

LOAN AGREEMENT

made and entered into by and between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

MSUNDUZI LOCAL MUNICIPALITY

in respect of funding the

2023/24 -2024/25 CAPITAL EXPENDITURE PROGRAMME



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TABLE OF CONTENTS

SUMMARY	4
1. DEFINITIONS AND INTERPRETATION	5
2. RECORDAL	15
3. THE LOAN	15
4. FACILITY LAPSE DATE	16
5. CONDITIONS PRECEDENT	16
6. INTEREST	21
7. PRICE RATCHET MECHANISM	23
8. COMMITMENT FEES	24
9. REPAYMENT	24
10. EARLY PAYMENT	25
11. PAYMENT COVENANTS	26
12. SUSPENSION/CANCELLATION	27
13. INCREASED COSTS AND DECREASED COSTS	29
14. OTHER INDEMNITIES AND BREAKAGE COSTS	30
15. COVENANTS - POSITIVE	31
16. REPRESENTATIONS AND WARRANTIES	35
17. RIGHTS AND REMEDIES	38
18. EVENTS OF DEFAULT	38
19. ILLEGALITY OF THE LOAN	40
20. SEVERABILITY	40
21. CESSION AND DELEGATION	40
22. DISPUTE RESOLUTION	41
23. COUNTERPARTS	42
24. GOVERNING LAW	42
25. JURISDICTION	42
26. CERTIFICATE OF INDEBTEDNESS	43

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27. REMEDIES AND WAIVERS	43
28. ENFORCEMENT COSTS	43
29. NOTICES AND DOMICILIA	43
30. RELAXATION	45
31. VARIATION	45
32. WHOLE AGREEMENT	45
SIGNATURES	46
ANNEXURE A: FORM OF DISBURSEMENT REQUEST	47
ANNEXURE B: DISBURSEMENT SCHEDULE	49
ANNEXURE C: PERMITTED TRANSFEREES	50

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SUMMARY

1	LOAN AMOUNT	:	R350 590 806.00 (three hundred and fifty-nine million eight hundred and six Rand).
2	LOAN PERIOD FIXED	:	10 years
3	FIXED INTEREST RATE	:	See Clause 6 [Note: Government Bond Rate]
4	INTEREST GRACE PERIOD	:	Not applicable
5	CAPITAL GRACE PERIOD	:	A period commencing on the first Disbursement Date and ending on the 31 st of July 2025.
6	CAPITAL REPAYMENT	:	Half-Yearly instalments, commencing on the last day of the Half-Year following the end of the capital grace period.
7	INTEREST REPAYMENT	:	Half-Yearly instalments, commencing on the last day of the Half-Year following the half year during which first Disbursement was made.
8	CAPITAL REPAYMENT COMMENCEMENT DATE	:	30 June 2025
9	PROGRAMME FILE NO.	:	12008534

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1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless inconsistent with or the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

1.1.1. "**Accounting Officer**" shall have the meaning ascribed thereto in the MFMA;

1.1.2. "**Administration**" means the KwaZulu Natal Provincial Executive Council intervention in terms of Section 139(1)(b) of the Constitution;

1.1.3. "**Administrator**" means an administrator or collectively, a team of administrators appointed to ensure continued functioning of the Borrower pursuant to the intervention of the KwaZulu Natal Provincial Executive Council in terms of 139(1)(c) of the Constitution;

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

1.1.5. "**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;

1.1.6. "**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, 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;

1.1.7. "**Availability Period**" means a period of 24 (twenty-four) months commencing from the CP Fulfilment Date;

1.1.8. "**Bad Debt**" means any debt, including receivables or outstanding balances owed to the Borrower, that has not been paid, is no longer deemed recoverable and must be or has been written off, any provision for bad debt and/or any additional provision for consumer and property rate debtors that are older than 90 (ninety) days;

1.1.9. "**Base Rate**" means the R2030 Government Bond for all Disbursements;

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1.1.10. "**Borrower**" means the Msunduzi Local Municipality, a Category B municipality established or deemed to be established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;

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

Account Holder:	Msunduzi Local Municipality
Bank:	First National Bank
Account Number:	50941827782
Branch:	MIDLANDS MALL
Branch Code:	257355

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

1.1.12.1. the interest (but excluding the Margin) which the DBSA would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a 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:

1.1.12.2. 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;

1.1.13. "**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;

1.1.14. "**Capital**" means an amount of R350 590 806.00 (three hundred and fifty million, five hundred and ninety thousand and eight hundred and six Rand);

1.1.15. "**Cash ratio**" means cash and cash balances and call investments less unspent conditional capital grants divided by total current liabilities less the sum of unspent conditional capital grants and current consumer deposits;

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- 1.1.16. "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.1.17. "**Commitment Fee**" means an amount equal to 0.5% (zero point five percent) per annum payable in accordance with clause 7.1 (*Commitment Fees*) below;
- 1.1.18. "**Conditions Precedent**" means the conditions precedent contained in clause 5 (*Conditions Precedent*) of this Agreement;
- 1.1.19. "**Constitution**" means the Constitution of the Republic of South Africa, 1996;
- 1.1.20. "**Court**" means any court of law having jurisdiction;
- 1.1.21. "**Credit Risk Levers**" means performance in and management of trade receivables (including management of trade receivables' collections), the cash reserves as well as the trade payables and other related financial performance indicators that have impact on the financial ratios and qualitative factors as referred to in clause 0 (*Price Ratchet Mechanism*);
- 1.1.22. "**CP Fulfilment Date**" means the date on which the DBSA confirms by written notice to the Borrower that it has received all the Conditions Precedent in form and substance satisfactory to it;
- 1.1.23. "**Current ratio**" means the total current assets less additional provision for consumer and property rates debtors divided by total current liabilities including the unspent conditional capital grants and consumer debtors' current deposits;
- 1.1.24. "**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;
- 1.1.25. "**Debt Service**" means the Borrower's gross interest incurred on borrowings (including finance leases) plus the capital portion of debt repayable in that Financial Year;
- 1.1.26. "**Debt Service Coverage Ratio**" means the net cash flow from operations plus finance costs minus capital grants divided by total Debt Service;
- 1.1.27. "**Default Interest**" means any interest which accrues at the Default Rate in terms of this Agreement;

