



ANNEXURE I – BRPS’ REMUNERATION AGREEMENT

in relation to the

**BUSINESS RESCUE PLAN FOR
GROUP FIVE CONSTRUCTION LIMITED**
(in business rescue)

Publication Date: 30 August 2019

12 April 2019 - EXECUTION

BUSINESS RESCUE REMUNERATION AGREEMENT

between

PETRUS FRANCOIS VAN DEN STEEN

DAVID ARTHUR CHARLES LAKE

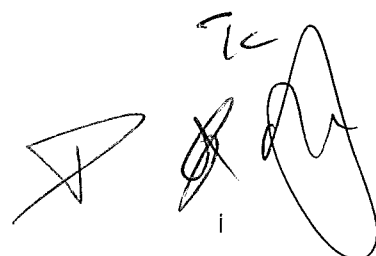
and

GROUP FIVE CONSTRUCTION PROPRIETARY LIMITED

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TABLE OF CONTENTS

1	DEFINITIONS	1
2	VOLUNTARY COMMENCEMENT OF THE BUSINESS RESCUE AND THE APPOINTMENT OF THE BRPS	7
3	STATUS OF THIS AGREEMENT AND RELATIONSHIP BETWEEN THE PARTIES	8
4	SUSPENSIVE CONDITIONS	8
5	TERM OF THE APPOINTMENT OF THE BRPS	9
6	STATUS OF THE BRPS	9
7	THE SUCCESS OR FAILURE OF THE BUSINESS RESCUE	11
8	BRPS' REMUNERATION	13
9	PAYMENT AND INVOICING	17
10	ENGAGEMENT BY THE BRPS OF PROFESSIONAL ADVISORS	18
11	OWNERSHIP	19
12	INSURANCE	19
13	WARRANTY BY THE COMPANY	20
14	LIABILITY AND INDEMNITY	20
15	EXCLUSION OF LIABILITY	20
16	RIGHTS AND OBLIGATIONS OF THE PARTIES IF THE BUSINESS RESCUE IS SET ASIDE FOR ANY REASON OR IS A NULLITY	21
17	BREACH	21
18	ARBITRATION	22
19	MISCELLANEOUS MATTERS	24

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BUSINESS RESCUE REMUNERATION AGREEMENT

between

PETRUS FRANCOIS VAN DEN STEEN

DAVID ARTHUR CHARLES LAKE

and

GROUP FIVE CONSTRUCTION PROPRIETARY LIMITED

1 DEFINITIONS

1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings -

1.1.1 **"Affected Persons"** - those persons who qualify as affected persons (as defined in section 128(1)(a) of the Companies Act) in relation to the Company;

1.1.2 **"Agreement"** - this agreement between the Parties, *inter alia*, for the payment by the Company of further remuneration additional to the Basic Remuneration;

1.1.3 **"Bank Account"** - the Bank Account of the BRPs' Nominated Entity with the following details -

Bank: Standard Bank

Accountholder: Metis Strategic Advisors (Pty) Ltd

Account Number: 301934835

Branch: Sandton

Branch Code: 051001

1.1.4 **"Basic Remuneration"** - the basic remuneration payable by the Company to the BRPs having regard to the provisions of clause 8.4 and as contemplated in accordance with section 143(1) of the Companies Act, in

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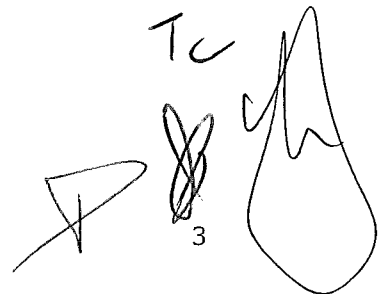
accordance with the tariff prescribed in section 143(6), with effect from the Commencement Date, it being recorded that –

- 1.1.4.1 the applicable tariff is the tariff contemplated in Regulation 128(1)(c) of the Companies Act Regulations; and
- 1.1.4.2 as at the Signature Date, the hourly tariff amounts to R2 000 (two thousand Rand) including VAT, and the maximum daily tariff amounts to R25 000 (twenty five thousand Rand) including VAT;
- 1.1.5 "**Board**" - the board of directors of the Company, from time to time;
- 1.1.6 "**BRPs**" - Lake and van den Steen, being the persons appointed in accordance with the applicable provisions of the Companies Act as the joint business rescue practitioners of the Company and of the Parent;
- 1.1.7 "**BRPs' Nominated Entity**" - the entity which each BRP may nominate from time to time, to which that BRP's entitlement to his share of the BRPs' Remuneration will be paid;
- 1.1.8 "**BRPs' Remuneration**" - the total remuneration payable by the Company to the BRPs as set out in this Agreement;
- 1.1.9 "**Business Day**" - every day of the week other than a Saturday, Sunday or South African public holiday;
- 1.1.10 "**Business Rescue**" - the business rescue proceedings of the Company from the Commencement Date to the date of termination in accordance with chapter 6 of the Companies Act;
- 1.1.11 "**Business Rescue Plan**" - the business rescue plan finally adopted in respect of the Company in terms of the Companies Act;
- 1.1.12 "**Commencement Date**" - 11 March 2019;
- 1.1.13 "**Commission**" - the Companies and Intellectual Property Commission established by section 185 of the Companies Act;



