



# STATE OF DISASTER DEPOSIT UTILISATION AGREEMENT

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1. SCHEDULE

|       |   |   |
|-------|---|---|
| 1.1   | Tenant's Name   |   |
| 1.1.1 | Tenant's registration number / identity number            |   |
| 1.2   | Landlord's name   | The Eastern Cape Development Corporation  |
| 1.2.1 | Landlord's registration number                            | Established in term of Section 2 of the Eastern Cape Development Corporations Act 2 of 1997   |
| 1.3   | Description of Premises                                   |   |
| 1.4   | Deposit Amount Utilised                                   | R   |
| 1.5   | Date of Initial Utilisation                               |   |
| 1.6   | Interest percentage (if any from date of first repayment) | %   |
| 1.7   | Number of Months remaining on the Lease Agreement         | or  |
|       | The Lease Agreement is currently on a Monthly basis       |   |
| 1.8   | Other ancillary costs                                     | R   |
| 1.9   | Repayment Schedule  |   |
| 1.9.1 | R   | , on or before the 1st day of the 3 <sup>rd</sup> (Third) Month following the Recovery Date   |
| 1.9.2 | R   | , on or before the 1st day of the 4 <sup>th</sup> (Fourth) Month following the Recovery Date  |
| 1.9.3 | R   | , on or before the 1st day of the 5 <sup>th</sup> (Fifth) Month following the Recovery Date   |
| 1.9.4 | R   | , on or before the 1st day of the 6 <sup>th</sup> (Sixth) Month following the Recovery Date   |
| 1.9.5 | R   | , on or before the 1st day of the 7 <sup>th</sup> (Seventh) Month following the Recovery Date |
| 1.9.6 | The balance R   | , on or before  |
| 1.10  | Landlord's Bank Account                                   |   |
|       | Account holder name                                       | Eastern Cape Development Corporation  |
|       | Bank  | Standard Bank   |
|       | Bank Branch   | Oxford Street   |
|       | Branch Code   | 050021  |
|       | Account Number  | 081210930   |
| 1.11  | The Tenant's address(es)                                  |   |
|       | Physical  |   |
|       | Postal  |   |
|       | Home telephone  |   |
|       | Work telephone  |   |
|       | Cellular  |   |
|       | Telefax   |   |

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## 2. DEFINITIONS

- 2.1. In this Agreement, unless the context requires otherwise, the words below mean the following:
- 2.1.1. **"Agreement"** means this state of disaster deposit utilisation agreement, together with all Schedules and annexures hereto;
  - 2.1.2. **"Date of Initial Utilisation"** means the date set out in item 1.5;
  - 2.1.3. **"Deposit"** means the Deposit paid to the Landlord by the Tenant under the Lease Agreement;
  - 2.1.4. **"Deposit Amount Utilised"** means the amount set out in item 1.4;
  - 2.1.5. **"Disaster"** means the state of disaster in South Africa declared by the President of South Africa as a result of the Covid-19 virus;
  - 2.1.6. **"Disaster Management Act"** means the Disaster Management Act 57 of 2002;
  - 2.1.7. **"Landlord"** means the Party set out in item 1.2;
  - 2.1.8. **"Lease Agreement"** means the agreement of lease for the Premises already concluded between the Landlord and Tenant;
  - 2.1.9. **"Recovery Date"** means either:
    - 2.1.9.1. the lapsing of the state of Disaster by 3 (Three) months after the state of disaster was declared on 15 March 2020, being 15 June 2020; or
    - 2.1.9.2. at any time before the date as set out in 2.1.9.1 above should the Minister terminate the state of disaster; or
    - 2.1.9.3. in the event that the state of Disaster is extended, the end of any extension of the state of Disaster by the Minister, which extension will be Gazetted;
  - 2.1.10. **"Premises"** means the immovable property set out in item 1.3;
  - 2.1.11. **"Rental"** means the Monthly rental payment due by the Tenant under the Lease Agreement;
  - 2.1.12. **"Rental Housing Act"** means the Rental Housing Act 50 of 1999;
  - 2.1.13. **"Schedule"** means the schedule to this Agreement set out in clause 1;
  - 2.1.14. **"Signature Date"** means the date of Signature of this Agreement by the Party Signing last in time; and
  - 2.1.15. **"Tenant"** means the party set out in item 1.1.
- 2.2. All other capitalised terms will have the meanings ascribed to them in the Lease Agreement, unless the contrary is specified in this Agreement.

