

**TERM LOAN AGREEMENT**

by and between

**THE STANDARD BANK OF SOUTH AFRICA LIMITED,  
ACTING THROUGH ITS PERSONAL AND BUSINESS BANKING DIVISION**

and

**DRAKENSTEIN MUNICIPALITY**

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## 1. PARTIES

The Parties to this Agreement are:

- 1.1 The Standard Bank of South Africa Limited, acting through its Personal and Business Banking Division; and
- 1.2 Drakenstein Municipality.

## 2. DEFINITIONS

2.1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 2.1.1 **Agreement** means this agreement, together with all appendices hereto and letters and notices given in terms hereof from time to time, all read together;
- 2.1.2 **Bank** means The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), acting through its Personal and Business Banking Division, a public company duly incorporated with limited liability according to the company laws of South Africa and its successors in title and assigns;
- 2.1.3 **Borrower** means Drakenstein Municipality, a municipality incorporated according to the municipal laws of South Africa;
- 2.1.4 **Borrower's Loan Account** means the loan account in the Borrower's name in the Bank's books in respect of the Loan Facility;
- 2.1.5 **Business Day** means a day other than a Saturday, Sunday or proclaimed public holiday in South Africa;
- 2.1.6 **Calendar Month** means a full calendar month in any year that is, January, February, March, April, May, June, July, August, September, October, November and December;
- 2.1.7 **Collateral** means any security, indemnity or undertaking provided to the Bank to secure the Borrower's payment and other obligations in terms of this Agreement;
- 2.1.8 **Collateral Provider** means each person or entity who is to provide Collateral to the Bank in respect of the due performance by the Borrower of its payment and other obligations in terms of this Agreement;
- 2.1.9 **Early Repayment** means any payment made by the Borrower in advance and in addition to the repayment set out in 8 of this Agreement, as part payment of the Loan Facility;
- 2.1.10 **Existing Commitments** means the aggregate of all amounts outstanding and payable to the Bank in relation to the term loan agreement concluded between the Borrower and the Bank loan account number: 000537722 as at the date of this Agreement;
- 2.1.11 **Facility Outstandings** means the aggregate of all amounts of loan principal, accrued interest, Breakage Costs as defined in clause 13.2.3, prepayment penalties, fees and all other amounts outstanding under the Existing Commitments;
- 2.1.12 **FICA** means the Financial Intelligence Centre Act, 38 of 2001;
- 2.1.13 **Financial Covenants** means the financial covenants set out in clause 12.1;
- 2.1.14 **Group** means Standard Bank Group Limited, its subsidiaries and their subsidiaries;
- 2.1.15 **Indebtedness** means the total balance of the capital amount outstanding on the Loan Facility plus any interest, fees and costs in respect of the Loan Facility which are owed by the Borrower to the Bank from time to time;
- 2.1.16 **JIBAR Rate** means the Johannesburg Interbank Agreed Rate, determined by reference to the offered rate quoted on the applicable Reuters "SAFEY" page or its replacement from time to time, and if no such offered rate is quoted, then the relevant JIBAR rate shall be determined and certified by any manager or divisional director of the Bank, whose appointment it shall not be necessary to prove, and such certification shall be binding on the Parties absent manifest error;
- 2.1.17 **Limit** shall have the meaning ascribed to it in clause 5;
- 2.1.18 **Loan Facility** means the term loan facility referred to in this Agreement (which is in the form of a term loan, a lending product of the Personal and Business Banking Division of the Bank);
- 2.1.19 **Material Adverse Event** means any event, circumstance or matter or combination of events, circumstances or matters which in the reasonable opinion of the Bank has or may have a material adverse effect on the:
  - 2.1.19.1 business, assets, operations, property or financial condition of the Borrower taken as a whole;
  - 2.1.19.2 ability of the Borrower to perform its obligations in terms of this Agreement; or

- 2.1.19.3 ability of a Collateral Provider to perform its obligations in terms of the Collateral; or
- 2.1.19.4 validity or enforceability of this Agreement or the Collateral or any other documents provided under this Agreement or the rights or remedies of the Bank thereunder;
- 2.1.20 **MFMA** means the Local Government: Municipal Finance Management Act 56 of 2003, including all schedules and regulations thereto;
- 2.1.21 **Parties** means the Bank and the Borrower and **Party** means any one of them as the context may indicate;
- 2.1.22 **Personal Information** means information about an identifiable, natural person and where applicable, a juristic person, including, but not limited to information about: race; gender; sex; pregnancy; marital status; nationality; ethnic or social origin; colour; sexual orientation; age; physical or mental health; well-being; disability; religion; conscience; belief; culture; language; birth; education; medical, financial, criminal or employment history; any identifying number, symbol, e-mail, postal or physical address, telephone number; location; any online identifier; any other particular assignment of the person; biometric information; personal opinions, views or preferences of the person or the views or opinions of another individual about the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; and the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.
- 2.1.23 **Prime Rate** means the publicly quoted variable base rate of interest per annum ruling from time to time at which the Bank lends on overdraft, available on the Bank's website: [www.standardbank.co.za](http://www.standardbank.co.za) (or as certified by any manager or business unit head of the Bank, whose appointment it shall not be necessary to prove and which certification shall be binding on the Parties absent manifest error);
- 2.1.24 **Process** means any operation or activity, automated or not, concerning Personal Information, including: alteration, blocking, collation, collection, consultation, degradation, destruction, dissemination by means of transmission, distribution or making available in any other form, erasure, linking, merging, organisation, receipt, recording, retrieval, storage, updating, modification, or the use of information; **Processing** and **Processed** will have a similar meaning;
- 2.1.25 **Rand** means a South African Rand, the currency of South Africa;
- 2.1.26 **Sanctioned** means listed on all or any one of the Sanction Lists or subject to any Sanctions;
- 2.1.27 **Sanction List** means the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the Department of Treasury of the United States of America or the United Nations Security Council list of persons or entities suspected to be involved in terrorist related activities or the funding thereof or any other list of Her Majesty's Treasury of the United Kingdom or the European Union's Common Foreign and Security Policy;
- 2.1.28 **Settlement Date** means the date of disbursement which date will be on or before 31 December 2019;
- 2.1.29 **Senior Facilities** means:-
- 2.1.29.1 this Loan Facility;
- 2.1.29.2 the DBSA Senior Loan Facility in the amount of R918,276,176 (nine hundred and eighteen million two hundred and seventy six thousand one hundred and seventy six Rand); and
- 2.1.29.3 the Nedbank Senior Loan Facility in the amount of R189,807,505 (one hundred and eighty nine million eight hundred and seven thousand five hundred and five Rand).
- 2.1.30 **Senior Lenders** means:
- 2.1.30.1 The Development Bank of Southern Africa;
- 2.1.30.2 Nedbank Limited; and
- 2.1.30.3 the Bank.
- 2.1.31 **Signature Date** means the date of signature of this Agreement by the Party signing last in time;
- 2.1.32 **South Africa** means the Republic of South Africa; and
- 2.1.33 **VAT** means value added tax in terms of the Value Added Tax Act, 89 of 1991.
- 2.2 Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the Signature Date and as amended or re-enacted from time to time.

