

LOAN AGREEMENT BETWEEN

FIRSTRAND BANK LIMITED

(REGISTRATION NUMBER 1929/001225/06)

(ACTING THROUGH ITS FIRST NATIONAL BANK DIVISION)

"AN AUTHORISED FINANCIAL SERVICES AND CREDIT PROVIDER"

AND

MIDVAAL LOCAL MUNICIPALITY

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APPENDICES

APPENDIX 1 DISBURSEMENT CONDITIONS

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1. PARTIES

1.1. The Parties to this Agreement are –

- 1.1.1. FirstRand Bank Limited (Registration number 1929/001225/06), a public company and registered bank with limited liability (acting herein through its First National Bank Division (or any sub-division)) referred to in this Agreement as the "**Bank**", an authorised financial services and credit provider; and
- 1.1.2. Midvaal Local Municipality, a municipality established pursuant to Section 12 of the Local Government: Municipal Structures Act, 1998, referred to in this Agreement as the "**Borrower**". The Parties agree as set out below.

2. INTERPRETATION

2.1. In this Agreement, unless inconsistent with or otherwise indicated by the context –

2.1.1. "Aggregate Prepaid Amount" means, on any day (a "Measurement Date"), the aggregate of all Prepaid Amounts. For ease of calculation the Aggregate Prepaid Amount shall be calculated in accordance with the following formula: $A = B - C$, where:

A = the Aggregate Prepaid Amount;

B = the aggregate of all amounts whatsoever which have (1) been paid by the Borrower towards the reduction of the Loan Principal (and not towards the payment of fees, insurances, assurances and the like which have not been capitalised to the Loan Principal) (2) and been received by the Bank as at the Measurement Date (each such individual amount a "Prepayment"); and

C = the aggregate of all Instalment Amounts which the Borrower is required to have paid as at the Measurement Date;

2.1.2. the/this "**Agreement**" means the agreement as set out in this document together with any schedules or appendices hereto;

2.1.3. "**Annum**" means any period of 12 (twelve) consecutive Calendar Months and "**Annually**" bears a corresponding meaning;

2.1.4. "**Applicable Law**" means including, but not limited to the MFMA and all other applicable laws, ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency or authority in any relevant jurisdiction;

2.1.5. "**Average Prepaid Amount**" means, for any particular Calendar Month (a "**Measurement Month**"), the Average Prepaid Amount for that Measurement Month, determined in accordance with the formula:

$A = [B_1 + B_2 + \dots B_n] / n$, where,

A = the Average Prepaid Amount;

B = on each day of the Measurement Month, the Aggregate Prepaid Amount as at close of business on the particular day; and

n = the number of days in the Measurement Month;

2.1.6. "**Borrower Account**" means the Borrower's transactional/operating account with number 62083734262,, as agreed to by the Borrower in the Bank's debit authorisation from, held with the Bank or such other

transactional account as the Parties may agree in writing;

- 2.1.7. **"Break Costs"** means all the cost, loss or reduced receipts determined and incurred by the Bank as a result of the early termination and/or failure to draw down the Loan and/or breach of this Agreement and/or early settlement and/or the prepayment by the Borrower and/or withdrawal by the Bank from the loan, which cost, loss or reduced receipts shall include, but not limited to, any reasonable third-party costs incurred by the Bank in preparing this Agreement and/or any Security Documents (including the costs incurred to vest the concomitant security rights), statutory fees, facility fees, deposit fees, penalty interest, legal costs, prepayment deposit fees, prepaid facility fees, prepaid drawdown fees, present value of all the future total margins calculated by using the appropriate risk free discount rates and/or early settlement fees and the like;
- 2.1.8. **"Business Day"** means a day which is not a Saturday, Sunday or an official South African public holiday;
- 2.1.9. **"Calendar Month"** means any month of the Gregorian calendar;
- 2.1.10. **"Change in Law"** means any implementation, introduction, abolition, withdrawal or variation of any Applicable Law, published practice or concession or official directive, ruling, request, notice, announcement (including but not limited to any budget speech), guideline by any government entity (whether or not having the force of law) or any change in any interpretation, or the introduction or making of any new or further interpretation, or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;
- 2.1.11. **"Disbursement Conditions"** means the conditions, as set out in Appendix 1 to this Agreement;
- 2.1.12. **"Disbursement Date"** means the date upon which the Loan or any tranche or portion thereof is disbursed by the Bank / drawn down by the Borrower in accordance with clause 7.2 below;
- 2.1.13. **"Dispose"** means any sale, transfer, cession, assignment, lease, alienation, donation, renunciation, surrender, waiver, relinquishment, exchange or other disposal of any nature whatsoever, and "Disposal" shall have a corresponding meaning;
- 2.1.14. **"Early Settlement"** means the payment of an amount in full settlement of the Loan prior to the required due date of payment thereof and **"Early Settle"** shall have a corresponding meaning;
- 2.1.15. **"Encumbrance"** means -
- 2.1.15.1. any mortgage, pledge, lien, assignment or cession conferring security, hypothecation, security interests, preferential right or trust arrangement or other encumbrance securing any obligation of any person;
 - 2.1.15.2. any arrangement under which money or claims to, or for the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person;
 - 2.1.15.3. any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security;
- 2.1.16. **"Events of Default"** means, collectively, (1) the events set out in clause 4 of Appendix 2 under the heading **"Events of Default"** and (2) any other event or events expressly referred to in the Agreement as constituting an event of default, and **"Event of Default"** means any of them;

- 2.1.17. **"Facility Agreement"** means, if applicable, the written facility agreement to be entered into by and between the Bank and the Borrower on or about the same time as this Agreement (or, where applicable, the facility agreement which the Borrower has already signed with the Bank) and includes any amendments, supplements, substitutions or replacements thereof;
- 2.1.18. **"Financial Covenants"** means the financial conditions as envisaged in clause 10 of the Agreement below;
- 2.1.19. **"Financial Statements"** means the financial statements of the Borrower for each Financial Year (consolidated and/or audited if required), which must include an income statement, balance sheet and cash flow statement for the relevant Financial Year to date and comparisons with the prior Financial Year together with relevant notes and commentary;
- 2.1.20. **"Financial Year"** means each financial year of the Borrower;
- 2.1.21. **"Fulfilment Date"** means the date on which the Disbursement Conditions have been finally fulfilled or waived, as the case may be as set out in clause 6 below;
- 2.1.22. **"GRAP"** means Generally Recognised Accounting Practices;
- 2.1.23. **"IFRS"** means International Financial Reporting Standards;
- 2.1.24. **"Increased Costs"** means any and all additional costs to, or reduction in the amount payable to, or a reduction in the after tax return on capital or regulatory capital achieved by the Bank which is attributable to all or part of the Security Documents and/or this Agreement and/or to the Bank entering into, performing, maintaining or funding its respective obligations under this Agreement provided that such increased costs relate only to increased costs levied by reason of those circumstances listed in clause 7.1 of Appendix 2;
- 2.1.25. **"Instalment Amounts"** means, collectively, the repayments required to be made by the Borrower as envisaged in clause 9.4 below, to ensure that the Loan together with interest thereon is repaid within the Loan Period, and "Instalment Amount" means any one thereof;
- 2.1.26. **"Interest Rate"** means the rate at which the Loan Outstandings shall bear interest and is measured as a fixed interest rate which shall have the Prime Rate as its base. The applicable Interest Rate shall be equal to the rate set out in clause 3.3 below that will be embodied to this Loan Agreement, which appendix will be signed by the authorised signatories of both parties;
- 2.1.27. **"Loan"** means an amortising loan in the amount set out in clause 3.1 below, made available by the Bank to the Borrower under the terms of this Agreement;
- 2.1.28. **"Loan Discharge Date"** means the date upon which all and any amounts (whether in respect of interest, principal or otherwise) which become payable by the Borrower to the Bank pursuant to this Agreement have been paid in full;
- 2.1.29. **"Loan Outstandings"** means, on any day, the aggregate of all amounts (whether in respect of interest, principal or otherwise) then owing by the Borrower to the Bank on account of the Loan advanced by the Bank to the Borrower;
- 2.1.30. **"Loan Period"** means the term of the Loan as set out in clause 3.2 below. The Loan Period is measured in number of Calendar Months and commences on the first day of the First Calendar Month (as defined in

this clause 2.1.31 below) and ends on the last Business Day of the last Calendar Month of the Loan Period – in this regard it is agreed that:

2.1.30.1. IF the Disbursement Date occurs more than 15 (fifteen) days prior to the occurrence of the first Repayment Date the **"First Calendar Month"** of the Loan Period shall commence on the Disbursement Date and shall end on the last day of the Calendar Month during which the Disbursement Date occurred;

OR

2.1.30.2. IF the Disbursement Date occurs 15 (fifteen) days or less prior to the occurrence of the first Repayment Date the **"First Calendar Month"** of the Loan Period shall commence on the first day of the Calendar Month which immediately succeeds the Calendar Month during which the Disbursement Date occurred and shall end on the last day of that same Calendar Month;

2.1.31. **"Loan Principal"** means the aggregate of (1) the principal amount of the Loan and (2) any interest compounded and capitalised in terms of clause 8.2 below, to the extent to which the applicable amounts remain outstanding from time to time;

2.1.32. **"Material Adverse Effect"** means the occurrence of any event, circumstance or matter or combination of events, circumstances or matters which, in the reasonable opinion of the Bank, has or will have or would be likely to have a material adverse effect on –

2.1.32.1. the ability of the Borrower or any Security Provider to comply with any of its or their obligations (financial or otherwise) under this Agreement and/or the Security Documents to which it is or they are a party;

2.1.32.2. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower or any Security Provider, and includes any substantial restructuring, disposal of material assets or arrangement;

2.1.32.3. the legality and/or validity and/or enforceability of the Agreement and/or the Security Documents and/or the rights and/or remedies of the Bank thereunder;

2.1.33. **"MFMA"** means the Local Government: Municipal Finances Management Act Of 2003;

2.1.34. **"Parties"** means the parties described in clause 1.1 above;

2.1.35. **"Potential Event of Default"** means (1) any event or the existence or occurrence of circumstances which would (or, in the Bank's reasonable opinion, is likely to) if not remedied or altered, bring about an Event of Default, or (2) an event that will become an Event of Default:

2.1.35.1. after the expiry of the applicable cure period in respect of such event as set out in clause 4 of Appendix 2 below if such event is not remedied during such period; or

2.1.35.2. if notice to remedy is given as envisaged in clause 4 of Appendix 2 below and such event is not remedied within the applicable notice period;

2.1.36. **"Prepaid Amount"** means the payment of an amount in partial settlement of the Loan Principal prior to the required due date of payment thereof, and **"Prepayment"**, **"Prepayments"** and **"Prepayment Amounts"** shall have a corresponding meaning;

- 2.1.37. **"Prime Rate"** means the publicly quoted basic rate of interest (per cent, per annum, compounded monthly in arrear and calculated on a 365 day year irrespective of whether or not the year is a leap year) from time to time published by the Bank as being its prime overdraft rate, as certified by any manager of the Bank, whose appointment and designation need not be proved;
- 2.1.38. **"Quarter"** means any period of 3 (three) consecutive Calendar Months and **"Quarterly"** shall have a corresponding meaning;
- 2.1.39. **"Relevant Legislation means" :-**
- a) MFMA;
 - b) Any other law which govern , or is binding on , any local authority or municipality in South Africa; and
 - c) Any and all regulations made under or in circumstances with the aforesaid statutes or laws;
- 2.1.40. **"Repayment Date"** means, during the currency of this Agreement, the date as envisaged in clause 9.4 below;
- 2.1.41. **"Security Documents"** means all the security and security documents referred to in Appendix 1;
- 2.1.42. **"Security Providers"** means the Borrower and each person or entity which provides security to the Bank for the obligations of the Borrower to the Bank under this Agreement;
- 2.1.43. **"Six-months"** means any period of 6 (six) consecutive Calendar Months and **"Six-monthly"** bears a corresponding meaning;
- 2.1.44. **"Standard Terms and Conditions"** means the standard terms and conditions applicable to this Agreement as are set out fully in Appendix 2;
- 2.1.45. **"Standard Undertakings"** means the standard undertakings given by the Borrower to and in the Bank's favour as set out in clause 2 of the Standard Terms and Conditions;
- 2.1.46. the **"Signature Date"** means the date upon which this Agreement is signed by the Party signing last in time;
- 2.1.47. **"Taxes"** means all taxes, charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and **"Tax"** and **"Taxation"** shall be construed accordingly;
- 2.1.48. **"VAT"** means value added tax as contemplated in the Value Added Tax Act, 89 of 1991;
- 2.2. Any reference to the singular includes the plural and vice versa;
- 2.3. Any reference to natural persons includes legal persons and vice versa;
- 2.4. Any reference to gender includes the other genders;
- 2.5. A reference to any statutory enactment or any specific section thereof shall be construed as a reference to that enactment as at the Signature Date and to that enactment as amended or substituted from time to time and to the relevant replacement section in any amended or substituted enactment.



- 2.6. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.7. The words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a party have the same meaning.
- 2.8. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.9. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.10. Save as otherwise expressly provided, if any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the first day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a Business Day or Saturday, in which case the last day shall be the preceeding Business Day.
- 2.11. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 2.12. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a party to this Agreement.
- 2.13. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.14. The use of any expression which is relevant to a process available under South African law (including "liquidation", "winding-up", "insolvency" and "judicial management") shall, if any party to this Agreement is subject to the laws of any other jurisdiction, be interpreted as to include any equivalent or similar process under the law of that other jurisdiction.

3. LOAN DETAIL AND FEES

Loan

- 3.1 Rand amount of the Loan: **R18,600,000.00 (eighteen million six hundred thousand Rand);**
- 3.2 Loan Period: **120 (one hundred twenty) Calendar Months;**
- 3.3 Interest Rate: **9.23% (nine-point two three percent)**

Prepayment Deposit Fees, Prepaid Facility Fees, Prepaid Drawdown Fees and Early Settlement Fees

- 3.3 The Borrower is entitled to make Prepayments but may not draw down against its Prepaid Amount/s.
- 3.4 The Bank reserves the right, in its sole discretion, to waive and/or reduce the payment of one or all of the Prepayment Deposit Fee, Prepaid Facility Fee, Prepaid Drawdown Fee and/or Early Settlement Fee.

Document and Legal Fees

- 3.5 The Borrower shall pay an "**Amendment Fee**" for each time that, subsequent to Signature Date, the terms of this Agreement are amended by way of an amendment agreement. Each such amendment shall attract an Amendment Fee of R5 700.00 (five thousand seven hundred Rand), including VAT. Each Amendment Fee

shall be and become due and payable immediately upon signature by the Borrower of such amendment agreement.

- 3.6 The Bank reserves the right, in its sole discretion, to waive and/or reduce the Amendment Fee.
- 3.7 Without prejudice to any rights that the Bank may have under this Agreement or in law, all charges or costs that may be necessary for the Bank to vest, cancel and/or release any Security and/or Security Documents (such as bond registrations, cancellations, drafting of ad-hoc agreements, etcetera) shall be borne by the Borrower in full.

4 RECORDAL

- 4.1 The Bank agrees to advance the Loan to the Borrower and the Bank shall not be obliged to monitor or verify the application of any amount borrowed pursuant to this Agreement.
- 4.2 The Parties wish to record the terms and conditions of their agreement in writing.

5 STANDARD CONDITIONS

The Standard Terms and Conditions are specifically incorporated into this Agreement as an integral part of terms and conditions of the Loan.

6 DRAW DOWN CONDITIONS

- 6.1 Subject to clause 6.3 below, the Bank shall not be obliged to advance the Loan to the Borrower unless all of the Disbursement Conditions have, to the sole and absolute satisfaction of the Bank, been fulfilled or waived, as the case may be. If the Disbursement Conditions have not been fulfilled (or waived as the case may be) within 60 (sixty) days of Signature Date (or such longer period as agreed between the Parties), the Bank shall be entitled to terminate this Agreement and the Borrower shall have no claim whatsoever against the Bank.
- 6.2 The Disbursement Conditions have been inserted into this Agreement for the benefit of the Bank. The Bank may, in its sole and absolute discretion, and subject to clause 6.3 below, waive each such Draw-down Condition by delivering written notice of waiver to the Borrower at any time.
- 6.3 To the extent that the Bank allows the Borrower to utilise the Loan prior to the fulfilment of a particular Disbursement Condition/s (to the extent that such Disbursement Condition/s have not been waived) the particular Disbursement Condition/s must be fulfilled or waived by the Bank no later than 30 (thirty) days of Disbursement Date. Failure or refusal to comply with the terms of this clause 6.3 (to the extent applicable) shall constitute an Event of Default.

