



**TERM CREDIT FACILITY AGREEMENT**

Between

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**

and

**NEDBANK LIMITED (ACTING THROUGH ITS NEDBANK CORPORATE AND INVESTMENT  
BANKING DIVISION)**

*[Handwritten initials and signatures]*

**TABLE OF CONTENTS**

1	DEFINITIONS AND INTERPRETATION.....	4
2	THE FACILITIES.....	12
3	PURPOSE.....	12
4	CONDITIONS OF UTILISATION.....	13
5	UTILISATION.....	13
6	REPAYMENT.....	14
7	PREPAYMENT AND CANCELLATION.....	14
8	INTEREST.....	16
9	INTEREST PERIODS.....	19
10	CHANGES TO THE CALCULATION OF INTEREST.....	19
11	TAX GROSS UP AND INDEMNITIES.....	20
12	INCREASED COSTS.....	22
13	INDEMNITIES.....	24
14	MITIGATION BY THE LENDER.....	25
15	COSTS AND EXPENSES.....	25
16	REPRESENTATIONS.....	25
17	INFORMATION UNDERTAKINGS.....	29
18	FINANCIAL COVENANTS.....	31
19	GENERAL UNDERTAKINGS.....	33
20	EVENTS OF DEFAULT.....	36
21	CHANGES TO THE LENDER.....	40
22	ROLE OF THE AGENT.....	42
23	CONDUCT OF BUSINESS BY THE FINANCE PARTIES.....	51
24	SHARING AMONG THE FINANCE PARTIES.....	51
25	PAYMENT MECHANICS.....	59
26	CHANGES TO THE BORROWER.....	58
27	CONDUCT OF BUSINESS BY NEDBANK.....	59
28	PAYMENT MECHANICS.....	59
29	SET-OFF.....	62
30	NOTICES.....	62
31	CALCULATIONS AND CERTIFICATES.....	63
32	PARTIAL INVALIDITY.....	63
33	REMEDIES AND WAIVERS.....	64
34	AMENDMENTS AND WAIVERS.....	64
35	RENUNCIATION OF BENEFITS.....	64
36	COUNTERPARTS.....	64
37	WAIVER OF IMMUNITY.....	64
38	SOLE AGREEMENT.....	64
39	NO IMPLIED TERMS.....	65

40	INDEPENDENT ADVICE.....	65
41	GOVERNING LAW .....	65
42	JURISDICTION.....	65
	SCHEDULE 1 .....	67
	Conditions of Utilisation .....	67
	SCHEDULE 2 .....	70
	Formalities Certificate .....	70
	SCHEDULE 3 .....	72
	Utilisation Request .....	72
	SCHEDULE 4 .....	73
	Form of Compliance Certificate .....	73
	SCHEDULE 5 .....	74
	Repayment Schedule.....	74
	SCHEDULE 6.....	74
	Form of Transfer Certificate .....	74

*N*

*M* *[Signature]*

THIS AGREEMENT is made between:

- 1 City of Johannesburg Metropolitan Municipality a municipality duly established in terms of the laws of South Africa (**Borrower**);
- 2 Nedbank Limited (acting through its Nedbank Corporate and Investment Banking division) (Registration No. 1951/000009/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa (**Nedbank**).

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

- 1.1.1 **Accounting Reference Date** has the meaning given to it in clause 16.18.
- 1.1.2 **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.
- 1.1.3 **Agreement** means this credit facility agreement, the Utilisation Request and any other document designated as such by Nedbank and the Borrower.
- 1.1.4 **Auditors** means one of PwC, EY, KPMG or Deloitte or any other firm approved in advance by Nedbank (such approval not to be unreasonably withheld or delayed) or any other firm appointed by the Auditor General in respect of the Borrower.
- 1.1.5 **Authorisation** means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation, lodgement or registration.
- 1.1.6 **Availability Period** means the period from and including the date upon which Nedbank notified the Borrower as contemplated in clause 4.1 to and including the date which occurs 30 days thereafter.
- 1.1.7 **Available Facility** means the Commitment under the Facility.
- 1.1.8 **Break Costs** means in respect of the Floating Interest Rate, the amount (if any) by which:
  - 1.1.8.1 the interest which Nedbank should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;  
exceeds:
  - 1.1.8.2 the amount which Nedbank would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a



leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

- 1.1.9 **Business Day** means a day (other than a Saturday, a Sunday or official public holiday) on which banks are open for general business in Johannesburg.
- 1.1.10 **Commitment** means R1 349 726 000, to the extent not cancelled or reduced.
- 1.1.11 **Companies Act** means the Companies Act, 2008.
- 1.1.12 **Compliance Certificate** means a certificate substantially in the form set out in Schedule 4.
- 1.1.13 **Default** means an Event of Default or any event or circumstance specified in clause 20 which would (with the expiry of any applicable grace period, the giving of notice, the making of any determination under this Agreement or any combination of any of the foregoing) be an Event of Default.
- 1.1.14 **Disruption Event** means either or both of:
- 1.1.14.1 a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by this Agreement to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- 1.1.14.2 the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
- 1.1.14.2.1 from performing its payment obligations under this Agreement; or
- 1.1.14.2.2 from communicating with other Parties in accordance with the terms of this Agreement,
- and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
- 1.1.15 **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.1.15.1 air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- 1.1.15.2 water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- 1.1.15.3 land (including, without limitation, land under water).

N

RJ [Signature]

- 1.1.16 **Environmental Claim** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.
- 1.1.17 **Environmental Law** means any applicable law or regulation which relates to:
- 1.1.17.1 the pollution or protection of the Environment;
  - 1.1.17.2 harm to or the protection of human health;
  - 1.1.17.3 the conditions of the workplace; or
  - 1.1.17.4 the generation, handling, storage, use, release, emission 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.
- 1.1.18 **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 the Borrower conducted on or from the properties owned or used by the Borrower.
- 1.1.19 **Event of Default** means any event or circumstance specified as such in clause 20.
- 1.1.20 **Facility** means the term loan facility made available under this Agreement as described in clause 2.
- 1.1.21 **Facility Office** means the office or offices notified by a lender to the Agent in writing on or before the date it becomes a lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.
- 1.1.22 **Financial Indebtedness** means any indebtedness, including for or in respect of:
- 1.1.22.1 moneys borrowed or credit granted;
  - 1.1.22.2 any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
  - 1.1.22.3 any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
  - 1.1.22.4 the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GRAP, be treated as a finance or capital lease;
  - 1.1.22.5 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - 1.1.22.6 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;

M

24 [Signature]

- 1.1.22.7 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 marked 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);
- 1.1.22.8 any amount raised by the issue of shares which are redeemable;
- 1.1.22.9 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
- 1.1.22.10 the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 1.1.22.1 to 1.1.22.9.
- 1.1.23 **Floating Interest Rate** means the aggregate of the applicable Floating Rate Margin and JIBAR.
- 1.1.24 **Floating Rate Margin** means:
- 1.1.24.1 at any time other than while an Event of Default is continuing, 2.08% per annum;
- 1.1.24.2 while an Event of Default is continuing, the percentage interest rate in clause 1.1.24.1 plus 2% per annum.
- 1.1.25 **GRAP** means Generally Recognised Accounting Practice.
- 1.1.26 **Interest Period** means, in relation to a Loan, each period determined in accordance with clause 9.1 and, in relation to an Unpaid Sum, each period determined in accordance with clause 8.3.
- 1.1.27 **Interpolated Screen Rate** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the Screen Rate) which results from interpolating on a linear basis between:
- 1.1.27.1 the Screen Rate for the longest period (for which the Screen Rate is available) which is less than the Interest Period of that Loan; and
- 1.1.27.2 the Screen Rate for the shortest period (for which the Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of the Specified Time on the Quotation Day.
- 1.1.28 **JIBAR** means, in relation to any Loan, the applicable Screen Rate:
- 1.1.28.1 as of the Specified Time on the Quotation Day for the offering of deposits in Rand for a period equal in length to the Interest Period of the relevant Loan; or

- 1.1.28.2 as otherwise determined pursuant to clause 10.1,  
and if, in either case, that rate is less than zero, then JIBAR shall be deemed to be zero.
- 1.1.29 **Johannesburg Market** means the South African interbank market.
- 1.1.30 **Loan** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.
- 1.1.31 **Material Adverse Effect** means a material adverse effect on:
- 1.1.31.1 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower;
- 1.1.31.2 the ability of the Borrower to perform any of its obligations under this Agreement; or
- 1.1.31.3 the validity or enforceability of this Agreement or the rights or remedies of Nedbank under this Agreement.
- 1.1.32 **MFMA** means the Municipal Financial Management Act, 2003.
- 1.1.33 **Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- 1.1.33.1 subject to clause 1.1.33.3, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- 1.1.33.2 if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- 1.1.33.3 if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end,
- provided that the above rules will only apply to the last Month of any period.
- 1.1.34 **Original Financial Statements** means, the audited consolidated financial statements of the Borrower for the financial year ended 30 June 2018.
- 1.1.35 **Party** means a party to this Agreement.
- 1.1.36 **Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that period unless market practice differs in the Johannesburg Market, in which case the Quotation Day will be determined by Nedbank in accordance with market practice in the Johannesburg Market (and if

quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

- 1.1.37 **Reference Banks** means the principal Johannesburg offices of Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited, Investec Bank Limited and The Standard Bank of South Africa Limited or such other entities as may be appointed by Nedbank in consultation with the Borrower.
- 1.1.38 **Reference Bank Quotation** means any quotation supplied to Nedbank by a Reference Bank.
- 1.1.39 **Reference Bank Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to Nedbank at its request by the Reference Banks:
- 1.1.39.1 (other than where clause 1.1.39.2 applies) as the rate at which the relevant Reference Banks could borrow funds in the Johannesburg Market in Rand and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or
- 1.1.39.2 if different, as the rate (if any, and applied to the relevant Reference Bank and the relevant currency and period), which contributors to the Screen Rate are asked to submit to the relevant administrator.
- 1.1.40 **Repeating Representations** means each of the representations set out in clause 16.1 to 16.6, 16.9, 16.10, 16.11, 16.12, 16.17 and 16.19.
- 1.1.41 **Screen Rate** means the mid-market rate for deposits in Rand for the relevant period which appears on the Reuters Screen SAFEY Page alongside the caption "YIELD" at the applicable time (or any replacement Reuters page which displays that rate, or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters). If such page or service ceases to be available, Nedbank may specify another page or service displaying the appropriate rate after consultation with the Borrower.
- 1.1.42 **Security** means a mortgage bond, notarial bond, cession in security, charge, pledge, hypothec, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
- 1.1.43 **Signature Date** means the date of the signature of the Party last signing this Agreement in time.
- 1.1.44 **Specified Time** means 11:00 a.m.
- 1.1.45 **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.

- 1.1.46 **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).
- 1.1.47 **Termination Date** means the 15<sup>th</sup> anniversary of the first Utilisation Date.
- 1.1.48 **Transfer** has the meaning given to it in clause 21.1.
- 1.1.49 **Unpaid Sum** means any sum due and payable but unpaid by the Borrower under this Agreement.
- 1.1.50 **Utilisation** means a utilisation of the Facility.
- 1.1.51 **Utilisation Date** means the date of a Utilisation, being the date on which the relevant Utilisation is to be made.
- 1.1.52 **Utilisation Request** means a notice substantially in the form set out in Schedule 3.
- 1.1.53 **VAT** means:
- 1.1.53.1 any value added tax as provided for in the Value Added Tax Act, 1991;
- 1.1.53.2 any general service tax; and
- 1.1.53.3 any other tax of a similar nature.
- 1.2 Construction**
- 1.2.1 Unless a contrary indication appears, any reference in this Agreement to:
- 1.2.1.1 the Borrower or any **Party** or any other person shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees to, or of, its rights and/or obligations under this Agreement;
- 1.2.1.2 **assets** includes present and future properties, revenues and rights of every description;
- 1.2.1.3 **authority** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
- 1.2.1.4 this **Agreement** or any other agreement or instrument is a reference to that document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.1.5 **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;




- 1.2.1.6 the use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples;
- 1.2.1.7 **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.8 a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 1.2.1.9 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.10 a provision of law is a reference to that provision as amended or re-enacted; and
- 1.2.1.11 a time of day is a reference to Johannesburg time.
- 1.2.2 The determination of the extent to which a rate is for a **period equal in length** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- 1.2.3 Clause and schedule headings are for ease of reference only.
- 1.2.4 Unless a contrary indication appears, a term used in this Agreement or in any notice given under or in connection with this Agreement has the same meaning in that document or notice as in this Agreement.
- 1.2.5 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived.
- 1.2.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 1.2.7 Unless inconsistent with the context, an expression in this Agreement which denotes the singular includes the plural and vice versa.
- 1.2.8 The Schedules to this Agreement form an integral part thereof and a reference to a **clause** or a **Schedule** is a reference to a clause of, or a schedule to, this Agreement.

