



TERM LOAN FACILITY AGREEMENT

EXECUTION COPY

between

ABSAs BANK LIMITED
(Registration Number 1986/004794/06)

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Member of



ABSAs Bank Limited Reg No 1986/004794/06 Authorised Financial Services Provider Registered Credit Provider Reg No NCRCP7

A handwritten signature in black ink, appearing to be a stylized name or set of initials.


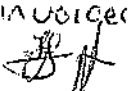
1. PARTIES

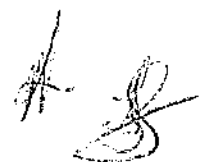
The parties to this Agreement are:

- 1.1 ABSA BANK LIMITED; and
- 1.2 CITY OF JOHANNESBURG METROPOLITAN.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.
- 2.2 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings --
 - 2.2.1 "Absa" means Absa Bank Limited (Registration No. 1986/004794/06), a company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa and includes its successors in title and assigns ;
 - 2.2.2 "Act" means the Municipal Finance Management Act No. 56 of 2003;
 - 2.2.3 "Advance Dates" means the First Advance Date and the Second Advance Date;
 - 2.2.4 "Agreed Rate" means the fixed annual rate of interest determined in accordance with clause 5.1 expressed as a NACS rate;
 - 2.2.5 "Agreement" means this loan agreement together with all appendices hereto;
 - 2.2.6 "Amortisation Schedule" means the dates on and amounts in which the Loan is to be repaid as set out in the Rate Fixing Letter;
 - 2.2.7 "Applicable Laws" means in relation to a Party:
 - 2.2.7.1 the common law and each statute and bylaw applicable to that Party, as well as any regulation, notice or rule issued under or in terms of such statute or bylaw;
 - 2.2.7.2 published practice notes, official directives, guidelines and rulings ("Instrument") issued by any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation which has oversight in relation to that Party (whether such Instrument has the force of law or, if not having the force of law, with which the Party or similar entities operating a similar business habitually comply); and
 - 2.2.7.3 any change in interpretation of any of the aforesaid, in each case, whether or not having the force of law;
 - 2.2.8 "Borrower" means City of Johannesburg Metropolitan Municipality, being a municipality duly established in terms of the Local Government: Municipal Structures Act 117 of 1998;
 - 2.2.9 "Breakage Costs" means all properly evidenced costs, losses, claims, expenses and other liabilities incurred by Absa as a direct result of the prepayment of the Loan or any portion thereof or the early termination, or breach by the Borrower, of this Agreement including, but not limited to, the direct costs incurred by Absa in unwinding any funding thereof or in liquidating or deploying deposits or funds taken or contracted to be taken from or made with third parties or arrangements entered into to effect or maintain funding or any part thereof where the funding instrument selected by Absa has a maturity date which occurs after the date of such early termination and any properly

- evidenced costs incurred by Absa pursuant to the premature termination, unwinding, closing out or modification of any underlying hedging instrument entered into by it in order to hedge its own risks under this Agreement;
- 2.2.10 "Breakage Gains" means all properly evidenced gains earned by Absa as a direct result of prepayment of the Loan or any portion thereof or the early termination of this Agreement arising other than as a consequence of a breach hereof by the Borrower including, but not limited to, the direct gains earned by Absa in unwinding any funding thereof or in liquidating or deploying deposits or funds taken or contracted to be taken from or made with third parties or arrangements entered into to effect or maintain funding or any part thereof where the funding instrument selected by Absa has a maturity date which occurs after the date of such early termination and any properly evidenced gains earned by Absa pursuant to the premature termination (other than as a consequence of a breach hereof by the Borrower), unwinding, closing out or modification of any underlying hedging instrument entered into by it in order to hedge its own risks under this Agreement;
- 2.2.11 "Business Day" means any day, other than a Saturday, Sunday and/or any official South African public holiday;
- 2.2.12 "Change in Law" means any implementation, introduction, abolition, withdrawal or variation or change in interpretation of any Applicable Laws;
- 2.2.13 "Commitment" means, to the extent not cancelled or reduced under this Agreement, an amount of R1 311 000 000 (one billion three hundred and eleven million Rand);
- 2.2.14 "Conditions to Advance" means the conditions set out in clause 3.1, which the Borrower is obliged to fulfil to enable Absa to advance the Loan;
- 2.2.15 "Cross Default" occurs when any third party loan, debt, suretyship, indemnity, guarantee or other obligation constituting indebtedness of the Borrower in aggregate becomes due and payable prior to its maturity by reason of default by the Borrower or any indebtedness of the Borrower in aggregate exceeds 1% (one percent) of the Borrower's Total Revenue is not repaid when due or within any originally applicable grace period;
- 2.2.16  "Debtors Collection Rate" means the total payments received from debtors (excluding government grants) divided by total revenue ~~(excluding payments received in respect of government grants)~~ for the same period as at the end of the financial year; 1. AUGUST 2018

