

**13.  
RAISING OF NEW EXTERNAL LOANS**

5/15/1/2/1

B A King

15 January 2016

(028) 3138154

Corporate Head Office

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**1. Executive Summary**

Report on the tabling and approval of the loan agreement for the raising of external loans amounting to R90 000 000.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate: Finance

Department: Accounting Services

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance

Provision and maintenance of municipal services

**4. Delegated Authority**

None

**5. Legal Requirements**

No. 56 of 2003: Local Government: Municipal Finance Management Act, 2003

**6. Background/Discussion/Evaluation/Conclusion**

Council has budgeted for capital projects on the approved multi-year capital budget for the 2015/2016 MTREF. Council approved the funding of a portion of the capital budget relating to services infrastructure with total external loan financing amounting to R90 000 000 (R30 000 000 per year) for the 2015/2016, 2016/2017 & 2017/2018 financial years. Proposals were called for from prospective lenders in terms of section 3 & 4 of the Municipal Regulations on Debt Disclosure.

The information statement, setting out the particulars of the proposed debt, was circulated to councillors on 23 December 2015 (See Annexure A).

**7. Financial Implications**

Repayment of external loan interest and redemption: Finance costs (interest) are included in the approved 2015/2016 MTREF, which includes the indicative

outer years. Redemption will be repaid from cash flows generated by operations, according to the cash flow budget.

Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2015/2016	: R46 894 846
Spent to Date/Committed	: R22 587 342
Balance Available	: R24 307 504
Funds Required *This report)	: R 1 725 000

Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2016/2017	: R46 779 874
Spent to Date/Committed	: R0
Balance Available	: R46 779 874
Funds Required *This report)	: R5 105 295

Source of Funding eg. Operating Budget Provision

Vote/Work Code	: Various Departments
Vote/Work Code Description	: Interest on external loans
Budget Provision 2017/2018	: R47 279 135
Spent to Date/Committed	: R0
Balance Available	: R47 279 135
Funds Required *This report)	: R8 383 529

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Copy of Information statement relating to proposed debt.  
Annexure B: Draft loan agreement

**RECOMMENDATION TO THE COUNCIL:**

1. that the loan agreement for the raising of the total external loans amounting to R90 000 000 (R30 000 000 per year) for the 2015/2016, 2016/2017 & 2017/2018 financial years be approved; and

2. that the Municipal Manager be authorised to sign the necessary agreements and documents for the above external loans.

**RESPONSIBLE OFFICIAL:****B A KING****TARGET DATE FOR IMPLEMENTATION:****1 MARCH 2016**



**OVERSTRAND MUNICIPALITY: RAISING OF AN EXTERNAL LOAN**

Notice in terms of section 46(3)(b) of the Local Government: Municipal Finance Management Act, 2003: (Act no. 56 of 2003)

A handwritten signature in black ink, appearing to read "CC Groenewald", is written over a horizontal line.

CC GROENEWALD

**MUNICIPAL MANAGER**



## OVERSTRAND MUNICIPALITY

### INFORMATION STATEMENT: RAISING OF EXTERNAL LOAN

Notice is hereby given in terms of section 46(3)(a) of the Local Government: Municipal Finance Management Act, 2003: (Act no. 56 of 2003) that the Municipality intends raising external loans for the amount of R90 000 000, as approved by Council through the budget for the 2015/2016, 2016/2017 and 2017/2018 financial years in order to finance the following:

Overstrand services infrastructure relating to Electricity, Water, Sewage and Waste Management: R90 000 000.

The debt will be unsecured.

#### Draft Loan Assumptions:

Loan Payments: Six Monthly

2015/2016

Loan amount	R30 000 000.00
Loan period	15 Years
Indicative Interest Rate	10.924%
Six monthly installments (30)	R2 055 506.61
Financing costs	R31 665 198.43
Total costs	R61 665 198.43

2016/2017

Loan amount	R30 000 000.00
Loan period	15 Years
Indicative Interest Rate	10.924%
Six monthly installments (30)	R2 055 506.61
Financing costs	R31 665 198.43
Total costs	R61 665 198.43

2017/2018

Loan amount	R30 000 000.00
Loan period	15 Years
Indicative Interest Rate	10.924%
Six monthly installments (30)	R2 055 506.61
Financing costs	R31 665 198.43
Total costs	R61 665 198.43



