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MoA between DEA and Emadlangeni Local Municipality – KZN – Construction of the Recycling Centre/Buyback Centre

MEMORANDUM OF AGREEMENT

Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
IN ITS DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

Hereinafter referred to as “the Department”

**Represented by Mr. Gcinumzi Qotywa
In his capacity as
Chief Director: Environmental Protection and Infrastructure Programmed
duly authorised thereto**

And

**Emadlangeni Local Municipality
Hereinafter referred to as “The Owning entity”
Represented by ~~Mr. VM Kubeka~~ **GPN NTSHANGASE**
In her capacity as Municipal Manager
duly authorised thereto**

For

**KZN – Construction of the Recycling Centre / Buy Back Centre
(the Project)**

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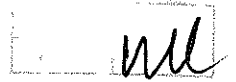
WHEREAS the Department has approved the Owing entity's application for funding for the project as set out in **Annexure "A"** attached hereto, subject to the terms and conditions set out herein;

AND WHEREAS the Owing entity has agreed that this agreement shall be binding to its successors in title irrespective of whether there has been a change in administration or political leadership or not;

NOW THEREFORE the Parties agree as follows:

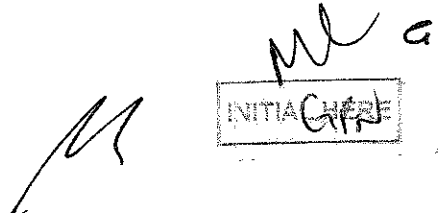
1. DEFINITIONS

- 1.1 **"Agreement"** means this project development agreement as may be amended or supplemented or modified in accordance with the provisions hereto together with its annexures or schedules, if applicable;
- 1.2 **"Applicable permits"** means all clearances, permits, authorisations, permissions, consents, licenses, approvals required to be obtained or maintained under or pursuant to Applicable laws in order to implement the Project during the subsistence of this Agreement;
- 1.3 **"Completion certificate"** shall mean a certificate signed by an Auditor setting out all the assets transferred to the Owing entity;
- 1.4 **"Day"** shall mean calendar day;
- 1.5 **"Department"** shall mean the Department of Environmental Affairs ,its agents or Independent Contractors;
- 1.6 **"Facilities"** means the buildings and other facilities together with all supporting infrastructure, plants and equipment which accede to the Project Site;
- 1.7 **"Implementer"** shall mean Independent Contractor appointed by the Department to carry out the Project in accordance with specifications;



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- 1.8 **“Independent Certifier”** means an auditor appointed by the Department ,its agent or Independent Contractor and who is responsible for issuing the Completion Certificate declaring that the Works have been completed ;
- 1.9 **“Owning entity”** shall mean the other party to this Agreement which may be Municipalities, Public entities or Government departments;
- 1.10 **“Parties”** means the Department and Emadlangeni Local Municipality;
- 1.11 **“Project”** means the provision by the Department of the Project Deliverables to Owning entity including, inter alia–
- 1.11.1 carrying out the Works in respect of the facilities;
 - 1.11.2 undertaking relocation; and
 - 1.11.3 providing the services at the facilities;
- 1.12 **“Project Assets”** means all movable assets of a value of not less than R5000.00 (five thousand rand) each and the immovable property created through the Project;
- 1.13 **“Current Assets”** means all the unused materials and consumables excluding cash instruments, as well as tools, equipment and machinery of a value not more than R5000.00 (five thousand rand) each that were procured through the Project using project funds.
- 1.14 **“Project Deliverables”** means the carrying out of the works, the installation, commissioning, operation and maintenance of the Project Assets including the repair, renewal or replacement thereof, the management and provision of the Services and the exercise and performance of all other rights and obligations of the Department under this Agreement from time to time;
- 1.15 **“Project Site”** means the immovable property where the Project is going to be implemented as set out in Annexure **“B”**;



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1.16 For purposes of this Agreement, the following rules of construction shall apply, unless otherwise provided and/or the context otherwise requires-

1.15.1 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

1.15.2 any word or expression defined in, and for the purposes of, this Agreement shall if expressed in the singular include the plural and vice versa, and a cognate word or expression shall have a corresponding meaning;