- 2.2.17 "Disposal" means any sale, transfer, cession, assignment, lease, alienation, donation, renunciation, surrender, waiver, relinquishment, exchange of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) or other disposal of any nature whatsoever;
- 2.2.18 "Effective Date" means the date of signature of this Agreement by the Party signing it last in time;
- 2.2.19 "Encumbrance" means any lien, pledge, cession *in securitatem debiti*, mortgage, charge, encumbrance or other security interest or any agreement or arrangement having the effect of providing a right of security, provided that Encumbrance shall not include any statutory preference;
- 2.2.20 "Event of Default" means an event specified as such in clause 13;
- 2.2.21 "Facility" means the term loan facility made available to the Borrower under this Agreement in an aggregate principal amount equal to the Commitment;
- 2.2.22 "Financial Covenant" means the financial covenants in clauses 9.3, 9.4 and 9.5 of this Agreement as the same may be amended or substituted by agreement between the Parties from time to time;



- 2.2.23 "Financing Cost" means the total amount of interest accruing on any indebtedness of the Borrower as per the audited financial statements of the Borrower, from time to time;
- 2.2.24 "Final Repayment Date" means, unless the Loan is settled in full in terms hereof and prior thereto, 28 June 2023 being a date which is 10 (ten) years from the First Advance Date;
- 2.2.25 "First Advance Date" means 28 June 2012;
- 2.2.26 "First Drawdown Amount" means R703 000 000 (seven hundred and three million Rand);
- 2.2.27 "Interest Period" means –
- 2.2.28 the period commencing on the First Advance Date and ending on the first Repayment Date thereafter; and
- 2.2.29 subsequently each period during the Term commencing on a Repayment Date and ending on the next Repayment Date;
- 2.2.30 "Interest Rate" means the aggregate of the Agreed Rate and the Margin expressed as an NACS rate;
- 2.2.31 "Loan" means the loan to be made under the Facility in an amount of the Commitment which shall be advanced to the Borrower in 2 (two) draw downs on the respective Advance Dates or the principal amount outstanding from time to time under that loan;
- 2.2.32 "Margin" means 2% (two percent) per annum expressed as a NACS rate;
- 2.2.33 "Material Adverse Effect" means an event, circumstance or matter or combination of events, circumstances or matters, which in the opinion of Absa has or could have a material adverse impact on –
- 2.2.33.1 the ability of the Borrower to comply with its obligations in terms of this Agreement; and/or
- 2.2.33.2 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower taken as a whole and includes any substantial Disposal of material assets, business or undertaking; and/or
- 2.2.34 the validity and/or enforceability of this Agreement and/or the rights and/or remedies of Absa in terms of this Agreement;
- 2.2.35 "Month" means a calendar month and "Monthly" shall be construed accordingly;
- 2.2.36 "Municipal Manager" means the municipal manager, as such term is defined in the Act, of the Borrower;
- 2.2.37 "NACS" means nominal annual compounded semi-annually;
- 2.2.38 "Net Cash Flow From Operating Activities" has the meaning as defined per the cash flow statement forming part of the financial statements referred to in Clause 9.1;
- 2.2.39 "Operating Expenses" means the sum of:
- 2.2.39.1 salaries, plus
- 2.2.39.2 wages and allowances; plus
- 2.2.39.3 electricity bulk; plus
- 2.2.39.4 water bulk; plus
- 2.2.39.5 other general expenses; plus

- 2.2.39.6 repairs and maintenance; plus
- 2.2.39.7 interest charged as per the audited financial statements of the Borrower, from time to time;
- 2.2.40 "Operating Income" means the sum of:
- 2.2.40.1 taxes, plus
- 2.2.40.2 electricity; plus
- 2.2.40.3 water; plus,
- 2.2.40.4 sewage; plus
- 2.2.40.5 refuse; plus
- 2.2.40.6 interest income as per the audited financial statements of the Borrower, from time to time; plus
- 2.2.40.7 any other income accrued;
- 2.2.41 "Parties" means Absa and the Borrower, and "Party" means either of the Parties, as the context may indicate;
- 2.2.42 "Permitted Disposals" means any Disposals other than the Disposals restricted under the Act;
- 2.2.43 "Permitted Encumbrance" means any guarantee issued, or to be issued, in terms of the section 50 of the Act or any security issued, or to be issued, in terms of section 48 of the Act, provided however that the Borrower shall not, without the prior consent of Absa, issue a guarantee or security on its own or together with other outstanding guarantees or security which will result in more than 1% of the Borrower's Total Revenue being encumbered;
- 2.2.44 "Permitted Indebtedness" means indebtedness not in aggregate exceeding the Gearing Ratio as set out in clause 9.1.17;
- 2.2.45 "Prime Rate" means the prime rate of interest publicly quoted as such by Absa from time to time as certified by any manager of Absa whose appointment and designation as such need not be proved;
- 2.2.46 "Rate Fixing Letter" means the letter from Absa to the Borrower in terms of which Absa sets out the Agreed Rate together with the repayment dates and repayment amounts, in substantially the form attached hereto as Annexure A;
- 2.2.47 "Repayment Dates" means each of the repayment dates being the end of a semi-annual period described in the Amortisation Schedule and includes the Final Repayment Date;
- 2.2.48 "Sanctioned Country" means a country or territory which is subject to:
- 2.2.48.1 general trade, economic or financial sanctions embargoes imposed, administered or enforced by (i) the US government and administered by OFAC, (ii) the United Nations Security Council, (iii) the European Union or (iv) Her Majesty's Treasury of the United Kingdom; or
- 2.2.48.2 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.
- 2.2.49 "Sanctions" means:
- 2.2.49.1.1 economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (i) the US government and

