

**SHAREHOLDERS' AGREEMENT**

entered to amongst and between:

**INTER-WASTE PROPRIETARY LIMITED**

and

**MAIN STREET 1710 PROPRIETARY LIMITED (TO BE RENAMED "*BAMBANANI WASTE MANAGEMENT (RF) PROPRIETARY LIMITED*")**

and

**MAIN STREET 1711 PROPRIETARY LIMITED (TO BE RENAMED "*MAIN STREET 1711 (RF) PROPRIETARY LIMITED*")**

and

**MAIN STREET 1712 PROPRIETARY LIMITED (TO BE RENAMED "*BMM WASTE MANAGEMENT (RF) PROPRIETARY LIMITED*")**

and

**EDEN WASTE MANAGEMENT (RF) PROPRIETARY LIMITED**

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## 1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise indicates:

1.1.1 The singular shall import and include the plural and vice versa.

1.1.2 Words indicating one gender shall import and include other genders.

1.1.3 Words indicating natural persons shall import and include artificial persons.

1.1.4 The head notes to this Agreement are used for the sake of convenience only and shall not govern the interpretation of the clause to which they relate.

1.2 Any reference in this Agreement to:

1.2.1 **business hours** shall be construed as being the hours between 08h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;

1.2.2 **days** shall be construed as calendar days unless qualified by the word **business**, in which instance a **Business Day** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.2.3 **law** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

1.2.4 **person** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and

1.2.5 **writing** means legible writing and in English and includes any form of Electronic Communication.

1.3 The words **include** and **including** mean **include without limitation** and **including without limitation**. The use of the words **include** and **including** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

1.4 The words **shall** and **will** and **must** be used in the context of any obligation or restriction imposed on a Party have the same meaning.

1.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.

1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.

1.7 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

- 1.9 Any reference to any terms as defined in the Act shall bear such definition given to it in the Act.
- 1.10 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 1.12 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.
- 1.13 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.14 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 1.15 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Agreement, then:
- 1.15.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.15.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.15.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.15.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.15.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 1.16 This Agreement shall be read in conjunction with the PPP Agreement, and in the event of any conflict between the provisions of this Agreement and the PPP Agreement, the provisions of the latter shall prevail to the extent of the conflict.

## 2. DEFINITIONS

In this Agreement, unless inconsistent with, or specifically excluded by the context, the following words and expressions shall in addition to their respective ordinary meanings bear the following meanings assigned to each of them respectively:

- 2.1 **Act** means the Companies Act, 2008;
- 2.2 **Agreement** means this amended and restated shareholders' agreement and all annexures thereto;

- 2.3 **Annual BEE Reports** means the reports referred to in clause 54 of the PPP Agreement, more fully set out in clause 9.2 and any other reports as may be required under the Finance Documents;
- 2.4 **Auditors** means auditors of the Company, which shall be the same auditors as used by Interwaste from time to time;
- 2.5 **Bamba Nani SPV** means Main Street 1710 Proprietary Limited (to be remained "*Bambanani Waste Management (RF) Proprietary Limited*"), a private company, duly registered and incorporated in accordance with the company laws of South Africa, with registration number 2019/255917/07;
- 2.6 **BBBEE Act** means the Broad Based Black Economic Empowerment Act, 2003;
- 2.7 **BEE** means a qualifying description of an act or subject matter pertaining to broad-based black economic empowerment contemplated by the BBBEE Act and/or the BBBEE Codes;
- 2.8 **BEE Third Party** has the meaning given to the term in clause 9.6;
- 2.9 **Black Enterprise** means an enterprise that is at least 50.1% beneficially owned by Black People and in which Black People have substantial Management Control. Such beneficial ownership may be held directly or through other Black Enterprises;
- 2.10 **Black Equity** means the voting Equity held by Black Shareholders from time to time;
- 2.11 **Black People** means African, Coloured and Indian South African citizens as defined in the BBBEE Act and Codes and **Black Person** means any such citizen;
- 2.12 **Black Shareholder** means any Shareholder that is a Black Person or a Black Enterprise;
- 2.13 **Black Women** means female African, Coloured and Indian South African citizens;
- 2.14 **Board** means the board of directors of the Company as constituted from time to time;
- 2.15 **Business** means the business of the Company as set out in the PPP Agreement, specifically including the Output Specifications;
- 2.16 **Chairman** means chairman of the Board, appointed by Interwaste;
- 2.17 **Change in Control** means:
- 2.17.1 in respect of the Company, any event or circumstance which results in a Shareholder holding less than 51% (fifty one per cent) of the issued share capital of the Company, or the acquisition by any person or loss by any Shareholder of the right to appoint directly or by virtue of agreements, the majority of directors on the board of the Company or to control management or policy decisions affecting the Company
- 2.17.2 in respect of a Black Shareholder, any change whatsoever in Control, whether effected directly or indirectly;
- 2.18 **Claims** means all claims of whatsoever nature and howsoever arising which a Shareholder may have against the Company (including any Shareholder loans) from time to time;
- 2.19 **Codes** means the Codes of Good Practice and any regulations in terms of the BBBEE Act;
- 2.20 **Company** means Eden Waste Management (RF) Proprietary Limited, a private company incorporated in accordance with the laws of South Africa with registration number 2014/092464/07;

- 2.21 **Confidential Information** means without limiting the generality of the term, any information or other data, whether written, oral or graphic which the Company may disclose or provide to, or which otherwise comes to the knowledge of the Shareholders or their directors/trustees/members or the directors of the Company or the employees/beneficiaries of any of the foregoing by whatsoever means, including:
- 2.21.1 information relating to the Company's existing and future strategic objectives and planning;
  - 2.21.2 information relating to the Company's assets, business activities, business relationships, and clients;
  - 2.21.3 information relating to the Company in general and the discussions held by the Board;
  - 2.21.4 information shared with the Shareholders from time to time;
  - 2.21.5 information contained in any of the Company's proprietary software and associated documentation;
  - 2.21.6 technical, commercial, financial and market information, know-how and trade secrets;
  - 2.21.7 data concerning business relationships, demonstrations and processes;
  - 2.21.8 plans, designs, drawings, functional and technical requirements and specifications;
  - 2.21.9 information concerning faults or defects in the Company's systems, hardware and/or software or the incidence of such faults or defects;
  - 2.21.10 all other information in whatever form, whether or not subject to, or protected by, common law or statute related to copyrights, patents, trademarks or otherwise, which is disclosed or communicated by the Company or otherwise comes to the knowledge of the Parties/Shareholders,
  - 2.21.11 but excluding information or data which:
  - 2.21.12 is lawfully in the public domain at the time of disclosure; or
  - 2.21.13 subsequently becomes part of the public domain by publication or otherwise; or
  - 2.21.14 is disclosed pursuant to a requirement or request by operation of law, regulation or Court order,
- provided that the onus shall at all times rest on the relevant Shareholder/Party, as the case may be, to establish that such information falls within the exemptions contained in clauses 2.21.12 to 2.21.14;
- 2.22 **Construction Subcontract** has the meaning given to the term in the PPP Agreement;
- 2.23 **Construction Subcontractor** has the meaning given to the term in the PPP Agreement;
- 2.24 **Control** has the meaning set out in Section 2(2) of the Act;
- 2.25 **Corrupt Act** means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act, 2004, and any applicable law relating to the prevention of bribery, corruption, fraud or similar or related activities, and as defined under the PPP Agreement and the Finance Documents (if any);
- 2.26 **Debt** means at any date, all amounts that are outstanding under the Financing Agreements at that date, but excluding all default interest, breakage premiums as well as

all fees, costs and expenses whatsoever in connection with any hedging arrangements entered into by the Company;

- 2.27 **Debt Instrument** means a debt instrument as the term is defined in Section 43 of the Act;
- 2.28 **Deed of Adherence** means a deed of adherence substantially in the form of the draft attached hereto as Annexe "A";
- 2.29 **Development Costs** means costs incurred by Interwaste in developing the Project, which includes, *inter alia*, technical, legal, administrative and management costs, with effect from the commencement of the bidding process until the Effective Date;
- 2.30 **Direct Financing Agreement** means the direct financing agreement attached as Schedule 3: Direct Financing Agreement of the PPP Agreement;
- 2.31 **Director** means a director of the Company, as defined in the Act;
- 2.32 **Disposal** or **Transfer** means, in context of a Share:
- 2.32.1 the Transfer of all or any rights making up such Share to any other person for his benefit and/or for the benefit of others, whether such Transfer is effected pursuant to a sale, exchange, donation, distribution *in specie* or otherwise;
- 2.32.2 any transaction or event whereby such Share becomes beneficially owned by someone other than the person who was the beneficial holder thereof immediately prior to such transaction or event taking place; or
- 2.32.3 granting, creating or allowing the Encumbrance of such Share,
- and **Dispose** and **Disposal** shall have corresponding meanings;
- 2.33 **Disproportionate Equity Loans** has a meaning given to the term in clause 24.3.4(a);
- 2.34 **Effective Date** means the date on which the PPP Agreement becomes unconditional in accordance with its terms (save for any condition requiring this Agreement to become unconditional), unless the Parties agree in writing to the contrary;
- 2.35 **Electronic Communication** means an electronic communication as defined in the Electronic Communications and Transactions Act 25 of 2002, as amended;
- 2.36 **Encumber** means any right of first refusal, purchase right, option or any other restriction of any kind on ownership, Transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest, and **Encumbered** and **Encumbrance** shall have corresponding meanings;
- 2.37 **Equity** means a Shareholder's Shares and Claims, if any;
- 2.38 **Equity Contribution** has the meaning set out in clause 24.2.1;
- 2.39 **Equity Loans** has the meaning given to the term in clause 24.3.3(a)(i);
- 2.40 **Facilities** has a meaning given to the term in the PPP Agreement;
- 2.41 **Fair Market Value** means, in relation to the value of any Equity, a value mutually agreed upon by all the Shareholders, or failing such agreement within five days of delivery by any Shareholder to the others of a written request for such an agreed determination, then, at the written request of any Shareholder, a value determined by the Auditors, acting as experts and not as an arbitrator, and who in coming to such determination:



- 2.41.1 shall take into consideration:
- (a) the net asset value of the Business;
  - (b) the goodwill of such Business (and without taking into account the effects of death or permanent disablement or retirement of any Shareholder, director or key employee);
  - (c) the nature and extent of contracts binding upon the Company, and the sustainability of earnings;
  - (d) the value of the Shareholder Loan Accounts; and
  - (e) the financial statements, management accounts and other relevant information which the Shareholders and/or the independent expert deems relevant;
- 2.41.2 shall have reference to the value of any Equity in the open market on a going concern basis as between willing purchaser and seller;
- 2.41.3 shall afford each Shareholder fair opportunity to make submissions regarding the manner in which the Fair Market Value ought to be determined;
- 2.41.4 shall make no deduction due to the fact that the Equity in question constitutes a minority interest in the Company, nor due to the fact that new management will be managing the Company, nor shall any premium be added due to the fact that the Equity in question constitutes a majority or controlling interest in the Company, nor, if the purchaser is an existing Shareholder, due to the fact that by purchasing the Equity in question such Shareholder shall be in a position to control the Company's affairs; and
- 2.41.5 shall value Shareholder Loan Accounts at their face value,
- such determination by the Auditors (absent manifest error or gross irregularity) shall be completed within 10 Business Days, be final and binding, and the costs thereof shall be borne by the Company;
- 2.42 **Finance Documents** collectively, the Financing Agreements and the Direct Financing Agreement;
- 2.43 **Financial Close** shall have the meaning given to the term in the Financing Agreements;
- 2.44 **Financial Model** means the base case financial model for the Project as reflected in the computer model attached on disk as Schedule 2: Financial Model of the PPP Agreement;
- 2.45 **Financing Agreements** has the meaning given to the term in the PPP Agreement;
- 2.46 **Group Company** has a meaning given to the term in clause 20.1;
- 2.47 **IFRS** means the International Financial Reporting Standards as adopted from time to time by the board of the International Accounting Standards Committee, or its successor body, as approved for use in South Africa from time to time by the Financial Reporting Standards Council;
- 2.48 **Incapacitated** means physically or mentally incapacitated to an extent that the competent performance of the duties of a director is no longer reasonably possible;
- 2.49 **Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right,

topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

- 2.50 **Interwaste** means Inter-Waste Proprietary Limited, a private company, duly registered and incorporated in terms of the laws of South Africa, with registration number 1989/003651/07;
- 2.51 **Landfill Site** means the Garden Route District Regional landfill and waste disposal facility, to be financed, designed, constructed, managed and operated by the Company in terms of the PPP Agreement, and situated at the Project Site;
- 2.52 **Lenders** means any person providing finance to the Company under Financing Agreements as provided for in the PPP Agreement;
- 2.53 **Lock-in Period** has a meaning given to the term in clause 19.1.2;
- 2.54 **Management Control** means the ability to direct or cause the direction of the Business and management policies or practices of an enterprise;
- 2.55 **Mekan SPV** means Main Street 1711 Proprietary Limited (to be renamed "*Main Street 1711 (RF) Proprietary Limited*"), a private company, duly registered and incorporated in accordance with the company laws of South Africa, with registration number 2019/255952/07;
- 2.56 **Management Services Agreement** means the management services agreement to be entered into between the Company and Interwaste, setting out the terms and conditions on which Interwaste will render certain management services to the Company; **Minimum Black Equity** has the meaning given to the term in clause 9.1;
- 2.57 **Mol** means the Company's Memorandum of Incorporation;
- 2.58 **Mphono SPV** means Main Street 1712 Proprietary Limited (to be renamed "*BMM Waste Management (RF) Proprietary Limited*"), a private company, duly registered and incorporated in accordance with the company laws of South Africa, with registration number 2019/256000/07;
- 2.59 **Municipality** means the Garden Route District Municipality, as more fully defined at clause 1.58 of the PPP Agreement;
- 2.60 **Operations Subcontract** has the meaning given to the term in the PPP Agreement;
- 2.61 **Operations Subcontractor** has the meaning given to the term in the PPP Agreement;
- 2.62 **Ordinary Resolution** means a resolution requiring the approval of more than 50% of all the votes attaching to all of the issued Ordinary Shares;
- 2.63 **Ordinary Shares** means ordinary no par value shares in the share capital of the Company;
- 2.64 **Ordinary Voting Rights** means the voting rights exercisable by the Shareholders at any time in respect of the Ordinary Shares;
- 2.65 **Output Specifications** means the specifications detailed in Schedule 7: Output Specifications of the PPP Agreement;
- 2.66 **Parties** means the parties to this Agreement, and **Party** is a reference to one of them;
- 2.67 **Penalty Deductions** has the meaning given to the term in the PPP Agreement;

- 2.68 **Petro SA Access Arrangements** has the meaning given to the term in the PPP Agreement;
- 2.69 **PPP Agreement** means the agreement to be entered into between the Company and the Municipality in respect of the Project, as amended from time to time;
- 2.70 **Prime Rate** means the nominal, annual, compounded monthly in arrear, rate of interest from time to time properly quoted as such by the Company's principal bankers on overdraft facility to its most favoured corporate customers from time to time and generally known as such bank's prime rate, calculated on a 365-day factor irrespective of whether or not the year is a leap year and certified by any manager of that bank, whose appointment, authority or designation as such it shall not be necessary to prove and which certificate shall be prima facie proof of the Prime Rate;
- 2.71 **Project** has the meaning given to the term in the PPP Agreement;
- 2.72 **Project Documents** collectively, this Agreement, the PPP Agreement, Petro SA Access Arrangements, the Construction Subcontract and the Operations Subcontract;
- 2.73 **Project Site** has the meaning given to the term in the PPP Agreement;
- 2.74 **Rands** or **R** or **ZAR** means Rand, being the lawful currency of South Africa;
- 2.75 **Required Equity Contribution** means the aggregate of the required Equity of all the Shareholders as set out in the Financial Model;
- 2.76 **Scheduled Service Commencement Date** has the meaning given to the term in the PPP Agreement;
- 2.77 **Securities** means any Shares, Debt Instruments, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 2.78 **Service Commencement Date** has the meaning given to the term in the PPP Agreement;
- 2.79 **Services** has a meaning given to the term in the PPP Agreement;
- 2.80 **Shareholders** means the shareholders of the Company from time to time;
- 2.81 **Shareholder Loan Account** means any Shareholder's Claims on loan account from time to time;
- 2.82 **Shares** means any shares in the share capital of the Company, including without limitation, the Ordinary Shares;
- 2.83 **Signature Date** means the date of signature of this Agreement (whether or not in counterpart) by the Party last in time to do so;
- 2.84 **SMME** means an exempted micro enterprise or a qualifying small enterprise as defined in the Codes;
- 2.85 **Solvency and Liquidity Test** means the solvency and liquidity test as defined in Section 4(1) of the Act;
- 2.86 **South Africa** means the Republic of South Africa;
- 2.87 **Special Resolution** means the resolution approved by Shareholders collectively holding more than 60% of the aggregate Ordinary Voting Rights; and
- 2.88 **Subcontractor(s)** means collectively, the Construction Subcontractor and the Operations Subcontractor.

### 3. PREAMBLE AND INTERIM PERIOD ARRANGEMENTS

- 3.1 The Company has been formed for the purpose of fulfilling the requirements of the PPP Agreement as they relate to the Private Party (as defined therein).
- 3.2 The Shareholders have taken up shareholding in the Company as provided in the PPP Agreement.
- 3.3 The Parties hereby record the terms of their agreement, for the purposes aforesaid.

### 4. CONFLICTS WITH MOI AND/OR THE ACT

- 4.1 If there is a conflict or inconsistency between the provisions of this Agreement and the rights and obligations of the Shareholders under the Mol:
  - 4.1.1 the provisions of this Agreement shall, where applicable and permissible, take precedence over any alterable provisions of the Mol and/or the Act;
  - 4.1.2 the provisions of the Mol shall take precedence over any unalterable provisions of the Mol, in which case the provisions of this Agreement shall be void to the extent of such inconsistency; and
  - 4.1.3 the Shareholders undertake to take all such steps and do all such things as may be necessary, including passing any necessary resolution/s, to amend the Mol so as to incorporate, insofar as may be appropriate and permissible, such provisions of this Agreement.
- 4.2 Unless otherwise specifically amended in terms of this Agreement or the Mol, the time periods, thresholds, percentages and other provisions prescribed by the Act shall apply.

### 5. CONSTITUTIONAL MATTERS

- 5.1 As at the Effective Date the issued share capital of the Company will be held as follows:
  - 5.1.1 **Interwaste:** 748 Shares, constituting 74.80% of the issued Shares in the Company;
  - 5.1.2 **Mekan SPV:** 84 Shares constituting 8.4% of the issued Shares in the Company;
  - 5.1.3 **Mphono SPV:** 84 Shares constituting 8.4% of the issued Shares in the Company; and
  - 5.1.4 **Bamba Nani SPV:** 84 Shares constituting 8.4% of the issued Shares in the Company.
- 5.2 The abovementioned Parties constitute the initial Shareholders of the Company.
- 5.3 Subject to the remaining provisions of this Agreement, shareholding may change as provided for in the PPP Agreement in order to give effect to the provisions of the latter relating to Black Economic Empowerment.
- 5.4 The financial year-end of the Company shall be 31 December or as may be decided otherwise by the Board, from time to time.

### 6. COMMENCEMENT AND DURATION

- 6.1 This Agreement shall commence with effect from the Effective Date and shall endure until:
  - 6.1.1 an effective resolution to wind up the Company is passed and registered or a binding order is made by a court having jurisdiction for winding up of the Company;

- 6.1.2 this Agreement is amended or terminated by written agreement of the Parties to terminate this Agreement;
- 6.1.3 the date on which all of the Shares are owned by one Shareholder; or
- 6.1.4 the date on which the PPP Agreement terminates in accordance with its terms, unless otherwise decided unanimously by the Shareholders.
- 6.2 For the avoidance of doubt, the termination of this Agreement shall not affect Shareholder's existing or contingent obligations and liabilities which arose prior to the termination of this Agreement or which may accrue thereafter in respect of any act or omission which occurred prior to such termination.

## 7. RESTRICTIONS ON THE BUSINESS OF THE COMPANY

- 7.1 As contemplated in section 15(2)(b) of the Act, the Company is subject to the restrictive conditions set out in clause 7.2 below and shall be a ring fenced company as contemplated in section 11(3)(b) of the Act.
- 7.2 The Business as at the Signature Date is that of:
  - 7.2.1 design, financing, construction, management and operation of the Landfill Site;
  - 7.2.2 performing the Services as set out in the Output Specifications,and all matters ancillary to the above.
- 7.3 With effect from the Effective Date and for the duration of the PPP Agreement:
  - 7.3.1 at least 25% of voting Equity in the Company shall be directly and beneficially owned by Black People and/or Black Enterprises; and
  - 7.3.2 unless otherwise provided for in terms of the provision of the Finance Documents, and subject to the remaining provisions of this Agreement, the Black Shareholders may not Dispose of their Shares without the prior written consent of the other Shareholders.

## 8. SHARES

The Company may not authorise or issue any further Shares, of any class, other than in accordance with Section 36(2)(a) of the Act, and the Board's powers in terms of Sections 36(2)(b), 36(3) and 38 of the Act are restricted accordingly.

## 9. BLACK ECONOMIC EMPOWERMENT

### 9.1 Minimum Black Equity

- 9.1.1 As at the Effective Date, Black Equity in the Company is 25%. At all times thereafter, at least 25% of the Ordinary Voting Rights in the Company shall be directly and beneficially owned by Black People and/or Black Enterprises (**Minimum Black Equity**).
- 9.1.2 The Company shall not change its capital structure to the extent that it will dilute the Company's Minimum Black Equity.
- 9.1.3 Black Shareholders shall not allow the commission or omission of any act which will have a negative effect on their compliance with requirements for qualification as Black Shareholders.

## 9.2 BEE Reports

The Company shall present the Annual BEE Report to the Board for approval at least 15 Business Days prior to the financial year end to ensure that the Company fulfils its obligation in terms of the PPP Agreement, to furnish the Municipality annually within seven Business Days after the end of each financial year of the Company, with the Annual BEE Report setting forth, in relation to each Shareholder:

- 9.2.1 the ownership of that Shareholder in the Equity and details of all changes in such ownership in that financial year (including, without limitation, changes effected through any acquisition or disposal of issued shares, or through any subscription for new shares);
- 9.2.2 the Shareholder loans of that Shareholder and details of all changes in the amount of such Shareholder loans in that financial year (including, without limitation, changes effected through repayments);
- 9.2.3 the voting rights attaching to all classes of Shares owned by that Shareholder in that financial year; and
- 9.2.4 details of all dividends and other distributions declared to and received by that Shareholder in respect of its proportion of Shares, as well as all payments made to that Shareholder in respect of any Shareholder loans, in that financial year.

## 9.3 Management and Employment Equity

- 9.3.1 The Company shall ensure that:
  - (a) with effect from the Scheduled Service Commencement Date, no less than 25% of the Company's senior management and executive appointments shall be filled by Black People; and
  - (b) no less than 50% of the minimum number of appointments in clause (a) above are filled by Black Women.
- 9.3.2 The Company shall comply with the Employment Equity Act, 1998 (**Employment Equity Act**) and implement its current employment equity plan, as substituted from time to time, in accordance with the Employment Equity Act. The Company shall submit to the Board for approval:
  - (a) each successive employment equity plan to be submitted in accordance with the Employment Equity Act; and
  - (b) a copy of each report to be submitted by the Company to the Department of Labour pursuant to section 21 of the Employment Equity Act.
- 9.3.3 The Company shall implement a skills development plan and shall apply no less than an amount (the **Annual Skills Development Commitment**) equal to 6% of its annual payroll expenditure in any financial year towards the costs of implementing its skills development targets for that financial year.
- 9.3.4 The Annual BEE Report submitted to the Board for approval pursuant to clause 9.2 for each financial year shall include:
  - (a) a complete statement of all targets set forth in the skills development plan for that financial year that have been achieved by the Company in that financial year, together with details of the costs incurred by the Company in that financial year in respect of such targets;

- (b) a complete statement of all targets (if any) set forth in the skills development plan for that financial year that have not been achieved by the Company in that financial year, together with the Company's reasons for not achieving these targets; and
- (c) details of the portion (if any) of its Annual Skills Development Commitment for that financial year not applied by the Company towards the implementation of any of its skills development targets for that financial year, together with the Company's reasons for not applying the full Annual Skills Development Commitment in that financial year.