1.15.3 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;

1.15.4 references in this Agreement to "clauses", are to clauses and/or to schedules and/or annexures and/or appendices (as the case may be) to this Agreement;

1.15.5 words and expressions defined in any Law which is referred to in this Agreement and which are not defined in this Agreement shall, if and in the context of and/or in relation to that Law, have the same meanings in this Agreement as those ascribed to them in that Law;

1.15.6 any reference in this Agreement to this Agreement or any other Agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, or substituted from time to time;

1.15.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Agreement;

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- 1.15.8 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.15.9 no rule of construction shall be applied to the disadvantage of a party to this Agreement because that party was responsible for or participated in the preparation of this Agreement or any part of it;
- 1.15.10 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.15.11 if any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the first day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a Business day, in which case the last day shall be the next succeeding Business day;
- 1.15.12 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.15.13 if the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then the due date for performance of the relevant obligation shall be the immediately following Business Day;
- 1.15.14 if any obligation or act is required to be performed on a particular day it shall be performed by 16h00 (local time at the place where the obligation or act is required to be performed) on that day;

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- 1.15.15 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the Laws of which a party may be or become subject;
 - 1.15.16 no provision of this Agreement shall constitute a stipulation for the benefit of any person (*stipulatioalteri*) who is not a party to this Agreement;
 - 1.15.17 words or expressions having a meaning which is similar to any word or expression which is defined in this Agreement shall have the same meaning as the word or expression which is so defined;
 - 1.15.18 In the event of any conflict between the main body of this Agreement and any Annexures hereto, the provisions of the main body of this Agreement will prevail between the Parties.
- 1.16 Headings and Sub-headings

All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. OBJECTIVES

- 2.1 This Project is aimed at achieving the following objectives:
 - 2.1.1 Contribute to the improvement of the quality of life of local inhabitants;
 - 2.1.2 Contribute to job creation;
 - 2.1.3 Contribute to the utilisation of local labour;
 - 2.1.4 Contribute to the removal of obstacles that hinder the creation of long term employment opportunities;
 - 2.1.5 Contribute towards skills transfer and capacity building for disadvantaged groups within the area of jurisdiction of the Owning entity;

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- 2.1.6 Encourage socially cohesive communities who are viable, mutually supportive, productive and involved;
- 2.1.7 Fight poverty and underdevelopment through job creation, infrastructure development and the stimulation of economic growth.

3 ACCESS TO THE PROJECT SITE

- 3.1 The Owning entity shall within thirty (30) days after having been requested in writing by the Department, assist the Department in obtaining access to the Project Site;
- 3.2 Before obtaining access to the Project Site, the Owning entity and the Department shall conduct a joint survey of the Project Site, agree on the exact area of the Project Site to be made available to the Department.

4. ROLES AND RESPONSIBILITIES DURING PLANNING AND IMPLEMENTATION

4.1 THE DEPARTMENT

- 4.1.1 The Department shall implement, exercise its rights and perform its obligations to undertake the project deliverables at its own costs. The Project shall be described as KZN – Construction of the Recycling Centre/Buyback Centre. The Department shall make funding available for the implementation of the project;
- 4.1.2 The Department shall appoint an Implementer using its approved internal procurement processes and policies. The Implementer's responsibilities shall include but not limited to;
 - 4.1.2.1 detailed planning of the Project in consultation with the stakeholders;
 - 4.1.2.2 undertaking the planning process under the guidance of the Department and adhere to the relevant guidelines and procedures, including, but not limited to the planning norms and standards, Ministerial determination, Code

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of Good Practice and other EPWP requirements;

4.1.2.3 Implementing the project in accordance with the business plan;

4.1.2.4 opening and managing a dedicated bank account for the project;

4.1.3.5 establishing a Project Advisory Committee;

4.1.3.6 complying with such terms and conditions as are contained in the agreement entered into by the Implementer and the Department.