- 1.1.14 **"Company"** – Group Five Construction Proprietary Limited, with registration number 1974/003166/07, being a company incorporated and carrying on business in accordance with the company laws of South Africa, presently under business rescue with effect from the Commencement Date;
- 1.1.15 **"Companies Act"** - the Companies Act, 71 of 2008, as amended;
- 1.1.16 **"Companies Act Regulations"** - the Regulations to the Companies Act, namely, those Regulations published under GNR.351 in Government Gazette 34239, dated 26 April 2011;
- 1.1.17 **"Distributions"** - for each of the secured creditor class and the concurrent creditor class means all amounts repaid in permanent reduction of debt and/or cancellation or reduction of guarantees issued;
- 1.1.18 **"Dividend Surplus"** - for each of the secured creditor class and the concurrent creditor class means the aggregate amount of Distributions made to the respective creditor class that exceeds the Liquidation Dividend Estimate as calculated by PWC in accordance with section 150(2)(a)(iii) of the Companies Act for the respective creditor class;
- 1.1.19 **"Group Companies"** – the Parent and all of its direct and indirect Subsidiaries (as such term is defined in the Companies Act) and any other company in which the Parent and/or any of its direct and indirect Subsidiaries holds a shareholding interest;
- 1.1.20 **"Metis"** - Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) being a company incorporated and carrying on business in accordance with the company laws of South Africa;
- 1.1.21 **"Lake"** – David Arthur Charles Lake, with identity number: 5807045324186, being a senior business rescue practitioner, licensed as such under and in terms of section 138(1)(b) of the Companies Act, read with section 138(2) thereof, by the Commission;

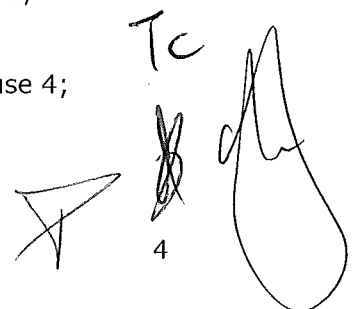
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- 1.1.22 **"Parent"** – Group Five Limited (registration number 1969/000032/06).
being a company incorporated and carrying on business in accordance with
the company laws of South Africa, being the holding company of the
Company;
- 1.1.23 **"Parties"** - the parties to this Agreement, being the Company, Lake and
van den Steen;
- 1.1.24 **"PCF"** - the provision to the Company of post-commencement finance as
envisaged in section 135(2) of the Companies Act;
- 1.1.25 **"Prime Rate"** - the rate of interest (nominal annual compounded monthly
in arrears) from time to time published by the Standard Bank of South
Africa Limited as its prime overdraft lending rate (a certificate from any
manager of that bank, whose appointment or authority need not be proved,
as to the prime rate at any time and the usual way in which it is calculated
and compounded at such time shall, in the absence of manifest or clerical
error, be final and binding on the parties);
- 1.1.26 **"PWC"** - PriceWaterhouseCoopers
- 1.1.27 **"Rand"** or **"R"** - South African Rand, the lawful currency of South Africa;
- 1.1.28 **"Signature Date"** - the date of the last of the signatures to this
Agreement;
- 1.1.29 **"South Africa"** - the Republic of South Africa;
- 1.1.30 **"Success Fee"** - the success fee payable by the Company to the BRPs
determined in accordance with the provisions of 8.5;
- 1.1.31 **"Surviving Provisions"** - clause 1, 18, 19 and any other provisions of this
Agreement which are expressed to continue in force after termination or
which by necessary implication must continue after termination;
- 1.1.32 **"Suspensive Conditions"** - the suspensive conditions in clause 4;

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1.1.33 "van den Steen" - Petrus Francois van den Steen, with identity number: 681107 5024 087, being a senior business rescue practitioner, licensed as such under and in terms of section 138(1)(b) of the Companies Act, read with section 138(2) thereof, by the Commission;

1.1.34 "VAT" - value-added tax levied in terms of the VAT Act;

1.1.35 "VAT Act" - Value-added Tax Act, 89 of 1991, as amended; and

1.1.36 "Werksmans" – Werksmans Incorporated, practising as such at, *inter alia*, 96 Rivonia Road, Sandton, Johannesburg.

1.2 In this Agreement –

1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and includes that provision as modified or re-enacted from time to time;

1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;

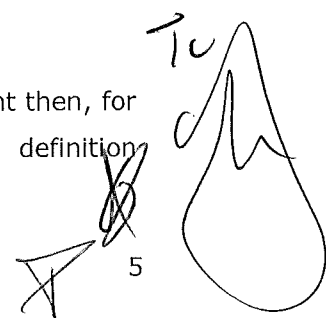
1.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

1.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;

1.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;

1.2.6 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement, the definition

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appearing in that clause shall prevail over any other conflicting definition appearing elsewhere in the Agreement;

1.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;

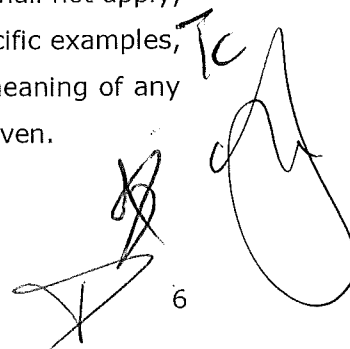
1.2.8 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

1.2.9 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

1.2.10 the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;

1.2.11 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

1.2.12 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

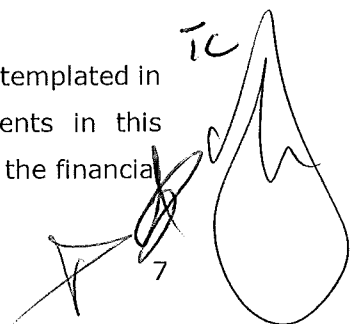
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- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (ie the *contra proferentem* rule), shall not apply.