- 2.3 Any reference in this Agreement to a specific requirement under the MFMA shall not derogate from or exclude the application of any provisions not specifically referred to herein.
- 2.4 Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.
- 2.5 The head notes to the clauses to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.6 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a Party, then notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 2.7 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.8 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.9 The words **include** and **including** mean **include without limitation** and **including without limitation**. The use of the words **include** and **including** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.10 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.
- 2.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 2.12 Any reference in this Agreement which requires that the Bank exercise its discretion in respect of any matter stated herein shall mean that the exercise thereof shall be as determined by the Bank in its reasonable discretion.
- 2.13 When any condition of this Agreement requires fulfilment by the Borrower, or any information, evidence, proof or documentation is required to be furnished by the Borrower, such condition shall be required to be fulfilled and information, evidence, proof or documentation shall be required to be furnished, in a form and substance to the satisfaction of the Bank.
- 2.14 Unless the context indicates a contrary intention, any reference in this Agreement to **material** or **materially** shall mean **material** or **materially** as determined by the Bank in its reasonable opinion.
- 2.15 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.16 The terms and conditions of this Agreement having been negotiated by the Parties, no provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

### 3. LOAN FACILITY

The Bank has agreed to grant the Borrower the Loan Facility, on and subject to the terms and conditions hereinafter set out.

### 4. RANKING OF LOAN FACILITY

The Borrower represents, warrants and undertakes that the Loan Facility comprises senior debt and ranks at least equally with all other senior debt in terms of servicing, repayment and collateral rights and the claims of all of the Borrower's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

### 5. LIMIT

- 5.1 The aggregate amount to be advanced to the Borrower under the Loan Facility is R433,066,761.79 (four hundred and thirty three million sixty six thousand seven hundred and sixty one Rand and seventy nine cents) (**Limit**).
- 5.2 To the extent that a drawdown under the Loan Facility would cause the Limit to be exceeded, the Borrower shall not be entitled to make such a drawdown.



## 6. AVAILMENT AND PURPOSE

- 6.1 The Loan Facility may only be utilised on fulfilment to the satisfaction of the Bank or waiver by the Bank of all the conditions precedent referred to in clause 9 and provided that drawdown must be made by the Borrower under the Loan Facility by no later than 31 December 2019, following which date, any unutilised portion of the Loan Facility shall be reduced by such unutilised amount.
- 6.2 The Borrower shall, no later than 09h00 2 (two) Business Day immediately preceding the Settlement Date, request the amount owing under the Facility Outstandings as at the Settlement Date.
- 6.3 The Bank shall, no later than 17h00 following receipt of the request above, provide the amount of the Facility Outstandings in writing and such written notice shall, on its presentation, be sufficient proof of the amounts to be settled as at the date and time on which the written notice is delivered.
- 6.4 The Bank shall apply all amounts borrowed under the Loan Facility towards discharging the Facility Outstandings.
- 6.5 No amount of the Existing Commitments cancelled under this Agreement may be subsequently reinstated.
- 6.6 The Bank shall not, however, be under any obligation to verify or monitor that the Borrower will utilise the Loan Facility for the aforesaid purpose.

## 7. INTEREST

- 7.1 The Loan Facility shall attract a fixed interest rate of 11.58% (eleven point five eight percent) per annum (**Fixed Interest Rate**). This rate is indicative and subject to change on the date of first drawdown of the Loan Facility. Any such change to the interest rate will be advised by the Bank to the Borrower in writing on the Settlement Date. The Fixed Interest Rate is based on settlement of accrued interest on the Settlement Date.
- 7.2 At least 2 (two) Business Days prior to the Settlement Date ("**Quotation and Election Date**"), the Borrower shall provide the Bank with a written request for a quotation of the Fixed Interest Rate as at the Quotation and Election Date ("**Quote**").
- 7.3 The Borrower acknowledges that the Fixed Interest Rate, such rate shall apply to Loan Facility for the Term, subject to the provisions of this Agreement. The Bank may however, following receipt of a written notice to this effect from the Borrower, agree to amend the Fixed Interest Rate to a variable interest rate. In such event, the:
  - 7.3.1.1 determination of the rate of the variable interest rate shall be at the sole and absolute discretion of the Bank and shall be confirmed by the Bank on written notice to the Borrower; and
  - 7.3.1.2 Borrower shall be liable for any costs incurred by the Bank regarding such amendment.
- 7.4 The first interest payment will be due on 30 June 2020. The interest payable by the Borrower will be:
  - 7.4.1 charged bi-annually in arrears;
  - 7.4.2 debited to the Borrower's Loan Account on a date convenient to the Bank and shall be payable in accordance with clause 8.
- 7.5 The Bank may immediately amend the pricing structure of the Loan if there is a change in:
  - 7.5.1 law or the issue of a directive with which the Bank must comply; or
  - 7.5.2 market conditions resulting in an increasing cost to the Bank.
- 7.6 If the Bank amends the pricing structure of the Loan, it will advise the Borrower accordingly.

## 8. DURATION AND REPAYMENT

- 8.1 The capital amount of the Loan Facility is to be repaid (**Repayments**) by the Borrower over a period of 12.5 (twelve and a half) years (**Term**) as follows:
  - 8.1.1 a capital moratorium for the first 2 (two) years commencing from the Settlement Date; and
  - 8.1.2 in 25 (twenty five) semi-annual amortising instalments in terms of a Repayment schedule to be prepared by the Bank and delivered by the Bank to the Borrower at the address set out clause 18.18.2.2.
- 8.2 The first Repayment shall be due on 30 June 2022 and shall thereafter be due and payable on the last business day of June and December of each and every succeeding year.

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- 8.3 All Repayments pursuant to this Agreement shall be made by means of electronic funds transfer, in permanent reduction of the Loan Facility, the details of which will be communicated to the Borrower in writing.
- 8.4 The Parties agree that the Repayment schedule will be amended by the Bank from time to time to cater for variations in the interest rate, changes in the interest period due to fluctuations in the interest calculations and/or in the event that the Bank becomes entitled to amend the pricing structure of the Loan Facility in accordance with this agreement. The Bank will deliver the amended Repayment schedule to the Borrower at the address set out clause 18.18.2.2.

#### 9. EARLY REPAYMENTS

- 9.1 The Borrower shall be entitled to make a full or partial Early Repayment of the Loan Facility. If the Borrower wishes to make an Early Repayment of the Loan Facility which is in permanent reduction of the Loan Facility, then:
- 9.1.1 the Early Repayment must be made on not less than 90 (ninety) Business Days' written notice to the Senior Lenders (or such shorter notice period as they may agree to in writing) of the Borrower's intention to make such Early Repayment and the Borrower undertakes that:
- 9.1.1.1 a pro-rata portion of each of the Senior Facilities of the same class is simultaneously repaid; and
- 9.1.1.2 such early repayment will not cause a breach of the Financial Covenants.
- 9.1.2 the Repayments over the remainder of the Term will be rescheduled by agreement in writing between the Parties.
- 9.2 To the extent that an Early Repayment is made, this will not result in any waiver of any rights by the Bank in terms of this Agreement or relieve the Borrower of its obligations to comply with the provisions of this Agreement.

#### 10. EARLY SETTLEMENT

In the event of an early permanent repayment as contemplated in clause 9.1.1 above, the Borrower will fully compensate the Bank for the costs, Break Costs, expenses, liabilities or losses incurred or suffered in connection with, or following the modification, breaking, or unwinding, or funding from other sources, or any arrangement which the Bank may have made for investing any repayments of the Loan Facility and/or hedging the Loan Facility for the Term.