4.1.3 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Department shall design, engineer, construct, commission, operate, maintain and manage the project during the agreement period;

4.1.4 Upon the project site having been granted to the Department by the Owning entity for the purpose of implementing the project, the Department or its agents shall have the rights, powers, benefits, privileges, authorizations and entitlements, to utilize the Project Site for the purposes of the Project, hold, occupy, enter upon and use the Project Site as may be necessary or appropriate to implement the project in accordance with the provisions of this Agreement;

4.1.5 The Department shall have the right to enter upon, occupy and use the same and to make at its costs, charges or expenses such investigations and development activities (including but not limited to land filling, leveling, clearing, shifting of utilities, landscaping and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project;

4.1.6 Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Department shall have the right to enter into agreements with such persons as it may deem necessary and appropriate, for performing its obligations under this Agreement;

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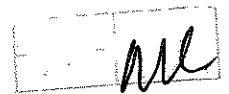
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- 4.1.7 The Department shall carry out the physical and geo-physical investigation and shall have the land and its surroundings inspected and examined;
- 4.1.8 The Department shall satisfy itself as to the nature of the land, the ground and the top soil, the form and nature of the land, load bearing and other relevant attributes of the land;
- 4.1.9 The Department shall satisfy itself as to the adequacy of the rights of access to and from the land including all conditions of title and the provisions of the applicable town planning scheme;
- 4.1.10 The Department shall satisfy itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, to be caused to any third parties;
- 4.1.11 The Department shall make periodic payments to a dedicated project bank account managed by the Implementer;
- 4.1.12 The Department shall deploy its officials to serve on the Project Advisory Committee for the purposes of progress and challenges on the Project;
- 4.1.13 The Department shall be responsible for project management;
- 4.1.14 The Department shall be responsible for certification of works;
- 4.1.15 The Department shall, from time to time, monitor the progress in the Project.
- 4.1.16 During the agreement period, the Department shall have exclusive authority to develop and implement the Project in accordance with the provisions of this Agreement;
- 4.1.17 During implementation, risk on the projects assets shall vest with the Department.
- 4.1.18 Department might after completion of the Project, conduct researches, evaluation studies and any other study to assess the impact of the project to the community.

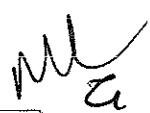
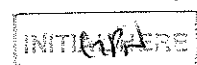
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4.2 THE OWNING ENTITY

- 4.2.1 The Owing entity shall not in any way undermine the implementation of this Project but shall use its best endeavors to support the Project fully;
- 4.2.2 The Owing entity shall offer technical support to the Project;
- 4.2.3 The Owing entity shall provide the Department with a letter of support from the Local authority in respect of implementation of the Project in their area.
- 4.2.4 The Owing entity shall make inputs towards finalization of the business plan;
- 4.2.5 The Owing entity shall participate in the planning processes of the Project and shall make the land available to the Department or its Implementers;
- 4.2.6 The Owing entity shall provide the Department with written confirmation of the project scope of work;
- 4.2.7 The Owing entity shall inform the Department in writing of any deviations from the specifications or business plan;
- 4.2.8 The Owing entity shall together with the Department and Implementer approve designs;
- 4.2.9 The Owing entity shall not disrupt or allow any of its inhabitants or employees to disrupt the implementation of this Project;
- 4.2.10 The Owing entity shall not temper with the roles of the Implementer;
- 4.2.11 The Owing entity shall be responsible for provision of beneficiaries' details for consideration of recruitment by the Implementer;



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- 4.2.12 The Owning entity records that it has obtained approval of all the key stakeholders in respect of the Project and has also obtained the political buy in;
- 4.2.13 The Owning entity shall appoint its own officials at an appropriate level who shall serve on the Project Advisory Committee in accordance and in line with the terms of reference prepared by the Department;
- 4.2.14 The Owning entity warrants that it has the human capacity to support the Programme/Project during implementation and post implementation;
- 4.2.15 The Owning entity shall provide the Department with all such other documentation as may be required by the Department from time to time;
- 4.2.16 The Owning entity shall provide the Department with letter of commitment to after care in respect of infrastructure developed by the Department;
- 4.2.17 The Owning entity after obtaining access to the Project Site shall, be responsible for securing the building against risks of theft, malicious damage, vandalism, riot, civil commotion, loitering and unauthorized entry and/or illegal occupation, and shall have no claim against the Department arising from any of the foregoing. Conversely the Owning entity shall have no claim against the Department arising from a breach of security and/or the building not being adequately secured;