- 1.2.9 The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 1.2.10 The expiry or termination of this Agreement shall not affect those provisions of this Agreement that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.11 This Agreement shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.2.12 Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
- 1.3 **Third party rights**
- 1.3.1 Except as expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of any person who is not a party to this Agreement.
- 1.3.2 Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time except to the extent that the relevant variation or rescission (as the case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.

## 2 THE FACILITIES

Subject to the terms of this Agreement, Nedbank makes available to the Borrower a term loan facility in an aggregate amount equal to the Commitment.

## 3 PURPOSE

### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility for the purposes of capital expenditure on property, plant or equipment to be used for the purposes of achieving the objects of local government as set out in section 152 of the Constitution of



South Africa Act, 1996, including costs referred to in section 46(4) of the MFMA and for no other purpose.

### **3.2 Monitoring**

Nedbank is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## **4 CONDITIONS OF UTILISATION**

### **4.1 Initial conditions precedent**

4.1.1 The Borrower may not deliver a Utilisation Request unless Nedbank has received all of the documents and other evidence listed in Schedule 1 in form and substance satisfactory to Nedbank. Nedbank shall notify the Borrower promptly upon being so satisfied.

4.1.2 If all of the documents and other evidence listed in Schedule 1 were not delivered to Nedbank by not later than 16:00 on 28 June 2019, Nedbank may, on not less than 1 days' notice to the Borrower, cancel the Commitment and declare all amounts accrued under this Agreement immediately due and payable, whereupon the Commitment will be cancelled and all such outstanding amounts will become immediately due and payable.

### **4.2 Further conditions precedent**

Nedbank will only be obliged to comply with clause 5.4 if on the date of the Utilisation Request and on the proposed Utilisation Date:

4.2.1 no Default is continuing or would result from the proposed Loan; and

4.2.2 the Repeating Representations to be made by the Borrower are true in all material respects.


### **4.3 Maximum number of Utilisations**

The Borrower may only deliver one Utilisation Request.

## **5 UTILISATION**

### **5.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to Nedbank of a duly completed Utilisation Request not later than the Specified Time (or such other time as Nedbank may agree to) on the day which is not later than 3 Business Days (or such other period as Nedbank may agree to) prior to the date of the proposed Utilisation Date.



**5.2 Completion of a Utilisation Request**

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

5.2.1.1 the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Facility;

5.2.1.2 the amount of the Utilisation complies with clause 5.3.

5.2.2 Only one Loan may be requested in each Utilisation Request.

**5.3 Amount**

The amount of the proposed Utilisation must be an amount which is not more than the Available Facility and which is a minimum of R1 349 726 000 or, if less, the Available Facility.

**5.4 Advance**

If the conditions set out in this Agreement have been met, Nedbank shall advance the Utilisation by the Utilisation Date.

**5.5 Cancellation of Commitment**

The Commitment which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.

**6 REPAYMENT**

**6.1 Repayment of the Loan**

The Loan shall be repaid by not later than the Termination Date and shall be repaid in 60 equal capital quarterly instalments, each of which shall be repaid on the last day of each Interest Period. The repayment schedule set out in Schedule 5 is, as at the Signature Date, indicative only and the Parties shall, having regard to the Utilisation Date, initial a revised payment schedule which will make reference to the Utilisation Date. Failure to adhere to the foregoing provisions shall not derogate from the Borrower's obligations to repay the Loan.

**6.2 No Reborrowing**

The Borrower may not reborrow any part of the Facility which is repaid.

**7 PREPAYMENT AND CANCELLATION**

**7.1 Illegality**

If it becomes unlawful in any applicable jurisdiction for Nedbank to perform any of its obligations as contemplated by this Agreement or to fund or maintain any Loan or it becomes unlawful for any Affiliate of Nedbank for Nedbank to do so:

7.1.1 Nedbank shall promptly notify the Borrower upon becoming aware of that event;



7.1.2 upon Nedbank notifying the Borrower, the Commitment will be immediately cancelled and

7.1.3 the Borrower shall repay the Loan made to the Borrower on the last day of the Interest Period for each Loan occurring after Nedbank has notified the Borrower or, if earlier, the date specified by Nedbank in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law) and the Commitment shall be cancelled in the amount of the Loan repaid.

## 7.2 **Voluntary cancellation**

The Borrower may, if it gives Nedbank not less than 5 Business Days' (or such shorter period as Nedbank may agree) prior notice, cancel the whole or any part (being a minimum amount of R10 000 000) of the Available Facility. Any cancellation under this clause 7.2 shall reduce the Commitment.

## 7.3 **Voluntary prepayment of the Loan**

7.3.1 The Borrower may, if it gives Nedbank not less than 5 Business Days' (or such shorter period as Nedbank may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of that Loan by a minimum amount of R10 000 000).

7.3.2 A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.3.3 Any prepayment under this clause 7.3 shall satisfy the obligations under clause 6.1 in inverse chronological order.

## 7.4 **Right of repayment and cancellation**

7.4.1 If:

7.4.1.1 any sum payable to Nedbank by the Borrower is required to be increased under clause 11.2.3; or

7.4.1.2 Nedbank claims indemnification from the Borrower under clause 11.3 or clause 12.1,

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues and provided no Default is then continuing, give Nedbank notice of cancellation of the Commitment and its intention to procure the repayment of the Loan.

7.4.2 On receipt of a notice of cancellation referred to in clause 7.4.1, the Commitment shall immediately be reduced to zero.

7.4.3 On the last day of each Interest Period in relation to any Loan which ends after the Borrower has given notice of cancellation under clause 7.4.1 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the Loan.



7.4.4 If the increased cost, tax gross-up or indemnity arose as a result of a law or regulation that is applicable to or affects financial institutions generally then the prepayment contemplated in this clause 7.4 shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs and save as otherwise provided for in clause 7.5.7, without premium or penalty.

**7.5 Restrictions**

7.5.1 Any notice of cancellation or prepayment given by any Party under this clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

7.5.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs and save as otherwise provided for in clause 7.5.7, without premium or penalty.

7.5.3 The Borrower may not reborrow any part of the Facility which is prepaid.

7.5.4 The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

7.5.5 No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

7.5.6 If all or part of a Loan under the Facility is repaid or prepaid and is not available for redrawing (other than by operation of clause 4.2), an amount of the Commitment (equal to the amount of the Loan which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

7.5.7 The Borrower may, at any time after the expiry of 9 (nine) months from the date of Nedbank's notification to the Borrower that it has received all of the documents and other evidence listed in Schedule 1 in form and substance satisfactory to Nedbank, prepay without penalty all or any portion of a Loan, whether as a result of incurring a Financial Indebtedness in favour of any person other than Nedbank or otherwise.

**8 INTEREST**

**8.1 Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the Floating Interest Rate for that Loan.

**8.2 Payment of interest**

The Borrower shall pay accrued interest on a Loan on the last day of each Interest Period.

ND



**8.3 Default interest**

8.3.1 If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to clause 8.3.2, is 2% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan of that Unpaid Sum for successive Interest Periods. Any interest accruing under this clause 8.3 shall be immediately payable by the Borrower on demand by Nedbank.

8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

8.3.2.1 the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

8.3.2.2 the rate of interest applying to the overdue amount during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.

8.3.3 Default interest (if unpaid) arising on any overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

**8.4 Notification of rates of interest**

Nedbank shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

**8.5 Change in the rate of interest**

8.5.1 If the long-term local rating attributed by the Global Credit Rating Company Proprietary Limited (or another rating agency registered with the Financial Services Board) to the Borrower is downgraded by 2 notches from the level it was at as at the Signature Date, then the Borrower must notify Nedbank of such event (the **2 Notch Downgrade Event**), Nedbank may review the Floating Rate Margin and, should Nedbank elect to increase the Floating Rate Margin, Nedbank shall notify the Borrower in writing (the **New Margin Notice**) of the revised Floating Rate Margin, which amount may not be more than 0.1% greater than the amount stated in clause 1.1.24.1 (the **New Margin**) by no later than 28 Business Days after having exercised its right to increase the Floating Rate Margin. Nedbank may only exercise such right within 28 Business Days of the later to occur of:

8.5.1.1 Nedbank becoming aware of such 2 Notch Downgrade Event; and

8.5.1.2 the Borrower notifying Nedbank of the occurrence of the 2 Notch Downgrade Event.

8.5.2 If the Borrower:



8.5.2.1 accepts, in writing, the rate prescribed by Nedbank as constituting the New Margin (the **New Margin Acceptance Notice**) by not later than 28 Business Days after receipt of the New Margin Notice, then the New Margin shall be effective as of the commencement of the next Interest Period;

8.5.2.2 shall have failed to accept in writing the rate prescribed by Nedbank as constituting the New Margin by not later than 15 Business Days after receipt of the New Margin Notice Nedbank may, on prior written notice to the Borrower, cancel the Commitment and declare all outstanding Loans, together with accrued interest, Break Costs and all other amounts accrued under the Finance Documents due and payable within 180 days, whereupon the Commitment will be cancelled and all such outstanding amounts will become due and payable within 180 days.

8.5.3 Subsequent to the New Margin becoming effective in accordance with the provisions of clauses 8.5.1 and 8.5.2 above, should the long-term local rating attributed by the Global Credit Rating Company Proprietary Limited (or another rating agency registered with the Financial Services Board) to the Borrower be upgraded by 2 notches, then the Borrower must notify Nedbank of such event (the **2 Notch Upgrade Event**), Nedbank may review the Floating Rate Margin and, should Nedbank elect to reduce the Floating Rate Margin, Nedbank shall notify the Borrower in writing (the **New Upgrade Margin Notice**) of the revised Floating Rate Margin, which amount may not be more than 0.1% lower than the New Margin (the **New Upgrade Margin**) (and such New Upgrade Margin shall never be lower than the amount stated in clause 1.1.24.1 (and prevailing as at the Signature Date)) by no later than 28 Business Days after having exercised its right to reduce the Floating Rate Margin. Nedbank may only exercise such right within 28 Business Days of the later to occur of:

8.5.3.1 Nedbank becoming aware of such 2 Notch Upgrade Event; and

8.5.3.2 the Borrower notifying Nedbank of the occurrence of the 2 Notch Upgrade Event.

8.5.4 If the Borrower:

8.5.4.1 accepts, in writing, the rate prescribed by Nedbank as constituting the New Upgrade Margin (the **New Upgrade Margin Acceptance Notice**) by not later than 28 Business Days after receipt of the New Upgrade Margin Notice, then the New Upgrade Margin shall be effective as of the commencement of the next Interest Period;

8.5.4.2 shall have failed to accept in writing the rate prescribed by Nedbank as constituting the New Upgrade Margin by not later than 15 Business Days after receipt of the New Upgrade Margin Notice Nedbank may, on prior written notice to the Borrower, cancel the Commitment and declare all outstanding




Loans, together with accrued interest, Break Costs and all other amounts accrued under the Finance Documents due and payable within 180 days, whereupon the Commitment will be cancelled and all such outstanding amounts will become due and payable within 180 days.

## **9 INTEREST PERIODS**

### **9.1 Selection of Interest Periods**

- 9.1.1 Interest Periods in respect of the Facility will be 3 Months each, the first of which shall commence on the Utilisation Date.
- 9.1.2 An Interest Period for a Loan shall not extend beyond the Termination Date.
- 9.1.3 Each Interest Period other than the first Interest Period shall start on the last day of its preceding Interest Period.

### **9.2 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

## **10 CHANGES TO THE CALCULATION OF INTEREST**

### **10.1 Unavailability of Screen Rate**

- 10.1.1 If no Screen Rate is available for JIBAR for the Interest Period of a Loan, the applicable JIBAR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- 10.1.2 If no Screen Rate is available for JIBAR for the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable JIBAR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan.
- 10.1.3 If clause 10.1.2 applies but no Reference Bank Rate is available or available for the relevant Interest Period there shall be no JIBAR for that Loan and clause 10.4 shall apply to that Loan for that Interest Period.