- administered by OFAC, (ii) the United Nations Security Council, (iii) the European Union or (iv) Her Majesty's Treasury of the United Kingdom; and
- 2.2.49.1.2 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.
- 2.2.50 "**Sanctions List**" means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by (a) the US government and administered by OFAC, the US State Department, the US Department of Commerce or the US Department of the Treasury (b) the United Nations Security Council (c) the European Union or (d) Her Majesty's Treasury of the United Kingdom, each as amended, supplemented, or substituted from time to time.
- 2.2.51 "**Second Advance Date**" means 30 August 2013;
- 2.2.52 "**Second Drawdown Amount**" means R608 000 000 (six hundred and eight million Rand);
- 2.2.53 "**Swap Curve**" means the market determined graphic line chart, table or otherwise that shows interest rates at a specific point for all securities having equal risk, but different maturity dates. In South Africa the data points used to derive the interest rate swap curve represent the yield in the interbank market with differing maturity values with a notional profile such that interest is serviced over the predetermined term of the security with full capital redemption at the end of this term;
- 2.2.54 "**Term**" means the period commencing on the First Advance Date and ending on the Final Repayment Date;
- 2.2.55 "**Total Interest Bearing Debt**" means borrowings incurring interest over a pre-determined period; and
- 2.2.56 "**Total Revenue**" means the aggregate of total grants and subsidies and total own income as reflected in the latest audited financial statements.
- 2.3 Unless a contrary indication appears, any reference in this Agreement to --
- 2.3.1 "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent; and
- 2.3.2 a provision of law is a reference to that provision as amended or re-enacted.
- 2.4 Unless the context dictates otherwise, an expression which:
- 2.4.1 denotes any gender includes the others;
- 2.4.2 refers to a natural person includes a juristic person; and
- 2.4.3 refers to the singular includes the plural,
- 2.4.4 and *vice versa* in each case.
- 2.5 The appendices to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such appendices.
- 2.6 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day. If the last day of any period or the day upon which any performance is to be rendered or any matter determined falls on a day which is not a Business Day, such day shall be the next succeeding Business Day.

Advance shall be deemed to have been fulfilled save in relation to any Condition to Advance which has been deferred in accordance with clause 3.4 hereof.

4. THE FACILITY

4.1 Absa hereby makes the Facility available to the Borrower.

4.2 Absa shall advance the Loan to the Borrower by paying:

4.2.1 subject to fulfilment of the conditions described in clause 3, the First Drawdown Amount on the First Drawdown Date; and

4.2.2 subject to receiving written confirmation from the Borrower that:

4.2.2.1 no Event of Default is continuing or would result from the further advance;

4.2.2.2 and that the Representations and Warranties described in clause 10 are true in all material respects,

the Second Drawdown Amount on the Second Drawdown Date to the credit of the following banking account of the Borrower:

Bank: Standard Bank

Account Name: Primary Bank Account

Account No: 000165476

Branch Code: 000 205

Branch Name: Johannesburg

4.3 The Loan shall be used for capital expenditure on property, plant and equipment for purposes of achieving the objects of local government as set out in section of 152 of the Constitution of the Republic of South Africa, 1996.

5. INTEREST

5.1 **Determination of Agreed Rate**

5.1.1 At any time during the period commencing on the Effective Date and ending on 28 June 2013, the Borrower shall be entitled to request Absa to provide to it a written quotation ("Quotation") of the fixed annual rate of interest expressed as a NACS rate ("Quoted Rate") which Absa intends to apply to the Commitment for the Term.

5.1.2 Absa may, at any time prior to 16:00 Johannesburg time on 28 June 2013 and in the absence of a request from the Borrower for a Quotation, issue a Quotation to the Borrower.

5.1.3 Absa shall, in providing a Quotation, base the Quoted Rate described therein upon the Swap Curve adjusted for both the value and the amortising profile of the Loan as such parameters differ from the assumed value and amortising profile applicable to the Swap Curve.

5.1.4 The Borrower shall, as soon as reasonably practicable after receipt by it of a Quotation, accept or reject the Quoted Rate. The Borrower agrees that, until it is formally accepted by the Borrower, the Quoted Rate is subject to change..

5.1.5 A Quoted Rate accepted by the Borrower shall, upon such acceptance, be the Agreed Rate for all purposes under this Agreement.

