29 March 2022

Midvaal Local Municipality
25 Mitchell Street
Meyerton
1871

Dear Sirs

BANKING FACILITIES

Nedbank Limited (acting through its Nedbank Business Banking division) (**Nedbank**) is pleased to offer the banking facilities described below to the Borrower upon the terms and conditions contained herein.

For purposes of interpretation, this offer letter (**Offer Letter**), read together with the general facility provisions (including Schedule 1 and Schedule 1) (**General Provisions**) and Appendices hereto, shall be referred to as the **Facility Letter**.

Terms defined in the General Provisions shall, unless otherwise stated, or the context otherwise requires, apply to the Offer Letter.

1 **BORROWER**

Midvaal Local Municipality (**Borrower**).

2 **AGGREGATE AMOUNT OF FACILITIES**

R6,725,000.00 (SIX MILLION SEVEN HUNDRED AND TWENTY FIVE THOUSAND).

3 **PURPOSE**

The Facilities may be used for general corporate purposes.

Business Banking | Gauteng | Central

Lakeview Campus 16 Constantia Boulevard Constantia Kloof 1706

T 011 534 6779 F 011 534 9345

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4 FACILITIES

In this Facility Letter all facilities and instruments described in this clause shall collectively be referred to as the **Facilities**, and **facility** or **instrument** shall refer to any of them as suggested by the context.

The terms and conditions contained in this Facility Letter are applicable to the Facilities and to the relevant instruments offered to the Borrower, provided however that some of the Facilities, are subject to additional specific terms and conditions contained in further separate agreements concluded or to be concluded between, inter alia, the Parties, all as amended, novated or extended from time to time and if there is any conflict between the provisions of the further separate agreements governing those Facilities and the terms and conditions of the Facility Letter, the provisions contained in the further separate agreements shall prevail.

The following Facilities are made available to the Borrower, subject to the terms applicable to each Facility contained in Schedule 1 of the General Provisions:

4.1 **Asset Based Finance Facility**

4.1.1 An asset based finance Facility with a maximum tenor of 5 (five) years for an amount up to R6,725,000.00 (six million seven hundred and twenty five thousand rand), the terms and conditions of which are more fully set out in separate agreements entered into between the Borrower and Nedbank, as amended from time to time.

5 CONDITIONS OF UTILISATION

5.1 The Borrower may not utilise a Facility unless Nedbank has received all of the following documents and other evidence in form and substance satisfactory to Nedbank (Nedbank shall notify the Borrower promptly upon being so satisfied):

5.1.1 receipt by Nedbank of a certified true copy of a resolution by the municipal council signed by the Mayor approving the entry into and performance by it of the Finance Documents to which it is party and giving the municipal manager / city manager the power to execute the aforesaid documents and all documents required to be delivered thereunder) and to perform all acts required thereunder and in order to render the same unconditional in accordance with the MFMA and/or any Governing Legislation.

5.1.2 Nedbank to be satisfied that the proposed transaction is not in conflict with, or contravenes, any Sanctions.

5.2 The Borrower shall use its best endeavours to procure the fulfilment at its cost, of the conditions of utilisation in this clause 5.1 of this Offer Letter on or before **3 May 2022**.

5.3 The conditions of utilisation in this clause 5.1 of this Offer Letter have been stipulated for the benefit of Nedbank and Nedbank shall be entitled to waive fulfilment of all or any part of such conditions by giving written notice to that effect to the Borrower, on such terms and conditions as Nedbank may impose at the time and the fulfilment thereof to Nedbank's satisfaction.

6 UNDERTAKINGS

In addition to the undertakings given in the General Provisions, the Borrower undertakes to furnish Nedbank with:

6.1 Audited Financial Statements of the Borrower as soon as they become available but in any event within 210 days after the end of each Financial Year.

6.2 All other financial information with which a shareholder is entitled to be furnished with by the Borrower, within 30 days after such information have become available to the Borrower.

6.3 A copy of the Constitutional Documents of the Borrower, at any time Nedbank requests same.

6.4 Any other information Nedbank may reasonably request from time to time.

7 DOMICILIUM CITANDI ET EXECUTANDI

7.1 The Parties choose the addresses set out opposite their names below as their *domicilium citandi et executandi* (whether in respect of notices, court processes or any other documents or communications of whatsoever nature) for all purposes of this Facility Letter:

7.1.1 **Nedbank**

Physical: Nedbank 135 Rivonia Campus, 135 Rivonia Road, Sandown, 2196, South Africa;

Email: shelleym@nedbank.co.za;

Attention: Head: Retail and Business Banking.

7.1.2 **Borrower**

Physical: 25 Mitchell Street, Meyerton, 1871;

Fax: 016 360 7519.

Attention: Departmental Head: Finance.

7.2 Any notice, document, proof, advice, disclosure, consent, approval, condonation, demand, confirmation, certification, request or communication referred to, required, or permitted to be given in terms of this Facility Letter shall be valid and effective only if in writing. It shall be acceptable to give notice by fax provided that proof of such fax transmission is provided to the Party to whom notice is addressed and physical copies of the notice or communication are delivered to the aforesaid address of the Party to whom such notice is addressed within 3 Business Days of such fax transmission.

7.3 Any Party may by written notice to the other Parties change its chosen address to another physical address in South Africa, provided that the change shall become effective on the 7th day after delivery of such notice to the addressee.

7.4 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address shall be deemed to have been received, unless the contrary is proved, on the first Business Day after delivery.

7.5 Notwithstanding anything to the contrary contained in this clause 7, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered in accordance with the provisions of this clause 7.

8 REVIEW OF FACILITIES AND INTEREST RATE

8.1 Nedbank shall be entitled to review the Facilities throughout their duration, including any renewals and extensions thereof:

8.1.1 at any time; and

8.1.2 once the Financial Statements, interim financial statements or management accounts (as the case may be) of the Borrower and/or each Security Provider is made available as required in this Offer Letter.

8.2 The interest rate applicable to asset-based finance facility will be equivalent to 5.75% (five point seven five percent) and charged by Nedbank.

9 REPLACEMENT

On the Signature Date, the Facilities offered in this Facility Letter, constitutes new facilities that are owing, subject to the terms of this Facility Letter. Notwithstanding the aforesaid, all Security provided or contemplated in all previous facility letters and other facilities shall remain in place and of full force and effect and shall serve as Security under this Facility Letter, unless released in terms of this Facility Letter

10 EXPIRY AND ACCEPTANCE

10.1 The Offer contained in this Facility Letter is open for acceptance until **3 May 2022**. If the Offer is not accepted by the Borrower on or before such date, the Offer shall lapse, and this Facility Letter shall be of no force and effect. If the Borrower signed this Facility Letter after such date, the Borrower shall be deemed to have made Nedbank a counter-offer to enter into this Facility on the same terms and Nedbank may accept such offer at any time by signing this Facility Letter and/or making the Facilities set out herein available for utilisation by the Borrower.

10.2 We thank you for the opportunity to submit this Offer and trust that it meets your requirements. Should you require any further information or clarification, please contact **Bongi Manyongwana** at 083 633 9304.

If the terms of this Facility Letter are acceptable to the Borrower, kindly have an authorised official of the Borrower sign this Facility Letter and return it to Nedbank by not later than **3 May 2022**, together with a resolution of the board of directors of the Borrower authorising the signing official to accept the Facilities on behalf of the Borrower.

Yours faithfully

....	NB 209 787 ....
Bongi Manyongwana **Business Manager** **For and on behalf of the Business Banking Division of Nedbank Limited (Reg No 1951/000009/06)**	**Ajesh Parumasur** **Credit Manager** **For and on behalf of the Business Banking Division of Nedbank Limited (Reg No 1951/000009/06)**
42606	CFinlayson ....
Derek Ramlachan **Area Client Manager** **For and on behalf of the Business Banking Division of Nedbank Limited (Reg No 1951/000009/06)**	**Cathrene Finlayson** **Senior Manager: Credit** **For and on behalf of the Business Banking Division of Nedbank Limited (Reg No 1951/000009/06)**

Accepted at ....Meyerton........ on this the ....17.... day of ....April.... 2022

For and on behalf of:
MIDVAAL LOCAL MUNICIPALITY
(who hereby warrants his authority)

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Schedule 1

General Provisions

1 DEFINITIONS AND INTERPRETATION

In this Facility Letter, unless clearly inconsistent with or otherwise indicated by the context:

1.1 The following expressions shall bear the meanings ascribed to them hereunder and cognate expressions shall have corresponding meanings:

1.1.1 **Accounting Principles** means GRAP as applied in South Africa.

1.1.2 **Accounting Standard** means any of IFRS, GRAP, GAMAP, which might be applicable to the Borrower, or whatever other accounting standard might be imposed on the Borrower by law.

1.1.3 **Accounts** means any and/or all accounts which the Borrower holds with Nedbank which are current in nature and payable on demand, including but not limited to, current accounts.

1.1.4 **Affected Instrument** bears the meaning ascribed thereto in clause 3 of this Schedule 1.

1.1.5 **Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

1.1.6 **Applicable Laws** means, including, but not limited to, the Companies Act, the Banks Act, Basel II (the Framework established for the International Convergence of Capital Measurement and Capital Standards) and Basel III (upon its implementation) and any amendments or any successor thereto, common or customary law, treaty or other legislative measure applicable to Nedbank and/or the Obligor and includes any present or future directive, regulation, guideline, practice, concession, request or requirement whether or not having the force of law, but, if not having the force of law, the compliance with which is customary.

1.1.7 **Applicable Public Sector Legislation** means legislation applicable to the local sphere of government, including but not limited to the MFMA, the Local Government: Municipal Systems Act, No. 32 of 2000, Governing Legislation and any regulations thereto, the Local Government: Municipal Structures Act, No. 117 of 1998, the Public Audit Act, the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, and the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

1.1.8 **Asset** includes present, future and contingent property, movables and immovables, revenues and rights of every description.

