

- 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 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 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;
- 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 OR REDUCTION OF DISBURSEMENTS

### 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, the Security Documents 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.
- 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 Project/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).

## 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 date of this Agreement;

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; 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 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:

13.2.1.1 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; or

13.2.1.2 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;

13.2.1.3 In the event that such revised funding terms referred to in clause 13.2.1.2, 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.

- 13.2.2 If an Economic Failure occurs that in the opinion of the DBSA effects 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.

## 13.3 Exceptions

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

Projects/Overstrand LM/22.12.2015/Draft

- 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 3 (three) business days of demand, indemnify the DBSA against any cost, loss or liability which the DBSA directly or indirectly incurred as a result of:

- 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 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- 14.1.4 the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
- 14.1.5 any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the Programme/Projects contemplated or financed under this Agreement;
- 14.1.6 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;
- 14.1.7 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);
- 14.1.8 a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;
- 14.1.9 investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or

14.1.10 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 AND NEGATIVE UNDERTAKINGS

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 this clause 15.3 (*Positive Undertakings*).

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 Authorisation(s) and/or permit(s)/licences which are or may be required in terms of the relevant environmental and/or water legislation. The Borrower agrees to provide the DBSA with copies of any such authorisation(s) and/or license(s) 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 loan 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 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.
- 15.3.7 The Borrower will make adequate provision(s) for the DBSA loan repayments.
- 15.3.8 The Borrower undertakes to submit annual consolidated management accounts within 30 days from Financial Close and such accounts should include:
- 15.3.8.1 debtor's recovery strategies;
  - 15.3.8.2 water and electricity losses; and
- 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 will request the DBSA's written consent before taking up any additional debt if the Total Debt to Total Income exceeds 50%.
- 15.3.12 **The Borrower and the Project/Programme**
- The Borrower shall:
- 15.3.12.1 comply with all law applicable to it;
  - 15.3.12.2 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 Project/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;

- 15.3.12.3 permit representatives or nominees of the DBSA, at reasonable times, access to the Project/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);
- 15.3.12.4 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 Project/Programme to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report;
- 15.3.12.5 promptly upon becoming aware thereof inform the DBSA of any occurrence which might have a Material Adverse Effect and/or of any Potential Event of Default and/or Event of Default;
- 15.3.12.6 use the Loan exclusively for the Project/Programme; and
- 15.3.12.7 maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available;

#### 15.4 Financial Statements

The Borrower shall deliver its audited annual financial statements to the DBSA within 180 (one hundred and eighty) days of the last day of the Financial Year.

### 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 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;
- 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

Projects/Overstrand LM/22.12.2015/Draft

Borrower on each day during the period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.

## 16.2 The Borrower

The Borrower represents and warrants that:

- 16.2.1 it is a legal entity duly incorporated 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 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 Project/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 Project/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 Project/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 Project/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 Project/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 Project/Programme and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Project/Programme is situated and obtain all necessary consents in respect of the Project/Programme upon reasonably satisfactory terms;
- 16.2.13.4 the Borrower is carrying out the Project/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 5 (five) 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 Lender, if such representation and/or warranty is capable of being remedied, fails to remedy it within 10 (ten) days of receipt of written demand from the Lender;
- 18.1.3 the Borrower allows a Court judgment for an amount in excess of R100 000,00 (one hundred thousand rand) 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 Lender:

- 18.1.4.1 Authorisations in respect of the Project/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 the Project/Programme or suspends the operation of the Project/Programme for a period of more than 3 (three) months;
  - 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. POST-FINANCING SUPPORT

- 19.1 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.

19.2 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.

19.3 For the avoidance of doubt, the Post-Financing Support shall 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 shall be provided or facilitated by the DBSA at a fee to be agreed between the Parties.

## 20. 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 Lender, 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 Lender, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

## 21. 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.

## 22. CESSION AND DELEGATION

22.1 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.

22.2 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 third party, either absolutely or as collateral security, and on any such cession, assignment and/or delegation taking place, the Borrower shall, if so required make all payments to any specified cessionary.

## 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

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

## 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 herefrom.

## 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. COSTS

28.1 The Borrower shall pay to the DBSA within 14 days from written demand, the amount of all costs and expenses (including legal fees) reasonably incurred by the DBSA in connection with the negotiation, preparation, printing, execution, filing and registration of:

28.1.1 this Agreement and any other documents referred to in this Agreement; and

28.1.2 any other Finance Documents executed after the Signature Date.

28.2 If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any Court award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

## 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:

### 29.2.1 DBSA:

Physical: Development Bank of Southern Africa Limited

1258 Lever Road

Headway Hill

Midrand

Postal: PO Box 1234, Halfway House, 1685

Facsimile: (011) 313 3086

Attention: The Group Executive, SA Ops;

### 29.2.2 Borrower: Overstrand Local Municipality

Physical: Magnolia Avenue

Hermanus

7200

Postal: Private bag x20, Hermanus, 7200

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.