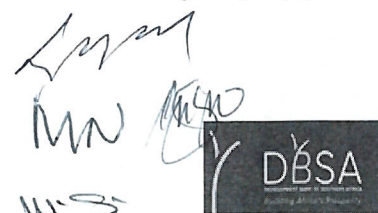
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- 1.1.28. "**Default Rate**" means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.29. "**Disbursement**" means any amount drawn down by the Borrower, and disbursed by the DBSA under the Facility and in terms of a Disbursement Request;
- 1.1.30. "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.31. "**Disbursement Request**" means a notice substantially in the form annexed hereto as **Annexure A** (*Form of Disbursement Request*);
- 1.1.32. "**Disbursement Schedule**" means the schedule annexed hereto as **Annexure B** (*Disbursement Schedule*);
- 1.1.33. "**Discretionary income**" means total income generated including service charges and property rates income but excluding the conditional capital grants received during the financial year;
- 1.1.34. "**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 shall be financially unsustainable and shall have a severe impact on the sustainability of the Borrower;
- 1.1.35. "**Event of Default**" means any event of default as envisaged in clause 18 (*Events of Default*) below;
- 1.1.36. "**Facility**" means the loan facility made available under this Agreement as described in clause 2.2;
- 1.1.37. "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.1.38. "**Final Maturity Date**" means 30 June 2035, which is a date falling 10 (ten) years from the First Capital Repayment Date;



- 1.1.39. **"Financial Recovery Plan"** means the plan setting out the mandatory intervention prepared by the Municipal Finance Recovery Services Unit within the National Treasury, which develops the plan for the municipality in terms of the MFMA. The Financial Recovery Plan is intended to be a strategic, focused approach to recovery, and ensuring the underlining causes of the crisis are adequately addressed;
- 1.1.40. **"Finance Documents"** means the following finance documents:
- 1.1.40.1. this Agreement;
 - 1.1.40.2. each Disbursement Request;
 - 1.1.40.3. the Disbursement Schedule;
 - 1.1.40.4. all material documents in respect of the Programme as identified by the DBSA and the Borrower as Finance Documents;
 - 1.1.40.5. each other document designated as such in writing by the DBSA and the Borrower; and
 - 1.1.40.6. each document amending or restating any document referred to above,
- and **"Finance Document"** means each or any one of them (as the context may require);
- 1.1.41. **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.1.42. **"First Capital Repayment Date"** means 30 June 2025;
- 1.1.43. **"Half-Yearly"** means each half-year period falling 6 (six) months from the first Disbursement Date and consecutively thereafter and **"Half Year"** shall have a corresponding meaning;
- 1.1.44. **"Half Year of the Financial Year"** means the period falling six months from 01 July, which is the beginning of the Borrower's Financial Year;
- 1.1.45. **"Interest Payment Date"** means the last Business Day of each Interest Period;
- 1.1.46. **"Interest Period"** means each period of 6 (six) months commencing on the first Disbursement Date, and each consecutive 6-month period. Should there be more than 1 (one) Disbursement falling within such a period, the first Interest Period of



each Disbursement(s) shall comprise the remaining period of the already running Interest Period of the foregoing Disbursement such that the next Interest Period of all Disbursements is aligned;

- 1.1.47. "**Interest Rate (Fixed)**" means interest rate determined in terms of clause 6 (*Interest*) of this Agreement;
- 1.1.48. "**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;
- 1.1.49. "**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;
- 1.1.50. "**Loan Period**" means a period of 10 (ten) years from the First Capital Repayment Date and such date to be confirmed in writing by the DBSA;
- 1.1.51. "**Margin**" means 300 (three hundred) basis points, expressed as a percentage rate per annum, unless the conditions stipulated under clause 0 (*Price Ratchet Mechanism*) apply;
- 1.1.52. "**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:
- 1.1.52.1. the business, operations, property, condition (financial, administration or otherwise), performance or prospects of the Borrower; or
 - 1.1.52.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
 - 1.1.52.3. the legality, validity or enforceability of the Finance Documents or the rights or remedies of the DBSA hereunder; or
 - 1.1.52.4. the right or remedies of the DBSA in terms of and pursuant to this Agreement; or
 - 1.1.52.5. South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets

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1.1.52.6. Further to the events mentioned in this clause 1.1.52, the following specific events will trigger the Material Adverse Effect:

1.1.52.6.1. adverse audit opinion;

1.1.52.6.2. escalation of the Administration from the Provincial Administration to the National Administration; and

1.1.52.6.3. any action by Eskom SOC Holdings Limited ("**Eskom**") and / or Umgeni Water in the event of overdue amounts and/ or non-compliance with the payment arrangements that the Borrower might have entered into with Eskom and Umgeni Water.

1.1.53. "**Mayor**" means in relation to:

1.1.53.1. a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of 55 of the Municipal Structures Act; or

1.1.53.2. 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;

1.1.54. "**month**" means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that:

1.1.54.1. if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the directly preceding Business Day; and

1.1.54.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month;

1.1.55. "**MFMA**" means the Municipal Finance Management Act No. 56 of 2003 as amended from time to time;