1.1.9 **Authorisation** means an authorisation, consent, approval, resolution, permit, licence, exemption, filing, notarisation, lodgement or registration.

1.1.10 **Banks Act** means the Banks Act, No. 94 of 1990.

1.1.11 **Borrower** bears the meaning ascribed thereto in the Offer Letter.

1.1.12 **Business Day** means a day (other than a Saturday, Sunday or proclaimed public holiday) on which banks are open for general business in Johannesburg.

1.1.13 **Companies Act** means the Companies Act, No. 71 of 2008.

1.1.14 **Change of Control** means after the Signature Date, any person or group of persons who exercised Control as at the Signature Date, ceasing to have direct or indirect Control of the Borrower.

1.1.15 **Constitutional Documents** means the memorandum of incorporation (as such term is defined in the Companies Act) of a company incorporated under the Companies Act together with the rules of the company (if applicable) the registration certificate, the notice of amendment and/or the notice of incorporation (as may be applicable).

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1.1.16

1.1.17 **Encumber** or **Encumbrance** (and all infections thereof) in respect of any Asset, means any:

1.1.17.1.1 Mortgage, notarial bond, pledge, lien, assignment, or cession conferring security, hypothecation, security interests, preferential right or trust arrangement, lease, option or other encumbrance;

1.1.17.1.2 Securing any obligation of any person;

1.1.17.1.3 Arrangement under which money or claims to, or 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;

1.1.17.1.4 Other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security.

1.1.18 **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

1.1.18.1.1 air (including, without limitation, air within natural or man-made structures, whether above or below ground);

1.1.18.1.2 water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

1.1.18.1.3 land (including, without limitation, land under water).

1.1.19 **Environmental Claim** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

1.1.20 **Environmental Law** means any applicable law or regulation which relates to:

1.1.20.1.1 the pollution or protection of the Environment;

1.1.20.1.2 the conditions of the workplace; or

1.1.20.1.3 the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

1.1.21 **Environmental Permits** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of an Obligor.

1.1.22 **Event of Default** means any event or circumstance specified as such in clause 10 of this Schedule 1.

1.1.23 **Finance Document/s** means the Facility Letter and the Security Documents (if any).

1.1.24 **Financial Indebtedness** means any indebtedness, including for or in respect of:

1.1.24.1.1 moneys borrowed or credit granted;

1.1.24.1.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

1.1.24.1.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

1.1.24.1.4 the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;

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1.1.24.1.5 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

1.1.24.1.6 any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

1.1.24.1.7 any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

1.1.24.1.8 any amount raised by the issue of shares which are redeemable;

1.1.24.1.9 any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

1.1.24.1.10 the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clause 1.1.24.1.1 to clause 1.1.24.1.9 of this Schedule 1.

1.1.25 **Financial Statements** means the most recent financial statements of an Obligor, consolidated, if applicable and prepared in accordance with Accounting Principles.

1.1.26 **Financial Year** means the financial year of the Borrower, or any Security Provider, as suggested by the context.

1.1.27 **Foreign Currency** means any indebtedness or amounts in a currency other than Rand.

1.1.28 **GAMAP** means generally recognised municipal accounting practise.

1.1.29 **GRAP** means standards of Generally Recognised Accounting Practices.

1.1.30 **Governing Legislation** means the legislation in terms whereof the Borrower was established or which governs the Borrower.

1.1.31 **Holding Company** bears the meaning ascribed thereto in the Companies Act.

1.1.32 **Increased Cost Event** bears the meaning ascribed in clause 8.1 of this Schedule 1.

1.1.33 **Insolvency Act** means the Insolvency Act, No. 24 of 1936 or its equivalent provision under the MFMA.

1.1.34 **Material Adverse Effect** means an event, circumstance or matter or combination of events, circumstances or matters which, in Nedbank's reasonable opinion, has or may have a material adverse effect on:

1.1.34.1.1 the business, operations, property, condition (financial or otherwise) or prospects of each Obligor and/or the Group (taken as a whole);

1.1.34.1.2 the ability of each Obligor to perform any of its obligations under the Finance Documents to which it is party; or

1.1.34.1.3 the validity or enforceability of any of the Finance Documents or the rights or remedies of Nedbank under any of the Finance Documents.

1.1.35 **Mayor** shall bear the meaning ascribed to it in the MFMA

1.1.36 **MFMA** means the Local Government: Municipal Finance Management Act, No. 56 of 2003

1.1.37 **Municipal Council** shall bear the meaning ascribed to it in the MFMA.

1.1.38 **NACM** means nominal annual compounded monthly in arrears.

1.1.39 **Nedbank** means collectively Nedbank Limited (Registration Number 1951/000009/06), Nedbank Company or, if the context is appropriate, any one or both of them.

1.1.40 **Nedbank Affiliate** means Nedbank Group Limited and any Nedbank Company.

1.1.41 **Nedbank Company** means any Subsidiary of Nedbank Group Limited.

1.1.42 **Nedbank Group Limited** means Nedbank Group Limited (Registration Number 1966/010630/06).

1.1.43 **Net Overall Limit** means the amount agreed upon from time to time between the Borrower and Nedbank as the overall limit on utilisation of all current debt facilities of the Borrower at Nedbank utilising, *inter alia*, the Accounts.

1.1.44 **Obligor** means the Borrower and each Security Provider.

1.1.45 **Offer** means the offer of banking facilities made by Nedbank to the Borrower in the Facility Letter.

1.1.46 **Offer Letter** means the letter to which these general provisions are attached, addressed to the Borrower and containing amongst other things, the Offer.

1.1.47 **Outstanding Amount** means the aggregate amount by which the Facilities have been drawn down from time to time, together with all accrued and capitalised interest thereon, if any, together with any and all other amounts that may be owing by the Borrower to Nedbank in connection with the Facilities.

1.1.48 **Parties** means collectively the Obligors and Nedbank and **Party** shall, as the context requires, mean any one of them.

1.1.49 **Penalty Interest Rate** means the agreed contractual interest rate plus 3%.

1.1.50 **Preferential Procurement Policy Framework Act** means the Preferential Procurement Policy Framework Act, No. 5 of 2000.

1.1.51 **Preferential Procurement Regulations** means the preferential procurement regulations promulgated in terms of section 5 of the Preferential Procurement Policy Framework Act.

1.1.52 **Prevention and Combating of Corrupt Activities Act** means the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

1.1.53 **Preferential Procurement Policy Framework Act** means the Preferential Procurement Policy Framework Act, No. 5 of 2000.

1.1.54 **Preferential Procurement Regulations** means the Preferential Procurement Regulations promulgated in terms of section 5 of the Preferential Procurement Policy Framework Act.

1.1.55 **Prevention and Combating of Corrupt Activities Act** means the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

1.1.56 **Prime Rate** means the publicly quoted basic rate of interest (expressed as a nominal annual compounded monthly in arrears rate) levied by Nedbank from time to time on overdraft, calculated on a 365 day year, irrespective of whether the applicable year is a leap year, and proved, prima facie, in the event of a dispute and in the absence of manifest error, by a certificate under the hand of any manager of Nedbank, whose appointment and authority need not be proved.

1.1.57 **Public Audit Act** means the Public Audit Act, No. 25 of 2004.

1.1.58 **Rand** means South African Rands, the lawful currency of South Africa.

1.1.59 **Security** means in respect of any Asset, any:

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1.1.59.1.1 mortgage, notarial bond, pledge, lien, assignment, or cession conferring security, hypothecation, security interests, preferential right or trust arrangement, lease, option or other security securing any obligation of any person;

1.1.59.1.2 arrangement under which money or claims to, or 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;

1.1.59.1.3 other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security.

1.1.60 **Security Documents** means any agreement or document securing any obligation or liability of the Borrower or any Security Provider to Nedbank in terms of the Finance Documents or any other agreement, including any Security in favour of Nedbank and any guarantee, suretyship, option or subordination in favour of, or for the benefit of, Nedbank contemplated in this Facility Letter (and any other document agreed to in writing between the Parties from time to time), whether recorded in this Facility Letter or in another document, referred to as 'Security Documents' in the Offer Letter.

1.1.61 **Security Provider** means any party to any Security Document, other than Nedbank, including anyone who subsequently becomes a Security Provider.

1.1.62 **Signature Date** means the date of signature of the Party last signing this Facility Letter.

1.1.63 **South Africa** means the Republic of South Africa.

1.1.64 **State Liability Act** means the State Liability Act, No. 20 of 1957.

1.1.65 **Subsidiary** means a "subsidiary" as defined in the Companies Act and shall include any person who would, but for not being a 'company' under the Companies Act, qualify as a 'subsidiary' as defined in the Companies Act.

1.1.66 **SARB** means the South African Reserve Bank.

1.1.67 **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Words referring to any one gender include the other gender.

1.3 Words importing the singular shall include the plural and *vice versa*.

1.4 Any reference to a person shall include a reference to an individual, a firm, a body corporate, a trust, an unincorporated association, government or a partnership and that person's legal representatives and successors.

1.5 The headings of the clauses in the Facility Letter are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of the Facility Letter nor any clause hereof.

1.6 When any number of days is prescribed in the Facility Letter, such number shall be calculated inclusively of the first and exclusively of the last day.

1.7 Any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

1.8 Where any act is to be performed on a day which is not a Business Day, such act shall be performed on the next Business Day.

1.9 Any reference to a statute or statutory provision or law includes a reference to that statute or statutory provision as amended, substituted, extended or re-enacted and to any regulation, order, proclamation, directive, code, practice, note, ruling, instrument or subordinate legislation under such statute or statutory provision.

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1.10 Any reference to any other agreement, document or instrument shall be to that agreement, document or instrument as amended, varied, novated or replaced from time to time.

1.11 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.12 Any term defined in this Facility Letter shall have the meaning ascribed to it by such definition, irrespective of where it is used in this Facility Letter and unless it is clear from the clause in question that the term so defined has limited application to that clause, that term shall bear the meaning ascribed to it in that clause for all purposes in this Facility Letter, notwithstanding that the term has not been defined in this interpretation clause.