#### 9.4 **Subcontracting**

Shareholders holding shares in either the Construction Subcontractor and/or the Operations Subcontractor shall ensure:

- 9.4.1 that no less than 30% of either the Construction Subcontractor or the Operations Subcontractor's total expenditure forecast, to be incurred by either of them, shall be expended under further subcontracts on participating Black People and/or Black Enterprises;
- 9.4.2 that no less than:
  - (a) 30% of each of the said Subcontractor's senior management and executive appointments shall be filled by Black Persons; and
  - (b) 50% of the minimum number of appointments specified in clause (a) above are filled by Black Women;
- 9.4.3 that each of Subcontractor (as applicable) implements that Subcontractor's current employment equity plan, as substituted from time to time in accordance with the Employment Equity Act, 1998. Each such Shareholder shall procure that the Subcontractor submits to the Company, at least 30 days prior to its required submission in terms of the Employment Equity Act:
  - (a) each successive employment equity plan to be submitted by that Subcontractor in terms of the Employment Equity Act; and
  - (b) a copy of each report to be submitted by that Subcontractor to the Department of Labour (or its successor) pursuant to section 21 of the Employment Equity Act;
- 9.4.4 that each Subcontractor shall apply no less than an amount equal to 6% of that Subcontractor's annual payroll expenditure in any financial year towards the costs of implementing its skills development targets for that financial year; and
- 9.4.5 that each Subcontractor shall expend no less than 1% of the total procurement budget of that Subcontractor in respect of the Project under procurement contracts with SMMEs.

#### 9.5 **BEE Undertakings**

- 9.5.1 As at the Signature Date, each of the following Shareholders undertake that they are a Black Enterprise and that they have the following BEE status levels:
  - (a) Mekan SPV:
    - (i) a BEE status of level 1;

- (ii) a Black Equity of level 100% with no less than 11% held by Black Women; and
  - (iii) senior management and executive appointments held by Black People of 100% with no less than 25% held by Black Women;
- (b) Mphono SPV:
  - (i) a the BEE status of level 1;
  - (ii) a Black Equity of level 100% with no less than 100% held by Black Women; and
  - (iii) senior management and executive appointments held by Black People of 100% with no less than 100% held by Black Women; and
- (c) Bamba Nani SPV:
  - (i) a BEE status of level 1;
  - (ii) a Black Equity of level 100% with no less than 50% held by Black Women; and
  - (iii) senior management and executive appointments held by Black People of 100% with no less than 50% held by Black Women.

#### 9.5.2

Each Black Shareholder hereby undertakes in favour of Interwaste and the Company that for so long as it is a Shareholder:

- (a) it shall maintain its BEE status as reflected in clause 9.5.1 above, necessary to ensure that the Company complies with the provisions of the PPP Agreement;
- (b) it shall remain a Black Enterprise for the duration of the PPP Agreement;
- (c) it shall maintain the same percentage of Black Women and Black People in senior management and executive positions as it had at the Signature Date in order to contribute to the Company's overall BEE requirements as set out in the PPP Agreement and clause 9.3.1; and
- (d) failing which, it will Dispose of its Equity to a BEE Third Party with the same BEE credentials as set out in this clause 9.5.2 and in accordance with clause 9.6, failing which the provisions of clause 22 will apply (as applicable);
- (e) it shall furnish the Company with all such information (in the manner and format reasonably prescribed by the Company), as may reasonably be required by the Company in terms of any applicable statement of the Codes to enable the Company to undertake the measurement of the BEE status of each Black Shareholder and/or the Company, which information shall be furnished to the Company within 10 Business Days of a written request therefor;
- (f) it shall cooperate fully with the Auditors or any verification agency and any professional advisors appointed by the Company from time to time and furnish such information as may reasonably be required by such verification agency or professional advisors from time to time for the purposes of establishing the BEE status of each of the Shareholders or providing a factual findings report relative to such status to ensure the timeous submission of Annual BEE Reports; and



- (g) it shall procure the maintenance of its BEE status as Construction Subcontractor and Operations Subcontractor (as the case may be) in relation to the Construction Subcontract and the Operations Subcontract to ensure that the Company complies with its BEE obligations in terms of the PPP Agreement,

and for so long as it is a shareholder of a Subcontractor, it shall procure such Subcontractor fulfils its obligations as set out in this clause 9.

#### **9.6 Disposal of Black Equity**

The Black Shareholders may Dispose of Equity in the Company to another person which shall have the same minimum BEE level status as is set out in clause 9.5.1 and the same percentage of Black Women in executive and directorship as such Black Shareholder had at the Signature Date (**BEE Third Party**) provided that:

- 9.6.1 the Disposal occurs after the Lock-in Period;
- 9.6.2 it is not in breach of the provisions of the PPP Agreement and the Finance Documents;
- 9.6.3 the Disposal will not constitute a breach under and is not likely to have any adverse consequences under the PPP Agreement and/or the Finance Documents;
- 9.6.4 the Disposal is to a Black Person or to a Black Enterprise and such Black Person or Black Enterprise undertakes to:
  - (a) continue to be a Black Person or a Black Enterprise for so long as required in terms of the PPP Agreement;
  - (b) maintain the required minimum BEE level status as is set out in clause 9.5.1 and percentage of Black Women in executive and directorship;
- 9.6.5 the Disposal has been approved by the Shareholders by way of a Special Resolution; and
- 9.6.6 such BEE Third Party binds itself to the provisions of this Agreement by signing a Deed of Adherence,

and in such event all references to, and provisions of this Agreement which are applicable to the Black Shareholder shall be taken as reference to, or obligations of, the BEE Third Party.

#### **10. CHANGE IN CONTROL**

- 10.1 For the duration of the PPP Agreement, each of the Black Shareholders shall procure that there is no Change in Control in each of them without the prior written approval of the Board.
- 10.2 The Company shall ensure that for the duration of the Project there is no Change in Control (at any time) in a Black Shareholders or a Black Enterprise, which will result in that Black Shareholder or Black Enterprise no longer maintaining its BEE status as at the Signature Date.

#### **11. THE COMPANY AND SUBCONTRACTORS**

- 11.1 The Company's, Construction Subcontractor's and the Operations Subcontractor's corporate and organisational structures are set out in the diagram annexed hereto as Annexe C.

- 11.2 The contractual relationship between the Company, the Construction Subcontractor and the Operations Subcontractor are set out in the Construction Subcontract and the Operations Subcontract respectively.
- 11.3 The Company undertakes to comply with the subcontracting obligation imposed upon it by the PPP Agreement.

## 12. MANAGEMENT

- 12.1 Control and management of the Company and the Business will vest in the Board.
- 12.2 The Board will be responsible for and have the following powers and authority:
- 12.2.1 the management of the Company;
  - 12.2.2 determining the strategic policy of the Company and preparing the annual budget from time to time; and
  - 12.2.3 ensuring compliance with the approvals framework agreed to by Special Resolution.
- 12.3 The day-to-day management of the Company will be:
- 12.3.1 subject to Interwaste's policies, including those on health, safety and the environment, human resources and finance or such other environmental and social policies or principles as set out in the Finance Documents; and
  - 12.3.2 subject always to:
    - (a) the overall control and direction of the Board, and
    - (b) the terms of the Management Services Agreement, as applicable.
- 12.4 The Company shall appoint the following officers:
- 12.4.1 the Finance Manager;
  - 12.4.2 the Project Contract Manager; and
  - 12.4.3 the health, environmental and quality (**SHEQ**) officer,
- to assist in the implementation and the management of the Facilities. The Finance Manager and the Project Contract Manager shall report directly to the Board and the SHEQ officer directly to the Project Contract Manager.
- 12.5 The Parties hereby agree that the authorised representative of the Company, the Chairman, Project Contract Manager and the Finance Manager are the only parties authorised and permitted to have direct and official communication with the Municipality in respect of the Project and the Business, and any other persons shall only have direct access to the Municipality, the Project and the Business upon the prior written approval of the Board.

## 13. DIRECTORS

- 13.1 The Board shall consist of no more than eight Directors. As at the Effective Date, the Board of the Company shall consist of seven directors. Mphono SPV, Mekan SPV and Bamba Nani SPV shall each be entitled to nominate one Director, whilst the remaining four Directors will be nominated by Interwaste. The Black Shareholders agree to each nominate a Black Person as a Director, of which at least one shall be a Black Woman nominated by either Mphono SPV or Bamba Nani SPV.

- 13.2 As at the date that the Black Equity increases to more than 30% each Black Shareholder with at least 10% shareholding shall be entitled to nominate one Director, whilst the remaining four Directors will be appointed by Interwaste provided that in the event that Mekan SPV, Bamba Nani SPV and Mphono SPV elect not to increase their shareholding, they are each entitled to elect one Director. Of the Directors nominated by Black Shareholders at least 50% thereof shall be Black Women.
- 13.3 Shareholders shall have the right to remove any person nominated by them, and upon such removal or upon an appointee ceasing to hold office for any reason, the Shareholders shall have the right (by the same process) to nominate another person as a Director of the Company.
- 13.4 Each Shareholder:
- 13.4.1 hereby irrevocably and unconditionally agrees, when requested by any other Shareholder to do so, to vote all of its Shares in favour of any resolution to:
- (a) appoint any Director (or alternate) nominated by any Shareholder in terms of clause 13.1; and
  - (b) remove any Director/s (or alternate) appointed in terms of clause 13.1 by the Shareholder who nominated and who made such a request; and
- 13.4.2 shall co-operate and procure that each appointment, removal or replacement of a Director or alternate in terms of this Agreement is implemented.
- 13.5 A Shareholder removing a Director representing it shall be responsible for and shall indemnify the other Shareholders and the Company against any claim by such Director for wrongful or unfair dismissal or redundancy or other compensation arising out of such removal or loss of office.
- 13.6 Should any Director at any time:
- 13.6.1 become disqualified from occupying the office of Director in accordance with any provision of the Act; or
  - 13.6.2 become Incapacitated; or
  - 13.6.3 breach any fiduciary duty, restraint of trade and/or confidentiality agreement in favour of the Company,
- then he shall immediately be disqualified from and deemed to have resigned as Director, provided that such resignation in the case of clause 13.6.3 shall in no way prejudice the Company's rights to proceed against and/or recover damages from such a Director.
- 13.7 Any Director may voluntarily resign on three months advance written notice to the Company. Voluntary resignation by a Director shall however in no way release him from any liability incurred during his period of directorship.
- 13.8 Shareholders shall be entitled to appoint an alternate Director, which alternate shall (except as to remuneration and power to appoint an alternate) be subject in all respects to the terms and conditions governing the other Directors. Each alternate Director, while so acting, shall exercise the same powers and discharge all the duties of the Director he represents. An alternate Director shall be entitled to receive notices of meetings of the Directors and to attend and vote as a Director at any such meeting at which the Director for whom he is an alternate is not present and to count towards a quorum at such meeting and generally at such meeting to perform all the functions of the Director for whom he is an alternate. Where an alternate is appointed to represent more than one Director, he shall have a separate vote on behalf of each Director for whom he is an alternate and who is not

personally present at the meeting, which shall be in addition to his own vote if he is a Director.

#### **14. DIRECTOR'S MEETINGS**

14.1 Meetings of the Board shall be held at least every four months, and otherwise as required by any Director on 14 days advance written notice to the other Directors, which notice shall state the intended subject matter and purpose of the meeting, and be supported by any relevant documentation, provided that any Director shall be entitled to convene a meeting of the Board on shorter notice to deal with urgent matters, provided that such urgency is substantiated by such Director in the notice convening such meeting and the shorter period of notice given is fair and reasonable in the circumstances.

