finance Documents to which it is a party to, if such breach is capable of remedy, fails to remedy that breach within days of receipt of written demand from the DBSA;
- 17.1.5. Authorisations in respect of the Projects 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;
- 17.1.6. 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;
- 17.1.7. 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;
- 17.1.8. the Borrower allows judgment for an amount in excess of R1 000 000.00 (one million Rand) to be entered against it and fails to pay the amount of such judgment within 5 (five) Business Days after the date on which the judgment becomes final (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);
- 17.1.9. the Borrower abandons the Projects or suspends the operation of the Projects for a period of more than 3 (three) months; and/or
- 17.1.10. an event occurs which the DBSA reasonably determines to have a Material Adverse Effect and the Borrower is unable, within 30 (thirty) days of receipt of written notice from the DBSA, to overcome such event.

- 17.2. If an Event of Default occurs, the DBSA will, 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:
- 17.2.1. 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 will immediately become due and payable; and/or
  - 17.2.2. cancel any undrawn amount of the Capital; and/or
  - 17.2.3. 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
  - 17.2.4. charge Default Interest on any Facility Outstandings, subject to clause 6.3.5 above.

#### 18. POST FINANCING SUPPORT

- 18.1 Over and above the DBSA's role as a lender, the DBSA is committed to ensure that the Borrower has the required support needed for the implementation of the various projects under the Programme. To this end, the DBSA will make Post-Financing Support available to the Borrower, at no additional cost, to ensure that the Borrower successfully achieves the objectives of the funded projects under the programme.
- 18.2 The DBSA's Post-Financing Support, as defined, will focus on assisting the Borrower and providing guidance in the implementation planning including matters of regulatory compliance, in progress monitoring and oversight, in quality, time and cost management, in preparation and/or review of projects claims, in projects reporting processes and in the formulation of operations and maintenance strategy for the new infrastructure.
- 18.3 For the avoidance of doubt, the Post-Financing Support will be provided by the DBSA at no additional cost to the Borrower. However, should the Borrower require additional services outside the scope of Post-Financing Support (as defined) as agreed by the Parties, such services will be provided or facilitated by the DBSA at a fee to be agreed between the Parties.

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*M.S. [Signature]*  
*PN*

## 19. ILLEGALITY OF THE FACILITY

If, after the Signature Date, there is any Change in Law that makes it unlawful for the DBSA to continue to maintain or to fund the Facility then the Borrower will, upon request by the DBSA, repay on the next Interest Payment Date or on such earlier date as the DBSA certifies to be necessary to comply with the relevant, law, regulation or applicable directive in full, the Facility Outstandings. In addition, upon receipt of such notification from the DBSA, the Borrower will have no further right to Disbursement of the undisbursed portion of the Capital.

## 20. 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 will be severable from the remaining provisions of this Agreement which will continue to be of full force and effect.

## 21. CESSION AND DELEGATION

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

21.2. The DBSA will be entitled, 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 will, if so required make all payments to any specified cessionary.

## 22. COUNTERPARTS

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

## 23. GOVERNING LAW

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



*[Handwritten signature]*

M.S  
T.M.C. *[Handwritten initials]* OB  
P.N.

## 24. JURISDICTION

The Parties hereby agree and that jurisdiction in regard to all matters arising from this Agreement shall be the non-exclusive jurisdiction of the North Gauteng High Court, Johannesburg, South Africa in relation to any dispute arising from or in connection with this Agreement.

## 25. 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, will be sufficient proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other proceedings, will be valid as a liquid document for such purpose and will in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by the DBSA arising here-from.

## 26. REMEDIES AND WAIVERS

Neither failure by the DBSA to exercise, nor any delay by the DBSA in exercising any right or remedy hereunder will operate as a waiver thereof, nor will 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.

## 27. COSTS

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 will be determined and recoverable on the scale as between an attorney and his own client and will 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 award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

## 28. NOTICES AND DOMICILIA

28.1. 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.



Handwritten signatures and initials: M.S. J.C.B., M.L., and other illegible signatures.