1.13 Any reference in this Facility Letter to **Security**, **Security Document** or **Security Provider** shall only apply to the extent that any Security is given, and if no Security is given, references to **Security**, **Security Document** or **Security Provider** shall be treated *pro non scripto* and the text shall be read without reference to **Security**, **Security Document** or **Security Provider** and construed as if there were no **Security**, **Security Document** or **Security Provider** and the text shall be deemed to have been amended accordingly.

1.14 Any date or time limit for the fulfilment or performance of any obligation or condition in terms of this Facility Letter, may, at the absolute discretion of Nedbank, be extended in writing to the Borrower, upon terms and conditions Nedbank may impose at the time.

2 FLEXIBILITY

Subject to the availability of a particular instrument at a particular time, the Borrower shall be entitled to utilise any or all of the instruments offered in the Facility Letter up to the amount of the limit or the sub-limit, as the case may be, pertaining to a particular instrument from time to time, provided that instruments with a fixed maturity date shall continue up to such maturity date.

3 UNAVAILABILITY OF INSTRUMENTS

Should:

3.1 there be any change in Applicable Law or in the departmental practice of any authority or in the interpretation or application of any such legislation or regulations or departmental practice by any court or competent official or should there be any change in banking practice as it affects or is applied by or to Nedbank and any other financial institutions generally registered as such in the applicable jurisdiction; and/or

3.2 any other event occurs which is beyond the control of Nedbank, with the result that any instrument offered in the Facility Letter is no longer made available by Nedbank (an **Affected Instrument**), then Nedbank shall notify the Borrower in writing that the Affected Instrument will no longer be made available to the Borrower and the Borrower shall, unless otherwise agreed between the Parties, within 3 Business Days of the dispatch of such notice, elect:

3.3 to replace the Affected Instrument with any one or more of the other instruments offered in the Facility Letter; and/or

3.4 to settle the amount owing under the Affected Instrument within 3 Business Days or as specified in the aforesaid notice.

4 PAYMENTS

4.1 Any payments to be made by the Borrower under this Facility Letter shall be made before 12:00 on due date in such manner as Nedbank may notify the Borrower in writing from time to time. Any payment shall be made free of exchange or right of deferment, avoidance or set-off and without deduction for or on account of any Tax unless the Borrower is, under law, required to make such payment subject to the deduction or withholding of Tax, in which case the Borrower must ensure compliance with clause 6.2 of this Schedule 1.

4.2 All interest, charges, commission, costs and fees which are payable by the Borrower to Nedbank shall be paid in the currency of the relevant instrument and, unless paid directly by the Borrower, shall, at the election of Nedbank, be paid out of any current account of the Borrower held at Nedbank. The Borrower hereby authorises Nedbank to debit and deduct such interest, charges, commissions, costs and fees to such current account.

4.3 Nedbank shall be entitled to allocate all and any payments by the Borrower, after deduction of costs, to any indebtedness of the Borrower to Nedbank and the Borrower waives all and any rights that it may have to name the debt in respect of which such payment is made.

5 **INTEREST**

5.1 The amount owing by the Borrower in respect of each facility governed by this Facility Letter shall bear interest at the 5.75% (five point seven five percent) agreed to between the Parties and such accrued interest shall be paid by the Borrower on the dates and in the manner agreed to between the Parties.

5.2 If the Borrower is in breach of any of its obligations including if there is any excess over any limit or sub-limit set out in the Facility Letter, then Nedbank shall be entitled to charge the Penalty Interest Rate on the full amount outstanding including the arrears amount, any excess and any excess fee, calculated from the date of the breach until the date when the breach has been remedied to the satisfaction of Nedbank.

5.3 Any amounts owing to Nedbank under the foreign finance facility which are not paid on the due date thereof or any excess over any foreign finance limit or sub-limit, as the case may be, shall bear interest at the prevailing penalty interest rate of Nedbank in respect of such foreign finance from time to time, calculated from the due date thereof or the date on which any excess occurred, as the case may be, until the date of actual payment thereof by the Borrower to Nedbank.

6 **TAX GROSS UPS**

6.1 In this Facility Letter the following expressions shall bear the meanings ascribed to them hereunder and cognate expressions shall have corresponding meanings:

6.1.1 **Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

6.1.2 **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

6.1.3 **Tax Payment** means either the increase in a payment made by the Borrower to Nedbank under clause 6.2 of this Schedule 1 or a payment under clause 6.3 of this Schedule 1

6.2 **Tax gross-up**

6.2.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

6.2.2 The Borrower shall promptly upon becoming aware that they must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify Nedbank accordingly. Similarly, Nedbank shall notify the Borrower on becoming so aware in respect of a payment payable to Nedbank.

6.2.3 If a Tax Deduction is required by law to be made by any Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

6.2.4 If any Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

6.2.5 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to Nedbank evidence reasonably satisfactory to Nedbank that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

6.3 **Tax indemnity**

The Borrower shall within 3 Business Days of demand by Nedbank, pay to Nedbank an amount equal to the loss, liability or cost which Nedbank determines will be or has been (directly or indirectly) suffered for or on account of Tax by Nedbank in respect of a Finance Document, however this provision shall not apply:

6.3.1 with respect to any Tax assessed on Nedbank under the law of the jurisdiction in which Nedbank is incorporated or, if different, the jurisdiction (or jurisdictions) in which Nedbank is treated as resident for tax purposes, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by Nedbank; or

6.3.2 to the extent a loss, liability or cost is compensated for by an increased payment under any other provision of this Facility Letter.

6.4 **Tax Credit**

If a Borrower makes a Tax Payment and Nedbank determines that:

6.4.1 a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

6.4.2 Nedbank has obtained, utilised and retained that Tax Credit, Nedbank shall pay an amount to that Borrower which Nedbank determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

6.5 **Value Added Tax (VAT)**

6.5.1 All amounts set out or expressed to be payable under a Finance Document by an Obligor to Nedbank which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies and if VAT is or becomes chargeable on any supply made by Nedbank to any Obligor, that Obligor shall pay to Nedbank (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and Nedbank shall promptly provide an appropriate VAT invoice to such Obligor).

6.5.2 Where a Finance Document requires an Obligor to reimburse or indemnify Nedbank for any costs or expenses, that Obligor shall reimburse or indemnify (as the case may be) Nedbank for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that Nedbank reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

7 **INCREASED COSTS**

7.1 The Borrower shall, within 3 Business Days of a demand by Nedbank, pay for the account of Nedbank the amount of any Increased Costs incurred by Nedbank or any Nedbank Affiliate as a result of (1) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (2) compliance with any law or regulation made after the Signature Date or (3) any increase in Nedbank's or any Nedbank Affiliate's cost of funding. Without in any way limiting or derogating from the foregoing Nedbank shall be entitled to adjust the interest and or margin for the purposes of recovering the amount of any such Increased Cost.

7.2 In this Facility Letter **Increased Costs** means:

7.2.1 a reduction in the rate of return from any Facility or on Nedbank's (or Nedbank Affiliate's) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by Nedbank); or

7.2.2 an additional or increased cost; or

7.2.3 an increase in Nedbank's or any Nedbank Affiliate's cost of funding; or

7.2.4 a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by Nedbank or any Nedbank Affiliate to the extent that it is attributable to Nedbank having entered into the Facility or funding or performing its obligations under any Finance Document.

7.3 **Increased cost claims**

7.3.1 If Nedbank intends making a claim pursuant to clause 7.1 of this Schedule 1, it shall promptly notify the Borrower.

7.3.2 Nedbank shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

7.4 **Exceptions**

7.4.1 Clause 7.1 of this Schedule 1 does not apply to the extent any Increased Cost is:

7.4.1.1.1 attributable to a Tax Deduction required by law to be made by the Borrower;

7.4.1.1.2 compensated for by clause 6.3 of this Schedule 1 (or would have been compensated for under clause 6.3 of this Schedule 1 but was not so compensated solely because any of the exclusions in clause 6.3 of this Schedule 1 applied); or

7.4.1.1.3 attributable to the wilful breach by Nedbank or any Nedbank Affiliate of any law or regulation.

7.4.2 In this clause 7.4, a reference to a **Tax Deduction** has the same meaning given to the term in clause 6.1 of this Schedule 1.

8 **UNDERTAKINGS**

The undermentioned undertakings remain in force from the Signature Date for so long as any amount is outstanding under the Finance Documents or any available Facility is in force. The Borrower shall procure that any of the undermentioned undertakings that any member of its Group are required to comply with are complied with.

Each Obligor undertakes:

8.1 **Accounting policy**

It shall not change its Accounting Policies without the prior written consent of Nedbank.

8.2 **Auditors**

It shall not change its auditor without the prior written consent of Nedbank.

8.3 **Authorisations**

It shall promptly:

8.3.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

8.3.2 supply certified copies to Nedbank of,

any Authorisation required to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

8.4 **Change of business**

It shall ensure that no substantial change is made to the general nature of its business or to the business of each member of its Group from that carried on at the Signature Date without the prior written consent of Nedbank.

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8.5 **Budgetary Limits**

It shall ensure that the nature and extent of the Outstanding Amount is within the approved budgetary limits for the applicable period and will be in accordance with the Applicable Public Sector Legislation.

8.6 **Compliance with laws**

It shall comply in all respects with all Applicable Laws and Applicable Public Sector Legislation to which it may be subject

8.7 **Environmental compliance**

It and each member of the Group shall:

8.7.1 comply with all Environmental Law;

8.7.2 obtain, maintain and ensure compliance with all requisite Environmental Permits;

8.7.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or might reasonably be expected to have a Material Adverse Effect.

8.8 **Environmental claims**

It shall, promptly upon becoming aware of the same, inform Nedbank in writing of:

8.8.1 any Environmental Claim against an Obligor and each member of the Group which is current, pending or threatened; and

8.8.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced against an Obligor or any other member of the Group, where the claim, if determined against it or any other member of the Group, has or might reasonably be expected to have a Material Adverse Effect or might reasonably be expected to result in any liability for Nedbank.