- 2.7 Where figures are referred to in numerals and in words in the Agreement, if there is any conflict between the two, the words shall prevail.
- 2.8 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
3. **CONDITIONS TO ADVANCE**
- 3.1 The Loan shall not be advanced on the Advance Date unless the Agreed Rate has been determined and Absa has received all of the following documents and other evidence in form and substance reasonably satisfactory to it -
- 3.1.1 a certified copy of a municipal council resolution of the Borrower, signed by the mayor of the Borrower approving the terms of the Facility and Loan with specific mention of the amount of the Commitment;
- 3.1.2 a written disclosure by the Borrower signed by the Municipal Manager, indicating that the purpose of the Facility is capital expenditure on property, plant or equipment as contemplated in section 46 (1)(a) of the Act and in accordance with the Borrower's current integrated development plan;
- 3.1.3 receipt by Absa of copies of -
- 3.1.3.1 the Borrower's approved annual budget for the 2012/2013 financial year;
- 3.1.3.2 the Borrower's integrated development plan; and
- 3.1.3.3 the Borrower's repayment schedules pertaining to its existing long-term debt;
- 3.1.3.4 the original audited financial statements of the Borrower for the financial year 2012.
- 3.1.4 receipt by Absa of written confirmation by the Borrower, signed by the Municipal Manager, that it has complied with the requirements of section 46(3) of the Act;
- 3.1.5 written confirmation from the Borrower that it has complied in all respects with the provisions of the Act;
- 3.1.6 such documentation and other evidence as is reasonably requested by Absa in order for Absa to carry out and be satisfied it has complied with all necessary "know your customer" or similar identification procedures under applicable laws and regulations (including the Financial Intelligence Centre Act, 2001) pursuant to the transactions contemplated in this Agreement; and
- 3.1.7 the Parties having established the Agreed Rate in terms hereof and Absa has issued to the Borrower a Rate Fixing Letter.
- 3.2 Absa will only be obliged to make a Loan if, on each of the Advance Dates -
- 3.2.1 no Event of Default has occurred and is continuing or would result from the advance of the Loan; and
- 3.2.2 the representations and warranties described in clause 10 are true.
- 3.3 Each of the Conditions to Advance is stipulated for the benefit of Absa. Absa shall accordingly be entitled to waive or defer fulfilment of any such Conditions to Advance by giving written notice to that effect to the Borrower on or prior to the date specified in clause 3.4 and, if deferred, such deferment shall be subject to such conditions as Absa may stipulate.
- 3.4 Unless the Conditions to Advance are fulfilled or waived or deferred by Absa by no later than 28 June 2013, or such later date as may be agreed by the Parties in writing, Absa shall not be obliged to advance the Loan to the Borrower. If the Loan is advanced by Absa the Conditions to

- 5.1.6 If the Parties do not agree on the Agreed Rate on the basis of the process set out in this clause 5.1 by 28 June 2013 and the Loan is not advanced in terms of clause 3.4, then this Agreement shall automatically terminate and be of no further force and effect.

5.2 **Calculation and Payment**

- 5.2.1 Interest shall be calculated on the Loan at the Interest Rate.
- 5.2.2 Interest shall accrue daily on the basis of actual days elapsed in the relevant Interest Period and shall be calculated with reference to a 365 (three hundred and sixty five) day year, irrespective of whether such year is a leap year or not.
- 5.2.3 Interest accrued on the Loan during an Interest Period shall be payable by the Borrower on the last day of such Interest Period.
- 5.2.4 Any amount due by the Borrower in terms of this Agreement that is not paid on due date ("Overdue Amounts"), shall bear interest at the Prime Rate plus 2% (two percent), nominal annual compounded monthly in arrears, from the due date to date of payment, calculated on the outstanding amount. Overdue amounts shall be payable on Absa's written demand.

6. **PAYMENTS**

- 6.1 All payments due by the Borrower in terms of this Agreement will be made by the Borrower to Absa for value by no later than 16h00 on the relevant due date as set out in the Amortisation Schedule, in the currency of the Republic of South Africa, free of set-off, counterclaim and deduction.
- 6.2 The Borrower may not raise any claim, counter-claim, dispute as a reason for deferring payment and the Borrower may not withhold any payment or set-off any claim or counterclaim which it may wish to raise against any amount payable to Absa.

7. **REPAYMENT OF LOAN**

- 7.1 The Loan will be repaid in the amounts described in the Amortisation Schedule on the relevant Repayment Dates.
- 7.2 The Borrower may not re-borrow any part of the Facility which is repaid or prepaid.

8. **PREPAYMENT**

- 8.1 The Borrower may, if it gives Absa not less than 6 (six) months prior written notice of its intention to do so prepay the whole or any part of the Loan, provided that the amount of any such prepayment shall not be less than R50 000 000 (fifty million Rand). Any notice of prepayment given in terms of this clause 8.1 shall be irrevocable.
- 8.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Breakage Costs or Breakage Gains and save as otherwise provided for in the Agreement, without premium or penalty.
- 8.3 The Borrower shall, within 3 (three) Business Days of demand by Absa, pay to Absa its Breakage Costs attributable to all or any part of a Loan or interest accrued on any Loan or costs incurred in terms of this Agreement being paid by the Borrower on a day other than a Repayment Date. The amount of any Breakage Gains attributable to any payment as aforesaid shall, unless otherwise agreed between the Parties, be set-off against the amount of such payment.
- 8.4 If the events described in clause 9.1.11 occur, Absa shall be entitled to review the terms of this Agreement and if it is thereafter of the opinion that the effect of the events described in clause 9.1.11 are reasonably likely to have the consequences described in such clause, provided that –

- 8.4.1 Absa has given the Borrower written notice of its opinion to that effect; and
- 8.4.2 the Borrower has failed to satisfy Absa within 45 (forty-five) days after its receipt of said notice that it shall have the ability to continue to meet its financial obligations under this Agreement,

Absa shall be entitled to require that the Borrower immediately repay all amounts outstanding under the Facility together with accrued interest and all other amounts due under this Agreement.

