**ANNEXURE A**

**TERMS AND CONDITIONS**

**1. DEFINITIONS**

In this Agreement, unless it appears otherwise from the context:

**“Act”** means the Pension Funds, Act, No. 24 of 1956, as amended from time to time.

**“Agreement”**  means this Housing Loan Facility Credit Agreement and all appendices, annexures and schedules hereto, all as may be added or amended from time to time which shall form an integral part hereof.

 **“Borrower**” means ….;

“**Business Days**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

**“Confidential Information”** means all and any information (written, oral and/or electronic) disclosed in confidence by one Party (**“the Disclosing Party**”) to the other Party (“**the Receiving Party**”), whether before or after the Effective Date and concerning the business, commercial and/or financial affairs of the Disclosing Party or any of its’ affiliates, including any information relating to that Party's or its’ affiliates’ operations, processes, plans, intentions, products and/or product information, know-how, designs, trade secrets, computer software, firmware and/or hardware, market opportunities, rating mechanisms, customers, clients, policy holders, documents, Data, Personal Information, letters, emails, correspondence, agreements, undertakings, structures, pricing, commission structures, messages, codes, formulae, technological information, specifications, blueprints, marketing methods, customer or client lists, supplier lists, employee or intermediary information, agent, consultant, contractor, subcontractor and/or representative information, projects, projections, financial information, cash flow charts, notes and/or extracts, and the strategic plans and/or policies that deal with the direction, manner, timing and/or implementation of any projects to be undertaken, and shall include this Agreement.

**“Default Administration Charges**" means charges which the Borrower will pay in the event of the Borrower defaulting in any payment obligation under this Agreement.

**“Effective Date”** means the Signature Date of this Agreement;

**"Employer”** means the Employer as defined in the registered rules of the Fund.

**“Fund”** means theAnglican Church of Southern Africa Retirement Fund, a pension fund registered in terms of, and subject to the Act, with registration number 12/8/26724 situated at the following address 1 Braehead Road, Kenilworth 7708

**“NCA”** means the National Credit Act, No. 34 of 2005, as may be amended from time to time;

**“Parties”** means collectively the Fund, the Borrower and the Employer, and “Party” refers to anyone of them, as the context may require;

**“Signature Date”** means the date of signature of this Agreement by the Party last signing;

**“Third Party**" means any Person which is not a Party to this Agreement.

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# 2. THE HOUSING LOAN

* 1. The Fund agrees to lend the Housing Loan to the Borrower and the Borrower Agrees to borrow the Housing Loan from the Fund, subject to the terms and conditions of this Agreement.

# 3. INTEREST

* 1. The Housing Loan shall bear interest at the applicable prime lending rate of Prime -2% (two percent) per annum. Interest so charged shall be debited on the last day of each month and shall be due and payable as soon as it is debited.

# 4. HOUSING LOAN REPAYMENT

* 1. The Housing Loan is to be repaid by the Borrower to the Fund over a period of 10 (ten) years in 120 (hundred and twenty) monthly installments.
	2. The Fund shall be entitled to deduct the monthly instalments due from the salary and other emoluments accruing to the Borrower, and the Employer will deduct those monthly instalments and pay it to the Fund towards the Housing Loan.
	3. For the purposes of, and as security for, the timely payments of monthly instalments due, the Borrower hereby irrevocably authorizes the Employer to make such deductions as are required in terms of this Agreement and undertakes not to terminate such authorization until the Principal Debt and all amounts due under this Agreement have been settled or paid in full. In this regard, the Borrower has signed the Authority to deduct document marked Annexure “A.”

# 5. EARLY REPAYMENT

* 1. Early repayment of the Housing Loan may be made by the Borrower provided that the Parties have agreed in writing to rescheduling the normal monthly repayments accordingly.
	2. If the Borrower makes an early reduction of the Housing Loan, unless the instalments are rescheduled by agreement in writing between the Parties, this will not affect the Borrower’s obligations to pay the monthly instalments as set out in clause in this Agreement.

# 6. DEFAULT EVENTS

* 1. If:
		1. the Borrower’s services with the Employer is terminated for any reason whatsoever and/or the Borrower’s membership of the Fund is terminated for any reason whatsoever;
		2. the Borrower commits a breach of the terms of this Agreement;
		3. the Borrower is in arrears to the equivalent of at least two monthly instalments payable in terms of this Agreement;
		4. any change or proposed change in the Fund rules and/or the Act which may affect the Fund’s security position;
		5. the Borrower commits any act of insolvency;
		6. the Borrower dies;
		7. the Borrower has provided the incorrect information; or
		8. the Borrower does anything to prejudice the Fund’s rights in terms of this Agreement,

The Fund may terminate this Agreement before the time period provided in the Agreement in terms of section 29 of the NCA. On termination by the Fund, all amounts outstanding shall become due and payable.