8.9 **Financial indebtedness**

8.9.1 It and each member of the Group shall, not incur or allow to remain outstanding any Financial Indebtedness.

8.9.2 Clause 8.9.1 of this Schedule 1 above does not apply to Financial Indebtedness which:

8.9.2.1.1 arises or is incurred with the prior written consent of Nedbank;

8.9.2.1.2 is existing prior to the Signature Date which has been disclosed in writing to Nedbank provided that the Financial Indebtedness is not increased after the Signature Date without the prior written consent of Nedbank;

8.9.2.1.3 arises under any of the Finance Documents;

8.9.2.1.4 arises under relationships with trade creditors incurred in the ordinary course of business which are not overdue on customary trade terms;

8.9.2.1.5 deferred payment for Assets or services entered into in the ordinary course of trade from normal trade credit;

8.9.2.1.6 subordinated shareholder loans and other Financial Indebtedness that is subordinated to the Facilities to the satisfaction of Nedbank;

8.9.2.1.7 constitutes any Financial Indebtedness arising out of letters of guarantee issued in the normal and ordinary course of the trading activities.

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8.10 **Sanctions**

8.10.1 In this Agreement:

8.10.1.1 **Sanctioned Entity** means:

8.10.1.2 a person, country or territory which is listed on a Sanctions List or is subject to Sanctions; or

8.10.1.3 a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.

8.10.1.4 **Sanctioned Transaction** means the use of the proceeds of the Facilities for the purpose of financing or providing any credit, directly or indirectly, to:

8.10.1.5 a Sanctioned Entity; or

8.10.1.6 any other person or entity, if the Borrower has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity, in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions if conducted by a person subject to the authority of any Sanctions Authority.

8.10.1.7 **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

8.10.1.8 **Sanctions Authority** means any of:

8.10.1.9 the United Nations;

8.10.1.10 the European Union;

8.10.1.11 the Council of Europe (founded under the Treaty of London, 1946);

8.10.1.12 the government of the United States of America;

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (**OFAC**), the US Department of Commerce, the US State Department or the US Department of the Treasury and Her Majesty's Treasury (**HMT**).

8.10.1.13 **Sanctions List** means:

8.10.1.14 the Specially Designated Nationals and Blocked Persons List maintained by OFAC;

8.10.1.15 the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT, and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

8.10.2 An Obligor shall not at any time participate in a Sanctioned Transaction in any manner.

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9 WARRANTIES

Each Obligor represents and warrants to Nedbank that:

9.1 **Applicable Public Sector Legislation**:

It has complied in all respects with the requirements of the Applicable Public Sector Legislation in so far as it relates to the Facility Letter and all transactions contemplated therein.

9.2 **Financial Problems**:

As at the date hereof, none of the factors contemplated in sections 138 and 140 of the MFMA, indicating serious financial problems and/or persistent material breach of financial commitments, has occurred in relation to the Borrower

9.3 **Financial Recovery Plan**:

As of the date hereof, no financial recovery plan, as contemplated in Chapter 13 of the MFMA, is being prepared in relation to the Borrower.

9.4 **Government Intervention**:

As at the date hereof, no steps have been taken to bring about any provincial or national government intervention whatsoever in relation to the Borrower, whether or not discretionary or mandatory, as contemplated in Chapter 13 of the MFMA.

9.5 **Incorporated**:

It is a municipality validly existing under the laws of South Africa.

9.6 **Authorisations**

All Authorisations required or desirable:

9.6.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;

9.6.2 to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and

9.6.3 for it and the other members of the Group to carry on their respective businesses, have been obtained or effected and are in full force and effect.

9.7 **Conflict**

The entry into and performance by it of and, the transactions contemplated by the Facility Letter do not and will not conflict with:

9.7.1 any Applicable Laws;

9.7.2 its and each of its Subsidiaries' Constitutional Documents; or

9.7.3 any agreement or instrument binding upon it or any of its Subsidiaries' Assets.

9.8 **Financial Statements**

Its Financial Statements:

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9.8.1 fairly represent the financial condition of the Borrower and its Subsidiaries, where applicable, or the financial position of the Borrower and its Subsidiaries, where applicable or the financial condition of any Security Provider;

9.8.2 were prepared in accordance with IFRS;

9.8.3 comply with the relevant reporting standards of the Companies Act and in respect of any regulatory authority, as applicable to the Borrower.

9.9 **Material Adverse Change**

There has been no Material Adverse Effect since the date of its most recent Financial Statements.

9.10 **No Event of Default**

No Event of Default is continuing or might reasonably be expected to result from the Borrower utilising the Facilities or from an Obligor performing any transaction contemplated by the Finance Documents.

9.11 **No Default**

No other event or circumstance which constitutes a default under any other agreement or instrument which is binding on it which might result in a Material Adverse Effect is continuing.

9.12 **Obligations valid**

The obligations expressed to be assumed by each Obligor in the Finance Documents are legal, valid, binding and enforceable obligations.

9.13 **Pari Passu**

9.13.1 The payment obligations under the Finance Documents rank at least pari passu with the claims of its other unsecured and unsubordinated creditors, except for claims that are preferred solely by insolvency, liquidation or other similar laws of general application.

9.13.2 The terms and conditions contained in this Facility Letter are not less favourable than those contained in any other agreement similar in nature to this Facility Letter concluded between the Borrower and any other creditor.

9.14 **Solvency**

The Assets, fairly valued, of the Borrower, exceed its liabilities, fairly valued.

9.15 **Tax**

No Obligor is required to make any deduction for or on account of Tax from any payment it may make under the Facility Letter or any Security, as the case may be.

9.16 **Repetition**

Each of the representations and warranties contained in clause 9 of this Schedule 1 are deemed to be made by each Obligor as at the Signature Date and throughout the duration of the Facilities, including any renewals and extensions thereof.

10 **EVENTS OF DEFAULT**

Each of the following events or circumstances (whether or not caused by or for any reason whatsoever outside the control of an Obligor or any other person) is an Event of Default:

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10.1 **Non-payment**

The Borrower fails to pay any amount due to Nedbank in terms of this Facility Letter on the due date thereof (unless failure to pay is solely due to technical or administrative reasons) and, save for a demand facility (which amount thereunder is due on demand), the relevant amount is not duly paid within 3 Business Days of receipt of written notice from Nedbank calling upon the Borrower to pay such relevant amount.

10.2 **Breach**

An Obligor breaches or does not comply with any provision of the Facility Letter and/or any other agreement between the Parties and fails to remedy such breach, to the extent that the breach is capable of remedy, within the period of 5 Business Days or such remedy period as is provided for in the relevant Security Document, after delivery by Nedbank to the Borrower and/or Obligor of written notice requiring remedy of the breach.

10.3 **Undertakings**

An Obligor fails to comply with any as set out in this Facility Letter (if any), or fails to comply with any other undertaking, if any.

10.4 **Applicable Public Sector Legislation**:

The Borrower fails to comply with any provisions of the Applicable Public Sector Legislation.

10.5 **Serious Financial Problems or Financial Crises**:

The Borrower experiences financial problems which would justify (i) any intervention, (ii) the preparation of a financial recovery plan, (iii) an application to stay legal proceedings or to suspend or terminate its financial obligations or (iv) the grant of any other relief, all as contemplated under Chapter 13 of the MFMA.

10.6 **Distribution Plan**:

Any distribution plan for proportional settlement of the Borrower's claims be implemented whether or not such plan is implemented following a court order or any other action taken by national, provincial or local government.

10.7 **Audit Qualification**

The auditors of the Borrower qualify its audited annual Financial Statements, raise a going concern issue, have withheld an opinion or issued a disclaimer due to the inadequacies in the Financial Statements or records of the Borrower, or have issued an opinion which identifies a serious financial problem in the Borrower.

10.8 **Non-Performance of Functions**:

The Borrower becomes unable or ceases, for any reason whatsoever, to perform its functions or deliver services or basic municipal services as defined and contemplated and provided for in the Governing Legislation and/or Applicable Public Sector Legislation.

10.9 **Writ of Execution**:

Any material asset of the Borrower be attached under writ of execution, notwithstanding the provisions of the State Liability Act.

10.10 **Control**

A change of control of an Obligor occurs without the prior written consent of Nedbank.

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10.11 **Expropriation**

Any expropriation, attachment, confiscation, nationalisation, sequestration or execution which affects any material Asset or Assets of an Obligor.

10.12 **Financial Indebtedness**

Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period, or is declared to be or otherwise becomes due and payable prior to its specified maturity by reason of default (however described) or is cancelled or suspended by a creditor as a result of an event of default, whether or not Nedbank is concerned therewith

10.13 **Laws**

Any Obligor fails to obtain, comply with and do all that is necessary to maintain in full force and effect all government, Tax, monetary and other approvals required under any Applicable Law to enable it to perform its obligations under the Finance Documents, as the case may be, and to ensure the legality, validity or enforceability of the Facility Letter or any Security, as the case may be and to continue its business operations.

10.14 **Legal proceedings**

Any litigation, arbitration, investigative or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might result in a Material Adverse Effect, is started against the Borrower or against any of its Subsidiaries or against any Security Provider.

10.15 **Material Adverse Effect**

A Material Adverse Effect occurs.

10.16 **Repudiation**

An Obligor repudiates the Facility Letter or any Security, as the case may be.

10.17 **Unlawful**

It is or becomes unlawful for an Obligor to perform or comply with any or all of its obligations under any of the Finance Documents, as the case may be, or any of its obligations is not or ceases to be legal, valid, binding and enforceable.