### **10.2 Absence of quotations**

- 10.2.1 Subject to clause 10.2.2, if JIBAR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- 10.2.2 If at or about noon on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

**10.3 Market disruption**

If, before close of business in Johannesburg on the Quotation Day for the relevant Interest Period Nedbank notifies the Borrower that the cost to it of funding a Loan would be in excess of JIBAR then clause 10.4 shall apply to that Loan for the relevant Interest Period.

**10.4 Cost of funds**

10.4.1 If this clause 10.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

10.4.1.1 the Margin; and

10.4.1.2 the rate notified to the Borrower by Nedbank (as soon as practicable and in any event within 5 Business Days of the first day of that Interest Period (or, if earlier, on the date falling 5 Business Days before the date on which interest is due to be paid in respect of that Interest Period)), to be that which expresses as a percentage rate per annum the cost to Nedbank of funding that Loan from whatever source it may reasonably select.

10.4.2 If this clause 10.4 applies and Nedbank or the Borrower so requires, Nedbank and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

10.4.3 Any alternative basis agreed pursuant to clause 10.4.2 shall be binding on all Parties.

**10.5 Break Costs**

10.5.1 The Borrower shall, within 90 days of demand by Nedbank, pay to Nedbank its Break Costs attributable to all or any part of a Loan or Unpaid Sum being prepaid by the Borrower on a day other than the last day of any applicable Interest Period.

10.5.2 Nedbank shall, as soon as reasonably practicable after a demand by it, provide a certificate confirming the amount of its accrued Break Costs.

**11 TAX GROSS UP AND INDEMNITIES**

**11.1 Definitions**

11.1.1 In this Agreement:

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

11.1.1.2 **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this Agreement.

11.1.1.3 **Tax Payment** means either the increase in a payment made by the Borrower to Nedbank under clause 11.2 or a payment under clause 11.3.

*Nd*

*[Handwritten signature]*

11.1.2 Unless a contrary indication appears, in this clause 11 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

11.2 **Tax gross-up**

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

11.2.2 The Borrower shall promptly upon becoming aware that the Borrower 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 from the Borrower.

11.2.3 If a Tax Deduction is required by law to be made by the 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.

11.2.4 If the 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.

11.2.5 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.

11.3 **Tax indemnity**

11.3.1 The Borrower shall (within 3 Business Days of demand by Nedbank) indemnify Nedbank against, and shall 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 this Agreement.

11.3.2 Clause 11.3.1 shall not apply:

11.3.2.1 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

11.3.2.2 to the extent a loss, liability or cost is compensated for by an increased payment under clause 11.2.



11.3.3 If Nedbank makes, or intends to make a claim under clause 11.3.1, Nedbank shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

11.3.4 Nedbank shall, on receiving a payment from the Borrower under this clause 11.3, notify the Borrower.

#### 11.4 Tax Credit

Subject to clause 26, if the Borrower makes a Tax Payment and Nedbank determines that:

11.4.1 a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, or to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

11.4.2 Nedbank has obtained, utilised and retained that Tax Credit,

Nedbank shall pay an amount to the 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.

#### 11.5 Value added tax

11.5.1 All amounts set out or expressed to be payable under this Agreement by any Party 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 accordingly, if VAT is or becomes chargeable on any supply made by Nedbank to any Party under this Agreement and Nedbank is required to account to the relevant tax authority for the VAT, that Party must 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 the VAT (and Nedbank must promptly provide an appropriate VAT invoice to that Party).

11.5.2 Where this Agreement requires any Party to reimburse or indemnify Nedbank for any costs or expenses, that Party 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.

## 12 INCREASED COSTS

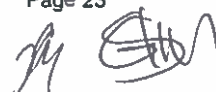
### 12.1 Increased costs

12.1.1 Subject to clause 12.3 the Borrower shall, within 3 Business Days of a demand by Nedbank, pay to Nedbank the amount of any Increased Costs incurred by Nedbank or any of its Affiliates as a result of:

12.1.1.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;

- 12.1.1.2 compliance with any law or regulation made after the Signature Date;
- 12.1.1.3 the implementation or application of or compliance with Basel III or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Nedbank or any of its Affiliates).
- 12.1.2 In this Agreement **Increased Costs** means:
- 12.1.2.1 a reduction in the rate of return from the Facility or on Nedbank's (or its Affiliate's) overall capital;
- 12.1.2.2 an additional or increased cost; or
- 12.1.2.3 a reduction of any amount due and payable under this Agreement,  
which is incurred or suffered by Nedbank or any of its Affiliates to the extent that it is attributable to Nedbank having entered into its Commitment or funding or performing its obligations under this Agreement.
- 12.2 **Increased cost claims**
- 12.2.1 If Nedbank intends to make a claim pursuant to clause 12.1, it shall notify the Borrower of the event giving rise to the claim.
- 12.2.2 Nedbank shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.
- 12.2.3 Following receipt of the notification set out in clauses 12.2.1 above, the Borrower shall be entitled to prepay the Facility, in whole but not in part, without penalty provided that (i) the Borrower shall give Nedbank not less than 5 Business Days' (or such shorter period as Nedbank may agree) prior notice, and (ii) payment is effected on the last of the Interest Period in which such prior notice has been given to Nedbank.
- 12.3 **Exceptions**
- 12.3.1 Clause 12.1 does not apply to the extent any Increased Cost is:
- 12.3.1.1 attributable to a Tax Deduction required by law to be made by the Borrower;
- 12.3.1.2 compensated for by clause 11.3 (or would have been compensated for under clause 11.3 but was not so compensated solely because any of the exclusions in clause 11.3.2 applied), or
- 12.3.1.3 attributable to the wilful breach by Nedbank or its Affiliates of any law or regulation.
- 12.3.2 In this clause 12.3:
- 12.3.2.1 a reference to a **Tax Deduction** has the same meaning given to that term in clause 11.1;

M



- 12.3.2.2 **Basel III means:**
- 12.3.2.2.1 the global regulatory framework on bank capital and liquidity contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating in the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- 12.3.2.2.2 the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- 12.3.2.2.3 any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

### 13 INDEMNITIES

The Borrower shall, within 3 Business Days of demand, indemnify Nedbank (as Agent (as defined later)) against, and shall pay to Nedbank (as Agent (as defined later)), any evidenced cost, loss or liability incurred by Nedbank (as Agent (as defined later)) as a result of:

- 13.1 investigating or taking any other action in connection with any event which it reasonably believes is a Default;
- 13.2 acting or relying on any notice (including a notice of prepayment), request or instruction purportedly received from the Borrower and which it reasonably believes to be genuine, correct and appropriately authorised;
- 13.3 the occurrence of any Default;
- 13.4 a failure by the Borrower to pay any amount due under this Agreement on its due date;
- 13.5 any default by the Borrower in the performance of any of the other obligations expressed to be assumed by it in this Agreement; or
- 13.6 funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by Nedbank alone); or
- 13.7 a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

## 14 MITIGATION BY THE LENDER

### 14.1 Mitigation

14.1.1 Nedbank shall, in consultation with the Borrower, take all reasonable steps (including consultation with the Borrower) to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1, clause 11 or clause 12.

14.1.2 Clause 14.1.1 does not in any way limit the obligations of the Borrower under this Agreement.

### 14.2 Limitation of liability

14.2.1 The Borrower shall, following agreement with Nedbank of the steps taken (if any) under clause 14.1, promptly indemnify Nedbank against, and pay to Nedbank, all costs and expenses reasonably incurred by Nedbank as a result of steps taken by it under clause 14.1.

14.2.2 Nedbank is not obliged to take any steps under clause 14.1 if, in its opinion (acting reasonably) to do so might be prejudicial to it.

## 15 COSTS AND EXPENSES

### 15.1 Amendment costs

lf:

15.1.1 the Borrower requests an amendment, waiver or consent; or

15.1.2 there is any change in law or any regulation which requires an amendment, waiver or consent under this Agreement,

the Borrower shall, within 3 Business Days of demand, reimburse Nedbank 50% of the amount of all costs and expenses (including legal fees) reasonably incurred by Nedbank in connection with evaluating, negotiating or complying with any such request or requirement.

### 15.2 Enforcement costs

The Borrower shall, within 3 Business Days of demand, pay to Nedbank the amount of all costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgment) incurred by Nedbank in connection with the enforcement of, or the preservation of any rights under, this Agreement.

## 16 REPRESENTATIONS

The Borrower makes the representations and warranties set out in this clause 16 to Nedbank on the Signature Date.



**16.1 Status**

16.1.1 It is duly established in terms of law.

16.1.2 It has the power to own its assets and carry on its business as it is being conducted.

**16.2 Binding obligations**

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

**16.3 Non-conflict with other obligations**

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

16.3.1 any law or regulation applicable to it;

16.3.2 its constitutional documents; or

16.3.3 any agreement or instrument binding upon it or any of its assets.

**16.4 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement to which it is a party and the transactions contemplated by this Agreement.

**16.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

16.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement;

16.5.2 to make this Agreement admissible in evidence in its jurisdiction of incorporation; and

16.5.3 for the conduct of the business, trade and ordinary activities of the Borrower,

have been obtained or effected and are in full force and effect.

**16.6 Governing law and enforcement**

16.6.1 The choice of South African law as the governing law of this Agreement will be recognised and enforced.

16.6.2 Any judgment obtained in relation to this Agreement will be recognised and enforced.

**16.7 Deduction of Tax**

It is not required to make any Tax Deduction (as defined in clause 11.1) from any payment it may make under this Agreement.

*NE*

*[Handwritten signature]*

**16.8 No filing or stamp taxes**

It is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.

**16.9 No default**

16.9.1 No Event of Default is continuing or might reasonably be expected to result from the entry into, or the performance of any transaction contemplated by, this Agreement.

16.9.2 No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject.

16.9.3 It is not experiencing financial problems which would justify:

16.9.3.1 an intervention;

16.9.3.2 the preparation of a financial recovery plan;

16.9.3.3 an application to stay legal proceedings or to suspend or terminate its financial obligations; or

16.9.3.4 the grant of any other relief,

contemplated in Chapter 13 of the MFMA.

**16.10 No misleading information**

All information supplied by the Borrower (including its advisors) to Nedbank was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

**16.11 Financial statements**

16.11.1 Its Original Financial Statements were prepared in accordance with GRAP consistently applied.

16.11.2 Its Original Financial Statements give a true and fair view and represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).

16.11.3 There has been no material adverse change in its business or consolidated financial condition of the Borrower) since 30 June 2018.

**16.12 Pari passu ranking**

Its payment obligations under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

N



**16.13 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, would result in a the Borrower having to pay an amount which is equal to or in excess of 3% of the Borrower's latest Total Operating Revenue has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

**16.14 Insolvency and Financial Distress**

16.14.1 No:

16.14.1.1 corporate action, legal proceeding or other procedure or step described in clause 20.8; or

16.14.1.2 creditors' process described in clause 20.9,

has been taken or threatened in relation to the Borrower, and none of the circumstances described in clause 20.7 applies to the Borrower.

16.14.2 The Borrower is not Financially Distressed (as defined in the Companies Act).

**16.15 No breach of laws**

It has not breached any law or regulation.

**16.16 Environmental laws**

16.16.1 The Borrower is in compliance with clause 19.4 and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance.

16.16.2 No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it.

**16.17 Authorised Signatures**

Any person specified as its authorised signatory under Schedule 1 or clause 17.5.4 is authorised to sign Utilisation Requests and other notices on its behalf.

**16.18 Accounting reference date**

The Accounting Reference Date of the Borrower is 30 June of each year.

**16.19 No immunity**

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement.



**16.20 No adverse consequences**

It is not necessary:

16.20.1 in order to enable Nedbank to enforce its rights under this Agreement; or

16.20.2 by reason of the execution of this Agreement or the performance by it of its obligations under this Agreement,

that Nedbank should be licensed, qualified or otherwise entitled to carry on business.

**16.21 Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

**17 INFORMATION UNDERTAKINGS**

The undertakings in this clause 17 remain in force from the Signature Date for so long as any amount is outstanding under this Agreement or any Commitment is in force.