14.2 The quorum for Board meetings of the Company shall be a majority of the Directors or their alternate/s, provided that:

14.2.1 a director of Interwaste shall be required to be present at the commencement and for the duration of the meeting;

14.2.2 meetings of Directors shall take place at such times and places that the Directors shall determine by agreement from time to time subject to a minimum of 14 clear days advance notice, unless otherwise agreed by all Directors, or under circumstances of urgency as per clause 14.1 above; and

14.2.3 if, within 30 minutes from the time appointed for a meeting (or such number of minutes as otherwise agreed to by the Directors from time to time), a quorum is not present, the meeting shall stand adjourned to a date seven days later, at the same time and place or, if that day be a public holiday, to the next succeeding Business Day. No matters may be dealt with at an adjourned meeting other than those specified on the agenda for the original meeting. Should the required quorum not be present after 30 minutes of scheduled commencement of a third adjourned meeting (or such number of minutes as otherwise agreed to by the Directors from time to time), the Director/s or their alternates then present shall constitute a quorum, provided that at least one Director nominated by Interwaste is present.

#### **14.3 Resolutions of the Board**

14.3.1 All decisions shall be by a simple majority of votes cast by the Directors duly called and constituted, and shall be recorded in minutes. The Chairman shall have a casting/deciding vote.

14.3.2 Each of the Directors appointed by a particular Shareholder shall have as many votes as the number of Shares which the Shareholder appointing him/her holds divided by the number of Directors appointed by that particular Shareholder, who vote on the particular resolution.

#### **14.4 Round-robin resolutions**

14.4.1 A written resolution passed by a majority of the votes cast by the Directors holding the requisite number of votes, is sufficient to approve that resolution and shall be valid and effective in accordance with its terms as if passed at a meeting of the Board in terms of this Agreement, provided that proper notice of the written resolution was duly given to each of the Directors in terms of this Agreement.

14.4.2 Such a resolution may be executed in any number of counterparts and must be inserted in the minute book. Once each Director has signed a counterpart, each such counterpart shall be considered an original and all such counterparts together shall constitute one and the same instrument. Unless the contrary is stated therein,

any such resolution shall be deemed to have been passed on the latest date on which it was signed by any Director.

- 14.4.3 A facsimile or e-mail transmission of a Director's signed resolution shall be acceptable evidence that such resolution has been signed by the Director whose signature appears on the facsimile or e-mail transmission.

**14.5 Electronic participation**

- 14.5.1 Proceedings of the Directors may be conducted by utilising conference telephone facilities, video conferencing facilities or any other means convenient in the circumstances, provided that the minimum quorum referred to in clause 14.2 is constituted, and provided that the method employed ordinarily enables all persons participating in such meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting. A resolution agreed to during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.
- 14.5.2 The Board shall cause a copy of the minutes of all proceedings of the Board to be disseminated to all Directors within seven days of such meeting.

**15. INDEMNIFICATION OF DIRECTORS**

The Company undertakes to:

- 15.1 maintain a Director's liability insurance policy;
- 15.2 pay all premiums due on such liability insurance policy; and
- 15.3 not make any material alternation to the terms of, or the cover provided by, the liability insurance policy without the consent of the Shareholders by Ordinary Resolution.

**16. DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

- 16.1 The Company may not pay remuneration to the Directors for their services as directors, however the Directors may be paid all their travelling and other expenses necessarily incurred by them in connection with:
- 16.1.1 the Business; and
- 16.1.2 attending meetings of the Directors.
- 16.2 The Board may, as set out in and subject to the requirements of section 45 of the Act, authorise the Company to provide financial assistance to a Director, prescribed officer or other person referred to in section 45(2) of the Act, and the power of the Board in this regard is not limited or restricted by the Mol.

**17. SHAREHOLDERS' MEETINGS**

**17.1 Quorum**

- 17.1.1 The provisions of Sections 61 to 64 of the Act shall apply to meetings of Shareholders, subject to the proviso that the threshold required in terms of Section 64(1) shall be 60% of the total Ordinary Voting Rights in the Company attaching to the Shares of Shareholders present in person or represented by proxy at such meeting, as opposed to 25%. No meeting of Shareholders shall be quorate unless a representative from Interwaste is present at such meeting.
- 17.1.2 Any Shareholder may be represented by proxy at any Shareholders meeting in accordance with the provisions of Section 58 of the Act.

- 17.1.3 If, within 60 minutes from the time appointed for a meeting (or such number of minutes as otherwise agreed to by the Shareholders from time to time), a quorum is not present, the meeting shall stand adjourned to the date falling seven days later, at the same time and place or, if that day is not a Business Day, to the next succeeding Business Day and if, at such adjourned meeting, a quorum is not present within 60 minutes from the time appointed for the meeting (or such number of minutes as otherwise agreed to by the Shareholders from time to time), the Shareholders then present in person or by proxy shall constitute a quorum, provided that Interwaste is duly represented. No business may be conducted at the adjourned meeting save for business specified on the agenda of the original meeting or unless all the Shareholders are present or represented at such adjourned meeting and unanimously agree that such business may be conducted.
- 17.1.4 Written notice of each adjournment specifying the business to be dealt with at the adjourned meeting shall be given by the Company to each of the Directors forthwith after such adjournment.
- 17.1.5 Any Shareholder who participates at the commencement and for the duration of a meeting by way of a telephone conference call or by way of a video conference or other audio, audio-visual or electronic means shall be deemed to be present at the meeting and counted towards the quorum (provided that all Shareholders at the meeting can hear and address each other in an immediately responsive manner).
- 17.2 **Notice of Shareholders' meetings**
- 17.2.1 A written notice of a Shareholders' meeting must be given to the Shareholders in the prescribed manner and form at least 10 Business Days before the meeting is to begin.
- 17.2.2 The Company may call a meeting with less notice than required but such meeting may proceed only if every person who is entitled to exercise Ordinary Voting Rights in respect of any item on the meeting agenda is:
- (a) present at the meeting; and
  - (b) votes to waive the required notice of the meeting.
- 17.3 **Chairman of Shareholders' meetings**
- The Chairman shall preside as chairman at every Shareholders' meeting of the Company. If there is no such Chairman, or if at any Shareholders' meeting, he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the members present shall choose a Director, or if no Director is present, or if all the Directors decline to take the chair, they shall choose a member present to be chairman of the Shareholders' meeting.
- 17.4 **Time and venue**
- Shareholders' meetings will be held at a reasonable time and venue in South Africa. In the ordinary course, meetings will be held at the principal place of Business in South Africa or at such other venue as the Board may agree to in writing.
- 17.5 **Resolutions of the Shareholders**
- 17.5.1 All decisions of the Shareholders at any general meeting or any other meeting shall be taken by Ordinary Resolution other than by Special Resolutions as may be required by section 65(11) of the Act to be taken by Special Resolution.

17.5.2 Resolutions of Shareholders of the Company (other than Special Resolutions) in order to be of force and effect must be approved by a Ordinary Resolution of the Shareholders of the Company, present at any meeting in person or by proxy.

17.5.3 Each Share shall carry one vote, and each Shareholder shall be entitled to that number of votes as is equal to the number of Shares registered in its name.

**17.6 Round-robin resolutions**

17.6.1 A written resolution passed by the required number of votes cast by the Shareholders holding the requisite number of votes and inserted in the minute book, shall be valid and effective in accordance with its terms as if passed at a Shareholders' meeting in terms of this Agreement, provided that proper notice of the written resolution was duly given to each of the Shareholders in terms of this Agreement.

17.6.2 The written resolution must be voted on within 20 Business Days after the resolution was submitted to the Shareholders.

17.6.3 Unless the contrary is stated therein, any such resolution shall be deemed to have been passed on the latest date on which it was signed by all Shareholders.

17.6.4 A facsimile or e-mail transmission of a Shareholder's signed resolution shall be acceptable evidence that such resolution has been signed by the Shareholder, provided that its signature (or that of its representative to the extent that same is stated on the face thereof to be duly authorised to sign on behalf of such Shareholder) appears on the facsimile or e-mail transmission.

**17.7 Electronic participation**

17.7.1 Shareholders' meetings may be conducted entirely by electronic communication or one or more Shareholders (or their proxies) may participate by electronic communication in all or part of a meeting that is being held in person, provided that the electronic communication facility employed ordinarily enables all Shareholders participating in that meeting to communicate concurrently with one another without any intermediary and to participate reasonably effectively in the meeting.

17.7.2 A resolution approved by Shareholders holding the requisite number of votes, who were connected by electronic communication at a Shareholders' meeting, shall be valid and shall be deemed to have been passed on the date on which the meeting was held.

17.7.3 Within 10 Business Days after the adoption or failing of a resolution at a meeting contemplated in clause 17.7.1, the Company shall:

(a) deliver to each Shareholder a copy of the resolution proposed with a statement describing the results of the vote, consent process or election as the case may be; and

(b) insert a copy of the resolution into the Company's minute book.

## **18. UNDERTAKING IN RESPECT OF THE PROJECT DOCUMENTS AND THE FINANCE DOCUMENTS**

### **18.1 General**

18.1.1 The Parties acknowledge and agree that the Project and the security of the Shareholders' investment in the Company and the expected return on such investment will substantially depend on the various parties thereto complying with their respective obligations under the PPP Agreement and the Finance Documents.

18.1.2 The Parties acknowledge, agree and undertake that:

- (a) they have been provided with copies of the Project Documents and the Finance Documents; and
- (b) they have familiarised themselves with the contents thereof, including the rights, privileges and obligations of the various parties thereto, and have a full appreciation of the import thereof.

18.1.3 Where the Project Documents and the Finance Documents:

- (a) impose obligations on any Party to this Agreement who is also a party to such document, that Party undertakes in favour of all other Parties that it shall comply with such obligations; and
- (b) requires that something will be done or will not be done by a Party and such Party is not a party to such document, the relevant Party shall use its reasonable commercial endeavours to ensure compliance with such requirements,

and each Shareholder shall use its Ordinary Voting Rights and rights of control in respect of the Company, and shall generally use its reasonable commercial endeavours to ensure that all the obligations of the Company under the Project Documents and the Finance Documents are complied with, and any events of defaults, potential events of default and other adverse contractual consequences under the aforementioned agreements are avoided; and

- (c) imposes an obligation on the Company in respect of the Construction Subcontractor or the Operations Subcontractor, a Shareholder which is appointed as the Construction Subcontractor or the Operations Subcontractor (or holds ordinary shares in the Construction Subcontractor or the Operations Subcontractor), hereby undertakes in favour of all other Parties that it shall procure that such Construction Subcontractor or the Operations Subcontractor (as the case may be) comply with such obligations.

### **18.2 Corrupt Acts**

18.2.1 Each Shareholder undertakes and warrants that, in relation to the entering into the PPP Agreement, neither it, its ultimate beneficial shareholder (save in respect of a public entity) or any of its appointed Directors or respective employees has committed any Corrupt Act in respect of the Project, and in so far as it is within its reasonable legal power or ability to do, it shall ensure that for the duration of the PPP Agreement neither it nor any of its respective employees will commit any Corrupt Act.

18.2.2 If a Corrupt Act is committed by any of:

- (a) the Company's employees or Director, or



- (b) the employees or directors of a Construction Subcontractor or the Operations Subcontractor,

and the Municipality gives the Company notice under the PPP Agreement requiring that such employees' or directors' involvement in the Project be terminated, the Company and/or Shareholder (in respect of the Construction Subcontractor and/or the Operations Subcontractor) shall procure that the involvement of such employee or director in the Project is immediately terminated.

### 18.3 Indemnity

18.3.1 Each of the Shareholders (the **Indemnifying Party**) hereby indemnifies and holds harmless the other Shareholders and the Company (collectively **Indemnified Parties**) against any established loss, cost, liability, damage or expense (excluding consequential damage and indirect loss) which an Indemnified Party may have suffered or incurred as a result of any breach of this clause 18 by the Indemnifying Party.