C C Groenewald

MUNICIPAL MANAGER

Draft 22.12.2015

## **LOAN AGREEMENT**

made and entered into by and between

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

and

**OVERSTRAND MUNICIPALITY**

**in respect of funding the**

**2015/16 to 2017/18 Capital Programme**



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## SUMMARY

1	LOAN AMOUNT	:	R 90,000,000.00
2	LOAN PERIOD FIXED	:	15 years
3	FIXED INTEREST RATE	:	See clause 6.
4	INTEREST GRACE PERIOD	:	None
5	CAPITAL GRACE PERIOD	:	None
6	CAPITAL REPAYMENT	:	30 Half-Yearly instalments, commencing on the last day of the Half-year during which first disbursement was made.
7	INTEREST REPAYMENT	:	30 Half-Yearly instalments, commencing on the last day of the Half-year during which first disbursement was made.
8	PROGRAMME FILE NO.	:	12007977

## 1. INTERPRETATION

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

- 1.1 **"Accounting Officer"** shall have the meaning ascribed thereto in the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;
- 1.2 **"Agreement"** means the agreement as set out in this document together with the Annexures hereto;
- 1.3 **"Authorisation"** means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;
- 1.4 **"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;
- 1.5 **"Availability Period"** means 36 months months from CP Fulfilment Date;
- 1.6 **"Base Rate"** means the 15 year swap rate as determined by the swap curve.;
- 1.7 **"Borrower"** means the Overstrand Local Municipality, a 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;
- 1.8 **"Borrower's Account"** means the bank account with the following details:
- Account Holder:
- Bank:
- Account Number:
- Branch:
- Branch Code: **"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;
- 1.9 **"Breakage Costs"** means the amount (if any) determined by the Lender by which:

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- 1.9.1 the interest (but excluding the Margin) which the Lender would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a 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:
- 1.9.2 the amount which the Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;
- 1.10 "**Breakage Gains**" means the amount (if any) by which the amount of interest contemplated in 1.9.2 above exceeds that in 1.9.1 above;
- 1.11 "**Cancellation Fee**" means an amount equal to 0,5% (nought comma five percent) of the Capital or a portion of the cancelled Capital;
- 1.12 "**Capital**" means an amount of R 90,000,000.00 (ninety million Rand);
- 1.13 "**Change in Law**" means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.14 "**Commitment Fee**" means an amount equal to 0,5% (nought comma five percent) per annum;
- 1.15 "**Cost of Funding Margin**" means the DBSA funding margin above the SWAP curve;
- 1.16 "**Court**" means any court of law having jurisdiction;
- 1.17 "**CP**" means the conditions precedent contained in clause 5 of this Agreement;
- 1.18 "**CP Fulfilment Date**" means the date on which the DBSA notifies the Borrower pursuant to clause 5.1 (*First Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.19 "**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.
- 1.20 "**Default Interest**" means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.21 "**Default Rate**" means the Interest Rate plus 200 (two hundred) basis points;

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- 1.22 "**Disbursement**" means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.23 "**Disbursement Date**" means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.24 "**Disbursement Request**" means a notice substantially in the form annexed hereto marked "Annexure A" (Form of Request for Disbursement/Loan);
- 1.25 "**Disbursement Schedule**" means the schedule received from the Borrower pursuant to clause 5.1.6 of this Agreement which sets out the amounts to be disbursed by the DBSA to the Borrower and the dates on which such amounts will be disbursed to the Borrower, under this Agreement;
- 1.26 "**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;
- 1.27 "**Event of Default**" means any event of default as envisaged in clause 18 (*Events of Default*) below;
- 1.28 "**Facility**" means the loan facility made available under this Agreement as described in clause 2.2;
- 1.29 "**FICA**" means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.30 "**Finance Documents**" means all the Finance Agreements including completely without limitation:
- 1.30.1 The Loan Agreement;
  - 1.30.2 Disbursement Request(s);
  - 1.30.3 All material documents in respect of the Programme as identified by the DBSA in its sole discretion as Finance Documents.

- 1.31 **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.32 **"Fixed Lending Margin"** means 68,8 basis points (0.688%);
- 1.33 **"Half-Yearly"** or **"Six-Monthly"** means from the first day of January to the 30th day of June and/or from the first day of July to the 31st day of December during the same calendar year;
- 1.34 **"Interest Payment Date"** means the last Business Day of each Interest Period;
- 1.35 **"Interest Period"** means each period of 6 (six) months commencing on 1 January or 1 July of each calendar year, except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date of first Disbursement, ending on the Interest Payment Date immediately following the first Disbursement;
- 1.36 **"Interest Rate (Fixed)"** means the interest rate as provided for in clause 6;
- 1.37 **"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;
- 1.38 **"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;
- 1.39 **"Loan Period"** means a period of 15 years from disbursement date.
- 1.40 **"Margin"** means 68.8 basis points, expressed as a percentage rate, per annum;
- 1.41 **"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:
- 1.41.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
  - 1.41.2 the ability of the Borrower to perform its obligations in terms of this Agreement; or
  - 1.41.3 the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
  - 1.41.4 the right or remedies of DBSA in terms of and pursuant to this Agreement; or