* 1. If any of the abovementioned Default Events occurs, the Fund:
		1. may propose that the Borrower refers the Agreement to a debt counsellor, alternative dispute resolution forum/agent, consumer tribunal or any ombudsman with jurisdiction, with the intent that the Fund and the Borrower resolve any dispute under this Agreement or develop and agree on a plan to bring the payment under this Agreement up to date, and
		2. subject to the NCA, may commence legal proceedings against the Borrower to enforce this Agreement.
	2. No relaxation or indulgence which the Fund may show to the Borrower shall in any way prejudice or deemed to be a waiver of its rights and, in particular, no acceptance by the Fund of payment after due date (whether on one or more occasions) nor any other act or omission by the Fund shall preclude or stop it from exercising any rights enjoyed by it hereunder by reason of any subsequent payment not being made strictly on due date or by reason of any subsequent breach by the Borrower.

# 7. DEFAULT ADMINISTRATION AND COLLECTION COSTS

* 1. In the event of default, default administration charges will be imposed and be recovered to the maximum extent permitted by the NCA.
	2. Collection costs will be imposed in respect of enforcement of a Borrower’s monetary obligations under the Agreement to the maximum extent permitted by the NCA.

# 8. REPRESENTATIONS AND WARRANTIES

* 1. REPRESENTATIONS AND WARRANTIES BY THE BORROWER
		1. The Borrower warrants and represents to the Fund on Signature Date and for the term of the Housing Loan that:
			1. he or she is not under administration;
			2. he or she is not under bad review;
			3. he or she is not blacklisted;
			4. no judgment has been take against his or her name as a result of his or failure to meet his financial obligation in the past;
			5. he or she has the full capacity to effect and carry out his or her obligations under this Agreement and that the terms of this Agreement do not conflict with and do not constitute a breach of the terms of any other agreement or undertaking or acting that is binding on him or her; and
			6. all information that he or she furnished to the Fund in connection with the granting of the Housing Loan is in all aspects true, complete, current and accurate, and the Borrower is not aware of any material facts or circumstances not disclosed to the Fund which, if disclosed, would adversely affect the Fund’s decision to grant the Borrower the Housing Loan.
		2. To the maximum extent permitted by law, the Borrower hereby indemnifies (hold the Fund harmless) against any loss or damage suffered by the Fund as a result of Fund’s reliance on any warranty, representation or information given by the Borrower in relation to this Agreement.
	2. REPRESENTATIONS AND WARRANTIES BY THE FUND
		1. The Fund warrants and represents that:
			1. at the time of issuing the Housing Loan, the Borrower is or was a Member of the Fund;
			2. at the time of processing the Housing Loan application in respect of the Borrower, it had conducted the affordability assessment checks and has complied with the requirements prescribed in terms of the NCA;
			3. it is licensed or has obtained a certificate of approval from the National Credit Regulator to grant Housing Loans to the members;
			4. it is registered under section 4 of the Act and that its rules are duly registered in terms of the Act and will not be amended in any manner that will prejudice the Parties’ obligations in terms of this Agreement;
			5. in the event of a Default Event, it will deduct and settle the outstanding Housing Loan on behalf of the Borrower;
			6. prior to granting the Housing Loan, it has satisfied itself that the property concerned is to be used for housing purposes as set out in clause 5 (five above); and
			7. a suitable resolution has been passed by the board of trustees authorizing the Fund to enter into this Agreement and to grant the Housing Loan to the Borrower.

* 1. REPRESENTATIONS AND WARRANTIES BY THE EMPLOYER
		1. The Employer undertakes and agree:
			1. to notify the Borrower of the status of his or her account upon receipt of such information from or on behalf of the Fund and specifically to hand to the Borrower notices and Statements sent to him or her at the Employer’s address;
			2. all deductions in terms of clause 9 (nine) above from the Borrower’s salary will be made in accordance with a valid Authority to Debit document completed and signed by the Borrower;
			3. the terms of this Agreement do not in any way conflict with any particular wage regulations measure, wage determination or collective agreement;
			4. will notify the Fund promptly if anything happens to make any of the above warranties untrue and incorrect; and
			5. will notify the Fund of termination (for whatsoever reason) of employment of the Borrower who has been granted as Housing Loan.