18.3.2 Without derogating from the generality of the foregoing, the Indemnifying Party hereby indemnifies and holds harmless the Indemnified Parties against any loss, cost, liability, damage or expense (excluding consequential damage and indirect loss) arising from:

- (a) the termination of the PPP Agreement pertaining to the Project in consequence of a Corrupt Act having been committed by a Shareholder, its employee and its appointed Director;
- (b) the termination of the PPP Agreement pertaining to the Project in consequence of a Corrupt Act having been committed by an employee and/or a director of a Construction Subcontractor and/or the Operations Subcontractor in which a Shareholder holds ordinary shares;
- (c) the Company becoming liable to effect payment of any penalties or Penalty Deductions in terms of the PPP Agreement as a result of the Company's breach of the PPP Agreement as a consequence of a breach by the Shareholder of its obligation under this clause 18; and
- (d) the termination of the PPP Agreement as a result of a breach by a Shareholder of its obligations under the provisions of this Agreement.

## 19. TRANSFERS

### 19.1 Black Equity

19.1.1 It is recorded that in compliance with the PPP Agreement, the dilution of Black Equity is prohibited.

19.1.2 The Parties shall use their reasonable endeavours at the expiry of five years, calculated from the date the PPP Agreement comes into full force and effect (the **Lock-In Period**), to procure the increase of the Black Equity in the Company from 25% to 40%. Any such increase in shareholding of the Black Equity shall be agreed to by Special Resolution. The Parties shall procure that agreements entered into between the Company and third parties, such as Lenders, allow for such change in percentage shareholding.

19.1.3 Subject to clause 22 below, Black Shareholders shall not be entitled to Dispose of their Shareholding during the Lock-In Period.

- 19.1.4 If a Black Shareholder wishes to Dispose of all or any of the Equity held by it, it must Dispose of all of its Equity in one and the same transaction (collectively, **BEE Sale Equity**) and such Disposal shall be subject to the provisions of clause 9.6.
- 19.1.5 Each of the Shareholders or its respective Group Company (the **BEE Equity Offerees**) shall have a right of first refusal to purchase the BEE Sale Equity, *pro rata* to their existing respective shareholding, provided that the overall Black Equity does not fall below the Minimum Black Equity.
- 19.1.6 In accordance with clause 19.1.5, the Company shall, in writing, first offer the BEE Sale Equity to the BEE Equity Offerees (the **BEE Offer**), stating the price (which shall sound in money in Rands at Fair Market Value) and the terms of payment required by it.
- 19.1.7 Payment of the purchase price for the BEE Sale Equity, accepted for purchase by the BEE Equity Offerees, must be made by the BEE Equity Offerees within 20 Business Days of receipt by the BEE Offer.
- 19.1.8 If:
- (a) within 14 days after the receipt of the BEE Offer referred to in 19.1.6 above (during which period the offer shall be irrevocable) it is not accepted in writing by any one or more of the BEE Equity Offerees; and
  - (b) the BEE Sale Equity purchase price is not paid within the period stated in clause 19.1.7,
- the Company shall have the right to Dispose of the BEE Sale Equity to another Black Enterprise or to other Black People, approved in writing by Special Resolution, upon the same terms and conditions.

## 19.2 General Disposals

- 19.2.1 Any Disposal of Shares to any non-shareholder of the Company shall be subject to the condition that such new Shareholder/s (i) bind themselves to this Agreement by signing a Deed of Adherence, and (ii) agrees to comply with the requirements of clause 9.5.1 as regards the Disposing Black Shareholder.
- 19.2.2 Shares shall only be Transferred in accordance with the provisions of this Agreement and no Transfer of any Shares which conflicts with any provisions of this Agreement shall be approved nor permitted to be registered.
- 19.2.3 A Shareholder may not Dispose of any of its Shares unless the Shareholder also Disposes of a proportionate share of its Claims.
- 19.2.4 No Share may be Disposed of, pledged or Transferred, save in accordance with the provisions of the PPP Agreement, the Finance Documents and this clause 19 and with the written consent of Shareholders authorised by Special Resolution.
- 19.2.5 The foregoing provisions shall in no way affect any "step in" or other similar rights in favour of Lenders or the Municipality as contained in the PPP Agreement and, specifically, the Direct Financing Agreement.

## 19.3 General Pre-emptive Rights

- 19.3.1 Subject to the restrictions in this Agreement (in particular clause 19.1), the PPP Agreement and the Finance Documents, including but not limited to clause 20, no Shareholder shall be entitled at any time to Dispose of any of its Equity otherwise than in terms of this clause 19.3.

- 19.3.2 If a Shareholder wishes to Dispose of all or any of the Equity held by it (the **Offeror**), then the Offeror shall (subject always to this clause 19) first offer in writing (**Offer**) all or any of its Equity (collectively, **Sale Equity**) to the other Shareholders (the **Offerees**) *pro rata* to their respective holdings of Ordinary Shares at the date upon which the Offer is made, by delivering an offer notice to the Company, the Board and the Company secretary, if any, at the Company's registered office and to all the Offerees. The Offer shall:
- (a) in respect of each of the Offerees, be open for acceptance in writing by an Offeree for a period of 30 days from the date on which such offer is received by the Offeree;
  - (b) state the number of Shares and the amount of the respective Claims which the Offeror proposes to Dispose of;
  - (c) state the price (in Rands) and the terms upon which the Offeror proposes to Dispose of those Shares and respective Claims;
  - (d) state full details of the proposed *bona fide* transferee to whom the Offeror intends selling and its holding company (if any);
  - (e) be accompanied, where applicable, by a true and complete copy of any written offer made to the Offeror by the proposed *bona fide* transferee in respect of the Offeror's Equity; and
  - (f) if there is no offer from a *bona fide* third party, state that fact.
- 19.3.3 The Offer will constitute an irrevocable offer to the Offerees who will be entitled to acquire all such Shares and respective Claims, but not part thereof only, at the price and on the terms and conditions stipulated in the Offer.
- 19.3.4 Any of the Offerees may accept an Offer in respect of a greater proportion of the Shares and respective Claims offered than its *pro rata* share thereof, provided:
- (a) that such acceptance will only be effective in respect of the excess if and to the extent that any other Offeree accepts the offer in respect of fewer Shares and the respective Claims than its respective *pro rata* entitlement; and
  - (b) however, that if acceptances in terms of this clause 19 together constitute acceptances for more than the Shares and Claims offered, then the Shares and the respective Claims offered shall be apportioned amongst the accepting Offerees, in the proportions as near as may be to their existing shareholdings *inter se* in the Company on the date of the Offeror's Offer, but on the basis that no Offeree shall be obliged to purchase more Shares and Claims than the number of Shares and the corresponding proportion of the Claims accepted by it.
- 19.3.5 If any of the Offerees fails to accept the Offeror's offer to it within the period of 30 days referred to in clause 19.3.2(a), and provided that the other Offerees have not yet accepted the Shares and the respective Claims concerned as contemplated in clause 19.3.2(a), the Offeror shall offer the Shares and respective Claims concerned to the remaining Offerees, excluding the Shareholders who failed to accept the Offeror's Offer, *mutatis mutandis* on the conditions set out in this clause 19, provided that the offer in such an event will only remain open for acceptance for a period of 10 days after receipt thereof by the remaining Offerees.
- 19.3.6 Should the Offer not have been accepted in full in writing within the 30 day time period referred to in clause 19.3.2(a) or should any subsequent Offer pursuant to clause 19.3.4 not have been accepted within the 10 day time period referred to in

clause 19.3.5, the Offer will be deemed to have been declined and the Offeror will then be entitled to Dispose of those Shares and Claims within a further period of 30 days to, subject to the provisions of clauses 9.5 and 9.6:

- (a) the proposed *bona fide* transferee referred to in clause 19.3.2(d); or
- (b) if the Offeror's Offer disclosed that there was no *bona fide* third party offeror in respect of the Equity, then to any other *bona fide* third party, provided that in such an instance the Offeror shall first disclose the identity of the *bona fide* third party to each of the other Shareholders, any of whom may require that the procedure referred to in clause 19.3.2 to clause 19.3.5 shall again be adopted prior to the Disposal to such *bona fide* third party,
- (c) in both instances at a price and on terms no more favourable to such person than that stated in the Offer.

19.3.7 Unless the Offeror Disposes of all the said Shares and Claims within the said further period of 30 days, the Offeror may not thereafter Dispose of any Shares and Claims without again adopting the procedure referred to herein.

19.3.8 No Offeror shall be entitled to Dispose of its Shares unless the Offeror shall at the same time procure that all persons nominated for election to the Board and duly elected, resign from the Board.

## 20. SUBSTITUTE SHAREHOLDERS

20.1 Subject to the provisions of this Agreement, the Project Documents and the Finance Documents, any transferring Shareholder may Transfer all of its Equity to its holding company, any subsidiary company or any subsidiary of such a holding company (**Group Company**) and will in such event assign its rights and obligations under this Agreement to such Group Company, subject always to the Black Shareholders complying with the requirements of clause 9.5.1. Clauses 19 and 21 shall not apply to a Transfer of Equity between a transferring Shareholder and its Group and *vice versa*.

20.2 Should a transferring Shareholder wish to Transfer its Equity to a Group Company as contemplated in clause 20.1:

20.2.1 the Group Company shall agree to be bound by all the terms and conditions herein contained;

20.2.2 the transferring Shareholder shall bind itself as surety for and co-principal debtor *in solidum* with the Group Company for the due compliance by the Group Company with all its obligations under and in terms of this Agreement; and

20.2.3 the Group Company shall undertake in writing that in the event that it ceases to be a Group Company in relation to the transferring Shareholder, it will forthwith Transfer all such Equity back to the transferring Shareholder or another Group Company of the transferring Shareholder.

## 21. COME ALONG

Subject to the relevant provisions of this Agreement, the Finance Documents and the Mol having been complied with, should a *bona fide* offer be received from a third party to purchase all the Shares in the Company on identical *pro rata* terms and provided that Shareholders holding at least 60% of the Shares accept such offer in respect of their Shares (after first having complied with the Transfer provisions contained in clause 19), then, all of the Shareholders shall be deemed to have accepted such offer from the third party in respect of all of their Shares.

## 22. DEEMED OFFERS

- 22.1 A Shareholder (the **Offering Shareholder**) shall be deemed to have offered its Equity for sale to the remaining Shareholders (**Deemed Offer**) upon the happening of the following events:
- 22.1.1 there is a Change of Control of such Black Shareholder in contravention of this Agreement, the PPP Agreement or the Finance Documents;
  - 22.1.2 a Black Shareholder Disposes its Black Equity in contravention of clause 9.6;
  - 22.1.3 a Black Shareholder fails to maintain its BEE status in terms of clause 9.5 (including the required minimum percentage of Black Women and Black People in senior management and executive positions);
  - 22.1.4 any Shareholder which is a trust, if its representative in terms of this Agreement dies or ceases to be a trustee of such trust for any reason, or if such trust ceases to operate primarily for the benefit of those who are beneficiaries on the date when the trust first becomes a Shareholder in the Company, unless the prior written consent to such changes has been obtained from all other Shareholders, which consent shall not be unreasonably withheld;
  - 22.1.5 a Shareholder is liquidated or placed under judicial management or business rescue or deregistration, whether voluntary or involuntary, provisional or finally;
  - 22.1.6 any Shareholder becomes the subject of business rescue proceedings as envisaged in terms of the Act;
  - 22.1.7 any Shareholder, being a natural person, dies or becomes Incapacitated;
  - 22.1.8 a Black Shareholder which is appointed as the Construction Subcontractor or the Operations Subcontractor fails to maintain its BEE status as required in terms of each of the Project Documents and the Financing Agreements (as applicable);
  - 22.1.9 a Black Shareholder, in its capacity as the Construction Subcontractor or the Operations Subcontractor or a director of such Construction Subcontractor or Operations Subcontractor or an employee of such Subcontractors commits a Corrupt Act, unless in respect of the employee, within five Business Days of its receipt of a written notice from the Company, procures the termination of that employee's involvement in the Project commits a Corrupt Act;
  - 22.1.10 a material breach by a Shareholder of any provisions of this Agreement, the PPP Agreement and/or the Finance Documents (which would include a breach of sanctions, illegality or termination payments under the PPP Agreement occur and which remains unremedied on expiry of any applicable grace period under the PPP Agreement and the Finance Documents);
  - 22.1.11 a Shareholder commits a second or subsequent breach of the same provision after having remedied an earlier or similar breach during the previous 12 months after receipt of written notice to do so, unless (i) such breach arises out of a *bona fide* error or mistake made by the such Shareholders, or (ii) the other Shareholder(s) agree to waive their rights in relation to such breach;
  - 22.1.12 a Shareholder breaches the confidentiality clause 29;
  - 22.1.13 a Black Shareholder or its appointed Director commits a Corrupt Act in respect of the Project;