## 3. INTERPRETATION

- 3.1. Any reference in this Agreement to:
- 3.1.1. a **clause** is, subject to any contrary indication, a reference to a clause of the main body of this Agreement;
  - 3.1.2. an **item** is, subject to any contrary indication, a reference to an item in the Schedule to this Agreement;
  - 3.1.3. **law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of the government, local government, statutory or regulatory body or court having legal authority within South Africa; and
  - 3.1.4. **person** means, unless the context indicates otherwise, any natural or Juristic Person, government, state, agency or organ of a state.
- 3.2. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 3.3. The headings do not govern or affect the interpretation of this Agreement.
- 3.4. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 3.5. Unless the context indicates otherwise, an expression which denotes any gender includes the other gender; reference to a natural person includes a Juristic Person; the singular includes the plural, and the plural includes the singular.
- 3.6. Any number of days prescribed in this Agreement excludes the first day and includes the last day.
- 3.7. The words "including" and "in particular" are without limitation.
- 3.8. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time, and includes all regulations and schedules to such legislation.
- 3.9. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 3.10. A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 3.11. A time of day is a reference to Johannesburg time.
- 3.12. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 3.13. The cancellation or termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after cancellation or termination, or which must continue to have effect after cancellation or termination, or which must by implication or by their nature continue to have effect after cancellation or termination.
- 3.14. No provision in this Agreement is intended to contravene or limit any applicable provisions of the CPA or POPIA.

#### 4. INTRODUCTION / PREAMBLE

- 4.1. The whole of humanity is currently faced with a global crisis brought upon us by the COVID – 19 pandemic.
- 4.2. South Africa declared a national state of Disaster on 15 March 2020, under the Disaster Management Act, which has far reaching consequences for the country and all individuals.
- 4.3. This Agreement was created to allow the Landlord and Tenant to make the necessary arrangements between them regarding a temporary utilisation of the Deposit, held by the Landlord or Agent, as the case may be, for the payment of Rental.
- 4.4. This Agreement is drafted in accordance with the provisions of the Rental Housing Act and, as such this Agreement also contains the agreement between the Parties regarding repayment of the Deposit Amount Utilised at an appropriate time.

#### 5. DEPOSIT UTILISATION

- 5.1. The Landlord and the Tenant hereby agree to partially and temporarily vary the terms of the Lease Agreement during the term of this Agreement. In Clause 13.7 of the Lease Agreement, the Parties expressly agreed that the Deposit could not be used to cover payment of Rent. However, considering the effect of the Disaster, the Parties now agree to temporarily amend this term of the Lease Agreement in the manner set out in this Agreement.
- 5.2. The Parties accordingly expressly agree that the Deposit may be utilised, in full or partially, for payment of Rent or any other amounts due and payable by the Tenant in terms of the Lease Agreement. The amount of the Deposit utilised for this purpose will be the Deposit Amount Utilised, and this may be utilised by the Landlord on the date set out in item 1.5.
- 5.3. The Parties agree that the Deposit Amount Utilised remains due and payable to the Landlord in terms of Clause 6 below. The Landlord agrees that the Deposit Amount Utilised will, once repaid by the Tenant, be dealt with in accordance with the terms of the Lease Agreement.
- 5.4. The Tenant hereby admits being indebted to the Landlord for the Deposit Amount Utilised, and this amount will be deemed to be a liquid amount and will include the amounts as contemplated in 5.5.1 and 5.5.2 (“**the Debt**”). If requested to do so by the Landlord, the Tenant will also Sign a Written acknowledgment of debt (“**AOD**”) for the amount of the Debt.
- 5.5. The Debt may include:
  - 5.5.1. interest on the Deposit Amount Utilised, or balance outstanding, at the rate set in item 1.6 of the Schedule, per annum, commencing on the date set out in item 1.9.1 of the Schedule; and
  - 5.5.2. other ancillary costs, in the amount set out in item 1.8, and this figure may include legal fees on an attorney and own client scale already incurred by the Landlord.
- 5.6. The Tenant hereby (i) accepts liability for the Debt, and (ii) consents to judgement for the full amount of the Debt.