10.18 **Acceleration**

10.18.1 On and at any time after the occurrence of an Event of Default Nedbank may, without prejudice to any other remedy, on written notice to the Borrower:

10.18.1.1.1 cancel the Facilities whereupon they shall immediately be cancelled;

10.18.1.1.2 refuse to advance any further amounts to the Borrower or suspend the availability of any Facility;

10.18.1.1.3 declare that all or part of the Facilities, together with accrued interest and all other amounts accrued or outstanding under the Facilities be immediately due and payable, whereupon they shall become immediately due and payable;

10.18.1.1.4 declare that all or part of the Facilities be payable on demand, whereupon they shall immediately become due and payable on demand by Nedbank;

10.18.1.1.5 in addition to any other right, declare that cash cover in respect of certain facilities, including but not limited to, Letters of Credit, Letters of Guarantee is immediately payable, whereupon that cash cover shall become immediately due and payable;

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10.18.1.1.6 (in addition to any other right of set-off, offset, combination of accounts, lien, right of retention, withholding or similar right or requirement to which Nedbank is at any time otherwise entitled or subject, whether by operation of law, contract or otherwise) set off the indebtedness of the Borrower to Nedbank arising from the Facilities against any and all amounts standing to the credit of the Borrower in the books of Nedbank (whether or not such other amounts are due and payable or contingent), and for the purposes hereof, the Parties agree that if any such indebtedness is or such amounts are denominated in Foreign Currency, such indebtedness or amounts shall be converted from such Foreign Currency to Rand at the spot Rand/Foreign Currency rate quoted by Nedbank on the date of conversion;

10.18.1.1.7 waive or renounce any right;

10.18.1.1.8 claim damages; and/or

10.18.1.1.9 rely on, or exercise, any other right, remedy available to it in terms of any Finance Document, or recorded in any other agreement between the Parties, or available to it at law.

10.18.2 It is specifically recorded and agreed that if the Borrower commences business rescue proceedings and the appointed business rescue practitioner suspends conditionally or unconditionally the whole or any part or provision, of this Facility Letter, then Nedbank shall not be obliged to tender any performance or fulfill any of its obligations in terms of this Facility Letter.

10.18.3 The Borrower hereby indemnifies Nedbank and holds it harmless on demand against any loss, liability or cost suffered by Nedbank if any obligation provided for in the Finance Documents is or becomes unenforceable, invalid or illegal or is cancelled or suspended entirely, partially or conditionally, including but not limited to:

10.18.3.1.1 any damages suffered by Nedbank contemplated in section 136(3) of the Companies Act; and/or

10.18.3.1.2 any claim which Nedbank has or may have against an Obligor for restitution,

arising as a result of the exercise by any business rescue practitioner of the powers granted to it in accordance with section 136(2) of the Companies Act. The amount of that loss, liability or cost shall at least include the amount which Nedbank would otherwise have been entitled to recover.

11 DETERMINATION OF AVAILABLE FUNDS AND LIMITS

11.1 The Borrower hereby authorises Nedbank as a continuous right, without notice or demand, to, at any time, notionally set-off the balances of all Accounts to determine whether there are sufficient funds for the purposes of meeting any payment, transfer or withdrawal instructions given by the Borrower to Nedbank and/or payment of any forward exchange contract in respect of the Accounts or other financial instrument of the Borrower.

11.2 Nedbank shall be entitled, in its sole and absolute discretion, to disregard or refuse any withdrawal, payment or transfer instruction, whether by electronic or other means, given by the Borrower to withdraw, pay or transfer from any one of the Accounts to any other, if the Borrower's Net Overall Limit is not sufficient to cover the amount of the cheque so drawn or the withdrawal, payment or transfer instruction so given, irrespective of whether the withdrawal, payment or transfer in question would not exceed the credit balance on the particular Account from which the withdrawal, payment or transfer would have been made.

12 CERTIFICATE OF INDEBTEDNESS

A certificate signed or purporting to be signed by a manager or director of Nedbank (whose appointment it shall not be necessary to prove) shall be prima facie proof of:

12.1 the amount of any debt owing by the Borrower to Nedbank (including, without limitation, accrued interest and default interest) in terms of this Facility Letter;

12.2 the due dates of performance in respect of any obligations of the Borrower in terms of this Facility Letter;

12.3 any interest rate; or

12.4 the fact that the debts are due and owing and have not been paid or otherwise discharged,

whether for the purposes of provisional sentence or summary judgment proceedings, business rescue proceedings or otherwise and any schedule, certificate or other document provided by Nedbank in terms of this Facility Letter shall, if signed by any manager or director of Nedbank, be deemed to be *prima facie* proof of the correctness of its contents.

13 **COSTS**

13.1 The Borrower shall promptly on demand pay to Nedbank the amount of all costs and expenses (including legal fees) (if any) reasonably incurred in connection with the negotiation, preparation, printing, execution and syndication of:

13.1.1 the Finance Documents and any other documents referred to in this Facility Letter; and

13.1.2 any other Finance Documents executed after the Signature Date.

13.2 All costs and expenses which Nedbank may incur in connection with the enforcement or preservation of any of its rights under any Finance Document, or pursuant to business rescue or any compromise, including, without derogating from the generality of the aforegoing, all legal costs on an attorney and client scale, tracing fees and stamp duty, shall be borne by the Borrower and shall be payable on demand.

14 **CESSION AND DELEGATION**

14.1 Nedbank shall be entitled to cede and/or delegate and/or assign or transfer in any way whatsoever all or any of its rights and obligations under the Finance Documents and to disclose to such company such information regarding any Obligor as Nedbank may reasonably consider appropriate.

14.2 An Obligor shall not be entitled to cede and/or delegate and/or assign or transfer in any way whatsoever, all or any of their respective rights and obligations under this Facility Letter or any Security, as the case may be.

15 **RENUNCIATION OF BENEFITS**

The Borrower expressly waives and renounces any benefits to which it is entitled in law, including without in any way limiting or affecting the generality of the aforegoing the benefits from the legal exceptions excussion and division, *non numeratae pecuniae, non causa debiti, errore calculi*, revision of accounts and no value received and declares itself to be fully acquainted with the full meaning and effect thereof.

16 **MONITORING**

Nedbank is not obliged to monitor or verify the application of any amount borrowed pursuant to the Facility Letter.

17 **MISCELLANEOUS**

17.1 **Applicable Law**

This Facility Letter shall be governed by and interpreted in accordance with the law of South Africa.

17.2 **Entire Agreement**

This Facility Letter contains all the express provisions agreed on by the Parties with regard to the subject matter hereof and the Parties waive the right to rely on any alleged express provision not contained in this Facility Letter.

17.3 **Independent Advice**

The Parties hereby acknowledge and agree that they have been free to obtain independent legal and other professional advice (including legal, financial and taxation advice) as to the nature and effect of the provisions of this Facility Letter and any Security.

17.4 **Jurisdiction**

Each of the Parties irrevocably agrees that the High Court of South Africa (Gauteng Local Division, 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 this Facility Letter and, for such purposes, irrevocably submits to the non-exclusive jurisdiction of such court.

17.5 **No Representations**

A Party may not rely on any representation or warranty which allegedly induced it to enter into this Facility Letter, unless the representation or warranty is recorded in this Facility Letter.

17.6 **Severability**

Any provision in this Facility Letter which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Facility Letter shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the rest of this Facility Letter without invalidating the remaining provisions of this Facility Letter or affecting the validity or unenforceability of such provision in any other jurisdiction.

17.7 **Survival**

The expiration or termination of the Facility Letter shall not affect such of the provisions of the Facility Letter 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.

17.8 **Variation and Cancellation**

No variation, addition to, amendment or cancellation of any term contained in this Facility Letter, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

17.9 **Waivers and Indulgences**

No failure to exercise, and no delay in exercising on the part of either Party, of any right, power or privilege under this Facility Letter shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No waiver by either Party shall be effective unless reduced to writing and signed by or on behalf of the Party granting such waiver. The grant of any indulgence by a Party under this Facility Letter shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

17.10 **Counterparts**

This Agreement may be executed in counterparts by the parties to this agreement and, once each party to this Agreement has signed a counterpart, each such counterpart shall be considered as an original and all such counterparts shall continue one and the same instrument.

Schedule 2

Terms Applicable to Specific Facilities

1 ASSET BASED FINANCE

The facility available under this instrument is subject to the terms and conditions of Nedbank's standard documentation relating to asset based finance from time to time or the terms and conditions of separate agreement/s that may be concluded between the Parties.

MASTER AGREEMENT

entered into by and between:

NEDBANK LIMITED
(Registration number 1951/000009/06)

of: 135 RIVONIA ROAD SANDTON 2196

(hereinafter referred to as "Nedbank")

and

MIDVAAL LOCAL MUNICIPLITY

of: Cnr Mitchell & Junius Street Midvaal Local Municipality Meyerton

(hereinafter referred to as "the Client")

whereby Nedbank leases/sells/rents to the Client the goods ("the goods") described in the Schedule(s) hereto subject to the terms and conditions herein contained.

Signed at ______ **on** 1/4/2022

in terms of a Resolution of Directors of the Client, a certified copy of which is attached hereto.

Witnesses:

1 ______

2 ______

______
for and on behalf of

Signed at ______ **on** ______

Witnesses:

1. ______

2 ______

______
for and on behalf of
Nedbank

1 **INTERPRETATION AND DEFINITIONS**

1.1 For all purposes hereof:

1.1.1 the masculine gender shall include the other genders and vice versa;

1.1.2 the plural shall include the singular and vice versa;

1.1.3 any reference to persons herein shall include natural and juristic persons; and

1.1.4 any reference to "days" herein shall be a reference to business days, excluding Saturdays, Sundays and public holidays, and any calculation of days shall be reckoned by excluding the first day and including the last day.

1.2 **Applicable MFMA Legislation** means legislation applicable to the local sphere of government, including but not limited to the MFMA, the Local Government: Municipal Systems Act, No. 32 of 2000, governing legislation and any regulations thereto, the Local Government: Municipal Structures Act, No. 117 of 1998, the Public Audit Act ,No. 25 of 2004, the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, and the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

1.3 **Current Market Value** shall mean the market value of the goods leased and/or purchased in terms hereof, established by valuation by a valuator nominated and appointed by Nedbank.