7 ADVANCE OF THE LOAN

- 7.1 The Bank hereby agrees to advance the Loan to the Borrower and the Borrower hereby agrees to borrow the amount so advanced by the Bank on the terms and conditions as set out in this Agreement.

Disbursement

- 7.2 Subject to the terms of clause 6 above, the Borrower shall draw down (and the Bank shall disburse) the Loan in no more than one tranche or unless agreed to by the Bank in no more than 3 (three) separate tranches. The Loan (or any tranche, if allowed) may be disbursed:



- 7.2.1 by electronic funds transferred into the Borrower Account (or such other bank account held by the Borrower with the Bank as the Borrower may, in writing instruct); and/or
- 7.2.2 once the Bank has disbursed the Loan the Bank shall have fully discharged its obligations under this Agreement.

Failure to Draw Down

- 7.3 If, for any reason whatsoever, the Borrower:
- 7.3.1 fails to draw down the Loan (or the first tranche thereof, if allowed as envisaged in clause 7.2 above) within 30 (thirty) days of the Fulfilment Date (or such longer period as the Bank may agree to in writing); or
- 7.3.2 repudiates this Agreement and/or gives notice to the Bank of its intent not to take up the Loan,
- the Borrower shall, within 7 (seven) days of receipt of written demand by the Bank to that effect, pay the Break Costs to the Bank and the Bank shall be entitled (but not obliged) to withdraw the Loan and to refuse to advance any portion thereof to the Borrower.

8 INTEREST

- 8.1 The outstanding amount of the Loan Principal from time to time, shall accrue interest at the Interest Rate.
- 8.2 All interest which accrues on the Loan Principal shall be calculated daily on the outstanding balance on a nominal annual compounded semi-annually (nacs) basis and capitalised in arrears. By "capitalise" the parties intend that the applicable interest shall be added to the Loan Principal and that such interest shall, after being so added, for all purposes of this Agreement, be regarded as part of the Loan Principal advanced by the Bank to the Borrower in terms of this Agreement.

Changes to Interest Rate

- 8.3 If there is any change in the Prime Rate, the amount of interest accruing on the Loan **shall not vary**
- 8.4 If the Borrower fails to pay any amount which becomes payable pursuant to this Agreement (whether in respect of interest, principal or otherwise) strictly on due date then, without prejudice to any rights which the Bank may otherwise have as a result of such non-payment, the Interest Rate shall, for the period which commences on the due date for payment of the applicable amount and which terminates on the day before such amount is actually paid, be increased by 3% (three percent). Any interest due in terms of this clause shall be compounded monthly in arrears and shall be payable in accordance to the provisions of clause 8.2 above.
- 8.5 If the Borrower breaches:
- 8.5.1 any of the Standard Undertakings; and/or
- 8.5.2 any of the warranties contained in clause 3 of Appendix 2 (the "Warranties"); and/or
- 8.5.3 any of the Financial Covenants,
- the Bank may, (1) without prejudice to any rights which the Bank may otherwise have as a result of such breach and (2) without notice to the Borrower, increase the Interest Rate by 3% (three percent) for the period during which the Borrower remains in breach of any such Standard Undertakings and/or Warranties and/or Financial Covenants.

Adjustment to repayment

- 8.6 If any of the events set out in clause 8.5 above occurs, the repayments due by the Borrower in terms of this Agreement shall change to the extent required to ensure that the Loan plus interest is repaid within the same period as it would have been, had such changes not occurred and the Bank is authorised to increase or decrease, as the case may be, the amount of each outstanding repayment (and therefore the amount debited to the Borrower's bank account under the relevant debit order or stop order (if any)).

9 REPAYMENT OF THE LOAN AND PAYMENT OF INTEREST

- 9.1 Subject to the provisions of clause 8.6 of the Agreement above (adjustment to repayment) and clause 4.2 of Appendix 2 (the Bank's rights upon the happening of an Event of Default), the Borrower shall be obliged to repay the Loan as set out in this clause 9.

General

- 9.2 If the Borrower draws down the Loan in tranches (as envisaged in 7.2 above), the amount of each tranche shall be deemed to constitute a separate Loan amount.
- 9.3 If the date for the payment of any amount is not a Business Day, the due date for payment shall be the first immediately preceding Business Day.

Repayment

- 9.4 The Borrower shall repay the Loan Principal together with interest bi-annually over a period of 10 years, on the first day of each Six-monthly period during the Loan Period until the Loan Discharge Date. In this regard, the first instalment shall be paid on the 1st first day of the of the Calendar Month which immediately succeeds the end of the first Six-months of the Loan Period until the Loan Discharge Date.
- 9.5 Notwithstanding the Loan Period and/or anything to the contrary contained in this Agreement the Borrower will repay the remainder of the Loan Outstandings (if any) on the day the final capital repayment is made (being the Loan Discharge Date) or on the last day of the Loan Period, whichever happens first.

Prepayment

- 9.6 The Borrower shall be entitled to Prepay the Loan Principal to the Bank subject to the terms of this clause 9.6 to clause 9.10 below.
- 9.7 The Borrower shall provide the Bank with prepayment payment confirmation with in 48 (forty eight) hours notice confirming such payment.
- 9.8 Any notice of prepayment pursuant to clause 9.7 shall :-
- 9.8.1 Specify a date upon which such prepayment is to be made; and
- 9.8.2 Specify the amount of such prepayment.
- 9.9 Any amount prepaid by the Borrower shall not be available to be re-advanced by the Bank to the Borrower.
- 9.10 If the Borrower were to prepay any amount the Borrower shall be liable to the payment of the amount of Break Cost, which Break Cost together with interest thereon will accrue on the balance of all amounts due and payable. Upon the written request by the Borrower the Bank shall notify the Borrower of the amount of Break Cost that is payable. Any amount so notified by the Bank shall be an indication only and shall not bind



the Bank.

9.11 The Bank reserves the right, in its sole discretion, to waive and/or reduce the Break Cost.

Early Settlement

9.12 If the Borrower repays the full Loan Outstandings before the end of the Loan Term, the Borrower shall be liable to the payment of the amount of Break Cost, which Break Cost together with interest thereon will accrue on the balance of all amounts due and payable

9.13 Upon the written request by the Borrower the Bank shall notify the Borrower of the amount of Break Cost that is payable. Any amount so notified by the Bank shall be an indication only and shall not bind the Bank.

9.14 The Bank reserves the right, in its sole discretion, to waive and/or reduce the Break Cost.

Debit Order Authority or Electronic Fund Transfer Payments

9.15 Notwithstanding anything to the contrary contained in this Agreement, the Bank shall be entitled (and the Borrower hereby irrevocably authorises and instructs the Bank) to debit the Borrower Account, with all amounts due or which might at any future time become due by the Borrower under this Agreement. If the Borrower closes or transfers the Borrower Account, the authority given in this clause 9.15 shall apply mutatis mutandis to any replacement or substituted account opened by the Borrower. This authority shall in no way be construed as substituting, varying or novating the Borrower's obligation under this Agreement.

9.16 If the Borrower repays the Loan Outstandings by way of an Electronic Funds Transfer (EFT), the Borrower hereby confirms to pay the Bank with any and or all amounts due. The Borrower agrees that any failure by the Borrower to pay any amount due in terms of this Agreement by EFT or by Debit Order or otherwise will be regarded as an Event of Default.

10 FINANCIAL COVENANTS

10.1 In this clause 10, the "Standard Financial Terms" as set out in clause 1 of Appendix 2 shall apply.

10.2 For the entire period which commences on the Signature Date and which terminates on the Discharge Date, the Borrower:

10.2.1 undertakes to maintain a Senior Debt Service Cover exceeding 1.5 (one point five) times. The "Debt Service Cover" Ratio is defined as the cash generated by operations divided by the debt service amount for that period;

10.2.2 undertakes to ensure that the debt to operating revenue will not exceed 50% (fifty percent).

10.2.3 acknowledges that the Bank shall be entitled to measure the Financial Covenants with reference to (1) the Audited Financial Statements, (2) the Borrower's Budget and/or (3) the Borrower's quarterly rolling management accounts, if applicable.

11 NOTICES AND DOMICILIA

11.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties. For purposes of clarity and avoidance of doubt it is hereby recorded that

all correspondence from the Bank shall be sent to the Borrower's chosen *domicilia citandi et executandi* in clause 11.2.2 below.