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- 1.1.56. "**MTREF**" means the Medium-Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.1.57. "**Municipal Structures Act**" means Local Government: Municipal Structures Act, No 117 of 1998, as amended from time to time;
- 1.1.58. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;
- 1.1.59. "**Permitted Transferee**" means any of the permitted transferees listed in **Annexure C** (*Permitted Transferee*);
- 1.1.60. "**Personal Information**" shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.1.61. "**POPI**" means the Protection of Personal Information Act, No 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
- 1.1.62. "**Potential Event of Default**" means any event, envisaged in clause 18 (*Events of Default*) which will become an Event of Default:
- 1.1.62.1. after the expiry of the applicable cure period set out in respect of such event in clause 18 (*Events of Default*); or
- 1.1.62.2. if notice to remedy is given as envisaged in clause 18 (*Events of Default*) and such event is not remedied within the applicable notice period set out in clause 18 (*Events of Default*);
- 1.1.63. "**Programme**" means the Capital Expenditure Projects approved by the Municipal Council of the Borrower for 2023/24 and 2024/25 Financial Years;
- 1.1.64. "**Project**" means each Capital Expenditure Project identified and included in the Programme as defined under 1.1.62.
- 1.1.65. "**Rand**" and "**R**" means the lawful currency of the Republic of South Africa;
- 1.1.66. "**Ratchet Margin**" has the meaning given to it in clause 0 (*Price Ratchet Mechanism*);
- 1.1.67. "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it in time;
- 1.1.68. "**South Africa**" means the Republic of South Africa;




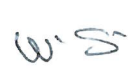



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- 1.1.69. "**Taxes**" shall mean all taxes (including VAT), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever 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;
- 1.1.70. "**Total Debt**" means the total amount of all interest-bearing obligations including finance lease and current portion of long-term borrowing;
- 1.1.71. "**Total Income**" means the total amount of operational income plus equitable share. Operational income includes trading income derived from rendering the rates, electricity, water, sanitation and refuse services by the Borrower;
- 1.1.72. "**Unwinding Costs**" means any and all actual 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 Loan; and
- 1.1.73. "**VAT**" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended from time to time.
- 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 the interpretation clause.
- 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

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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 seeks funding in respect of the Programme.

2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan of R350 590 806.00 (three hundred and fifty million, five hundred and ninety thousand, eight hundred and six Rand) for purposes of undertaking the Programme, subject to the terms and conditions set out in this Agreement.

2.3. The Parties wish to record that at the time of signing of this Agreement, the Borrower was under administration pursuant to section 139(1)(c) of the Constitution and was duly authorised by the Administrator to enter into this Agreement in accordance with the functions and powers of the Administrator.

2.4. 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;

3.1.2. disbursed in accordance with the Disbursement Schedule; and

3.1.3. 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**

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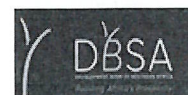
- 3.3.1. The Borrower shall, subject to clause 5 (*Conditions Precedent*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) Business Days (or such shorter time as may be acceptable to the DBSA for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.
- 3.3.2. The 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.

4. FACILITY LAPSE DATE

- 4.1. Unless otherwise agreed between the DBSA and the Borrower in writing, the Facility will be cancelled by the DBSA, at its sole discretion, in its entirety and the Finance Documents shall cease to be of any force and effect if:
 - 4.1.1. the Borrower does not sign this Agreement on or before 06 October 2023 or such later date as the DBSA may confirm in writing; or
 - 4.1.2. the Borrower does not procure the fulfilment of all the Conditions Precedent within 6 (six) months from the Signature Date or such later date as the DBSA may confirm in writing.
- 4.2. For the avoidance of doubt, the Finance Documents shall never become of any force and effect if the Borrower does not comply with clauses 4.1.1 and 4.1.2 above.

5. CONDITIONS PRECEDENT

- 5.1. Notwithstanding anything to the contrary contained in this Agreement, the Borrower shall not be entitled to deliver a Disbursement Request and the DBSA shall not be obliged to advance the Loan to the Borrower unless the DBSA has received all of the documents and other evidence set out in clauses 5.2, 5.3 and 5.4 below, in form and substance acceptable to the DBSA (the "**CP Documents**"), by no later than 6 (six) months after the Signature Date or such other date as confirmed by the DBSA in writing from time to time.
- 5.2. **First Disbursement**
 - 5.2.1. 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 below, and in particular, the



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DBSA shall have received the following CP Documents, all to the satisfaction of the DBSA:

- 5.2.1.1. a signed original (or electronic copy) of this Agreement;
- 5.2.1.2. evidence that a project steering committee (a copy of the Terms of Reference for the project steering committee members and duly signed copy of the minutes of the first project steering committee) comprising members from the DBSA, the Borrower, National Treasury and Cooperative Governance and Traditional Affairs has been established with a purpose to assist in reviewing the progress of the Borrower's implementation of Programme. The purpose of the project steering committee shall be to provide strategic direction and oversight to the Programme;
- 5.2.1.3. a certified copy of the council resolution of the Borrower approving, together with a letter from the Administrator noting and/or endorsing, the 2023/24 MTREF budget and a copy of the approved 2023/24 MTREF budget;
- 5.2.1.4. a certified copy of a resolution of the council of the Borrower in terms of section 46 of the MFMA:
 - 5.2.1.4.1 the terms of this Agreement to be signed by the Mayor;
 - 5.2.1.4.2 approving the terms of this Agreement; and
 - 5.2.1.4.3 authorising the Accounting Officer to execute this Agreement or any other document which creates or acknowledges the Loan on its behalf;
 - 5.2.1.4.4 proof from the Accounting Officer that the Borrower has complied with the provisions of section 46 (3) of the MFMA, which include evidence and confirmation that the Accounting Officer has, in accordance with section 21A of the Municipal Systems Act:
 - 5.2.1.4.4.1 at least 21 (twenty) days prior to the meeting of the council at which to pass the resolution referred to in clause 5.2.1.4 above, made public

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an information statement setting out particulars of each of the proposed Loans, including the Loan amounts, the purpose of each Loan to be incurred; and

5.2.1.4.4.2 invited the public, the Provincial and National Treasury and the relevant provincial treasury to submit written comments or representations to the council in respect of the proposed Loan,

together with a letter from the Administrator authorising to act in terms of section 46 of the MFMA;

5.2.1.5. has submitted a copy of the information statement to the council of the Borrower at least 21 (twenty) days prior to the meeting of the council referred to in clause 5.2.1.4 above, together with particulars of:

5.2.1.5.1. the essential Loan repayment terms, including the anticipated Loan repayment schedule; and

5.2.1.5.2. the anticipated total cost in connection with each Loan over the Loan Period;

5.2.2. proof that the Provincial or National Treasury has been advised of the Loan and the projects to be funded by the DBSA under the Programme;

5.2.3. written representation from the Accounting Officer confirming the adequacy of the implementation capacity within the Electrical Services i.e., the appointment of the management to lead the Electrical Services and appointment of the key personnel that will be required for the oversight of the implementation of the projects in the programme;

5.2.4. written representation of the scope of works / implementation activities that will be required for each project in the programme, the costing of each activity or equipment item(s) to be procured for each project and the projected implementation time period of each project in the programme;

5.2.5. the latest report submitted or issued to the Borrower's Council by the National Treasury on the implementation of the turnaround strategy, milestones that have been achieved and the key issues that remain a concern for the key stakeholders to

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the municipality's turnaround, including concerns on the turnaround progress by National Treasury, if any;

- 5.2.6. written confirmation from the Accounting Officer that the entering into this Agreement by Borrower shall not contravene the Municipal Supply Chain Regulations (as published under GN 868 in GG 27636 dated 30 May 2005) and/or any procurement or supply chain policies of the Borrower;
- 5.2.7. all FICA documents from the Borrower as required by legislation and requested by the DBSA in order for the DBSA to carry out and be satisfied that it has complied with all necessary "know your customer" or similar identification procedures under applicable laws and regulations (including FICA) pursuant to the transactions contemplated in the Finance Documents;
- 5.2.8. the Disbursement Schedule from the Borrower in terms of which all the proposed Disbursements should be within the Availability Period;
- 5.2.9. any other document in the form and substance to the satisfaction of the DBSA, matter, opinion, or assurance which the DBSA requires as a condition precedent to this Agreement; and
- 5.2.10. a Disbursement Request from the Borrower, which shall have been received by the DBSA 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.

5.3. Further Disbursements

Following the first Disbursement, the obligation of the DBSA to make any further Disbursements under this Agreement shall be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the conditions listed in this clause 5.3 and the DBSA shall have received the following CP Documents:

- 5.3.1. written progress report(s) on the implementation of the Projects undertaken through the utilisation of the proceeds of previous Disbursement(s) to the satisfaction of the DBSA;

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5.3.2. written progress report(s) providing updates on the financial recovery plan, audit action plan and the reduction strategy plan on unauthorised ("**Unauthorised**"), irregular and fruitless and wasteful ("**UIWF**") expenditure, provided that if the period between disbursements is longer than 3 (three) months such progress reports shall have been made on a quarterly basis for the period preceding the Disbursement Request; and

5.3.3. a covenant certificate which shows that the Borrower has attained the following covenants:

5.3.3.1. a Debt Service Cover Ratio of not less than 1.2 times; and

5.3.3.2. a debtors' collection rate of not less than 88% (eighty eight percent),

which covenants shall be determined in accordance with the provisions of clause 15.6 below.

5.4. **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 following conditions:

5.4.1. the delivery by the Borrower of the following progress reports:

5.4.1.1. report on the implementation of the Financial Recovery Plan;

5.4.1.2. report on the implementation of Unauthorised and UIFW reduction strategy plan;

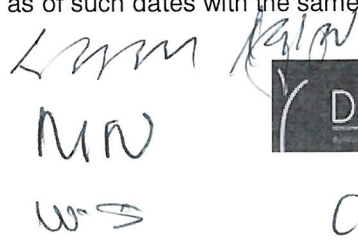


5.4.1.3. debtors' collection performance report; and

5.4.1.4. report on the status of the payments to key bulk suppliers such as Eskom and Umgeni Water and compliance with prior debt arrangements that the Borrower might have entered with them;

5.4.2. the DBSA is satisfied that:

5.4.2.1. no Economic Failure and/or Material Adverse Effect has occurred and is continuing;

5.4.2.2. 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;

5.4.2.3. 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;

5.4.2.4. 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:

5.4.2.4.1. any provision contained in the Finance Documents; or

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

5.4.3. the DBSA has received any agreements, documents, statements, instruments and information as the Borrower is bound to deliver in terms of this Agreement and/or as may be reasonably requested by the DBSA; and

5.4.4. all fees, charges and expenses due and payable to the DBSA under the Finance Documents or in relation to the Programme will have been paid in full (if applicable).

6. INTEREST

6.1. From the first Disbursement Date the Loan shall bear interest at the Interest Rate (Fixed).

6.2. The Interest Rate (Fixed) will be determined 2 (two) days before the first Disbursement and will consist of the appropriate Base Rate plus the Margin.

6.3. Default Interest, to the extent applicable, will be determined in accordance with clause 6.6.

6.4. Interest on the Loan under this Agreement shall:

6.4.1 subject to clause 6.6 (*Default Interest*), accrue from day to day from the date of Disbursement;

6.4.2 be calculated on the amount of the Loan Outstanding from time to time on the basis of the actual number of days elapsed and a 365-day year;

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- 6.4.3 be calculated and payable in Half-Yearly instalments on each Interest Payment Date;
and
- 6.4.4 be calculated on a nominal annual compounded Half-Yearly basis.
- 6.5. Interest payments shall commence on the last day of the Half-Year period during which the first Disbursement was made to the Borrower.
- 6.6. Default Interest:
- 6.5.1 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.
- 6.5.2 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.
- 6.5.3 Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.
- 6.5.4 The provisions of this clause 6.6 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.

