

MATJHABENG MUNICIPALITY

ANNEXURES

of the

**1ST SPECIAL MAYORAL COMMITTEE
MEETING FOR THE YEAR 2018**

held

MONDAY, 19 MARCH 2018

at

10h00

**EXECUTIVE MAYOR'S BOARDROOM, 4TH
FLOOR, CIVIC CENTRE, WELKOM**

ACKNOWLEDGEMENT OF DEBT AND REPAYMENT PLAN

MATJHABENG LOCAL MUNICIPALITY

1. PARTIES

The Parties to this Agreement are –

ESKOM HOLDINGS SOC LTD

Registration No 2002/015527/30

(‘Eskom’)

and

MATJHABENG LOCAL MUNICIPALITY

(‘the Municipality’)

2. INTRODUCTION

It is recorded that -

- 2.1 Eskom is presently supplying Matjhabeng Local Municipality ('the Municipality') with bulk electricity in terms of existing electricity supply agreements between Eskom Holdings SOC Ltd and Matjhabeng Local Municipality (the 'Electricity Supply Agreements').
- 2.2 The Municipality acknowledges that it is truly and lawfully indebted to Eskom for electricity supplied in terms of the Electricity Supply Agreements and undertakes to pay Eskom as detailed herein.
- 2.3 The terms and conditions set out herein below regulate and govern the repayment of all and any monies due, owing and payable to Eskom arising out of the Municipality's indebtedness to Eskom.

3. INTERPRETATION

- 3.1 The headings of the Agreement are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any Clause hereof.
- 3.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
 - 3.2.1 **'Current Account'** means the Electricity Accounts for the supply of electricity for each billing period commencing with the billing period of October 2017 and subsequent thereto.
 - 3.2.2 **'Due Date'** means the date on which each Electricity Account shall be due and payable.

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- 3.2.3 **‘Electricity Accounts’** means the electricity bills for account number **9209566687** for the supply of electricity to the Municipality.
- 3.2.4 **‘Electricity Supply Agreements’** has the meaning as defined in sub clause 2.1.
- 3.2.5 **‘Eskom’** means Eskom Holdings SOC Ltd, registration number 2002/015527/30, a state owned public company with limited liability incorporated in terms of the laws of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sandton.
- 3.2.6 **‘Interest Rate’** means the prime rate charged by First National Bank of Southern Africa Limited in South Africa plus 2.5% (five percent).
- 3.2.7 **‘Monthly Instalment’** means the monthly amount specified in the table in sub clause 6.1 below.
- 3.2.8 **‘Parties’** means Eskom and the Municipality, or its successors-in-title, and **‘Party’** shall be construed accordingly.
- 3.2.9 **‘Principal Debt’** has the meaning as defined in sub clause 5.1 below.
- 3.2.10 **‘the Municipality’** means Matjhabeng Local Municipality.
- 3.2.11 **‘VAT’** means value added tax as contemplated in the Value Added Tax Act (Act No 89 of 1991), as amended or re-enacted from time to time.
- 3.3 When any number of days are prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next successive day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.

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- 3.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.5 The rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

4. PERIOD OF AGREEMENT

- 4.1 This Agreement shall notwithstanding the last signature thereof become effective on 1 March 2018 and shall remain in force until the Municipality has paid the Principal Debt plus accrued interest to Eskom in full.

5. DEBT ACKNOWLEDGEMENT

- 5.1 The Municipality acknowledges that as at 15 March 2018 it is truly and lawfully indebted to Eskom in the sum of **R 1 835 015 218.58 (One billion eight hundred and thirty five million and fifteen thousand two hundred and eighteen rand and fifty eight cents)** inclusive of value-added tax ('VAT'), ('the Principal Debt'), which amount is the aggregate of the amounts (inclusive of VAT) owed to Eskom in respect of **Electricity Accounts** for the supply of electricity to the Municipality for the billing periods prior to the billing period of February 2018.

