

**SERVICE DELIVERY AGREEMENT**

**Entered into between**

**THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY  
("the City")**

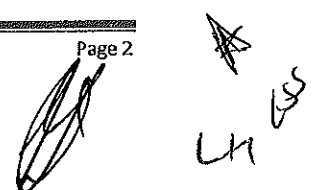
**and**

**JOHANNESBURG ROADS AGENCY SOC Ltd ("JRA")**

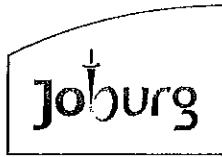
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**TABLE OF CONTENTS**

<b>1. INTERPRETATION AND DEFINITIONS.....</b>	<b>5</b>
<b>2. SUPREMACY OF THIS AGREEMENT .....</b>	<b>17</b>
<b>3. APPOINTMENT OF JRA .....</b>	<b>18</b>
<b>4. CESSION AND ASSIGNMENT.....</b>	<b>18</b>
<b>5. COMMENCEMENT AND DURATION .....</b>	<b>19</b>
<b>6. SERVICE AREA .....</b>	<b>19</b>
<b>7. SERVICES AND SERVICE STANDARDS.....</b>	<b>20</b>
<b>8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS .....</b>	<b>21</b>
<b>9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN .....</b>	<b>22</b>
<b>10. THE BUSINESS PLAN .....</b>	<b>24</b>
<b>11. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW.....</b>	<b>25</b>
<b>12. PERFORMANCE MANAGEMENT .....</b>	<b>26</b>
<b>13. REPORTING REQUIREMENTS .....</b>	<b>27</b>
<b>14. SUPPLY CHAIN MANAGEMENT POLICY .....</b>	<b>29</b>
<b>15. POWER TO MONITOR PERFORMANCE .....</b>	<b>30</b>
<b>16. HUMAN RESOURCE AND LABOUR RELATIONS.....</b>	<b>31</b>
<b>17. HUMAN RESOURCE POLICIES.....</b>	<b>33</b>
<b>18. USER FORUM .....</b>	<b>33</b>
<b>19. CUSTOMER CHARTER .....</b>	<b>34</b>
<b>20. SOCIO-ECONOMIC DEVELOPMENT PLAN .....</b>	<b>34</b>
<b>21. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES.....</b>	<b>35</b>



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22. WARRANTIES ..... 36

23. INDEMNITIES ..... 37

24. INTELLECTUAL PROPERTY INDEMNITY..... 41

25. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE ..... 44

26. MEDIATION..... 45

27. OPERATIONAL DISPUTE RESOLUTION ..... 46

28. THE TERMINATION PROCESS ..... 46

29. BREACH AND CONSEQUENCES THEREOF ..... 46

30. SUBSTITUTION OF MANAGEMENT ..... 50

31. EFFECT OF NOTICE OF CANCELLATION – TERMINATION PROCESS..... 53

32. MUTUAL CO-OPERATION ..... 59

33. CONFIDENTIALITY ..... 60

34. DOMICILIA AND NOTICES..... 61

35. ENTIRE AGREEMENT..... 62

36. VARIATION, CANCELLATION OR WAIVER..... 62

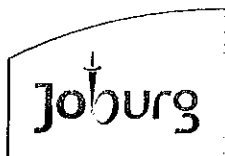
37. SEVERABILITY..... 63

38. APPLICABLE LAW ..... 63

ANNEXURE A: SERVICES.....Error! Bookmark not defined.

ANNEXURE B: SERVICE LEVELS ..... 1

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**WHEREAS:**

- A. the City is in terms of the Constitution of the Republic of South Africa and other applicable legislation charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction;
- B. with a view to deriving maximum benefit from the principles of performance-based contracting, the City has elected to deliver the Services through JRA which is a company wholly owned and controlled by the City;
- C. JRA functions as an external mechanism for delivery of municipal services as contemplated in Section 76(b) of the Systems Act. In this instance, the JRA is a State Owned Company which is a wholly owned subsidiary of the City with regulatory and policy responsibilities of a Roads Authority;
- D. the City has entered into a Service Delivery Agreement with JRA as contemplated in Section 81(2) of the Systems Act;
- E. the Systems Act contemplates a Service Delivery Agreement which sets out the framework within which JRA is assigned the task of rendering the Services on behalf of the City, without detracting from the accountability of the City under its constitutional mandate;
- F. the existing Service Delivery Agreement has been reviewed by both the City and JRA to comply with the City's long term strategy, and the agreed outcome of such review process is the revised agreement as recorded herein;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

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## 1. INTERPRETATION AND DEFINITIONS

In this Agreement and in any annexures and schedules hereto:

1.1 clause headings are for convenience only and are not to be used in interpretation of this Agreement;

1.2 unless the context indicates a contrary intention, an expression which denotes

1.2.1 any gender includes the other gender.

1.2.2 a natural person includes a juristic person and vice versa;

1.2.3 the singular includes the plural and vice versa;

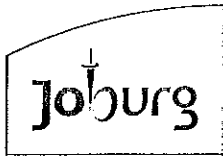
1.3 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

1.3.1 "Accounting Officer" shall have the meaning ascribed to it in Section 93 of the MFMA, meaning the chief executive officer of the municipal entity appointed in terms of section 93J of the Systems Act;

1.3.2 "SDA" means this Service Delivery Agreement including all annexures and schedules attached hereto;

1.3.3 "Assets" mean all the Assets, whether corporeal or incorporeal, of JRA used in connection with or in the provision of the Services comprising, but not limited to plant, movable and immovable property and incorporeal rights.

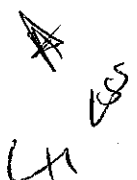
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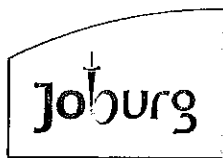
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- 1.3.4 "Auditors" means the Auditor-General as defined in the MFMA;
- 1.3.5 "Board" means the Board of Directors of JRA;
- 1.3.6 "Budget" means a budget that is prepared and submitted to the City by JRA and which is finalised and approved in accordance with the requirements of section 87 of the MFMA and otherwise in accordance with the provisions of the Municipal Budget and Reporting Regulations;
- 1.3.7 "Business Day" means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.3.8 "Business Plan" means the annual business plan of JRA contemplated in clauses 9 and 10, as approved by the City and amended from time to time;
- 1.3.9 "CCRs" means Core Competency Requirements as identified in the Scorecard;
- 1.3.10 "Chairperson's Quarterly Meeting" means a meeting convened and attended by the chairperson of the Board of JRA, the relevant MMC, JRA Accounting Officer, representatives from the Group Governance and Line Department/s, which meetings are scheduled by the City on a quarterly basis;
- 1.3.11 "CM" means the City Manager;
- 1.3.12 "the City" means when referred to as:



- 1.3.12.1 an entity, the City of Johannesburg Metropolitan Municipality established by notice no. 6766 of 2000 published in the Gauteng Provincial Gazette No. 141 by the MEC responsible for Local Government in Gauteng in terms of section 12(1) of the Structures Act, or its successors-in-title, and includes duly authorised officials of the municipality who have been delegated any powers, functions and duties necessary to give effect to this Agreement and decide upon and administer the matters referred to herein; and
- 1.3.12.2 a geographical entity, the area within the municipal boundary of the City of Johannesburg Metropolitan Municipality as determined from time to time by the Municipal Demarcation Board acting under the Demarcation Act;
- 1.3.13 “City Group Performance Management Framework” means the Group Performance Management Framework for the City of Johannesburg as approved by the Mayoral Committee on 20 August 2009 as amended from time to time;
- 1.3.14 “City Supply Chain Management Policy” means the Supply Chain Management Policy of the City of Johannesburg adopted in terms of Section 111 of the MFMA;
- 1.3.15 “Competent Authority” means any department in the national or provincial or local government sphere of government exercising statutory powers in terms of legislation;



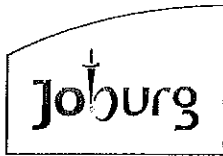
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- 1.3.16 "Companies Act" means the Companies Act 71 of 2008, as amended from time to time;
- 1.3.17 "Confidential Information" means all confidential data whether of a historical, current or future nature irrespective of whether it is stored, recorded or embodied in a handwritten, printed, visual, electronic, audible or other format or medium, and belonging to, created by, in the possession or under the control of the Parties individually. For the purpose of this Agreement "information" shall include, without limiting its ordinary meaning, data, codes, letters, telefaxes, telegrams, faxes, agreements, specifications and strategic plans;
- 1.3.18 "CPI" means the weighted average of the consumer price index in respect of all areas and for all items as published by the Central Statistical Services (Statistical Release P0141.1) from time to time, provided that if:
- 1.3.18.1 such index should cease to be published, or
  - 1.3.18.2 the basis of calculation of such index has changed and pursuant to such change one Party has notified the other that it is not satisfied therewith; or
  - 1.3.18.3 due to a change in circumstances, the index is no longer representative of general inflationary changes in South Africa, then, in any such circumstances, the Parties will use such official information or index as may be available and acceptable to them, or failing such availability and acceptance, an index

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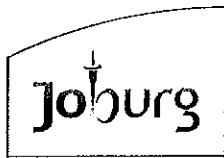
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determined in writing as fair and reasonable by a majority decision of a panel of 3 (three) independent chartered accountants of the Republic of South Africa (who shall act as experts and not as arbitrators) appointed by the president for the time being of the South African Institute of Chartered Accountants, which determination shall be binding upon the Parties. Any determination made by the majority of such panel as to the date from which any revised index shall take effect and liability for the cost of determination of the index by the panel shall be binding upon the Parties;

- 1.3.19 "Customer Charter" means a customer relations and customer management system prepared by JRA in accordance with clause 19 of this Agreement. "Demarcation Act" means the Local Government: Municipal Demarcation Act 29 of 1998;
- 1.3.20 "Designated Oversight Structures" means the departments/units/structures charged with decentralised municipal entity oversight under the City's revised governance model, namely, the relevant line departments, Group Governance and the relevant MMCs;
- 1.3.21 "Effective Date" means 25 February 2014.
- 1.3.22 "Employees" means all the employees employed by JRA from time to time throughout the period of this Agreement;