**17.1 Financial statements**

The Borrower shall supply to Nedbank:

17.1.1 as soon as the same become available, but in any event within 30 days after having been approved by council:

17.1.1.1 its audited company and consolidated financial statements for that financial year; and

17.1.2 as soon as the same become available, but in any event within 30 days after having been approved by council:

17.1.2.1 its company and consolidated management accounts for that financial half year.

**17.2 Compliance Certificate**

17.2.1 The Borrower shall supply to Nedbank, with the set of financial statements delivered pursuant to clause 17.1.1.1, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 18 as at the date as at which those financial statements were drawn up.

17.2.2 Each Compliance Certificate shall be signed by the Chief Financial Officer and the Municipal Manager of the Borrower.

**17.3 Requirements as to financial statements**

17.3.1 Each set of financial statements delivered by the Borrower pursuant to clause 17.1 shall be certified by the Borrower or a director of the relevant company as fairly

M



representing its financial condition as at the date as at which those financial statements were drawn up.

- 17.3.2 The Borrower shall procure that each set of financial statements delivered pursuant to clause 17.1 is prepared using GRAP.

**17.4 Year-end**

The Borrower shall not change its Accounting Reference Date.

**17.5 Information: miscellaneous**

The Borrower shall supply to Nedbank:

- 17.5.1 promptly upon becoming aware of them, details and copies of any changes proposed to or made to its constitutional documents;

- 17.5.2 promptly upon becoming aware of them, the details of any (i) litigation and/or arbitration proceedings which are current, threatened or pending against it which in aggregate exceed 3% of the Borrower's latest Total Operating Revenue, and (ii) administrative proceedings, liquidation applications, winding up applications or business rescue applications which are current, threatened or pending against it;

- 17.5.3 promptly, such further information regarding the financial condition, business and operations of it as Nedbank may reasonably request;

- 17.5.4 promptly, notice of any change in authorised signatories of it signed by the Accounting Officer or Chief Financial Officer (both as defined in the MFMA) (or such other delegated official) and accompanied by specimen signatures of any new authorised signatories; and

- 17.5.5 promptly upon request, such additional information or documentation as Nedbank may require in order to verify that any signatory referred to in clause 17.5.4 has been duly authorised.

**17.6 Notification of default**

- 17.6.1 The Borrower shall notify Nedbank of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

- 17.6.2 Promptly upon a request by Nedbank, the Borrower shall supply to Nedbank a certificate signed by the Accounting Officer or Chief Financial Officer (both as defined in the MFMA) (or such other delegated official) on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

ND

M

(S)

**17.7 Know your customer checks**

If:

- 17.7.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signature Date;
- 17.7.2 any change in the status of the Borrower after the Signature Date; or
- 17.7.3 a proposed Transfer by Nedbank of any of its rights and obligations under this Agreement,

obliges Nedbank (or, in the case of clause 17.7.3, any prospective transferee) to comply with know your customer or similar identification procedures (whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise) in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of Nedbank supply, or procure the supply of, such documentation and other evidence as is reasonably requested by Nedbank (for itself or, in the case of the event described in clause 17.7.3, on behalf of any prospective transferee) in order for Nedbank or, in the case of the event described in clause 17.7.3, any prospective transferee to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

**18 FINANCIAL COVENANTS**

**18.1 Financial definitions**

In this Agreement:

- 18.1.1 **Billed Revenue** means all invoiced revenue from Service Charges and property rates.
- 18.1.2 **Cash Receipts** means cash receipts from Billed Revenue.
- 18.1.3 **Debtors Cash Collection Percentage** means, in respect of each Relevant Period, the percentage resulting from the following formula:

$$\frac{P}{Q} \times 100$$

where:

- 18.1.3.1 P = .....Cash Receipts; and
- 18.1.3.2 Q = .....Billed Revenue.
- 18.1.4 **Financial Half Year** means the period commencing on the day after one Half Year Date and ending on the next Half Year Date.
- 18.1.5 **Financial Year** means the annual accounting period of the Borrower ending on or about 30 June in each year.

- 18.1.6 **Half Year Date** means 31 December of each year.
- 18.1.7 **Gross Debt to Total Operating Revenue Percentage** means the percentage determined in accordance with the following formula:
- $$\frac{X}{Y} \times 100$$
- where:
- 18.1.7.1 X = ..... Gross Debt; and
- 18.1.7.2 Y = ..... Total Operating Revenue Less Operating Conditional Grant.
- 18.1.8 **Gross Debt** means bank overdraft facilities plus short- term borrowings plus short-term leases plus long- term borrowings plus long- term leases.
- 18.1.9 **Relevant Period** means each period of twelve months ending on or about the last day of each Financial Year and each period of twelve months ending on or about the last day of each Financial Half Year.
- 18.1.10 **Service Charges** means all amounts invoiced and arising from the sale of electricity, sale of water, sewerage and sanitation charges, and refuse removal.
- 18.1.11 **Total Operating Revenue** means all revenue received of an operating nature, including conditional and unconditional grants used for operating purposes.

**18.2 Financial condition**

The Borrower shall ensure that:

- 18.2.1 **Gross Debt to Total Operating Revenue Percentage** in respect of any Relevant Period specified in column 1 below shall be less than the percentage set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	55%

- 18.2.2 **Debtors Cash Collection Percentage** in respect of any Relevant Period specified in column 1 below shall be greater than the percentage set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	85%

*ND*

*[Handwritten signatures]*

**18.3 Financial testing**

The financial covenants set out in clause 18.2 shall be calculated in accordance with GRAP and tested by reference to each of the financial statements delivered pursuant to clause 17.1 and/or each Compliance Certificate delivered pursuant to clause 17.2.

**19 GENERAL UNDERTAKINGS**

The undertakings in this clause 19 remain in force from the Signature Date for so long as any amount is outstanding under this Agreement or any Commitment is in force.

**19.1 No Refinancing of Short Term Debt**

The proceeds of this Facility shall not be applied to refinance any short term debt in a manner that may contravene section 45(5)(a) of the MFMA, or any other similar provision.

**19.2 Authorisations**

The Borrower shall promptly:

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

19.2.2 supply certified copies to Nedbank of,  
  
any Authorisation required under any law or regulation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement.

**19.3 Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject.

**19.4 Environmental compliance**

The Borrower shall:

19.4.1 comply with all Environmental Law;

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

19.4.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**19.5 Environmental claims**

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

19.5.1 any Environmental Claim against it which is current, pending or threatened; and

NE

Handwritten signatures and initials.

19.5.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against it.

**19.6 Negative pledge**

The Borrower shall not create or permit to subsist any Security over any of its assets, other than as permitted under the MFMA.

**19.7 Disposals**

The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset unless such sale, lease, transfer or other disposal is permitted in terms of the provisions of the MFMA.

**19.8 Acquisitions**

The Borrower shall be entitled to acquire such assets as are approved in any approved Capital Budget (as defined in the MFMA) and in respect of which all the necessary approvals as required by all applicable laws, including, without limitation, the MFMA, have been obtained.

**19.9 Change of business**

The Borrower shall procure that no substantial change is made to the general nature of its business taken as a whole from that carried on at the Signature Date.

**19.10 Loans or credit**

19.10.1 Except as permitted under clause 19.10.2, The Borrower shall not be a creditor in respect of any Financial Indebtedness.

19.10.2 Clause 19.10.1 does not apply to:

19.10.2.1 loans made or credit granted in the ordinary course of trade;

19.10.2.2 loans made or credit granted with Nedbank's prior written consent.

**19.11 Financial Indebtedness**

The Borrower shall not incur or allow to remain outstanding any Financial Indebtedness unless such Financial Indebtedness is permitted in terms of the provisions of the MFMA;

**19.12 Capital budget and integrated development plan**

The Borrower shall at all times comply with its approved integrated development plan, capital budget and/or approved adjustments budget and shall furnish to Nedbank, promptly after it has become available, a copy of the capital budget and adjustments budget, as the case may be.

N



**19.13 Auditor**

The Borrower shall not appoint as its auditors any auditors other than the Auditor-General or any Auditor appointed by the Auditor-General.

**19.14 Sanctions**

19.14.1 In this Agreement:

19.14.1.1 **Sanctioned Entity** means:

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

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

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

19.14.1.2.1 a Sanctioned Entity; or

19.14.1.2.2 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.

19.14.1.3 **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.

19.14.1.4 **Sanctions Authority** means any of:

19.14.1.4.1 the United Nations;

19.14.1.4.2 the European Union;

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

19.14.1.4.4 the government of the United States of America;

19.14.1.4.5 the government of the United Kingdom;

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).

N

Handwritten initials and signatures.

- 19.14.1.5                    **Sanctions List** means:
- 19.14.1.5.1                    the Specially Designated Nationals and Blocked Persons List maintained by OFAC;
- 19.14.1.5.2                    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.
- 19.14.2                    The Borrower shall not (and the Borrower shall ensure that no other member of the Borrower group will) at any time participate in a Sanctioned Transaction in any manner.

## 20    **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this clause 20 is an Event of Default (save for clause 20.16).

### 20.1        **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable unless:

- 20.1.1                    its failure to pay is caused by:
- 20.1.1.1                    administrative or technical error; or
- 20.1.1.2                    a Disruption Event; and
- 20.1.2                    payment is made within:
- 20.1.2.1                    (in the case of clause 20.1.1.1) 3 Business Days of its due date; or
- 20.1.2.2                    (in the case of clause 20.1.1.2) 5 Business Days of its due date.

### 20.2        **Financial covenants**

Any requirement of clause 18 is not satisfied.

### 20.3        **Other obligations**

- 20.3.1                    The Borrower does not comply with any provision of this Agreement (other than those referred to in clause 20.1 and clause 20.2).
- 20.3.2                    No Event of Default under clause 20.3.1 will occur if the failure to comply is capable of remedy and is remedied within 3 Business Days of the earlier of:
- 20.3.2.1                    Nedbank giving notice to the Borrower; and
- 20.3.2.2                    the Borrower becoming aware of the failure to comply.

**20.4 Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in this Agreement or any other document delivered by or on behalf of the Borrower under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

**20.5 Serious financial problems or financial crisis**

The Borrower experiences financial problems which would justify:

- 20.5.1 an intervention;
- 20.5.2 the preparation of a financial recovery plan;
- 20.5.3 an application to stay legal proceedings or to suspend or terminate its financial obligations; or
- 20.5.4 the grant of any other relief,

contemplated in Chapter 13 of the MFMA.

**20.6 Cross default**

- 20.6.1 Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- 20.6.2 Any Financial Indebtedness the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 20.6.3 Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- 20.6.4 Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- 20.6.5 No Event of Default will occur under this clause 20.6 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within the preceding sub-clauses is less than 3% of the Borrower's latest Total Operating Revenue (or its equivalent in any other currency or currencies).

**20.7 Insolvency**

- 20.7.1 The Borrower:
  - 20.7.1.1 is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due;
  - 20.7.1.2 suspends making payments on any of its debts; or

20.7.1.3 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (other than Nedbank) with a view to rescheduling any of its indebtedness.

20.7.2 The Borrower is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Companies Act).

20.7.3 The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).

20.7.4 A moratorium is declared in respect of any indebtedness of the Borrower.

**20.8 Insolvency and business rescue proceedings**

20.8.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:

20.8.1.1 the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;

20.8.1.2 a composition, compromise, assignment or arrangement with any creditor of the Borrower;

20.8.1.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of the Borrower or any of its assets; or

20.8.1.4 enforcement of any Security over any assets of the Borrower,

or any analogous procedure or step is taken in any jurisdiction. This clause 20.8 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

20.8.2 A meeting is proposed or convened by the directors of the Borrower, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of the Borrower or any analogous procedure or step is taken in any jurisdiction.

**20.9 Creditors' process**

Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution affects any asset or assets of the Borrower having an aggregate value of 3% of the Borrower's latest annual Total Operating Revenue and is not discharged within 30 days.

N



**20.10 Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

**20.11 Expropriation**

20.11.1 The authority or ability of the Borrower to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person.

20.11.2 By the authority of any governmental, regulatory or other authority or other person:

20.11.2.1 the management of the Borrower is wholly or substantially replaced; or

20.11.2.2 all or a majority of the shares of the Borrower or the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

**20.12 Cessation of business**

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**20.13 Audit qualification**

The Auditor-General or 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 of the financial statements or records of the Borrower, or have issued an opinion which identifies a serious financial problem in the Borrower.