5. OWNING ENTITY'S WARRANTIES REGARDING LAND

- 5.1 The Owning entity warrants that the land is suitable for purposes of the permitted use and/or any other purpose;
- 5.2 The Owning entity shall inform the relevant heritage resources authority of any grave discovered on the land during the construction of the works;

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- 5.3 To the extent that the land is subject to a claim for restitution in terms of the Restitution of Land Rights Act No. 22 of 1994, such claim is in the process of being settled, and will be settled, on a basis that will not entail the restitution of the Land to the claimants and/or the payment of any compensation by the Department and/or any of obligation being imposed upon the Department;
- 5.4 Every authority and approval required by the Owing entity in terms of any other legislation which may be applicable to the Owing entity for the conclusion and implementation of this Agreement have been obtained and all procedures prescribed in terms of the any other legislation applicable to the Owing entity have been adhered to. Where applicable the Owing entity has obtained approvals required in terms of the Companies Act 1973 (Act No. 61 of 1973); and;
- 5.5 No litigation, arbitration, investigation or administrative proceeding is in progress as at the signature date or, to the best of the knowledge of the Owing entity as at the signature date having made all reasonable enquiries, threatened against it which is likely to have a material adverse effect on the ability of the Department to provide the Project Deliverables;

6. USE OF THE LAND

- 6.1 The land and the buildings shall be used in accordance with the zoning granted by the local authority and for purposes of the permitted use;
- 6.2 Any application for additional zoning, approval or special consent that may be required for the use of the land and the improvements for the permitted use, including all costs incurred in that regard, shall be for the account of the Owing entity;
- 6.3 The Owing entity shall not use the land and/or the building or permit same to be used for any illegal or improper purposes and in any manner which creates an unlawful nuisance or disturbance to other persons;
- 6.4 The Owing entity shall at all times observe (and is obliged to fully acquaint itself with) the–
 - 6.4.1 conditions of title and registered servitudes applicable to the land; and the provisions of all applicable laws including the provisions of the applicable town planning scheme;
- 6.5 All improvements to be constructed on the land will comply with all applicable title deed conditions and servitudes and every applicable Law.

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7. ESTABLISHMENT OF A PROJECT ADVISORY COMMITTEE

7.1 There shall be established, a committee to be known as the Project Advisory Committee whose purpose shall be:

7.1.1 to ensure that all relevant stakeholders and beneficiaries actively participate in advising on processes pertaining to the implementation of the Project;

7.1.2 to ensure that stakeholders are informed and constantly updated about the Project;

7.1.3 to assist with the identification of suitable candidates from the community to fill the limited temporary and permanent job opportunities in consultation with the local Owing entity and leadership from the project implementer in line with the applicable guidelines as contained in the Ministerial Determination and Code of Good practice for employment and conditions of work for Expanded Public Work Programmes.

7.2 The Project Advisory Committee shall be constituted and managed in accordance with the terms of reference as prepared by the Department; and

7.3 The terms of reference shall be read as if incorporated into this Agreement by way of reference and shall be binding on the Parties.

8. WARRANTIES

8.1 The Owing entity gives the Department the warranties, representations and undertakings ("Warranties") on the basis that -

8.1.1 notwithstanding that the Department is or should be aware that any Warranty is or may be incorrect, this Agreement is entered into by the Department relying on the Warranties, each of which is deemed to be both a material representation inducing the Department to enter into this Agreement and an



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essential contractual undertaking by the Owing entity to ensure that the Warranty is true and correct;