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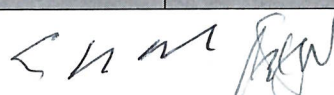
7. CE RATCHET MECHANISM

- 7.1. The DBSA will consider ratchetting either down or up the margin should there be an improvement or deterioration in the identified credit levers; and the impact of that improvement or deterioration leads to the level of improvement or deterioration in the financial ratios and qualitative factors as indicated in clauses 7.2 and 7.3 respectively.
- 7.2. The pricing ratchet down at dates of disbursement requests will be considered should the Borrower achieve following levels of the financial ratios and qualitative results:

Financial ratio	Scenario 1	Scenario 2
Current ratio	1.5 times	2.0 times
Cash ratio	0.1 times	0.5 times
Bad debts / Discretionary income	0.1 times	0.05 times
Qualitative factors		
Auditor General's Report	Unqualified	Unqualified
Status of the Borrower's administration	Provincial administration lifted	Provincial administration lifted.
Indicative reduction in margin	0.30%	0.50%

- 7.3. The pricing ratchets up at dates of disbursement requests will be considered should the Borrower achieve following levels of the financial ratios and qualitative results

Financial ratio	Scenario 1	Scenario 2
Current ratio	< 1.0 times	< 0.5 times
Cash ratio	< 0.05 times	< 0.0
Bad debts / Discretionary income	> 0.2 times	> 0.3 times
Qualitative factors		
Auditor General's Report	Adverse	Disclaimer
Status of the Borrower's administration	Provincial administration escalated to National administration	Provincial administration escalated to National Administration.
Indicative increase in the margin	0.30%	1.00%


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In the event the consideration for ratchetting up of the margin given the circumstances listed above, the cumulative interest accrued shall never exceed the Capital amount.

- 7.4. The financial ratios and qualitative factors stated in clauses 7.2 and 7.3 used to determine whether the DBSA should consider to either ratchet up or down the margin will be based on the financial ratios calculated and qualitative factors reported:

7.4.1 as at the end of the immediately preceding audited financial year, should the disbursement requested be submitted by the Borrower post the immediately preceding financial year; or

7.4.2 as at the half year of the financial year performance audited by the Borrower's internal audited, should the disbursement request be submitted by the Borrower post the half year of the financial year.

- 7.5. For the avoidance of doubt, should there be no improvement or deterioration in the credit risk levers, the Margin as defined, will be apply in pricing any and / or all disbursement(s).

8. COMMITMENT FEES

- 8.1. The Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled within the Availability Period.

- 8.2. The Commitment Fee shall:

8.2.1 commence to accrue from the Signature Date until the end of the Availability Period;

8.2.2 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

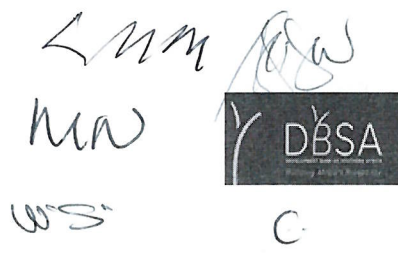

8.2.3 be payable Half-Yearly, in arrears, on each Interest Payment Date.

9. REPAYMENT

- 9.1. The Borrower shall, subject to clause 10 (*Early Payment*), repay the:

9.1.1 Capital in 20 (twenty) Half-Yearly instalments, commencing on:

9.1.1.1 the First Capital Repayment Date in respect of the first Disbursement no later than 30 June 2025;

9.1.1.2 a date falling 1 (one) year 9 (nine) months from the date of second Disbursement, in respect of such Disbursement; and

9.1.1.3 a date falling 1 (one) year from the last Disbursement, in respect of such Disbursement,

provided that no repayment shall commence later than 30 June 2025 in respect of any and all the Disbursements.,

9.2. The Loan Outstandings shall be repaid in full by no later than the Final Maturity Date.

9.3. The Borrower shall not be entitled to re-borrow any of the Loan Outstanding's that have been repaid.

9.4. Repayments shall be:

9.4.1. applied to the Loan in inverse order of maturity; and

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

10. EARLY PAYMENT

10.1. At any time the Borrower may, by giving 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.

10.2. Any notice of prepayment pursuant to clause 10.1 shall:

10.2.1 be irrevocable;

10.2.2 specify a date (the "**Prepayment Date**") upon which prepayment is to be made;

10.2.3 specify the amount of the Loan Outstandings to be prepaid; and

10.2.4 oblige the Borrower to make such prepayment on the Prepayment Date.

10.3. The Borrower shall not be entitled to make more than 1 (one) prepayment in any calendar month.

10.4. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings prepaid.

10.5. Any prepayment shall be:

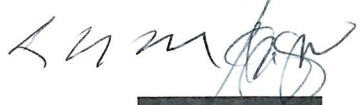

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- 10.5.1. applied to the Loans being prepaid in inverse order of maturity;
- 10.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to DBSA); and
- 10.5.3. subject to Breakage Costs and Unwinding Costs.
- 10.6. The Borrower shall not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided in this Agreement.
- 10.7. If any prepayment of all or any part of the Loan Outstandings is made otherwise than on an Interest Payment Date, then the Borrower shall pay DBSA within 3 (three) Business Days of written demand by DBSA a sum equal to the Breakage Costs applicable thereto.

11. PAYMENT COVENANTS

- 11.1. 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.
- 11.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement.
- 11.3. 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.
- 11.4. 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:
 - 11.4.1. 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, including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing the provisions of this Agreement;
 - 11.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and





11.4.3. thirdly, in or towards repayment of the Loan.

11.5. The DBSA may set off any obligation due under this Agreement from the Borrower against any obligation owed by DBSA to the Borrower.

11.6. The Borrower shall not set off any obligation due under this Agreement from the DBSA against any obligation owed by the Borrower to DBSA.

12. SUSPENSION/CANCELLATION

12.1. By the DBSA

12.1.1 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.

12.1.2 Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.


12.1.3 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.

12.1.4 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 12 (*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.

12.1.5 Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled.

12.2. Cancellation by the Borrower

12.2.1. 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.


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12.2.2. If, after having received a notice in accordance with clause 12.2.1 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.

12.2.3. Should the Borrower cancel the Facility, any portion thereof or undisbursed portion of the Capital in terms of this clause 12, 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.

