

**LOAN AGREEMENT**

entered into between

**ABSA BANK LIMITED**  
**(Registration Number: 1986/004794/06)**  
**("the Bank/Absa")**

and

**KNYSYNA MUNICIPALITY**  
**("Borrower")**

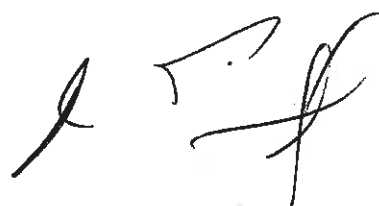
Handwritten signature and initials in black ink, located in the bottom right corner of the page.

## Loan Terms and Agreement

Absa Bank Limited, registration number 1986/004794/06 (the Bank/ Absa) is pleased to offer the Borrower (defined below) a term loan facility (the Facility). The terms of the Facility are contained in this document (the Commercial Terms) and in the Standard Terms delivered with these Commercial Terms.

References to clauses in these Commercial Terms shall be a reference to a clause as it appears in the Standard Terms.

Bank's Address for Notices (domicilium)	Barclays Towers West, 15 Troye Street, Johannesburg, 2001
Borrower:	Knysna Municipality
Borrower's Address for Notices:	2 Queen Street Knysna 6571
Loan Amount:	<b>R 17 301 600.00</b> (Seventeen Million Three Hundred and One Thousand and Six Hundred Rand), to be advanced by the Bank to the Borrower in a single drawdown.  Request for drawdown will be provided to the Bank in accordance with Schedule 3.
Loan Term:	The Bank hereby lends to the Borrower, which hereby borrows the Loan Amount for a maximum period of ten (10) years. The Loan Term may not exceed the useful life of the assets being financed.
Fees:	N/A
Final Date for Drawing:	The date falling (to be negotiated with client) after the Signature Date.( before financial year end 30 June 2017)
Final Repayment Date:	In accordance with the Repayment Schedule attached hereto as Schedule 1



**Financial Covenants:**

The following financial covenants apply to the Borrower: The Financial covenants are:

The following covenants will be monitored annually:

- 1) **Moving average collection rate for Debtors (90 days and less) should not be less than 85%.**
- 2) **Net Cash from operating activities expressed as a percentage of total long term interest bearing loans should not reduce to below 50%.**

**Testing:**

The above financial covenants shall be tested annually or as advised by the Bank from time to time.

**Financial Information**

The Borrower will provide the Bank with any financial information and documentation which the Bank may request from time to time.

**Interest Rate:**

**Term Loan: Fix Rate**

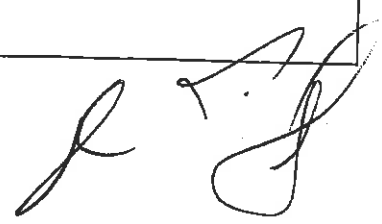
**Loan amount:  
R 17 301 600**

**Term: 10 years**

**9.53%**

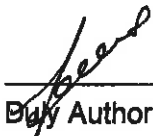
**0.80%**

**10.33% NACS**



Signed at KNYSNA on 31 JANUARY 2017

For: Absa Bank Limited

  
Duly Authorised  
Name: BYRON ANDREWS

\_\_\_\_\_  
Duly Authorised  
Name: \_\_\_\_\_

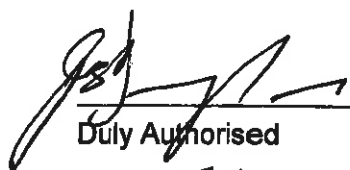
Capacity: TRANSACTIONAL BANKER


Capacity: \_\_\_\_\_

The Term Loan detailed above is accepted for and on behalf of the Borrower on the terms contained in the Commercial Terms and the Standard Terms delivered.

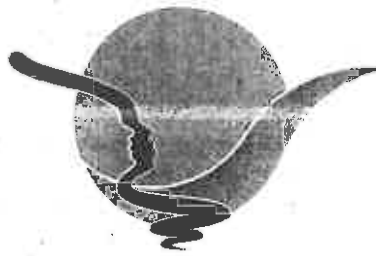
Signed at KNYSNA on 31<sup>st</sup> JANUARY 2017

For: Knysna Municipality

  
Duly Authorised  
Name: Johnny Douglas  
Capacity: Acting Municipal Manager

  
Duly Authorised  
Name: Nana Mdoony  
Capacity: Nana Mdoony





**KNYSNA**  
Municipality  
Munisipaliteit  
uMasipala

**DRAW DOWN NOTICE: 10 YEAR LOAN**

**DETAILS OF DRAW DOWN**

Amount in rand value: R 9 680 000.00

Amount in words:

Nine million six hundred and eighty thousand rand only.

Date to be disbursed (taking into account three business days notice): 31 January 2017

**BANK DETAILS**

Bank: Nedbank  
Account Name: Knysna Municipality  
Account Number: 1626561826  
Branch Name: Business Garden Route  
Branch Number: 162 645

The Borrower being **Johnny Brown Douglas** in his capacity as Acting Municipal Manager of the Borrower, he being duly authorized hereto under and by virtue of a resolution passed by the Council of the Borrower on the 30<sup>th</sup> day of June 2016 hereby issues a draw down notice as stipulated in the loan agreement.

THUS DONE AND SIGNED AT KNYSNA

On this the 31<sup>st</sup> day of JANUARY 2017

In the presence of the undersigned witness:

**AS WITNESS:**

for and on behalf of:  
**THE BORROWER**

SCHEDULE 1

Term	10 years
Type	Term Loan
Rate	Fixed
Day Convention	Preceding

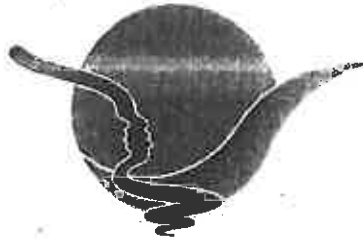
MACS

Kryveza Municipality

Base Rate	8.13%
Liquidity Premium	1.20%
Liquid Asset Cost	0.20%
Margin	0.80%
All-In Rate	10.33%