**20.14 Repudiation**

The Borrower (or any other relevant party) repudiates this Agreement or purports to repudiate this Agreement or evidences an intention to repudiate this Agreement.

**20.15 Material adverse change**

Any event or circumstance occurs which Nedbank reasonably believes has or is reasonably likely to have a Material Adverse Effect.

**20.16 Acceleration**

On and at any time after the occurrence of an Event of Default Nedbank may, by notice to the Borrower:

20.16.1 cancel all or any part of the Commitment whereupon it shall immediately be cancelled;

20.16.2 declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable; and/or

*M*

*[Handwritten signatures]*

20.16.3 declare that all or part of the Loan be payable on demand, whereupon they shall immediately become payable on demand by Nedbank.

## **21 CHANGES TO THE LENDER**

### **21.1 Cessions and delegations by Nedbank**

21.1.1 Subject to this clause 21 and provided that 6 (six) months have elapsed from the from the date of Nedbank's notification to the Borrower that it has received all of the documents and other evidence listed in Schedule 1 in form and substance satisfactory to Nedbank, Nedbank may cede and/or delegate (a **Transfer**) any or all of its rights and/or obligations under this Agreement to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (a **New Lender**). Nedbank shall give the Borrower 5 (five) days' prior notice of such Transfer occurring. The Borrower consents to any splitting of claims which arises or may arise as a result of a Transfer permitted by this Agreement.

21.1.2 Notwithstanding the foregoing, Nedbank shall be entitled at any time to Transfer any or all of its rights and/or obligations under this Agreement to a New Lender in circumstances where such Transfer is for purposes of creating capacity within Nedbank to cater for new business won with the Borrower.

### **21.2 Procedure for Transfer**

21.2.1 Subject to the conditions set out in the Agreement, a Transfer is effected when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the existing lender and the New Lender.

### **21.3 Conditions of Transfer**

21.3.1 The consent of the Borrower is not required for a Transfer by Nedbank to any New Lender. The consent of the Borrower is required for a Transfer to any other prospective transferee (and the Borrower irrevocably and unconditionally authorises the Borrower to give such consent for the benefit of the prospective transferee and Nedbank).

21.3.2 Where the consent of the Borrower to a Transfer is required in terms of clause 21.3.1, that consent must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 5 Business Days after Nedbank has requested it unless consent is expressly refused by the Borrower within that time.

21.3.3 If:

21.3.3.1 Nedbank Transfers any of its rights or obligations under this Agreement; and

21.3.3.2 as a result of circumstances existing at the date the Transfer or change occurs, the Borrower would be obliged to make a payment to the transferee under clause 11 or clause 12,

then the transferee is only entitled to receive payment under those clauses to the same extent as Nedbank would have been if the Transfer or change had not occurred.

**21.4 Limitation of responsibility of Lenders**

21.4.1 Unless expressly agreed to the contrary, Nedbank (and any lender who subsequently becomes a New Lender pursuant to a Transfer) makes no representation or warranty and assumes no responsibility to a New Lender for:

21.4.1.1 the legality, validity, effectiveness, adequacy or enforceability of the Agreement or any other documents;

21.4.1.2 the financial condition of the Borrower;

21.4.1.3 the performance and observance by the Borrower of its obligations under the Agreement or any other documents; or

21.4.1.4 the accuracy of any statements (whether written or oral) made in or in connection with any Agreement or any other document,

and any representations or warranties implied by law are excluded.

21.4.2 Each New Lender confirms to Nedbank and the other lenders that it:

21.4.2.1 has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by Nedbank or any other existing lender in connection with the Agreement; and

21.4.2.2 will continue to make its own independent appraisal of the creditworthiness of the Borrower whilst any amount is or may be outstanding under the Agreement or any Commitment is in force.

21.4.3 Nothing in the Agreement obliges Nedbank or an existing lender to:

21.4.3.1 accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations Transferred under this Clause 21; or

21.4.3.2 support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Agreement or otherwise.

N



**21.5 Effect of Transfer**

On the date a Transfer takes effect pursuant to a transfer agreement:

- 21.5.1 the Transfer shall take effect under this Agreement so that the rights and/or obligations which are the subject of the Transfer shall be ceded and delegated by Nedbank to the transferee (being the **Transferred Rights and Obligations**);
- 21.5.2 each of the Borrowers shall perform their obligations and exercise their rights in relation to the Transferred Rights and Obligations in favour of or against the transferee, as the case may be;
- 21.5.3 the transferee shall become a Party and any reference to Nedbank in this Agreement shall be construed as reference to the transferee.

**21.6 Copy of transfer agreement to the Borrower**

Nedbank shall notify the Borrower of the conclusion of a transfer agreement executed by it as soon as reasonably practicable after it has executed any such transfer agreement.

**22 ROLE OF THE AGENT**

**22.1 Appointment of the Agent**

- 22.1.1 Each other lender appoints Nedbank (the "**Agent**") to act as its agent under and in connection with the Agreement.
- 22.1.2 Each other lender authorises the Agent to perform the duties, obligations and responsibilities and exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Agreement together with any other incidental rights, powers, authorities and discretions.

**22.2 Instructions**

**22.2.1 The Agent shall:**

- 22.2.1.1 unless a contrary indication appears in an Agreement, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
  - 22.2.1.1.1 all lenders if the relevant Agreement stipulates the matter is an all lender decision; and
  - 22.2.1.1.2 in all other cases, the majority lenders, being a lender or lenders whose Commitments aggregate more than 66⅔ % of the total Commitments (or, if the total Commitments have been reduced to zero, aggregated more than 66⅔ % of the Total Commitments immediately prior to the reduction)(the "**Majority Lenders**"); and
- 22.2.1.2 not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph 22.2.1.1 above.

- 22.2.2 The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the Agreement stipulates the matter is a decision for any other lender or group of lenders, from that lender or group of lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- 22.2.3 Save in the case of decisions stipulated to be a matter for any other lender or group of lenders under the Agreement and unless a contrary indication appears in an Agreement, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all finance parties.
- 22.2.4 The Agent may refrain from acting in accordance with any instructions of any lender or group of lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Agreement and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- 22.2.5 In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of all the lenders.
- 22.2.6 The Agent is not authorised to act on behalf of a lender (without first obtaining that lender's consent) in any legal or arbitration proceedings relating to any Agreement.
- 22.3 Duties of the Agent
- 22.3.1 The Agent's duties under the Agreement are solely mechanical and administrative in nature.
- 22.3.2 Subject to clause 22.3.3, the Agent shall forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party as soon as reasonably practicable after having received that original or copy document as the case may be.
- 22.3.3 Without prejudice to Clause 21.6 (Copy of transfer agreement to the Borrower), clause 22.3.2 above shall not apply to any transfer agreement.
- 22.3.4 Except where an Agreement specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 22.3.5 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other finance parties.

- 22.3.6 If the Agent is aware of the non-payment of any principal, interest, or other fee payable to a finance party (other than the Agent) under this Agreement it shall promptly notify the other finance parties.
- 22.3.7 The Agent shall have only those duties obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no other shall be implied).
- 22.4 No fiduciary duties
- 22.4.1 Nothing in any Agreement constitutes the Agent as a trustee or fiduciary of any other person.
- 22.4.2 The Agent shall not be bound to account to any lender for any sum or the profit element of any sum received by it for its own account.
- 22.5 Business with the Borrower

The Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.

- 22.6 Rights and discretions of the Agent
- 22.6.1 The Agent may:
- 22.6.1.1 rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- 22.6.1.2 assume that:
- 22.6.1.2.1 any instructions received by it from the Majority Lenders, any lender or any group of lenders are duly given in accordance with the terms of the Agreement; and
- 22.6.1.2.2 unless it has received notice of revocation, that those instructions have not been revoked; and
- 22.6.1.3 rely on a certificate from any person:
- 22.6.1.3.1 as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
- 22.6.1.3.2 to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of clause 22.6.1.2.1 above, may assume the truth and accuracy of that certificate.

*nl*

*EM*

- 22.6.2 The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the lenders) that:
- 22.6.2.1 no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (Non-payment)); and
- 22.6.2.2 any right, power, authority or discretion vested in any Party or any group of lenders has not been exercised;
- 22.6.3 The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- 22.6.4 Without prejudice to the generality of clause 22.6.3 above or clause 22.6.5 below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the lenders) if the Agent in its reasonable opinion deems this to be necessary.
- 22.6.5 The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- 22.6.6 The Agent may act in relation to the Agreement through its officers, employees and agents.
- 22.6.7 Unless an Agreement expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- 22.6.8 Notwithstanding any other provision of any Agreement to the contrary, the Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 22.6.9 Notwithstanding any provision of any Agreement to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- 22.7 Responsibility for documentation

The Agent is not is responsible or liable for:

- 22.7.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Borrower or any other person in or in connection with any



Agreement or the transactions contemplated in any Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Agreement;

22.7.2 the legality, validity, effectiveness, adequacy or enforceability of any Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Agreement; or

22.7.3 any determination as to whether any information provided or to be provided to any finance party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

22.8 No duty to monitor

The Agent shall not be bound to enquire:

22.8.1 whether or not any Default has occurred;

22.8.2 as to the performance, default or any breach by any Party of its obligations under any Agreement; or

22.8.3 whether any other event specified in any Agreement has occurred.

22.9 Exclusion of liability

22.9.1 Without limiting paragraph 22.9.2 below (and without prejudice to any other provision of any Agreement excluding or limiting the liability of the Agent), the Agent will not be liable for:

22.9.1.1 any damages, costs or losses to any person, any diminution in value, or any liability whatsoever or arising as a result of taking or not taking any action under or in connection with any Agreement unless directly caused by its gross negligence or wilful misconduct;

22.9.1.2 exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Agreement, other than by reason of its gross negligence or wilful misconduct; or

22.9.1.3 without prejudice to the generality of clauses 22.9.1.1 and 22.9.1.2 above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of:

22.9.1.3.1 any act, event or circumstance not reasonably within its control; or

22.9.1.3.2 the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

22.9.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Agreement and any officer, employee or agent of the Agent may rely on this Clause 22.9 subject to Clause 1.3 (Third party rights).

22.9.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under any Agreement to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

22.9.4 Nothing in this Agreement shall oblige the Agent to carry out:

22.9.4.1 any "know your customer" or other checks in relation to any person; or

22.9.4.2 any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any lender or for any Affiliate of any lender,

on behalf of any lender and each lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

22.9.5 Without prejudice to any provision of any Agreement excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Agreement shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

22.10 Lenders' indemnity to the Agent

Each lender shall (in proportion to its share of the total Commitments or, if the total Commitments are then zero, to its share of the total Commitments immediately prior to their reduction to zero) indemnify Agent, within three Business Days of demand, against, and pay to the Agent, any cost, loss or liability incurred by the Agent (otherwise than by reason of the

Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 24.10 (Disruption to payment systems etc.) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Agreement (unless the Agent has been reimbursed by the Borrower pursuant to any Agreement).

- 22.11        Resignation of the Agent
- 22.11.1        The Agent may resign and appoint one of its Affiliates acting through an office in South Africa as successor by giving notice to the lenders and the Borrower.
- 22.11.2        Alternatively the Agent may resign by giving 30 days' notice to the lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- 22.11.3        If the Majority Lenders have not appointed a successor Agent in accordance with clause 22.11.2 above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in South Africa).
- 22.11.4        If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under clause 22.11.3 above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 22 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable (if any) under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- 22.11.5        The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Agreement. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- 22.11.6        The Agent's resignation notice shall only take effect upon the appointment of a successor.
- 22.11.7        Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Agreement (other than its obligations under clause 22.11.5 above) but shall remain entitled to the benefit of Clause 13 (Indemnities) and this Clause 22 (and any agency fees for the account of the retiring

Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.11.8 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with clause 22.11.2 above. In this event, the Agent shall resign in accordance with clause 22.11.2 above.

22.12 Confidentiality

22.12.1 In acting as agent for the lenders, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

22.12.2 If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

22.13 Relationship with the Lenders

22.13.1 The Agent may treat the person shown in its records as lender at the opening of business (in the place of the Agent's principal office as notified to the finance parties from time to time) as the lender acting through its Facility Office:

22.13.1.1 entitled to or liable for any payment due under any Agreement on that day; and

22.13.1.2 entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Agreement made or delivered on that day,

unless it has received not less than five Business Days prior notice from that lender to the contrary in accordance with the terms of this Agreement.