#### 11. CONDITIONS PRECEDENT

- 11.1 The Borrower shall only be entitled to drawdown the Limit if all of the following conditions precedent are fulfilled or waived by the Bank, which conditions precedent shall be fulfilled or waived by no later than 15H00 on 31 December 2019:
- 11.1.1 that the Borrower has undergone the Bank's Know Your Customer (KYC) process pursuant to the provisions of FICA;
- 11.1.2 that the Bank is provided with a copy of this Agreement signed by the accounting officer of the Borrower, accepting the terms and conditions stipulated herein, in accordance with section 46(2)(b) of the MFMA;
- 11.1.3 that the Bank has been provided with the certified copy of the resolution of the Municipal Council, signed by the Mayor, approving the:
- 11.1.3.1 the Loan Facility and the agreement(s) relating thereto, in accordance with section 46(2)(a) of the MFMA; including
- 11.1.3.2 the refinance of the existing long-term debt as envisaged in this Agreement, in accordance with section 45(5) of the MFMA.
- 11.1.4 that the Borrower has provided the Bank with a written disclosure, in form and substance acceptable to the Bank, that the purpose of the Loan Facility is to fund capital expenditure on property, plant or equipment as contemplated in section 46(1)(a) of the MFMA;
- 11.1.5 that the Borrower has provided the Bank with a certified copy of the information statement, in form and substance acceptable to the Bank, signed by the Mayor, prepared in terms of section 46(3) of the MFMA in respect of the Loan Facility;
- 11.1.6 that the Borrower has provided the Bank with a letter of award, in form and substance acceptable to the Bank, in favour of the Bank, in terms of which the Borrower informs the Bank that it has been successful in bidding to provide the Loan Facility;

- 11.1.7 that the Borrower has provided the Bank with a copy of the adjustments budget tabled in terms of the MFMA and that the Bank is satisfied as to the manner in which the Loan Facility has been dealt with in such adjustment budget, if applicable;

**Financial**

- 11.1.8 that the Borrower has provided the Bank with the:
- 11.1.8.1 signed audited financial statements for the preceding 3 (three) financial years, together with an indication whether the audit deadline referred to in section 126 of the MFMA has been met;
  - 11.1.8.2 approved annual budget;
  - 11.1.8.3 integrated development plan or multi-year business plan referred to in section 87(5)(d) of the MFMA, if applicable;
  - 11.1.8.4 repayment schedules pertaining to its existing short-term and long-term debt;
  - 11.1.8.5 the unqualified audit report prepared by the Auditor General in terms of section 126(3) of the MFMA in respect of the 2018/2019 financial statements;
  - 11.1.8.6 signed audited financial statements for the year ended June 2019, which audited annual financial statements shall not demonstrate a material deterioration from the reports / management accounts and annual budgets prepared in terms of section 71 of the MFMA; and

for the purposes of this clause, a "material deterioration" shall mean a change in the structure of the Borrower's revenue streams; or any deterioration in the Borrower's financial position; or a deterioration in the Borrower's ability to service debt.

- 11.1.9 if applicable, that the Borrower has provided the Bank with a copy of the adjustments budget tabled in terms of the MFMA and that the Bank is satisfied as to the manner in which the Loan Facility has been dealt with in such adjustment budget;
- 11.1.10 that the Bank is satisfied that the 2019 audited financial statements do not differ materially from the draft financial statements presented to the Senior Lenders.

**Other**

- 11.1.11 that the Borrower has provided the Bank with written confirmation (in a form and substance acceptable to the Bank) from the Accounting Officer or any other duly authorised representative of the Borrower confirming:
  - 11.1.11.1 that the Borrower is not in breach of any material contracts to which the Borrower is a party; and
  - 11.1.11.2 the absence of any material pending (which has a reasonable prospect of occurring) industrial action; litigation, investigation or proceeding against the Borrower; and
  - 11.1.11.3 that there has been no material deterioration in the financial position of the Borrower between the date of application for the Loan Facility and the date of the first drawdown under the Loan Facility; and
- 11.1.12 that, in the Bank's opinion, there has been no material deterioration in the financial position of the Borrower between the date of application for the Loan Facility and the date of first drawdown of the Loan Facility by the Borrower.
- 11.1.13 that the Bank has received confirmation in writing from the other Senior Lenders that they have agreed to the restructure proposal made by the Borrower to restructure their respective Senior Facilities and that the Bank has received confirmation in writing from the Borrower that they have accepted all Senior Lenders proposals and that terms and conditions are accepted by all Senior Lenders;
- 11.1.14 that the Bank is satisfied, in its sole discretion, that its rights in terms of the Loan Facility contemplated in this Agreement will not be prejudiced in any manner by the terms and conditions of the restructure of the Senior Facilities granted or to be granted by the other Senior Lenders it being agreed by the Borrower that should this not be the case, the Bank retains the right to immediately, automatically and without the requirement for notice to terminate this Agreement and/or amend the terms and conditions of this Agreement;
- 11.1.15 that the Bank has been furnished with the updated cashflow model and is satisfied with its contents.
- 11.2 The above conditions precedent are inserted for the benefit of the Bank, which may in writing on or before the dates for fulfilment of the conditions set out in clause 11.1, extend the period for fulfilment or waive any of the



said conditions precedent in its sole discretion. Unless and until the above conditions precedent are either waived or fulfilled, the Borrower shall not be entitled to drawdown the Limit.

- 11.3 Notwithstanding any provision to the contrary, if the Bank, in the erroneous belief that all the conditions precedent have been fulfilled or waived (as the case may be), makes any advances or any portion of the Limit (**Advanced Amount**) available to the Borrower and if it subsequently transpires that any one (or more) of the conditions precedent has in fact not been fulfilled or waived (as the case may be):
- 11.3.1 the terms and conditions of this Agreement shall apply in respect of the amount of the Advanced Amount (subject to clauses 11.3.2 and 11.3.3);
- 11.3.2 the Bank shall be entitled to declare the amount of the Advanced Amount to be immediately due and payable by the Borrower to the Bank; and
- 11.3.3 the Bank shall not be obliged to make any further advances to the Borrower.