Date	Day	DD	Flowed	Rate	Margin	Interest Rate	Drawdown	Interest Repayment	Capital Repayment	ADHOC Interest Repayment	ADHOC Capital Repayment	Total Repayment	Interest	Cumulative Interest	Capital Balance	Asset Balance
Tue 31 Jan 17	Tue	62	0	9.53%	0.80%	10.330%	9 680 000.00								9 680 000.00	9 680 000.00
Tue 31 Jan 17	Tue	28	0	9.53%	0.80%	10.330%								75 708.03	9 680 000.00	9 680 000.00
Fri 31 Mar 17	Fri	31	0	9.53%	0.80%	10.330%								161 634.78	9 680 000.00	9 680 000.00
Fri 28 Apr 17	Fri	28	0	9.53%	0.80%	10.330%								238 342.82	9 680 000.00	9 680 000.00
Sun 30 Apr 17	Sun	2	0	9.53%	0.80%	10.330%								243 821.96	9 680 000.00	9 680 000.00
Wed 31 May 17	Wed	31	0	9.53%	0.80%	10.330%								328 748.71	9 680 000.00	9 680 000.00
Fri 30 Jun 17	Fri	30	0	9.53%	0.80%	10.330%								410 355.89	9 680 000.00	9 680 000.00
Mon 31 Jul 17	Mon	31	0	9.53%	0.80%	10.330%								495 862.64	9 680 000.00	9 680 000.00
Thu 31 Aug 17	Thu	31	0	9.53%	0.80%	10.330%		495 862.64	291 720.34	787 582.98				82 367.36	9 388 279.66	9 388 279.66
Sat 30 Sep 17	Sat	30	0	9.53%	0.80%	10.330%								162 077.72	9 388 279.66	9 388 279.66
Thu 31 Oct 17	Thu	31	0	9.53%	0.80%	10.330%								244 445.06	9 388 279.66	9 388 279.66
Thu 30 Nov 17	Thu	30	0	9.53%	0.80%	10.330%								324 155.43	9 388 279.66	9 388 279.66
Sun 31 Dec 17	Sun	31	0	9.53%	0.80%	10.330%								406 522.80	9 388 279.66	9 388 279.66
Wed 31 Jan 18	Wed	28	0	9.53%	0.80%	10.330%								488 890.15	9 388 279.66	9 388 279.66
Wed 28 Feb 18	Wed	28	0	9.53%	0.80%	10.330%								570 902.45	9 388 279.66	9 388 279.66
Wed 31 Mar 18	Wed	31	0	9.53%	0.80%	10.330%								653 724.74	9 388 279.66	9 388 279.66
Sat 31 Mar 18	Sat	31	0	9.53%	0.80%	10.330%								737 495.09	9 388 279.66	9 388 279.66
Mon 30 Apr 18	Mon	30	0	9.53%	0.80%	10.330%								821 265.38	9 388 279.66	9 388 279.66
Mon 30 Apr 18	Mon	30	0	9.53%	0.80%	10.330%								905 036.65	9 388 279.66	9 388 279.66
Thu 31 May 18	Thu	31	0	9.53%	0.80%	10.330%								988 807.91	9 388 279.66	9 388 279.66
Sat 30 Jun 18	Sat	30	0	9.53%	0.80%	10.330%								1072 579.16	9 388 279.66	9 388 279.66
Tue 31 Jul 18	Tue	31	0	9.53%	0.80%	10.330%								1156 350.41	9 388 279.66	9 388 279.66
Fri 31 Aug 18	Fri	31	0	9.53%	0.80%	10.330%								1240 121.66	9 388 279.66	9 388 279.66
Sun 30 Sep 18	Sun	30	0	9.53%	0.80%	10.330%								1323 892.91	9 388 279.66	9 388 279.66
Wed 31 Oct 18	Wed	31	0	9.53%	0.80%	10.330%								1407 664.16	9 388 279.66	9 388 279.66
Fri 30 Nov 18	Fri	30	0	9.53%	0.80%	10.330%								1491 435.41	9 388 279.66	9 388 279.66
Mon 31 Dec 18	Mon	31	0	9.53%	0.80%	10.330%								1575 206.66	9 388 279.66	9 388 279.66
Thu 31 Jan 19	Thu	28	0	9.53%	0.80%	10.330%								1658 977.91	9 388 279.66	9 388 279.66
Thu 28 Feb 19	Thu	28	0	9.53%	0.80%	10.330%								1742 749.16	9 388 279.66	9 388 279.66
Thu 31 Mar 19	Thu	31	0	9.53%	0.80%	10.330%								1826 520.41	9 388 279.66	9 388 279.66
Sun 30 Apr 19	Sun	30	0	9.53%	0.80%	10.330%								1910 291.66	9 388 279.66	9 388 279.66
Tue 30 May 19	Tue	31	0	9.53%	0.80%	10.330%								1994 062.91	9 388 279.66	9 388 279.66
Fri 31 May 19	Fri	31	0	9.53%	0.80%	10.330%								2077 834.16	9 388 279.66	9 388 279.66
Sun 30 Jun 19	Sun	30	0	9.53%	0.80%	10.330%								2161 605.41	9 388 279.66	9 388 279.66
Wed 31 Jul 19	Wed	31	0	9.53%	0.80%	10.330%								2245 376.66	9 388 279.66	9 388 279.66
Sat 31 Aug 19	Sat	31	0	9.53%	0.80%	10.330%								2329 147.91	9 388 279.66	9 388 279.66
Mon 30 Sep 19	Mon	30	0	9.53%	0.80%	10.330%								2412 919.16	9 388 279.66	9 388 279.66
Thu 31 Oct 19	Thu	31	0	9.53%	0.80%	10.330%								2496 690.41	9 388 279.66	9 388 279.66
Sat 30 Nov 19	Sat	30	0	9.53%	0.80%	10.330%								2580 461.66	9 388 279.66	9 388 279.66
Tue 31 Dec 19	Tue	31	0	9.53%	0.80%	10.330%								2664 232.91	9 388 279.66	9 388 279.66
Fri 31 Jan 20	Fri	31	0	9.53%	0.80%	10.330%								2748 004.16	9 388 279.66	9 388 279.66
Sat 28 Feb 20	Sat	29	0	9.53%	0.80%	10.330%								2831 775.41	9 388 279.66	9 388 279.66
Tue 31 Mar 20	Tue	31	0	9.53%	0.80%	10.330%								2915 546.66	9 388 279.66	9 388 279.66
Thu 30 Apr 20	Thu	30	0	9.53%	0.80%	10.330%								2999 317.91	9 388 279.66	9 388 279.66
Sun 30 May 20	Sun	31	0	9.53%	0.80%	10.330%								3083 089.16	9 388 279.66	9 388 279.66
Tue 30 Jun 20	Tue	30	0	9.53%	0.80%	10.330%								3166 860.41	9 388 279.66	9 388 279.66
Fri 31 Jul 20	Fri	31	0	9.53%	0.80%	10.330%								3250 631.66	9 388 279.66	9 388 279.66
Mon 31 Aug 20	Mon	31	0	9.53%	0.80%	10.330%								3334 402.91	9 388 279.66	9 388 279.66
Wed 30 Sep 20	Wed	30	0	9.53%	0.80%	10.330%								3418 174.16	9 388 279.66	9 388 279.66
Fri 30 Oct 20	Fri	30	0	9.53%	0.80%	10.330%								3501 945.41	9 388 279.66	9 388 279.66
Fri 30 Oct 20	Fri	30	0	9.53%	0.80%	10.330%								3585 716.66	9 388 279.66	9 388 279.66
Sat 31 Oct 20	Sat	1	0	9.53%	0.80%	10.330%								3669 487.91	9 388 279.66	9 388 279.66
Mon 30 Nov 20	Mon	30	0	9.53%	0.80%	10.330%								3753 259.16	9 388 279.66	9 388 279.66
Thu 31 Dec 20	Thu	31	0	9.53%	0.80%	10.330%								3837 030.41	9 388 279.66	9 388 279.66
Fri 31 Dec 20	Fri	31	0	9.53%	0.80%	10.330%								3920 801.66	9 388 279.66	9 388 279.66
Fri 29 Jan 21	Fri	29	0	9.53%	0.80%	10.330%								4004 572.91	9 388 279.66	9 388 279.66
Sun 28 Feb 21	Sun	28	0	9.53%	0.80%	10.330%								4088 344.16	9 388 279.66	9 388 279.66
Sun 28 Feb 21	Sun	28	0	9.53%	0.80%	10.330%								4172 115.41	9 388 279.66	9 388 279.66
Wed 31 Mar 21	Wed	31	0	9.53%	0.80%	10.330%								4255 886.66	9 388 279.66	9 388 279.66
Fri 30 Apr 21	Fri	30	0	9.53%	0.80%	10.330%								4339 657.91	9 388 279.66	9 388 279.66
Mon 31 May 21	Mon	31	0	9.53%	0.80%	10.330%								4423 429.16	9 388 279.66	9 388 279.66
Wed 30 Jun 21	Wed	30	0	9.53%	0.80%	10.330%								4507 200.41	9 388 279.66	9 388 279.66
Fri 30 Jul 21	Fri	30	0	9.53%	0.80%	10.330%								4590 971.66	9 388 279.66	9 388 279.66
Sat 31 Jul 21	Sat	1	0	9.53%	0.80%	10.330%								4674 742.91	9 388 279.66	9 388 279.66
Tue 31 Aug 21	Tue	31	0	9.53%	0.80%	10.330%								4758 514.16	9 388 279.66	9 388 279.66