1.4 **Transaction Schedule** or **Schedule** shall mean any of the schedules hereto marked Annexure "A1", "A2" etc. and shall include every Transaction Schedule entered into in terms of this agreement.

1.5 **Republic of South Africa** shall mean the Republic of South Africa as constituted on 31 May 1961.

1.6 **Return the Goods** shall mean delivery at the Client's expense and risk, to such person and place within the Republic of South Africa as Nedbank may reasonably specify, in a clean condition (and where the goods are motor vehicles, in a roadworthy condition) together with all keys, spares, accessories and documents of whatever nature relating thereto, and in the case of a motor vehicle, the registration and license certificates, together with properly completed and signed documents required for the registration of transfer.

1.7 **Credit Agreement** shall mean an Instalment Sale Agreement and/or a Lease Agreement and/or a Rental Agreement.

1.8 **MFMA** means Local Government: Municipal Finance Management Act, No. 56 of 2003.

1.9 **Financial Indebtedness** means any indebtedness, including for or in respect of:

1.9.1 moneys borrowed or credit granted;

1.9.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

1.9.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

1.9.4 the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;

1.9.5 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

1.9.6 any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

1.9.7 any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value (or, if any actual amount is due as a result of

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the termination or close-out of that derivative transaction, that amount) shall be taken into account);

1.9.8 any amount raised by the issue of shares which are redeemable;

1.9.9 any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 19.1 to 19.8 above.

1.10 **Principal Debt** means the capital amount outstanding in terms of this agreement.

1.11 **Delivery Receipt** shall mean an acknowledgement, in the form as provided by Nedbank from time to time, by the Client that it has taken delivery of the goods as described in the requisition, on behalf of Nedbank.

1.12 **Book Value** shall mean the amount as indicated as the book value on the Schedule.

2 **SCHEDULES AND COMMITMENT**

2.1 Nedbank hereby agrees to lease or sell or rent to the Client and the Client hereby agrees to lease or purchase or rent from Nedbank the goods described in the Schedule(s).

2.2 The conditions of this Master Agreement shall apply *mutatis mutandis* to each and every Schedule which the parties may enter into and the goods described in such Schedule shall be leased or purchased or rented according to the conditions of this Master Agreement as if the conditions of this agreement were incorporated in each and every such Schedule and the conclusion by the parties of a further Transaction Schedule(s) shall create an independent agreement in respect of the goods described in such Transaction Schedule(s).

2.3 The Client shall, on the goods requisition form(s), indicate whether it wishes to lease the goods or purchase the goods or rent the goods. The Transaction Schedule(s) shall be prepared by Nedbank in accordance with such indication and on signature thereof by both parties the Transaction Schedule(s) shall constitute the type of agreement that has been indicated in the goods requisition form(s).

3 **DEPOSIT**

3.1 The Client shall, after signature of this Master agreement, make the initial payment referred to in the Schedule.

4 **PAYMENT IN RELATION TO LEASE OR INSTALMENT SALE OR RENTAL**

If the transaction constitutes a Lease or Rental or Instalment Sale transaction, then:

4.1 The Client shall pay to Nedbank at the address nominated by Nedbank the instalments/rentals shown in the Schedule(s) and any other amounts payable on due date at the place specified in the Schedule(s). All payments shall be made without any deduction of whatsoever nature and by way of such instruments of payment as Nedbank may nominate and which shall not be a variation of any of Nedbank's rights.

4.2 Nedbank is entitled to appropriate any payments, received from or on behalf of the Client, to any indebtedness of the Client to Nedbank from whatever cause arising.

4.3 All amounts of whatever nature that are due in terms of this agreement and are not paid on due date shall bear interest at a variable finance charge rate equal to the Nedbank Prime Overdraft Rate, calculated from due date until the actual payment date. This shall not detract from the other remedies available to Nedbank on breach.

4.4 If the word 'fixed' does not appear next to the finance charges, as set out in the Schedule, the following conditions shall apply:

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4.4.1 Should the prime lending rate publicly quoted by Nedbank from time to time (evidenced by means of a certificate of any manager of Nedbank whose authority need not be proved) be increased or decreased, the finance charges yet to accrue and the unpaid instalments payable in terms of the Schedule shall be adjusted commensurately with the change in the prime lending rate, and the Client shall be notified thereof in writing. The period over which the instalments are payable shall remain unchanged.

4.5 Should there be any change in the rate, calculation, method or nature of taxation or deduction or allowance levied on Nedbank's income in terms of South African income tax legislation, or should there be any increase in the prudential requirement of Nedbank in terms of the Banks Act, 94 of 1990, or the regulations thereunder, then Nedbank shall be entitled, on each occurrence of any of the aforesaid events and without prior notice to the Client, to increase the finance charge rate applicable hereto with such an amount as will place Nedbank in the same financial position it would have been in had the said changes not occurred.

5 UNDERTAKINGS, WARRANTIES AND INDEMNITIES

5.1 The Client warrants that:

5.1.1 It has carefully inspected and examined the goods, together with all fittings, accessories and equipment and is satisfied therewith in all respects.

5.1.2 The goods are available and can be purchased by Nedbank for the amount specified in the requisition.

5.1.3 The supplier of the goods is the owner thereof and can transfer ownership therein to Nedbank.

5.1.4 The goods are fit for the purposes of the Client and are free of any defects, whether latent or patent, the Client having made all necessary enquiries in relation thereto.

5.1.5 It shall at all times during the period of this agreement comply with all Applicable MFMA Legislation.

5.2 The Client indemnifies Nedbank against:

5.2.1 Any taxes, levies, duties and the like of any nature whatsoever imposed against Nedbank or the Client by any authority on and in respect of any of the goods or the ownership thereof, or the delivery, sale, use, operation, possession or control thereof, or on or in respect of the rentals, receipts or earnings arising therefrom or out of or in respect of this agreement, excepting only the tax imposed on Nedbank and referred to in the Income Tax Act, 58 of 1962, as amended, as the 'normal tax'.

5.2.2 Any penalties or fines levied or imposed arising out of or in connection with the use, operation, possession or control of the goods or otherwise howsoever and against all costs incurred by Nedbank in defending the prosecution of any offence or alleged offence relating thereto.

5.2.3 Any damage or loss arising as a result of a cancellation of this agreement.

5.3 The Client acknowledges that Nedbank will purchase the goods on the basis of the warranties and indemnities herein contained and shall constitute a representation by the Client to Nedbank that it has satisfied itself in relation to the goods and is able to make the warranties and give the indemnities.

5.4 The Client undertakes to furnish Nedbank with:

5.4.1 Audited company and consolidated annual Financial Statements of the Client as soon as they become available but in any event within 120 days after the end of each Financial Year.

5.4.2 Unaudited company and consolidated Financial Statements of the Client as soon as they become available but in any event within 90 days after the end of each interim financial year.

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5.4.3 Management accounts of the Client as soon as they become available but in any event within 30 days after the end of the period to which such management accounts relate.

5.4.4 A copy of the Constitutional Documents of the Client, at any time Nedbank requests same.

5.4.5 Any other information Nedbank may reasonably request from time to time.

6 DELIVERY

6.1 The Client shall, at its own expense, arrange for and take delivery of the goods from the supplier, and delivery of the goods by the supplier to the Client shall be deemed to be delivery of the goods by Nedbank to the Client. The supplier acts as Nedbank's agent for the purpose of delivery only.

6.2 The Client shall have no claim of any nature whatsoever against Nedbank if the Client fails or is unable, for any reason, to obtain delivery of the goods, either timeously or at all.

6.3 If the Client fails to arrange or accept delivery of the goods, Nedbank shall be entitled, without prejudice to any other remedies which it would have in the circumstances, to cancel this agreement, whereupon the Client shall immediately reimburse Nedbank for all amounts disbursed by it in connection with the transaction in question.

7 PERIOD OF AGREEMENT

7.1 The commencement date of any Credit Agreement entered into in terms of any requisition shall be the date on which the goods are delivered to the Client, which date shall be the date of signature of the Delivery Receipt by the Client.

7.2 Should Nedbank regard the period chosen by the Client as unsuitable for the goods under the circumstances of the particular transaction, it shall not be obliged to structure the payment of the rentals/instalments in accordance with such indication, but shall be entitled to structure the payment of the rentals/instalment according to the period which it in its sole discretion deems fit.

8 TERMINATION BY EFFLUXION OF TIME

8.1 If a Lease or Rental is terminated by effluxion of time, the Client shall on such termination Return the Goods to Nedbank in good working order and condition, fair wear and tear only on such termination excepted; and where the Current Market Value thereof exceeds the Book Value thereof, Nedbank shall pay such excess to the Client after deducting all amounts owing to Nedbank.

9 EARLY TERMINATION

9.1 If a Lease:

9.1.1 The Client is entitled to repay the Principal Debt and finance charges in one amount before the due date thereof, provided that:

9.1.1.1 The Client gives Nedbank 90 (ninety) days' written notice (or such longer period as may be prescribed by the national Credit Act of 2005) of the Client's intention to do so;

9.1.1.2 Such notice shall not be given prior to 90 (ninety) days after the date of this agreement;

9.1.1.3 Such notice shall state the date on which the Client intends to pay the outstanding balance and finance charges in one amount; and

9.1.1.4 Should such notice be given by the Client, the date stated by the Client as that on which payment will be made will be deemed to be the date on which the outstanding balance of the Principal Debt and finance charges thereon shall be paid.

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9.1.2 If any one or more agreements which is/are covered by this master agreement is/are not subject to the National Credit Act, and if the Client wishes to terminate any one or more of the agreements before the expiry thereof by effluxion of time, the Client shall give Nedbank 90 (ninety) days' written notice of its intention to do so and shall in such notice state the date on which such agreement(s) shall be so terminated.