## 12. ONGOING CONDITIONS AND FINANCIAL COVENANTS

### 12.1 Financial covenants

- 12.1.1 Both general and specific financial covenants may be required in accordance with the Bank's credit risk requirements and having considered the financial covenants of all the other Senior Lenders, including but not limited to the following financial covenants the breach of which shall constitute an event of default, based on the financial information in the most recent draft financial statements and audited financial statements (as the case may be):
- 12.1.1.1 **Interest Bearing Debt to Revenue Ratio**  
To be maintained at a level that is less than or equal to:
- 12.1.1.1.1 78% (seventy eight percent) of revenue for the period 2018/2019 to 2020/21 financial years of the Borrower; and thereafter
- 12.1.1.1.2 70% (seventy percent) of revenue,  
for purposes of this clause "**Revenue**" includes total operating revenue less conditional operating grants recorded in the statement of budget comparison and "**Debt**" shall mean the aggregate of moneys borrowed (both long and short term) excluding finance leases as recorded in Annexure A to the annual financial statements.
- 12.1.1.2 **Billings to Collections rate**  
To be maintained at a level that is greater than or equal to 90% (ninety percent). For purposes of this clause, "**Collections**" shall mean the amount received by the Borrower from its debtors calculated as the sum of gross debtors closing balance and billed revenue less gross debtors opening balance and "**Billings**" shall mean the aggregate amount in respect of accounts rendered by the Borrower for assessment rates, services and consumption charges and other regulated municipal imposts and levies as recorded in the statement of financial position, statement of financial performance and notes to the financial statements.
- 12.1.1.3 **Capital Cost to Total Operating Expenditure**  
To be maintained at a level that is less than or equal to 15% (fifteen) of total operating expenditure, "**Capital Cost**" shall mean the sum of interest paid and capital redemption as recorded in the Cash Flow Statement, "**Total Operating Expenditure**" shall mean total operating expenditure as recorded in the statement of financial performance; and
- 12.1.1.4 **Debt Service Coverage Ratio**  
To be equal to or greater than 1 (one times), for the purposes of this clause, Debt Service Cover Ratio means the sum of net cash from operating activities plus finance charges incurred less capital grant funding received to cover the sum of capital redemption and interest paid on interest bearing debt as recorded in the Cash Flow Statement.
- 12.1.2 To be monitored quarterly at the end of March, June, September and December of each year for the Term based on the on the management accounts and cash flow projections which are to be provided by the Borrower within 15 (fifteen) days from the end of each quarter, to monitor amongst others but not limited hereto, liquidity levels, creditor age analysis, cash flow projections to budgets and adherence to terms of term loan agreements.
- 12.1.3 The Borrower and the Senior Lenders will meet on a biannual basis on a date agreed to and on prior notice by the Senior Lenders for the Term or unless otherwise agreed to by the Senior Lenders to review the

financial performance and cashflow projections of the Borrower in light of the original and adjusted budgets presented to the Bank.

## 12.2 **Signing Authorities**

In the event of there being any variation in the signing authorities during the Term, the Borrower is then to furnish the Bank with written resolution and amended mandate instructions timeously.

## 12.3 **Financial Statements**

12.3.1 The Borrower shall furnish the Bank with signed copies of the audited annual financial statements of the Borrower annually within a period of 180 (one hundred and eighty) days from the date that they are due in terms of the MFMA together with any other information as the Bank may reasonably require.

12.3.2 The draft audited annual financial statements submitted to the Bank shall not differ materially from the signed audited annual financial statements in respect of the previous financial year.

## 12.4 **Management Accounts**

The Borrower undertakes that during the Term it shall provide the Bank with the quarterly management accounts of the Borrower (in the format as agreed between the Parties from time to time) by no later than 25 (twenty five) Business Days after the end of the period to which they relate and which management accounts shall not differ materially from the signed financial statements (prepared in compliance with the relevant Financial Reporting Standard) of the Borrower for the particular year.

## 12.5 **Audit Report**

The Borrower shall ensure that the Bank is furnished with a copy of Borrower's unqualified audit report prepared by the Auditor General in terms of section 126(3) of the MFMA in respect of the 2019/2020 financial statements by no later than 31 January 2021.

## 12.6 **Notification of event of default**

The Borrower hereby undertakes to the Bank that it will advise the Bank immediately on becoming aware of the occurrence of an event of default or of any circumstances that could potentially result in an event of default as contemplated in clause 13.

## 12.7 **Reporting Requirements**

While the Loan Facility remains available or any amount or commitment remains outstanding to the Bank the following conditions shall apply, the Borrower shall:

12.7.1 provide the Bank, on request by the Bank, with information relating to its draft budgets, approved budgets, adjustment budgets as well as a copy of the monthly and quarterly reports required in terms of the MFMA within 5 (five) days of such information being due in terms of the MFMA for a particular period, together with such other information as the Bank may from time-to-time request;

12.7.2 without limitation to clause 12.4, inform the Bank, as soon as possible after identification of any financial problems facing the Borrower, including any emerging or impending financial problems in terms of the provisions of section 54 of the MFMA that could reasonably be expected to affect the Borrower's ability to repay any amounts outstanding under the Loan Facility; and

12.7.3 provide the Bank, on request by the Bank, with confirmation, in form and substance acceptable to the Bank, that it submits to its mayor and the Provincial Treasury the monthly reports required in terms of section 71 of the MFMA within 10 (ten) days after the month to which they relate.

## 12.8 **Credit Replacement Report**

The Borrower undertakes that the Credit Replacement Reserve Fund will be replenished in accordance with the approved budget. The Bank will verify this on against the quarterly management accounts and the financial covenants.

## 12.9 **Annual Review**

12.9.1 The Loan Facility is subject to annual review by the Bank, with the first annual review falling due by 30 November 2020 and annually thereafter in light of the following information:

12.9.1.1 draft or audited annual financial statements;

12.9.1.2 approved annual budget;

12.9.1.3 annual revised integrated development plan; and

12.9.1.4 repayment schedules pertaining to the Borrower's existing short-term and long-term debt.

- 12.9.2 The above information must be given to the Bank before the review date. In the event of a delay in receipt of this information, the Bank may reduce or restructure the Loan Facility until such time as such required information has been received and the review undertaken.
- 12.10 Without limitation to the Bank's other rights under this Agreement, the Bank reserves the right to reassess and to renegotiate the Loan Facility in the event of there being any change in the:
- 12.10.1 management and/or legislated governance of the local authority;
  - 12.10.2 overall structure of the local authority;
  - 12.10.3 structure of revenue streams; or
  - 12.10.4 any deterioration in the Borrower's financial position; or
  - 12.10.5 an existing or pending material (which has a reasonable prospect of occurring) industrial action, litigation, investigation or proceeding against the Borrower.

### 13. EVENTS OF DEFAULT

- 13.1 An event of default will occur if:
- 13.1.1 the Borrower fails to pay any sum due and payable by it to the Bank in terms of this Agreement;
  - 13.1.2 the Borrower commits a breach of any of the other terms and conditions of this Agreement, and such breach is not remedied within a period of 14 (fourteen) days of written notice having been given to the Borrower to do so;
  - 13.1.3 the Borrower or any Collateral Provider commits a breach of any of the terms and conditions of any Collateral and such breach is not remedied within a period of 14 (fourteen) days of written notice having been given to the Borrower to do so;
  - 13.1.4 the Borrower ceases to carry on its business in a normal and regular manner;
  - 13.1.5 the Borrower defaults in the due payment of any amount falling due for payment under any suretyship or guarantee to which it is a party;
  - 13.1.6 the Borrower suffers any default judgment against it which remains unsatisfied for 21 (twenty-one) days, or is refused a rescission of any default judgment;
  - 13.1.7 the Borrower permits any of its assets to be attached under a warrant of execution which is not set aside within a period of 21 (twenty-one) days after service thereof on the Borrower;
  - 13.1.8 the Borrower defaults in the due and punctual performance under any other agreement including but not limited to any other agreement concluded between the Borrower and a third party or any other loan/credit facility between the Borrower and the Bank and (if such default is capable of being remedied) same has not been remedied to the satisfaction of the Bank within 14 (fourteen) days from the date of any written notice given by the Bank to the Borrower to remedy the default;
  - 13.1.9 the Borrower meets the conditions of a mandatory provincial intervention (as contemplated in section 139 and 140 of the MFMA);
  - 13.1.10 any representation, or warranty or undertaking made either in respect of the Borrower or in connection with this Agreement or in any documents delivered under this Agreement, is not complied with or is materially incorrect in any respect;
  - 13.1.11 the Borrower's auditors in any financial statements of the Borrower published after the date of the last set of financial statements furnished to the Bank or if none have been so furnished, after the Signature Date, materially qualifies that annual statement in any respect, or inserts a note in the supporting documents to that financial statement relating to any material irregularity;
  - 13.1.12 there is a material deterioration in the Borrower's financial position;
  - 13.1.13 the whole or any part of the Collateral furnished is judicially attached, or becomes subject to any lien, hypothec or other encumbrance without the Bank's prior written consent;
  - 13.1.14 the Borrower is unable to pay its debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its indebtedness to any other creditors, commences negotiations or takes any other step with the view to the deferral, rescheduling or other re-adjustment of all of (or all of a particular type of) its indebtedness to creditors (or of any part of such indebtedness which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of the indebtedness of the Borrower;