- 8.2 The Owing entity warrants that all information supplied to the Department with regard to the premises where the project assets is to be built, is true and correct in all material aspects;
- 8.3 The Owing entity warrants in particular that it owns the premises; alternatively it has the necessary permissions to use the premises;
- 8.4 The Owing entity shall be obliged to take whatever steps that may be necessary to prevent the destruction or loss of the project assets and the Owing entity shall acquaint itself with the terms and conditions of any insurance policy issued pursuant thereto and undertakes to do everything that may be necessary to ensure compliance with the terms and conditions of such insurance policy, subject to the Department receiving a copy of the policy before signing this Agreement;
- 8.5 It shall accept transfer of the project assets on delivery of completion certificate;
- 8.6 The Owing entity shall procurement of all the necessary applicable permits or authorisations from the relevant authorities to ensure implementation of this Agreement;
- 8.7 Owing entity, after handover, shall be responsible for the maintenance of the project assets;
- 8.8 This agreement is for all intents and purposes not in conflict with any other legislation applicable to the Owing entity;
- 8.9 The Owing entity warrants that it has obtained all the approvals necessary in terms of legislation applicable to it to enter into this Agreement.

9. MONITORING

- 9.1 The Department and its agents, including, without limitation, any and all accredited third-party verifiers approved by the Department, shall during and after the completion of the Project have the right to enter the property at reasonable times and from time to time for purposes of monitoring and verifying Owing entity's compliance with this Agreement.

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9.2 The Owning entity shall assist the Department by providing access to the site where the project assets are held and making available all documentation, books, records, bank statements and/ or any other details and/ or matter under its or any of its agents or appointees' control and/ or provide such information as it may reasonably bear knowledge of without any information of whatsoever nature being withheld.

10. **COMPLETION CERTIFICATE**

10.1 Project shall be deemed complete when the deliverables in terms of designs and business plan have been met.

10.2 When the Department considers that it has complied with its obligations under this agreement and is satisfied that the Works are complete and that the project assets are available and /or ready for use, it shall advise the Independent Certifier accordingly, and request the Independent Certifier to issue Completion Certificate;

10.3 The Independent Certifier shall upon receipt of the Department's request;

10.3.1 issue the Completion Certificate, being satisfied that -

10.3.1.1 all of the Works have been completed in accordance with the Design and construction specifications and have been satisfactorily commissioned by passing all the requisite tests; and;

10.3.1.2 in the Independent Certifier's reasonable opinion, the Project Assets are ready for use.

10.4 The Owning entity shall, not in any way repudiate the Completion Certificate by the Independent Certifier as it shall have participated and raised objections during the planning and implementation phases of the Project;

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10.5 Upon receipt of the Completion Certificate including a list of Assets and Current Assets from the Independent Certifier, the Department shall deliver same to the Owing entity and the Owing entity shall be obliged to accept same.

11 POSSESSION, DELIVERY, RISK AND OWNERSHIP

- 11.1 Upon delivery of the Completion Certificate to the Owing entity, all the benefits and risk including, without limitation, the risk of loss, damage, destruction or non performance in the Project Assets, shall be deemed to have passed to the Owing entity;
- 11.2 Ownership of the Project Assets including current assets shall be deemed to have passed and vested to the Owing entity upon delivery of the Completion Certificate;
- 11.3 Upon delivery of the Completion Certificate, risk with regard to the consumables such as electricity, water, etc shall be deemed to have passed to the Owing entity, and
- 11.4 All the latent defects in the Project Assets shall be covered in the Builder's warranty.

12. INSURANCE

- 12.1 The Owing entity shall, at its own cost, insure the Project Assets with a reputable insurer for an amount which the Owing entity in its bona fide opinion considers to be the full replacement value of the Building (and shall increase the amount of such insurance from time to time as it may reasonably determine) against such risks as similar buildings are customarily insured against in accordance with sound business practice;
- 12.2 The Owing entity shall not do or omit to do anything which will or may render void or voidable any such policy of insurance; and
- 12.3 The Owing entity shall, if required thereto in writing by the Department, furnish the Department with extracts of the relevant insurance policies as to enable the Department to acquaint itself with their contents, and from time to time upon written request of Department exhibit proof of the existence of such insurance and the payment of premiums in respect thereof.

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13. REPAIR AND MAINTENANCE

13.1 Upon transfer of ownership of the Project Assets, the Owing entity shall be responsible for the maintenance and repair of the Project Assets in a good and serviceable order and condition, fair wear and tear excepted.