Thu 30 Sep 21	30	9.53%	0.80%	10.330%	787 582.98	339 404.05	448 178.93	787 582.98	113 746.22	6 482 430.02	6 596 176.24
Fri 29 Oct 21	29	9.53%	0.80%	10.330%					166 950.10	6 482 430.02	6 649 300.12
Sun 30 Oct 21	2	9.53%	0.80%	10.330%					3 669.23	6 482 430.02	6 653 049.35
Tue 30 Nov 21	30	9.53%	0.80%	10.330%					275 657.89	6 482 430.02	6 708 087.85
Fri 31 Dec 21	31	9.53%	0.80%	10.330%					339 404.05	6 482 430.02	6 764 960.96
Mon 31 Jan 22	31	9.53%	0.80%	10.330%					47 817.72	6 034 251.09	6 034 251.09
Mon 28 Feb 22	28	9.53%	0.80%	10.330%					100 758.77	6 034 251.09	6 082 068.81
Thu 31 Mar 22	31	9.53%	0.80%	10.330%					150 284.26	6 034 251.09	6 135 099.85
Fri 29 Apr 22	29	9.53%	0.80%	10.330%					51 993.04	6 034 251.09	6 184 535.35
Tue 31 May 22	31	9.53%	0.80%	10.330%					204 952.09	6 034 251.09	6 186 243.12
Thu 30 Jun 22	30	9.53%	0.80%	10.330%					256 166.36	6 034 251.09	6 239 184.17
Fri 29 Jul 22	29	9.53%	0.80%	10.330%					305 691.85	6 034 251.09	6 290 417.44
Sun 31 Jul 22	2	9.53%	0.80%	10.330%					3 142.79	5 552 359.95	5 552 359.95
Wed 31 Aug 22	31	9.53%	0.80%	10.330%					51 856.00	5 552 359.95	5 552 359.95
Fri 30 Sep 22	30	9.53%	0.80%	10.330%					98 997.82	5 552 359.95	5 552 359.95
Mon 30 Oct 22	30	9.53%	0.80%	10.330%					147 711.03	5 552 359.95	5 604 215.95
Wed 30 Nov 22	30	9.53%	0.80%	10.330%					194 652.85	5 552 359.95	5 651 357.77
Sat 31 Dec 22	31	9.53%	0.80%	10.330%					243 566.06	5 552 359.95	5 700 070.98
Tue 1 Jan 23	1	9.53%	0.80%	10.330%					40 074.05	5 552 359.95	5 747 212.80
Thu 28 Feb 23	28	9.53%	0.80%	10.330%					84 441.76	5 057 056.24	5 057 056.24
Fri 28 Mar 23	28	9.53%	0.80%	10.330%					124 515.81	5 057 056.24	5 141 498.00
Fri 28 Apr 23	28	9.53%	0.80%	10.330%					171 745.94	5 057 056.24	5 181 572.05
Sun 30 Apr 23	2	9.53%	0.80%	10.330%					227 378.24	5 057 056.24	5 184 634.46
Wed 31 May 23	31	9.53%	0.80%	10.330%					259 050.13	5 057 056.24	5 228 802.18
Fri 30 Jun 23	30	9.53%	0.80%	10.330%					39 730.66	4 528 523.39	4 528 523.39
Mon 30 Jul 23	30	9.53%	0.80%	10.330%					78 178.68	4 528 523.39	4 568 254.05
Mon 30 Aug 23	30	9.53%	0.80%	10.330%					117 910.34	4 528 523.39	4 606 703.07
Thu 31 Aug 23	31	9.53%	0.80%	10.330%					158 359.37	4 528 523.39	4 646 433.79
Sat 30 Sep 23	30	9.53%	0.80%	10.330%					196 090.03	4 528 523.39	4 684 892.75
Tue 31 Oct 23	31	9.53%	0.80%	10.330%					235 820.68	4 528 523.39	4 724 613.41
Thu 30 Nov 23	30	9.53%	0.80%	10.330%					39 730.66	3 976 761.09	3 976 761.09
Thu 30 Dec 23	30	9.53%	0.80%	10.330%					34 638.86	3 976 761.09	4 009 399.94
Sun 31 Dec 23	31	9.53%	0.80%	10.330%					34 889.81	3 976 761.09	4 044 289.76
Fri 31 Jan 24	31	9.53%	0.80%	10.330%					101 253.01	3 976 761.09	4 078 054.09
Fri 31 Feb 24	28	9.53%	0.80%	10.330%					169 947.16	3 976 761.09	4 112 943.91
Thu 30 Mar 24	30	9.53%	0.80%	10.330%					204 836.97	3 976 761.09	4 146 708.24
Thu 29 Apr 24	29	9.53%	0.80%	10.330%					29 777.14	3 394 015.07	3 394 015.07
Fri 28 May 24	28	9.53%	0.80%	10.330%					58 593.72	3 394 015.07	3 427 792.21
Fri 28 Jun 24	28	9.53%	0.80%	10.330%					88 370.95	3 394 015.07	3 452 608.79
Mon 30 Jun 24	30	9.53%	0.80%	10.330%					117 187.44	3 394 015.07	3 482 395.93
Thu 30 Jul 24	30	9.53%	0.80%	10.330%					146 964.57	3 394 015.07	3 511 202.51
Sat 30 Aug 24	30	9.53%	0.80%	10.330%					176 741.71	2 783 173.80	2 783 173.80
Thu 31 Oct 24	31	9.53%	0.80%	10.330%					22 054.94	2 783 173.80	2 805 228.73
Thu 31 Dec 24	30	9.53%	0.80%	10.330%					46 472.90	2 783 173.80	2 829 646.70
Fri 31 Jan 25	31	9.53%	0.80%	10.330%					70 103.19	2 783 173.80	2 877 694.95
Fri 28 Feb 25	28	9.53%	0.80%	10.330%					94 521.16	2 783 173.80	2 877 694.95
Mon 31 Mar 25	31	9.53%	0.80%	10.330%					118 151.45	2 783 173.80	2 901 325.24
Wed 30 Apr 25	30	9.53%	0.80%	10.330%					142 569.41	2 138 160.22	2 138 160.22
Sat 31 May 25	30	9.53%	0.80%	10.330%					36 912.85	2 138 160.22	2 156 919.21
Thu 30 Jun 25	30	9.53%	0.80%	10.330%					55 671.83	2 138 160.22	2 175 079.07
Sun 30 Sep 25	30	9.53%	0.80%	10.330%					92 584.68	2 138 160.22	2 183 892.06
Thu 31 Oct 25	31	9.53%	0.80%	10.330%					78 825.69	2 138 160.22	2 198 350.22
Sun 30 Nov 25	30	9.53%	0.80%	10.330%					110 738.54	2 138 160.22	2 211 986.92
Wed 31 Dec 25	31	9.53%	0.80%	10.330%					413.57	1 461 315.78	1 461 315.78
Sat 28 Feb 26	28	9.53%	0.80%	10.330%					11 580.03	1 461 315.78	1 461 315.78
Thu 30 Mar 26	30	9.53%	0.80%	10.330%					12 820.74	1 461 315.78	1 473 308.38
Thu 30 Apr 26	30	9.53%	0.80%	10.330%					37 221.51	1 461 315.78	1 486 130.12
Sun 31 May 26	31	9.53%	0.80%	10.330%					50 042.26	1 461 315.78	1 498 337.29
Thu 30 Jun 26	30	9.53%	0.80%	10.330%					62 448.43	1 461 315.78	1 511 358.04
Fri 30 Jul 26	31	9.53%	0.80%	10.330%					75 270.17	1 461 315.78	1 523 765.21
Mon 31 Aug 26	31	9.53%	0.80%	10.330%					6 571.32	749 002.97	749 002.97
Wed 30 Sep 26	30	9.53%	0.80%	10.330%					12 980.66	749 002.97	753 574.29
Sat 31 Oct 26	31	9.53%	0.80%	10.330%					6 571.32	749 002.97	761 893.63
Mon 30 Nov 26	30	9.53%	0.80%	10.330%					23 861.39	749 002.97	768 504.96
Thu 31 Dec 26	31	9.53%	0.80%	10.330%					32 492.65	749 002.97	774 864.30
Fri 29 Jan 27	29	9.53%	0.80%	10.330%					39 580.01	749 002.97	781 436.62
									0.00	0.00	0.00