- 13.1.15 if an attachment, execution or other legal process is levied, enforced, issued or sued out on or against any assets of the Borrower or any unsatisfied judgement or order, including failure to pay a final judgement or court order, except insofar as reasonable court process is underway for the Borrower's indebtedness to the Bank, and is not discharged or stayed within 30 (thirty) days of service by the relevant officer of the court of such attachment, execution or other legal process;
- 13.1.16 should a writ of execution issued by any competent court attaching any assets belonging to the Borrower remain unsatisfied for more than 7 (seven) days after the date on which it is issued;
- 13.1.17 if the Loan Facility and/or charges related to or associated with the Loan Facility is not budgeted for in the Borrower's budget in any particular year;
- 13.1.18 if the Borrower becomes aware of any over expenditure or potential over expenditure in respect of its budget or adjustments budget;
- 13.1.19 if the payment of all amounts under the Loan Facility/and or charges is not retrospectively approved by means of an adjustments budget within the prescribed time period in terms of the MFMA; or
- 13.1.20 if there is at any time a change in the demarcation of the area falling within the jurisdiction of the Borrower as at the Signature Date;
- 13.1.21 if at any time after the Signature Date there is any change in (including but not limited to repeal of legislation) or addition to, the legislation to which the Borrower is subject and which in the reasonable opinion of the Bank could be expected to adversely affect the ability of the Borrower to comply with any of its obligations hereunder;
- 13.1.22 if the Borrower defaults in the due payment or due performance of any amount payable or obligation to be performed under any agreement, which amount or which obligation the Bank considers to be material in its reasonable opinion;
- 13.1.23 if any material indebtedness or obligation for monies borrowed constituting indebtedness of the Borrower shall become due and payable prior to its specified maturity by reason of default, or shall not be paid when due;
- 13.1.24 any Collateral Provider who may have provided additional Collateral for, the whole or part of the Indebtedness commits any act, or omits to do anything, referred to in this clause 13 or if any of the events referred to in this clause 13 occurs in respect of any such person, or in relation to that person's own affairs;
- 13.1.25 a Material Adverse Event occurs;
- 13.1.26 the Borrower generally does or omits to do anything which may cause the Bank to suffer any loss or damage; or
- 13.1.27 the Borrower or any Collateral Provider becomes or is, in the opinion of the Bank, likely to become Sanctioned, or the Bank in any way knows or suspects that the Borrower's Current Account is being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply with the law or the Borrower is involved in any illegal or terrorist activities.
- 13.2 The Bank, may without prejudice to any other rights hereunder or at law, at any time after the happening of an event of default, by written notice to the Borrower:
  - 13.2.1 decline any request by the Borrower to drawdown any further monies under the Limit and cancel the Limit forthwith;
  - 13.2.2 require immediate repayment all the Indebtedness, which Indebtedness shall become immediately become due, owing and payable;
  - 13.2.3 require immediate payment of all "**Breakage Costs**" being all costs, charges, expenses, losses or reduced receipts which the Bank may have sustained or incurred in relation to the termination or modification of any arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility; or
  - 13.2.4 increase the rate of interest charged.
- 13.3 The Bank's rights under this clause shall not be exhaustive but shall be in addition to and without prejudice to any other rights which it may have under this Agreement or the law.
- 13.4 If any of the events specified in clause 13.1 (other than in clause 13.1.2 become applicable in respect of any Collateral Provider (and for such purpose, a reference to "Borrower" in clause 13 shall be read and construed as a reference to such person), then, on the occurrence of such event, an event of default shall be deemed to have taken place for the purposes of this Agreement thereby entitling the Bank to avail itself of the remedies specified in clause 13.2.

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### 13.5 Penalty Interest

At any time after the occurrence of an event of default in terms of this Agreement, the Bank shall be entitled, but not be obliged, to increase the interest rate set out in clause 7.1 by a rate of 2.5% (two point five percent) per annum, without prejudice to any rights which the Bank may otherwise have as a result of that event of default.

### 14. REPRESENTATIONS AND WARRANTIES AND UNDERTAKINGS

- 14.1 The Borrower represents and warrants to the Bank that as at the Signature Date and for the Term, that:
- 14.1.1 it is a Municipality duly constituted and existing under the laws of South Africa;
  - 14.1.2 it has full power to enter into and perform in terms of this Agreement and has taken all necessary corporate and other actions to authorise the borrowings hereunder;
  - 14.1.3 the execution, delivery and performance of any agreements applicable to the Loan Facility do not violate any law, including the MFMA;
  - 14.1.4 it has complied with all the provisions of the MFMA in relation to the Loan Facility and undertakes that it will continue to do so for the currency of the Loan Facility;
  - 14.1.5 it has disclosed all guarantees, suretyships and other off-balance sheet items to the Bank;
  - 14.1.6 its annual budget as well as its approved annual budget contains all of the information referred to in section 17 of the MFMA;
  - 14.1.7 there are no circumstances resulting in a Material Adverse Event, and in the reasonably exercised opinion of the Borrower no such circumstances are likely to arise;
  - 14.1.8 it is not in breach of any law applicable to it, nor in breach of any material contract by which it is bound, or to which it is a party, and in its reasonably exercised opinion, no such breach is likely to occur or arise;
  - 14.1.9 the terms of this Agreement do not conflict with and do not constitute a breach of the terms of any other agreement or undertaking or act that is binding on the Borrower;
  - 14.1.10 there is no material industrial action or litigation or similar proceedings, to the knowledge of the Borrower, presently pending or threatened which would result in a Material Adverse Event;
  - 14.1.11 no event of default specified in clause 13.1 has occurred and is continuing;
  - 14.1.12 the Loan Facility and the charges associated with the Loan Facility have been provided for in an approved budget, which has been properly approved in terms of the MFMA and that payment of the amount of the Loan Facility and any charges associated with the Loan Facility will not result in the total amount of the budget being exceeded. These requirements will be met in future as well;
  - 14.1.13 it will not utilise savings with regards to an unrelated expenditure in a budget to defray any excess expenditure that may be required for satisfying a claim under a loan agreement;
  - 14.1.14 its acceptance in terms of the Loan Facility has been duly authorised and to the best of its knowledge and belief does not contravene any law or any contractual obligation binding upon it;
  - 14.1.15 the Loan Facility is not a form of debt renewal or refinancing and the Borrower will ensure that the Loan Facility is not used for this purpose;
  - 14.1.16 the terms and conditions applicable to any loans provided by any other long term funders, are not, and shall not, be more favourable than the terms and conditions applicable to the Loan Facility;
  - 14.1.17 the Loan Facility shall be used solely for the purposes set out in clause 6;
  - 14.1.18 all information supplied or to be supplied to the Bank by the Borrower concerning the Borrower's business as contained in the Borrower's balance sheets, trading and profit and loss accounts, cash flows and other financial statements or accounts, is true and correct in all material respects and will in future be true and correct in all material respects;
  - 14.1.19 the Borrower has, in relation to the conduct of its business, obtained and complied with all the necessary consents, registrations, filings, certificates, licences, approvals, permits and insurances;
  - 14.1.20 there has been no material deterioration in the financial position of the Borrower;
  - 14.1.21 this Agreement constitutes legal, valid, binding and enforceable obligations of the Borrower;
  - 14.1.22 the Borrower's acceptance of the terms of this Agreement has been duly authorised and does not contravene any law or any contractual obligation binding on it;