9.1.3 On termination of the agreement(s) in accordance with either clause 9.1.1 or 9.1.2 above the Client shall Return the Goods to Nedbank, and where the Current Market Value thereof exceeds the aggregate amount of the Principal Debt still unpaid on the date on which the Credit Agreement(s) is/are terminated and the finance charges owing thereon, which finance charges shall be calculated from the commencement date until the termination date, then Nedbank shall pay such excess to the Client, but should the Current Market Value of the goods be less than the aggregate the Client shall pay such shortfall, together with finance charges thereon at the finance charge rate applicable to the Credit Agreement(s), to Nedbank within 90 (ninety) days of termination of the Credit Agreement(s).

9.1.4 Where Nedbank pays the Client the excess referred to in clause 9.1.3 above, any and all costs incurred by Nedbank in recovering, controlling, storing, conserving, transporting, insuring or otherwise in preserving the goods while the Current Market Value is being determined, as well as those costs involved in determining the Current Market Value, shall be for the Client's account.

9.2 If an Instalment Sale:

9.2.1 The Client is entitled to repay the Principal Debt and finance charges in one amount before the due date thereof, provided that:

9.2.1.1 The Client gives Nedbank 90 (ninety) days' written notice of the Client's intention to do so;

9.2.1.2 Such notice shall not be given prior to 90 (ninety) days after the date of this agreement;

9.2.1.3 Such notice shall state the date on which the Client intends to pay the outstanding balance and finance charges in one amount; and

9.2.1.4 Should such notice be given by the Client, the date stated by the Client as that on which payment will be made will be deemed to be the date on which the outstanding balance of the Principal Debt and finance charges thereon shall be paid.

9.2.2 If any one or more agreements which is/are covered by this master agreement is/are not subject to the National Credit Act, and if the Client wishes to terminate any one or more of the Credit Agreements before the expiry thereof by effluxion of time, the Client shall give Nedbank 90 (ninety) days' written notice of its intention to do so and shall in such notice state the date on which such agreement(s) shall be so terminated.

9.3 If a Rental:

9.3.1 The Client is entitled to repay the Principal Debt and finance charges in one amount before the due date thereof, provided that:

9.3.1.1 The Client gives Nedbank 90 (ninety) days' written notice of the Client's intention to do so;

9.3.1.2 Such notice shall not be given prior to 90 (ninety) days after the date of this agreement;

9.3.1.3 Such notice shall state the date on which the Client intends to pay the outstanding balance and finance charges in one amount; and

9.3.1.4 Should such notice be given by the Client, the date stated by the Client as that on which payment will be made will be deemed to be the date on which the outstanding balance of the Principal Debt and finance charges thereon shall be paid.

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9.3.2 If any one or more agreement(s) which is/are covered by this master agreement is/are not subject to the National Credit Act, and if the Client wishes to terminate any one or more agreement(s) before the expiry thereof by effluxion of time, the Client shall give Nedbank 30 (thirty) days' written notice of its intention to do so and shall in such notice state the date on which such agreement(s) shall be so terminated.

9.3.3 On termination of the agreement(s) in accordance with clause 9.3.1 and 9.3.2 above the Client shall Return the Goods to Nedbank and where the Current Market Value thereof exceeds the aggregate amount of the Principal Debt still unpaid on the date on which the Credit Agreement(s) is/are terminated and the finance charges owing thereon, which finance charges shall be calculated from the commencement date until the termination date, plus the Book Value, then Nedbank shall pay such excess to the Client, but should the Current Market Value of the goods be less than the aggregate amount the Client shall pay such shortfall to Nedbank together with finance charges thereof at the finance charge rate applicable to the agreement(s) to Nedbank within 90 (ninety) days of termination of the Credit Agreement(s).

9.3.4 Where Nedbank pays the Client the excess referred to in clause 9.3.3 above, any and all costs incurred by Nedbank in recovering, controlling, storing, conserving, transporting, insuring or otherwise in preserving the goods while the Current Market Value is being determined, as well as those costs involved in determining the Current Market Value, shall be for the Client's account.

10 TERMINATION ON TOTAL LOSS

10.1 The agreement shall be terminated in respect of any of the goods that are lost or stolen and not recovered within a period of 21 (twenty-one) days, or that are destroyed or damaged beyond repair. The goods shall be deemed to be damaged beyond repair only if the insurer of such goods elects to treat them as a total loss or if Nedbank notifies the Client in writing that in its opinion the goods have been damaged beyond repair.

10.2 On termination of the agreement pursuant to this clause the Client shall forthwith pay to Nedbank the balance outstanding at the date of such termination, together with all other amounts payable under the agreement, and Nedbank shall reimburse the Client as far as possible out of the proceeds (if any) received by Nedbank from any insurance policy in respect of the goods. If the insurer of the goods elects to treat the same as a total loss and take over the goods, the Client shall deliver the goods to the insurer at its own expense.

11 OWNERSHIP

11.1 The ownership of the goods will remain vested in Nedbank until the Client:

11.1.1 in the event of a cash sale, has made payment in full to Nedbank; or

11.1.2 in the event of an Instalment Sale, has discharged all its obligations in terms of such agreement to Nedbank.

11.2 The Client shall not in any way alienate, pledge or encumber the goods nor shall it cede, assign or in any way make over any of its rights and/or obligations under this agreement without the prior written consent of Nedbank.

12 RISK

12.1 The risk in and to the goods shall pass to the Client on the date on which the supplier ceases to bear a risk in the goods. Where the Client has elected to enter into a Rental agreement the risk of the first R50, 00 (fifty rand) of all loss or damage shall vest in Nedbank.

12.2 Should the goods, or any part thereof, be damaged, destroyed, stolen or lost, the Client shall forthwith:

12.2.1 notify Nedbank in writing to that effect; and

12.2.2 properly and timeously do everything necessary to cause payment of compensation under any applicable insurance policy to be made; and

12.2.3 if so required by Nedbank, repair and reinstate the goods at its own cost; and

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12.2.4 continue to pay any amounts due and payable in terms of this agreement.

13 USE OF THE GOODS

13.1 The Client shall at all times keep the goods in its possession and control, and exercise care in the use thereof and shall at its own expense maintain the goods in proper working order.

13.2 Should the goods be a motor vehicle(s), the Client shall keep the goods in a roadworthy condition and shall protect them from loss or damage and keep the goods free from attachment, hypothec, or other legal charge or process and shall not, without the prior written consent of Nedbank, sell, encumber or in any way deal in the goods.

13.3 The goods shall be operated at the Client's expense and only by competent, properly trained, licensed and qualified persons, and shall be used only for the purpose for which they were intended and the Client shall itself comply and procure compliance with the specifications, instructions and recommendations of the manufacturer and/or supplier of the goods and/or any person or company nominated by the manufacturer or supplier.

13.4 The Client shall not make any material alteration or modification to the goods without the prior written consent of Nedbank. Any part or accessory added to the goods shall become Nedbank's property without compensation.

13.5 Nedbank shall at all reasonable times be entitled to examine the goods wherever they are located.

13.6 The Client acknowledges and agrees that the goods are movable property and that they will be installed with the intention that they remain so however they may be installed.

13.7 The goods shall not without the prior written consent of Nedbank be used elsewhere than in the Republic of South Africa.

14 LICENCE AND INSURANCE

14.1 The Client shall keep the goods registered, licensed and insured against third-party claims and against all loss and damage, including those covered by SASRIA, for the full period of this agreement with a registered insurer for such value as may be determined by Nedbank from time to time and shall pay all insurance premiums punctually and comply with all the conditions of the insurance policy.

14.2 The Client shall have Nedbank's interest noted on the insurance policy.

14.3 The Client hereby cedes all its right, title and interest in such insurance to Nedbank as security for the due performance by the Client of its obligations in terms of this agreement and Nedbank accepts the benefits of such cession.

14.4 The Client shall on demand deliver to Nedbank any policy affected in terms hereof, together with proof of payment of each premium.

14.5 If the Client fails to effect the insurance as contemplated above and/or to pay the premiums relating thereto, Nedbank will be entitled to effect such insurance and/or pay such premiums on the Client's behalf and the Client shall, on demand, refund to Nedbank the amounts so disbursed by Nedbank.

15 LIENS

15.1 The Client shall notify Nedbank in writing of the situation of the premises where the goods will be kept or stored from time to time and the Client shall on delivery of the goods notify the owner and/or the lessor and/or the occupier of the abovementioned premises in writing that the ownership of the goods vests in Nedbank.

15.2 Nedbank reserves the right to give the notice as contemplated herein, or such additional notice as it in its discretion may deem fit.

15.3 The Client shall, *mutatis mutandis* in accordance with clause 16.1 above, immediately when it comes to its attention, notify Nedbank of any change in ownership, or occupation of the premises contemplated in clause 16.1 above and also the new owner and/or occupier, as the case may be, of Nedbank's ownership of the goods.

15.4 The Client shall not without the prior written consent of Nedbank sell, cede, assign, delegate, transfer, make over, pledge or otherwise encumber, alienate or deal in or part with possession of the goods or any of its rights or obligations in terms of this agreement or any sale or pursuant thereto, or offer to do the aforegoing or permit the goods to become subject to any lien, hypothec, pledge or other encumbrance or judicial attachment from whatsoever cause arising.