- 1.41.5 South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;
- 1.42 **"Mayor"** means in relation to:
- 1.42.1 a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
- 1.42.2 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.
- 1.14 **"Month/Monthly"** 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:
- 1.14.1 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
- 1.14.2 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;
- 1.43 **"MTREF"** means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.44 **"MFMA"** means the Municipal Finance Management Act No. 56 of 2003 as amended from time to time;
- 1.45 **"Parties"** means the DBSA and the Borrower, and **"Party"** shall as the context requires, be a reference to either one of them;
- 1.46 **"Post-Financing Support"** means services and products to be provided by the DBSA to the Borrower from the Signature Date (as agreed between the Parties) to support projects implementation and post-investment monitoring which may inter alia include the following:
- 1.46.1 Pre-investment support:

- 1.46.1.1 advisory services on pre-implementation planning;
- 1.46.1.2 compliance with technical and regulatory matters;
- 1.46.1.3 compliance with Conditions Precedent as provided for under clause 5 of this Agreement;
- 1.46.1.4 review of technical documentation to ensure norms and standards are met;
- 1.46.2 Implementation support:
  - 1.46.2.1 oversight on implementation of projects, including those funded by fiscal transfers;
  - 1.46.2.2 projects progress monitoring (quality, time, cost);
  - 1.46.2.3 review and quality assurance of progress reports to National Treasury and CoGTA;
  - 1.46.2.4 preparation and /or review of projects claims;
  - 1.46.2.5 guidance and/or assistance with the formulation of operations and maintenance strategy for the new infrastructure;
  - 1.46.2.6 any other solutions, which may assist the Borrower, in conjunction with other stakeholders (MISA, SALGA etc) in reaching projects milestones in a timeous and efficient manner and to improve service delivery in general.
- 1.47 **"Potential Event of Default"** means any event, envisaged in clause 18 (*Events of Default*) which will become an Event of Default:
  - 1.47.1 after the expiry of the applicable cure period set out in respect of such event in clause 18 (*Events of Default*); or
  - 1.47.2 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*);
- 1.48 **"Programme"** means the financing of the capital loan requirements for 2015/16 – 2017/18 as more fully described in **"Annexure B"** (*Project/Programme Description*);

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- 1.49 "**Project**" means the means the various Projects within the Programme as more fully described in "**Annexure B**" (*Project/Programme Description*);
- 1.50 "**Rand**" and "**R**" means the lawful currency of the Republic of South Africa;
- 1.51 "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it;
- 1.52 "**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;
- 1.53 "**Total Debt**" means the total amount of all interest bearing obligations including finance lease and current portion of long term borrowing;
- 1.54 "**Total Income**" means the total amount of operational income plus equitable share. Operational income Includes rates, electricity, water, sanitation and refuse.
- 1.55 "**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;
- 1.56 "**VAT**" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended:
- 1.56.1 a **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement;
- 1.56.2 **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; and
- 1.56.3 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);
- 1.56.4 Any reference to the singular includes the plural and *vice versa*;

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- 1.56.5 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;
- 1.56.6 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;
- 1.56.7 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;
- 1.56.8 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;
- 1.56.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.56.10 Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement;
- 1.56.11 A reference to a person includes such person's permitted successors, assignees, transferees or substitutes;
- 1.56.12 Any reference to a document is a reference to that document as amended, novated, ceded or supplemented;
- 1.56.13 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time;
- 1.56.14 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;
- 1.56.15 Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT;
- 1.56.16 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

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effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

1.56.17 Where the day on or by which a payment is due to be made or an obligation is to be performed is not a Business Day, such payment shall be made or that obligation done on or by, in the case of a payment due or thing to be done, on the next succeeding Business Day. Interest, fees and charges (if any) shall continue to accrue for the period from the due date which is not a Business Day;

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

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

## 2. RECORDAL

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

2.2 The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan R 90,000,000.00 (ninety million Rand) subject to the terms and conditions set out in this Agreement.

2.3 The Parties agree as set out below.

## 3. THE LOAN

3.1 The Loan shall be:

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

3.1.2 disbursed in accordance with the Disbursement Schedule;

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

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

### 3.3 Disbursement Procedure

3.3.1 The Borrower shall, subject to clause 5(*Conditions Precedent*), request a Disbursement by delivering to the DBSA the Disbursement Request at least

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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.

#### 3.4 Security Package

The loan will be unsecured.