- 14.1.23 it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to in it each jurisdiction in which the Borrower conducts business (its "Environmental Responsibility") and hereby undertakes to continue to do so for so long as the Borrower is indebted to or owes any obligations to the Bank under or in terms of this Agreement;
- 14.1.24 that it is not aware of any circumstances which may prevent full compliance with its Environmental Responsibility in future;
- 14.1.25 it will ensure that the Collateral Providers, at all times comply with all legislation and other laws, including anti-money laundering and combating the financing of terrorism regulations;
- 14.1.26 neither the Borrower nor any of the Collateral Providers are subject to any law prohibiting the borrowing of funds or ownership of the property by non-resident individuals or limiting the borrowing of funds by companies and other entities in which non-residents have a 75% (seventy five percent) or greater interest or, if such law does apply, that the Borrower shall deliver to the Bank before the first advance written evidence to the Bank's satisfaction of the written permission of the exchange control authorities entitling the Borrower to obtain the Loan Facility;
- 14.1.27 it will not use (or otherwise make available) the proceeds of the Limit for the purposes of financing, directly or indirectly, the activities of any person or entity which is Sanctioned or in a country which is subject to any Sanctions;
- 14.1.28 it will not contribute or otherwise make available, directly or indirectly, the proceeds of the Limit to any other person or entity if such party uses or intends to use such proceeds for the purpose of financing the activities of any person or entity which is subject to any Sanctions;
- 14.1.29 it is not involved in any illegal or terrorist activities; and
- 14.1.30 none of the bank accounts held by the Borrower with the Bank are being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply with any law.
- 14.2 The Borrower undertakes in favour of the Bank not to incur any further long term debt for capital projects during the period contemplated in clause 8.1.1 and for a period of 1 (one) year commencing the expiry of the capital moratorium being 30 June 2022.

## 15. INDEMNITIES

- 15.1 The Borrower hereby indemnifies the Bank against any loss, damage, claims, costs, charges, expenses or any other liability, which may arise (because of this or any other banking facility or the Bank having an interest in the Borrower's assets) in respect of a breach of, or a failure, by the Borrower to meet its Environmental Responsibility.
- 15.2 The Borrower hereby indemnifies and holds the Bank harmless against any actions, proceedings, claims or demands that may be brought against the Bank and all losses, damages, costs, charges and expenses which the Bank may incur or sustain, in connection with or arising out of:
  - 15.2.1 the seizure, blocking or withholding of any funds by any Sanctioning Body; and
  - 15.2.2 the breach of any warranties as set out in clause 14.
- 15.3 The Borrower shall be bound by all instructions transmitted by it to the Bank by facsimile transceiver or by means of an e-mail message, and hereby waives any rights it may have or obtain against the Bank arising directly or indirectly from any losses or damages which the Borrower may suffer as a result of the Bank acting on any purported faxed or e-mailed instruction. The Borrower further indemnifies the Bank in respect of any claims, demands or actions made against the Bank or losses or damages suffered by the Bank as a result of the Bank acting on the said faxed or e-mailed instruction.

## 16. CHANGE(S) IN CIRCUMSTANCES

- 16.1 If at any time or times during the Term there is:
  - 16.1.1 any change in or introduction of any law, regulation, ruling, directive, policy, requirement, request or guidelines (whether or not having the force of law) or any other similar event with which the Bank or any of its divisions is obliged to comply or which is in accordance with the practice of a responsible banker, or any interpretation or administration thereof,
  - 16.1.2 without derogating from the generality of the foregoing:
    - 16.1.2.1 any change in banking practice, as it affects or is applied generally by any financial institution in South Africa;

- 16.1.2.2 a requirement or a request by any authority, to pay taxes or other amounts whatsoever or to maintain special deposits or reserve assets;
  - 16.1.2.3 any compliance by the Bank with any reserve, cash ratio, special deposit or liquidity requirements (or any other similar requirements) in respect of the Loan Facility;
  - 16.1.2.4 any compliance with or application of (whether mandatory or not) any capital adequacy or similar requirements, including but not limited to the provisions of the International Convergence of Capital Measurement and Capital Standards (a revised framework) (i.e. BASEL II) or any other standards or guidelines published by the Basel Committee on Banking Supervision (including BASEL III) by the Bank or any of its divisions, or any interpretation or administration thereof, results in any increase in the Bank's costs in providing the Loan Facility to the Borrower;
  - 16.1.2.5 any change to any present or future law, ruling or regulation;
  - 16.1.2.6 any change in the interpretation or administration of any law, ruling or regulation by any relevant monetary or fiscal authority;
  - 16.1.2.7 any amendment to the Banks Act, 94 of 1990; or
  - 16.1.2.8 any compliance by the Bank with any directive or request, whether or not having the force of law, from any monetary or fiscal authority;
- which would or does:
- 16.1.3 subject the Bank to any taxes, duties, or other charges in respect of the Loan Facility or change the basis of taxation of the Bank in respect of payments of principal or interest/fees payable to the Bank (except for changes in the rate of taxation on the overall net income of the Bank);
  - 16.1.4 impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank; or
  - 16.1.5 impose on the Bank any other obligation or condition affecting the Loan Facility or its commitment in terms of this Agreement,
  - 16.1.6 and the result of any of the above is to increase the cost to the Bank of making any advance or maintaining the Loan Facility or to reduce any amount or amounts received or receivable or loanable by the Bank hereunder by a material sum, then the Borrower shall pay to the Bank on demand and while such circumstances continue, such fee as the Bank may impose or such additional amount or amounts which will compensate the Bank for such additional cost or reduced receipts.
- 16.2 The Bank shall give the Borrower 30 (thirty) days' written notice of all amounts payable in terms of clause 16.1. A certificate signed by any manager or divisional head of the Bank (whose appointment it shall not be necessary to prove) as to such additional amount/s shall be prima facie proof for all purposes in the absence of manifest error.
  - 16.3 If the Borrower is required to pay additional amount/s to the Bank pursuant to clause 16.1, it shall be entitled to prepay any amounts owed in terms hereof without penalty, or to forthwith cancel any unutilised portion of the Loan Facility by giving the Bank 30 (thirty) days' written notice thereof.
  - 16.4 Without detracting from any other rights that the Bank may have, the Borrower furthermore acknowledges that the Bank has approved and is providing the Loan Facility based on the present circumstances of the Borrower and the industry and environment within which it operates. The Borrower understands and agrees that certain circumstances, including but not limited to those circumstances set out in clause 16.1.1, may arise that would have the effect of materially altering the basis on which said Loan Facility was/is given. Should any event or series of events accordingly occur which, in the reasonable opinion of the Bank have or may be expected to have an adverse effect on the ability of the Borrower to comply with its obligations hereunder the Bank shall, by giving reasonable written notice, have the right to change the terms of the Loan Facility with the Borrower. Should the new terms on which the Bank is prepared to continue to make the Loan Facility available not be acceptable to the Borrower, all outstanding amounts will, without further notice, immediately become due and payable and the Borrower, or any other entities indebted in terms of the Loan Facility will immediately effect payment of such outstanding amounts.