**KNYSNA**  
Municipality  
Munisipaliteit  
uMasipala

Collab. Ref:  
File Ref.: 5/8/2  
A Morgan

23 January 2017

Transactional Banker – Public Sector Banking  
ABSA Bank Limited  
1<sup>st</sup> Floor ABSA Building  
106 York Street  
George  
6529

ATTENTION: Byron Andrews

Dear Sir

**LOAN AGREEMENT: T06 OF 2016 – CONDITIONS PRECEDENT**

This serves to confirm that:

- a. The purpose of this 5 year & 10 year Term Loans of R 1 720 000.00 (5yr) & R 9 680 000.00 (10yr) is for capital expenditure on property, plant or equipment as contemplated in Section 46 (1)(a) of the Municipal Finance Management Act No.56 of 2003.
- b. The Municipality complied with the requirements of Section 46 (3) of the Municipal Finance Management Act No.56 of 2003 in the processes leading up to the loan approval by Council.
- c. Comments from National & Provincial Treasury has been obtained in accordance with Section 46 (3)(a)(ii) of the Municipal Finance Management Act No.56 of 2003.

**AUTHORISED SIGNATORIES**

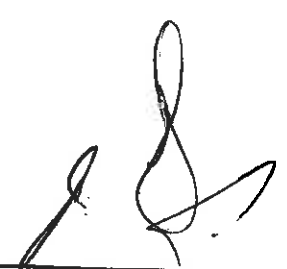
The Borrower being Johnny Brown Douglas in his capacity as Municipal Manager of the Borrower, he being duly authorized hereto under and by virtue of a resolution passed by the Council of the Borrower on the 30<sup>th</sup> day of June 2016.

AS WITNESS:

  
ACTING DIRECTOR: FINANCE  
LH FOURIE

for and on behalf:  
THE BORROWER

  
ACTING MUNICIPAL MANAGER  
J B DOUGLAS





SPECIAL COUNCIL MEETING  
MINUTES  
30 JUNE 2016

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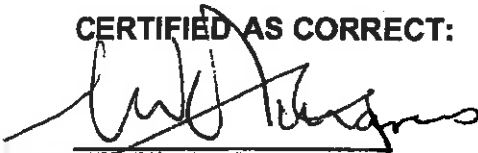
SC03/06/16 **LONG-TERM DEBT**

**UNANIMOUSLY RESOLVED**

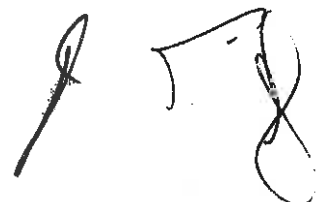
- [a] That a 5 year loan for R 1 720 000 with ABSA Bank at a fixed or floating interest rate, which will be determined on date of drawdown, be entered into;
- [b] That a 10 year loan for R 17 301 600 with ABSA at a fixed or floating interest rate, which will be determined on date of drawdown, be entered into;
- [c] That the Municipal Manager be authorised to enter into loan agreements submitted to the Municipal Council; to be entered into between the Municipality and ABSA Bank in respect of the loans referred to in [a] and [b] above;
- [d] That the Chief Financial Officer report to the Municipal Council at a later date when she considers the time most favourable to convert the loans referred to in [a] and [b], if necessary.

File Number: 9/1/2/10  
Execution: Director : Financial Services

CERTIFIED AS CORRECT:

  
EXECUTIVE MAYOR  
G Wolmarans

18/07/2016  
DATE



SPECIAL COUNCIL MEETING  
AGENDA  
30 JUNE 2016

Clyde Street  
Knysna  
6570

Clydestraat  
Knysna  
6570

iClyde  
eKnysna  
6570

PO Box 21  
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6570

Posbus 21  
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Ifeksi: +27 44 302 6333



Notice is hereby given that a **SPECIAL MEETING** of the **MUNICIPAL COUNCIL** of Knysna Municipality will be held in the **COUNCIL CHAMBER, Clyde Street, Knysna on THURSDAY, 30 JUNE 2016 at 14:00** to consider the business set forth in the attached agenda.

Kennis geskied hiermee dat 'n **SPESIALE VERGADERING** van die **MUNISIPALE RAAD** van Knysna Munisipaliteit in die **RAADSAAL, Clydestraat, Knysna op DONDERDAG, 30 JUNIE 2016 om 14:00** gehou sal word ten einde sake soos uiteengesit in die aangehegte agenda te oorweeg.

Isaziso **ESIBALULEKILEYO SENTLANGANISO** ye**BHUNGA** lika**MASIPALA** waseKnysna eyakubanjelwa **KWIGUMBI LEKHANSILE** kwisitalato **iClydee, Knysna** lentlanganiso iyakuba **NGOLWESINE, NGE 30 JUNI 2016** ngentsimibi ye **14:00** umba iyakuba lushishino oluchazwekwi agenda.