# CONFIDENTIALITY

* 1. All Confidential Information disclosed by one Party to the other, shall only be disclosed as is strictly necessary in accordance with the provisions of this Agreement and each Party shall procure that its Personnel or Third Parties treat such information as confidential. Such Confidential Information shall only be used for the purpose for which it is disclosed and only insofar as it is strictly necessary for the purpose of this Agreement and shall not, without the prior written consent of the Disclosing Party, be disclosed to any Third Party or Personnel.
	2. Whenever the consent or authority of the Disclosing Party is required to disclose Confidential Information, the said consent or authority shall be in writing. Should the Receiving Party have been granted the necessary consent or authority, it shall only disclose the Confidential Information to its Third Parties or Personnel who –
		1. have a need to know (and then only to the extent that each such person has a need to know); and/or
		2. are aware that the Confidential Information should be kept confidential.
	3. Any Confidential Information, remains the property of the Disclosing Party. The furnishing of Confidential Information shall not result in any obligation to grant the Receiving Party rights therein, other than expressly stated in this Agreement. It is acknowledged by the Receiving Party that no license or right of use under any patent, copyright, trademark or other proprietary right is granted or conveyed by this Agreement, unless specifically regulated herein or in a Statement of Work.
	4. The Parties shall not at any time during the term of this Agreement, release any statement to the press or make any other public statement of any nature, which could reasonably be expected or anticipated to be published in any media regarding the relationship of the Parties or the subject matter of this Agreement or a Statement of Work, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
	5. The confidentiality undertakings contained herein, are in addition to and not in lieu of any other confidentiality undertakings given by the Receiving Party to the Disclosing Party.
	6. The Receiving Party acknowledges and agrees that any breach of its obligations under this Clause 9 shall be deemed a material breach of this Agreement.
	7. Both Parties’ obligations in terms of this Clause 9, will perpetually survive the termination of this Agreement for whatever reason

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# DATA PROTECTION AND INFORMATION SHARING

* 1. The Fund and the Employer may and the Borrower expressly consents to the collecting and processing of his or her Personal Information by the Fund and the Employer, for the purposes of opening; administering; and operating the Housing Loan Account.
	2. Save as provided for in this clause, the Fund will not disclose any of the Borrower’s Personal Information without the Borrower’s express consent, unless required by law to do so.
	3. The Borrower confirms that the Fund may transmit to any credit bureau Data about the application, opening and termination of any account in respect of the Borrower pursuant to this Agreement.
	4. The Fund will transmit to any credit bureau notice of any non-compliance by the Borrower with the terms and conditions of this Agreement.
	5. The credit bureau to which the Fund transmits information will provide a profile and possibly a credit score on the creditworthiness of the Borrower to third parties as provided for in the NCA.
	6. The Borrower has the right in terms of the NCA to contact the credit bureau, particularly in instances where the credit record disclosed incorrect information.
	7. Further, the Fund may disclose any fraudulent information and/or activity by the Borrower to the South African Fraud Prevention Services (“SAFPS”) and /or any similar organisation.
	8. The Borrower hereby direct his or her bank to release any financial information that the Fund may require relating to the Borrower’s bank accounts.

# DISPUTE RESOLUTION

* 1. Any dispute, question or difference arising at any time between the parties to this Agreement out of or in regard to:
		1. the rights and duties of either of the Parties herein;
		2. the interpretation of;
		3. the termination of;
		4. any matter arising out of termination of; or
		5. the rectification of this Agreement, shall be discussed between the Parties who will attempt, in good faith, resolve such dispute.
	2. Should the Parties fail to resolve the dispute, it may be referred to arbitration as set out below.
	3. Any such arbitration shall be held in Cape Town in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended.
	4. The arbitrator shall be appointed by the Parties, and failing agreement, shall be nominated by the Chairman for the time being of the Cape Bar Council.
	5. The The arbitrator shall be entitled to –
		1. determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence;
		2. investigate or cause to be investigated any matter, fact or thing which the arbitrator considers necessary or desirable in connection with any matter referred to him for decision;
		3. decide the matters submitted to the arbitrator according to what he or she considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
		4. make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as the arbitrator in his or her discretion may deem fit and appropriate.
	6. The arbitration shall be held as promptly as possible after it is agreed between the Parties, with a view to it being completed within 30 (thirty) days.
	7. The Parties agree that the decision of the arbitrator shall be final and binding.
	8. Nothing contained in this clause shall preclude either party from seeking relief of an interim or urgent nature in any Court of competent jurisdiction.
	9. This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.
	10. The provisions of this clause 11.10 will survive termination of the Agreement.