6. DEBT REPAYMENT

- 6.1 The Municipality shall pay to Eskom the Principal Debt plus interest compounded monthly at the Interest Rate on the outstanding balance of the Principal Debt, in full by no later than 31 July 2031; provided further that the Municipality pays in full the Monthly Instalments as set out in this Clause 6 and Clause 7 of this Agreement, respectively. The Municipality hereby undertakes to pay the Principal Debt in Monthly Instalments starting from the Due Date of the February 2018 electricity bill as follows:

Month	Payment towards arrear debt	Outstanding Arrear Balance
Agreed outstanding balance:		R 1 835 015 281.58
Mar-18	R 45 000 000.00	R 1 790 015 281.58
Jul-18	R 45 000 000.00	R 1 745 015 281.58
Dec-18	R 45 000 000.00	R 1 700 015 281.58
Mar-19	R 45 000 000.00	R 1 655 015 281.58
Jul-19	R 45 000 000.00	R 1 610 015 281.58
Dec-19	R 45 000 000.00	R 1 565 015 281.58
Mar-20	R 45 000 000.00	R 1 520 015 281.58
Jul-20	R 45 000 000.00	R 1 475 015 281.58
Dec-20	R 45 000 000.00	R 1 430 015 281.58
Mar-21	R 45 000 000.00	R 1 385 015 281.58
Jul-21	R 45 000 000.00	R 1 340 015 281.58
Dec-21	R 45 000 000.00	R 1 295 015 281.58
Mar-22	R 45 000 000.00	R 1 250 015 281.58
Jul-22	R 45 000 000.00	R 1 205 015 281.58
Dec-22	R 45 000 000.00	R 1 160 015 281.58
Mar-23	R 45 000 000.00	R 1 115 015 281.58
Jul-23	R 45 000 000.00	R 1 070 015 281.58
Dec-23	R 45 000 000.00	R 1 025 015 281.58
Mar-24	R 45 000 000.00	R 980 015 281.58
Jul-24	R 45 000 000.00	R 935 015 281.58
Dec-24	R 45 000 000.00	R 890 015 281.58
Mar-25	R 45 000 000.00	R 845 015 281.58
Jul-25	R 45 000 000.00	R 800 015 281.58
Dec-25	R 45 000 000.00	R 755 015 281.58
Mar-26	R 45 000 000.00	R 710 015 281.58
Jul-26	R 45 000 000.00	R 665 015 281.58
Dec-26	R 45 000 000.00	R 620 015 281.58
Mar-27	R 45 000 000.00	R 575 015 281.58
Jul-27	R 45 000 000.00	R 530 015 281.58
Dec-27	R 45 000 000.00	R 485 015 281.58
Mar-28	R 45 000 000.00	R 440 015 281.58
Jul-28	R 45 000 000.00	R 395 015 281.58
Dec-28	R 45 000 000.00	R 350 015 281.58
Mar-29	R 45 000 000.00	R 305 015 281.58
Jul-29	R 45 000 000.00	R 260 015 281.58
Dec-29	R 45 000 000.00	R 215 015 281.58
Mar-30	R 45 000 000.00	R 170 015 281.58
Jul-30	R 45 000 000.00	R 125 015 281.58
Dec-30	R 45 000 000.00	R 80 015 281.58
Mar-31	R 45 000 000.00	R 35 015 281.58
Jul-31	R 35 015 281.58	R -

- 6.2 Further to the municipality complying with its payment obligations in terms of the above Payment plan, Eskom herewith expressly agrees that the outstanding capital amount would not be subject to any further interest.
- 6.3 A certificate under the signature of a professional practising accountant setting out the amount due and payable by the Municipality at any time in terms of this Agreement shall be sufficient and prima facie proof of the Municipality's debt.

7. CURRENT ACCOUNTS

- 7.1 The Municipality undertakes to pay all the Current Accounts timeously as and when they become due and payable in terms of the Electricity Supply Agreements, subject to the provisions of the above agreed upon payment plan. The municipality's minimum monthly payment will be equal to or exceed the current account levied from no later than March 2018.
- 7.2 Should the current account be more than the above estimated current account, the current account from the applicable month should be paid in full and the other payments towards the outstanding debt should be paid in full.

8. DEFAULT

Should the Municipality fail to pay Eskom:

any one of the Monthly Instalments as per the above payment plan by the 30th (thirtieth) calendar day after the date of the Electricity Accounts, then Eskom will be entitled to implement punitive measures and or sanctions aimed at ensuring the municipality return to full compliance with the terms and conditions of this agreement. These sanctions will be applied by Eskom incrementally and may include the full outstanding balance of the Principal Debt and Current Account, plus accrued interest, becoming due and payable immediately, and Eskom may with due regard to all the

relevant legislations and the provisions of the Electricity Supply Agreement take whatever legal remedies available, including disconnection of supply of electricity to the Municipality.