11.2 For purposes of this Agreement the Parties' respective addresses shall be –

11.2.1 the Bank at: 6th Floor, 2 First Place, Cnr Jeppe & Simmonds Streets, Johannesburg (Marked for the attention: Head: Deal Execution – LCS),

Facsimile number: (011) 428 4277, E-mail: legalnotice.commercial@fnb.co.za;

11.2.2 The Borrower at: _____

(Marked for attention of: _____)

Facsimile number: _____

or at such other address in the Republic of South Africa of which the Party concerned may notify the other in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

11.3 Any notice given in terms of this Agreement shall be in writing and shall –

11.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

11.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the eighth day immediately succeeding the date of such posting;

11.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day immediately succeeding the date of dispatch,

unless the contrary is proved.

11.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission shall be adequate written notice or communication to such Party.

12 VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

13 WHOLE AGREEMENT AND COUNTERPARTS

13.1 This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

13.2 This Agreement may be signed by the signatories hereto in counterparts and each signed copy shall together constitute one document.



14 RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

15 JURISDICTION

Each of the Parties to this Agreement irrevocably agrees that the South Gauteng High Court, Johannesburg shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes which may arise out of or in connection with the agreements and for such purposes, irrevocably submits to the non-exclusive jurisdiction of such court.

16 CERTIFICATE

A certificate signed by any manager of the Bank (whose appointment or authority as such it shall not be necessary to prove), certifying any amount outstanding in terms of the agreements which has become due and payable to the Bank as well as the rates of interest and other charges applicable thereto shall be *prima facie* proof of the matters therein stated for all purposes, including for the purposes of furnishing further particulars.

17 INDEPENDENT ADVICE

- 17.1 Each of the Parties hereto acknowledges that they have been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so.
- 17.2 The Borrower acknowledges and agrees that it has not relied in any way upon any information and/or advice given by the Bank in the preparation, negotiation and/or implementation of this Agreement or the Security Documents and has taken all reasonable actions to satisfy itself as to the consequences of entering into this Agreement or the Security Documents.

18 RENUNCIATION OF BENEFITS

The Borrower expressly waives and renounces the legal benefits and exceptions of *non numeratae pecuniae*, *non causa debiti*, revision of accounts and *errore calculi*, and it declares itself to be fully acquainted with the meaning and effect of these exceptions and the renunciation thereof.

19 SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provisions of this Agreement be in conflict with any Applicable Law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

20 COSTS

- 20.1 All costs and expenses (including all legal fees, legal costs and stamp duties) together with any VAT actually incurred by the Bank in connection with the negotiation, preparation, execution, delivery, modification, amendment and administration of the Agreement, the negotiation, preparation, execution, delivery, modification, amendment, administration perfection and/or registration of any security, the valuation and/or revaluation of any security and/or any other matter ancillary thereto shall be borne by the Borrower.
- 20.2 Collection costs will be charged by the Bank to the Borrower only in the event of the Bank having to preserve and/or enforce any of the rights of the Bank under the Agreement. Such collection costs will include: legal costs as on the scale between attorney and client, collection commission and other fees or disbursements incurred by the Bank in collecting any amounts owing by the Borrower to the Bank, including value-added tax where applicable..
- 20.3 The Borrower shall pay all transfer duties, registration fees and other Taxes to which the Agreement is or at any time may be subject and indemnifies the Bank against any claims resulting from any failure to pay or any delay in paying such Tax.

21 CESSION AND ASSIGNMENT

The Bank shall be entitled to cede or assign any of its rights or obligations under this Agreement at any time without first obtaining the prior written consent of the Borrower. The Borrower shall not be entitled to cede or assign any of its rights or obligations under this Agreement without first obtaining the prior written consent of the Bank.

22 PRIVACY TERM

- 22.1 Your personal information (which, for the purposes of this term, includes special personal information) will be held by entities within the FirstRand group.
- 22.2 To better understand the entities that form part of the FirstRand group and how your personal information is treated, please refer to FirstRand's privacy notice which forms part of this privacy term. The privacy notice can be found on our FNB website or contact us to request a copy.
- 22.3 In this privacy term references to "we", "us" or "our" are references to the entities in the FirstRand group, and all affiliates, associates, cessionaries, delegates, successors in title or third parties (authorised agents and contractors), when such parties are acting as responsible parties or operators in terms of applicable privacy laws, unless stated otherwise.
- 22.4 By accepting this agreement or by utilising any products or services ("solutions") offered by us, you acknowledge that in order to:
- 22.4.1 Conclude and fulfil contractual terms or obligations to you;
- 22.4.2 Comply with obligations imposed by law; or
- 22.4.3 To protect or pursue your, our, or a third party's legitimate interests, including offering solutions that best meet your needs;

Your personal information may be processed through centralised functions and systems across entities in the FirstRand group and may be used for the purposes, in the manner, and with the appropriate controls as

set out in our privacy notice.

- 22.5 Where it is necessary to obtain consent for processing outside of this privacy term, we will explicitly seek your consent separately.
- 22.6 We want to ensure that you fully understand how your personal information may be used. We have described the purposes for which your personal information may be used in detail in our privacy notice. We have also set out further information about accessing, correcting or objecting to the processing of your personal information in our privacy notice. We strongly advise that you read our privacy notice.
- 22.7 For the purposes of this agreement, the responsible party is the party with whom you are contracting a solution, as well as other entities in the FirstRand group, which are listed in our privacy notice as responsible parties. For the contact details of these responsible parties, please see our privacy notice.

23 WITHDRAWAL OF LOAN FACILITY

- 23.1 The Bank shall be entitled to withdraw from the Loan, by written notification to the Borrower, or to review the Loan in terms of normal credit assessment procedure and approval at any time prior to draw down of the Loan to the Borrower, if, in the Bank's sole opinion:
- 23.1.1 any incorrect or misleading information is furnished to the Bank; or
- 23.1.2 any relevant fact or information, which would have had an effect on the Bank's decision to grant the Loan, has been withheld from, or becomes known to the Bank; or
- 23.1.3 there is a Material Adverse Effect; or
- 23.1.4 the Borrower fails to provide the necessary information required in terms of the Financial Intelligence Centre Act No. 38 of 2001, (and any related law, ruling, regulations or guidelines); or the Bank is unable to verify the information required by it.
- 23.2 In any such event, the Bank shall be entitled to levy any Break Costs (if any) that the Bank may have incurred, which amounts shall be payable by the Borrower on demand from the Bank.

24 FOREIGN TAX OBLIGATIONS

- I/We confirm that the Borrower is **NOT** required, or registered, to file a tax return in another country in addition to South Africa and/or is **NOT** tax resident in any country other than South Africa.
- I/We acknowledge that the Bank may be required to supply tax related information to the relevant tax authorities locally and abroad.
- I/We agree that if any tax information or other information required by law or agreement is outstanding, FirstRand Bank Limited may freeze all or any account/s of the Borrower until such time as the required information is provided.
- I/We have the necessary authority to represent and bind the Borrower and the information we have given is true, correct and complete.
- I/we will inform the Bank in writing of any change of this status within 30 days of the change of status.

I/We hereby certify all of the above to be correct and that the Borrower has no foreign tax liability.	Yes	No
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If the Borrower replied "No" to the foreign tax liability question above, the following must be populated:

- I/We confirm that the Borrower is required, or registered, to file a tax return in another country in addition to South Africa and/or is tax resident in country/ies other than South Africa. The Borrower's tax details in these countries are:

Name of Country/Jurisdiction	Tax Reference Number

- I/We acknowledge that the Bank may be required to supply tax related information to the relevant tax authorities locally and abroad.
- I/We agree that if any tax information or other information required by law or agreement is outstanding, FirstRand Bank Limited may freeze all or any account/s of the Borrower until such time as the required information is provided.
- I/We have the necessary authority to represent and bind the Borrower and the information we have given is true, correct and complete.
- I/we will inform the Bank in writing of any change of this status within 30 days of the change of status.