- 22.1.14 a shareholder, member or director of a Black Shareholder (which is not a public company) commits a Corrupt Act in respect of the Project;
- 22.1.15 a Shareholder fails to pay its debts as they become due, other than by virtue of a *bona fide* dispute concerning the validity of such debt, or fails to satisfy a judgement within 30 Business Days after it becomes aware of the judgement, except that if it provides evidence on an on-going basis to the reasonable satisfaction of the other Shareholder(s), that steps are being initiated within 30 Business Days to appeal, review or rescind the judgement and to procure suspension of execution and that such steps are being expeditiously pursued, the period of 30 Business Days will run from the date the judgement becomes final or the attempt to procure suspension of execution fails;
- 22.1.16 a Shareholder takes steps to de-register itself or to be deregistered, otherwise than for the purposes of amalgamation, reconstruction or other corporate restructuring;
- 22.1.17 a Shareholder which fails to comply with its Equity Contribution obligations as stated in Annexe B; and
- 22.1.18 a Shareholder commits an offence which brings the Company into disrepute and as such the Company suffers reputational damage.
- 22.2 As soon as an event contemplated in clauses 22.1.1 to 22.1.18 occurs, the Offering Shareholder shall be obligated to notify the remaining Shareholders and the Company thereof in writing.
- 22.3 Whether or not the notice is given as required in clause 22.2, within 14 days after learning of the occurrence of any event contemplated in clauses 22.1.1 to 22.1.18, and subject to clause 22.10 below, any one of the remaining Shareholders of the Company, other than the Offering Shareholder, may by notice in writing compel the Offering Shareholder to offer its Shares in the Company to the remaining Shareholders (**Deemed Offer Shares**). The purchase price for the Deemed Offer Shares, in the case of:
- 22.3.1 a Deemed Offer contemplated in clauses 22.1.1, 22.1.2, 22.1.3, 22.1.8, 22.1.9, 22.1.10, 22.1.11, 22.1.13 and 22.1.14, at 0% of the Fair Market Value of the Deemed Offer Shares;
- 22.3.2 a Deemed Offer contemplated in clauses 22.1.17 and 22.1.18, at 50% of the Fair Market Value of the Deemed Offer Shares;
- 22.3.3 a Deemed Offer contemplated in clause 22.1.12, 22.1.16 and 22.1.17, at 70% of the Fair Market Value of the Deemed Offer Shares;
- 22.3.4 a Deemed Offer contemplated in clauses 22.1.4, 22.1.5, 22.1.6, 22.1.7 and 22.1.15, at 100% of the Fair Market Value of the Deemed Offer Shares,
- subject however to the provisions of clause 19.1 above (ie any Black Offering Shareholder shall only offer its shares, in terms of this clause, to other existing Black Shareholders).
- 22.4 For purpose of sale of Deemed Offer Shares in terms of clause 22.3, as soon as the price has been agreed or determined as aforesaid and notified to the Shareholders in writing, the Offering Shareholder shall be deemed to have offered the Deemed Offer Shares to the remaining eligible Shareholders at the values stated in clause 22.3 (proportionately to their shareholding), subject to clause 22.10 below. Such Deemed Offer shall be open for acceptance thereafter for a period of 20 days and failing acceptance thereof in respect of all such Shares within such period shall lapse. Such lapsing of the Deemed Offer will not affect the continued application of the pre-emptive provisions of this Agreement. If the Deemed Offer is accepted, the effective date of the sale shall be deemed to be the date

upon which the event contemplated in clauses 22.1.1 to 22.1.18, which triggered the Deemed Offer, occurs.

- 22.5 Each accepting Shareholder's proportionate share of the purchase price shall be paid upon such terms and conditions as mutually agreed upon by the Parties at the time of the sale or, in the absence of such agreement, on such reasonable commercial terms and within such period as the Auditors may determine as reasonable, in their sole discretion. Provided that the maximum period for repayment in such circumstances shall be 60 days or such other period as agreed to between the Offering Shareholder and the purchasing Shareholders.
- 22.6 Provided that in determining the purchase price payable for the Shares, account has been taken of the liabilities in respect of the guarantees, suretyships and indemnities that the Offering Shareholder may have given for the Company's obligations, the purchasing Shareholders shall use their best endeavours to procure the release of the Offering Shareholder *pro rata* (in the same ratio as the Shares so purchased in terms of this clause 22 bear to all the Deemed Offer Shares held by the Offering Shareholder) from any such liability. If in determining such price no such liability was taken into account, the purchasing Shareholders shall use their best endeavours to procure such release only in respect of any liability arising after the acceptance of the Deemed Offer. Until the release as aforesaid is procured, the purchasing Shareholders indemnify the Offering Shareholder against any such liability, on the same *pro rata* basis referred to above.
- 22.7 The Deemed Offer Shares shall be delivered in transferable form to the Shareholders in question against payment of the full purchase price in accordance with clause 22.4, provided that, should the purchase price not be payable immediately, then such Deemed Offer Shares shall be lodged with the Auditors in transferable form to be held by them in trust on behalf of the purchasing Shareholder(s) pending payment of the full purchase price.
- 22.8 The Director/s of the Company, if any, appointed by the Offering Shareholder, or the Offering Shareholder personally, if a Director of the Company, shall be deemed to have resigned as Director/s of the Company upon any deemed total sale or forfeiture of Deemed Offer Shares as per the foregoing.
- 22.9 If any Deemed Offer is not accepted in respect of all such Deemed Offer Shares, the Offering Shareholder shall then be deemed to have offered such Deemed Offer Shares for sale to the Company to be held as stock at the same price as offered to the other Shareholders (subject always to the maintenance of the Black Equity requirements imposed on the Company by the PPP Agreement and in terms of clauses 9.1 and 19.1.2), which offer shall remain open for acceptance by the Company for a further period of seven days. If accepted, the purchase price shall be payable by the Company within 60 days of date of acceptance, or within such other period agreed to by the Offering Shareholder in writing.
- 22.10 Should neither the other Shareholders nor the Company purchase all the Deemed Offer Shares in accordance with the foregoing procedures, then the Offering Shareholder shall, within 14 days thereafter be entitled to Dispose of such remaining Deemed Offer Shares to *bona fide* third parties at a price sounding in money in South African currency not lower and on terms not more favourable than those on which the remaining Shareholders were entitled to purchase, but subject to the provisions of clause 19.1.1, 19.1.2, which shall apply *mutatis mutandis*.

## 23. ENCUMBRANCE & LODGING OF SHARES

- 23.1 No Shareholder shall be entitled in any manner whatsoever to pledge or otherwise Encumber its Shares save as allowed by the PPP Agreement and the Finance Documents and as provided for in clause 23.2 below.

- 23.2 The restrictions of this clause 23 and any other provisions of this Agreement relating to the Transfer of Shares shall not apply to the granting of any Encumbrance over the Shares in terms of the Finance Documents or any enforcement of such Encumbrance granted in terms of the Finance Documents.

## 24. FUNDING AND LOAN ACCOUNTS

### 24.1 Development Costs

- 24.1.1 Each Shareholder acknowledges that Interwaste has funded the development of the Project by means of the Development Costs.
- 24.1.2 The Shareholders undertake that within 14 Days of Financial Close, the Company shall pay Interwaste the Development Costs.

### 24.2 Committed Equity

- 24.2.1 Each Shareholder hereby agrees in favour of each of the other Shareholders and the Company to provide its respective portion of the Required Equity Contribution (**Equity Contribution**) at the date on which such Equity Contribution is called by the Board.
- 24.2.2 The Parties record that the Required Equity Contribution and the figures in Annexe B are extracted from the current version of the Financial Model. The Parties agree that if the Financial Model is amended, updated, changed or replaced in terms of the Financing Agreements before Financial Close, the Required Equity Contribution and/or the figures in Annexe B (as the case may be) shall be deemed to be amended in accordance with the Financial Model.

### 24.3 Further Funding

- 24.3.1 Funding required by the Company shall be as determined by the PPP Agreement, and in any other case, by the Board however shall always be subject to the provisions of the Financing Agreements.
- 24.3.2 The Company will use its reasonable endeavours to procure that such future financial requirements of the Company are met as far as practicable from:
- (a) firstly, the Company's own resources;
  - (b) secondly, subject always to the terms of the Financing Agreements, borrowings from banks and other third party sources on the most favourable terms reasonably obtainable as to interest, repayments and security (but without allowing any prospective lender a right to participate in the equity share capital of the Company);
  - (c) thirdly, from Shareholders loans; or
  - (d) lastly, subject to the provisions of the PPP Agreement in relation to the maintenance of the Black Equity, subscription of Shares.

### 24.3.3 Equity Loan Funding

- (a) Once the amount of funding required by the Company has been determined and the funding sources contemplated in clauses 24.3.2(a) and 24.3.2(b) have been exhausted, the Board shall:
- (i) prior to offering any Securities to any third party, afford each Shareholder a reasonable opportunity to elect whether to advance the additional



funding required by the Company, *pro rata* to its then shareholding in the Company, by way of Shareholder loans (**Equity Loans**); and

- (ii) notify the Shareholders accordingly in writing (a **Funding Notice**) and supply to any Shareholder such information as that Shareholder may reasonably request regarding such required funding.
- (b) Should a Shareholder elect to contribute its portion of such funding (a **Contributing Shareholder**), the Contributing Shareholder shall pay to the Company, in cash, the amount of its portion of the additional funding stated in the Funding Notice within 15 Business Days of receipt by it of the Funding Notice.
- (c) If a Shareholder is unable or unwilling to provide its portion of such additional funding to the Company (a **Non-Contributing Shareholder**) it shall advise the Board accordingly within 10 Business Days of receipt by it of the Funding Notice. If a Shareholder simply fails to so advise the Board within the aforementioned 10 Business Day period, it shall be deemed to have decided not to make a contribution for purposes of this clause (c) and shall be regarded as a Non-Contributing Shareholder.

#### 24.3.4

#### **Disproportionate Equity Loans**

- (a) For the purposes of this clause, the following shall be regarded as Disproportionate Equity Loans:
  - (i) if any Shareholder has not advanced its Shareholder loans pursuant to the terms of clause 24.3.3, the full amount of the funding provided by the Contributing Shareholders under clause 24.3.3, shall constitute Disproportionate Equity Loans;
  - (ii) if all Shareholders have made some contribution to funding but one or more is not funded up to its full *pro rata* portion of total funding required:
    - (A) the amount of the funding which is provided by all Shareholders in the ratio of their shareholdings shall constitute Equity Loans; and
    - (B) the balance shall constitute Disproportionate Equity Loans.
- (b) Any Disproportionate Equity Loans provided by a Shareholder to the Company pursuant to the provisions of this clause 24.3.4, shall bear interest at the Prime Rate plus 5% and the Shareholder advancing the Disproportionate Equity Loan shall, subject to the provisions of this Agreement, the PPP Agreement and the Financing Agreements, be entitled to such security over the assets of the Company for the repayment of that Disproportionate Equity Loan as may be available. The terms of any such security shall be market related. The Shareholders shall endeavour to agree the terms of any such security. If they are unable to do so, within 10 Business Days of the date on which the negotiations break down, the terms of the security shall be determined by an independent commercial attorney with expertise in the preparation of security documents of not less than 10 years' standing. If the Shareholders are unable to agree the identity of such independent attorney within a further five Business Days, the appointment shall be made by the President for the time being of the Law Society of the Northern Provinces, or its principal successor-in-title. The independent attorney shall act as an expert and not as an arbitrator. The costs of such independent attorney shall be borne by the Shareholders pro rata to their shareholding in the Company at that time.