28.2. For purposes of this Agreement the Parties' respective addresses will be as follows:

28.2.1. The DBSA:

Physical: The Development Bank of Southern Africa Limited  
1258 Lever Road  
Headway Hill  
Midrand

Postal: P.O. Box 1234, Halfway House, 1685

Tel: (011) 313 3911

Facsimile: (011) 313 3086

Attention: The General Manager– Infrastructure Finance (Local Govt: M2/M3);  
and

28.2.2. The Borrower: Greater Tzaneen Local Municipality

Physical: Civic Centre  
38 Agatha Street  
Tzaneen

Postal: P.O Box 24  
Tzaneen

Tel: (015) 307 8000

Facsimile: (015) 307 8049

Attention: The Municipal 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 will be changed to a post office box or post restante.

28.3. Any notice given in terms of this Agreement will be in writing and will :

28.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

28.3.2. 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.

28.4. 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 will be adequate written notice or communication to such party.

DBSA  
Development Bank  
of Southern Africa

*[Handwritten signatures and initials]*  
M.S. JLB  
R.M.C.  
A.V.

**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, will 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**

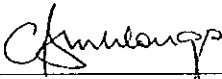
No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

**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.

*[Handwritten signatures and initials]*  
MS  
RML  
PW

For: THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

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

Name: CHUCHEKA MALONGO


Date: 27 OCTOBER 2015

Place: MIDRAND

Witness: 

Witness: 

For: GREATER TZANEEN LOCAL MUNICIPALITY

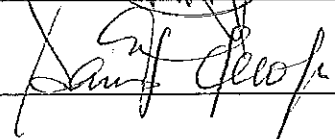
Signature:   
in his/her capacity as Accounting Officer

Name: SR MONTKEBI

Date: 22 OCTOBER 2015

Place: TZANEEN

Witness: 

Witness: 



## Form of Request for Disbursement of the Facility

Borrower's letterhead

[insert date]

To: The Manager: *(name and address of the DBSA)*

Dear [insert]

Disbursement Request No. [•]

Project No. [•]

1. Please refer to the Facility Agreement dated [insert date] between the [•]Municipality (the "Borrower") and the Development Bank of Southern Africa Limited ("the DBSA"). Terms defined in the Facility Agreement have their defined meanings whenever used in this request.
2. The Borrower irrevocably requests the Disbursement on or before [insert date] (or as soon as practicable thereafter) of the aggregate amount of [insert numerals] [insert words] under the Facility (the "Disbursement"). You are kindly requested to pay such amount to the account of the Borrower, Account No. [•] Branch Code [•].
3. The Borrower further certifies to the best of its knowledge (after due enquiry) as follows:
  - 3.1 the representation and warranties made in the Facility Agreement are true on the date of this request and will be true on the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date except as set forth on the certificate accompanying this request;
  - 3.2 the Borrower is not aware (after due enquiry) that any Potential Event of Default or Event of Default has occurred, is continuing or about to occur;
  - 3.3 since the date of the Facility Agreement no changes in the Projects or in the financial condition of the Borrower has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;
  - 3.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Projects;
  - 3.5 after receipt of the Disbursement the Borrower will not be in violation of:

3.5.1 any provision contained in any document to which the Borrower is a Party or by which the Borrower is bound; or

3.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

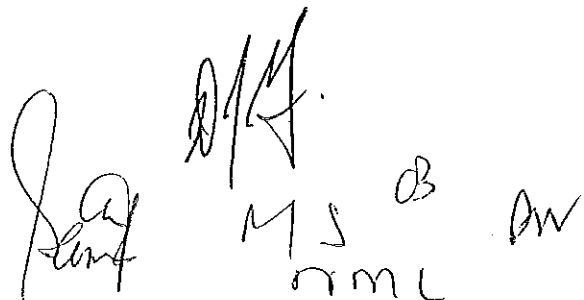
4. The above certifications are effective as at the date of this Disbursement Request and will continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully



Accounting Officer

Name: SR MONAKEDI



Handwritten initials and signatures: *SR*, *MS*, *CB*, *AW*, *rml*

PROGRAMME / PROJECT DESCRIPTION

FACILITY AGREEMENT 2016/2017 AND 2017/2018 TO IMPLEMENT ELECTRICITY HOUSEHOLD CONNECTIONS THROUGH THE INEP PROGRAMME

*[Handwritten signatures and initials]*  
MS  
rml  
B  
PN

Cession Agreement



*M.S.* *R/M*  
*[Signature]* *[Signature]* *B*  
*[Signature]* *PN*  
*rml*

Tripartite Agreement



M.S. [Signature] B [Signature] PN