12.3. **Reinstatement**

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

12.4. **Other requirements**

12.4.1. Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Loan Outstandings or cancel all or any part of the Capital, except at the times and in the manner expressly provided for in this Agreement.

12.4.2. 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.

12.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.

12.4.4. A prepayment by the Borrower of the Loan 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 and Unwinding Costs (if applicable).



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13. INCREASED COSTS AND DECREASED COSTS

13.1. Increased Costs

Except as provided in clause 13.3 below, the Borrower must pay to the DBSA the amount of any increased cost incurred by the DBSA as a result of:

- 13.1.1 a Change in Law;
- 13.1.2 compliance with any law or regulation made after the Signature Date;
- 13.1.3 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; and/or
- 13.1.4 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.

13.2. Economic Failure

- 13.2.1 If an Economic Failure occurs that in the opinion of the DBSA affects the DBSA's ability to make any Disbursement, 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. Should the Borrower still require the funding and request the further Disbursements, then the DBSA shall advise the Borrower of the impact this will have on the Margin. The DBSA shall, in its discretion, determine if the revised Margin will not have the adverse impact on the financial sustainability of the Borrower before making Disbursements.
- 13.2.2 If an Economic Failure and/or Material Adverse Effect occurs, 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:
 - 13.2.2.1 the DBSA may demand in writing that the Borrower shall pay to the DBSA an additional amount as will be sufficient to compensate the DBSA for

such reduction in return not less than 30 (thirty) days after the date of such written notice; or

13.2.2.2 the DBSA shall be entitled to increase the Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in Margin 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.

13.2.3 In the event that such revised funding terms referred to in clause 13.2.2.2, in the reasonable opinion of the Borrower, 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, within the Availability Period, without incurring a Cancellation Fee.

13.2.4 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 demand repayment of advances made prior to occurrence of the Economic Failure within 30 (thirty) days of its demand or such longer period as may be agreed in writing by the Parties.

13.3. Exceptions

The Borrower need not make any payment for an increased cost to the extent that the increased cost is:

13.3.1 attributable to a Tax deduction required by law to be made by the Borrower;

13.3.2 compensated for under clause 11.3; or

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

14. OTHER INDEMNITIES AND BREAKAGE COSTS

14.1. Indemnities

The Borrower will, within 10 (ten) Business Days of demand, indemnify the DBSA against any cost, loss or liability which the DBSA directly or indirectly incurred as a result of:

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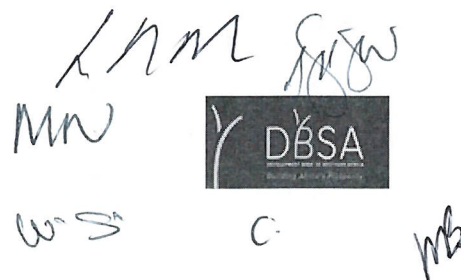
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- 14.1.1 the occurrence of any Event of Default, including legal fees on an attorney and own client scale;
 - 14.1.2 investigating or taking any other action in connection with any event that it reasonably believes is an Event of Default;
 - 14.1.3 the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
 - 14.1.4 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;
 - 14.1.5 a 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;
 - 14.1.6 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);
 - 14.1.7 a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;
 - 14.1.8 investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or
 - 14.1.9 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.
- 14.2. 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 any Loan.

15. COVENANTS - POSITIVE

- 15.1. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in clause 15.3 (*Positive Undertakings/Warranties*).



- 15.2. 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.

15.3. Positive Undertakings/Warranties

- 15.3.1 The Borrower warrants that it has obtained and in future will or cause to be obtained from the relevant government authorities any Authorisations which are or may be required in terms of the relevant legislation including environmental and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such Authorisations as received.
- 15.3.2 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.
- 15.3.3 The Borrower will ensure proper maintenance of the assets created through this Facility in line with National Treasury Municipal Finance Management Act Circular number 55 and 66.
- 15.3.4 The Borrower undertakes to 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.
- 15.3.5 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.
- 15.3.6 The Borrower undertakes to notify DBSA as soon as possible should they decide or intend to suspend any of the projects under the Programme funded through this Facility.
- 15.3.7 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.
- 15.3.8 The Borrower will make adequate provision(s) for the Loan repayments.

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- 15.3.9 The Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities ("Red Book") and that all Eskom and NERSA standards for the provision of bulk electricity and electrical reticulation are complied with.
- 15.3.10 The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.
- 15.3.11 The Borrower shall provide written progress report(s) on the implementation of the Projects undertaken through the utilisation of the proceeds of the Loan(s) to the satisfaction of the DBSA.
- 15.3.12 The Borrower shall not obtain any other additional external loan borrowings without the written consent of the DBSA, which shall not be unreasonably withheld.

15.4. The Borrower and the Programme

The Borrower shall: initiatives

- 15.4.1 comply with all law applicable to it;
- 15.4.2 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;
- 15.4.3 permit representatives or nominees of the DBSA, at reasonable times, access to the Programme site, subject to compliance with normal safety procedures, and to have access to its books of account and records (the DBSA shall use 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);
- 15.4.4 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;

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- 15.4.5 within 10 (ten) Business Days 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;
- 15.4.6 use the Loan exclusively for the Programme; and
- 15.4.7 maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available.
- 15.4.8 The Borrower undertakes to provide the DBSA with quarterly updates of the implementation of following items:
 - 15.4.8.1 The Financial Recovery Plan;
 - 15.4.8.2 the Audit Action Plan to deal with the previous audit exceptions and strategy to avoid the recurrence of similar audit exceptions in future audits;
- 15.4.9 The Borrower undertakes to provide the DBSA with semi-annual updates, as audited by the internal audit, on:
 - 15.4.9.1 debtor's collection performance and debtors' recovery strategies report;
 - 15.4.9.2 Unauthorised and/or UIFW reduction strategy; and
 - 15.4.9.3 water and electricity demand management strategies and progress on water and electricity distribution loss reduction initiatives.