#### 6. REPAYMENT

- 6.1. The Tenant hereby undertakes to repay the Debt as set out in item 1.9.
- 6.2. Once the Debt has been repaid in full, this Agreement will terminate and the Lease Agreement will continue to regulate the relationship between the Parties, un-amended in relation to the Deposit.
- 6.3. All payments made by the Tenant, shall be paid by way of electronic funds transfer without deduction, free of exchange, set-off and bank charges thereon into the bank account of the Landlord.
- 6.4. The Tenant undertakes to pay the instalments referred in clause 6.1 directly into the bank account set out in item 1.10, or such alternative bank account as may be nominated by the Landlord from time to time in Writing.
- 6.5. The undertakings set out in this Agreement create additional rights and remedies in favour of the Landlord and they are not a novation of any existing debt or liability owed by the Tenant to the Landlord, nor do they constitute a novation, alteration, cancellation or variation of any existing Lease Agreement), unless the contrary is expressly stated in this Agreement.
- 6.6. Renunciation is hereby made by the Tenant of all the benefits of the legal exceptions *non numeratae pecuniae* (money not paid), *non causa debiti* (no cause of debt), *errore calculi* (error in calculation), revision of accounts and no value received, with the full force and effects of the renunciation thereof.
- 6.7. The Tenant declares itself to understand and be fully acquainted with this Agreement and confirms that it shall supersede all previous arrangements between the Parties with regards to payment of the Debt.

#### 7. BREACH

- 7.1. Should the Tenant:
  - 7.1.1. fail to make payment of all or any amounts payable in terms of this Agreement on the due date; or
  - 7.1.2. commit any breach whatsoever of any of the provisions of this Agreement; or
  - 7.1.3. have any attachment, execution or similar processes issued against it, or fail to satisfy fully within 7 (Seven) days any judgment granted against it; or
  - 7.1.4. be provisionally or finally sequestered / liquidated or his estate be placed under administration; or
  - 7.1.5. arrive at or attempt to arrive at a compromise with its creditors,then, and in such event, the Tenant agrees that:
  - 7.1.6. the full balance of the Debt will immediately become due and payable notwithstanding that any portion thereof may not yet be due and payable; and
  - 7.1.7. the Landlord shall be entitled, but not obliged, to immediately register the Tenant with the credit bureau or credit bureaus of their choice; and
  - 7.1.8. the Landlord shall immediately and without notice either be entitled to institute action against the Tenant for recovery of all amounts owing in terms of this Agreement, and issue warrants of execution for the attachment of all goods of the Tenant, without prejudice to any other right which the Landlord may have as a result of such breach by the Tenant.
- 7.2. In addition to the provisions of clause 7.1, the Parties agree, and Tenant hereby consents and agrees, that this Agreement and / or any AOD may be made an order of Court, and the Tenant waives all rights to notice of any application to make this Agreement and / or any AOD an order of Court, or to enforce the terms hereof.

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## 8. COST OF PROCEEDINGS

- 8.1. The Tenant hereby undertakes, on payment of the instalments referred to in clause 6.1, to pay the collection fees for which the Landlord is liable in respect of the recovery of such instalment, if any.
- 8.2. In the event of the Landlord instituting legal proceedings against the Tenant for the recovery of the whole or any portion of the Debt, the Tenant shall, and hereby agrees to, pay for all legal costs incurred by the Landlord on the scale as between attorney and own client.

## 9. CERTIFICATE OF INDEBTEDNESS

- 9.1. In any legal action instituted by the Landlord against the Tenant, a certificate signed by or on behalf of the Landlord, whose authority, qualifications and appointment need not be proved, confirming the amount of the Tenant's liability shall, together with this Agreement and / or any AOD:
  - 9.1.1. be proof on the face of it of the amount being owed to the Landlord by the Tenant;
  - 9.1.2. be valid as a liquid document in any court with competent jurisdiction for purposes of obtaining provisional or summary judgement against the Tenant and the Tenant hereby admits its indebtedness in respect of the amount stated as being due in respect of such certificate.

## 10. MISCELLANEOUS

- 10.1. The Parties agree that all other provisions of the Lease Agreement not specifically amended in this Agreement will remain in full force and effect between them and will govern the provisions of this Agreement, including the letters and notices clause, governing law and jurisdiction clause, and all other general / boiler plate clauses.
- 10.2. This Agreement will be concluded in Writing and Signed by the Parties.
- 10.3. No addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless it is in Writing and Signed by the Parties.
- 10.4. This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

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**SIGNATORIES**

DATED AT (place) ON 20

TENANT AS WITNESS (1)  
(on behalf of and duly authorised)

NAME OF SIGNATORY AS WITNESS (2)

DATED AT (place) ON 20

LANDLORD AS WITNESS (1)  
(on behalf of and duly authorised)

NAME OF SIGNATORY AS WITNESS (1)

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