## 17. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager or business unit head of the Bank (whose authority, qualification or appointment need not be proved) setting out the amount of any Indebtedness of the Borrower to the Bank in terms hereof, the rates of interest and any other fact, shall, on its mere presentation, be sufficient proof, unless the contrary is proved, of the Indebtedness and of such other facts contained therein.

## 18. GENERAL TERMS

### 18.1 Matters requiring the Bank's consent

The Borrower may not without the Bank's prior written consent, which shall not be unreasonably withheld:

- 18.1.1 cease carrying on business;
- 18.1.2 change the nature of its business;
- 18.1.3 become surety, guarantor for or give any indemnity on behalf of any third party whomsoever or render itself liable in any way whatsoever for the debts or engagements of any other party, other than encumbrances as agreed to by the Bank;
- 18.1.4 pledge, cede, mortgage, hypothecate or otherwise encumber or further encumber any of its movable or immovable assets to secure any liability of any nature;
- 18.1.5 sell or otherwise dispose of or attempt to sell or dispose of any of its assets except in the ordinary course of its business and provided the sale of such assets are invested in the Capital Replacement Reserve;
- 18.1.6 subject to the further provisions of clause 14.2, incur any further borrowings, including but not limited to guarantees provided, other than permitted indebtedness as agreed to by the Bank. This restriction shall include off-balance sheet commitments;
- 18.1.7 advance credit to third parties other than in the ordinary course of business; and/or
- 18.1.8 make material changes to the accounting policies, standards or conventions of the Borrower or any Collateral Provider.

### 18.2 Legal Charges

- 18.3 Each Party shall bear its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement.
- 18.4 All legal costs (on the attorney and own client scale), commissions or fees and other charges and expenses in connection with this Agreement including but not limited to all costs incurred by the Bank in the enforcement of any of its rights hereunder, the preparation of any documentation relating hereto, the registration and eventual cancellation of any bonds referred to herein, and the premiums on the insurance policies which may be ceded in security to the Bank, will be for the account of the Borrower and payable on demand.

### 18.5 Fees and Charges

- 18.5.1 The Bank may charge and recover fees and charges in respect of this Agreement.
- 18.5.2 All fees and charges will be debited to the Borrower's Current Account.
- 18.5.3 Where there is a change in the frequency or time for payment of a fee or charge, the Bank will give the Borrower written notice setting out the particulars of the change.
- 18.5.4 The Borrower must pay to the Bank all applicable fees and charges set out in this Agreement.
- 18.5.5 The Bank may charge and recover from the Borrower interest on and in respect of any unpaid fees and charges referred to in this Agreement.
- 18.5.6 The fees and charges applicable will be set out in the Bank's annual pricing schedule (amended from time to time) which will be issued to the Borrower or available on the Bank's website [www.standardbank.co.za](http://www.standardbank.co.za).
- 18.5.7 The Bank reserves the right to charge separate fees for any indulgences granted, or additional services provided by the Bank in connection with this Agreement. The Bank shall advise the Borrower in writing of these fees, as well as the payment terms associated therewith.

### 18.6 Free of Deduction

All amounts paid to the Bank under this Agreement shall be made free of deduction or set-off. Should the Borrower be compelled by law to withhold or deduct any taxes or other charges from any amounts payable to the Bank, the amounts payable to the Bank shall be increased to the extent necessary to ensure that the Bank receives the amounts payable, free of such withholding or deduction.

### 18.7 Allocation of Payments

The Bank will be entitled to allocate any payments received under this Agreement to any indebtedness of the Borrower to the Bank and the Borrower waives any rights it may have to name the debt in respect of which payment is made.



**18.8 Set-off and Realisation**

Should the Borrower commit an event of default as set out in clause 13 or elsewhere in this Agreement and the Bank exercise its rights in terms of the provisions of clause 13.2, the Bank may in addition to any rights the Bank has:

- 18.8.1 set-off any credit balances held in any other account which the Borrower has with the Bank that are due and payable, against the Indebtedness; or
- 18.8.2 realise any Collateral held by the Bank and use the proceeds in payment of the Indebtedness,
- 18.9 on written notice to the Borrower.

**18.10 Collateral**

On the incurrence of an event of default in clause 13.1 or elsewhere in this Agreement, or if the value of any Collateral held by the Bank to secure the Indebtedness is no longer adequate, or if in the opinion of the Bank the Borrower's account conduct increases the Bank's risk regarding the Indebtedness or any other amount owing to the Bank by the Borrower in terms of any other agreement, the Bank shall have the right to:

- 18.10.1 request the Borrower to provide the Bank with additional Collateral to secure repayment of the Indebtedness;
- 18.10.2 reduce the Limit;
- 18.10.3 require repayment of all or some of the Limit; and/or
- 18.10.4 increase the interest rate in accordance with the provisions of clause 13.5.

**18.11 Renunciation of benefits**

The Borrower hereby renounces the benefits of the following legal defences to any claim brought by the Bank:

- 18.11.1 the Borrower has received no value for its obligations to the Bank;
- 18.11.2 no money has been paid to the Borrower;
- 18.11.3 there is no underlying cause for the Borrower's obligation to the Bank; and
- 18.11.4 the Bank made an error in calculating the Indebtedness. The Bank will revise its accounts in respect of the Indebtedness if they are incorrect.

**18.12 Whole Agreement, Variation of Terms**

- 18.12.1 This Agreement by the Borrower and the Bank shall constitute the whole agreement between the Bank and the Borrower relating to the subject matter hereof.
- 18.12.2 No addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this Agreement, shall be of any force or effect unless it is recorded in writing and is signed on behalf of the Bank by one of its authorised officials and accepted by the Borrower. This requirement will only be satisfied if such amendment or variation is made in a written, paper based form. The provisions of the Electronic Communications and Transactions Act, 25 of 2002 do not apply to this clause.

**18.13 Illegality**

If at any time after the Signature Date it is or becomes unlawful in any jurisdiction, or contrary to any lawful and binding request from or requirement of the South African Reserve Bank or other South African governmental department or authority, for the Bank to perform any of its obligations under this Agreement, then the Bank shall promptly after becoming aware of the same notify the Borrower by way of a certificate signed by any manager or divisional head of the Bank (whose authority, qualification or appointment need not be proved) and the Borrower shall repay any and all amounts due under this Agreement as required by law.

**18.14 No Indulgence**

- 18.14.1 No indulgence shown or extension of time given by the Bank shall operate as an estoppel against the Bank or waiver of any of the Bank's rights unless recorded in writing and signed by the Bank.
- 18.14.2 The Bank shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the conclusion of any agreement created by acceptance of the Loan Facility or whether it was negligent or not.

**18.15 Good Faith**

The Parties undertake at all times to do all such reasonable things, perform all such reasonable actions and take all such reasonable steps open to them and necessary for or incidental to the putting into effect or

maintenance of the terms, conditions or import of this Agreement, provided that nothing herein shall prevent the Bank from exercising its rights under the Agreement in the event of the occurrence of an event of default.