For and on behalf of: **FIRSTRAND BANK LTD**
(Acting through its First National Bank Public Sector Banking division)

Designation:

Name:

Designation:

Name:

For and on behalf of:

Signed at

on the

Full name of duly authorised signatory

Capacity

Signature (who warrants his/her authority)

Full name of duly authorised signatory

Capacity

Signature (who warrants his/her authority)

APPENDIX 1

DISBURSEMENT AND MONITORING CONDITIONS AND SECURITY

The advance of the Loan is subject to the fulfilment, to the sole and absolute satisfaction of the Bank, of the following conditions:

1. SECURITY DOCUMENTS

1.1. In addition and without prejudice to any security already held by the Bank in respect of any of the Borrower's obligations towards the Bank, the security set out in this Appendix 1 is required as continuing covering security for the entirety of the Borrower's indebtedness, howsoever arising, to the Bank from time to time including, but not limited to, the indebtedness arising from the Loan (all such security to be in form and substance satisfactory and acceptable to the Bank).

1.1.1. No Security/Collateral Required.

2. PAYMENT CONDITIONS

The following documentary formalities must be attended to and carried out to the reasonable satisfaction of the Bank prior to the Disbursement Date:

2.1. a certified copy of a resolution of the Municipal Council, signed by the mayor of the Borrower, approving the execution and performance of this Agreement and the terms and conditions of this Agreement, and stipulating:

2.1.1. the principal amount of the Loan; and

2.1.2. that amendments to this Agreement may only be effected following a resulting resolution of the Municipal Council, in respect of such changes.

2.2. evidence to the satisfaction of the Bank as to the identity and office bearing of the Municipal Manager, and in respect of whom the Borrower shall have delivered to the Bank certified specimens of the Municipal Manager's signature.

2.3. the Municipal Manager of the Borrower having signed and initialled each page of the duplicate copy of this Agreement, and returning same to the Bank at its earliest convenience. Availability is furthermore subject to the Bank receiving the duly signed originals of the required collateral and/or further agreements (if any).

2.4. as soon as this Agreement is signed, but in any event by no later than 180 (one hundred and eighty) Business Days after the end of the Signature Date, the Borrower shall provide the Bank with the budget and audited Financial Statements of the Borrower for the immediately preceding Financial Year.

2.5. With regard to Appendix 1, Clause 2.4 above, the Borrower will ensure that:

2.5.1. the budget is prepared in accordance with the MFMA;

2.5.2. the Financial Statements are prepared in accordance with GRAP or IFRS or any other reporting standard acceptable to the Bank;

2.5.3. the Financial Statements are certified by the Municipal Manager as giving a true and fair view of the financial condition of the Borrower as at the end of the period to which those Financial Statements relate and of the result of its operations during such period; and

2.5.4. the Financial Statements have been audited by the Auditor-General (being that person appointed as Auditor-General in terms of Section 193 of the Constitution of the Republic of South Africa, 1996).

2.6. the Borrower understands and agrees that no drawdown's will be permitted should the Auditor-General's audit and reports on the accounts, financial statements and financial management of the Borrower be issued with a disclaimer or adverse opinion/finding.

2.7. no draw down's will be permitted should there be a Material Adverse Effect.

2.8. in the event of the Borrower defaulting in the due payment or due performance of any amount payable or obligation to be performed under this and/or any agreement, which amount or which obligation the Bank considers to be material, the Bank in its sole discretion reserves the right to request the Borrower to provide additional security, or to proceed with any other course of action in order to protect the Bank's interest herein.

3. MONITORING CONDITIONS

The following conditions must be adhered to for the duration of the Loan:

- 3.1. Notwithstanding anything to the contrary contained in this Agreement it is agreed that, in the event of the Borrower being in breach of the terms of this or any other agreement between the Parties, the Bank will not be obliged to pay any amounts or to perform any obligations due to the Borrower until all amounts owed and all performances due by the Borrower to the Bank have been paid in full or are fully performed
- 3.2. undertakes that it shall not, without the Bank's prior written consent:
 - encumber any of its assets by way of mortgage, pledge, lien, charge, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security on the assets.
 - otherwise than in the ordinary course of business, either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer or otherwise dispose of the whole or the substantial part of its assets or the whole or the substantial part of its undertaking.

The fact that the above provisions are highlighted does not in any way detract from the validity and the effect of any of the other terms and conditions contained in this Agreement.
- 3.3. the Borrower waives preference in respect of its other unsecured and unsubordinated creditors so that the Bank shall rank *pari passu* and equal in all respects with the aforesaid creditors.
- 3.4. the Borrower understands and agrees that the Bank reserves the right to re-price the Loan solely at its instance should any of the following occur:
 - 3.4.1. the sovereign credit rating of the Republic of South Africa deteriorates;
 - 3.4.2. a Material Adverse Effect;
- 3.5. the Borrower agrees and undertakes that the Loan must be drawn down in full on the 30th of June 2022, failing which, without limiting the Bank's other rights, Break Costs will be payable.
- 3.6. the Borrower agrees that in addition to Appendix 1, Clause 3.5 in the event of Prepayment, it will also be liable to the Bank for the present value of all the future total margins, calculated by using the appropriate risk free discount rates.

APPENDIX 2

STANDARD TERMS AND CONDITIONS

1. STANDARD FINANCIAL TERMS

For the purposes of clause 10 of the Agreement (headed "Financial Covenants"), the following words and phrases shall have the meanings ascribed thereto below. To the extent that a term defined below is not used in clause 10 of the Agreement, it may be ignored.

- 1.1. "Cash on Hand" means cash held by the Borrower in any bank account but excludes cash which may be drawn on or against overdraft;
- 1.2. "Cumulative Total Debt Service Cover" means, for any Required Period, the ratio (expressed as a multiple) of (1) Free Cash Flow plus Cash on Hand at the beginning of the relevant Required Period to (2) Total Debt Service. Expressed differently, it is Free Cash Flow plus the Cash on Hand at the beginning of the relevant Required Period divided by Total Debt Service for the same Required Period;
- 1.3. "EBITDA" means operating income before interest, tax, depreciation and amortisation of any intangibles, but excludes extra-ordinary items;
- 1.4. "Free Cash Flow" means EBITDA less tax charged to the income statement (excluding movements in deferred tax), plus / less (as the case may be) changes in Net Working Capital, less capital expenditure incurred, plus proceeds received as a result of the disposal of the Borrower's assets;
- 1.5. "Good Ceded Debtors" means all debtors, exclusive of those debtors outstanding for longer than 60 (sixty) days, bad and doubtful debt, intra-group debtors and such other accounts as the Bank may identify and advise upon;
- 1.6. "Interest Bearing Debt" means, on any day, the aggregate of all interest bearing amounts owing by the Borrower to third parties;
- 1.7. "Net Debt" means Senior Debt minus Cash on Hand;
- 1.8. "Net Working Capital" means (1) the movement in the current assets of the Borrower over the Required Period minus (2) the movement in the current liabilities of the Borrower over the same Required Period;
- 1.9. "Required Period" means any period, as required by the Bank in the Agreement, the Facility Letter or as otherwise agreed to by the Parties in writing, over which a particular financial condition of the Borrower is to be measured. Unless otherwise instructed, the Required Period shall be the period which commences on the start of the Borrower's financial year and which ends on the last day of the Borrower's financial year;
- 1.10. "Senior Debt" means all debt owing by the Borrower which, (1) is interest bearing and (2) in a liquidation scenario, ranks equal to or ahead of the Loan. For the avoidance of doubt, any term loans, overdrafts, asset finance facilities or other credit granted by the Bank or any of its divisions and/or any other bank or financial services provider to the Borrower shall be Senior Debt;
- 1.11. "Senior Debt Service" means, for any Required Period, the aggregate of the interest and capital payable by the Borrower on all Senior Debt over that Required Period;
- 1.12. "Senior Debt Service Cover" means, for any Required Period, the ratio (expressed as a multiple) of (1) Free Cash Flow to (2) Senior Debt Service. Expressed differently, it is the Free Cash Flow for any Required Period divided by the Senior Debt Service for the same Required Period;
- 1.13. "Subordinated Debt" means:
 - 1.13.1. any loans or other claims for the payment of money held by the creditors of the Borrower against the Borrower; and
 - 1.13.2. any other amounts owing by the Borrower to any party has been specifically subordinated to the Senior Debt and specifically includes what is commercially known as "mezzanine debt" or "junior debt";
- 1.14. "Total Assets" means all assets reflected as such on the Borrower's most recent financial statements (whether audited or not);
- 1.15. "Total Debt Service" means, for any Required Period, the aggregate amount of the interest and capital payable by the Borrower on all Senior Debt as well as all Subordinated Debt over that Required Period;

- 1.16. "Total Debt Service Cover" means, for any Required Period, the ratio (expressed as a multiple) of (1) Free Cash Flow to (2) Total Debt Service. Expressed differently, it is the Free Cash Flow for any Required Period divided by the Total Debt Service for the same Required Period;

2. STANDARD UNDERTAKINGS

For the duration of the period which commences on the Signature Date and which terminates on the Discharge Date, the Borrower gives the undertakings contained in clause 2 below to the Bank. Each of these undertakings is (1) separate and distinct, (2) shall not be qualified by or limited with reference to any other undertaking and (3) is material.