CLLR E R J BOUW-SPIES

The Speaker  
Die Speaker  
Usomlomo

MR G EASTON

Municipal Manager  
Munisipale Bestuurder  
uManejala KaMasipala

Date: 24 JUNE 2016

SPECIAL COUNCIL MEETING  
AGENDA  
30 JUNE 2016


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SPECIAL COUNCIL MEETING  
AGENDA  
30 JUNE 2018

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1. OPENING AND WELCOME
2. SILENT PRAYER
3. ATTENDANCE OF MEMBERS
  - COUNCIL PRESENT
  - COUNCILLORS ABSENT WITH LEAVE
  - COUNCILLORS ABSENT WITHOUT LEAVE
4. NOTING OF THE PROVISIONS OF CODE OF CONDUCT FOR COUNCILLORS
5. DISCLOSURE OF INTEREST
6. ITEMS SUBMITTED BY THE MUNICIPAL MANAGER
7. CLOSURE

3/2/2018



**Standard Terms**

**1. DEFINITIONS**

Terms defined in the Commercial Terms and in these Standard Terms have the same meaning when used in any other part of the Facility Agreement, unless the context otherwise requires:

- Absa Group** means Absa Bank Limited and any of its Subsidiaries;
- Business Day** means a day (other than a Saturday or a Sunday or an official public holiday in the Republic of South Africa);
- Breakage Costs** means the amount (if any) by which:
- (i) the interest which the Bank should have received for the period from the date of receipt 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 the Interest Period;
- exceeds:
- (ii) the amount which the Bank 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 in the Johannesburg interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period;
- Due Date/s** means the repayment date/s provided for per Schedule 1 to this Agreement.
- Event of Default** means any one of the events mentioned in Clause 16 (Events of Default);
- Facility / Facility Agreement** means collectively the Commercial Terms and these Standard Terms;
- Finance Document** means the Facility Agreement, any guarantee provided by a Guarantor, any Security Document and any other document designated as such by the Bank and the Borrower;



<b>Interest Rate</b>	means the Interest Rate charged as set out in the Commercial Terms;
<b>Loan</b>	means the aggregate principal amount for the time being outstanding under the Facility;
<b>Material Adverse Effect</b>	means in the reasonable opinion of the Bank, a material adverse effect on: <ul style="list-style-type: none"> <li>(a) the business, operations, property, condition (financial or otherwise) or prospects of any Relevant Party;</li> <li>(b) the ability of any Obligor to perform any of its obligations under the Finance Documents; or</li> <li>(c) the validity or enforceability of any of the Finance Documents or the rights or remedies of any Relevant Party under any of the Finance Documents;</li> </ul>
<b>Obligor</b>	means the Borrower, the Guarantor (if named in the Commercial Terms) and any other person who has given a guarantee or security relating to the Facility;
<b>OFAC</b>	means the Office of Foreign Assets Control, an agency of the United States Department of Treasury;
<b>Party</b>	means a party to the Facility Agreement;
<b>Potential Event of Default</b>	means an event which, with the giving of notice, the lapse of time or the making of any determination, would constitute an Event of Default;
<b>Prime Rate</b>	means the Bank's publicly quoted prime rate of interest and calculated on a 365 day year factor, irrespective of whether it is a leap year, as certified by any authorised signatory of the Bank, whose appointment and authority it shall not be necessary to prove, and the Bank shall not be required to notify the Borrower of any changes to the Bank's prime rate of interest;
<b>Rand, R and ZAR</b>	mean the lawful currency of the Republic of South Africa;
<b>Reputation Risk Event</b>	means any act, matter, event or circumstance which results in, or could, in the reasonable opinion of the Bank, be expected to

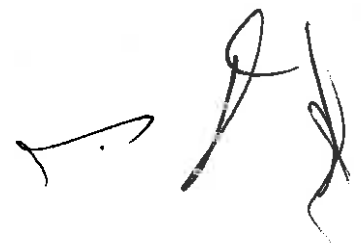
result in damage to the reputation of any part of the Bank;

**Sanctioned  
Country**

means a country or territory which is subject to: (i) general trade, economic or financial sanctions embargoes imposed, administered or enforced by (a) the US government and administered by OFAC, (b) the United Nations Security Council, (c) the European Union; or (d) Her Majesty's Treasury of the United Kingdom; or (ii) general economic or financial sanctions embargoes imposed by the US government and administered by the US State Department, the US Department of Commerce or the US Department of the Treasury;

**Sanctions**

means (i) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the US government and administered by OFAC, (b) the United Nations Security Council, (c) the European Union; or (d) Her Majesty's Treasury of the United Kingdom; and (ii) economic or financial sanctions imposed, administered or enforced from time to time by the US State Department, the US Department of Commerce or the US Department of the Treasury;

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<b>Sanctions List</b>	means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by (i) the US Government and administered by OFAC, the US State Department, the US Department of Commerce or the US Department of the Treasury; (ii) the United Nations Security Council; (iii) the European Union; or (iv) Her Majesty's Treasury of the United Kingdom, each as amended, supplemented, or substituted from time to time;
<b>Security Interest</b>	means a mortgage bond, notarial bond, cession in security, charge, hypothec, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
<b>Signature Date</b>	means the date of the signature of the Party last signing the Commercial Terms;
<b>Subsidiary</b>	means a subsidiary as defined in the Companies Act, 2008 (Act No. 71 of 2008); and
<b>VAT</b>	means any value added tax as provided for in the Value Added Tax Act, 1991 (Act No. 89 of 1991).

## **2. INTERPRETATION**

- 2.1** References to the statutory provisions are provisions of the Republic of South Africa statutes and include references to amended, extended or re-enacted versions.
- 2.2** 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 the Facility Agreement.
- 2.3** References to the Borrower, the Guarantor (if named in the Commercial Terms), the Parent (if named in the Commercial Terms) a Relevant Party (as defined in the Commercial Terms), an Obligor (as defined herein) or the Bank shall include references to their respective successors and assigns.
- 2.4** References to **indebtedness** or **amounts** outstanding shall include any obligation for the payment or repayment of money (whether present or future, actual or contingent).
- 2.5** Person means any person, firm, company, corporation, government, state, agency of a state, association, trust or partnership.



2.6 **Company** includes any company or corporation irrespective of its jurisdiction of incorporation.

2.7 **Assets** include present and future properties, revenues and rights of every description.

2.8 A **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, substituted, supplemented, extended or restated.

2.9 The Facility Agreement shall to the extent permitted by 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 the Facility 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.

2.10 The date of acceptance of the Facility Agreement and the date of Facility Agreement means the Signature Date.

### 3. AMOUNT

The maximum aggregate amount that the Borrower may borrow under the Facility is the Loan Amount as set out in the Commercial Terms.

### 4. PURPOSE

4.1. The Facility shall only be used for the Purpose as set out in the Commercial Terms. For the avoidance of doubt, the Borrower will not use the Facility in contravention of any requirements of any law and not for any other purpose except as set out in this Facility Agreement. The Borrower will be in breach of this Facility Agreement if it uses any part of the Facility in a manner that will result in breach of this Facility Agreement.

4.2. The Bank shall be entitled to, but is not obliged to, monitor or verify the application of any amount borrowed by the Borrower pursuant to this Facility Agreement.

### 5. CONDITIONS PRECEDENT

The Facility may be drawn down by the Borrower provided that, before the first drawing, the Bank has received in form and substance satisfactory to it:

5.1. all of the documents and other evidence listed in Schedule 2 to the Commercial Terms (Conditions Precedent); and

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5.2. copies of any document, opinion or assurance which the Bank considers necessary or desirable (if it has notified the Borrower accordingly) in connection with the Facility or for the validity and enforceability of this Facility Agreement.

## 6. DRAWDOWN

6.1. In respect of where there is only one drawdown, the Borrower may request a drawdown under the Facility by giving notice to the Bank in the form of a drawdown request as set out in Schedule 3 of the Commercial Terms, it being agreed that the disbursement of the Facility will be made by way of electronic transfer into the Borrower's Current Account. The Borrower shall submit the drawdown request within three months of the date that the Condition Precedents referred to in 5, are fulfilled.