2 VOLUNTARY COMMENCEMENT OF THE BUSINESS RESCUE AND THE APPOINTMENT OF THE BRPS

- 2.1 On the Commencement Date –
- 2.1.1 the Board resolved that the Company voluntarily commence business rescue proceedings, and appointed Lake and van den Steen as the BRPs of the Company; and
- 2.1.2 the board of directors of the Parent resolved that the Parent commence business rescue proceedings, and appointed Lake and van den Steen as the BRPs of the Parent.
- 2.2 On 13 March 2019, the Commission approved the appointment of Lake and van den Steen as BRPs of the Company and the Parent respectively, through the stamping and return of the requisite Forms CoR 123.2.
- 2.3 Whilst the primary relevant business activities, assets and obligations of Group Five fall predominantly within the Company, various cross-guarantee and other like security arrangements exist between the Company and the Parent, and various lenders and other third parties, in respect of the obligations of the Company and the Parent to such lenders and other third parties.
- 2.4 This Agreement is the remuneration agreement of the BRPs as contemplated in section 143(2) of the Companies Act. The financial arrangements in this Agreement have been designed in a manner which recognizes that the financial

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7

affairs of the Company and of the Parent are in many instances inexorably linked and that consequently, the most efficient methodology to be adopted in so remunerating the BRPs, is through the Company, notwithstanding that certain of the activities they undertake in earning such remuneration, will relate to the Parent.

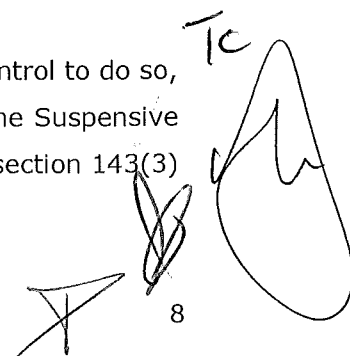
3 STATUS OF THIS AGREEMENT AND RELATIONSHIP BETWEEN THE PARTIES

- 3.1 In performing their duties as the BRPs, the BRPs shall act in accordance with their obligations in terms of the Companies Act and in accordance with the terms and conditions of this Agreement.
- 3.2 This Agreement shall not constitute a contract of employment as between the BRPs and the Company in any way or manner whatsoever.

4 SUSPENSIVE CONDITIONS

- 4.1 The provisions of this Agreement (other than the Surviving Provisions which shall be unconditional and of immediate force and effect on and with effect from the Signature Date) are subject to the fulfilment of the following Suspensive Conditions by no later than 15 May 2019 -
- 4.1.1 the approval in terms of section 143(3)(a) of the Companies Act by the holders of a majority of the creditors' voting interests, as determined in accordance with sections 145(4) to 145(6) of the Companies Act, present and voting at a meeting called for the purpose of considering this Agreement; and
- 4.1.2 the approval in terms of section 143(3)(b) of the Companies Act by the holders of a majority of the voting rights attached to any shares of the Company that entitle the shareholder to a portion of the residual value of the Company on winding up, present and voting at a meeting called for the purpose of considering this Agreement
- 4.2 The Parties shall, where it is within their respective power and control to do so, use their best endeavours to procure the fulfilment of each of the Suspensive Conditions, specifically by taking the steps envisaged in terms of section 143(3)

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8

of the Companies Act for the purpose of seeking the approvals contemplated in section 143(3) of the Companies Act

- 4.3 If the Suspensive Conditions are not fulfilled by the date contemplated at clause 4.1, the BRPs shall have the election to terminate their appointment, resign as the BRPs of the Company with immediate effect (in which event the BRPs shall notify the Company in writing immediately). Should either of the BRPs elect not to terminate this Agreement and resign as the BRPs of the Company, that BRP shall be entitled to Basic Remuneration.
- 4.4 If the Suspensive Conditions are not fulfilled, no Party shall have any claim against any other Party as a result of or in connection with any such non-fulfilment (other than a claim for a breach by a party of any of its obligations under this clause 4), and the Parties indemnify each other accordingly.

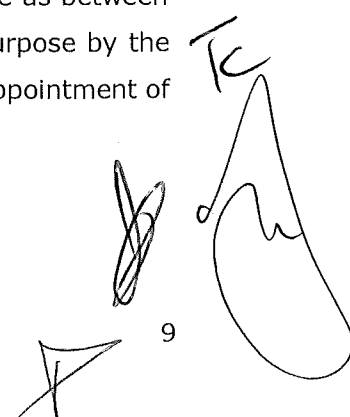
5 **TERM OF THE APPOINTMENT OF THE BRPS**

The appointment of the BRPs took effect on the Commencement Date (from which date, subject to the fulfilment of the Suspensive Conditions, this Agreement shall be of full force and effect), and shall endure until the earlier of –

- 5.1 the termination of the Business Rescue as contemplated in section 132 of the Companies Act;
- 5.2 the removal of the BRPs as contemplated in section 139 of the Companies Act; or
- 5.3 the resignation of the BRPs as contemplated in clause 4.3 or otherwise.

6 **STATUS OF THE BRPS**

- 6.1 The Companies Act contemplates that the appointment of a business rescue practitioner for the purposes of a Business Rescue shall take place as between the business rescue practitioner (licensed as such and for that purpose by the Commission) and the company in business rescue. As such, the appointment of the BRPs is made in their names.



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6.2 It is recorded that the BRPs have nominated Metis as their respective BRPs' Nominated Entity. In the event that either BRP wishes to nominate a new entity, he may do so on written notice to the Company, at its email address recorded in clause 19.1.1 below.

6.3 Notwithstanding clause 6.1, the BRPs will perform their appointment hereunder as part of their duties and responsibilities to the BRPs' Nominated Entity.