**18.16 Severability**

Each provision of this Agreement is severable, the one from the other and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

**18.17 Governing Law**

The terms of this Agreement shall be governed by and interpreted in accordance with the laws of South Africa.

**18.18 Domicilium and Notices**

18.18.1 The Parties choose as their *domicilium citandi et executandi* (address for the purpose of legal proceedings) their respective addresses set out below, at which addresses all processes and legal notices arising out of or in connection with this Agreement, its breach or termination may validly be served on or delivered to the Parties:

18.18.1.1 as regards the Bank:

Attention: Group Governance / Legal

Standard Bank Centre,

9th Floor, Reception 1, 5 Simmonds Street, Johannesburg, 2001

With a copy to be sent to:

Attention: Head Public Sector Business Banking

7th floor west wing, 30 Baker Street, Rosebank, 2196

Telephone Number: 011 721 7406; and

18.18.1.2 as regards the Borrower:

Attention: Municipal Manager

Bergvrierv Boulevard, Paarl, 7622

Telephone Number: 021 807 4500

or at such other physical address, not being a post office box or *poste restante*, of which the Party concerned may notify the other Party in writing.

18.18.2 Any other written notices in connection with this Agreement shall be addressed as follows:

18.18.2.1 as regards the Bank:

at the address set out in clause 18.18.1.1

Email address: [natalie.neves-oakes@standardbank.co.za](mailto:natalie.neves-oakes@standardbank.co.za) and

18.18.2.2 as regards the Borrower:

at the address set out in clause 18.18.1.2

Email address: [cfo@drakenstein.gov.za](mailto:cfo@drakenstein.gov.za),

or at such other address of which the Party concerned may notify the other in writing.

18.18.3 Any notice given in terms of this Agreement shall be in writing and shall:

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

18.18.3.2 if delivered by a recognised international courier service, be deemed to have been received by the addressee on the first business day following the date of such delivery by the courier service concerned;

18.18.3.3 if posted by prepaid registered post will be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) Business Day following the date of such posting; and

18.18.3.4 if sent electronically, shall be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt (unless the contrary is proven). It is recorded, for the avoidance of doubt, that a legal notice sent by a Party shall not be regarded as valid legal notice, if sent electronically in terms of this clause 18.18.

18.18.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above, shall be an adequate written notice of communication to such Party.

18.18.5 Where the post office does not effect street deliveries at the Borrower's Notice Address, the Bank may send any notices in terms of this Agreement to the Borrower's post office box number.

#### 18.19 Counterparts

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

#### 18.20 Cession

18.20.1 The Borrower shall not be entitled to cede or assign its rights or obligations in terms of this Agreement to any party.

18.20.2 The Bank shall, on written notification to the Borrower, be entitled at any time to cede any or all of its rights or delegate any or all of its obligations under or in terms of this Agreement to any party.

18.20.3 To the extent that any cession, assignment or transfer by the Bank of its rights or obligations under or in terms of this Agreement to any party results (whether directly or indirectly) in a splitting of claims against the Borrower, the Borrower hereby irrevocably and unconditionally consents to such splitting of claims.

18.20.4 On cession, assignment or transfer in accordance with the provisions of clause 18.20.2 and without limitation to clause 18.21 the Bank shall be entitled to divulge and disclose such information or documents relating to the Borrower or any of its subsidiaries, which would otherwise be deemed to be confidential, to the cessionary, assignee or transferee as the Bank may deem necessary.

#### 18.21 Data protection

18.21.1 The Borrower consents to the Bank collecting its Personal Information from the Borrower and where lawful and reasonable, from public sources for credit, fraud and compliance purposes as well as and the purposes set out below.

18.21.2 If the Borrower gives the Bank Personal Information about or on behalf of another person (including, but not limited to, account signatories, shareholders, principal executive officers, trustees and beneficiaries), the Borrower confirms that it is authorised to: (a) give the Bank the Personal Information; (b) consent on their behalf to the Processing of their Personal Information, specifically any cross-border transfer of Personal Information into and outside the country where the products or services are provided; and (c) receive any privacy notices on their behalf.

18.21.3 The Borrower consents to the Bank Processing its Personal Information:

18.21.3.1 to provide products and services to the Borrower in terms of this Agreement and any other products and services for which the Borrower may apply;

18.21.3.2 to carry out statistical and other analyses to identify potential markets and trends, evaluate and improve our business (this includes improving existing and developing new products and services);

18.21.3.3 in countries outside the country where the products or services are provided. These countries may not have the same data protection laws as the country where the products or services are provided. Where the Bank can, the Bank will ask the receiving party to agree to the Bank's privacy policies;

18.21.3.4 by sharing the Borrower's Personal Information with the Bank's third-party service providers, and insurers, locally and outside the country where the products or services are provided. The Bank asks people who provide services to the Bank, including its insurers, to agree to the Bank's privacy policies if they need access to any Personal Information to carry out their obligations;

18.21.3.5 within the Group.

18.21.4 The Borrower consents to the Bank disclosing its Personal Information to Collateral Providers.

18.21.5 The Borrower will find the Bank's Processing practices in the Group and the Bank's privacy statements. These statements are available on the Group's websites or on request.

18.21.6 If the Borrower is unsure about its tax or legal position because the Borrower's Personal Information is Processed in countries other than where the Borrower lives or conducts business, the Borrower should get independent advice.

**18.22 Recordal of Conversations**

The Borrower agrees that the Bank may record telephone conversations with the Borrower's representative for the purpose of creating a record of the Borrower's instructions or requests given telephonically by the Borrower to the Bank.

**18.23 Independent Advice**

18.23.1 The Borrower acknowledges and agrees that it has not relied in any way on any information or advice given by the Bank in preparation, negotiation or implementation of this Agreement and that it has taken all reasonable actions to satisfy itself as to the consequences of entering into this Agreement.

18.23.2 The Borrower further acknowledges that:

18.23.2.1 the Bank does not provide any tax advice. The Borrower is responsible for any tax consequences associated with any account the Borrower has with the Bank;

18.23.2.2 it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement, and that it has taken such independent legal and other advice or dispensed with the necessity of doing so; and

18.23.2.3 all of the provisions of this Agreement, and the restrictions herein contained, are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a large, stylized signature on the left, a smaller signature or set of initials in the middle, and a single, large, stylized letter 'J' on the right.

SIGNED AT Paarl ON THE 6th DAY OF December 2019

Signature

ABRE BOER

Full Names

ACCOUNT EXECUTIVE

Designation

For and on behalf of:

**THE STANDARD BANK OF SOUTH AFRICA  
LIMITED, ACTING THROUGH ITS PERSONAL  
AND BUSINESS BANKING DIVISION**

Who warrants his/her authority hereto

As witnesses:

1

Full names:

ID number:

2

JACQUES CARSTENS

Full names:

ID number:

JACQUES CARSTENS

550329 5126 088

SIGNED AT 6TH PAARL ON THE 6TH DAY OF DECEMBER 2019

Signature

JOHANNES HEINRICUS LEIBBRANDT

Full Names

CITY MANAGER

Designation

For and on behalf of:

**DRAKENSTEIN MUNICIPALITY**

Who warrants his/her authority hereto

As witnesses:

1

Full names:

ID number:

Africa Viola

180215036083

2

Full names:

ID number:

ELDE' JOY MULLER

880920021 6089