9. UNDERTAKINGS

- 9.1 The Borrower undertakes to Absa that, until all amounts payable in terms of this Agreement have been repaid in full, the Borrower shall –
- 9.1.1 send its audited annual financial statements to Absa as soon as they are available, but in any event not later than 45 (forty-five) days from the date of their consideration by the Borrower's council, which consideration shall take place after finalisation thereof by the Auditor-General;
- 9.1.2 not give subsequent financial service providers preferential creditor status;
- 9.1.3 not create any Encumbrance other than a Permitted Encumbrance upon the whole or any part of its present or future assets or revenues;
- 9.1.4 comply with Applicable Laws;
- 9.1.5 obtain, comply with and do all that is necessary to maintain in full force and effect any authorisation required to enable it to perform its obligations under this Agreement;
- 9.1.6 not have any dealings with third parties which are not conducted on an arms' length basis;
- 9.1.7 not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset other than Permitted Disposals;
- 9.1.8 Absa to rank at least *pari passu* with other financial service providers;
- 9.1.9 not incur any indebtedness other than Permitted Indebtedness;
- 9.1.10 furnish Absa with such financial information and relevant credit information as may be required by Absa from time to time on 30 (thirty) Business Days notice from Absa;
- 9.1.11 notify Absa of any statutory change to the functions, powers, duties, rights or obligations of the Borrower which may materially affect the Borrower's ability to meet its obligations under this Agreement;
- 9.1.12 implement reasonable measures to ensure that, while this Agreement is in force, it honours its obligations in other existing loan agreements with third parties;
- 9.1.13 provide written notification to Absa as soon as possible after becoming aware of -
- 9.1.13.1 any event which is likely to affect the ability of the Borrower to meet its obligations under this Agreement;
- 9.1.13.2 any Event of Default or any matter or circumstance which, with the passing of time, might reasonably become an Event of Default;
- 9.1.13.3 the provision of any material security provided to a financial services provider, with respect to borrowings that exceed 12 month in term, by the Borrower in respect of any indebtedness; or

- 9.1.13.4 any mandatory intervention by the provincial executive in terms of Chapter 13 of the Act;
- 9.1.14 not contribute or otherwise make available the proceeds of the Loan, directly or indirectly, to any person or entity (whether or not related to any of them) for the purpose of financing the activities of any person or entity which is currently listed on a Sanctions List or currently located in a Sanctioned Country, to the extent such contribution or provision of proceeds would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions and it shall ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the Loan from being used contrary to this clause 9.1.14;
- 9.1.15 obtain and maintain all necessary insurance;
- 9.1.16 not extend any loans, credit, guarantees or indemnities which in aggregate exceed 1% (one percent) of its Total Revenue other than loans, credit, guarantees or indemnities extended in the ordinary course of business; .
- 9.1.17 comply with the following Financial Covenants:
- 9.1.17.1 the Borrower's Total Interest Bearing Debt to Operating Income ratio shall not exceed 50% (fifty percent) ("**Gearing Ratio**");
- 9.1.17.2 the Borrower's Financing Cost shall be less than 12% (twelve percent) of its Operating Expenses;
- 9.1.17.3 Net Cash Flow From Operating Activities to Total Interest Bearing Debt shall not decrease below 40% (forty percent);
- 9.1.17.4 the Borrower's Debtors Collection Rate shall not decrease to below 85% (eighty-five percent). National Treasury guidelines, the provisions of section 71 of the Act and the reporting methodology described in the Act generally shall be used by Absa to monitor compliance
- 9.1.18 On a breach of any of the Financial Covenants, the Borrower and Absa will enter into negotiations to determine how to continue with the Facility, including but not limited to amending the Financial Covenants. If no agreement is reached within 10 (ten) days of the breach such Financial Covenant, such breach shall constitute an Event of Default for purposes of this Agreement.
- 9.2 In the event of the Borrower requiring the written consent or approval of Absa before it can pursue a certain course of action, Absa undertakes -
- 9.2.1 that it shall not unreasonably withhold such consent or approval; and
- 9.2.2 that it shall provide the Borrower with its written response within 30 (thirty) days from the date on which it received such request.

10. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to Absa on the First Drawdown Date and on the Second Drawdown Date that -

- 10.1 the Borrower has full power and authority to enter into and perform the obligations under this Agreement and that all necessary corporate and/or other actions to authorise the execution of this Agreement and utilisation of the Facility have been taken;
- 10.2 the obligations expressed to be assumed by it under this Agreement are legal, valid, binding and enforceable obligations;
- 10.3 the provisions hereof are not in conflict with and will not constitute a breach of the provisions of any other agreement or undertaking, or provision of law binding upon the Borrower;

- 10.4 it is not using or will not use the proceeds of the Loan 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 nor is it contributing nor will it contribute or otherwise make available the proceeds of the Loans 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.
- 10.5 all of the information supplied by the Borrower to Absa in connection with the granting of the Facility is true, complete and accurate in all material respects and the Borrower is not aware of any material facts or circumstances that have not been disclosed to Absa and which, if disclosed, might adversely have affected the decision to provide the Facility; and
- 10.6 the Borrower is not in default in respect of any of its material obligations concerning borrowed money and no Event of Default has occurred or is continuing.