6.2. The Borrower may request a drawdown under the Facility by giving notice to the Bank (which shall be irrevocable and in a form and substance satisfactory to the Bank), specifying the drawdown date (being a Business Day on or before the Final Date for Drawing).

6.3. If the Interest Rate is at a fixed rate the Borrower may only request drawings if a fixed rate has been agreed and only on the date(s) and in the amount(s) agreed between the Bank and the Borrower.

6.4. No drawing may be made if an Event of Default or a Potential Event of Default exists or would occur if such drawing were made.

6.5. The Bank is not bound to monitor or verify the application of any amount borrowed pursuant to this Facility Agreement.

## 7. REPAYMENT

7.1. The Borrower shall pay the Repayment Instalments (if applicable) as specified in the Commercial Terms. No amount which is repaid may be redrawn. If the Facility is not fully drawn by the Final Date for Drawing, any undrawn portion of the Facility shall be automatically cancelled and the Repayment Instalments shall be reduced *pro rata*.

7.2. Notwithstanding any other provisions of the Facility Agreement, the Borrower must repay the Loan, all accrued interest and all other amounts due in connection with the Facility in full on the Final Repayment Date.

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## **8. PREPAYMENT**

### **8.1. VOLUNTARY PREPAYMENT**

- 8.1.1. The Borrower shall give the Bank 90 (ninety) calendar days' notice in writing if the Borrower intends to pay the outstanding balance of the Facility and finance charges and costs in one lump sum before the due date thereof, provided that such notice may not be given at least 90 (ninety) calendar days after commencement of this Facility Agreement and the notice shall state the date on which the Borrower intends to pay such amount, which shall be irrevocable.
- 8.1.2. If the Borrower settles the outstanding amounts under this Facility Agreement early, the Bank may levy a penalty or Breakage Costs and any other amounts due under this Facility Agreement if the Borrower refinances this Facility with another financial institution without the Bank's prior written approval (including any amounts under the Indemnities in Clause 19 (Indemnities) to compensate the Bank from losses or future loss of income.

### **8.2. MANDATORY PREPAYMENT**

- 8.2.1. If it becomes unlawful for the Bank to perform any of its obligations as contemplated by this Facility Agreement or to fund or maintain any Loan:
- 8.2.1.1. the Bank shall promptly notify the Borrower upon becoming aware of the event;
- 8.2.1.2. upon the Bank notifying the Borrower, the Facility will be immediately cancelled; and
- 8.2.1.3. the Borrower shall repay the Loan on the day specified by the Bank in the notice delivered to the Borrower (being not earlier than the last day of any applicable grace period).
- 8.2.2. Where the Borrower or the Guarantor (if named in the Commercial Terms):
- 8.2.4.1. is using or will use the proceeds of the Facility for the purpose of financing or making funds available directly or indirectly to any person or entity which is currently listed on a Sanctions List or currently located in a Sanctioned Country, to the extent such financing or provision of funds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions; or
- 8.2.4.2. is contributing or will contribute or otherwise make available the proceeds of the Facility to any other person or entity for the purpose of financing the activities of any person or entity which is currently listed on a Sanctions List or currently located (or ordinarily resident) in a Sanctioned Country, to the extent contribution or provision of proceeds would currently be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions;

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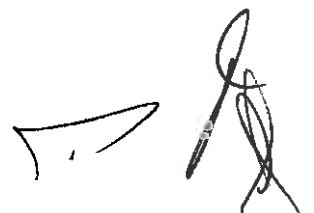
- 8.2.4.2.1. the Bank shall promptly notify the Borrower upon becoming aware of the event;
  - 8.2.4.2.2. upon the Bank notifying the Borrower, the Facility will be immediately cancelled; and
  - 8.2.4.2.3. the Borrower shall repay the Loan on the day specified by the Bank in the notice delivered to the Borrower (being not earlier than the last day of any applicable grace period).
- 8.3. Any amount prepaid shall be applied towards the Repayment Instalments in inverse order of maturity. No amount prepaid may be redrawn.
- 8.4. Any prepayment under this Facility Agreement shall be made together with accrued interest on the amount prepaid and Breakage Costs.

## **9. CANCELLATION**

The Borrower may cancel the whole or any part of the undrawn Facility by giving not less than 7 (seven) days' notice in writing to the Bank (which shall be irrevocable) specifying the amount to be cancelled and the cancellation date. The Borrower shall, on the cancellation date, pay any accrued Commitment Fee and any Breakage Costs on the amount cancelled.

## **10. INTEREST**

- 10.1. The outstanding balance of the Facility from time to time shall bear interest with effect from the date that the Facility is disbursed by the Bank in accordance with clause 6.1 and 6.2 at the Interest Rate, annually compounded monthly in arrears.
- 10.2. If the Borrower fails to pay any amount due under this Facility Agreement on the due date or if the Parties agree to defer the payment of such amount, the Bank shall be entitled to recover from the Borrower an additional amount in respect of finance charges which shall be calculated by reference to:
- 10.2.1. the total amount which is payable but is unpaid;
  - 10.2.2. the term during which the default continues or the term for which payment is deferred as aforesaid, as the case may be; and/or
  - 10.2.3. annual finance charges at the maximum rate from time to time determined by the Bank.
- 10.3. If the periods between the instalments by means of which all amounts outstanding under this Facility Agreement are repayable, are longer than one month, and the Borrower fails to pay any amount due under the Facility Agreement on due date or if the Parties agree to defer the payment of any such amount, the Bank shall thereafter be entitled to recover additional interest thereon, calculated in accordance with clause 11.2, on a monthly basis



and particulars thereof shall be advised by the Bank in writing to the Borrower from time to time.

10.4. If the period between the instalments by means of which all amounts outstanding under this Facility Agreement are repayable, are longer than one month, the Bank shall be entitled to calculate and recover interest on a monthly basis on the outstanding balance of the Facility Agreement from time to time, provided that should the Borrower fail to pay such finance charges timeously, the Bank shall be entitled to capitalise the amount of such finance charges against the outstanding balance of the Facility Agreement and provided further that the failure by the Borrower to pay any such finance charges timeously, shall not constitute a breach in terms of this Facility Agreement.

## **11. FEES**

11.1. The Borrower shall pay the Fees (plus any VAT payable on such fees) to the Bank, as specified in the Commercial Terms.

11.2. Any Commitment Fee will be calculated on a daily basis from the date of acceptance of the Facility Agreement on the undrawn and un-cancelled portion of the Facility and will be payable quarterly in arrear, on the date the Facility (or any part of the Facility) is cancelled on the Final Drawdown Date (or, on the date the Facility becomes fully drawn).

## **12. PAYMENTS**

12.1. All payments by the Borrower under the Facility Agreement shall be made in full to the Bank for value on the due date by such times and in such funds as the Bank may specify without set off or counterclaim and free and clear of any deduction or withholding on account of tax or otherwise. If the Borrower is required by law to make any deduction or withholding from any payment under the Facility Agreement, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives a net sum equal to the sum which it would have received had no such deduction or withholding been required.