14. FORCE MAJEURE

14.1 The Party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the *Force Majeure* event it is not able to perform all, or a material part of its obligations under this Agreement;

14.2 Where a Party is (or claims to be) affected by an event of *Force Majeure*-

14.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of *Force Majeure* as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

14.2.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations.

14.3 The Party claiming relief shall serve written notice on the other Party within 5(five) Business Days of it becoming aware of the relevant event of *Force Majeure*. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of *Force Majeure*.

14.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 30 (thirty) days, or such longer period as may be agreed between the Parties, which shall contain such relevant information relating to the failure to perform (or delay in performing) as is



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available, including (without limitation) the effect of the event of *Force Majeure* on the ability of the Party to perform;

14.5 The Party claiming relief shall notify the other Party as soon as the consequences of the event of *Force Majeure* have ceased and when performance of its affected obligations can be resumed;

14.6 If, following the issue of any notice the Party claiming relief receives or becomes aware of any further information relating to the event of *Force Majeure* (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible;

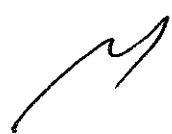
14.7 The Party shall endeavour to agree any modifications to this agreement which may be equitable having regard to the nature of an event or events of *Force Majeure*.

15. LIMITATION OF LIABILITY

15.1 Save to the extent that any loss or damage may be caused by the negligence or default of the Department and any of the Department's officers, agents and/or employees and/or any other person for whom the Department may be vicariously liable at Law ("Department's Representatives or agents")-

15.1.1 neither the Department nor the Department's representatives shall be liable to the Owing entity for any loss or damage (whether to person or property) which may be suffered by the Owing entity and/or any of the Owing entity's employees or invitees on or about the land and/or the building; and;

15.1.2 the Owing entity hereby indemnifies the Department including the Department's Representatives and holds them harmless in respect of all claims which may be brought or threatened against them or any of them in respect of any loss suffered by them or any of them on or about the land.

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16. UNDERTAKINGS BY THE OWNING ENTITY

- 16.1 With effect from the Date of hand over up to and including the date upon which the Project Assets or building is handed over by the Department, the Owning entity shall–
- 16.1.1 use the Project Assets solely for the purpose and in the manner for which it is designed and intended in accordance with the proposal and/or as prescribed by the Department;
 - 16.1.2 take reasonable care in the use of the Facilities and take reasonable precautions to safeguard the Facilities from loss, damage and/or excessive wear and tear;
 - 16.1.3 keep the Project Assets in a safe and secure environment;
 - 16.1.4 ensure that the Project Assets are used only by employees employed by the Owning entity, competent, properly trained and qualified,
 - 16.1.5 not cede, delegate, assign, transfer or pledge any of its rights and/or obligations under this Agreement or Project Assets,
 - 16.1.6 at all times comply in all respects with the terms of any insurance policy issued in respect of the Facilities;
 - 16.1.7 on request, permit the Department or its representatives to inspect, examine and/or test the Facilities at reasonable times and to have access to the premises on which the Facilities is located;
 - 16.1.8 not remove the Facilities from the Premises at any time without the prior written consent of the Department;
 - 16.1.9 immediately notify the Department in writing of any loss of, or damage to, the Project Assets or part thereof or any failure of the project to function;
 - 16.1.10 not to change the beneficiaries of the Project without the consent of the Department;

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16.1.11 not to change the use of facilities without the written consent of the Department;

16.1.12 comply with the objectives as set out in clause 2 of this Agreement.

17. CO-OPERATION

17.1 Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

18. DEFAULT

18.1 The Owning entity shall be deemed to be in default if –

18.1.1 the Owning entity fails to accept transfer of the project assets.

18.1.2 the Owning entity commits a breach of any obligation in terms of this Agreement which breach is either not capable of being remedied or is not remedied by the Owning entity within three business days; or

18.1.3 the Owning entity sells or otherwise disposes of, or attempts to sell or otherwise dispose of, the whole or a major portion of project assets unless written consent of the Department has been obtained;

18.1.4 the Owning entity permits any lien, hypothec, notarial bonds, pledge or other security or interest to be created in the Project assets or abandons the Project assets or allows the Project assets to be seized under any legal process issued against the Owning entity as the case may be.