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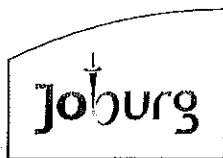


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- 1.3.23 "End User" means a natural or juristic person who uses or benefits directly from the provision of the Services provided by JRA;
- 1.3.24 "ED" means the Executive Director of the City Department of Transport responsible for oversight of JRA;
- 1.3.25 "Financial Year" means the financial-year of both the City and JRA being a 12 (twelve) month period commencing on 1 July and ending the following 30 June;
- 1.3.26 "GDS" means the Growth and Development Strategy of the City as formulated from time to time;
- 1.3.27 "GPAC" means the Group Performance Audit Committee, the structure established pursuant to the Local Government: Municipal Planning and Performance Management Regulations, 2001 for ensuring the objective review and verification of the various components of the City's employee performance management system;
- 1.3.28 "GRAP" means Standards of Generally Recognised Accounting Practice as determined by the Accounting Standards Board of South Africa from time to time;
- 1.3.29 "IDP" means the Integrated Development Plan of the City as formulated from time to time;
- 1.3.30 "IRFA" means the Intergovernmental Relations Framework Act No. 13 of 2005 and any regulations or guidelines promulgated thereunder from time to time;

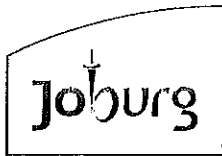
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- 1.3.31 “KPA” means the Key Performance Area which is the explicit statement of a performance objective and outcome results that relate to a major functional, operational, technical, financial or behavioural area of the role and accountability of the individual or entity whose performance is being assessed;
- 1.3.32 “KPI” means the Key Performance Indicator and means the deliverables, standards or measures used to indicate whether or not an SPO or KPA has been met. These must be within the control of the individual or entity whose performance is being assessed, as well as being objective, observable and capable of being measured;
- 1.3.33 “Local Community” means that body of persons comprising:
- 1.3.33.1 the residents of the City;
  - 1.3.33.2 the ratepayers of the City, any civic organizations and non-governmental, private sector or labour organizations or bodies which are involved in local affairs within the City; and
  - 1.3.33.3 visitors and other people residing outside the City who, because of their presence in the City, make use of services or facilities provided by the City, and includes, more specifically, the poor and other disadvantaged sections of such body of persons;
- 1.3.34 “Minister” means the Cabinet member responsible for provincial and local government;



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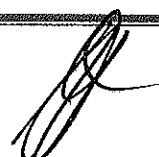


- 1.3.35 "MFMA" means the Local Government: Municipal Finance Management Act No. 56 of 2003;
- 1.3.36 "MMC" means a Member of the Mayoral Committee;
- 1.3.37 "Municipal Asset Transfer Regulations" means the Local Government Municipal Finance Management Act, 2003, Municipal Asset Transfer Regulations published under Notice R878 in Government Gazette No. 31346 dated 22 August 2008;
- 1.3.38 "Municipal Budget and Reporting Regulations" means the Local Government Municipal Finance Management Act, 2003, Municipal Budget and Reporting Regulations published under Notice 393 in Government Gazette No. 32141 dated 17 April 2009;
- 1.3.39 "Municipal Legislation" means all the legislation (including regulations framed thereunder) in operation at the Effective Date which regulates the conduct of the City's affairs and of its municipal entities, including, without limitation, the MFMA, Systems Act and Structures Act and any new or replacement legislation (including regulations) which subsequently comes into force;
- 1.3.40 "Municipal Manager" means the official appointed as such by the City in terms of section 82 of the Structures Act,
- 1.3.41 "Municipal Services" means municipal services as defined in the Systems Act;
- 1.3.42 "Operational Dispute" means a dispute between the Parties to an SDA, or between any such Party and any other municipal entity of

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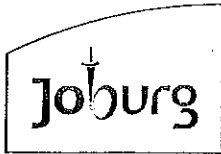
the City, which arises out of the provisions of such SDA or anything done, provided or procured pursuant thereto;

- 1.3.43 "Party" and "Parties" means JRA and the City and their successors in title, as the context requires;
- 1.3.44 "R & CRM Department" means the City's Revenue and Customer Relations Management Department established by the City in respect of the municipal entities referred to in clause;
- 1.3.45 "Regulatory Provisions" means collectively the provisions of any law, proclamation, ordinance, Act of Parliament or Provincial legislature, or other enactment having the force of law, any policy directive or notice issued by a Competent Authority in exercising statutory powers and any administrative action in respect of or relating to the provision of the Services or relating to the functioning of a municipal entity;
- 1.3.46 "Section 57 Employee" means the municipal manager of a municipality or a person who is appointed by the said municipality and who is directly accountable to the municipal manager as contemplated in section 57(1) of the Systems Act;
- 1.3.47 "Section 79 Oversight Committee" means a committee convened pursuant to section 79 of the Structures Act for the purpose of considering and making recommendations to the Council in relation to, *inter alia*, certain legislative issues and matters arising out of such committee's oversight role over the activities of the EISD and also arising out of the consideration of quarterly reports from the EISD, the relevant MMC and JRA;



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- 1.3.48 "Scorecard" means, in the context of performance management, the document within which all relevant KPIs, KPAs and SPOs impacting on the performance assessment of the individual or entity concerned, are captured relative to a particular assessment period;
- 1.3.49 "SDBIP" means the Service Delivery Budget Implementation Plan of the City as formulated from time to time;
- 1.3.50 "Cluster Scorecard" means the cluster scorecard pertaining to the cluster of the City within which JRA engages with the relevant core department/s of the City in provision of the Services. The cluster Scorecard is developed jointly between the cluster and JRA from the cluster plan prepared annually as part of the City's five year IDP;
- 1.3.51 "Service Area" means the geographical area in respect of which JRA is appointed (and where applicable, licensed in terms of applicable Regulatory Provisions) to render the Services as more fully described in Annexure "B";
- 1.3.52 "Service Levels" means the levels of service to be achieved by JRA in providing the Services under this Agreement as more fully described in clause 11.5.3 and specified by the City in the SLAs from time to time;
- 1.3.53 "JRA" means Johannesburg Road Agency SOC Ltd (RF) with Registration No. 2000/029899/07, a municipal entity incorporated and registered in the Republic of South Africa in terms of the Companies Act 61 of 1973, which has now been repealed by the Companies Act 71 of 2008, Juta Street, Braamfontein, Johannesburg;



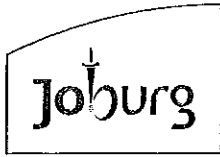
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- 1.3.54 "JRA Accounting Officer" means the managing director or chief executive officer of JRA, from time to time as defined in section 93 of the MFMA;
  - 1.3.55 "Services" means the services provided or to be provided by JRA as described in Annexure "A" hereto;
  - 1.3.56 "Structures Act" means the Local Government: Municipal Structures Act 117 of 1998;
  - 1.3.57 "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000;
  - 1.3.58 "Treasury Policy Manual" means the City's Treasury Policy Manual approved by the City from time to time;
  - 1.3.59 "User Forum" means the end-user forum established by the Board of JRA and made up of representatives of the Local Community;
  - 1.3.60 "VAT" means value added tax in terms of the Value Added Tax Act 89 of 1991, as amended.
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.5 when any number of days is prescribed in this Agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the

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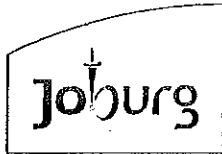
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last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 expressions defined in this Agreement shall bear the same meanings in schedules and/or annexures to this Agreement save to the extent expressly provided to the contrary in writing;
- 1.8 all schedules and annexures to this Agreement shall be deemed to have been expressly incorporated into and form an integral part of this Agreement and as such each reference herein to this Agreement shall be deemed to include a reference to all such schedules, appendices and annexures;
- 1.9 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation and definitions clause;
- 1.10 a reference to a Party includes that Party's successors in title and permitted assigns;
- 1.11 any reference to an enactment is to that enactment, as amended, as of the date of signature hereof, and as amended or re-enacted from time to time thereafter;

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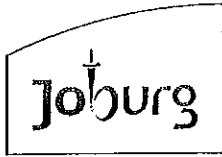


- 1.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.13 the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the agreement shall not apply.
- 1.14 all policies and protocols of general application of the City which have been officially adopted by it or which may be adopted by it in the future from time to time and communicated by the City to JRA in writing from time to time, shall, unless expressly excluded in this Agreement or by the context governing the relationship between the City and JRA to the extent that they have a bearing on the provision of the Services under this Agreement, be deemed to have been incorporated by reference.

## 2. SUPREMACY OF THIS AGREEMENT

Save as may be expressly agreed and recorded to the contrary, if any provision of any other agreement entered into between the City and JRA or any provision of the Business Plan and pertaining to the subject-matter of this Agreement, conflicts with the provisions of this Agreement, the provisions of this Agreement shall prevail.



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### 3. APPOINTMENT OF JRA

3.1 Notwithstanding the date of signature of this Agreement, all rights and obligations arising from this Agreement shall be deemed to have come into operation on the Effective Date, from which date the provisions of this Agreement shall be deemed to have replaced the provisions of the previous SDA.

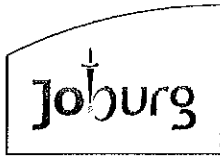
3.2 Save to the extent specifically provided to the contrary in this SDA, JRA at all times acts as a separate legal entity and neither the appointment of JRA nor anything in this Agreement shall give rise to or be construed as giving rise to an employer-employee relationship between the Parties, a relationship of principal and agent, a joint venture or an agreement of partnership between the Parties, nor shall it give rise to a labour broking agreement.

### 4. CESSION AND ASSIGNMENT

4.1 Neither Party shall be entitled to cede its rights or assign its obligations under this Agreement without the prior written consent of the other Party.