22.13.2 Any lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that lender under the Agreement. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that lender for the purposes of Clause 29 (Notices) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that lender.

**22.14 Credit appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Agreement, each lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Agreement including but not limited to:

- 22.14.1 the financial condition, status and nature of the Borrower;
- 22.14.2 the legality, validity, effectiveness, adequacy or enforceability of any Agreement and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Agreement;
- 22.14.3 whether that lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Agreement, the transactions contemplated by the Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Agreement; and
- 22.14.4 the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Agreement, the transactions contemplated by any Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Agreement.

**22.15 Agent's management time**

Any amount payable to the Agent under Clause 13 (Indemnities), Clause 15 (Costs and expenses) and Clause 22.10 (Lenders' indemnity to the Agent) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the lenders, and is in addition to any fee paid or payable to the Agent.

**22.16 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Agreement the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Agreement and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Agreement that Party shall be regarded as having received any amount so deducted.

**22.17 Role of Reference Banks**

- 22.17.1 No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- 22.17.2 No Reference Bank will be liable for any action taken by it under or in connection with any Agreement, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

22.17.3 No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 22.17 (Role of Reference Banks) subject to Clause 1.3 (Third party rights).

22.18 Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 22.17 (Role of Reference Banks), subject to Clause 1.3 (Third party rights).

## 23 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- 23.1.1 interfere with the right of any finance party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 23.1.2 oblige any finance party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 23.1.3 oblige any finance party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 24 SHARING AMONG THE FINANCE PARTIES

24.1 Payments to Finance Parties

If a finance party (a **Recovering Finance Party**) receives or recovers any amount from the Borrower other than in accordance with clause 27 (Payment mechanics)

24.2 Payments to the Agent

- 24.2.1 On each date on which the Borrower or a lender is required to make a payment under an Agreement, the Borrower or lender shall make the same available to the Agent (unless a contrary indication appears in any Agreement) in Rand for value by no later than 12h00 (Johannesburg time) on the due date and in such funds specified by the Agent by way of a funds flow schedule or otherwise.
  - 24.2.2 Payment shall be made to such account in South Africa with such bank as the Agent specifies.
- 24.3 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (Distributions to the Borrower) and Clause 27.4 (Clawback and pre-

funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in South Africa in writing.

**24.4 Distributions to the Borrower**

The Agent may (with the consent of the Borrower or in accordance with Clause 28 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Agreement.

**24.5 Clawback and pre-funding**

**24.5.1** Where a sum is to be paid to the Agent under the Agreement for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

**24.5.2** Unless clause 27.4.3 applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

**24.5.3** If the Agent is willing to make available amounts for the account of a Borrower before receiving funds from the lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a lender in respect of a sum which it paid to the Borrower:

**24.5.3.1** the Borrower shall on demand refund it to the Agent; and

**24.5.3.2** the lender by whom those funds should have been made available or, if that lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that lender.

**24.6 Partial payments**

**24.6.1** If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Agreement, the Agent shall apply that payment towards the obligations of the Borrower under the Agreement in the following order:

**24.6.1.1** first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Agreement;



- 24.6.1.2            **secondly**, in or towards payment pro rata of any accrued interest, fees, Break Costs or commission due but unpaid under this Agreement;
- 24.6.1.3            **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- 24.6.1.4            **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Agreement.
- 24.6.2              The Agent shall, if so directed by the Majority Lenders, vary the order set out in clauses 27.5.1.1 to 27.5.1.4 above.
- 24.6.3              Clauses 27.5.1 and 27.5.2 above will override any appropriation made by the Borrower.
- 24.7                No set-off by the Borrower
- All payments to be made by the Borrower under the Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 24.8                Business Days
- 24.8.1              Any payment under the Agreement which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 24.8.2              During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.
- 24.9                Currency of account
- 24.9.1              Subject to clauses 27.8.2 and 27.8.3 below, South Africa Rand is the currency of account and payment for any sum due from the Borrower under any Agreement.
- 24.9.2              Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 24.9.3              Any amount expressed to be payable in a currency other than ZAR shall be paid in that other currency.
- 24.10              Disruption to payment systems etc
- 24.11              If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

- 24.11.1 the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in clause 27.9.1 above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- 24.11.2 the Agent shall consult with the finance parties in relation to any changes mentioned in paragraph 27.9.1 above, but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- 24.11.3 any such changes agreed upon by the Agent (acting on the instruction of the Majority Lenders) and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Agreement notwithstanding the provisions of Clause 33 (Amendments and Waivers);
- 24.11.4 the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.9; and
- 24.11.5 the Agent shall notify the finance parties of all changes agreed pursuant to clause 27.9.4 above.
- 24.11.6 the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- 24.11.7 the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause 27 (Payment mechanics)
- 24.11.8 Payments to the Agent
- 24.12 On each date on which the Borrower or a lender is required to make a payment under an Agreement, the Borrower or lender shall make the same available to the Agent (unless a contrary indication appears in any Agreement) in Rand for value by no later than 12h00 (Johannesburg time) on the due date and in such funds specified by the Agent by way of a funds flow schedule or otherwise.
- 24.12.1 Payment shall be made to such account in South Africa with such bank as the Agent specifies.
- 24.12.2 Distributions by the Agent




- 24.12.3 Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (Distributions to the Borrower) and Clause 27.4 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in South Africa in writing.
- 24.12.4 Distributions to the Borrower
- 24.12.5 The Agent may (with the consent of the Borrower or in accordance with Clause 28 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Agreement.
- 24.13
- 24.14 Clawback and pre-funding
- 24.15 Where a sum is to be paid to the Agent under the Agreement for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

Unless clause 27.4.3 applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

If the Agent is willing to make available amounts for the account of a Borrower before receiving funds from the lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a lender in respect of a sum which it paid to the Borrower:

- 24.16 the Borrower shall on demand refund it to the Agent; and

the lender by whom those funds should have been made available or, if that lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that lender.

#### Partial payments

- 24.17 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Agreement, the Agent shall apply that payment towards the obligations of the Borrower under the Agreement in the following order:

- 24.17.1 first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Agreement;
- 24.17.2 secondly, in or towards payment pro rata of any accrued interest, fees, Break Costs or commission due *but* unpaid under this Agreement;
- 24.17.3 thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- 24.17.4 fourthly, in or towards payment pro rata of any other sum due but unpaid under the Agreement.
- 24.17.5 The Agent shall, if so directed by the Majority Lenders, vary the order set out in clauses 27.5.1.1 to 27.5.1.4 above.
- 24.17.6 Clauses 27.5.1 and 27.5.2 above will override any appropriation made by the Borrower.
- 24.17.7 No set-off by the Borrower
- 24.17.8 All payments to be made by the Borrower under the Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 24.17.9 Business Days
- 24.17.10 Any payment under the Agreement which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 24.17.11 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.
- 24.17.11.1 Currency of account
- 24.17.11.2 Subject to clauses 27.8.2 and 27.8.3 below, South Africa Rand is the currency of account and payment for any sum due from the Borrower under any Agreement.
- 24.17.11.3 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 24.17.11.4 Any amount expressed to be payable in a currency other than ZAR shall be paid in that other currency.
- 24.17.11.5 Disruption to payment systems etc
- 24.17.11.6 If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

24.18 the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

24.18.1 the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in clause 27.9.1 above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

24.18.1.1 the Agent shall consult with the finance parties in relation to any changes mentioned in paragraph 27.9.1 above, but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

24.18.1.2 any such changes agreed upon by the Agent (acting on the instruction of the Majority Lenders) and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Agreement notwithstanding the provisions of Clause 33 (Amendments and Waivers);

24.18.1.3 the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.9; and

24.18.1.4 the Agent shall notify the finance parties of all changes agreed pursuant to clause 27.9.4 above.

24.18.2 without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

24.18.3 the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 27.5 (Partial payments).

24.19 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the finance parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 27.5 (Partial payments) towards the obligations of that Obligor to the Sharing Finance Parties.

24.20 Recovering Finance Party's rights

24.20.1 On a distribution by the Agent under Clause 24.19 (Redistribution of payments) of a payment received by a Recovering Finance Party from the Borrower, as between

the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

24.20.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under clause 24.20.1 above, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

24.21 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

24.21.1 each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**); and

24.21.2 as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

24.22 Exceptions

24.22.1 This clause 24 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause 24.22, have a valid and enforceable claim against the Borrower.

24.22.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

24.22.2.1 it notified that other finance party of the legal or arbitration proceedings; and

24.22.2.2 that other finance party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice.

**25 CHANGES TO THE BORROWER**

The Borrower may not cede any of its rights or delegate any of its obligations under this Agreement.

NE

Handwritten signatures and initials.

## 26 CONDUCT OF BUSINESS BY NEDBANK

No provision of this Agreement will:

- 26.1 interfere with the right of Nedbank to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 26.2 oblige Nedbank to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 26.3 oblige Nedbank to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 27 PAYMENT MECHANICS

### 27.1 Payments to the Agent

- 27.1.1 On each date on which the Borrower or a lender is required to make a payment under an Agreement, the Borrower or lender shall make the same available to the Agent (unless a contrary indication appears in any Agreement) in Rand for value by no later than 12h00 (Johannesburg time) on the due date and in such funds specified by the Agent by way of a funds flow schedule or otherwise.

- 27.1.2 Payment shall be made to such account in South Africa with such bank as the Agent specifies.

### 27.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (Distributions to the Borrower) and Clause 27.4 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in South Africa in writing.

### 27.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 28 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Agreement.

### 27.4 Clawback and pre-funding

- 27.4.1 Where a sum is to be paid to the Agent under the Agreement for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- 27.4.2 Unless clause 27.4.3 applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- 27.4.3 If the Agent is willing to make available amounts for the account of a Borrower before receiving funds from the lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a lender in respect of a sum which it paid to the Borrower:
- 27.4.3.1 the Borrower shall on demand refund it to the Agent; and
- 27.4.3.2 the lender by whom those funds should have been made available or, if that lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that lender.
- 27.5 Partial payments
- 27.5.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Agreement, the Agent shall apply that payment towards the obligations of the Borrower under the Agreement in the following order:
- 27.5.1.1 **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Agreement;
- 27.5.1.2 **secondly**, in or towards payment pro rata of any accrued interest, fees, Break Costs or commission due but unpaid under this Agreement;
- 27.5.1.3 **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- 27.5.1.4 **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Agreement.
- 27.5.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in clauses 27.5.1.1 to 27.5.1.4 above.
- 27.5.3 Clauses 27.5.1 and 27.5.2 above will override any appropriation made by the Borrower.
- 27.6 No set-off by the Borrower

All payments to be made by the Borrower under the Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

re

M. E. J.

27.7 Business Days

27.7.1 Any payment under the Agreement which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

27.7.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

27.8 Currency of account

27.8.1 Subject to clauses 27.8.2 and 27.8.3 below, South Africa Rand is the currency of account and payment for any sum due from the Borrower under any Agreement.

27.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

27.8.3 Any amount expressed to be payable in a currency other than ZAR shall be paid in that other currency.

27.9 Disruption to payment systems etc

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

27.9.1 the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

27.9.2 the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in clause 27.9.1 above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

27.9.3 the Agent shall consult with the finance parties in relation to any changes mentioned in paragraph 27.9.1 above, but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

27.9.4 any such changes agreed upon by the Agent (acting on the instruction of the Majority Lenders) and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Agreement notwithstanding the provisions of Clause 33 (Amendments and Waivers);

27.9.5 the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as

a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.9; and

27.9.6 the Agent shall notify the finance parties of all changes agreed pursuant to clause 27.9.4 above.

## 28 SET-OFF

Provided that this is permitted in terms of law, a finance party may set off any matured obligation due from the Borrower under this Agreement against any matured obligation owed by that finance party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the finance party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## 29 NOTICES

### 29.1 Addresses and Domicilia

29.1.1 Each of the Parties chooses the address and fax number (and the department or officer, if any, for whose attention the communication is to be made) set out below as (1) its *domicilium citandi et executandi* (at which documents in legal proceedings in connection with this Agreement may be served) and (2) as the address for any communication or document to be made or delivered under or in connection with this Agreement.