**capitalisation of Disproportionate Equity Loans**

Subject to the provisions of the Financing Agreements and the PPP Agreement:

- (a) if the Company does not repay some or all of the Disproportionate Equity Loan together with accrued interest thereon within six months from the date on which such Disproportionate Equity Loan was advanced to the Company (**Grace Period**), any Contributing Shareholder may, at any time after the expiry of the Grace Period, require the Company to:
  - (i) determine the Fair Market Value of the Shares; and
  - (ii) capitalise the Disproportionate Equity Loan by the issue of such number of Shares to the relevant Contributing Shareholder, the Rand value of which being equal to the Rand value of the Disproportionate Equity Loan (including accrued interest) provided by such Contributing Shareholder, which is outstanding at the time of capitalisation.
- (b) Each Shareholder hereby irrevocably and unconditionally:
  - (i) agrees, when any Contributing Shareholder elects to exercise its rights in terms of clause (a) above to vote all of its Shares (if applicable) in favour of any resolution to increase the authorised share capital of the Company as may be necessary to enable the exercise of such rights; and
  - (ii) appoints the Contributing Shareholder exercising its rights under clause (a) above as its proxy and agent to represent it at any general meeting convened and held for purposes of passing any resolution necessary to increase the authorised share capital of the Company, and to sign and execute any document (including any proxy or written resolution) necessary or desirable to give effect to the provisions of this clause.
- (c) Each of the Company and the Shareholders irrevocably and unconditionally undertakes to do all such things as may be necessary to increase the authorised share capital of the Company (to the extent necessary) so as to enable the exercise of rights in terms of clause (a) above.

**ranking of Shareholder loans**

The Shareholder loans shall be ranked for repayment, in priority as follows:

- (a) first, the Disproportionate Equity Loans (interest then capital), if any; and
- (b) second, the Equity Loans (interest then capital).

All funding provided by Shareholders shall be credited to the applicable Shareholder Loan Account.

Save as may be otherwise determined by all the Shareholders of the Company in writing, Shareholders' Loan Accounts against the Company shall be subject to the following terms and conditions:

- (a) in respect of the Equity Loans, they shall bear interest at the Prime Rate;
- (b) subject to the Solvency and Liquidity Test and availability of funds and the liquidity and reserves policy of the Company, they shall be repaid as may be agreed from time to time between the Company and all its Shareholders; and

- (c) they shall in any event become repayable on the granting of any order (whether provisional or final) placing the Company under judicial management or in liquidation.

- 24.3.9 All repayments by the Company to the Shareholders shall be made *pro rata* to their respective Shareholder Loan Accounts but to the extent that any Shareholder's Loan Account exceeds its *pro rata* share based on its shareholding in the Company such excess shall (ie the Disproportionate Equity Loan portion), subject to the provisions of the Financing Agreements, first be repaid.
- 24.3.10 Subject to the provisions of the PPP Agreement and Financing Agreements relating to the payment of dividends, the income generated by the Company from time to time shall be applied firstly in reduction of the Company's operating expenses as contemplated in clause 26, then may be applied in the reduction of Shareholder Loan Accounts.

## 25. SURETYSHIPS AND GUARANTEES

Subject always to the provisions of the Finance Documents and the PPP Agreement:

- 25.1 if the Board determines that the Shareholders are required to provide any guarantee, suretyship or indemnity to any third party for the obligations of the Company, then the Board shall notify the Shareholders accordingly in writing (a **Security Notice**);
- 25.2 upon receiving a Security Notice, a Shareholder may elect whether or not to provide its *pro rata* portion of such guarantee, suretyship or indemnity, and shall notify the Board in writing of its election within 10 Business Days of receipt by it of the Security Notice. Should a Shareholder elect to contribute its portion of such guarantee, suretyship or indemnity (a **Security Contributing Shareholder**), the Security Contributing Shareholder shall do so within 10 Business Days of receipt by it of the Security Notice;
- 25.3 if a Shareholder is unable or unwilling to provide its portion of such guarantee, suretyship or indemnity (the **Security Non-Contributing Shareholder**) it shall advise the Board accordingly within 10 Business Days of receipt by it of the Security Notice. If a Shareholder simply fails to so advise the Board within the aforementioned 10 Business Day period, it shall be deemed to have decided not to make a contribution for purposes of this clause 25.3 and shall be regarded as a Security Non-Contributing Shareholder;
- 25.4 the Board shall immediately in writing inform any Security Contributing Shareholder of the Security Non-Contributing Shareholder's decision and the Security Contributing Shareholder may elect whether or not to provide a larger portion of the guarantee, suretyship or indemnity than its portion. Should the Security Contributing Shareholder elect to provide a larger portion of the guarantee, suretyship or indemnity than its portion, the Security Contributing Shareholder (and if more than one, each of them *pro rata* to their elected larger contributions) shall do so within 10 Business Days of receipt by it of the Board notification contemplated in this clause 25.4;
- 25.5 any Security Contributing Shareholder shall be entitled to charge the Company any amount it has incurred in expenses, costs, fees etc, in relation to the issuance and maintenance of any suretyship or guarantee (**Security Costs**) which amounts shall bear interest at the Prime Rate plus 5%. At the election of the Security Contributing Shareholder, the Security Costs contemplated in this clause may be converted into a Disproportionate Equity Loan and the provisions of clauses 24.3.4, 24.3.5 and 24.3.6 shall then apply;
- 25.6 if a Security Contributing Shareholder becomes bound by any guarantee for the Company's obligations is at any time (even after such Shareholder has ceased to hold any Shares) obliged to pay to the creditor in terms of such guarantee (the **Security Payments**) then the Company indemnifies that Security Contributing Shareholder and shall reimburse

such Shareholder within a period of six months of such Shareholder paying the creditor. The Company's liability to reimburse the Security Contributing Shareholder which paid under the guarantee shall be on the basis that from the date of payment by such Shareholder of the Security Payments to the date of reimbursement by the Company, the Security Payments shall bear interest at the Prime Rate plus 5% and at the election of the Security Contributing Shareholder, the Security Payments may be converted into a Disproportionate Equity Loan and the provisions of clauses 24.3.4, 24.3.5 and 24.3.6 shall then apply; and

- 25.7 if a Security Contributing Shareholder becomes bound by any guarantee for the Company's obligations and that Security Contributing Shareholder (an **Outgoing Shareholder**) subsequently Disposes all of its Shares and Claims in the Company, the Company and the remaining Shareholders shall use reasonable endeavours to procure the Outgoing Shareholder's release from such guarantee as soon as possible after such sale and the remaining Shareholders shall, if they are the purchaser(s) of the Share(s) of the Outgoing Shareholder, be obliged to offer their own guarantee in order to procure such release.

## 26. **DIVIDENDS**

- 26.1 Payment of dividends shall always be subject to the provisions of the Financing Agreements and the PPP Agreement and shall in addition comply with the remaining provision of this clause 26.
- 26.2 The power of the Board to make distributions shall be subject to the provisions of section 46 of the Act.
- 26.3 Subject to the provisions of section 46 of the Act, the Company shall declare and pay a monthly dividend from all available cash of the Company, it being recorded that the Shareholders intend that when declaring dividends, the Company shall at all times seek to maximise the flow of dividends to the Shareholders, subject to:
- 26.3.1 the reasonable cash requirements of the Company in respect of its commitments and liabilities in the ordinary course of its Business, such as income tax payable, trade creditors, provision for accumulated leave and capital expenditure;
- 26.3.2 the retention of three month's working capital;
- 26.3.3 the retention of capital for maintenance as may be decided by the Board from time to time; and
- 26.3.4 the retention of capital for the replacement of equipment required for the Project as may be decided by the Board from time to time.

## 27. **ADMINISTRATION, BOOKS ACCOUNT AND RECORDS**

- 27.1 The annual financial statements of the Company shall be prepared, audited, unless otherwise determined by Special Resolution, and maintained in accordance with the IFRS.
- 27.2 The annual financial statements of the Black Shareholders shall be prepared, audited and maintained in accordance with IFRS.
- 27.3 The Black Shareholders shall procure the services of the same auditors used by the Company, from time to time.
- 27.4 The books of account, financial records and other books and documents of the Company shall be kept at the registered office of the Company and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by a

resolution of the Shareholders in general meeting, shall be open to the inspection of Shareholders during ordinary hours of business.

- 27.5 The Shareholders and Directors shall procure that the Company complies with all Interwaste's policies, including those on health, safety and the environment, human resources and finance.

## 28. GOOD FAITH

- 28.1 Shareholders shall at all times owe to each other and to the Company a duty of good faith at all times. Their relationship shall be that of *quasi* partners, provided however that the establishment of the Company, as aforesaid, shall not constitute any Party as the agent of the other (or of the Company)/ nor shall any Party be entitled to engage or bind the credit of the other or issue any guarantee on the other's behalf.
- 28.2 The Directors and Shareholders of the Company shall at all times act in the best interests of the Company, and shall at all times avoid any conflict of interest between themselves and the Company. Should any situation arise in terms of which a conflict of interest or potential conflict of interest arises/ the Directors and/or Shareholders shall immediately disclose same to the other Directors and Shareholders/ and shall not be entitled to pursue any such matters without the latter/s prior written approval.

## 29. INTELLECTUAL PROPERTY RIGHTS

- 29.1 All Intellectual Property Rights owned by each Party at the Effective Date remains the property of that Party and nothing in this Agreement is intended to transfer any ownership of such Intellectual Property Rights.
- 29.2 The Company acknowledges and agrees that all Intellectual Property Rights created and acquired by Interwaste pursuant to or for the purpose of the provision of the Services in respect of the Project shall be owned by Interwaste and are not provided in its capacity as Shareholder but rather in terms of the Management Services Agreement.

## 30. CONFIDENTIALITY

- 30.1 The Shareholders hereby undertake and shall procure that their appointed Directors undertake, in favour of the Company that:
- 30.1.1 they shall:
- (a) keep confidential and refrain from divulging the Confidential Information unless such Directors have received the prior written consent of the Board, save only to the extent that the performance of their duties to the Company necessitate acting otherwise;
  - (b) refrain from exploiting the Confidential Information or causing it to be exploited, in whole or in part, except in the course of performance of their duties to the Company;
  - (c) refrain from disclosing either directly or indirectly to any other person, firm or company:
    - (i) any information relating to the details of the Business; and
    - (ii) any information relating to any Director, customer, Shareholder, employee or persons with whom they have dealt with in the performance of their duties to the Company.

- 30.2 This clause shall not prevent the Directors from disclosing Confidential Information to their shareholders, and professional advisers who:
- 30.2.1 have a need to know (and then only to the extent that each such person has a need to know);
  - 30.2.2 are aware that the Confidential Information should be kept confidential;
  - 30.2.3 are aware of the Directors' undertaking in relation to such information in terms of this Agreement; and
  - 30.2.4 have been directed by the Directors to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

## 31. BREACH

- 31.1 For the purposes of this clause a breach shall be deemed to be material if:
- 31.1.1 it is incapable of being remedied by payment, goes to the root of this Agreement, and the Party committing the breach fails to remedy it within 10 Business Days of receipt of written notice from any Party calling on it to do so; or
  - 31.1.2 it is capable of being remedied by payment, goes to the root of this Agreement, and the Party committing the breach fails to remedy the breach or make the payment in question within 10 Business Days of receipt of written notice from any party calling on it to do so.
- 31.2 If any Party commits a material breach of this Agreement and fails to remedy that breach within 10 Business Days of written notice from any Party calling on the Party in default to do so, then the Party giving notice may claim specific performance or damages or both, as the case may be, but shall have no right of cancellation.
- 31.3 Each Party acknowledges and agrees that in the event that a Shareholder causes a breach of the PPP Agreement which results in Penalty Deductions being imposed on the Company, the Shareholder(s) who caused the breach shall be liable to pay the whole or its proportion of the Penalty Deduction (as may be applicable).
- 31.4 Any payment due, owed or payable to the Company may be set-off against the dividend payments due and payable to the Shareholder in question by the Company.