4.2 JRA may subject to the Government, City and its own policies appoint consultants, contractors and suppliers to undertake any portion of its obligations in terms of this Agreement, which appointment shall be at its own cost and not relieve JRA of any of its obligations to the City.

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## 5. COMMENCEMENT AND DURATION

- 5.1 This Agreement shall commence on the Effective Date and shall be reviewed every 5 (five) years in line with the period of the Integrated Development Plan (IDP) in terms of the provisions set out in this Agreement or until terminated by the City pursuant to Section 93B(c) of the Systems Act.
- 5.2 This SDA shall cover the period of the IDP from 2011 to 2016 and upon expiry of this period, it shall be reviewed in line with the new IDP for the period 2016 to 2021.
- 5.3 Annexures A and B to this SDA shall be reviewed and agreed to annually by both the Board of JRA and the City as they form the basis for the performance review of JRA.

## 6. SERVICE AREA

- 6.1 Subject to clauses 6.2 and 6.3 below, JRA shall provide the Services within the Service Area as stipulated in Annexure "A".
- 6.2 If the municipal boundaries of the City are extended under the Demarcation Act or any other law, and the City elects to expand the Service Area, the procedure shall be as follows:
- 6.2.1 the City shall forthwith, following the publication of a redetermination of its municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law, indicate whether it shall cover the area accordingly to provide the Services within the extended area;

6.2.2 if JRA is required by the City to provide the Services in the extended area, JRA shall negotiate with the City to amend the Budget of JRA in a way which will accommodate the additional activities to be undertaken by JRA in the extended area, using the procedures specified in the Municipal Budget and Reporting Regulations. If the Parties fail to agree on the requisite changes required to JRA's Budget within [30 (thirty) days] of commencement of negotiations, such dispute shall be referred for dispute resolution as an Operational Dispute.

6.3 If the municipal boundaries of the City are reduced under the Demarcation Act or any other law, then following the publication of a redetermination of the City's municipal boundaries in the Gauteng Provincial Gazette under the Demarcation Act or any other law:

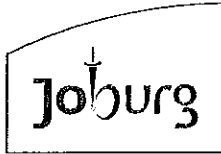
6.3.1 the Service Area shall be reduced to coincide with the new boundaries of the City; and

6.3.2 JRA shall negotiate with the City to amend JRA's Budget mutatis mutandis in accordance with the process contemplated in clause 9.

## 7. SERVICES AND SERVICE STANDARDS

7.1 The Services provided or to be provided by JRA from the Effective Date in accordance with the provisions of this Agreement, are those described in Annexure "A".

7.2 The Services are described in general terms in Annexure "A" but will on an annual basis be specified in more detail in the SDBIP and JRA's annual Business Plan as contemplated in this Agreement.



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7.3 The scope of the Services may be changed by agreement between the Parties pursuant to the business planning and budgeting process as referred to in this Agreement.




7.4 The Service standards are attached hereto as Annexure B and shall be reviewed annually prior to the commencement of each financial year in line with the budget approval process.

## 8. PRINCIPAL OBJECTIVE OF SDA AND LINK TO BUDGETING PROCESS

8.1 The SDA is entered into between the Parties with the principal objective of providing a framework within which detailed service delivery plans can be developed and implemented by JRA in a manner which is consistent with and which will play a part in giving effect to the City's strategic planning processes.

8.2 The municipal budgeting process is the mechanism by which JRA translates into practice the strategic objectives of the City in a manner which is not only consistent with the GDS (in respect of long term strategic objectives), the IDP (in respect of medium term strategic objectives) the SDBIP (which outlines current objectives set for the City) and the Cluster Scorecard, but also in a manner which is consistent with the availability and prudent and sustainable use of available resources.

8.3 As an outcome of the budgeting process, the Business Plan of JRA identifies the key service delivery objectives of JRA together with the resources allocated to the achievement of such objectives. It also identifies the KPAs and KPIs which are used in evaluating the extent to which JRA and its management have achieved the service delivery



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objectives determined for JRA, and enables evaluation of management performance in the context of appropriate remuneration.

## 9. ANNUAL BUDGETING PROCESS AND BUSINESS PLAN

9.1 The Board of JRA shall ensure for each Financial Year of JRA, that a budget is prepared and submitted to the City and finalised in accordance with the requirements of Section 87 of the MFMA and the Municipal Budget and Reporting Regulations.

9.2 JRA's Budget shall include a multi-year Business Plan which shall, inter alia:

9.2.1 serve the purpose of providing a vehicle through which the obligations of the Parties with regard to service delivery can be articulated and agreed upon on an annual basis.

9.2.2 To achieve this purpose each Business Plan must define the outputs to be achieved by JRA in each year, the budget needed to achieve the outputs, and such other issues as the City shall request JRA to incorporate in the Business Plan, including a range of other critical issues and supporting information describing the business and the strategies to be adopted to ensure delivery on the agreed outputs.

9.2.3 set key financial and non-financial performance objectives and measurement criteria which shall have been agreed between JRA and the City.

9.3 The budget shall:

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- 9.3.1 be within any limits determined by the City, including any limits on tariffs, revenue, expenditure and borrowing;
  - 9.3.2 be consistent with the City's budget and IDP;
  - 9.3.3 be consistent with this SDA;
  - 9.3.4 reflect actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates;
  - 9.3.5 comply with the Municipal Budget and Reporting Guidelines; and
  - 9.3.6 otherwise comply with the requirements of Section 17(1) and (2) of the MFMA to the extent that such requirements can reasonably be applied to JRA.
- 9.4 Should the City and JRA fail to agree any of the foregoing matters, either Party may declare a dispute by giving written notice thereof to the other Party, whereupon the dispute resolution provisions shall immediately come into operation and, if the matter is not resolved within the 15 (fifteen) day period contemplated in clause 25.3, the matter shall be resolved as an Operational Dispute.
- 9.5 The Business Plan shall also:
- 9.5.1 as far as possible be in accordance with a pro forma submitted to JRA from time to time by the City at commencement of the annual budgeting process and shall in detail set out the outcomes to be achieved by JRA in the following year, commencing 1<sup>st</sup> July.

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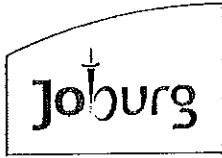
- 9.5.2 In addition, each Business Plan shall include indicative inputs and outputs and financial models for the subsequent 3 (three) years;
- 9.5.3 be approved by the Board of JRA after it has been finally negotiated and settled as per the provisions of section 87 of MFMA; and
- 9.5.4 be submitted to the City in terms of the provisions of the MFMA including any regulations framed hereunder or on or before a date determined by the City from time to time, provided that such date is not later than the date contemplated under the MFMA.
- 9.6 Any projected allocation to JRA by the City must be provided for in the annual budget of the City, and to the extent not so provided, JRA's Budget and where applicable, the Business Plan, must be adjusted in accordance with the provisions of section 87(6) of the MFMA.
- 9.7 JRA shall incur expenditure only in accordance with its approved Budget, subject to any adjustments effected on the basis contemplated in the MFMA.

## 10. THE BUSINESS PLAN

JRA shall develop an annual Business Plan and Budget which shall be approved within the time limits provided for in terms of section 87 of the MFMA as read with the Municipal Budget and Reporting regulations.

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## 11. PERFORMANCE OBJECTIVES, COMPLIANCE AND REVIEW

- 11.1 Taking into account the City's key service delivery imperatives and the resources available for achieving those objectives, JRA's Business Plan shall set out the key annual financial and non-financial performance objectives of JRA.
- 11.2 Pursuant to determination of the key annual performance objectives for the year to which the relevant Business Plan relates, JRA shall, by agreement with the City also establish the relevant KPAs and KPIs for JRA in respect of such period, for inclusion in JRA's Business Plan.
- 11.3 KPIs shall be designed to indicate to the Parties, End Users and the general public, the measure of success achieved by JRA in the provision of the Services.
- 11.4 The service objectives agreed to from time to time between JRA and the City represent a critical measure of service delivery, and as a substantive obligation pursuant to this SDA JRA undertakes at all times to perform the Services in a professional manner which is in compliance with the KPA and KPIs established pursuant to the Business Plan, as agreed to annually and where applicable, amended as provided for in terms of this Agreement or by Municipal Legislation. In this regard JRA shall at all times exercise proper skill, care and diligence and comply with all directives, time schedules and budgets as agreed with the City pursuant to the Business Plan.
- 11.5 JRA shall report on its performance:

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- 11.5.1 annually, as part of annual reporting process, against the agreed KPAs and KPIs in terms of clause 13.3;
- 11.5.2 six months after commencement of the financial year; and
- 11.5.3 quarterly report on its activities during the quarter under review to the Designated Oversight Structures prior to the relevant Chairperson's Quarterly Meeting, and the meetings of the Mayoral Committee and Section 79 Oversight Committee tasked to oversee the activities of JRA in terms of clause 13.2.

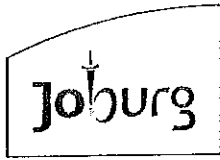
## 12. PERFORMANCE MANAGEMENT

- 12.1 The Board is ultimately responsible for the performance management of JRA and all employees of JRA (including the Accounting Officer) in the context of JRA's performance Scorecard, and shall develop and implement such internal performance management tools and protocols as are deemed to be in the best interests of JRA in discharging its obligations under this Agreement.
- 12.2 External to JRA, the City Group Performance Management Framework regulates performance planning and implementation co-ordination between JRA and the City by means of the applicable Cluster Scorecard.
- 12.3 JRA shall in response to the PIPs, contribute to the Cluster scorecard and the performance thereof shall be reviewed by the Cluster on an annual basis.