## **13. REPRESENTATIONS AND WARRANTIES**

13.1. Each Obligor represents and warrants at all times that:

13.1.1. it is a legal entity duly incorporated or organised and validly existing under the law of its jurisdiction of incorporation;



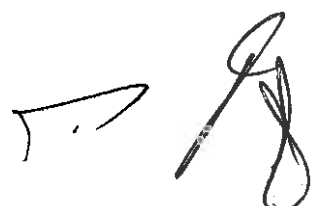
- 13.1.2. it is legally empowered to borrow the Facility on the terms set out in the Facility Agreement;
- 13.1.3. it has taken all necessary action to authorise the acceptance of and the exercise of its rights under the Facility Agreement and the performance of its obligations under the Facility Agreement and all other documents to be entered into by it in connection with the Facility; and
- 13.1.4. there is no legal or other restriction on its ability to perform its obligations in respect of the Facility.

#### **14. GENERAL UNDERTAKINGS**

14.1. Each Obligor undertakes to procure that:

- 14.1.1. the obligations of the Borrower (and, if applicable, the Guarantor) in respect of the Facility shall at all times rank at least *pari passu* with all other present and future unsecured obligations;
- 14.1.2. no Relevant Party shall create or agree to create or permit to subsist (other than in favour of the Bank) any Security Interest over its assets;
- 14.1.3. no Relevant Party will sell, transfer or otherwise dispose of the whole or any substantial part of its undertaking, property, assets or revenues, whether by a single transaction or a number of transactions (other than in the ordinary course of trading);
- 14.1.4. no Relevant Party will make any material change in the scope or nature of its business;
- 14.1.5. each Relevant Party shall maintain adequate insurance in relation to its business and assets with reputable underwriters or insurance companies against risks usually insured by persons carrying on a business such as that carried on by such Relevant Party and such other risks as the Bank may from time to time reasonably require;
- 14.1.6. it will immediately upon becoming aware of it, inform the Bank of any material litigation being threatened against a Relevant Party or the occurrence of any Event of Default or Potential Event of Default (and the steps, if any, being taken to remedy it);
- 14.1.7. each Relevant Party shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Document.

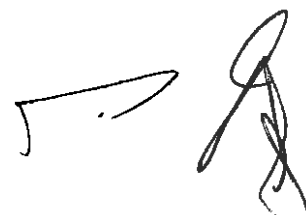
#### **15. INFORMATION**

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- 15.1. Each Obligor will provide the Bank with the Financial Information as specified in the Commercial Terms.
- 15.2. Each Obligor will provide the Bank with such further information regarding the financial condition, business and operations of it or any other Relevant Party as the Bank may reasonably request.

## **16. EVENTS OF DEFAULT**

- 16.1. Each of the events or circumstances set out in this Clause 16 is an Event of Default:
  - 16.1.1. The Borrower fails to pay any amount due in terms of this facility agreement on the due date thereof;
  - 16.1.2. The Borrower breaches any undertaking and or covenant given in terms of this facility agreement or renders any representation or warranty made in terms of this facility agreement untrue and/or incorrect;
  - 16.1.3. The Borrower is unable, or ceases for any reason whatsoever, to conduct its ordinary line of business in the ordinary or regular manner;
  - 16.1.4. Any event or series of events occurs which, in the reasonable opinion of the Bank, may have a material adverse effect;
  - 16.1.5. Any judgment of any court or arbitration order is granted against the Borrower in respect of any debt, and the Borrower fails within 14 (fourteen) days after the date of such judgment or order either to satisfy same or to take steps, and thereafter actively pursue such steps, to appeal or set aside such judgment and in the event of such steps being unsuccessful, the Borrower fails to make immediate payment thereof;
  - 16.1.6. Any property of the Borrower being attached in execution for any debt;
  - 16.1.7. The Borrower having made any materially incorrect or untrue statement or representation in connection with this Facility Agreement or its financial affairs or any particulars thereof and such statement or representation has not been remedied within 14 (fourteen) days after delivery to the Borrower of a written notice requiring such remedy;
  - 16.1.8. The Borrower committing any act or allowing any omission which might prejudice the Bank's rights under this Facility Agreement
  - 16.1.9. The Borrower defaulting on any of its obligations with other financial institutions or creditors;
  - 16.1.10. The Borrower defaulting on any other clause of this Facility Agreement;

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- 16.1.11. If the Borrower fails to remedy such an event of default (where capable of remedy) within thirty (30) days of having been given notice by the Bank calling upon the Borrower to do so, or if the event is not capable of remedy and the Bank gives notice, then, and in any such event, the Bank shall be entitled, without prejudice to any other rights which it may have in law, to claim immediate repayment of the loan, together with the accrued interest thereon then owing by the Borrower to the Bank, including costs and calculated in accordance with the relevant clauses of this facility agreement, notwithstanding that the due date for payment of such amount has not yet arrived.

## **17. COST AND EXPENSES**

The Borrower shall pay to the Bank any costs incurred by the Bank in enforcing this Facility Agreement and, in particular, legal costs calculated on the scale between attorney and own client.

## **18. CHANGE IN CIRCUMSTANCE**

- 18.1. Any change in applicable law or regulation or the existing requirements of, or new requirements being imposed by, the South African Reserve Bank, the Financial Services Board or other regulatory authority (whether or not having the force of law) which results in an increase in the Bank in the cost of funding, maintaining or making available the Facility or reduces the effective return to the Bank from the Facility, then the Borrower shall pay on demand such sum as may be certified by the Bank as being necessary to compensate for such increased cost or such reduction.
- 18.2. If, at any time, the Bank determines that it is or will become unlawful for it to carry out any of its obligations towards the Borrower in respect of the Facility then, upon notifying the Borrower or such event arising or existing in connection with the Borrower or any person related to the Borrower or any security and/or guarantee(s), the Borrower shall immediately prepay the Loan, together with all other amounts payable by the Borrower in respect of the Facility.

## **19. INDEMNITIES**

- 19.1. The Borrower shall indemnify the Bank on demand for any cost, expense, loss or liability suffered or incurred by the Bank in consequence of:
- 19.1.1. failure by the Borrower to borrow in accordance with a notice of drawing given by it to the Bank;
- 19.1.2. any default or delay by the Borrower in the payment of any amount when due in respect of the Facility;





- 19.1.3. the occurrence or continuance of any Event of Default or Potential Event of Default;
  - 19.1.4. all or part of the Loan being prepaid or becoming repayable before its due date,
  - 19.1.5. including, without limitation, any loss (including loss of margin), expense or liability sustained or incurred by the Bank in any such event in liquidating or re-deploying funds acquired or committed to fund, make available or maintain the Loan (or any part of it) or in liquidating or varying transactions entered into in order to match, hedge or fund the Loan or any part of it and shall also extend to interest, fees and expenses paid or payable by the Bank on account of any funds borrowed in order to fund any unpaid amount arising as a result of non-payment by the Borrower of any amount due from it under the Facility Agreement.
- 19.2. In calculating the amounts payable pursuant to Clause 19.1.4 (*Indemnity*), the Bank may:
- 19.2.1. make or attempt to make arrangements from time to time such as hedging or swap arrangements to ensure the payment to it of all or part of the sums contemplated by the Facility Agreement or the financial equivalent;
  - 19.2.2. refer from time to time to any agreement or agreements to which it is a party providing for transactions which are substantially the reverse of or which hedge or fund in whole or in part the transactions contemplated in the Facility Agreement; and
  - 19.2.3. take all reasonable steps to make arrangements to avoid, mitigate or reduce the losses or the risk of losses which, in the opinion of the Bank, might otherwise arise from termination of any such arrangements; and losses arising from them shall be treated as losses incurred as a result of the matters referred to in Clause 19.1 (*Indemnities*) after taking into account, as far as appropriate, the discharge or reduction of the obligations of the Bank and other such factors as the Bank shall reasonably determine to be relevant.