6.4 It is therefore agreed that –

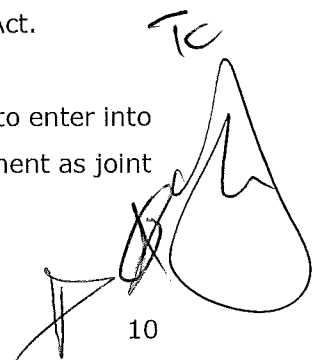
6.4.1 for as long as the BRPs remain engaged with or retain an interest in the BRPs' Nominated Entity, the benefits of any and all payments due and payable to the BRPs hereunder, including, but not limited to, the BRPs' Remuneration, properly vest in and accrue to and in favour of BRPs' Nominated Entity and for that purpose the BRPs are agents of the BRPs' Nominated Entity for purposes of section 54 of the VAT Act;

6.4.2 the BRPs antecedently divests, cedes and assigns their right, title and interest in and to the BRPs' Remuneration in favour of the BRPs' Nominated Entity, it being expressly recorded and agreed that, should the relationship between either or both of the BRPs and the BRPs' Nominated Entity come to an end, or either or both of the BRPs choose to appoint an alternative nominee at any time after the Signature Date, the contemplated divestment, cession and assignment by the BRPs of their right, title and interest in and to the BRPs' Remuneration in favour of the BRPs' Nominated Entity will terminate with immediate effect in respect of such BRP and the BRP shall then be entitled to divest, cede and assign his right, title and interest in and to the BRPs' Remuneration in favour of an alternative nominee of his choosing; and

6.4.3 notwithstanding clauses 6.4.1 and 6.4.2, the BRPs shall be liable in full to and in favour of the Company in relation to the discharge of their duties as the BRPs of the Company as contemplated in the Companies Act.

6.5 Each BRP warrants that he has the capacity and requisite authority to enter into and to conclude this Agreement, and in particular, that his appointment as joint

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10

business rescue practitioner of the Company will not be in contravention of section 138(1) of the Companies Act.

- 6.6 This clause 6 constitutes a *stipulatio alteri* (right in favour of a third party) in favour of the BRPs' Nominated Entity, capable of acceptance by the BRPs' Nominated Entity at any time.

7 THE SUCCESS OR FAILURE OF THE BUSINESS RESCUE

- 7.1 It is expressly recorded and agreed that –

7.1.1 the Company irrevocably and unconditionally acknowledges that it is fully cognisant of its obligations under the Companies Act and in particular, but without limiting the generality of the Companies Act, Chapter 6 thereof. The Company shall render all assistance to the BRPs as may be required by the BRPs in the discharge by the BRPs of their duties in relation to the successful Business Rescue;

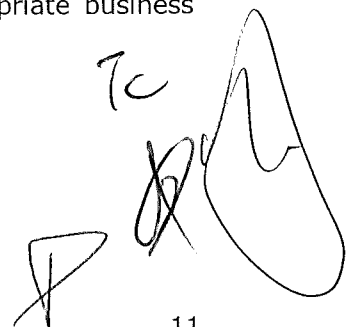
7.1.2 the Company shall procure that its Board, officers and employees shall likewise render all assistance to the BRPs as may be required by the BRPs in the discharge of their duties in relation to the successful Business Rescue.

- 7.2 The Company undertakes, and shall procure that its board, the officers and employees shall also undertake, *inter alia* –

7.2.1 to assist the BRPs during the Business Rescue at all times, as set out in the Companies Act;

7.2.2 not to enter into any contract or bind the Company in any way without the prior written consent of the BRPs;

7.2.3 not to permit, in the case of the Company or misappropriate business opportunities during the Business Rescue;



7.2.4 not to make any disparaging comments or remarks in any public forum about the BRPs, their professional advisors or the Business Rescue proceedings; and

7.2.5 not to do anything that will jeopardise the successful Business Rescue.

7.3 The Company acknowledges that –

7.3.1 the BRPs are required by the Companies Act to investigate the affairs of the Company;

7.3.2 the BRPs shall take all necessary steps as prescribed by the Companies Act to rectify any transgressions of any law;

7.3.3 the role of the Board is suspended during the Business Rescue and the Board shall report to the BRPs at all times, fully and effectually. The BRPs hereby exercise their right to delegate to the pre-existing management the BRPs powers and/or functions, subject to the continued oversight of the BRPs;

7.3.4 the BRPs are required to report to the relevant authorities as prescribed in the Companies Act any fraud or attempted fraud that was committed by any person in relation to the affairs of the Company;

7.3.5 the Board may make no statements about the affairs of the Company or details of the Business Rescue Plan prior to the adoption thereof to any third party and all queries in relation thereto shall be required to be directed to the BRPs or whomsoever the BRPs has nominated to respond to such queries;

7.3.6 the BRPs have the authority to amend, suspend or, subject to procuring the requisite court order, cancel any agreements, contracts or any other obligations during the Business Rescue save for employment contracts, in accordance with the Companies Act;

7.3.7 no member of the Board shall receive any director's fees during the Business Rescue;

 
12 TC

7.3.8 the BRPs shall be responsible for authorising all payments made for and on behalf of the Company and no member of the Board or prescribed officer of the Company may make any payments to any party without the prior written consent of the BRPs; and

7.3.9 should the Company fail to obtain approval for the Business Rescue Plan, the Company may be placed in liquidation.

8 **BRPS' REMUNERATION**

8.1 The remuneration payable by the Company to the BRPs in terms of this Agreement shall comprise –

8.1.1 the Basic Remuneration, as contemplated in clause 8.4; and

8.1.2 the Success Fee, as contemplated in clause 8.5.