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 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 agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

**SIGNATURES**

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

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

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For: **OVERSTRAND LOCAL MUNICIPALITY**

Signature: \_\_\_\_\_  
in his/her capacity as Accounting Officer

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_



**ANNEXURE A: FORM OF REQUEST FOR DISBURSEMENT (LOAN)**

Borrower's letterhead

(Date)

To: The Manager: (*name and address of the DBSA*)Dear [*insert*]**Disbursement Request No. [●]****DBSA Project/Programme No. [●]**

1. Please refer to the Loan Agreement dated [*insert date*] between the [●] Metropolitan Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**"). 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 Project/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 Project/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

Projects/Overstrand LM/22.12.2015/Draft

- 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: PROGRAMME/PROJECT DESCRIPTION**

Description	Total	2015/16	2016/17	2017/18
<b>Electricity</b>				
- Franskraal, Kleinbaai & Birkenhead MV/LV	2,600,000.00	2,600,000.00		
- Gansbaai Minisub & MV/LV upgrade	8,700,000.00	2,700,000.00	3,000,000.00	3,000,000.00
- Blompark Low voltage upgrade	1,000,000.00	1,000,000.00		
- Stanford MV Upgrade	1,200,000.00	1,200,000.00		
- Electrification of low cost housing	4,000,000.00			4,000,000.00
- Hermanus LV Upgrade/Replacement	4,000,000.00		4,000,000.00	
- Kleinmond MV/LV Network upgrade	3,000,000.00		1,500,000.00	1,500,000.00
- Hawston LV Upgrade/replacement	3,000,000.00		1,500,000.00	1,500,000.00
- Transformer /Capital replacement	1,500,000.00	1,500,000.00		
	<b>29,000,000.00</b>	<b>9,000,000.00</b>	<b>10,000,000.00</b>	<b>10,000,000.00</b>
<b>Water</b>				
- Replacement of pipes (Overstrand)	13,652,800.00		9,652,800.00	4,000,000.00
- Upgrading of The Oog Pumpstation	500,000.00		500,000.00	
- New bulk reservoir (Sandbaai)	6,000,000.00			6,000,000.00
- Upgrading of Franskraal-Kleinbaai-gansbaai pipe	9,500,000.00		9,500,000.00	
- Pearly Beach WTW Pre-treatment	900,000.00	900,000.00		
- Refurbishment Buffels River Dam Bridge & Tower	2,000,000.00	2,000,000.00		
- Water pumps (Contingency)	200,000.00	200,000.00		
	<b>32,752,800.00</b>	<b>3,100,000.00</b>	<b>19,652,800.00</b>	<b>10,000,000.00</b>
<b>Sewerage</b>				
- Upgrading of pumpstations	8,047,200.00	3,547,200.00	4,500,000.00	
- Stanford Sewer Network ext	8,500,000.00	3,000,000.00	5,500,000.00	
- Sewage pumps (Contingency)	300,000.00	300,000.00		
- Kleinmond Sewer Networks Ext	4,000,000.00			4,000,000.00
- Gansbaai CBD Sewer Network Ext	6,000,000.00			6,000,000.00
- Upgrade of Kidbrooke Pipeline	1,400,000.00	1,400,000.00		
	<b>28,247,200.00</b>	<b>8,247,200.00</b>	<b>10,000,000.00</b>	<b>10,000,000.00</b>
	-			
<b>Total</b>	<b>90,000,000.00</b>	<b>20,347,200.00</b>	<b>39,652,800.00</b>	<b>30,000,000.00</b>

**1. Disbursement Schedule**

Disbursement shall be made in three tranches:

A first tranche of R 30 000 000 (Thirty million Rands) as soon as possible after the signing of loan agreement

A second tranche of R 30 000 000 (thirty million Rands) on 26 February 2017.

A third tranche of R 30 000 000 (thirty million Rands) on 24 February 2018.

**ANNEXURE C: CP CONFIRMATION**

Borrower's letterhead

(Date)

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

Dear [*insert*]

**Project No. [●]**

1. Please refer to the Loan Agreement dated [*insert date*] between the [●] Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**"). Terms defined in the Loan Agreement have their defined meanings whenever used in this request.
2. The Borrower further certifies to the best of its knowledge (after due enquiry) as follows:
  - 2.1 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;
  - 2.2 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;
  - 2.3 since the date of the Loan Agreement no changes in the Project 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;
  - 2.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Project;
  - 2.5 after receipt of the Disbursement the Borrower will not be in violation of:
    - 2.5.1 any provision contained in any document to which the Borrower is a Party or by which the Borrower is bound; or
    - 2.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

Projects/Overstrand LM/22.12.2015/Draft

3. 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: \_\_\_\_\_