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### 13. REPORTING REQUIREMENTS

13.1 JRA shall adhere to the requirements of the Municipal Budget and Reporting Regulations.

#### 13.2 *Quarterly Reports*

13.2.1 Within 7 (seven) days of the end of each quarter, preparation and submission to Group Governance department of a quarterly performance report for JRA as at the end of each quarter, reflecting:

13.2.1.1 its financial performance in rendering the Services;

13.2.1.2 its achievement of the performance objectives referred to in clause 11, including any Service Levels which have been incorporated into any performance objective on the basis contemplated in clause 11.5.3:

13.2.1.3 any special circumstances and factors that should be taken into account in analysing its performance; and

13.2.1.4 any measures to be taken by JRA to improve its performance.

13.2.2 JRA Accounting Officer shall provide the City with such additional information regarding its operations, related to the provision of the Services as the City may reasonably require.

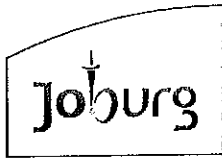
13.2.3 JRA Accounting Officer shall provide quarterly financial statements reflecting JRA's actual income and expenditure together with financial notes explaining any variances and the reasons for variances and its achievement or otherwise of the agreed outputs, which report shall include such information as is necessary to enable the City to accurately assess the extent to which JRA has achieved the agreed outputs.

### 13.3 *Annual Reports and Annual Financial Statements*

13.3.1 JRA Accounting Officer shall ensure the preparation and submission of the Annual Financial Statements within two months of JRA financial year end (in accordance with the provisions of Municipal Legislation, the Companies Act and GRAP) to the City and the Auditors which:

13.3.1.1 fairly present the state of affairs of JRA for the period in question, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results and its financial position as at the end of the financial year;

13.3.1.2 comply with all disclosure requirements of Municipal Legislation from time to time;



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13.3.1.3 comply with the disclosure guidelines as recommended by the King Report III on Corporate Governance as updated from time to time, disclosing both financial and non-financial issues.

13.4 The Accounting Officer for JRA shall prepare for each financial year, an Integrated report in accordance with the requirements of the MFMA and submit the Integrated report to the Group Governance in August of each year.

#### 14. SUPPLY CHAIN MANAGEMENT POLICY





14.1 JRA shall at all times ensure that its Supply Chain Management Policy is consistent with the MFMA, relevant regulations from time to time and aligned to the City Supply Chain Management Policy.

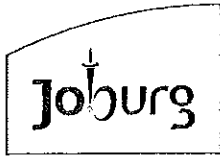
14.2 JRA's Supply Chain Management Policy shall include, without limitation, amongst others, the following policies:

14.2.1 a policy on broad-based black economic empowerment (which includes the empowerment of youth, women, the disabled and ex-combatants);

14.2.2 a policy on development and management of small, micro and medium enterprises;

14.2.3 a policy on supplier management; and



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14.2.4 shall include clearly defined annual targets as set out by the City from time to time to be achieved by JRA, and reported upon monthly as part of the quarterly report prescribed in terms of clause 13.2 above.

14.3 JRA may participate in an e-procurement system developed by the City from time to time and may negotiate in good faith a service-level agreement with the City in terms of which the City shall provide JRA with centralised procurement services, if required.

## 15. POWER TO MONITOR PERFORMANCE

15.1 The City shall, through the GG, GSPCR and GAS, fulfil its legal obligations of continually monitoring and regulating the performance of JRA under this Agreement.

15.2 In performing its monitoring in terms of clause 15.1, the GG, GSPCR and GAS shall be entitled to conduct interviews with End Users, conduct user satisfaction surveys, performance audits or use such other monitoring methods as the GG, GSPCR and GAS may deem fit.

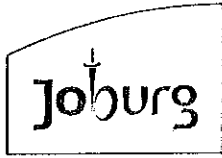
15.3 JRA shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of the Services performed under this Agreement. Notwithstanding the provisions of applicable law (such as the National Archives Act) JRA shall only destroy such records to the extent agreed with the relevant GG, GSPCR and GAS.

15.4 JRA shall render such reasonable assistance as may be necessary to allow the GG, GSPCR and GAS to exercise their powers in terms of this clause 15.

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## 15.5 Duty to provide access to information

15.5.1 In order to exercise their monitoring and oversight roles in terms of this Agreement, the GG, GSPCR and GAS of the City and their duly authorised representatives shall have a right of access to all information belonging to JRA.

## 16. HUMAN RESOURCE AND LABOUR RELATIONS

16.1 JRA recognizes the City's vision of being a "best practice" employer and confirms its commitment to achieving the same ideal.

16.2 Further, JRA undertakes to:-

16.2.1 endeavour to adopt and implement, as far as possible, as its minimum standard those standards contained in the collective agreement concluded between the City and its recognised unions ("the Collective Agreement") to the extent that it is in the best interest of JRA and consistent with its obligations under this Agreement to do so or as otherwise agreed with the City acknowledge the provisions of the Collective Agreement as the minimum threshold of standards, terms and conditions of employment, except where otherwise agreed between JRA and its recognized unions. JRA and its recognized unions may negotiate mutual interest issues at a more favourable level in favour of employees than those contained in the Collective Agreements;

16.2.2 meaningfully participate, together with the City's other municipal owned entities, in a group human resources or labour relations

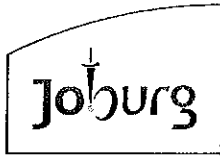
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committee established by the City from time to time, for the purposes of, amongst others:

- 16.2.2.1 effectively communicating and sharing relevant information;
  - 16.2.2.2 continuous and on-going learning in respect of human resources and labour relations issues;
  - 16.2.2.3 coordinating human resource and labour relations activities;
  - 16.2.2.4 aligning labour relations strategies;
  - 16.2.2.5 developing and sharing best practices;
  - 16.2.2.6 preventing disputes initiated by the unions in various forums;
  - 16.2.2.7 fostering harmonious labour relations with the Johannesburg division of the South African Local Government Bargaining Council ("SALGBC");
- 16.3 Notwithstanding anything contained herein, JRA may, with the consent of the City, which consent shall not be unreasonably withheld, depart from any of the provisions of clauses 16.1 and 16.2. so as to ensure flexibility and independence of JRA.



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## 17. HUMAN RESOURCE POLICIES

- 17.1 JRA shall ensure that for the duration of this SDA that its human resource policies and employee monitoring and incentive schemes are approved by the Board and maintained by JRA.
- 17.2 Notwithstanding the provisions of clause 17.1 above, JRA shall ensure that human resource policies and employee monitoring schemes and incentive schemes are aligned to the policies of the City where applicable.
- 17.3 JRA shall at all times during the duration of this SDA, develop and maintain a register of all employees employed by it and shall keep, in a separate file for each employee, full details of that employee's employment contract; conditions of employment; emoluments; benefits; employment history; and such other information as may be necessary to determine the rights and functions of such employee within JRA, and shall permit the Director: Human Resources of the City or any other authorised person to inspect such register and/or such files from time to time.

## 18. USER FORUM

- 18.1 JRA shall establish a User Forum consisting of End Users and stakeholders in the sector within which JRA operates.
- 18.2 The User Forum shall have a constitution which makes provision for meetings of the forum and shall meet at least three times per annum for purposes of making submissions to JRA regarding the improvement of the Services.

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18.3 JRA shall at the meetings of its Board consider any reasonable submission by the User Forum dealing with complaints by End Users regarding service levels, the role of the Local Community, the enhancement of facilities or suggestions for the improvement of the Services.

## 19. CUSTOMER CHARTER

19.1 JRA shall prepare and submit to the City a Customer Charter for approval which, in compliance with industry standards and norms and any applicable Regulatory Provisions, shall:

19.1.1 if it incorporates a customer relations and customer management system shall (where applicable), function in a manner aligned with and complementary to the City's R & CRM Department; and

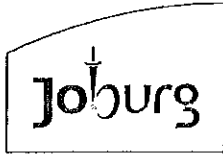
19.1.2 set out the rights and responsibilities of End Users in relation to the provision of the Services and generally describe the relationship between JRA and End Users.

19.2 Once the Customer Charter has been approved by the City, JRA shall in its dealings with End Users act in accordance with the Customer Charter.

## 20. SOCIO-ECONOMIC DEVELOPMENT PLAN

20.1 JRA shall in each Business Plan submitted for approval, prepare and submit to the City for approval, a socio-economic development plan which shall:

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- 20.1.1 be prepared after consultation with and having due regard to the needs of the Local Community in the Service Area and views of the User Forum (where applicable);
- 20.1.2 include proposals regarding appropriate Service Levels for the poor and disadvantaged sections of the Local Community unable to afford the Services; and
- 20.1.3 endeavour to achieve an appropriate standard over time in the provision of the Services throughout the Service Area and in the interests of the Local Community as a whole.

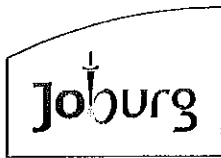
## 21. SAFETY, HEALTH AND ENVIRONMENTAL POLICIES

- 21.1 JRA shall render the Services in compliance with all applicable legislation (including, without limitation), all environmental and health and safety legislation, and in such a manner as is least harmful to the environment and human health, and shall, at its own cost, prevent, at least to the extent required by law, any pollution to the environment or risk to human health.
- 21.2 JRA indemnifies and holds the City harmless against any claims that may be brought against the City in connection with pollution of soil, water and air, human health or the environment in general caused by JRA, its employees or contractors in the rendering of the Services.
- 21.3 JRA shall comply with the provisions and requirements of all statutory notices that are served on it by the City and its various departments, especially the law enforcement agencies of the City and any other competent authority.

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21.4 JRA shall be obliged to acknowledge receipt of and respond in writing to any statutory notices served on it by the City in this context, and give reasons when it is not possible to comply, as well as submitting action plans and time-frames for bringing about compliance where appropriate.

## 22. WARRANTIES

22.1 The City warrants in favour of JRA that:

22.1.1 this Agreement has been duly authorised and executed by the City;


22.1.2 the execution of this Agreement does not violate any judgement or order of any court, Competent Authority or arbitrator of competent jurisdiction applicable in relation to the City or the existing assets of the City or the Assets;

22.1.3 it has the exclusive authority to provide the Services in the Service Area and is fully authorised and entitled to contract with JRA to do so on its behalf on the basis set out in this Agreement;

22.1.4 it has the legal capacity and authority to appoint JRA as a services provider in terms of the Systems Act on the basis set out in this Agreement.