8.2 In addition to the BRPs' Remuneration, the Company shall reimburse the BRPs for any reasonable costs, expenses and disbursements incurred by either of them in the discharge of their duties and responsibilities such as –

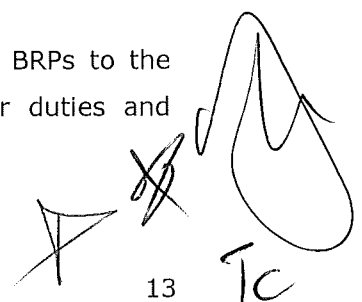
8.2.1 travelling costs and expenses, it being noted that –

8.2.1.1 any travelling costs incurred by the BRPs in relation to the motor vehicle/s of the BRP shall be charged at the applicable Automobile Association of South Africa's recommended rate, excluding VAT;

8.2.1.2 airline travel shall be with any recognised domestic or international carrier at the applicable full economy class fare save that any flight longer than two hours shall be business class fare;

8.2.2 accommodation costs and expenses;

8.2.3 any other costs and expenses reasonably incurred by the BRPs to the extent required in order for the BRPs to discharge their duties and responsibilities.



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8.3 The fees payable to the BRPs under and in terms of this Agreement are exclusive of all reasonable costs and expenses which may of necessity be incurred by the BRPs and/or the Company, as the case may be, in relation to the employment and/or the engagement of all professionals or other service providers advising and/or providing services to the BRPs and/or the Company for the purposes of the Business Rescue.

8.4 **Basic Remuneration**

8.4.1 For the purposes of calculating the Basic Remuneration, time spent by each of the BRPs shall include (without any limitation):

8.4.1.1 time actually spent by the BRPs in acting as the BRPs of the Company subject to the completion by the BRPs of reasonable time attendance records to that effect;

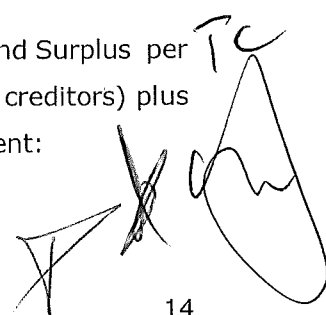
8.4.1.2 any travelling time incurred by the BRPs in the discharge of the duties and responsibilities of the BRPs;

8.4.1.3 any planning, preparation and assessments completed and/or undertaken by the BRPs in the discharge of the duties and responsibilities of BRPs.

8.4.2 In accordance with section 143(2)(b) of the Companies Act, upon an extension in terms of section 150(5)(b) being granted, the Basic Remuneration will include, with effect from the Commencement Date, an additional hourly amount, so as to bring each of the BRPs individual hourly rates to R3 650 (three thousand six hundred and fifty rand) (excluding VAT) per hour.

8.5 **Success Fee**

8.5.1 The Success Fee shall be calculated as (i) 10% of the Dividend Surplus per creditor class (comprising secured creditors and concurrent creditors) plus (ii) 1% of Bonds Rescued. For the purposes of this Agreement:



8.5.1.1 **"Dividend Surplus"** shall mean the Rand amount actually available to be paid to creditors during the Business Rescue proceedings, which is 10% greater than the liquidation dividend estimate theoretically available to be paid to such creditors as calculated by PWC in accordance with section 150(2)(a)(iii) of the Companies Act (**"Liquidation Dividend Estimate"**).

8.5.1.2 **"Bonds Rescued"** shall mean the face value of all guarantees and/or indemnities and/or counter-indemnities (**"Bond"**) issued by any person in respect of the obligations (of whatsoever nature and howsoever described) of any Group Company, in force as at 30 April 2019 less the aggregate quantum of all amounts lawfully required to be paid and actually paid to the relevant payees or beneficiaries under such guarantees and/or indemnities and/or counter-indemnities during the Business Rescue proceedings.

8.5.2 The Dividend Surplus portion of the Success Fee shall be payable on and simultaneously with each distribution to the respective creditor class once the Liquidation Dividend Estimate threshold for that class has been achieved.

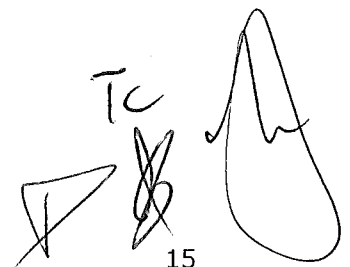
8.5.3 The Bonds Rescued portion of the Success Fee shall be payable on the earlier of (i) the date upon which the Bond expires (ie when it falls away without having been called on); or (ii) 3 Business Days prior to the termination of the Business Rescue proceedings.

8.5.4 The amount of the Success Fee shall be determined in accordance with the following formulae:

SF Secured = $(A - (B + 10\%)) \times 10\%$ subject to a maximum amount of R20 million where:

SF Secured = Success Fee relating to the secured creditor class, excluding value-added tax, expressed in ZAR;

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A = the aggregate of all distributions available to be made to the secured creditor class during the Business Rescue proceedings expressed in ZAR.

B = the Liquidation Dividend Estimate for secured creditors as calculated by PWC in accordance with section 150(2)(a)(iii) of the Companies Act in respect of the secured creditor class.

To the extent that any part of a secured claim is not fully discharged pursuant to the realisation of the asset(s) securing that secured claim and the balance of that claim is recognised as a concurrent claim, such balance will form part of the "SF Concurrent" pool referred to below.

SF Concurrent = $(C - (D+10\%)) \times 10\%$ where:

SF Concurrent = the Success Fee relating to the concurrent creditor class, excluding value-added tax, expressed in ZAR;

C = the aggregate of all distributions available to be made to the concurrent creditor class during the Business Rescue proceedings expressed in ZAR.