2.1. Negative Undertakings - the Borrower shall not:

- 2.1.1. create or permit to subsist any Encumbrance over, or Dispose of, whether by one or more transactions or series of transactions (whether related or not and whether voluntarily or involuntarily) any or the Borrower's present or future assets except (1) as a part of the normal conduct in the ordinary course of the Borrower's business or (2) for any security which, as at the Signature Date, has been provided by the Borrower in respect of this Agreement or any Disposal in the ordinary course of its business;
- 2.1.2. acquire any assets or any interest in, or amalgamate with, any other company or other party whatsoever except if such acquisition or amalgamation is a result of or done pursuant to this Agreement;
- 2.1.3. incur any borrowings, liability or other indebtedness (other than pursuant to this Agreement, the Facility Letter and/or the Security Documents) provided that the condition contained in this clause shall not be construed as a prohibition on the incurrence of credit from trade creditors as part of the normal conduct in the ordinary course of the Borrower's business;
- 2.1.4. give any financial assistance, make any loans or grant or extend any credit or give any guarantee, suretyship or indemnity (except as required in this Agreement and/or Security Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any other person, provided that the condition contained in this clause shall not be construed as a prohibition on the provision of credit given by the Borrower to its trade debtors or employees as part of the normal conduct in the ordinary course of the Borrower's business;
- 2.1.5. make any change to the general nature or scope of its business as a whole from that which is carried on as at the Signature Date;
- 2.1.6. change its accounting policy and practice from that which it has at Signature Date except to the extent to which it is necessary to do so in order to comply with generally accepted accounting principles in the Republic of South Africa and with internationally accepted accounting standards;

2.2. Positive Undertakings – the Borrower shall:

- 2.2.1. ensure that its Audited Financial Statements are prepared in accordance with GRAP or IFRS or any other reporting standard acceptable by the Bank;
- 2.2.2. deliver the Audited Financial Statements to the Bank as soon as they become available, but in any event not later than 180 (one hundred and eighty) days (or such longer period as may be agreed in writing with the Bank) of the Borrower's Financial Year End;
- 2.2.3. provide the Bank with such other material information in relation to the Borrower's financial affairs as the Bank may, on 5 (five) Business Days' written notice, reasonably require;
- 2.2.4. if it becomes aware of the occurrence of any facts or circumstances which may result in a Material Adverse Effect or in the occurrence of an Event of Default or a Potential Event of Default, forthwith and in writing advise the Bank of such facts and/or circumstances;
- 2.2.5. comply in all respects with all Applicable Laws if failure to do so could be expected to have a Material Adverse Effect;
- 2.2.6. forthwith notify the Bank if any litigation, arbitration or administrative proceedings are commenced against the Borrower if such proceedings could be expected to have a Material Adverse Effect;
- 2.2.7. obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of the Republic of South Africa to enable it lawfully to enter into and perform its obligations under this Agreement, to conduct its business and affairs and to ensure the legality, validity, enforceability or admissibility into evidence in the Republic of South Africa of this Agreement;

- 2.2.8. within 7 (seven) Business Days of receipt of a written request by the Bank, deliver documentary proof to the Bank of the obtaining by the Borrower of the authorisations, approvals, licences and consents envisaged in clause 2.2.7 above;
- 2.2.9. pay all and any Taxes which it becomes obliged to pay and furnish to the Bank, within 5 (five) Business Days of a written request, documentary proof that it has done so;
- 2.2.10. supplement, from time to time, any information given by it to the Bank in respect of the transactions contained in this Agreement, in order to ensure that such information remains complete and correct in all material respects;
- 2.2.11. deliver to the Bank –
 - 2.2.11.1. simultaneously with delivery of copies of the Audited Financial Statements; or
 - 2.2.11.2. within 5 (five) Business Days of receipt of a written request by the Bank, a certificate under the hand of an authorised official of the Borrower to the effect that no Event of Default or Potential Event of Default has occurred or, if an Event of Default or a Potential Event of Default has occurred, specifying details thereof and the steps being taken to remedy it; and
 - 2.2.11.3. supply to the Bank all material documents dispatched by the Borrower to its creditors generally at the same time as they are dispatched. By "material documents" the parties intend to include any document which deals with and/or may impact on (or may reasonably be expected to impact on) the Borrower's business and business interests, its ownership or management;

3. STANDARD WARRANTIES

- 3.1. The Borrower hereby provides the warrants contained in this clause 3 below to and in favour of the Bank. Each of these warranties:
 - 3.1.1. is separate and distinct;
 - 3.1.2. is material;
 - 3.1.3. has induced the Bank to enter into this Agreement;
 - 3.1.4. is given, save where otherwise indicated, as at the Signature Date and shall be deemed to have been repeated on each day between the Loan Draw-down Date and the Discharge Date.
- 3.2. The Borrower hereby warrants that;
 - 3.2.1. It is not prohibited in terms of Applicable Law or otherwise, from entering into this Agreement and/or the Security Documents;
 - 3.2.2. each of this Agreement and/or the Security Documents are valid and fully enforceable against the Borrower in accordance with its terms;
 - 3.2.3. it is not in breach of or in default under any other agreement to which it is a party or which is binding on it or any of its assets, or under any of its constitutive documents, to an extent or in a manner, which may have a Material Adverse Effect;
 - 3.2.4. all information (as supplemented from time to time) that has been made available or will hereafter be made available to the Bank by the Borrower in connection with the transactions envisaged in the Agreement and Security Documents, is and will at all times be complete and correct in all respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made;
 - 3.2.5. all actions to be taken in order:
 - 3.2.5.1. to enable the Borrower lawfully to enter into, exercise its rights under and perform and comply with its obligations under this Agreement and/or the Security Documents; and
 - 3.2.5.2. to ensure that the obligations of the Borrower under this Agreement and/or Security Documents are enforceable, legal and valid, have been taken;
 - 3.2.6. no other legal suit, action, proceeding or process of or before any court, arbitrator, arbitral tribunal or governmental authority that might have a Material Adverse Effect has been commenced or, to the best of the Borrower's knowledge and belief, have been threatened. In addition, the Borrower has not received any communications from, nor is it aware of any proceedings by, any authority which could have a Material Adverse Effect;

- 3.2.7. no facts or circumstances have occurred which may have a Material Adverse Effect;
- 3.2.8. the Borrower has no liabilities (contingent or otherwise) that have not been disclosed by it in writing in the most recent management accounts to the Bank nor does it have any unrealised or anticipated losses arising from commitments made by it that were not disclosed;
- 3.2.9. the execution or delivery of this Agreement by the Borrower and any exercise by the Borrower of its rights and performance of its obligations thereunder do not and shall not conflict with any:
- 3.2.9.1. agreement, mortgage bond, deed or other instrument to which it is a party or which is binding upon it or any of its assets;
- 3.2.9.2. of the Borrower's memorandum of incorporation and/or articles of association and/or otherwise;
- 3.2.9.3. any Applicable Law, court order or decision by any arbitor, arbitral tribunal or governmental authority, which is binding on the Borrower;
- 3.2.10. no Event of Default or Potential Event of Default might reasonably be expected to result from the conclusion of this Agreement or the advance of the Loan to the Borrower;
- 3.2.11. it has good title to all its assets and the Borrower has not Disposed of or Encumbered such assets, nor will the Borrower Dispose of or Encumber such asset save as reflected in the Audited Financial Statements;
- 3.2.12. the acceptance of this Agreement has been duly authorised by the Borrower and does not contravene any law or any contractual obligation binding upon it;
- 3.2.13. it is not in default in respect of any of its obligations in respect of money advanced and no event specified as constituting an Event of Default as set forth above has occurred and is continuing;
- 3.2.14. all information supplied or to be supplied to the Bank by the Borrower concerning the Borrower's business whether contained in the Borrower's Audited Financial Statements and other financial statements or accounts or otherwise, is true and correct in all material respects and will in future be true and correct in all material respects.
- 3.2.15 it shall ensure that –
- 3.2.15.1 the financial statements delivered, as provided for in this agreement, are prepared in accordance with the GRAP, IFRS or any other reporting standard acceptable by the Bank;
- 3.2.15.2 the financial statements delivered, as provided for in this agreement, are certified by the Municipal Manager as giving a true and fair view of the financial condition of the Borrower as at the end of the period to which those financial statements relate and of the result of its operations during such period;
- 3.2.15.3 each set of financial statements delivered, as provided for in this agreement, has been audited by the Auditor-General (being that person appointed as Auditor-General in terms of Section 193 of the Constitution of the Republic of South Africa, 1996).
- 3.2.16 by signing and accepting this agreement, the Borrower irrevocably guarantees and undertakes unto and in favour of the Bank that insofar as its facilities granted by the Bank is concerned, the Borrower is complying and will continue to comply with the provisions any Applicable Law has concluded this agreement in accordance with the requirements of MFMA and other Relevant Legislation and has entered into this agreement through its Council and Accounting Authority;
- 3.2.18 the signatory/ies on behalf of the Borrower warrant that they are duly authorised to sign this Agreement;
- 3.2.19 that the provisions of section 48(3), if applicable, of the MFMA was adhered to and it was resolved that the collateral security provided is an asset or right that is not necessary for providing the minimum level of basic municipal services.