22.2 JRA warrants in favour of the City that:

22.2.1 no steps will have been taken and JRA is not aware of any steps pending or threatened against JRA for its de-registration in terms of the Companies Act;

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22.2.2 the execution of this Agreement does not violate any judgment or order of any court, Competent Authority or arbitrator of competent jurisdiction in relation to JRA or the Assets of JRA; and

22.2.3 JRA is able, entitled and authorised, as may be necessary, validly and effectively to enter into this Agreement and to supply the Services as contemplated herein in accordance with the provisions of this Agreement.

22.3 It is expressly agreed between the Parties that each warranty given by them in this Agreement is material to this Agreement and has induced them to conclude this Agreement.

22.4 No warranties or representations which are not set forth in this Agreement shall be binding on either Party.

22.5 The provisions of this clause 24 shall survive the termination of this Agreement.

## 23. INDEMNITIES

23.1 JRA shall:

23.1.1 at its own expense or in compliance with the City's insurance policies and with effect from the Effective Date, take all reasonable precautions for the protection of life and property or in any way connected with the whole or any part of the asset;

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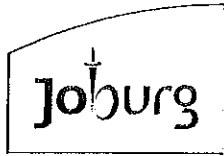


- 23.1.2 comply with the City's insurance policies requirements in respect of premiums, insurance claims and/or resultant recoveries arising out of this Agreement or at law in respect of injury to or death of any person or loss of or damage to any person or property occurring after the Effective Date but prior to the termination of this Agreement;
- 23.1.3 report all serious accidents involving it to the City's office of the Executive Director: Group Risk & Assurance Department within 24 (twenty four) hours of becoming aware of their occurrence;
- 23.1.4 subject to the other provisions of this Agreement, be obliged to comply and assist with requests for documentation in support of any insurable claim instituted against the City arising from or attributable to JRA in respect of the provision of the Services or the operation and maintenance of the assets unless such injury, death, loss or damage was caused by any act or omission of the City or any of its agents employees, subcontractors, consultants, or representatives or other third Parties for whom the City is liable in law or under this Agreement;
- 23.1.5 as from the Effective Date, be responsible to the City, the Local Community and third Parties for all risks and obligations pertaining to or arising out of the provision of the Services in accordance with this Agreement, and shall be responsible for the payment of any damages, claims or losses due to any act or omission of JRA and shall seek the assistance of the Office of the Executive Director: GRAS.

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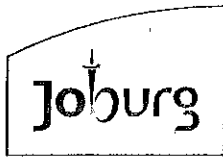
23.1.6 JRA will be obliged to intervene and shall assume responsibility in respect of any legal proceedings, including arbitration of any nature whatsoever, and whether brought within the Republic of South Africa or elsewhere that is instituted against the City in respect of any acts or omissions of JRA, or any other subcontractor or any person for whom JRA may be liable in law in respect of the supply or failure to provide the Services, that may arise after the Effective Date.

23.1.7 The City shall forthwith notify JRA in writing of any claim made against it in this regard or of any such claim that comes to its knowledge and shall subject to the other provisions of this Agreement and as from the Effective Date, comply with any law, regulation or other applicable provisions issued by any competent authority having jurisdiction over the Services to be provided under this Agreement.

23.1.8 In particular, but without limitation, JRA hereby holds the City harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising from any act or omission of JRA in relation to payments for all income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any person by JRA or as a result of or arising from any industrial action or related conduct embarked upon by any employee.

23.2 The City shall:

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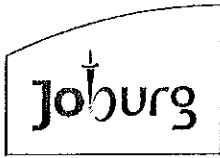


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- 23.2.1 hold JRA harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising out of this Agreement or at law, where such injury, death, loss or damage was caused by any act or omission of the City or any of its employees, sub-contractors, consultants, agents or representatives or other third Parties for whom the City is liable in law or under this Agreement, whether prior to or after the Effective Date.
- 23.2.2 the City will be obliged to intervene and shall assume responsibility in respect of any such claim arising;
- 23.2.3 hold JRA harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses, including reasonable legal expenses, of whatsoever nature arising from or attributable to the City whether prior to or after the Effective Date in discharging any of its rights or obligations under this Agreement where such injury, death, loss or damage was caused by any act or omission of the City or any of its agents, employees, sub-contractors, consultants, or representatives or other third parties for whom the City is liable in law or under this Agreement and the City will be obliged to intervene in any such claim arising;
- 23.2.4 in respect of any condition existing prior to the Effective Date of the Sale of Business Agreement which contributes towards a claim, demand, proceeding or damages against JRA, hold JRA harmless against such claims, demands, proceedings or damages including reasonable attorney's fees to the extent of such contribution, provided that such assurance shall not apply in the event of JRA,

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despite reasonable opportunity to do so, having failed to rectify such condition.

23.3 Each of the Parties assures the other that it shall not hold the other liable against any claims, demands, proceedings, damages and expenses, including reasonable attorney's fees, which may arise due to a breach by any Party of the warranties contained in clause 22 hereof.

23.4 No breach by a party of any warranty referred to in clause 22 and no claim against a party under any assurance under clause 23 shall entitle a claimant to make a claim in respect of both such breach of warranty and such assurance where such breach or claim arises out of the same cause of action.

## 24. INTELLECTUAL PROPERTY INDEMNITY

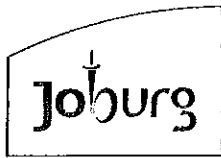
24.1 In respect of any Assets acquired by JRA under the Sale of Business Agreement from the City, the City hereby:

24.1.1 authorises and licenses or (where applicable), will endeavour to procure that the relevant third party intellectual property owner will have authorised and licensed and will continue to so authorise and license JRA to use and to continue to use or apply as from the Effective Date, any and all intellectual property rights of third Parties used or applied by the City in respect of the provision of the Services or the operation and maintenance of the Assets on the same basis as those rights were used or applied as at the effective date of the Sale of Business Agreement;

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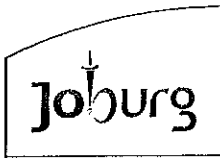


- 24.1.2 indemnifies JRA and undertakes to keep JRA fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Services or the operation and maintenance of the Assets by JRA as from the Effective Date in respect of any intellectual property rights of third Parties;
- 24.1.3 JRA hereby indemnifies the City and undertakes to keep the City fully and effectively indemnified against all claims, demands, costs, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of the Services or the operation and maintenance of the Assets by JRA after the Effective Date in breach (or alleged breach) of any intellectual property rights of third Parties, but specifically excluding the intellectual property rights.
- 24.2 The indemnities shall extend to all costs and expenses (including reasonable legal expenses on a full indemnity basis) incurred by the Party who has been indemnified ("the indemnified Party") by the other Party ("Indemnitor").
- 24.3 The indemnified Party shall give to the Indemnitor reasonable notice in writing of any claim being made or action threatened or brought against it and shall permit the Indemnitor (at the Indemnitor's expense) to conduct any litigation which may ensue and all negotiations for a settlement of any claim, giving the Indemnitor all reasonable assistance (at the Indemnitor's expense) and the indemnified Party agrees not to make any admission which might be prejudicial thereto.

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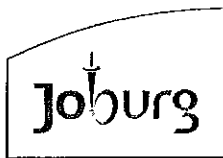


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- 24.4 The conduct by the indemnitor of any such litigation or negotiations shall be conditional upon its taking over such conduct within a reasonable time after being notified of the claim in question.
- 24.5 If any claim by a third party based on infringement of its intellectual property rights as aforesaid prevents JRA from fully conducting its business or any part thereof, JRA shall forthwith, to the extent possible, replace or modify its intellectual property so that the use of such intellectual property becomes non-infringing or, where possible, obtain a licence to use the relevant intellectual property, and shall compensate the City for the amount of any direct losses or damages sustained or expenses incurred by the City during such replacement or modification.
- 24.6 To the extent that it is not possible or practical for JRA to replace or modify any asset, whether corporeal or incorporeal, or any operation, constituting or involved in the use of intellectual property or to obtain a licence as envisaged in clause 24.5, and should JRA notify the City that, without such replacement or modification, it will not be in a position to fulfil its obligations under this Agreement, the Parties shall negotiate with one another in good faith with a view to amending the provisions of this Agreement to the extent necessary so as to enable JRA to continue to fulfil its obligations under this Agreement. Should the Parties fail to reach agreement as to the amendments to be effected to this Agreement within 6 (six) months of receipt of the notification from JRA, the matter shall be resolved as an Operational Dispute.
- 24.7 Any replacement or modification envisaged in clause 24.5 will be carried out as soon as possible so as to minimize any interruption in JRA's business operations.

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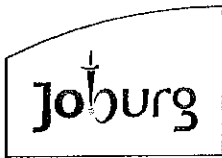
## 25. COMPLIANCE WITH IRFA GUIDELINES AND NEGOTIATION PROCEDURE

- 25.1 It is recorded that the Parties are both "municipal organs of state" for the purposes of the IRFA. In conducting their affairs, the Parties must seek to achieve the objectives of IRFA by seeking to prevent intergovernmental disputes from arising when exercising their powers or performing their functions in terms of this Agreement, and where such disputes do arise, by giving effect to the constitutional requirement that organs of state must make every reasonable effort to settle the dispute by means of the mechanisms and procedures provided for that purpose, and must exhaust all other remedies before they approach a court to resolve the dispute.
- 25.2 Should a deadlock or dispute of whatever nature arise in connection with this Agreement or any rights or obligations of the Parties thereunder, the Party claiming the dispute must inform the other Party in writing within 21 days of the date the dispute is said to have arisen, of the nature of the dispute, and that a dispute has been declared ("Dispute Notice"). A copy of the said Dispute Notice shall simultaneously be served on the City's Disputes Settlement Manager ("DSM"). Within 20 (twenty) Business Days of receipt of the Dispute Notice, the Parties shall meet to attempt to resolve the dispute by informal negotiations in good faith. Such meeting ("Negotiation Meeting") shall take place on 7 (seven) days written notice from either Party, at a venue mutually agreed between them and failing such agreement within 24 (twenty four) hours, at the official premises of the Party giving the Dispute Notice. The Parties shall use their best endeavours to settle the dispute and negotiations shall be conducted in good faith.