15.5. **Financial Statements**

The Borrower shall deliver its audited annual financial statements to the DBSA within 275 (two hundred and seventy-five) days of the last day of each Financial Year.

15.6. **Financial Covenant**

- 15.6.1. The Borrower shall request the DBSA's written consent before taking up any additional debt, which consent shall not be unreasonably withheld.
- 15.6.2. The Borrower shall ensure that its Total Debt to Total Income does not exceed 55% (fifty-five percent) for the duration of the Loan Period.

[Handwritten signatures and initials]

W.S. *C.* *mb.*

DBSA

15.6.3. The Borrower further undertakes:

15.6.3.1 to maintain the Debt Service Cover Ratio of 1.2 times from 01 July 2024 until the Final Maturity Date; and at each date when Borrower delivers the audited financial statements as per clause 15.5, to submit to the DBSA a certificate confirming the Debt Service Cover Ratio and Total Debt to Total Income (a "**Financial Ratio Certificate**").

15.6.4. 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 clauses 15.6.2 and 15.6.3 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.

15.6.5. 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 18 (*Events of Default*) below shall immediately apply.

16. REPRESENTATIONS AND WARRANTIES

16.1. In addition to any representation and warranties given elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the representations and warranties contained in this clause 16 (*Representations and Warranties*) to the DBSA. Each such warranty:

16.1.1 is a separate and distinct warranty;

16.1.2 is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;

16.1.3 has induced the DBSA to enter into this Agreement; and

16.1.4 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.

Handwritten signatures and initials are present below the text, including "MN", "WS", and "C". A stamp of the DBSA (Deutsche Bank South Africa) is also visible, along with a handwritten signature "VPS".

16.2. The Borrower

The Borrower represents and warrants that:

- 16.2.1. it is a legal entity duly established and validly existing under the laws of South Africa;
- 16.2.2. 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;
- 16.2.3. 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;
- 16.2.4. 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;
- 16.2.5. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding which exceeds 3% 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;
- 16.2.6. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 16.2.7. the Programme conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 16.2.8. the Borrower has, all Authorisations required in connection with the Programme and is in compliance with such Authorisations;

- 16.2.9. 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;
- 16.2.10. 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;
- 16.2.11. 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;
- 16.2.12. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 16.2.13. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 16.2.13.1. 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;
 - 16.2.13.2. 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;
 - 16.2.13.3. 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

Handwritten signatures and initials: *LM*, *MS*, *W.S.*, *C*, *NB*.

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Building Africa's Potential

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

16.3. 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.

17. 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:

- 17.1. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or
- 17.2. 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 17 (*Rights and Remedies*), prejudice such rights or remedies.

18. EVENTS OF DEFAULT

18.1. An Event of Default shall occur if any one of the following events occur:

- 18.1.1 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 10 (ten) Business Days after its due date;
- 18.1.2 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 15 (fifteen) days of receipt of written demand from the DBSA;
- 18.1.3 the Borrower allows a Court judgment for an amount in excess of 3% (three percent of the Borrower's total revenue) to be entered against it and fails to pay the amount of such Court judgment within the time frame stipulated in the final judgment (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);








- 18.1.4 If any of the following events occur and the event is capable of being remedied and the Borrower fails to remedy the event within 28 (twenty-eight) days of receipt of written notice from the DBSA:
- 18.1.4.1 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;
 - 18.1.4.2 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;
 - 18.1.4.3 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;
 - 18.1.4.4 the Borrower abandons any project funded under the Programme or suspends the operation of any project funded under the Programme for a period of more than 3 (three) months or such longer period as may be agreed by the DBSA in writing;
 - 18.1.4.5 an event occurs which the DBSA reasonably determines to have a Material Adverse Effect.
- 18.2. 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:
- 18.2.1. 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 shall immediately become due and payable; and/or
 - 18.2.2. cancel any undrawn amount of the Capital; and/or
 - 18.2.3. 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








18.2.4. charge Default Interest.

19. 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.

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

21. CESSION AND DELEGATION

- 21.1. 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.
- 21.2. The DBSA shall 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 Permitted Transferee, or to another entity with the prior written consent of the Borrower (which shall not be unreasonably withheld or delayed), 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 Permitted Transferee or other third party (as the case may be).
- 21.3. The DBSA shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement, as contemplated in clause 21.2 above, subject to the following conditions:
- 21.3.1. the cession, assignment, delegation or transfer (as applicable) shall not result in a breach of the provisions of the Competition Act, 1998;

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WS
C
DBSA
MB

- 21.3.2. the cession, assignment, delegation or transfer (as applicable) shall not result in a breach of any applicable law; or
- 21.3.3. the terms of the Agreement shall not change as a result of such cession, assignment, delegation or transfer (as applicable), except that the Borrower shall be required make all payments to any specified Permitted Transferee or other third party (as the case may be);
- 21.3.4. the proposed cessionary, assignee or transferee (as applicable) has furnished the DBSA with a statement that:
- 21.3.4.1. the proposed cessionary, assignee or transferee (as applicable) is not an employee in the service of the state;
 - 21.3.4.2. (if such transferee is not a natural person), none of the proposed cessionary, assignee or transferee (as applicable)'s directors, managers or principal shareholders are persons in the service of the state;
 - 21.3.4.3. the proposed cessionary, assignee or transferee (as applicable) is not an advisor or consultant contracted with the Borrower;
 - 21.3.4.4. the proposed cessionary, assignee or transferee (as applicable) has its tax affairs in order;
 - 21.3.4.5. if the proposed cessionary, assignee or transferee (as applicable) is in the service of the state, it shall make the disclosures required in terms of the Municipal Supply Chain Regulations as published under GN 868 in GG 27636 dated 30 May 2005).
- 21.3.5. For the purposes of clause 21.3.4, the words "in the service of the state" shall bear the same meaning ascribed to them in the Municipal Supply Chain Regulations referred to in clause 21.3.4.5.