16 BREACH

16.1 Should the Client at any time during the period of this agreement:

16.1.1 default in the due and punctual payment of any instalment or any other amount payable to Nedbank in terms of this agreement; or

16.1.2 fail to observe and perform any other of the terms, conditions and/or obligations in terms of this agreement or any subsequent agreement entered into pursuant to this agreement; or

16.1.3 fail to comply with any Applicable MFMA Legislation; or

16.1.4 allow any judgment against it to remain unsatisfied for 7 (seven) days from the date of such judgment, or be refused rescission within 14 (fourteen) days of any default judgment; or

16.1.5 be placed under administration in terms of a court order or apply for such order; or

16.1.6 attempt to compromise with any creditor or commit an act of insolvency, or being a natural person, surrender his estate; or

16.1.7 be placed under business rescue or be wound up, whether provisionally or finally; or,

16.1.8 being a partnership, be dissolved, or being a natural person, die; or

16.1.9 abandon the goods; or

16.1.10 have made any inaccurate statement or representation in connection with this agreement or his financial affairs; or

16.1.11 allow the goods to be seized under any legal process issued against the Client; or

16.1.12 do, or allow to be done, any act which may prejudice Nedbank's rights in terms of this agreement or its ownership of the goods; or

16.1.13 default in the due and punctual payment of any other material indebtedness or obligation owed to Nedbank;

16.1.14 any financial indebtedness obligations of the Client is not paid when due nor within any originally applicable grace period, or is declared to be or otherwise becomes due and payable prior to its specified maturity by reason of default (however described) or is cancelled or suspended by a creditor as a result of an event of default, whether or not Nedbank is concerned therewith

all of which shall be deemed to be a material breach of this agreement, then Nedbank shall be entitled forthwith, at its option and without prejudice to any other remedy and/or right which it may have, either:

16.1.15 to claim immediate payment of all amounts payable in terms hereof, irrespective of whether or not such amounts are due at that stage; or

16.1.16 to cancel this agreement, obtain repossession of the goods, retain all payments already made in terms hereof by the Client and claim, as liquidated damages, payment of the balance outstanding.

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16.2 Whenever it is necessary in terms of this agreement to determine the market value of the goods, such value shall be determined by an appraiser appointed by Nedbank at the expense of the Client, whose valuation shall be final and binding on the Client.

16.3 Should Nedbank thereafter sell, or rent the goods, on such terms and conditions as Nedbank in its sole discretion deems reasonable, at an amount exceeding the value determined, the price at which the goods are sold or leased shall be deemed to be the Current Market Value.

16.4 In the event that the Client disputes Nedbank's right to cancel this agreement, or in the event of any other dispute, the Client shall, pending the resolution of such dispute, continue to pay the instalments on their due date and should the dispute be determined in favour of Nedbank, Nedbank shall be entitled to retain such payments as liquidated damages.

16.5 If the Client is a private company and transfer of any of its shares or the issue of any of its unissued shares occurs so that the control of the Client is altered, then Nedbank may, unless it has consented in writing to such transfer or issue, regard such transfer or issue of shares as a breach in terms of clause 17.1 above.

17 JURISDICTION AND COSTS

17.1 This agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.

17.2 The Client hereby agrees that, if any legal proceedings arise out of or in connection with this agreement, Nedbank shall have the right to institute such proceedings either in any provincial or local division of the High Court of South Africa, notwithstanding the fact that such court may not have jurisdiction over the Client's person, or in any magistrate's court in South Africa having jurisdiction in respect of the Client's person, notwithstanding that the claim or value of the matter in dispute may exceed the jurisdiction of such court.

17.3 All costs and disbursements, including legal costs on the attorney-and-client scale, incurred by Nedbank in recovering possession of the goods, or in tracing the buyer and/or the goods and in disposing of the goods, collecting or endeavouring to collect all or any amounts payable by the Client to Nedbank, or otherwise, and all collection commissions, transportation costs, storage charges, costs of valuation of the goods, costs of sale, including costs of restoring the goods to a saleable condition, selling commissions, dismantling and removal charges and all other fees and charges of a like nature, including value-added tax where applicable, shall be payable by the Client to Nedbank on demand.

18 NEDBANK'S INTERVENTION TO PROTECT ITS RIGHTS

Should the Client fail to comply with any of the provisions of this agreement, more specifically with regard to the payment of amounts in respect of any insurance premiums, licenses, levies, fees, duties and taxes, or other amounts of whatever nature, Nedbank shall be entitled, but not obliged, to pay any such amount on the Client's behalf and the amount thus paid shall thereupon be payable by the Client to Nedbank.

19 NON-VARIATION

19.1 This agreement and all schedules thereto is the whole agreement between the parties and no variation shall be of any force or effect, unless agreed to by Nedbank in writing.

19.2 No relaxation or indulgence granted by Nedbank to the Client shall be deemed to be a waiver of any of Nedbank's rights, nor shall any such relaxation or indulgence be deemed to be a variation of any of the terms and conditions of this agreement.

19.3 Acceptance by Nedbank of any payment after any termination of this agreement shall not be deemed to be a waiver of Nedbank's rights or a novation or reinstatement of this agreement and such termination shall remain of full force and effect, such payment being conclusively deemed to be an amount paid by the Client on account of damages or any other amounts payable to Nedbank by the Client.

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20.1 All duties and levies payable in respect of this agreement or any Schedule or any suretyships or securities given in respect of this agreement or any Schedule shall be paid by the Client on demand.

20.2 A certificate under the hand of any director, manager, or other official of Nedbank (whose appointment need not be proved and who shall be deemed to be acting as an agent for the Client in terms hereof) as to any amount due and owing by the Client in terms of this agreement shall for all purposes, including without limitation proceedings for summary judgment or provisional sentence, constitute *prima facie* proof of the matters stated therein.

20.3 Nedbank shall at all times and without limitation be entitled to cede, delegate or assign any of its rights and/or obligations in terms of this agreement, without notice to the Client, and the Client agrees to recognise the cessionary and act in accordance with such cessionary's requirements.

20.4 Should any provision of this agreement be, or be retrospectively rendered unlawful, then the unlawful provision shall be deemed to be modified only to the extent and in the manner necessary to render it consistent with the enactment rendering it unlawful or, if such modification is impossible, be deemed to be severable from the remaining provisions hereof and *pro non scripto*.

20.5 Notwithstanding anything to the contrary contained in this agreement, the Client and Nedbank respectively shall have all the rights that are conferred on them by the law rendering such provision unlawful, as if specifically contained herein. Such conferral shall be deemed to have complied with the provisions hereof relating to variation.

20.6 The Client shall, in the event of any process of law affecting the goods being issued against or served on the Client, notify Nedbank in writing within two days after the Client becomes aware thereof.

20.7 Nedbank shall be entitled to perform any obligation of the Client or procure that any obligation of the Client set out in this agreement is performed and shall be entitled to recover all costs incurred by it in the enforcement of any right in terms of this agreement (including, but not limited to, the refurbishing of the goods for purposes of resale or leasing) from the Client forthwith on demand.

20.8 Any requisition made and accepted in terms hereof shall be irrevocable by the Client.

20.9 In the event of any of the provisions contained herein being in conflict with any law in force in the Republic of South Africa for the time being, then such provision shall be deemed to be amended only to the extent necessary to bring it into compliance with such law.

21 DOMICILIA AND NOTICES

21.1 For all purposes arising out of or in respect of this agreement, each of the parties chooses its *domicilium citandi et executandi* at its address specified above.

21.2 Either party shall be entitled to change its address for the purposes hereof by giving notice to that effect, delivered by hand or dispatched by registered mail, to the other party.

21.3 Any notice addressed by prepaid registered post to the *domicilium* of the addressee thereof shall be conclusively deemed to have been received by the said addressee on the 8th (eighth) day after the date of postage thereof and, in the event of delivery by hand, to have been received on the date of delivery.

21.4 If any payment is remitted through the post by the Client, then the Post Office shall be deemed to be the Client's agent.

22 ACKNOWLEDGEMENTS

The Client declares and acknowledges that:

22.1 It shall not be entitled to withhold or delay payment of any amount payable in terms of this agreement or to claim set-off arising out of any matter whatsoever or to cancel this agreement or to claim any damages if the goods or part thereof are on delivery of the goods to the Client or otherwise, or at any time during the subsistence of this agreement, damaged or destroyed or are in defective condition or in a state of disrepair or not functioning or for any reason or circumstance whatsoever.

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22.2 Nedbank shall not be liable to the Client in any way for any damages suffered or losses sustained by the Client in consequence of or in connection with any use, operation, possession, control, replacement, repairs, servicing, maintenance, conveyance or storing of the goods by anyone whomsoever, whether or not such person would have been nominated or instructed by Nedbank, or for any damages suffered by reason of the goods being or becoming defective or unsuitable, whatever the cause, for the purposes for which they have been purchased.

23 **ADDITIONAL TERMS AND CONDITIONS**

23.1 The goods have been or will be purchased by Nedbank from a supplier at the Client's request and solely for the purpose of selling the goods to the Client;

23.2 Both the goods and the supplier of such goods have been selected and approved by the Client and the goods are hereby sold by Nedbank to the Client as supplied by the supplier;

23.3 Nedbank shall not be liable to the Client for any defects in the goods whether patent or latent;

23.4 Nedbank has no knowledge of the purpose for which the goods are required by the Client;

23.5 Nedbank does not indemnify the Client against eviction for any reason whatsoever;

23.6 Neither Nedbank nor its agent, employees or any other person whomsoever purporting to act on behalf of Nedbank, have given any warranties or guarantees or undertakings or made any representations or done any act of any nature whatsoever, other than those specifically recorded in this agreement, as to the quality of the goods or their fitness for the purpose intended or has made any representation of whatever nature to induce the Client to enter into this agreement and the Client is aware that any sale, Lease or Rental of goods in terms hereof will be 'voetstoots' in all respects and that the Client shall have no claims of whatever nature (whether for consequential damages or otherwise) against Nedbank and indemnifies Nedbank against any claims which may be made against Nedbank by any third party from whatever cause arising; and

23.7 Defective and/or incomplete delivery or the failure by the supplier to make good any breach or fulfil any warranties, guarantees, representations or undertakings shall in no way affect the Client's obligations and the Client shall continue to perform all its obligations, including paying the rentals or instalments as they fall due, as if no such defective or incomplete delivery or failure had occurred.

23.8 To be in line with those in the form of the credit agreement recommended by the Loan Market Association for the South African market.

23.9 Cross default threshold of R20m, meaning if client's default is in excess of R20 million, all facilities become due and payable.

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