# DECLARATIONS BY THE BORROWER

* 1. The Borrower declares and agrees that:
		1. if he or she is married in Community of Property, he or she has obtained consent from his/her spouse to enter into this Agreement. In the event that the Borrower deliberately mislead the Fund that he or she has obtained the necessary consent from his or her spouse, the Borrower acknowledges that the Fund retains the right to rescind this Agreement and/or institute criminal action against him or her for the incorrect information he or she submitted during the application;
		2. he has read and understood the terms of this Agreement which have been explained to him or her in a language of his or her choice;
		3. the information provided by the Borrower to the Fund or which he or she may provide in future is and will be true and correct; and
		4. a copy of the Agreement has been given to him or her by the Fund.

# GENERAL

* 1. **CESSION AND ASSIGNMENT.** The Borrower will not be entitled to pledge, cede, assign of transfer its rights or obligations under this Agreement.
	2. **ENTIRE AGREEMENT.** This Agreement replaces all other agreements, terms, conditions, warranties or representations, from the Effective Date whether oral or in writing that was made or entered into by the Parties prior to this Agreement.
	3. **INDULGENCES.** Any indulgence that the Fund may grant the Borrower or any failure on the part of the Fund to exercise any rights in terms of this Agreement, will not prejudice the Fund’s rights and neither will it be considered a novation or waiver of such rights.
	4. **VARIATION.** No variation or consensual cancellation of this Agreement (including this clause 19.4) and no addition hereto shall be of any force or effect unless reduced to writing and signed by the Parties. This requirement shall only be satisfied if such amendment, alteration or variation is made in a written, paper based form. The provisions of the Electronic Communications and Transactions Act 25 of 2002, are expressly excluded from this clause 13.4.
	5. **SEVERABILITY.** Should any clause of this Agreement be held to be invalid, unlawful or unenforceable, such clause will be severable from the remaining terms which will continue to be valid and enforceable.
	6. **NOTICES.** All notices in terms of this Agreement have to be sent by registered post, email, faxed or delivered by hand.
	7. **GOVERNING LAW.** This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be construed and governed in accordance with the laws of South Africa.
	8. **JURISDICTION.** The Parties irrevocably agree that the High Court of South Africa (Cape Town) shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with the Agreement and for such purpose irrevocably submit to the jurisdiction of the High Court of South Africa. The submission to the jurisdiction of the court referred to above shall not be construed so as to limit the rights of either Party to take proceedings against the other Party in any other court of competent jurisdiction for the purposes of obtaining urgent or interdictory relief.
	9. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.
	10. **DULY AUTHORISED.** By the signatures of their duly authorized representatives below, the Parties, intending to be legally bound, agree to all of the provisions of this Agreement and all annexures and addenda to this Agreement.

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#  ANNEXURE “B”

**AUTHORITY TO DEDUCT HOUSING LOAN**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the undersigned, with Identity Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby authorise my Employer, currently being \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Employer”) to deduct proportionately from my wages ot from my salary, as the case may be, the monthly Housing Loan instalment due by me to the Fund, in respect of the Housing Loan and to pay such instalment to the Fund, subject to the following terms and conditions:

1. Such Housing Loan Repayment shall initially be R \_\_\_\_\_\_\_\_\_\_\_\_\_ per month.
2. Should the Fund at any time give notice that the monthly Housing Loan Repayment due by me has changed, I hereby authorise the Employer to deduct the amount stated in the notice from my wages or salary, as the case may be, with effect from the dated stated in the notice.
3. The payments shall be made to the Fund by the Employer not later than the date negotiated with the Employer each month. Payments shall commence with effect from the date stipulated for this purpose in a notice given by the Fund.
4. In the event that I am weekly paid, I authorise the Employer to deduct the amount due by me to the Fund in respect of my monthly Housing Loan Repayments proportionately from my weekly pay.
5. This authority is for the full term of the Housing Loan and may not be withdrawn, amended or suspended during this term without the prior consent of the Fund in terms of this Agreement

**Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2017.**

**AS WITNESSES:**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BORROWER SIGNATURE**