#### 29.1.1.1 Borrower

Physical: 158 Loveday Street (Civic Boulevard), 3rd Floor, A Block, Group Legal Department, Braamfontein, 2001;

Attention: City Manager - [citymanager@joburg.org.za](mailto:citymanager@joburg.org.za);

with a copy to:

Chief Financial Officer –; [ManenzheM@joburg.org.za](mailto:ManenzheM@joburg.org.za)

Group Head: Legal & Contracts Department – [MafoaneM@joburg.org.za](mailto:MafoaneM@joburg.org.za),

#### 29.1.1.2 Nedbank

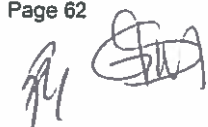
Physical: Infrastructure and Telecoms Lending Middle Office, 3<sup>rd</sup> Floor, Block F, Nedbank 135 Rivonia Campus, 135 Rivonia Road, Sandown, 2196, South Africa;

email: [InfraTel@nedbank.co.za](mailto:InfraTel@nedbank.co.za);

Attention: Deal Manager.

29.1.2 Any Party may, by written notice to the others, change (1) its domicilium to another address, not being a post office box or a poste restante, in South Africa and/or (2) the

NE



address, fax number, department or officer for whose attention any communication or document is to be made or delivered under or in connection with this Agreement, provided that any such change shall only be effective on the 5<sup>th</sup> Business Day after deemed receipt of the notice by the others.

**29.2 Delivery**

29.2.1 Any communication or document made or delivered by one person to another will:

29.2.1.1 if by way of fax, be deemed to have been received on the 1<sup>st</sup> Business Day following the date of transmission provided that the fax is received in legible form;

29.2.1.2 if delivered by hand, be deemed to have been received at the time of delivery; and

29.2.1.3 if by way of courier service, be deemed to have been received on the 5<sup>th</sup> Business Day following the date of such sending,

provided that, if a particular department or officer was specified as part of its address details, such communication or document was addressed to that department or officer.

29.2.2 Any communication or document to be made or delivered to Nedbank will be effective only when actually received by Nedbank and then only if it is expressly marked for the attention of the relevant department or officer set out above (or any substitute department or officer as Nedbank may specify for this purpose).

**30 CALCULATIONS AND CERTIFICATES**

**30.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by Nedbank are *prima facie* evidence of the matters to which they relate.

**30.2 Certificates and Determinations**

Any certification or determination by Nedbank of a rate or amount under this Agreement is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

**30.3 Day count convention**

Any interest, commission or fee accruing under this Agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days (irrespective of whether the year in question is a leap year).

**31 PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid, unenforceable or inoperable in any respect under any law of any jurisdiction, neither the legality, validity,

*N*

*[Handwritten signatures]*

enforceability or operation of the remaining provisions nor the legality, validity, enforceability or operation of such provision under the law of any other jurisdiction will in any way be affected or impaired. The term **inoperable** in this clause 31 shall include, without limitation, inoperable by way of suspension or cancellation.

**32 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of Nedbank, any right or remedy under this Agreement or other document or other indulgence shall operate as a waiver, nor shall any single or partial exercise of any right or remedy otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement. No consent to any waiver or novation of a Party's rights in terms of or arising from this Agreement shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**33 AMENDMENTS AND WAIVERS**

No amendment or waiver shall be of any force or effect unless in writing and signed by or on behalf of the relevant Parties.

**34 RENUNCIATION OF BENEFITS**

The Borrower renounces, to the extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, *errore calculi*, *non causa debiti*, *non numeratae pecuniae* and cession of actions, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

**35 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**36 WAIVER OF IMMUNITY**

The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- 36.1 the giving of any relief by way of an interdict or order for specific performance or for the recovery of assets or revenues; and
- 36.2 the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

**37 SOLE AGREEMENT**

This Agreement constitutes the sole record of the agreement between the Parties in regard to the subject matter thereof.

NE



**38 NO IMPLIED TERMS**

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in this Agreement in regard to the subject matter thereof.

**39 INDEPENDENT ADVICE**

The Borrower acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Borrower acknowledges that all of the provisions of this Agreement and the restrictions therein contained are part of the overall intention of the Parties in connection with this Agreement.

**40 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

**41 JURISDICTION**

- 41.1 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg (or any successor to that division) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**).
- 41.2 The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 41.3 This clause 41 is for the benefit of the Nedbank only. As a result, Nedbank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction.

*RE*

*[Handwritten signatures]*

To the extent allowed by law, Nedbank may take concurrent proceedings in any number of jurisdictions.

For **CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

Signature 

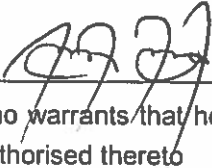
who warrants that he / she is duly authorised thereto

Name N LUKHWANE

Date 18/06/19

Place Braamfontein

For **CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

Signature 

who warrants that he / she is duly authorised thereto

Name MOTHELE M

Date 18/06/2019

Place \_\_\_\_\_

For **NEDBANK LIMITED (ACTING  
THROUGH ITS NEDBANK  
CORPORATE AND  
INVESTMENT BANKING  
DIVISION)**

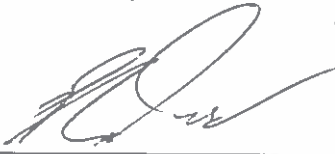
Signature 

Name GERTUDE DUBE

Date 14 JUNE 2019

Place SANDOWN

For **NEDBANK LIMITED (ACTING  
THROUGH ITS NEDBANK  
CORPORATE AND  
INVESTMENT BANKING  
DIVISION)**

Signature 

Name POOVEN MOODLIAR

Date 14 JUNE 2019

Place SANDOWN

**Schedule 1  
Conditions of Utilisation**

- 1 Borrower
- 1.1 The Borrower providing evidence to the satisfaction of Nedbank that:
- 1.1.1 when the Borrower entered into discussions with Nedbank with a view to incurring indebtedness, the Borrower made available to Nedbank, certified copies of:
- 1.1.1.1 its audited financial statements for the preceding 3 financial years, together with an indication whether the audit deadline referred to in section 126(1) and section 126(2) of the MFMA has been met;
- 1.1.1.2 its approved annual budget, and evidence that such annual budget complies with section 17 of the MFMA;
- 1.1.1.3 the Borrower's integrated development plan referred to in section 87(5)(d) of the MFMA; and
- 1.1.1.4 its repayment schedules pertaining to its existing short-term and long-term debt;
- 1.1.2 the debt proposed to be incurred in terms of the agreement (**Proposed Debt or Debt**):
- 1.1.2.1 is to be used only for the purpose of:
- 1.1.2.1.1 capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution, including costs referred to in section 46(4) of the MFMA; or
- 1.1.2.1.2 re-financing existing long-term debt subject to section 46(5) of the MFMA;
- 1.1.2.2 will not be repaid from revenues linked to a particular municipal service (and if it is, the Borrower must comply with Regulation 15 of the Municipal Regulations on Debt Disclosure);
- 1.1.3 as prescribed in terms of section 46(3) of the MFMA, the Borrower:
- 1.1.3.1 has, in accordance with sections 21, 21A and 21B of the Local Government: Municipal Systems Act, 2000:
- 1.1.3.1.1 at least 21 days prior to the meeting of the council at which approval for the Proposed Debt is to be considered, made public an information statement setting out particulars of the Proposed Debt, including the amount of the Proposed Debt, the purposes for which the debt is to be




- incurred and particulars of any security to be provided (the **Information Statement**);
- 1.1.3.1.2 invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the council in respect of the Proposed Debt,
- and, for the purposes of the foregoing, a copy of the relevant website page, newspaper clippings showing the date of publication and copies of the letters in terms of which National Treasury and the relevant provincial treasury were notified must be provided; and
- 1.1.3.2 has submitted a copy of the Information Statement to the municipal council at least 21 days prior to the meeting of the council, together with particulars of:
- 1.1.3.2.1 the essential repayment terms, including the anticipated debt repayment schedule; and
- 1.1.3.2.2 the anticipated total cost in connection with such debt over the repayment period.
- 1.1.4 the Proposed Debt is consistent with the Borrower's capital budget referred to in section 17(2) of the MFMA as contemplated in section 46(6) of the MFMA.
- 1.2 A copy of the Information Statement referred to in 1.1.3.1.1 containing all the particulars set out in 1.1.3.1.1.
- 1.3 A copy of a resolution of the Municipal Council signed by the Mayor:
- 1.3.1 approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement;
- 1.3.2 authorising the Borrower's municipal manager, on its behalf, to execute this Agreement on its behalf; and
- 1.3.3 authorising the Borrower's municipal manager, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, the Advance Request) to be signed and/or despatched by it under or in connection with this Agreement.
- 1.4 Execution of a formalities certificate by the Borrower (signed by the Borrower's Mayor):
- 1.4.1 setting out a specimen signature of the Borrower's municipal manager, in his/her capacity as accounting officer; and
- 1.4.2 confirming that borrowing the Commitment would not cause any borrowing or similar limit binding on it to be exceeded;
- 1.4.3 certifying that no material event disclosures contemplated in and pursuant to Regulation 16 of the Municipal Regulations on Debt Disclosure have been made by

the Borrower within the 2 years immediately preceding the date of the certificate;  
and

1.4.4 certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the Signature Date.

2 Finance Document

This Agreement duly executed by the Parties.

3 Legal opinions

A legal opinion from legal advisers to Nedbank (and paid for by Nedbank), confirming that:

3.1 this Agreement will, upon it becoming unconditional in accordance with its respective provisions, be valid, binding and enforceable against the Parties (other than in respect of Nedbank).

3.2 the Borrower has the necessary, capacity, power and authority to enter into and perform its obligations in terms of this Agreement.

4 Other documents and evidence

4.1 A copy of any other Authorisation or other document, opinion or assurance which Nedbank considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement.

4.2 Such documentation and other evidence as is reasonably requested by Nedbank in order for Nedbank to carry out and be satisfied it has complied with all necessary know your customer or similar identification procedures under applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

*N*

*[Handwritten signatures]*

**Schedule 2  
Formalities Certificate**


From: City of Johannesburg Metropolitan Municipality  
 To: Nedbank Limited  
 Dated: [insert date] **18 JUNE 2019**

Dear Sirs




City of Johannesburg Metropolitan Municipality - Credit Facility Agreement dated [insert date] (the Agreement)

**Formalities Certificate**

- 1 We refer to the Agreement. This is a formalities certificate as contemplated in 1.4 of Schedule 1. Terms defined in the Agreement have the same meaning in this letter, unless given a different meaning.
- 2 I:
- 2.1 set out hereunder a specimen of the of the Borrower's accounting officer:

Name of Accounting Officer	Specimen Signature
Ndivhonyani LUKHWARENI	

- 2.2 confirm that borrowing or guaranteeing, as appropriate, the Commitment would not cause any borrowing, guaranteeing or similar limit binding on ourselves to be exceeded.
- 2.3 certify that no material event disclosures contemplated in and pursuant to Regulation 16 of the Municipal Regulations on Debt Disclosure have been made by the Borrower within the 2 years immediately preceding the date of this certificate.



2.4 certify that each copy document relating to ourselves and delivered to Nedbank is correct, complete and in full force and effect as at a date no earlier than the Signature Date.

Yours faithfully

.....

The Mayor for City of Johannesburg Metropolitan Municipality

A handwritten signature in black ink, appearing to be 'M'.

A handwritten signature in black ink, appearing to be 'M' followed by a large flourish.

**Schedule 3  
Utilisation Request**

From: City of Johannesburg Metropolitan Municipality  
To: Nedbank  
Dated: [insert date] 18 June 2019

Dear Sirs

City of Johannesburg Metropolitan Municipality - Credit Facility Agreement dated [insert date] (the Agreement)

Utilisation Request

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Utilisation on the following terms:
  - 2.1 Proposed Utilisation Date: ...[●] (or, if that is not a Business Day, the next Business Day).
  - 2.2 Amount: .....R1 349 726 000 - 00..... R[●].
- 3 We confirm that each condition specified in clause 4.2 is satisfied on the date of this Utilisation Request.
- 4 The Utilisation should be credited to [insert details of the account].
- 5 This Utilisation Request is irrevocable.