11. CHANGE OF CIRCUMSTANCES

- 11.1 In the event of any amendments to, change in interpretation of, or promulgation of any Applicable Law, or the application or interpretation of any Applicable Law by government or any external body of authority binding on Absa that has the effect of increasing or adding costs to Absa, Absa is entitled to increase the Interest Rate.
- 11.2 In the event of any amendments to, change in interpretation of, or promulgation of any Applicable Law, or the application or interpretation of any Applicable Law by government or any external body of authority binding on Absa that has the effect of decreasing costs to Absa, the Borrower shall be entitled upon written request to Absa to a decrease of the Interest Rate.
- 11.3 A certificate signed by any of Absa's managers (whose designation and authority need not be proved) wherein such amendment, promulgation and increased or decreased interest costs is set out, is sufficient proof of the correctness thereof.
- 11.4 The payment of the increased cost referred to in clause 11.1 or the entitlement of the Borrower to the decreased cost referred to in clause 11.2 shall be subject to the Borrower complying with the provisions of section 116 of the Act.
- 11.5 Upon the Borrower obtaining compliance with the Act as set out in clause 11.4, the Borrower shall as soon as reasonably possible make payment of all increased cost incurred from the date of such increased cost occurred to date of payment thereof.
- 11.6 In the event that the Borrower does not obtain compliance with the Act as set out in clause 11.4, Absa shall be entitled to require that the Borrower immediately repay all amounts outstanding under the Facility together with accrued interest (including any increased cost from the date that such increased cost occurred to date of payment thereof) and all other amounts due under this Agreement, including, and any Breakage Cost or less any Breakage Gains.

12. CERTIFICATE

A certificate by any director and/or general manager of Absa (who's appointment as such need not be proved) confirming a rate of interest in terms of this Agreement or showing the amount due and owing by the Borrower to Absa at any given time as a result of -

- 12.1 termination in terms of any relevant clause of this Agreement;
- 12.2 any increase or decrease in interest payable in terms of clause 11; and
- 12.3 any Event of Default,

shall be *prima facie* proof of the facts stated therein for the purposes of all legal proceedings including provisional sentence or summary judgment against the Borrower.

13. EVENTS OF DEFAULT

- 13.1 An Event of Default shall occur if any one of the following events occurs -
- 13.1.1 the Borrower fails to pay any amount due in terms of this Agreement on the due date thereof other than any non-payment for technical reasons and which is remedied within 72 hours;
- 13.1.2 subject to clause 9.1.18, the Borrower breaches any undertaking or Financial Covenant given in terms of this Agreement or renders any representation or warranty made in terms of this Agreement untrue and/or incorrect;
- 13.1.3 the Borrower is unable, or ceases for any reason whatsoever, to conduct its ordinary line of business in the ordinary or regular manner;
- 13.1.4 any event or series of events occurs which, in the reasonable opinion of Absa, may have a Material Adverse Effect;
- 13.1.5 any judgment of any court or arbitration order is granted against the Borrower in respect of any indebtedness exceeding % 1% ((one percent) of its Total Revenue, and the Borrower fails within 45 (forty-five) 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;
- 13.1.6 a Cross Default of an amount in excess of 1% of Total Revenue occurs;
- 13.1.7 any property of the Borrower being attached in execution for any indebtedness exceeding 1% (one percent) of its Total Revenue the Borrower makes any materially incorrect or untrue statement or representation in connection with this Agreement or its financial affairs or any particulars thereof and such statement or representation has not been remedied within 30 (thirty) days after delivery to the Borrower of a written notice requiring such remedy;
- 13.1.8 it becomes unlawful for the Borrower to perform any of its obligations under this Agreement; and
- 13.1.9 the Borrower repudiates this Agreement.
- 13.2 If the Borrower fails to remedy an Event of Default (where capable of remedy), other than a non-payment in terms of clause 13.1.1, within the stipulated time period or where no time period is stipulated within ninety (90) 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 that such event has occurred, then and in any such event, Absa shall be entitled, without prejudice to any other rights which it may have in law, to claim immediate repayment of the Facility together with accrued interest and all other amounts due or which may become due in terms of this Agreement.

14. ABSA BREACH

If Absa breaches any of the provisions of this Agreement, nothing herein contained shall detract from the right of the Borrower to assert against Absa its rights in law for performance.

15. DOMICILIUM AND NOTICES

- 15.1 The Parties choose the following addresses as their respective addresses in respect of all correspondence between the Parties regarding this Agreement, domicile for the service of notices, legal process and execution:

- 15.1.1 Absa Physical address: 15 Alice Lane,
Sandown,
2196
Fax number: +27 11 895 7803
Attention: Head:Documentation Management
- 15.1.2 The Borrower Physical address: 158 Civic Boulevard
Metro Centre Building
Braamfontein
Fax number: +27 11 407 1012
Attention: City Manger
- 15.2 Either Party may change its domicile by written notice to the other Party with effect from the date of receipt or deemed receipt by the latter of such notice. A domicile may not be a post box number or a poste restante, but will always be a physical address in South Africa.
- 15.3 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 15.4 Any notice, demand or other communication in terms hereof properly addressed by either Party to the other Party at the latter's domicile for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 5th (fifth) day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods, including telefax, for the transmission or delivery of notices acceptances, demands and other communications, and shall, where applicable, be deemed to have been received on the day of delivery or telefax transmission, as the case may be.
- 15.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen domicile.
- 15.6 Notwithstanding the termination of this Agreement, the chosen domicile, as set out in this clause, will remain of full force and effect for the purpose of enforcing any rights that a Party may have.
- 16. MISCELLANEOUS**
- 16.1 **Sole Agreement**
This Agreement constitutes the sole record of the agreement between the Parties in regard to the subject matter thereof.
- 16.2 **No waiver**
No waiver by a Party of any breach, failure or default in performance by the other Party, and no failure, refusal or neglect by a Party to exercise any right hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement and a Party may at any time require strict compliance with the provisions of this Agreement.
- 16.3 **Variation**
No amendment, consensual cancellation or other modification of this Agreement, including this clause, shall be valid or binding on a Party unless reduced to writing and signed on behalf of all Parties hereto.
- 16.4 **Governing law and Jurisdiction**
- 16.4.1 This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa.
- 16.4.2 The Parties hereby consent and submit to the jurisdiction of the South Gauteng High Court, Johannesburg (or any successor to that division) in respect of all proceedings connected with this Agreement,