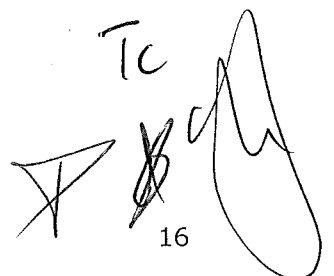
D = the Liquidation Dividend Estimate for concurrent creditors as calculated by PWC in accordance with section 150(2)(a)(iii) of the Companies Act in respect of the concurrent creditor class.

SF Guarantees = **E x 1%**

SF Guarantees = the Success Fee relating to the guarantee creditor class, excluding value-added tax, expressed in ZAR;

E = Bonds Rescued expressed in ZAR.

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To the extent that guarantees and/or indemnities and/or counter-indemnities are exercised/crystallised during the Business Rescue proceedings, the amounts required to be paid under such guarantees and/or indemnities and/or counter-indemnities will constitute secured claims and will form part of the SF Secured pool referred to above. Any amounts so required to be paid under such guarantees and/or indemnities and/or counter-indemnities which are not covered by security will be included in the SF Concurrent pool referred to above.

9 PAYMENT AND INVOICING

9.1 By virtue of the provisions of clause 6, all payments under and in terms of this Agreement shall be due and payable and shall be made by the Company to the BRPs' Nominated Entity into the Bank Account (the details of which may be varied by the BRP on written notice to the Company from time to time).

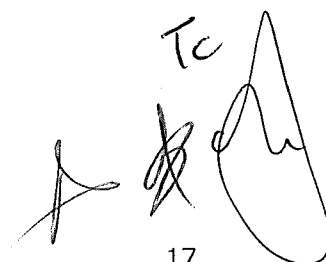
9.2 The Company shall be required to pay the BRPs' Remuneration to the BRPs' Nominated Entity as follows, namely –

9.2.1 in the case of the Basic Remuneration, the Company shall pay the Basic Remuneration of the BRPs to the BRPs' Nominated Entity within 5 (five) Business Days of the presentation of each weekly invoice therefore, it being agreed that –

9.2.1.1 the BRPs' Nominated Entity shall provide the Company with a narration (together with all costs and expenses incurred by the BRPs) of the weekly attendances of the BRPs;

9.2.1.2 for purposes of each invoice, a week shall be the period commencing at 00h01 on every Sunday during the Business Rescue and ending at 24h00 on every succeeding Saturday during the Business Rescue; and

9.2.1.3 the BRPs' Nominated Entity shall submit each weekly invoice to the Company, marking these for the attention of the Chief Financial Officer;

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9.2.2 in the case of the Success Fee, the Company shall pay each tranche of the Success Fee to the BRPs' Nominated Entity within 5 (five) Business Days of the achievement of each milestone, as recorded in clause 8.5 above.

9.3 It is expressly recorded and agreed that –

9.3.1 all invoices, accounts and vouchers, presented by the BRPs or the BRPs' Nominated Entity in respect of the Basic Remuneration or reasonable costs, expenses and disbursements, shall be paid by the Company within 5 (five) Business Days of presentation of the invoice;

9.3.2 the Company shall make payment of all amounts due to the BRPs' Nominated Entity without any deduction, setoff and/or withholding on any account, including, but not limited to, any taxes or other fees or amounts of any nature;

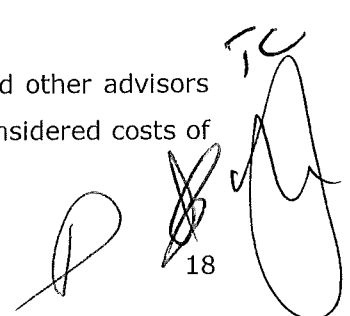
9.3.3 if the Company is required to deduct or withhold any amount from any amount payable by the Company to the BRPs' Nominated Entity under and in terms of this Agreement, the Company shall be required to increase the gross amount payable by the Company to the BRPs' Nominated Entity such that the BRPs' Nominated Entity receives payment of an amount equal to the amount of the applicable invoice of the BRPs' Nominated Entity.

9.4 The Company shall pay interest on any late payments by the Company to the BRPs' Nominated Entity, the applicable interest rate being the Prime Rate, from the due date of payment to the date of payment, both inclusive.

10 **ENGAGEMENT BY THE BRPS OF PROFESSIONAL ADVISORS**

10.1 The BRPs may retain the services of Werksmans and/or professional and other advisors to assist the BRPs during the Business Rescue, which engagement/s shall be subject to the terms and conditions of engagement letters between the Company (therein represented by the BRPs) and Werksmans and/or such other professional and other advisors.

10.2 The fees and costs of Werksmans and and/or professional and other advisors engaged to assist the BRPs during the Business Rescue are considered costs of



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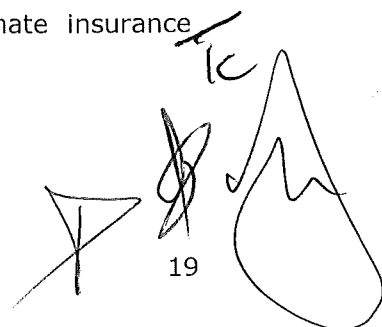
the Business Rescue proceedings of the Company in terms of section 135(3) which are for the account of and payable by the Company.

11 OWNERSHIP

- 11.1 The BRPs and their professional and other advisors shall retain ownership, copyright and any other intellectual property rights, whether oral and/or tangible, as the case may be, as well as ownership itself, of any and all working papers of the BRPs and their professional advisors.
- 11.2 The BRPs shall be permitted to use the name of the Company as a reference in any proposals or any other similar submissions of the BRPs to any prospective client/s of the BRPs.