Yours faithfully



.....  
authorised signatory for

City of Johannesburg Metropolitan Municipality



**Schedule 4  
Form of Compliance Certificate**

From: City of Johannesburg Metropolitan Municipality

To: Nedbank

Dated: [insert date] 18 JUNE 2019

Dear Sirs

City of Johannesburg Metropolitan Municipality - Credit Facility Agreement dated [insert date] (the Agreement)

Compliance Certificate

- 1 We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that: [insert details of covenants to be certified].
- 3 [We confirm that no Default is continuing].

Signed



.....  
Authorised Signatory

for

City of Johannesburg Metropolitan Municipality



.....  
Authorised Signatory

for

City of Johannesburg Metropolitan Municipality

.....

for and on behalf of

[name of auditors of the Borrower]



**Schedule 5  
Repayment Schedule**

*[Handwritten mark]*

Page 74 *[Handwritten signature]*  
*[Handwritten initials]*

City Of Johannesburg - 15 year equal quarterly capital payment fully amortising

Client	City of Johannesburg Metropolitan Municipality
Loan Amount	R 1 349 726 000
Base Rate Type	Floating
Start Date	28-Jun-19
End Date	28-Jun-34
Tenor	15
Margin	2,08%
Base Rate (3m JIBAR)	7,058%
All-In Rate	9,138%

Indicative Repayment Schedule

Date	Day	Days	Rate	Drawdown	Capital Paid	Accrued Interest	Interest paid	Payments	Balance
28-Jun-19	Friday			1 349 726 000					1 349 726 000,00
30-Sep-19	Monday	94	9,14%		22 495 433,33	31 763 749,09	31 763 749,09	(54 259 182,42)	1 327 230 566,67
31-Dec-19	Tuesday	92	9,14%		22 495 433,33	30 569 792,56	30 569 792,56	(53 065 225,89)	1 304 735 133,33
31-Mar-20	Tuesday	91	9,14%		22 495 433,33	29 725 012,00	29 725 012,00	(52 220 445,33)	1 282 239 700,00
30-Jun-20	Tuesday	91	9,14%		22 495 433,33	29 212 511,79	29 212 511,79	(51 707 945,13)	1 259 744 266,67
30-Sep-20	Wednesday	92	9,14%		22 495 433,33	29 015 396,33	29 015 396,33	(51 510 829,66)	1 237 248 833,33
31-Dec-20	Thursday	92	9,14%		22 495 433,33	28 497 264,25	28 497 264,25	(50 992 697,59)	1 214 753 400,00
31-Mar-21	Wednesday	90	9,14%		22 495 433,33	27 370 890,17	27 370 890,17	(49 866 323,50)	1 192 257 966,67
30-Jun-21	Wednesday	91	9,14%		22 495 433,33	27 162 510,97	27 162 510,97	(49 657 944,30)	1 169 762 533,33
30-Sep-21	Thursday	92	9,14%		22 495 433,33	26 942 868,02	26 942 868,02	(49 438 301,35)	1 147 267 100,00
31-Dec-21	Friday	92	9,14%		22 495 433,33	26 424 735,94	26 424 735,94	(48 920 169,28)	1 124 771 666,67
31-Mar-22	Thursday	90	9,14%		22 495 433,33	25 343 416,82	25 343 416,82	(47 838 850,16)	1 102 276 233,33
30-Jun-22	Thursday	91	9,14%		22 495 433,33	25 112 510,14	25 112 510,14	(47 607 943,47)	1 079 780 800,00
30-Sep-22	Friday	92	9,14%		22 495 433,33	24 870 339,71	24 870 339,71	(47 365 773,04)	1 057 285 366,67
30-Dec-22	Friday	91	9,14%		22 495 433,33	24 087 509,72	24 087 509,72	(46 582 943,06)	1 034 789 933,33
31-Mar-23	Friday	91	9,14%		22 495 433,33	23 575 009,52	23 575 009,52	(46 070 442,85)	1 012 294 500,00
30-Jun-23	Friday	91	9,14%		22 495 433,33	23 062 509,31	23 062 509,31	(45 557 942,64)	989 799 066,67
29-Sep-23	Friday	91	9,14%		22 495 433,33	22 550 009,10	22 550 009,10	(45 045 442,44)	967 303 633,33
29-Dec-23	Friday	91	9,14%		22 495 433,33	22 037 508,90	22 037 508,90	(44 532 942,23)	944 808 200,00
29-Mar-24	Friday	91	9,14%		22 495 433,33	21 525 008,69	21 525 008,69	(44 020 442,02)	922 312 766,67
28-Jun-24	Friday	91	9,14%		22 495 433,33	21 012 508,48	21 012 508,48	(43 507 941,82)	899 817 333,33
30-Sep-24	Monday	94	9,14%		22 495 433,33	21 175 832,72	21 175 832,72	(43 671 266,06)	877 321 900,00
31-Dec-24	Tuesday	92	9,14%		22 495 433,33	20 207 151,01	20 207 151,01	(42 702 584,35)	854 826 466,67
31-Mar-25	Monday	90	9,14%		22 495 433,33	19 260 996,79	19 260 996,79	(41 756 430,12)	832 331 033,33
30-Jun-25	Monday	91	9,14%		22 495 433,33	18 962 507,66	18 962 507,66	(41 457 940,99)	809 835 600,00
30-Sep-25	Tuesday	92	9,14%		22 495 433,33	18 652 754,78	18 652 754,78	(41 148 188,12)	787 340 166,67
31-Dec-25	Wednesday	92	9,14%		22 495 433,33	18 134 622,71	18 134 622,71	(40 630 056,04)	764 844 733,33
31-Mar-26	Tuesday	90	9,14%		22 495 433,33	17 233 523,44	17 233 523,44	(39 728 956,77)	742 349 300,00
30-Jun-26	Tuesday	91	9,14%		22 495 433,33	16 912 506,83	16 912 506,83	(39 407 940,16)	719 853 866,67
30-Sep-26	Wednesday	92	9,14%		22 495 433,33	16 580 226,47	16 580 226,47	(39 075 659,81)	697 358 433,33
31-Dec-26	Thursday	92	9,14%		22 495 433,33	16 062 094,40	16 062 094,40	(38 557 527,73)	674 863 000,00
31-Mar-27	Wednesday	90	9,14%		22 495 433,33	15 206 050,09	15 206 050,09	(37 701 483,43)	652 367 566,67
30-Jun-27	Wednesday	91	9,14%		22 495 433,33	14 862 506,00	14 862 506,00	(37 357 939,33)	629 872 133,33
30-Sep-27	Thursday	92	9,14%		22 495 433,33	14 507 698,16	14 507 698,16	(37 003 131,50)	607 376 700,00
31-Dec-27	Friday	92	9,14%		22 495 433,33	13 989 566,09	13 989 566,09	(36 484 999,42)	584 881 266,67
31-Mar-28	Friday	91	9,14%		22 495 433,33	13 325 005,38	13 325 005,38	(35 820 438,71)	562 385 833,33
30-Jun-28	Friday	91	9,14%		22 495 433,33	12 812 505,17	12 812 505,17	(35 307 938,51)	539 890 400,00
29-Sep-28	Friday	91	9,14%		22 495 433,33	12 300 004,97	12 300 004,97	(34 795 438,30)	517 394 966,67
29-Dec-28	Friday	91	9,14%		22 495 433,33	11 787 504,76	11 787 504,76	(34 282 938,09)	494 899 533,33
30-Mar-29	Friday	91	9,14%		22 495 433,33	11 275 004,55	11 275 004,55	(33 770 437,89)	472 404 100,00
29-Jun-29	Friday	91	9,14%		22 495 433,33	10 762 504,34	10 762 504,34	(33 257 937,68)	449 908 666,67
28-Sep-29	Friday	91	9,14%		22 495 433,33	10 250 004,14	10 250 004,14	(32 745 437,47)	427 413 233,33
31-Dec-29	Monday	94	9,14%		22 495 433,33	10 058 520,54	10 058 520,54	(32 553 953,88)	404 917 800,00
28-Mar-30	Thursday	87	9,14%		22 495 433,33	8 819 509,05	8 819 509,05	(31 314 942,39)	382 422 366,67
28-Jun-30	Friday	92	9,14%		22 495 433,33	8 808 245,31	8 808 245,31	(31 303 678,65)	359 926 933,33
30-Sep-30	Monday	94	9,14%		22 495 433,33	8 470 333,09	8 470 333,09	(30 965 766,42)	337 431 500,00
31-Dec-30	Tuesday	92	9,14%		22 495 433,33	7 771 981,16	7 771 981,16	(30 267 414,49)	314 936 066,67
31-Mar-31	Monday	90	9,14%		22 495 433,33	7 096 156,71	7 096 156,71	(29 591 590,04)	292 440 633,33
30-Jun-31	Monday	91	9,14%		22 495 433,33	6 662 502,69	6 662 502,69	(29 157 936,02)	269 945 200,00
30-Sep-31	Tuesday	92	9,14%		22 495 433,33	6 217 584,93	6 217 584,93	(28 713 018,26)	247 449 766,67
31-Dec-31	Wednesday	92	9,14%		22 495 433,33	5 699 452,85	5 699 452,85	(28 194 886,18)	224 954 333,33
31-Mar-32	Wednesday	91	9,14%		22 495 433,33	5 125 002,07	5 125 002,07	(27 620 435,40)	202 458 900,00
30-Jun-32	Wednesday	91	9,14%		22 495 433,33	4 612 501,86	4 612 501,86	(27 107 935,20)	179 963 466,67
30-Sep-32	Thursday	92	9,14%		22 495 433,33	4 145 056,62	4 145 056,62	(26 640 489,95)	157 468 033,33
30-Dec-32	Thursday	91	9,14%		22 495 433,33	3 587 501,45	3 587 501,45	(26 082 934,78)	134 972 600,00
31-Mar-33	Thursday	91	9,14%		22 495 433,33	3 075 001,24	3 075 001,24	(25 570 434,57)	112 477 166,67
30-Jun-33	Thursday	91	9,14%		22 495 433,33	2 562 501,03	2 562 501,03	(25 057 934,37)	89 981 733,33
29-Sep-33	Thursday	91	9,14%		22 495 433,33	2 050 000,83	2 050 000,83	(24 545 434,16)	67 486 300,00
29-Dec-33	Thursday	91	9,14%		22 495 433,33	1 537 500,62	1 537 500,62	(24 032 933,95)	44 990 866,67
30-Mar-34	Thursday	91	9,14%		22 495 433,33	1 025 000,41	1 025 000,41	(23 520 433,75)	22 495 433,33
29-Jun-34	Thursday	91	9,14%		22 495 433,33	512 500,21	512 500,21	(23 007 933,54)	-

1 349 726 000,00

**SCHEDULE 6**

**FORM OF TRANSFER CERTIFICATE**

To: Nedbank Limited (acting through its Nedbank Corporate and Investment Banking division) as Agent

From: [*The Existing Lender*] (the **Existing Lender**) and [*the new Lender*] (the **New Lender**)

Dated:

**City of Johannesburg Metropolitan Municipality – Term Credit Facility Agreement  
dated [            ] (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to clause 21 (Changes to the Lender) and in particular to clause 21.2 (Procedure for Transfer) of the Agreement:
  - (a) The existing lender and the New Lender agree to the existing lender transferring to the New Lender by cession and delegation all or part of the existing lender's Commitment, rights and obligations referred to in the Schedule in accordance with clause 21.2 (Procedure for Transfer) of the Agreement.
  - (b) The proposed Transfer Date is [            ].
  - (c) The [Facility Office/office]<sup>1</sup> and address through which the New Lender will perform its obligations, fax number and attention details for notices of the New Lender for the purposes of Clause 29 (Notices) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the existing lender's obligations set out in clause 21.1 (Cessions and Delegations by Nedbank) and clause 21.3 (Limitation of responsibility of Lenders) of the Agreement.
4. The New Lender agrees that it shall assume the same obligations towards each other finance party under the finance documents as if it had been an original lender.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by South African law.

---

<sup>1</sup> Delete as applicable.





7. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

N

Page 76   




**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[[Facility Office/Office],<sup>2</sup> address, fax number and attention details for notices and account details for payments,]*

[existing lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [        ].

Nedbank Limited (acting through its Nedbank Corporate and Investment Banking division)

By:

---

<sup>2</sup> Delete as applicable.

*N*  
Page 77  
*[Handwritten signature]*