22. DISPUTE RESOLUTION

- 22.1. If any dispute arises between any of the Parties to this Agreement at any time in relation to:


 The bottom right of the page contains several handwritten signatures and the official logo of the DBSA (Development Bank of South Africa). The logo is a dark rectangle with 'DBSA' in white, and smaller text below it. There are at least five distinct handwritten marks or signatures around the logo.

- 22.1.1 any matter arising out of or relating to this Agreement;
 - 22.1.2 the interpretation of this Agreement;
 - 22.1.3 the termination of this Agreement or any matter arising out of the termination of this Agreement; and
 - 22.1.4 a claim for rectification of this Agreement, then the Parties to that dispute shall endeavour to resolve their differences or dispute by a process of negotiation and mediation. If the Parties are not able to resolve the dispute, either party may in writing within 7 (seven) Business days refer the dispute to the signatories of this Agreement or to their authorised representatives.
- 22.2. If the dispute remains unresolved for 7 (seven) Business days after it has been referred to the authorised signatories, or any person acting in that capacity either of the Parties may refer the matter for resolution in terms of Chapter 4 of the Intergovernmental Relations Frameworks Act, 2005 (Act no 13 of 2005).
- 22.3. Should the dispute between the Parties remain unresolved after it has been referred to the resolution in terms of clause 21.1.4 above, either party may refer the matter for resolution in terms of an Arbitration process.
- 22.4. The rules and procedures of the arbitrator's foundation of Southern Africa shall apply.
- 22.5. The decision of the Arbitrator shall be final and binding and only subject to review by the court of law.

23. COUNTERPARTS

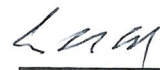






This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

24. GOVERNING LAW

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

25. JURISDICTION

Subject to the provisions of clause 22 (*Dispute Resolution*), the Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Gauteng Division of the High Court of

South Africa, Pretoria (or any successor to that division) in regard to all matters arising from this Agreement.

26. 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.

27. 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.

28. ENFORCEMENT 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 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.

29. NOTICES AND DOMICILIA

29.1. 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.

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

[Handwritten signature]

[Handwritten signature]
W.S.



[Handwritten signature]
C.

[Handwritten signature]

29.2.1. **DBSA:**

Physical: 1258 Lever Road
Headway Hill
Halfway House
Midrand

Postal: PO Box 1234, Halfway House, 1685

Facsimile: (011) 313 3086

E-mail: claimadmin@dbsa.org

Attention: The Group Executive: Coverage Divisions and General Counsel;
and

29.2.2. **Borrower:**

Physical: Cnr Church & Chief Albert Luthuli Streets
Pietermaritzburg
3201

Postal: Private Bag X 321
Pietermaritzburg
3200

Facsimile: 033 392 2397

E-mail: Lulamile.Mapholoba@msunduzi.gov.za

Attention: 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 shall be changed to a post office box or post *restante*.

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

- 29.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 29.3.2 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; or
- 29.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following Business Day.

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BPO



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29.4. 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.

30. 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.

31. 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.

32. WHOLE AGREEMENT

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

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W. S. Sigala

C.

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SIGNATURESFor: **DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**Signature: 

who warrants that he / she is duly authorised thereto

Name: MOTALE Ben MokheleDate: 06 OCTOBER 2023Place: NYDRANDWitness: Witness: For: **MSUNDUZI LOCAL MUNICIPALITY**Signature: 

who warrants that he / she is duly authorised thereto

Name: LUKHANYO MAPHOKODate: 06/10/2023Place: PietermaritzburgWitness: Witness: 

ANNEXURE A: FORM OF DISBURSEMENT REQUEST

Borrower's letterhead

(Date)

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

Dear [*insert*]

Disbursement Request No. [●]

DBSA Programme No. [●]

1. Please refer to the Loan Agreement dated [*insert date*] entered into between the Msunduzi Local Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**") (the "**Loan Agreement**"). Terms defined in the Loan 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 Loan (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 Loan 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 Loan Agreement no changes in the Programme 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 Programme;
 - 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 shall 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: _____

ANNEXURE B: DISBURSEMENT SCHEDULE

PROJECT DESCRIPTION	First Disbursement (R'000)	Second Disbursement (R'000)	Third Disbursement (R'000)	Total Disbursement (R'000)
PURCHASE OF 11KV CAPITAL EQUIPMENT (PURCHASE OF 48 X RMU)	7000	9000	3000	19,000
PURCHASE OF 11KV CAPITAL EQUIPMENT (PURCHASE OF 4 X MINI SUBSTATIONS)	9000	15000	13700	37,700
PURCHASE OF 11KV CAPITAL EQUIPMENT (PURCHASE OF 25 X POLE MOUNTED TRANSFORMERS)	4000	3000		7,000
NEW TRANSPORT ASSETS	2500	5500		8,000
HILTON INFRASTRUCTURE UPGRADE		17,875		17,875
MEDIUM VOLTAGE NETWORK UPGRADE		17,900		17,900
MID-BLOCK & T-JOINTS SERVICES RELOCATION	5,000	15,000	25,000	45,000
MPUMUZA/ PHAYIPHINI BULK INFRASTRUCTURE INSTALLATION AND NETWORK UPGRADE	9,300			9,300
EASTWOOD PRIMARY 132KV OHL INSTALLATION AND NETWORK UPGRADE	70,000			70,000
HESKETH PRIMARY NETWORK UPGRADE		2,000		2,000
RETIEF PRIMARY SUBSTATION NETWORK UPGRADE		1,000		1,000
MASONS 132/11kv PRIMARY SUBSTATION UPGRADE	49,500	46,624	13,792	109,916
PURCHASE OF TRANSFORMER CAPITAL EQUIPMENT	3,700	2,200		5,900
Total	160,000	135,099	55,492	350,591
Indicative Disbursement Date	12-Oct-23	28-Feb-24	31-Aug-24	

ANNEXURE C: PERMITTED TRANSFEREES