12 INSURANCE

- 12.1 The BRPs shall purchase professional indemnity and related insurance from Shackleton Risk Management Proprietary Limited in an amount reasonably acceptable to the BRP ("**Insurance**"), it being noted that the Insurance cover as at the Signature Date is an amount of R250 000 000 (two hundred and fifty million Rand), which shall be reviewed and amended within 3 (three) months of the Commencement Date, at the sole discretion of the BRPs.
- 12.2 The Company shall reimburse the BRPs for the cost of and insurance premiums in relation to the Insurance, or pay such amounts directly to Shackleton Risk Management Proprietary Limited.
- 12.3 At the request of the Company, the BRPs shall furnish the Company with –
- 12.3.1 proof of payment of all insurance premiums;
- 12.3.2 a copy of the insurance policy relating to the Insurance.
- 12.4 The BRPs shall be entitled to reduce the aggregate amount of professional indemnity and related insurance and/or nominate an alternate insurance company by written notice to the Company at their discretion.



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13 **WARRANTY BY THE COMPANY**

The Company hereby unconditionally and irrevocably warrants that it is a large company as envisaged in Regulation 127(2)(b)(i) of the Companies Act Regulations, that is, the public interest score of Company, as calculated in terms of Regulation 26(2) of the Companies Act Regulations, is more than 500 (five hundred).

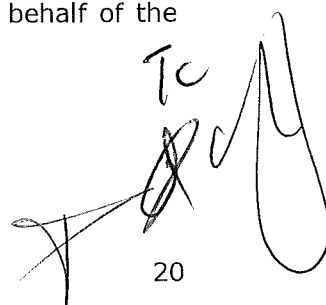
14 **LIABILITY AND INDEMNITY**

The Company hereby –

- 14.1 agrees to advance any and all expenses to the BRPs to defend litigation in any proceedings arising out of the performance by the BRPs of their duties under and terms of this Agreement; and
- 14.2 indemnifies the BRPs for any and all expenses contemplated in paragraph 14.1 irrespective of whether the Company has advanced those expenses to the BRPs.

15 **EXCLUSION OF LIABILITY**

- 15.1 As far as the law allows, the aggregate (total) liability of the BRPs (of any nature) to the Company, or any third party, will not exceed the proceeds of any professional indemnity cover the BRPs actually receives or that the BRPs' insurers pay to the company, or any third party.
- 15.2 This limit shall apply to liability that arises, including a liability arising by breach of contract, by a delict (including the delict of negligence) or arising by breach of statutory duty.
- 15.3 The BRPs hereby exclude any and all liability which may be described and/or characterised as indirect loss, pure economic loss and/or consequential damages.
- 15.4 The BRPs do not accept any liability for the acts, errors, omissions, or the fees of any advisers or service providers instructed by the BRPs on behalf of the Company.

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16 RIGHTS AND OBLIGATIONS OF THE PARTIES IF THE BUSINESS RESCUE IS SET ASIDE FOR ANY REASON OR IS A NULLITY

- 16.1 Notwithstanding anything to the contrary in this Agreement, if the Business Rescue is set aside for any reason or is a nullity for whatever reason, the Company shall be liable to pay to the BRPs the Basic Remuneration as specified in 1.1.4 above from the Commencement Date until the Business Rescue is set aside or is a nullity, as if the Business Rescue had not been set aside or is not a nullity, as the case may be.
- 16.2 The Company shall be required to make payment of the amounts contemplated in paragraph 16.1 within 5 (five) Business Days of the date on which the Business Rescue is set aside or is a nullity, as the case may be.

17 BREACH

Should any of the Parties hereto ("**Defaulting Party**") breach any of the provisions of this Agreement, and the breach is material and the Defaulting Party fails to remedy that breach within 10 (ten) Business Days ("**Ten Business Day Period**") after receipt of a written notice from the non-defaulting party (or if it is not reasonably possible to remedy the breach within the Ten Business Day Period, within such further period as may be reasonable in the circumstances provided that the Defaulting Party furnishes evidence within the Ten Business Day Period reasonably satisfactory to the non-defaulting party, that the Defaulting Party has taken whatever steps are available to the defaulting party, to commence remedying the breach), requiring the Defaulting Party to remedy that breach, the non-defaulting party shall be entitled to –

- 17.1 seek specific performance from the Defaulting Party; and/or
- 17.2 cancel this Agreement; and/or
- 17.3 seek to recover damages from the Defaulting Party,

on the occurrence of the material breach or on the expiry of the Ten Business Day Period, as the case may be.

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21

18 ARBITRATION

18.1 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to –

18.1.1 the interpretation of; or

18.1.2 the carrying into effect of; or

18.1.3 any of the Parties' rights and obligations arising from; or

18.1.4 the termination or purported termination of or arising from the termination of; or

18.1.5 the rectification or proposed rectification of,

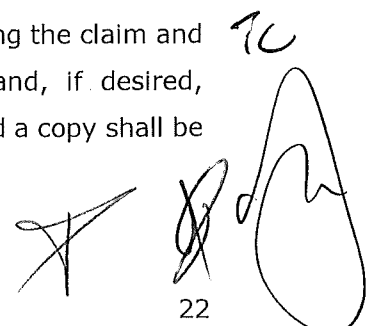
this Agreement, or out of or pursuant to this Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

18.2 All disputes shall be finally determined in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law, except as explicitly provided for in 18.8.