### 4. FACILITY LAPSE DATE

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

- 4.1 The Finance Documents are not signed on or before 31 **March 2016**; and
- 4.2 The Borrower does not procure the fulfilment of all the Conditions Precedent within 6 (six) months from the date of signature of this Agreement.
- 4.3 For the avoidance of doubt, the Finance Agreements shall never become of any force and effect if the Borrower does not comply with both clauses 4.1 and 4.2.

### 5. CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT

#### 5.1 First Disbursement

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

- 5.1.1 a copy of the latest approved MTREF budget of the Borrower reflecting that money for the Project has been appropriated in the capital budget, approving the Project and the total cost thereof. In this regard the Borrower's Chief Financial Officer shall in writing confirm to the DBSA the authentication of the copies of the budget;
- 5.1.2 a certified copy of a resolution of the Council of the Borrower in terms of section 46 of the MFMA:

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- 5.1.2.1 signed by the Mayor;
  - 5.1.2.2 approving the terms of the loan agreement;
  - 5.1.2.3 authorising the Accounting Officer to execute the loan agreement or any other document which creates or acknowledges the Loan on its behalf; and
- 5.1.3 proof from the Accounting Officer that the Borrower has complied with the provisions of section 46 (3) of the MFMA;
  - 5.1.4 proof that the Provincial or National Treasury has been advised of the loan/programme;
  - 5.1.5 all FICA documents from the Borrower as required by legislation;
  - 5.1.6 the disbursement schedule from the Borrower which should be within the Availability Period;
  - 5.1.7 a disbursement request from the Borrower, which shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing;
  - 5.1.8 written confirmation from the Department of Environmental Affairs & Development Planning of the Western Cape Provincial Government, sent to the DBSA by the Borrower, indicating which of the projects listed in "**Annexure B**" (*Programme/Project Description*), require environmental authorizations, permits or licenses;
  - 5.1.9 the Borrower will provide the DBSA with all the required environmental authorizations, permits or licenses required in terms of clause 5.1.8; and

## 5.2 All Disbursements

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

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

## 6. INTEREST

- 6.1. Interest will be capitalised for each Disbursement made by the DBSA to the Borrower pursuant to a Disbursement Request, on the Interest Payment Date and in terms of this clause Error! Reference source not found..
- 6.2. The Interest Rate will be determined in accordance with clause 6.4.
- 6.3. Default Interest, to the extent applicable, will be determined in accordance with clause 6.2.

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## 6.4. Interest Rate:

The Interest Rate for each disbursement will be determined and fixed based on the close out rate two days prior to each disbursement and will consist of the appropriate base rate (SWAP) plus the Cost of Funding Margin and the Fixed Lending Margin.

## 6.5. Interest on the Loan under this Agreement shall:

- 6.1.1 subject to clause 6.2 (*Default Interest*), accrue from day to day;
- 6.1.2 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;
- 6.1.3 be calculated and payable on an Interest Payment Date;
- 6.1.4 be calculated on a nominal annual compounded Half-Yearly basis;
- 6.1.5 Interest repayment(s) shall commence on the last day of the first Half-Year during which first disbursement was made; and
- 6.1.6 accrue from date of first disbursement.

## 6.2 Default Interest:

- 6.2.1 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.
- 6.2.2 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.

6.2.3 Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.

6.2.4 The provisions of this clause 6.3 are without prejudice to any other rights which the DBSA may have as a result of the failure by the Borrower to pay amounts whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

## 7. REPRICING

If the total Capital amount has not been drawn down by the Borrower at the end of the Availability Period or any portion of the Capital has been cancelled by the Borrower during the Availability Period, the DBSA is entitled to reprice the cumulative total of the Capital drawn by the Borrower at the end of the Availability Period or at the date of cancellation, to ensure that the DBSA maintains its return on equity percentage on the drawn Capital.

## 8. COMMITMENT FEES

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

7.2 In the event that the Borrower deviates (on both amount and date) from the draw-down schedule, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled. The Commitment Fee shall:

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

7.2.2 be pro-rated on the basis of a 365 (three hundred and sixty five) day year irrespective of whether it is a leap year or not, for the actual number of days elapsed; and

7.2.3 be payable Half-Yearly, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

## 9. REPAYMENT

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

- 9.1.1 Capital in 30 Half-Yearly instalments, commencing on the last day of the Half-year during which first disbursement was advanced to the Borrower.
- 9.1.2 Interest in 30 Half-Yearly instalments, commencing on the last day of the Half-year during which the first disbursement was advanced to the Borrower.
- 9.2 The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.

## 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 and no other.
- 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;
  - 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:
  - 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.