16.5 **Costs**

The Borrower shall be liable for and pay all costs, on the scale of attorney and own client costs, arising out of or in connection with any demand or legal proceedings by Absa for the recovery of any amount owing in terms hereof.

16.6 **Further Assurances**

The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for the putting into effect or maintenance of the terms, conditions and import of this Agreement.

16.7 **Severability**

Each provision in this Agreement is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, and without limiting the generality of the foregoing, the Parties acknowledge their intention to continue to be bound by this Agreement notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force

16.8 **Cession and Delegation**

16.8.1 Absa, or any successor in title, may at any time during the currency of this Agreement, cede any or all of its rights and delegate any part or all of its obligations in terms of this Agreement to any other person.

16.8.2 The Borrower shall not, without the prior written consent of Absa, cede any or all of its rights nor delegate any part or all of its obligations in terms of this Agreement to any other person.

16.9 **Signature**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

Signed at on this the day of 2013

For: **Absa Bank Limited**

Duly Authorised

Name:

Capacity:

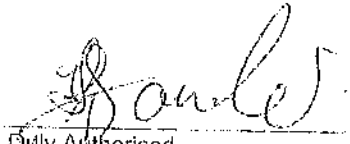
Duly Authorised


Name:

Capacity:

Signed at Bramfontein on this the 28th day of June 2013

For: **Municipal Manager of City of Johannesburg Metropolitan Municipality**


Duly Authorised
Name: Trevor G. Fowler
Capacity: City Manager/Accounting
Officer


Duly Authorised
Name: M. HUMOTSO LETSOFISI
Capacity: GROUP HEAD TREASURY

RATE FIXING LETTER

Annexure A

To: City of Johannesburg Metropolitan Municipality
[Address] (the "Borrower" and together with the Lender, hereinafter, the "Parties")

From: Absa Bank Limited
15 Alice Lane
Sandton
2196
South Africa
(the "Lender")

[Date]

Dear Sirs

Facility agreement (the "Facility Agreement") concluded on or about 28 June 2013 between the Lender (as lender) and the Borrower (as borrower) pursuant to which the Lender agrees to lend and advance a loan to the Borrower

Reference is made to the Facility Agreement.

This is the rate fixing letter contemplated in the Facility Agreement (hereinafter, this "Rate Fixing Letter"). Save as defined herein terms defined in the Facility Agreement (whether directly or by way of incorporation by reference) shall bear the meanings ascribed thereto therein when used in this Rate Fixing Letter.

The Lender and the Borrower hereby agree that the Agreed Rate for all purposes in terms of the Facility Agreement shall be [_____].

The Payment Schedule for the purposes of the Facility Agreement is attached hereto as Payment Schedule 1.

The terms of this Rate Fixing Letter constitute the sole record of the agreement between the Parties in relation to the subject matter hereof and are governed by the laws of South Africa and no waiver, amendment, or cancellation of any of the provisions or terms of this Rate Fixing Letter shall be binding unless recorded in a written document signed by the Parties.

The Borrower may not cede, delegate, assign or transfer all or any part of its rights and/or obligations under this Rate Fixing Letter without the prior written consent of the Lender.

This Rate Fixing Letter may be executed in one or more counterparts all of which, when read together, shall comprise one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

Signed for and on behalf of:

Absa Bank Limited

Absa Bank Limited

Name:

Name:

Title:

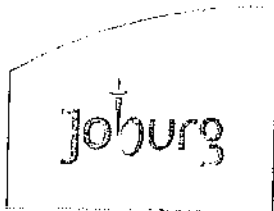
Title:

Date:

Date:

Witness:

Witness:



City of Johannesburg
City of Johannesburg

2nd Floor CCW
Metropolitan Centre
158 Civic Boulevard
Braamfontein

PO Box 1049
Johannesburg
South Africa
2000

Tel +27(0) 11 407 7300
Fax +27(0) 11 403 1012
www.joburg.org.za

Utilisation Request

From: City of Johannesburg Metropolitan Municipality
158 Civic Boulevard
Metro Centre Building
Braamfontein

To: 15 Alice Lane,
Sandown,
2196

Dated: 28 June 2013

Dear Sirs

City of Johannesburg Metropolitan Municipality – Term Loan Facility Agreement dated 28 June 2013 (the Agreement)

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: **28 June 2013** (or, if that is not a Business Day, the next Business Day)
Amount: **ZAR703,000,000.00** (Seven hundred and three million Rand only) or, if less, the Available Facility
Interest Period: **6 months**

3 We confirm that each condition specified in clause 3.1 (Conditions to Advance) is satisfied on the date of this Utilisation Request.