3.3. Environmental Responsibility

- 3.3.1. The Borrower warrants and represents to the Bank that it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to it in each jurisdiction in which it conducts business (its "Environmental

Responsibility") and hereby undertakes to continue to do so for so long as the Borrower is indebted to or owes any obligations to the Bank under or in terms of this Agreement.

3.3.2. The Borrower warrants that it is not aware of any circumstances which may prevent full compliance with its Environmental Responsibility in future.

3.3.3. The Borrower hereby indemnifies the Bank against any loss, damage, claims, costs or any other liability, which may arise (because of this or any other banking facility and/or the Bank having an interest in the Borrower's assets) in respect of a breach of, or a failure, by the Borrower to meet its Environmental Responsibility.

4. EVENTS OF DEFAULT

4.1. An Event of Default shall occur if any of the following events, each of which shall be severable and distinct from the others, occurs (whether or not caused by any reason whatsoever outside the control of the Borrower or any other person):

4.1.1. the Borrower fails to pay any amount due in terms of this Agreement;

4.1.2. the Borrower fails to comply with any of its obligations pursuant to this Agreement or any of the Security Providers fail to comply with any of the terms and conditions of the Security Documents and, if such failure is capable of being remedied in terms of the applicable agreement, the Borrower or any of the Security Providers does not remedy such failure within the period provided for in this Agreement or the Security Documents; or

4.1.3. the Borrower fails to comply with or maintain any of the Financial Covenants contemplated in the Agreement; or

4.1.4. the Borrower and/or any of the Security Providers enter into any compromise, composition or arrangement with any of its/their creditors or attempts to do so; or

4.1.5. the Borrower ceases to carry on its business in a normal and regular manner; or

4.1.6. the Borrower and/or any of the Security Providers default in the due payment or due performance of any amount payable or obligation to be performed by the Borrower and/or Security Providers under any other agreement which amount or which obligation the Bank considers to be material; or

4.1.7. any indebtedness or obligation for monies borrowed constituting an indebtedness of the Borrower and/or any of the Security Providers shall become due and payable prior to its specified maturity by reason of default, or shall not be paid when due; or

4.1.8. the Borrower and/or any of the Security Providers default in the due payment of any amount falling due for payment under any suretyship or guarantee to which it is a party; or

4.1.9. the Borrower and/or any of the Security Providers suffer any default judgment against them which remain unsatisfied for a period of 30 (thirty) days, or is refused rescission of any default judgment; or

4.1.10. the Borrower and/or any of the Security Providers stop payment of any liquid document made payable to the Bank or any of its divisions; or

4.1.11. the Borrower and/or any of the Security Providers fail for whatever reason at any time during the duration of this Agreement to record a trading profit during any one or more year's trading, unless condoned by the Bank in writing; or

4.1.12. any warranty or undertaking contained (1) in clause 3 above, or (2) in the Facility Agreement (if applicable) is breached; or

4.1.13. it is or becomes unlawful for the Borrower and/or any of the Security Providers, to perform any of their obligations under this Agreement and/or the Security Documents; or

4.1.14. the Borrower and/or any of the Security Providers is placed under provisional or final liquidation or provisional or final judicial management or takes steps for their voluntary winding-up or business rescue; or

4.1.15. any order of court (whether provisional or final) is granted for the winding-up or the liquidation of (as the case may be) of the Borrower and/or any of the Security Providers; or

4.1.16. the Borrower, any guarantor or Surety (if any) take any action intended to commence business rescue proceedings;

4.1.17. a receiver or similar officer is appointed in respect of the Borrower and/or any of the Security Providers in respect of all or any material part of its/ their assets; or

- 4.1.18. any judgement of any court or arbitration award against the Borrower and/or any of the Security Providers remain unsatisfied for a period of 10 (ten) Business Days after it has been granted against the relevant entity concerned; or
- 4.1.19. any asset or assets of the Borrower and/or any of the Security Providers (which, in the reasonable opinion of the Bank are material given the size of the Borrower's and/or Security Providers' businesses or balance sheets) are attached under a writ of execution and the relevant entity concerned fail to stay such execution for more than 30 (thirty) days after having been notified thereof in writing; or
- 4.1.20. any indebtedness of the Borrower and/or any of the Security Providers is or is declared to be or is capable of being rendered due and payable before its agreed or normal maturity by reason of any actual default, event of default or the like (however described) or is not paid when due or within the applicable grace period in any agreement relating to that indebtedness or, as a result of any actual default, event of default or the like (however described), any facility relating to such indebtedness is or is declared to be or is capable of being cancelled or terminated before its agreed or normal expiry date, or any person otherwise entitled to use any such facility is not entitled to do so; or
- 4.1.21. the Borrower and/or any of the Security Providers commit an act which is or would, (if committed by a natural person) be an act of insolvency within the meaning of Section 8 of the Insolvency Act No 24 of 1936; or
- 4.1.22. the Borrower and/or any of the Security Providers is unable to or admit an inability in writing to pay its/their debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its/ their indebtedness to any other creditors, commences negotiations or take any other step with a view to the deferral, rescheduling or other readjustment of all (or all of a particular type of) its/their indebtedness to creditors (or of any part of such indebtedness which it/they will or might otherwise be unable to pay when due), propose or make a general assignment or an arrangement or composition with or for the benefit of its/ their creditors or a moratorium is agreed or declared in respect of or affecting all or a part of the indebtedness of the Borrower and/or any of the Security Providers to the Bank; or
- 4.1.23. the Borrower repudiates this Agreement or does or causes to be done any act or thing which, in the opinion of the Bank, evidences an intention to repudiate this Agreement; or
- 4.1.24. the Borrower and/or any of the Security Providers breach or repudiate any of the Security Documents and fail to remedy such breach or repudiation, where a remedy period is provided for; or
- 4.1.25. any event or series of events occur which, in the sole opinion of the Bank, may have a Material Adverse Effect; or
- 4.1.26. any Security Document is breached by any party thereto as provided for therein; or
- 4.1.27. if the Borrower fails to fulfil any outstanding Disbursement Conditions within 30 (thirty) days of the Disbursement Date, provided that this clause 4.1.27 shall apply only if and to the extent that the Bank has allowed disbursement of the Loan prior to the Disbursement Conditions having been duly fulfilled.
- 4.1.28. by or under the authority of any government:
- 4.1.28.1. the management of the Borrower is wholly or partially displaced or the authority of the Borrower in the conduct of its business is wholly or partially curtailed
- 4.1.28.2. at any time it is or it becomes unlawful for the Borrower to perform or comply with any or all of its obligations under this Agreement or any of the obligations of the Borrower under the Facility Agreement if cease to be legal, valid and binding; or
- 4.1.29. any action to submit to arbitration any matter involving a decision on the Borrower's status, powers or duties or the validity of its actions or by-laws as prohibited in terms of Section 109 of the Local Government: Municipal Systems Act, 2000;
- 4.1.30. any decision by the Municipal Council to dissolve itself; or
- 4.1.31. any provincial intervention by the Borrower's provincial executive or Member of the Executive Council for local government (whether discretionary or mandatory) in terms of Section 139 of the Constitution of the Republic of South Africa, 1996.
- 4.2. Upon the occurrence of an Event of Default and if the Default has not been rectified within a period of 10 (ten) business days notice to you, the Bank shall, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law including, without limitation, its right to claim damages, have the right, without further notice, to:

- 4.2.1. accelerate or place on demand payment of all amounts owing, whether in respect of principal, interest or otherwise and all such amounts shall immediately become due and payable; and/or
- 4.2.2. decline any request by the Borrower to draw down any further monies under the Loan (if applicable) or terminate the Loan forthwith; and/or
- 4.2.3. call up and execute on any Security and Security Document which it holds.

