

"Without prejudice"

Dr George Mothapo
Sedibeng TVET COLLEGE
Central Office
37 Voortrekker Street,
Vereeniging
1930

8 June 2020

Dear Dr Mothapo,

**RE: TERMINATION OF THE INFRASTRUCTURE AGREEMENT ENTERED INTO BETWEEN
W&RSETA AND SEDIBENG TVET COLLEGE**

1. The above matter refers,
2. W&RSETA and Sedibeng TVET College entered into an agreement wherein a need was identified for the development of the Sedibeng TVET College, to advance the national objectives for the advancement of post-school education and training as laid out in the National Skills Development Strategy ("NSDSIII") and the National Skills Development Plan ("NSDP").
3. W&RSETA consequently made funds available to facilitate the development of the aforesaid Sedibeng TVET College by concluding the referred to Infrastructure agreement in line with the W&RSETA Accounting Authority's decision to approve the project and W&RSETA's Policy for the Funding of Infrastructure Development to which the referred to infrastructure agreement is deemed to align.

ie Sibiya (Chairperson), Sibusiso Busane, Thandeka Ntshangase, Themba Mthembu, Mzimaseki Silimandlela, Lerato Mokhitli, David Makua, Ramatlhodi, Ross Rayners, Margaret Bango, Zinhle Tyikwe, Nonkululeko Bogopa, Zibele Sokabo, Sebe Rasebitse

4. However, due to an exceptional event or circumstance which could not reasonably be foreseen and one which is beyond the control of both parties (force Majure), the emergence of the COVID-19 pandemic, has caused the President of the Republic of South Africa to pronounce on the COVID-19 directives, in particular, the four-month Skills Development Levy holidays issued to W&RSETA Stakeholders and has also caused a directive to be issued by the Minister of Higher Education, Science and Innovation in response to the pandemic.
5. Consequently, the referred to directives obligate W&RSETA to reprioritise its budget and Annual Performance Plan because of the estimated loss of income to the value of R655 million which W&RSETA is estimated to suffer, as a direct impact of COVID-19 and the four-month Skills Development Levy holiday dispensed to W&RSETA Stakeholders. The directive further instructs W&RSETA to reassign some of its discretionary funding to other learning interventions, Stipends *inter alia* during the period of Lockdown and beyond.
6. These measures now cause W&RSETA to formally inform Sedibeng TVET College that the execution of the terms in the signed Infrastructure agreement can no longer be honoured as the discretionary funding committed for this infrastructure project have been re-assigned to such new priorities as directed by the Minister and the W&RSETA's Accounting Authority because of the effects of the COVID-19 pandemic within the Wholesale and Retail Sector.
7. For ease of reference, we have attached the said directive from the Minister to this correspondence for your information and records.
8. Hence, to align with the above referred to Ministerial Directive and the W&RSETA Accounting Authority's decision, W&RSETA wishes to terminate the operation of the

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Infrastructure agreement by evoking clause 15.9 and 15.12 of the Infrastructure agreement signed by both parties which both read as follows:

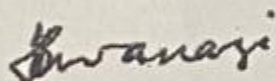
- 15.9 *"Either Party may terminate this Agreement if Force Majeure renders its performance under this Agreement impossible."*
- 15.12 *"Termination of the Agreement under this clause shall be without prejudice to any other rights that may have accrued to either of the Parties, in respect of services rendered before the date of termination. The Parties specifically agree that upon the termination of this Agreement no rights shall accrue to either party for the performances not yet rendered under this Agreement except those already initiated at the date of termination."*
9. Force Majeure is defined in Clause 3.9 of the signed Infrastructure agreement to be:
"an exceptional event or circumstance that could not have been reasonably foreseen is beyond the control of the Parties, is not caused by fault or negligence by the Parties and could not have been avoided or overcome."
10. While W&RSETA fully and unreservedly appreciates the financial impact and the operational consequence, the termination of the Infrastructure agreement will have on Sedibeng TVET College and all parties linked to this project, it is necessary to appreciate the new priorities set by the President, Minister, the W&RSETA Accounting Authority and the needs of the sector affected by this pandemic within Wholesale and Retail.
11. Furthermore, we wish to place on record that all other agreements that W&RSETA has concluded with Sedibeng TVET College will not be affected by this Ministerial directive and will be fully honoured per the terms in the respective agreements.
12. In conclusion, although the termination of the Infrastructure agreement as well as the effects of the Pandemic are regrettable and place a strain on the fruitful relationship W&RSETA has with Sedibeng TVET College, W&RSETA implores Sedibeng TVET

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College not to define the parameters of the said relationship within Skills Development in light of the termination of this single agreement but in the light of ensuring the complexion of the Wholesale Retail Sector changes for the better.

In light of the above, we trust that the reasons for the termination of the Infrastructure agreement are well ventilated in this correspondence. Should there be any further concerns regarding the termination of the agreement kindly forward all correspondence to Mr Siphon Mkhathshwa, the Project Owner to set up meetings and further engagements on the concerns the TVET College may have.

Regards,



Mr. Tom Mkhwanazi
Chief Executive Officer