4 We confirm that:

- 4.1 no Event of Default has occurred and is continuing or would result from the advance of the Loan; and
4.2 the warranties described in clause 10 are true

5 The proceeds of this Loan should be credited to the following account:

Bank: Standard Bank
Account Name: Primary Bank Account
Account No: 000165476
Branch Code: 000 205
Branch Name: Johannesburg

6 This Utilisation Request is irrevocable.

Yours faithfully


TREVOR G FOWLER
CITY MANAGER

authorised signatory for
City of Johannesburg Metropolitan Municipality



Corporate and
Investment Banking

CONFIDENTIAL

15 Alice Lane
Sandton
Johannesburg
2196
South Africa

Private Bag X10056
Sandton
2146
South Africa

Tel +27 (0)11 895 6000
Fax +27 (0)11 895 7802

www.absacapital.com

To: **City of Johannesburg Metropolitan Municipality**
(the "Borrower" and together with the Lender, hereinafter, the "Parties")

From: **Absa Bank Limited**
15 Alice Lane
Sandton
2196
South Africa
(the "Lender")

28 June 2013

Dear Sirs

Facility agreement (the "Facility Agreement") concluded on or about 28 June 2013 between the Lender (as lender) and the Borrower (as borrower) pursuant to which the Lender agrees to lend and advance a loan to the Borrower

Reference is made to the Facility Agreement.

This is the rate fixing letter contemplated in the Facility Agreement (hereinafter, this "Rate Fixing Letter"). Save as defined herein terms defined in the Facility Agreement (whether directly or by way of incorporation by reference) shall bear the meanings ascribed thereto therein when used in this Rate Fixing Letter.

The Lender and the Borrower hereby agree that the Agreed Rate for all purposes in terms of the Facility Agreement shall be 9.65%.

The Payment Schedule for the purposes of the Facility Agreement is attached hereto as Payment Schedule 1.

The terms of this Rate Fixing Letter constitute the sole record of the agreement between the Parties in relation to the subject matter hereof and are governed by the laws of South Africa and no waiver, amendment, or cancellation of any of the provisions or terms of this Rate Fixing Letter shall be binding unless recorded in a written document signed by the Parties.

The Borrower may not cede, delegate, assign or transfer all or any part of its rights and/or obligations under this Rate Fixing Letter without the prior written consent of the Lender.

This Rate Fixing Letter may be executed in one or more counterparts all of which, when read together, shall comprise one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.

Member of



Signed for and on behalf of:

Absa Bank Limited

Absa Bank Limited

Name:

Name:

Title:

Title:

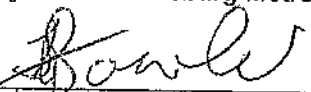
Date:

Date:

Accepting the benefit hereof:

Signed for and on behalf of

City of Johannesburg Metropolitan Municipality



Name: Trevor G Fowler

Title: City Manager.

Date: 28/6/2013.

Payment Schedule 1

Interest was calculated on the outstanding balance from time to time and compounded semi-annually For Drawdown on 28 June 2013

Interest Rate		9.65%			
Total Payment		55,600,591.78			
Start	End	Nominal	Interest	Capital Repayment	Total Repayment
28/06/2013	30/12/2013	703,000,000.00	34,384,404.11	21,216,187.67	55,600,591.78
30/12/2013	30/06/2014	681,783,812.33	32,805,942.73	22,794,649.05	55,600,591.78
30/06/2014	29/12/2014	658,989,163.27	31,709,114.18	23,891,477.61	55,600,591.79
29/12/2014	29/06/2015	635,097,685.67	30,559,508.64	25,041,083.14	55,600,591.78
29/06/2015	28/12/2015	610,056,602.53	29,354,586.60	26,246,005.18	55,600,591.78
28/12/2015	28/06/2016	583,810,597.35	28,246,036.28	27,354,555.50	55,600,591.78
28/06/2016	28/12/2016	556,456,041.85	26,922,562.93	28,678,028.85	55,600,591.78
28/12/2016	28/06/2017	527,778,013.00	25,395,521.21	30,205,070.57	55,600,591.78
28/06/2017	28/12/2017	497,572,942.43	24,073,669.53	31,526,922.26	55,600,591.79
28/12/2017	28/06/2018	466,046,020.18	22,425,113.02	33,175,478.76	55,600,591.78
28/06/2018	28/12/2018	432,870,541.41	20,943,225.55	34,657,366.23	55,600,591.78
28/12/2018	28/06/2019	398,213,175.18	19,161,145.19	36,439,446.59	55,600,591.78
28/06/2019	30/12/2019	361,773,728.60	17,694,699.97	37,905,891.81	55,600,591.78
30/12/2019	29/06/2020	323,867,836.79	15,583,810.46	40,016,781.32	55,600,591.78
29/06/2020	28/12/2020	283,851,055.46	13,658,290.65	41,942,301.13	55,600,591.78
28/12/2020	28/06/2021	241,908,754.33	11,640,119.05	43,960,472.73	55,600,591.78
28/06/2021	28/12/2021	197,948,281.60	9,577,171.72	46,023,420.06	55,600,591.78
28/12/2021	28/06/2022	151,924,861.54	7,310,291.35	48,290,300.43	55,600,591.78
28/06/2022	28/12/2022	103,634,561.11	5,014,067.21	50,586,524.57	55,600,591.78
28/12/2022	28/06/2023	53,048,036.53	2,552,555.25	53,048,036.53	55,600,591.78