## 20. ENVIRONMENTAL MATTERS

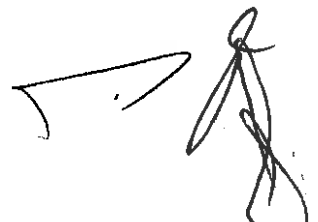
- 20.1. Each Obligor shall

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- 20.1.1. comply with all Environmental Law;
  - 20.1.2. obtain, maintain and ensure compliance with all requisite Environmental Permits; and
  - 20.1.3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or might reasonably be expected to have a Material Adverse Effect or is reasonably likely to result in any liability for the Absa Group.
- 20.1. Each Obligor shall promptly upon becoming aware, inform the Bank in writing of:
- 20.2.1. any Environmental Claim against it which is current, pending or threatened; and
  - 20.2.2. any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against it, where the claim, if determined against it has or might reasonably be expected to have a Material Adverse Effect or is reasonably likely to result in any liability for the Absa Group.

## **21. DISPUTES**

- 21.1. Should any dispute arise between any Party, in connection with:-
- 21.1.1. the formation or existence of;
  - 21.1.2. the implementation of;
  - 21.1.3. the interpretation or application of the provisions of;
  - 21.1.4. the Parties' respective rights and obligations in terms of or arising out of, or the breach or termination of;
  - 21.1.5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
  - 21.1.6. any documents furnished by the parties pursuant to the provisions of, this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties to the dispute, be referred to a court of law with competent jurisdiction, or if the Parties agree in writing, be determined by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa.
- 21.2. Any Party to this Agreement may demand that a dispute be determined in terms of this clause by written notice given to the other Party.
- 21.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.
- 21.4. The arbitrator shall be, if the matter in dispute is principally: -



- 21.4.1. A legal matter, a practising advocate or attorney of George or Cape Town of at least 10 (ten) years' standing;
- 21.4.2. An accounting matter, a practising chartered accountant of George or Cape Town of at least 10 (ten) years' standing;
- 21.4.3. Any other matter, any suitably qualified and experienced independent person, agreed upon between the Parties to the dispute.
- 21.5. Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 21.6. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 21.2 above, the arbitrator shall be appointed at the request of either Party to the dispute by the President for the time being of the Cape Law Society according to the provisions of clause 21.4 above.
- 21.7. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the Court referred to in clause 21.8 below at the instance of any of the Parties to the dispute.
- 21.8. The Parties hereby consent to the jurisdiction of the Western Cape Division of the High Court of South Africa in respect of the proceedings referred to in clause 21.3 above.
- 21.9. The Parties agree to keep the arbitration, including the subject-matter of the arbitration and the evidence heard during the arbitration, confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 21.7 above.
- 21.10. The provisions of this clause: -
- 21.10.1. Constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.

## **22. NOTIFICATIONS BINDING**

All notifications or determinations given or made by the Bank shall be conclusive and binding on the Borrower, except in the case of manifest error.

## **23. CERTIFICATES AND DETERMINATIONS**

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Any certification or determination by the Bank of a rate or amount under any Finance Document is, in the absence of manifest error, prima facie evidence of the matters to which it relates.

#### **24. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Facility Agreement are cumulative and not exclusive of any rights or remedies provided by law.

#### **25. CESSION**

The Borrower may not cede or transfer any of its rights in respect of the Facility. The Bank may cede or transfer any of its rights in respect of the Facility, in whole or in part, to any person or persons and may disclose to any actual or prospective cessionary or transferee (or to any other person (i) in connection with a securitisation of all or any part of the Bank's loan assets from time to time or (ii) who may otherwise enter into contractual relations with the Bank in relation to the Facility) any information relevant to the Facility in the Bank's possession relating to the Borrower, the Guarantor (if named in the Commercial Terms) and their respective Subsidiaries on terms that such recipient is to treat in confidence any confidential information disclosed to it.

#### **26. 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 (i.e. that there has been a wrong calculation of the debt by the Relevant Party), non causa debiti (i.e. no just cause for the debt of the Relevant Party), non numerate pecunia (i.e. that the money has not been paid by the Bank to the Relevant Party) and cession of actions, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

#### **27. SOLE AGREEMENT AND AMENDMENTS**

The Finance Documents constitute the sole record of the agreement between the Parties in regards to the subject matter thereof. No amendment of any Finance Document shall be of any force or effect unless in writing and signed by or on behalf of the parties thereto.

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## **28. SET-OFF**

The Bank may at any time after an Event of Default has occurred, without prior written notice to the Borrower (and irrespective of any instructions to the contrary) apply any credit balance of the Borrower on any account or otherwise (or any amount paid to it by or on behalf of the Borrower) in or towards the payment or discharge of any indebtedness due, owing or incurred to the Bank by the Borrower. The Bank may use that credit balance (or amount) to buy any currency needed for that purpose. This right is without prejudice to any other rights the Bank may have at law.

## **29. INVALIDITY AND FORBEARANCE**

- 29.1. If any provision of any document relating to the Facility is or becomes invalid or unenforceable to any extent, the remainder of that document shall not be affected and each such provision shall be valid and enforceable to the fullest extent permitted by law.
- 29.2. All rights, powers and privileges under the documents relating to the Facility shall continue in full force and effect, regardless of the Bank's exercising, delaying in exercising or omitting to exercise any of them. The rights and remedies of the Bank in respect of the Facility are cumulative and not exclusive of any right or remedy provided by law.

## **30. LIABILITY**

Where the Borrower consists of more than one party, each such party shall be individually as well as jointly liable for all amounts payable under the Facility Agreement. In the event of death, bankruptcy, liquidation, business rescue (including the passing of resolutions for liquidation or business rescue) or dissolution of one or more of such parties or any analogous proceedings in any other jurisdiction, the obligations of the other parties shall continue in full force and effect.

## **31. NOTICES**

- 31.1. Every notice, request or other communication shall be:
- 31.1.1. in writing, delivered personally, electronically or by facsimile transmission;
- 31.1.2. deemed to have been received by the Borrower, in the case of a letter when delivered personally or in the case of facsimile transmission, at the time of the transmission (provided that the date of transmission is not a Business Day it shall be deemed to have been received at the opening of business on the next Business Day); and

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31.1.3. sent: (i) to the Borrower at the address set out in the Commercial Terms; (ii) to each Guarantor at the address set out in the Commercial Terms; and (iii) to the Bank at the address set out in the Commercial Terms or such other address in South Africa as may be notified in writing by the Relevant Party to the other.

31.2. All communications to the Bank shall be effective only on actual receipt by the Bank.

## **32. DOMICILIA**

32.1. Each of the Parties chooses its physical address provided in the Commercial Terms as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement or any other Finance Documents may be served.

32.2. Any Party may by written notice to the other Parties change its domicilium from time to time to another address, not being a post office box or a poste restante, in South Africa provided that any such change shall only be effective on the fourteenth day after actual receipt of the notice in accordance with clause 31(Notices).

## **33. GOVERNING LAW**

33.1. The Facility Agreement, and all non-contractual obligations arising out of or in connection with it are governed by South African law and the parties submit to the exclusive jurisdiction of the South African courts.

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