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25.3 If the Parties are unable to resolve the deadlock or dispute in question within 15 (fifteen) Business Days after the commencement of the Negotiation Meeting or any date to which such Negotiation Meeting has been adjourned (which shall not be more than 30 (thirty) Business Days after the date of the initial Negotiation Meeting), then the deadlock or dispute shall be referred by the DSM on application by either Party, for resolution by mediation.



## 26. MEDIATION

26.1 Mediation shall be non-binding on the Parties and shall be conducted by a facilitator appointed for this purpose by the Parties or, if they are not able to agree on a facilitator within 3 (three) Business Days, appointed by the DSM from the panel of recognised facilitators maintained by the DSM.

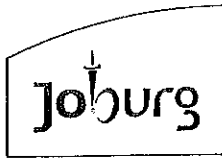
26.2 The mediation will be conducted according to the directions of the facilitator and the Parties shall act in good faith and will respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.

26.3 The mediation process shall be deemed to have commenced upon written acceptance of the facilitator of his or her appointment. In the event that the mediation has not resolved the dispute within 30 (thirty) Business Days of its commencement (or such extended period as the facilitator may approve in writing) it shall be referred by the DSM on the written request of either Party, for determination in terms of the City's Operational Dispute Resolution Protocol.

26.4 Each Party shall bear its own costs save that the costs of the mediator will be shared equally by the Parties and paid on demand.

  
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## 27. OPERATIONAL DISPUTE RESOLUTION

- 27.1 All the City's disputes and/or matters referred for resolution by the DSM shall be dealt with in accordance with the City's Operational Dispute Resolution Protocol, as determined by the City from time to time.
- 27.2 Where both Parties to the Operational Dispute accept the Adjudicator's Recommendation, upon such written acceptance the Adjudicator's Recommendation shall become final and binding upon them.

## 28. THE TERMINATION PROCESS

The termination of this Agreement is initiated by notice of cancellation given by the City in circumstances where it is entitled to give such notice in terms of this Agreement pursuant to clauses 29.2.2, 29.2.3 or 32. Notwithstanding the giving of notice of cancellation, this Agreement shall only terminate following implementation of the transitional provisions contemplated in clause 34.

## 29. BREACH AND CONSEQUENCES THEREOF

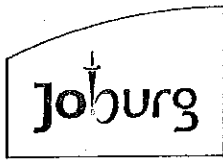
- 29.1 An event of default by JRA shall occur if:
- 29.1.1 JRA breaches any of its obligations in terms of this Agreement and persists with such breach for a period of 14 (fourteen) Business Days after delivery by the City of written notice requiring JRA to remedy such breach; or

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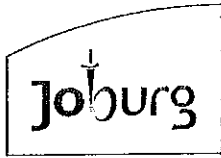


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- 29.1.2 JRA commits an act which is or would (if committed by a natural person) be an act of Insolvency as defined in the Insolvency Act No. 24 of 1936 (as amended) or an act defined in terms of the Companies Act;
- 29.1.3 JRA is unable or ceases for any reason whatsoever to provide the Services in the ordinary and regular manner; or
- 29.1.4 JRA compromises or attempts to compromise or defer payment of any indebtedness owing by it to its creditors, generally; or
- 29.1.5 any assets of JRA are attached under writ of execution and JRA fails within 15 (fifteen) Business Days after becoming aware, or after it should reasonably have become aware, of such attachment, to take the necessary steps to have such attachment set aside and thereafter to successfully pursue such steps with due diligence; or
- 29.1.6 JRA is removed from the Register of Companies or placed under judicial management; or
- 29.1.7 JRA sells, transfers, exchanges or otherwise disposes of, in any one transaction or a series of related transactions, a material portion of its business or undertaking or changes its asset structure, except in the normal course of its business; or
- 29.1.8 JRA sells, transfers, exchanges or otherwise disposes of, in any one transaction or a series of related transactions more than 5% (five percent) of its Assets other than in accordance with the Municipal Asset Transfer Regulations; or

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29.1.9 JRA allows any bond, lien, charge or encumbrance on any of its assets other than in accordance with its Business Plan and/or the Municipal Asset Transfer Regulations; or

29.1.10 any order of court (whether provisional or final), unless pursuant to a reorganisation, reconstruction or amalgamation approved in writing by the City, is granted for the winding up of JRA (whether voluntarily or compulsorily); or

29.1.11 any judgment of any court or arbitration award against JRA remains unsatisfied for a period of 30 (thirty) Business Days after JRA has become aware, or should reasonably have become aware, that it has been granted and such judgment or arbitration award is not the subject of an application for rescission or review or is not appealed against and, in the event of such application, review or appeal being unsuccessful, JRA fails to immediately make payment thereof; or

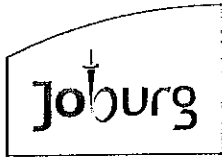
29.1.12 a judicial manager, receiver or similar officer is appointed in respect of JRA or in respect of all or any material part of its assets; or

any regulatory authority which has jurisdiction over JRA and the Services provided by it, withdraws or cancels any license or authorisation in terms of which JRA is entitled to render the Services, save to the extent that the withdrawal or cancellation is not caused by the negligence or failure of JRA to comply with any conditions set out therein; or

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29.1.13 following an annual performance review, the performance of JRA has, measured against the performance objectives and measurement standards contemplated in clauses 11 and 11.5.3 of this Agreement, been unsatisfactory whether or not the City elects to liquidate and disestablish JRA pursuant to Section 93B(c)(i) of the Systems Act; and

29.1.14 the Board of JRA has failed to act effectively in relation to serious or persistent financial problems experienced by JRA, whether or not the City elects to impose a financial recovery plan, liquidate and disestablish JRA as contemplated in Section 93B(c)(ii) of the Systems Act and section 109 of the MFMA.

29.2 Upon the occurrence of an event of default by JRA as contemplated above, or at any time thereafter whilst it is continuing, the City may, without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to JRA:

29.2.1 claim specific performance (without cancelling this Agreement and without prejudice to its right to claim damages); or

29.2.2 cancel this Agreement (without prejudice to its right to claim damages); or

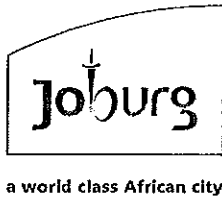
29.2.3 without cancelling this Agreement, exercise the management substitution rights referred to in clause 30, without prejudice to the right of the City to elect to cancel this Agreement if the exercise of the said management substitution right does not have the effect (in the sole discretion of the City), of remedying the event of default

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originally giving rise to the City exercising its rights pursuant to this clause 29.2.3.

29.3 An event of default by the City shall occur if:

29.3.1 the City breaches any of its obligations in terms of this Agreement and persists with such breach for a period of 14 (fourteen) Business Days after delivery by JRA of written notice requiring it to remedy such breach; and/or

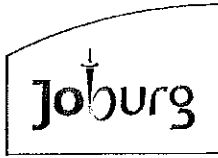
29.3.2 the City fails to pay any amount due by it in terms of this Agreement on the due date for payment thereof and the City persists in such failure to pay for a period of 14 (fourteen) Business Days after delivery by JRA to the City of written notice requiring it to pay such amounts.

29.4 Upon the occurrence of an event of default by the City or at any time thereafter whilst it is continuing and provided that if the breach is capable of being remedied JRA has been given 21 (twenty one) Business Days written notice to cure such breach, JRA may, without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to the City, claim specific performance or claim damages. In no event shall JRA have the right to cancel this Agreement as a result of events of default set out in clause 29.3 above.

### 30. SUBSTITUTION OF MANAGEMENT

30.1 It is recorded that:

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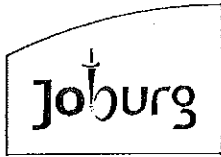
- 30.1.1 the provision of the Services by JRA represents the long-term policy of the City and a reversal of this policy may interrupt the provision of the Services;
- 30.1.2 under the extreme circumstances that would justify termination of this Agreement, the City may consider requiring the substitution of all or a portion of the management of JRA as an appropriate alternative to termination of this Agreement if at any time, and objectively considered, it is apparent that JRA is unable to continue performing its functions under this SDA due to the actions or omissions of the management (or portion/s thereof) of JRA whom the City wishes to substitute, and failure to take precipitate action is likely to lead to a service delivery crisis or cause an emergency situation to arise. Except in circumstances where the City is able to show that a crisis or emergency situation exists or is imminent, the City shall give JRA at least 60 (sixty) days' notice in writing before invoking the provisions of this clause.
- 30.1.3 The Parties have accordingly agreed that the City shall have the right to require the Board of JRA to substitute the management of JRA in order to preserve this Agreement in accordance with the provisions of this clause.
- 30.2 Should any event of default contemplated in clause 29.1 occur, the City may, instead of exercising its right to cancel this Agreement, call upon the Board of JRA to make one or more substitutions of management in terms of this clause 30 without having to give any notice.

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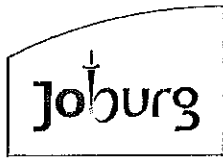
- 30.3 The City shall exercise its right in terms of clause 30.2 by delivering a substitution notice in writing to the chairperson of the Board of JRA, which substitution notice will specify the terms and conditions of the substitution/s required, including an implementation date, and may require the substitution of senior management in its entirety or specify individuals for substitution, and may be of limited duration, or permanent.
- 30.4 Should the Board of JRA intimate directly or indirectly that it is not prepared to or is unable to implement the management changes required by the City, the City may forthwith exercise any right that has accrued to it to cancel this Agreement pursuant to clause 29.1.
- 30.5 The right to require substitution of management in terms of this clause 36.5 is a right that may be exercised by the City as a contracting Party with JRA and JRA shall be responsible for (and indemnifies the City against) any employment law consequences that may ensue within the management structure of JRA if it transpires that, objectively considered, the intervention of the City in terms of this clause was justified in the circumstances. If it subsequently transpires that such intervention by the City was objectively not justified in terms of the provisions of this clause or in bad faith, the City shall not be entitled to the aforesaid indemnification and JRA shall be entitled to recover from the City any damages suffered by it arising out of such employment law consequences.