Notwithstanding anything to the contrary contained in the Facility Agreement or any other agreement between the Bank and the Borrower it is agreed that, in the event of the Borrower being in breach of the terms of this or any other agreement between the parties, the Bank will not be obliged to pay any amounts or to perform any obligations due to the Borrower until all amounts owed and all performances due by the Borrower to the Bank have been paid in full or are fully performed

5. TAXES

- 5.1. Any payment whatsoever to be made by the Borrower to the Bank under this Agreement or any of the Security Documents shall be made free and clear of and without deduction for or on account of any tax whatsoever unless the Borrower is, under Applicable Law, required to make such payment subject to the deduction or withholding of tax, in which case the amount payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Bank receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the amount which it would have received and so retained had no such deduction or withholding been required to be made.
- 5.2. Without limiting the generality of clause 5.1 above, the Borrower indemnifies the Bank against any payment required to be made under any Applicable Law by the Bank on account of Tax (other than income tax payable by the Bank in the normal course of its business) in relation to any amount received or receivable under this Agreement by the Bank (including, without limitation, any amount received or receivable under this clause 5.2 and against any liability imposed, levied or assessed against the Bank in respect of any such payment.
- 5.3. If, at any time, the Borrower is required under Applicable Law to make any deduction or withholding as contemplated in clause 5.1 above (or if thereafter there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), then the Borrower shall promptly notify the Bank.
- 5.4. If the Borrower makes any payment under this Agreement in respect of which it is required to make any deduction or withholding, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under Applicable Law and shall deliver to the Bank, within 30 (thirty) days after it has made such payment to the applicable authority, an original receipt (or a certified copy) issued by such authority evidencing the payment to such authority of all amounts so required to be deducted or withheld.
- 5.5. If the Borrower makes any payment envisaged in clause 5.4 above and if the Bank is entitled, as a result of such payment to any reduction in the amount of any Taxes payable by it, the Bank shall, within 3 (three) Business Days of receipt by it of the receipt (or copy thereof) envisaged in clause 5.4 above, pay the amount of the aforesaid reduction to the Borrower.

6. NO DEDUCTION OR SET-OFF

The borrower shall make payment of all amounts which may become payable by it to the Bank pursuant to this Agreement (whether in respect of interest, principal debt or otherwise) by paying such amounts to the Bank free of exchange or other deduction and without the right of set-off or deferment or avoidance by virtue of any counterclaim or set-off, directly into the account of the Bank by 15h00 on the due date for payment thereof.

7. CHANGE IN CIRCUMSTANCES

- 7.1. If, by reason of -
- 7.1.1. any Change in present or future Applicable Law; and/or
- 7.1.2. any new Applicable Law is promulgated, given or adopted; and/or
- 7.1.3. there are any changes in the interpretation or administration of any Applicable Law by any relevant monetary or fiscal authority or comparable agency changed with the interpretation or administration thereof; and/or

- 7.1.4. any directive, requirement, request or guidance, after the Signature Date, (whether or not having the force of law) or the interpretation of any directive, requirement, request or guidance now existing of any central bank or any other fiscal, monetary, regulatory or other authority; and/or
- 7.1.5. any change in banking practice, as it affects or is applied generally by any financial institution in the Republic; and/or
- 7.1.6. a requirement or a request by any statutory or monetary authority, to pay Taxes or other amounts whatsoever or to maintain special deposits or reserve assets; and/or
- 7.1.7. any compliance by the Bank with any reserve, cash ratio, special deposit or liquidity requirements (or any other similar requirements) in respect of the agreements; and/or
- 7.1.8. any compliance by the Bank with any capital adequacy or similar requirements howsoever arising, including as a result of an increase in the amount of the capital to be allocated to the amount advanced under this Agreement or of a change of weighting of the commitment under this Agreement,

there are any Increased Costs, then the Borrower shall forthwith on demand pay to the Bank the amount of any Increased Costs incurred by the Bank determined with effect from the date of such change to compensate the Bank for such Increased Costs, whether retrospectively or not and for such period while such circumstances continue.

- 7.2. If the Bank becomes entitled to the payment of Increased Costs it shall deliver a certificate setting out the amount of such Increased Costs to the Borrower. The aforesaid certificate shall be executed by any manager of the Bank (whose authority and appointment need not be proved) and shall, in the absence of manifest error, be *prima facie* proof of the amount of the Increased Costs set out therein.
- 7.3. If any Increased Costs becomes payable by the Borrower pursuant to clause 7.1 above and provided that the Borrower has paid such Increased Cost to the Bank, the Borrower shall be entitled, on not less than 30 (thirty) days' prior written notice to the Bank, to pay the Bank –

- 7.3.1. the balance then outstanding on the Loan;
- 7.3.2. all and any other amounts which have become payable by the Borrower to the Bank pursuant to this Agreement (whether in respect of interest or otherwise); and

provided that the 30 (thirty) days' written notice envisaged above shall be given by the Borrower to the Bank within seven days of the date on which the Borrower makes payment of the applicable Increased Cost.

- 7.4. Clause 7.1 above shall not apply to any Increased Costs attributable to any change in the rate of tax on the overall net income of the Bank.

8. ACCELERATED REPAYMENT

- 8.1. If there is a Change in Law which renders, will render or may have the effect of rendering this Agreement and/or any of the agreements or anything done or to be done pursuant thereto illegal, invalid or unenforceable and the Parties in good faith fail to rectify such illegality, invalidity or unenforceability (provided such illegality, invalidity or unenforceability is capable of being rectified), or agree upon alternative acceptable provisions, within 10 (ten) Business Days or such longer period as may be agreed to between the Parties, after receipt of notice from the Bank advising the Borrower of the relevant change, then the Bank shall, in addition to and without prejudice to any other rights it may have in terms of this Agreement or in law, be entitled to call upon the Borrower without further notice to repay the outstanding Loan at such date together with all accrued interest thereon plus any other amounts outstanding in terms of this Agreement, which amounts shall immediately become due and payable.

9. TELEPHONE RECORDINGS

Each of the Bank and the Borrower agrees:

- 9.1 to the electronic recording of its telephone conversations with the other party with respect to transactions governed by this facility agreement, any potential transaction or in respect of any transactions which if entered into by the parties would be governed by this facility agreement, with or without the use of an automatic tone warning device or other notice thereof and each party further agrees to (A) obtain any necessary consents from, and give notice to, its trading, marketing and other relevant personnel in respect of such recording, and (B) each party will be deemed to have obtained any necessary consent from, and given notice to, its trading, marketing and other relevant personnel in respect of such recording;

9.2 that such recordings and transcripts can be used as evidence by either party in any dispute between them and will be admissible as evidence in any court of competent jurisdiction for the purpose of establishing any matters pertinent to such transactions, any potential transaction or otherwise related to this facility agreement; and

9.3 that neither party is obliged to maintain copies of such recordings and transcripts for the benefit of the other party.

10. COPIES

The Parties agree that a scanned or electronically reproduced copy or image of the Agreement will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof, notwithstanding the failure or inability to produce or tender an original, executed counterpart of the Agreement and without the requirement that the unavailability of such original, executed counterpart of the Agreement first be proven.

11. SANCTIONS

The Bank may, as a consequence of anti-terrorism or anti-money laundering requirements and Know Your Customer requirements of the Bank (Financial Intelligence Centre Act requirements) and local and international sanctions and the Bank's policies relating to the aforesaid or the Borrower being involved in undesirable conduct, refuse any instructions or deals and may terminate any deal or the business relationship with the Borrower or refuse to honour any instrument or carry out any transaction and the Bank shall not be liable for any direct, indirect or consequential loss, damage, costs or expenses whatsoever that may be suffered or incurred by the Borrower as a result of, arising from, or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause, provided that the Borrower shall remain liable to the Bank for all amounts in terms of this Agreement.