18.3 The Parties to the dispute shall agree on the arbitrator who shall be an attorney or senior advocate (with at least 10 years' experience) on the panel of arbitrators of AFSA. If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or senior advocate (with at least 10 years' experience) nominated by the Chairman of AFSA for the time being.

18.4 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be

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22

furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

18.5 The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

18.6 The Parties irrevocably agree that, subject to 18.7 any decisions and awards of the arbitrator –

18.6.1 shall be binding on them;

18.6.2 shall be carried into effect; and

18.6.3 may be made an order of any court of competent jurisdiction.

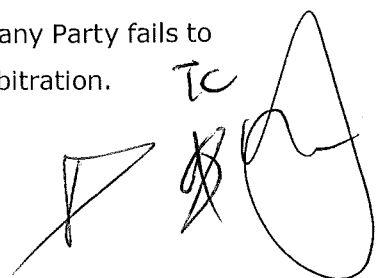
18.7 The Parties agree that there shall be a right of appeal against the decision of the arbitrator to an appeal panel of three arbitrators appointed by agreement between the Parties to the dispute, failing which the appeal arbitrators shall be appointed by the Chairman of AFSA.

18.8 Nothing contained in this 18 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the Parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).

18.9 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

18.10 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

18.11 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

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19 MISCELLANEOUS MATTERS

19.1 Any written notice in connection with this Agreement may be addressed –

19.1.1 in the case of the Company to –

address : 2 Eglin Road, Sunninghill, Johannesburg, 2191

email : aclacher@groupfive.co.za

and marked for the attention of Mr Anthony Clacher

19.1.2 in the case of van den Steen to –

address : 1755 Monterey Drive
Sawgrass Village
Dainfern Country and Residential Estate

email : peter@metis.co.za

and marked for the attention of Peter van den Steen

19.2 In the case of Lake to –

address : 69 Victoria Avenue, Parkmore, Johannesburg, 2196

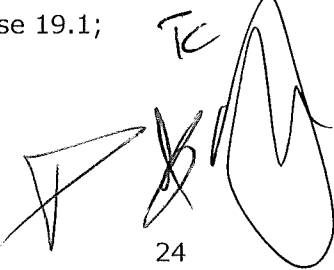
email : dave@metis.co.za

and marked for the attention of David Lake.

19.2.1 The notice shall be deemed to have been duly given –

19.2.1.1 5 Business Days after posting (14 Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of sub-clause 19.1;

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24

19.2.1.2 on delivery, if delivered to the Party's physical address in terms of either sub-clause 19.1 or sub-clause 19.5 before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;

19.2.1.3 on despatch, if sent to the Party's then e-mail address before 17h00 on a Business Day or if sent on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was sent;

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

19.3 A Party may change that Party's address or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

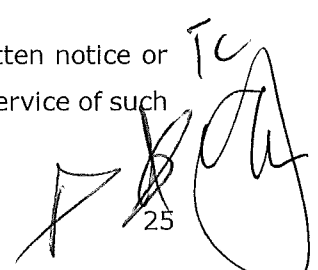
19.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in 19.1.

19.5 The Parties choose the physical addresses recorded at 19.1 as the physical addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*).

19.6 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

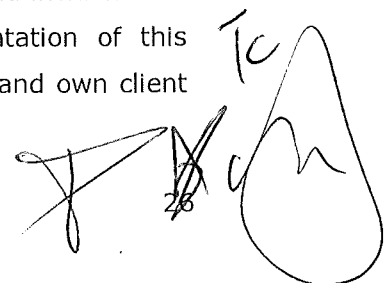
19.7 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such

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written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.

- 19.8 This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 19.9 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 19.10 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 19.11 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 19.12 A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.
- 19.13 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 19.14 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for any proceedings arising out of or in connection with this Agreement.
- 19.15 The Company shall bear the legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement. Any costs, including all legal costs on an attorney and own client

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basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

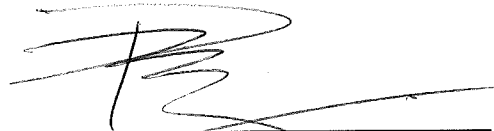
19.16 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

19.17 Each of the Parties hereby respectively agrees and acknowledges that -

19.17.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

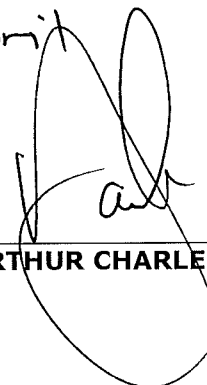
19.17.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

Signed at Summinghill on 17 April 2019

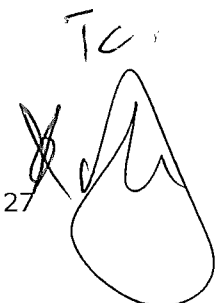


PETRUS FRANCOIS VAN DEN STEEN

Signed at Summinghill on 17 April 2019



DAVID ARTHUR CHARLES LAKE

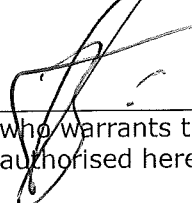

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Signed at *Sunninghill*

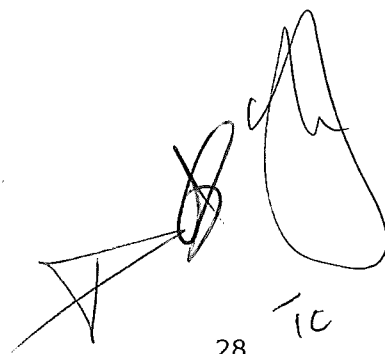
on *17 APRIL*

2019

for **GROUP FIVE CONSTRUCTION
PROPRIETARY LIMITED**



who warrants that he is duly
authorised hereto


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