18.1.5 Fails to comply with any of the provisions of this agreement.

18.2 Upon the happening of any event of default referred or any other event which is material and which gives rise to a right of cancellation in common law, the Department shall be entitled, in addition

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and without prejudice to any other right or remedy which it may have in terms of this Agreement or in law, forthwith and without notice either -

- 18.2.1 to enforce this Agreement and to accelerate the Owing entity's obligations hereunder and accordingly to claim and recover all the monies expended in the project;
- 18.2.2 to cancel this Agreement, and to recover from the Owing entity as damages as may have been suffered by the Department;
- 18.2.3 to claim specific performance.

18.3 The Department is further, in addition to its other rights and remedies, authorised to perform any obligation of the Owing entity which the Owing entity fails to perform on the Owing entity's behalf and to claim the cost thereof from the Owing entity on demand including without limitation all costs incurred in the resumption of the possession of the Project assets;

18.4 Where the Project assets has to be valued for any purpose in terms of this Agreement, the value shall be that placed on the Project assets by a sworn appraiser nominated by the Department in its sole discretion or the amount for which the Project assets is subsequently sold. The Owing entity shall pay the cost of such valuation to the Department on demand. If the said sworn appraiser is unable to inspect the Project assets on the date on which the value thereof is to be determined, the value thereof as at that date shall be irrefutably deemed to be the same as the value on the later date on which the said sworn appraiser inspects the Project assets.

19. DISPUTE RESOLUTION

19.1 Any disagreement or dispute arising between the Parties with regard to implementation, application, interpretation or breach of this Agreement shall be settled as follows:

- 19.1.1 A disagreement or dispute must be initiated in writing.

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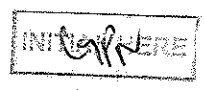

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- 19.1.2 The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation.
- 19.1.3 Should either party allege that there has been any non-compliance by the other party, in respect of any of the material terms and conditions of this agreement, the duly appointed on-site representatives of the Parties must first attempt to resolve the matter amicably.
- 19.1.4 Should settlement not be achieved in terms of clause 19.1.3 above, the party alleging non-compliance with this agreement shall, in writing, advise the other party of its non-compliance.
- 19.1.5 The party against whom material non-compliance is alleged must respond to the written allegation of the other party within 7 (seven) days of receiving written notification of non-compliance from the other party.
- 19.1.6 The Parties should convene a meeting within 10 calendar days after the date of the correspondence referred to in paragraph 19.1.5 above has been received by the particular party.
- 19.1.7 At the aforesaid meeting, the Parties shall attempt to reach agreement in relation to whether or not any party has failed to comply with any of the material terms and conditions of this agreement.
- 19.1.8 If the Parties fail to reach agreement as envisaged in 19.1.7, a formal intergovernmental dispute may be declared by the aggrieved party in terms of section 41 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005 – IGRF Act)

19.2 If a formal intergovernmental dispute is declared, the procedures in sections 42 to 45 (inclusive) of the Intergovernmental Relations Framework Act shall apply.

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20 CONFIDENTIALITY

20.1 Notwithstanding the cancellation or termination of this Agreement, no Party ("Receiving Party") shall, at any time after the conclusion of this Agreement, disclose to any person or use in any manner whatever another Party's Confidential Information or the existence and contents of this Agreement; provided that–

20.1.1 any Party may disclose the existence and contents of this Agreement to the extent required by any rules of any stock exchange by which that Party is bound; provided further that no such disclosure shall be made unless the other Party has first given its written approval for the form thereof, which approval may not be withheld unreasonably;

20.1.2 the Receiving Party may disclose another Party's Confidential Information and the existence and contents of this Agreement–

20.1.2.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party); to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its Business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this clause 20 by the Receiving Party; and

20.2 the provisions of this clause shall cease to apply to any Confidential Information of a Party which–

20.2.1 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause;

20.2.2 is also received by the Receiving Party from a Third Party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of another Party; or was known to the Receiving Party prior to receiving it from another Party.