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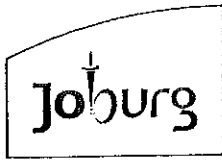
30.6 JRA shall ensure that all things required to implement the substitution notice are done and shall ensure that any member of management of JRA substituted in terms of the foregoing shall comply with the terms of the substitution notice referred to in clause 30.2, and will, if required to, assist in the process of substitution on the basis set out in the substitution notice.

30.7 Any person appointed in substitution for JRA Accounting Officer in terms of this clause 30 must be appointed by the Board of JRA but the City may by agreement with the Board of JRA, and subject to clause 30.8, second any of its employees to undertake management roles within JRA pursuant to the substitution provisions of this clause 30, on a temporary basis until such time as the board of JRA is in a position to make a permanent substitute appointment.

30.8 In the absence of agreement to the contrary, any management substitution effected in terms of clause 30.2 on a permanent basis must have been confirmed by the Board of JRA within 12 (twelve) months of delivery of the relevant substitution notice referred to in clause 30.3, and JRA must within such period have entered into a formal contract of employment with the relevant substituted employee/s, failing which the City may elect to proceed with cancellation of this Agreement.

### 31. EFFECT OF NOTICE OF CANCELLATION – TERMINATION PROCESS

The Parties acknowledge that it is the duty of the City to ensure as far as is reasonably possible uninterrupted delivery of the Services in the best interests of the Local Community. The Parties have accordingly agreed as follows:



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31.1 Once notice of cancellation has been given in terms of this Agreement:

31.1.1 this Agreement shall not terminate until the date of termination and the Parties have negotiated a transitional process which shall be designed to achieve termination whilst maintaining uninterrupted delivery of the Services to the Local Community;

31.1.2 JRA shall continue to provide the Services in terms of this Agreement pending the date referred to in clause 31.1.4;

31.1.3 the City shall during such transition period have the option of purchasing from JRA the Assets only or the entire business conducted by JRA as a going concern ("JRA Going Concern") for delivery either to the City or to an alternative JRA nominated by the City, in the City's discretion; and

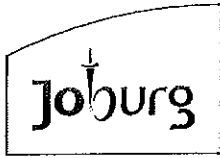
31.1.4 this Agreement shall terminate on a date or on the occurrence of an event agreed between the Parties, or if no such date or event is agreed between the Parties, upon the earliest of:

31.1.4.1 the City having received delivery of the Assets, alternatively, JRA Going Concern pursuant to the City having elected to exercise the option referred to in clause 31.1.3; or

31.1.4.2 an alternative JRA appointed by the City having received delivery of the Assets, alternatively, JRA Going Concern as the nominee of the City pursuant to clause 31.1.3; and

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31.1.4.3 compliance with the requirements of clause 31.2.

in, any such event, the City or its nominee JRA has confirmed in writing that it is in a position to commence provision of the Services itself.

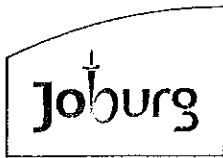
31.2 In the event of the City electing to purchase the Assets:

31.2.1 JRA shall on receipt of the written notice exercising the City's option, be deemed to have offered to sell the Assets to the City or a JRA designated by the City (in either instance "the Buyer"), and the Buyer shall be deemed to have accepted such offer;

31.2.2 the purchase price of the Assets (and any accretions thereto) shall be determined by the Auditors. If either Party does not accept the determination of the Auditors, it may refer the matter for determination by an independent firm of auditors having international representation, who shall be appointed by the chairman for the time being of the SA Institute of Chartered Accounts ("SAICA"), and who shall make its determination acting as an expert and not as an arbitrator, and the costs of such determination shall be borne by the party whose challenge is substantially unsuccessful;

31.2.3 if the Assets are purchased by the City, the purchase price of the Assets (and any accretions thereto), together with VAT thereon, shall be discharged by set-off against any loan account in favour of the City in the books of account of JRA, if such loan account is

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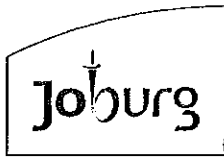
sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash or other agreed settlement;

- 31.2.4 if the Assets are purchased by a third party JRA nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JRA and the third Party JRA with the approval of the City, and the purchase price shall be utilised by JRA towards settling the loan account in favour of the City in the books of account of JRA;
- 31.2.5 against payment of the purchase price of the Assets determined in terms of clause 31.2.2, JRA shall deliver the Assets (and any accretions thereto) to the Buyer by placing the Buyer in possession thereof and ownership of the Assets (and accretions thereto), and all risk in and benefit to the Assets (and accretions thereto), shall thereupon pass to the Buyer;
- 31.2.6 JRA shall sign all such documents and do all such things as may be necessary or desirable to enable the Assets (and accretions thereto) which are capable of registration to be registered in the name of the Buyer; and
- 31.2.7 JRA shall be required to make arrangements for the transfer of contracts of employment to the Buyer in relation to those employees who, in the reasonable opinion of JRA, are required to ensure the continuity of the supply of the Services, provided that such employees consent to the transfer of their contracts of employment to the Buyer. The Buyer shall be obliged to employ the above-mentioned employees.

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31.3 In the event of the City (or the City's nominee) electing to purchase JRA Going Concern:

31.3.1 JRA shall on receipt of the written notice exercising the City's option, be deemed to have offered to sell JRA Going Concern to the City or a JRA designated by the City (in either instance "the Buyer") as a going concern, and the Buyer shall be deemed to have accepted such offer on the terms and conditions specified hereunder;

31.3.2 the purchase price of JRA Going Concern shall be the net asset value of the business, as determined by the Auditors of JRA, together with VAT at the applicable rate (it being recorded that such transactions are currently zero-rated);

31.3.3 if either of the Parties does not accept the determination of the Auditors it may refer the matter for expert determination mutatis mutandis on the basis contemplated in clause 31.2.2;

31.3.4 if JRA Going Concern is purchased by the City, the purchase price of JRA Going Concern shall be discharged by set-off against any loan account in favour of the City in the books of account of JRA, if such loan account is sufficient to discharge the purchase price, or if insufficient, by set off and by way of a cash or other agreed settlement;

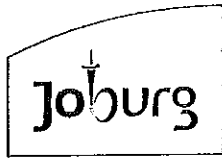
31.3.5 if JRA Going Concern is purchased by a third party JRA nominated by the City, the purchase price shall be discharged by whatever mechanism is agreed between JRA and the third Party JRA with the approval of the City, and the purchase price shall be utilised by JRA

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towards settling the loan account in favour of the City in the books of account of JRA;

31.3.6 against discharge of the purchase price of JRA Going Concern, JRA shall deliver JRA Going Concern to the Buyer;


31.3.7 JRA shall sign all documents and do all things as may be necessary or desirable to enable the Assets which are capable of registration to be registered in the name of the Buyer; and

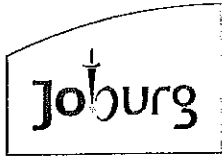
31.3.8 contracts of employment shall be transferred from JRA to the Buyer in accordance with section 197 of the Labour Relations Act 66 of 1995.

31.4 On the sale either of the Assets or JRA Going Concern, JRA shall, subject to compliance with any Regulatory Provisions and the consent of any licensing authority having jurisdiction, assign any permits or authorities held by it on the date of termination of this Agreement to the Buyer, and generally facilitate the implementation of this Agreement and the achievement of its intent and purpose.

31.5 In respect of employees whose contracts of employment are to be transferred to the Buyer:

31.5.1 JRA shall be responsible for and shall discharge all obligations in respect of all payments and amounts accrued to such employees arising out of their employment with JRA prior to the date of transfer and shall indemnify and hold the City and the Buyer harmless in respect of all such obligations;

  
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31.5.2 JRA shall be liable for and indemnify and hold the City and the Buyer harmless in respect of all claims in respect of such employees which claims accrued on or after the Effective Date but prior to the date of transfer or which arose by reason of the transfer;

31.5.3 any debt or liability arising from or connected to the employment by the Buyer of such employees after the date of transfer will be the exclusive responsibility of the Buyer;

31.5.4 any obligation on JRA to make contributions to any pension, provident, retirement or medical aid or health care funds of which such employees are members at the date of transfer will with effect from the date of transfer become the obligation of the Buyer, and the Buyer shall indemnify and hold the City (if applicable) and JRA harmless in respect of all such claims, costs and expenses.

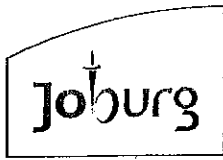
## 32. MUTUAL CO-OPERATION

The Parties may consult from time to time with regard to any assistance or advice which either Party may require in connection with any of its obligations in terms of this Agreement. The City shall further timeously provide JRA with such information as it may reasonably require to enable it to comply with any of JRA's obligations in terms of this Agreement.

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### 33. CONFIDENTIALITY

33.1 Each Party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:

33.1.1 the provisions of this Agreement;

33.1.2 the negotiations relating to this Agreement;

33.1.3 the subject matter of this Agreement; and/or

33.1.4 the other Party.

33.2 A Party may disclose information which would otherwise be confidential if and to the extent:

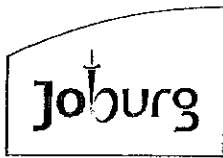
33.2.1 required by law;

33.2.2 required to vest the full benefit of this Agreement in either Party;

33.2.3 disclosed to the professional advisers, auditors and bankers of each Party;

33.2.4 the information has come into the public domain through no fault of that Party;

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33.2.5 the other Party has given prior written approval to the disclosure, such approval not to be unreasonably withheld or delayed;

provided that any information so disclosed shall be disclosed only after notification to the other Party.