9. RENOUNCIATION OF BENEFITS

- 9.1 The Municipality renounces the benefits of the legal exceptions “*non numerate pecuniae*”, “*non causa debiti*”, “*errori calculi*”, “revisions of accounts” and “no value received” with the full force meaning and effect whereof the Municipality declares itself to be fully acquainted.

10. GENERAL

- 10.1 This Agreement constitutes the sole record with respect to the indebtedness of the Municipality to Eskom.
- 10.2 No addition to or variation or cancellation hereof shall be of any force or effect unless agreed to in writing by the Parties.
- 10.3 No indulgence which Eskom may grant to the Municipality in respect of the terms of this Agreement shall constitute a waiver or novation of any of the past or future rights of Eskom which shall not thereby be precluded from exercising any rights against the Municipality which may have arisen in the past or which might arise in the future.

11. DOMICILIUM AND NOTICES

- 11.1. The Parties choose as their *domicilium citandi et executandi* (“*domicilium*”) their respective addresses set out in subclause 11.1.1 below for the purposes of the giving of any notice, the serving of any other process and for any other purpose arising from this Agreement.

- 11.1.1 As regards the Municipality:

Municipal Manager

Matjhabeng Local Municipality
PO Box 708
WELKOM
9460

As regards Eskom:

Eskom Holdings SOC Ltd
General Manager: Legal
Megawatt Park, Maxwell Drive
Sunninghill, Extension 3
Johannesburg
South Africa
2196

or at such other physical address of which the Party concerned may notify the other in writing.

11.2 Any notice given, which:

- 11.2.1 is delivered by hand at the Party's *domicilium* for the time being shall be deemed to have been received by the Party at the time of delivery;
- 11.2.2 is posted by pre-paid registered post to the Party at its *domicilium* for the time being shall be deemed to have been received by the Party on the 10th day following the date of the posting.
- 11.2.3 is successfully transmitted by facsimile, shall be deemed to be received on the first business day following the date of dispatch.

12. WARRANTY OF AUTHORITY

- 12.1 The persons signing this Agreement on behalf of the Municipality and Eskom respectively warrant their authority to do so and shall on written request provide proof of authority to sign this Agreement.

**DEBT REPAYMENT AGREEMENT BETWEEN MATJHABENG LOCAL
MUNICIPALITY AND ESKOM HOLDINGS SOC LTD**

Signed for and on behalf of MUNICIPALITY at _____ on this
_____ day of

_____ 20_____.

_____(Signed)

THABISO TSOAELI
MUNICIPAL MANAGER

Witnesses 1. _____ 2. _____

Signed for and on behalf of ESKOM at _____ on this
_____ day of

_____ 20_____.

_____(Signed)

CALIB CASSIM
CHIEF FINANCIAL OFFICER (ACTING)

Witnesses 1. _____ 2. _____



Mr. T Tsoaeli
Municipal Manager
Matjhabeng Local Municipality
P O Box 708
WELKOM
9460

Date:
15 March 2018

Enquiries:
Edgar B Louw
Tel +27 51 404 2006

Dear Mr. Tsoaeli

NOTIFICATION OF INTENT TO IMPLEMENT THE PROMOTION OF JUSTICE ACT, (ACT 3 OF 2000) IN MATJHABENG LOCAL MUNICIPALITY

We refer to our meeting held on 15 March 2018. The Municipality is in breach of the agreement, and indebted in the sum **R 1 835 015 218.58 (One billion eight hundred and thirty five million and fifteen thousand two hundred and eighteen rand and fifty eight cents)** as at 15 March 2018.

To suspend the interruptions planned for 23 March 2018, the following was agreed to:

1. We acknowledge receipt of the R10m paid on 9 March 2018.
2. The Municipality will pay an additional cash amount of R35m on or before 22 March 2018.
3. The municipality will submit the signed payment arrangement as well as a council resolution, endorsing the plan, on or before 22 March 2018.

The following agreements were reached regarding the payment arrangement:

1. The current account will be settled in full and on time, monthly.
2. If point 1 is adhere to, Eskom will suppress future interest.
3. The payment arrangement will run over a maximum period of 13 years, subject to a 6 monthly review. The review will assess the possibilities to reduce the maximum period and ensure that there is no growth of overdue debt.

Failure to adhere to the above mentioned conditions, Eskom will have no recourse but to implement the PAJA process with a 48 hour notice period. Eskom will start interruptions with the 14 hour schedule as follows:

Monday to Friday	Saturday and Sunday
06h00 – 20h00	06h00 – 20h00

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Eskom Holdings SOC Ltd Reg No 2002/015527/30