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21 **DOMICILIUM AND NOTICES**

21.1 The Parties choose *domicilium citandi et executandi* ("Domicilium") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows–

21.1.1 The Department of Environmental Affairs
4th floor, Fedsure House
315 Pretorius Street
Pretoria
0002

Facsimile : (012) 310 3438

21.1.2 The Owning entity
Municipal Manager
Emadlangeni Local Municipality
60 Kerk Street
UTRECHT
2980

Facsimile: (034) 413 1706

21.2 Any Party shall be entitled from time to time, by giving written notice to the others, to vary its physical *Domicilium* to any other physical address (not being a post office box or postrestante) within the RSA, and to vary its facsimile *Domicilium* to any other facsimile number.



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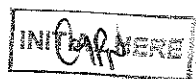
- 21.3 Any notice given or payment made by a Party to the others ("Addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical *domicilium* for the time being shall be deemed to have been received by the Addressee at the time of delivery.
- 21.4 Any notice given by a Party to the others which is successfully transmitted by facsimile to the Addressee's facsimile *domicilium* for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof.
- 21.5 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

22 CESSION AND ASSIGNMENT

- 22.1 The Owning entity shall not be entitled to cede, transfer, assign or burden any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Department.
- 22.2 The Department shall be entitled to cede, transfer, assign or burden any of its rights or delegate any of its obligations under this Agreement without the prior written consent of and/or notice to the Owning entity.

23 GENERAL

- 23.1 This Agreement and its annexures constitute the sole record of the Agreement between the Parties in relation to the subject matter hereof;
- 23.2 No Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement;
- 23.3 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

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- 23.4 No indulgence which any Party may grant to any other shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 23.5 This Agreement (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the Parties in terms of and arising out of the conclusion, breach and termination of the provisions of this Agreement), shall be interpreted and governed in all respects by the laws of the RSA.
- 23.6 All costs, charges and expenses of every nature whatever which may be incurred by any Party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Party against which such rights are successfully enforced.

24. COSTS

The Department shall pay the costs of and incidental to the negotiating, drafting, preparing and implementing of this Agreement.

25. LIAISON

25.1 The Parties shall from time to time nominate, by way of a written notice to the other, a representative. It is hereby recorded that the initial contact person for the Parties shall be as follows:

25.1.1 for the Department– the Director: Programme Planning and Quality Assurance of the Department, his/her successor in title or his/her delegate;

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and

25.1.2 for owning entity –Municipal Manager– Emadlangeni Local Municipality, his/her successor

Title or his/her delegate

25.2 The above appointed representatives of the Parties shall be responsible for;

25.2.1 Managing the relationship with each other and acting as the Parties primary Contact for purposes of this Agreement;

25.2.2 Receiving and reporting any issues / queries associated with the implementation of the Project.

26 RESTRICTION

The Parties hereby agree that they may only deal with each other and not directly with any of the Parties' clients and / or suppliers for the duration of this agreement. The provisions of this clause shall not apply if either party has already had business dealings with the client or supplier prior to the signing of this agreement.

27. CONSENTS REQUIRED FROM THE DEPARTMENT

All consents referred to herein which are required from the Department to perform any act referred to in this agreement shall not be required after the lapse of 20 (twenty) years from date of completion of the project.

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MoA between DEA and Emadlangeni Local Municipality – KZN – Construction of the Recycling Centre/Buyback Centre

THUS DONE AND SIGNED BY THE DEPARTMENT AT Pretoria

ON THIS 5th DAY OF March 2014.

AS WITNESSES

1. [Signature]
SIGNATURE

Maale Lawrence
FULL NAME

2. [Signature]
SIGNATURE

Geneva Mabogane
FULL NAME

[Signature]
For THE DEPARTMENT

THUS DONE AND SIGNED BY THE OWNING ENTITY AT UTRECHT

ON THIS 5 DAY OF FEBRUARY 2014.

AS WITNESSES

1. [Signature]
SIGNATURE

TITOKOZANI OZIAS MTHETHWA
FULL NAME

[Signature]
For THE OWNING ENTITY

2. [Signature]
SIGNATURE

VOSIMUZI VINCENT NHALAPHO
FULL NAME

[Signature]
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