#### 34. DOMICILIA AND NOTICES

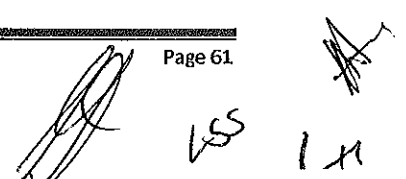
34.1 All notices to be given in connection with this Agreement shall be in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post:

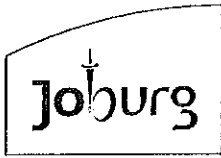
The City Manager:  
Metropolitan Centre  
158 Loveday Street  
Braamfontein  
Johannesburg  
telefax no: 011 403 1012  
marked for the attention of: The City  
Manager .

JRA at:  
Managing Director / Chief Executive Officer  
JRA Johannesburg (SOC) Ltd (RF)  
66 Sauer Street  
Johannesburg  
telefax no: [011] 298 5001  
marked for the attention of: The Managing  
Director

which physical addresses the Parties select as their *domicilium citandi et executandi*.

34.2 A notice shall be deemed to have been received.

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34.2.1 14 (fourteen) days after posting, if posted by registered post to the Party's address in terms of clause 34.1;

34.2.2 on delivery, if delivered to a responsible person during normal business hours at the Party's physical address in terms of clause 34.1;

34.2.3 on despatch, if sent to the Party's then telefax number and such transmission is independently confirmed.



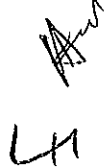
34.3 Notwithstanding the foregoing a written communication actually received by a Party shall be deemed to have been received by such Party notwithstanding that it was not sent to or delivered at such Party's chosen domicilium.

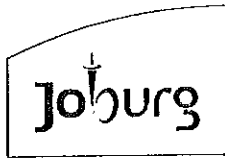
### 35. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with herein. There are no terms, conditions or warranties, express or implied, other than those contained in this Agreement and there have been no prior representations made by the Parties or any agent or other person purporting to act for the Parties shall be of any force or effect if not set out herein.

### 36. VARIATION, CANCELLATION OR WAIVER

No variation of the terms of this Agreement, or consensual cancellation of this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.



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**37. SEVERABILITY**

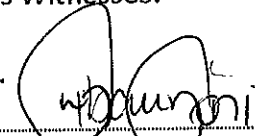
If any of the provisions of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity of the remainder of the provisions of this Agreement which shall remain effective and be interpreted as if any such unenforceable provision/s were not a part of this Agreement, unless the effect of such severance renders the rest of the agreement unworkable.

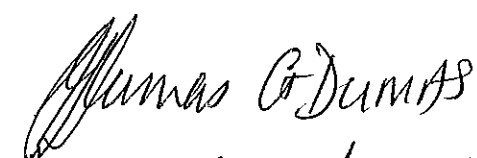
**38. APPLICABLE LAW**

This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa, provided that in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as interpreted and applied in the Gauteng Province shall prevail.

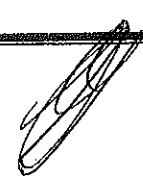
THIS DONE AND SIGNED AT JOHANNESBURG ON THIS THE \_\_\_\_\_

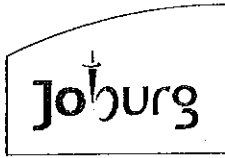
As Witnesses:

- 1. 
- 2. Arifah Hamid

  
 ACTING CITY MANAGER

**CITY MANAGER**  
 who warrants that he is duly authorised  
 For and on behalf of  
**CITY OF JOHANNESBURG**  
**METROPOLITAN MUNICIPALITY**  
 (Herein referred to as "the City")

  
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THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 27<sup>th</sup> May 2015

As Witnesses:

1.

.....

2.

.....

MPHO KAU.

LA. K.

.....  
**ACTING MANAGING DIRECTOR**  
who warrants that he is duly authorised  
For and on behalf of  
**JOHANNESBURG ROADS AGENCY SOC**  
**Ltd (RF)**  
**(Herein referred to as "JRA")**

## ANNEXURE A

The JRA service delivery expectations as described in the Charter are as follows:-

- i. Potholes will be repaired within 3 working days
- ii. Faulty Traffic Signals will be repaired within 24 hours
- iii. Missing manhole covers will be replaced within 3 days
- iv. Damaged , defaced or missing stop and traffic signs will be replaced within 7 days
- v. Road trenches will be repaired within 3 days
- vi. Requests to correct street name spelling will be done within 7 days

### Exceptions

It is not possible in all cases to comply with the requirements of the Customer Charter since in certain circumstances, the restoration of services are reliant on other City entities or for practical / operational reasons cannot be completed within the required timeframes. In such circumstances, the following exceptions are noted hereunder:-

#### Traffic lights

In instances where:-

- Major repairs are required (Pole replacements, stolen cables, repairs to concrete foundations),
- The power supply authority is ESKOM,

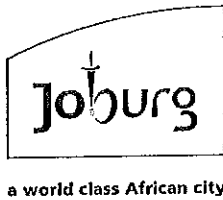
the 24 hour turnaround time for repair will not apply

#### Road trenches and re-instatements

In instances where trenches are not JRA trenches and where entities / stakeholders have failed to comply with SLA obligations, JRA will:-

- Secure the site
- Replace re-instatement if material required is a stock item
- Claim for reimbursement from 3rd party involved
- In cases where materials are not standard

14



stock items, the JRA will write to 3rd party requesting repairs to re-instatement within 3 days,

- Replace materials and complete re-instatement through SCM processes if 3rd party fails to comply,
- Claim for reimbursement from 3rd party involved

Manhole covers

In instances where:-

- Manhole covers do not belong to the JRA,

the 3 day turnaround time will not apply.

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**ANNEXURE A: SERVICES**

In relation to the day to day operations of JRA

**ANNEXURE B: SERVICE LEVELS**

In relation to the PIPs

Priority	2015/16 Key Performance Measures and Deliverables	2014/15 Key Performance Measures and Deliverables	2013/14 Key Performance Measures and Deliverables
Financial Sustainability and Resilience	% Increase in monetary value of revenue realized from alternative sources (Year on Year)	The JRA is not a revenue generating entity but has undertaken to develop and implement an alternative funding strategy for income generation through the development of the asphalt plant.	N/A
	% Capex spend Target 95%	% Capex spend Target 95% to be confirmed in line with MMC's scorecard target	% Capex spend revised to 85% (Not achieved)
	% reduction in staff costs Clean Audit	0% reduction in staff costs Clean Audit	0% reduction in staff costs Unqualified
Agriculture and Food Security		<ul style="list-style-type: none"> <li>Provide freight-logistics-supportive road network system that enables the rapid</li> </ul>	

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<p>Sustainable Settlements</p>	<p>Human</p>	<p>movement of goods, intermodal transfers and provides access to facilities such as food markets and other agricultural facilities.</p> <ul style="list-style-type: none"> <li>Through the use of urban storm water systems, the JRA will also contribute to the conservation and diversion of surface runoff water into irrigation schemes in support of food production.</li> </ul>	
		<ul style="list-style-type: none"> <li>Providing the core road network that is necessary for mobility and connectivity in communities.( improvement of arterial roads and main roads going into communities, the development of complete streets)</li> <li>This will also serve to attract investment to local economic nodes and thus grow the City's economic base.</li> <li>Support safety and the updating of storm water master plans to</li> </ul>	

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<p>SMME and Entrepreneurial Support</p>		<p>manage the impacts of development.</p>	
<p>Engaged Citizenry</p>	<p>Active</p>	<ul style="list-style-type: none"> <li>Utilisation and support of emerging contractors in the capital works programme;</li> <li>Implementation of Expanded Public Works Programmes (EPWPs) and the application of EPWP principles in normal JRA projects.</li> <li>Establishment of an SMME Desk within the JRA</li> </ul>	
<p>Resource Sustainability</p>		<ul style="list-style-type: none"> <li>Rollout of programmes such as 'adopt a street' and 'adopt a pavement'</li> <li>Communities mobilised to participate in infrastructure protection and road safety programmes.</li> </ul>	
		<ul style="list-style-type: none"> <li>Supporting an ecosystem of complete street-linked storm water systems that promote sustainable urban water drainage;</li> <li>Minimising flood events to improve the safety of our</li> </ul>	

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		<p>residents;</p> <ul style="list-style-type: none"> <li>• Reducing the amount of road related waste sent to landfill sites;</li> <li>• Preventing illegal dumping.</li> </ul>	
Smart City		<ul style="list-style-type: none"> <li>• Intelligent transport systems (ITS) that include traffic flow management systems; infrastructure security systems; etc.</li> <li>• Road asset management systems such as the pavement management system and bridge management system; and the geographical information system (GIS).</li> <li>• Remote monitoring systems for traffic signals</li> </ul>	
Investment attraction, retention and expansion		<ul style="list-style-type: none"> <li>• Improve mobility for freight moving into and out of the City Deep precinct by providing an efficient road network system.</li> <li>• Improvement of the freeway system in the City to unblock known bottlenecks and improve riding quality.</li> </ul>	

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<p><b>Green economy</b></p>		<ul style="list-style-type: none"> <li>• Implementation of solar power, light emitting diode (LED) and uninterruptible power supply (UPS) traffic signals;</li> <li>• Waste minimisation.</li> <li>• Use of recycled and innovative alternative products.</li> </ul>	
<p><b>Safer cities</b></p>		<ul style="list-style-type: none"> <li>• Improve and upgrade traffic signal system</li> <li>• Improve road markings maintenance</li> <li>• Establish an integrated traffic management Centre supporting the City-wide operations – implementation of road safety, Accident Management System and management of traffic congestion</li> <li>• Establish the Overload Control Function and weigh -in-motion systems to protect road infrastructure</li> <li>• Management of vandalism &amp; Infrastructure Protection</li> <li>• Flood management in conjunction with EMS</li> </ul>	

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