## 32. DISPUTES

- 32.1 Any dispute that arises between Directors and/or Shareholders on any matter relating to the Company or this Agreement, shall be resolved according to the following process:
- 32.1.1 the Directors/Parties shall convene as soon as possible, but in any event no longer than five Business Days from the declaration in writing of a dispute by a Party delivered to the other Parties, in order to attempt to resolve the deadlock in good faith and with the best interest of the Company as priority;
  - 32.1.2 in the event that the Directors are unable to resolve the dispute pursuant to clause 32.1.1 within three Business Days, then the Parties shall refer the dispute to arbitration in accordance with the clauses set out herein below;
  - 32.1.3 the arbitrator shall be a practicing advocate or attorney of not less than 15 (fifteen) years standing. Failing agreement as to the identity of the arbitrator, the arbitrator shall be appointed by the Arbitration Foundation of South Africa (**AFSA**);

- 32.1.4 the arbitration shall, subject to the hereinafter stated qualifications, be pursued in accordance with the commercial rules of AFSA;
- 32.1.5 the arbitration shall be held in Johannesburg and shall be dealt with expeditiously with a view to its determination within 30 days of referral to the arbitrator;
- 32.1.6 the arbitrator shall be entitled to waive or relax compliance with the rules relating to the submission of the dispute, pleadings and presentation of evidence with a view to the speedy determination thereof;
- 32.1.7 the arbitrator shall have the right to make an award in respect of the costs of the arbitration;
- 32.1.8 the arbitrator's award shall be final and binding upon the Parties subject, however, to any appeal or review as may be provided for in terms of the AFSA Rules, alternatively the Arbitration Act, 1965, as amended or any legislation in substitution thereof; and
- 32.1.9 in the event of non-compliance with the arbitrator's award, a Party shall be entitled to make such award an order of a competent Court.
- 32.2 These provisions shall survive the termination or cancellation of this Agreement for any reason.
- 32.3 Notwithstanding the provisions as set out in this clause 32, it shall be competent for a Party to seek any urgent or interim relief in a Court of competent jurisdiction.

### 33. CONSEQUENCES OF CESSATION OF BUSINESS

- 33.1 In the event that the Company ceases to trade, for whatsoever reason, then, subject to the provisions of the Project Documents and the Finance Documents (as applicable):
- 33.1.1 the Company shall immediately discontinue the use of the trade names, trademarks, logos, cards, notices and other display or advertising matter indicative of the Shareholders or the Municipality or of any association with the Shareholders with the Business or Municipality;
- 33.1.2 in the absence of a written agreement to the contrary between the Shareholders regarding the manner in which the affairs of the Company will be dealt with pursuant to the termination of this Agreement, and subject to any provisions in the PPP Agreement relating thereto, the Business and the assets of the Company shall be wound up in accordance with the following:
- (a) the Auditors shall conduct an audit of the Company as at the termination date specifying, inter alia, the assets and liabilities and Shareholders' Equity;
  - (b) a member of the Auditors, or if the Auditors are not willing to act, then an auditor agreed upon by the Shareholders and failing such agreement, then a person appointed by the Auditors (hereinafter referred to as the **Administrator**) shall attend to the winding up of the Company's affairs;
  - (c) the Administrator shall:
    - (i) collect all debts due to the Company by persons other than Shareholders; and
    - (ii) not realise the assets in the Company save to the extent necessary to discharge liabilities of the Company to third parties and to discharge the expenses of realisation and winding up.

33.2 Pursuant to the finalisation of the informal winding up process set out above, the Directors of the Company shall cause the Company to be deregistered.

#### 34. DOMICILIA CITANDI

34.1 The Shareholders appoint the following addresses as their respective nominated addresses for giving notice or service of court process, notices or other documents or communications of whatsoever nature under this Agreement, provided that service of court process must take place at a Party's chosen domicilium citandi et executandi ('**domicilium**')

34.1.1           Name:                       **Interwaste**

Physical (domicilium):   2 Brammer Road, Germiston South

Postal:                       PO 382, Germiston, 1400

Fax:                         086 576 8152

E-mail:                     <mailto:sallyd@interwaste.co.za>                     and  
[notices@interwaste.co.za](mailto:notices@interwaste.co.za)

34.1.2           Name:                       **Mekan SPV**

Physical (domicilium):   09 Philip Endelbrecht Ave, Meyersdal, Alberton

Postal:                     P.O Box 17690, Randhart, Alberton

Fax:                         011 867 0140

E-mail:                     vivian@mekanes.co.za

34.1.3           Name:                       **Mphono SPV**

Physical (domicilium):   12 Mt Orville Street, Midstream Estates, 1692

Postal:                     P.O Box 8284, Halfway House 1685

Fax:                         086 459 9521

E-mail:                     mpho@mphono - energies.co.za

34.1.4           Name:                       **Bamba Nani SPV**

Physical (domicilium):   97 Craig Road, Anderolt, Boksburg

Postal:                     P.O Box 5809, Boksburg, North Gauteng 146

Fax:                         086 541 8085

E-mail:                     [neon@bbnt.co.za](mailto:neon@bbnt.co.za)

34.1.1           **Name:**                       **Company**

Physical (domicilium):   2 Brammer Road, Germiston South

Postal:                     P O Box 382, Germiston, 1400

Fax:                         086 576 8152



E-mail: [lsallyd@interwaste.co.za](mailto:lsallyd@interwaste.co.za) and notices@interwaste.co.za

- 34.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax and/or e-mail.
- 34.3 Any notice to a Party:
- 34.3.1 sent by prepaid courier in a correctly addressed envelope to it at its chosen postal or physical address shall be deemed to have been received on the 7th Business Day after posting (unless the contrary is proved);
- 34.3.2 delivered by hand to a responsible person during ordinary business hours at its chosen physical address, shall be deemed to have been received on the day of delivery;
- 34.3.3 sent by telefax to its chosen telefax number stipulated in clause 34.1, shall be deemed to have been received on the date of despatch if transmitted during the hours of 09h00 - 16h00 on a Business Day, or if sent outside such hours, then on the next following Business Day; or
- 34.3.4 sent by way of e-mail to its chosen e-mail address stipulated under clause 34.1, shall be deemed to have been received on the date of successful transmission if transmitted during the hours of 09h00 - 16h00 on a Business Day, or if sent outside such hours, then on the next following Business Day, which successful transmission shall be proved by way of an electronically generated delivery report and/or read receipt, indicating that such message has been successfully delivered to and/or read by the addressee.
- 34.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

## 35. GENERAL

- 35.1 This Agreement constitutes the whole agreement between the Shareholders relating to the subject matter hereof.
- 35.2 No addition to, variation, amendment or consensual cancellation of this Agreement or any provision or term thereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement shall be binding unless recorded in a written document signed by the Shareholders. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 35.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against any Shareholder in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 35.4 No Shareholder shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 35.5 The Parties shall, at all times, effect their obligations and exercise their rights in terms of this Agreement, with a view to ensuring compliance by the Company with its obligations in terms of the Project Documents and the Finance Documents.

- 35.6 Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severable from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**36. COSTS**

- 36.1 The costs of and incidental to the drawing and preparation of this Agreement shall be borne by the Company and each Party shall bear and pay its own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 36.2 Any costs including attorney and client costs incurred by a Party arising out of the breach by the other Party of any of the provisions of this Agreement shall be borne by the Party in breach.

**37. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and once each Party has signed a counterpart, each such counterpart shall be considered an original and all such counterparts together shall constitute one and the same instrument. Any such counterpart may be a facsimile or e-mail transmission copy thereof.

  
For and on behalf of:

**INTER-WASTE PROPRIETARY LIMITED**

Name: LEONARDUS CHRISTOFFEL GROBBE LAAR

Office:

DIRECTOR

(who warrants his authority)

  
For and on behalf of:

**MAIN STREET 1710 PROPRIETARY  
LIMITED (to be renamed "BAMBANANI  
WASTE MANAGEMENT (RF)  
PROPRIETARY LIMITED")**

Name: NEO RUDENCE HAEBE

Office:

DIRECTOR

(who warrants his authority)

  
For and on behalf of:

**MAIN STREET 1711 PROPRIETARY  
LIMITED (to be renamed "MAIN  
STREET 1711 (RF) PROPRIETARY  
LIMITED")**

Name: YVIAN SHABANGU

Office:

DIRECTOR

(who warrants his authority)

ML

15/07/2019

For and on behalf of:

**MAIN STREET 1712 PROPRIETARY  
LIMITED (to be renamed "BMM WASTE  
MANAGEMENT (RF) PROPRIETARY  
LIMITED"**

Name: MILDRED MPHO MTHEMBU

Office: DIRECTOR  
(who warrants his authority)



15/07/2019

For and on behalf of:

**EDEN WASTE MANAGEMENT (RF)  
PROPRIETARY LIMITED**

Name: LEONARDUS CHRISTOFFEL GROBBELAAR

Office: DIRECTOR  
(who warrants his authority)

## DEED OF ADHERENCE

**Deed of Adherence in respect of the Agreement (the Shareholders' Agreement) concluded between the shareholders of Eden Waste Management (RF) Proprietary Limited, Registration Number 2014/092464/07 (the Company) and [●] (the Signatory)**

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## 1. Interpretation

In this Deed words and phrases defined in the Shareholders' Agreement shall, unless otherwise defined herein, have the same meanings, and the following terms shall bear the following meanings:

- 1.1 **Deed** means his deed of adherence;
- 1.2 **Effective Date** means the effective date of the acquisition of shares in the Company by the Signatory;
- 1.3 **Shareholders Agreement** means the shareholders' agreement entered into between [●] and the Company regulating, *inter alia*, their relationship as Shareholders in the Company *inter se*; and
- 1.4 **Signatory** means the signatory to this Deed, namely, [●],

## 2. Introduction

- 2.1 The Shareholders Agreement was entered into in order to record the relationship between the Shareholders *inter se* and between the Company and its Shareholders.
- 2.2 The Signatory will acquire Shares in the Company with effect from the Effective Date.
- 2.3 The Signatory is required to be bound by and to adhere to the terms and conditions of the Shareholders Agreement.

## 3. Adherence

The Signatory hereby agrees to be bound by the Shareholders Agreement and undertakes to adhere to all the terms and conditions therein contained as if it was a signatory thereto in the first instance as from the Effective Date.

## 4. Stipulatio alteri

The undertakings of the Signatory in terms of this Deed comprise a *stipulatio alteri* in favour of the Company and each of the Shareholders, capable of acceptance at any time.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 20[●]

**Witness** \_\_\_\_\_ for [INSERT FULL NAME OF SIGNATORY]

.....

.....  
duly authorised and warranting such  
authority

## REQUIRED EQUITY CONTRIBUTION

| Required Equity Contribution (at Signature Date)   | % shareholding | Equity Contribution in Rand '000* |
|--|----------------|-----------------------------------|
| Inter-waste Proprietary Limited  | 74.8%          | 31 820                            |
| Main Street 1710 Proprietary Limited (name to be changed to Bambanani Waste Management (RF) Proprietary Limited) | 8.4%           | 3 535                             |
| Main Street 1711 Proprietary Limited (name to be changed to Main Street 1711 (RF) Proprietary Limited)           | 8.4%           | 3 535                             |
| Main Street 1712 Proprietary Limited (name to be changed to BMM Waste Management (RF) Proprietary Limited)       | 8.4%           | 3 535                             |
|  | 100%           | 42 426                            |
| *Subject to change in capex movements between base date and financial close (Inflation and USD sensitive)        |                |                                   |

**CONSTRUCTION SUBCONTRACTOR AND OPERATIONS SUBCONTRACTOR CORPORATE  
AND ORGANISATIONAL STRUCTURES**

*Documentation to follow*