

*Disclaimer*

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**CONTRACT IN TERMS OF THE ALIENATION OF LAND ACT OF 1981 AND**  
**THE NATIONAL CREDIT ACT OF 2005**

**SALE AGREEMENT**

between

("the Seller")

and

("the Purchaser")

**SCHEDULE**

A.	Name of Seller	
B.	Seller's Contact Details	(a) Residential / Business Address (Physical)
		(b) Domicilium Address (Physical)
		(c) Postal Address
		(d) Telefax No. ( )
		(e) Telephone No. ( )
		(f) Email Address
C.	Is the Seller a resident of the Republic of South Africa for Income Tax purposes?	
D.	Name and Address of the Owner (if not the Seller)	
E.	Name of Purchaser	
F.	Purchaser's Contact Details	(a) Residential / Registered Address (Physical)
		(b) Domicilium Address (Physical)
		(c) Postal Address
		(d) Telefax No. ( )
		(e) Telephone No. ( )
		(f) Email Address

G.	Marital Status of Purchaser		
H.	Name and Identity Number of Purchaser's Spouse (if married in community of property)		
I.	Description of Property and Extent as per title deed		
J.	Physical Address of Property		
K.	Existing Mortgage Bonds over the Property	(a) Name of Mortgagee / Bank	
		(b) Mortgagee's address and contact details	
		(c) Loan Account Number	
		(d) Mortgage Bond Number	
		(e) Amount of Bond	
L.	Anticipated Occupation Date		
M.	Purchase Price	R	
N.	Payment	(a) Deposit	R
		(b) Further Deposit	R
		(c) Amount of Each Instalment	R
		(d) Due Date of First Instalment	
		(e) Due Date of Subsequent Instalments	___ day of each month

**Comment [SF1]:** This should be greater than the sum of the Estate Agent's commission and the withholding tax (if applicable)

		(f) Commencing Interest Rate on Outstanding Balance	____% per annum
		(g) Date by Which the balance of the purchase price is to be paid ("Repayment Date")	
O.	Seller's Bank Account Details (for payment of Instalments)		
P.	Name and Address of Estate Agent		
Q.	Name of Broker		
R.	Estimated Transfer Duty to be Paid by Purchaser (if applicable)	R	
S.	Estimated Amount of Annual Rates		
T.	Estimated Amount of monthly Levies (if applicable)		
U.	Special Conditions		

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EXAMPLE DOCUMENT

**CONDITIONS OF SALE**  
**(FREEHOLD)**

1.

**Definitions**

Unless inconsistent with the context, the following expressions shall have the meanings set forth against them, namely:

1.1 "the ALA" means the Alienation of Land Act No. 68 of 1981, as amended, and the Regulations published in terms thereof.

1.2 "Business Day" means a day other than a Saturday, Sunday or a public holiday.

1.3 "Contract" means these Conditions of Sale and the Schedule prefixed hereto.

1.4 "Conveyancers" means \_\_\_\_\_, E-mail: \_\_\_\_\_, Telephone: \_\_\_\_\_.

1.5 "Conveyancers' Trust Account" means:

Bank: \_\_\_\_\_

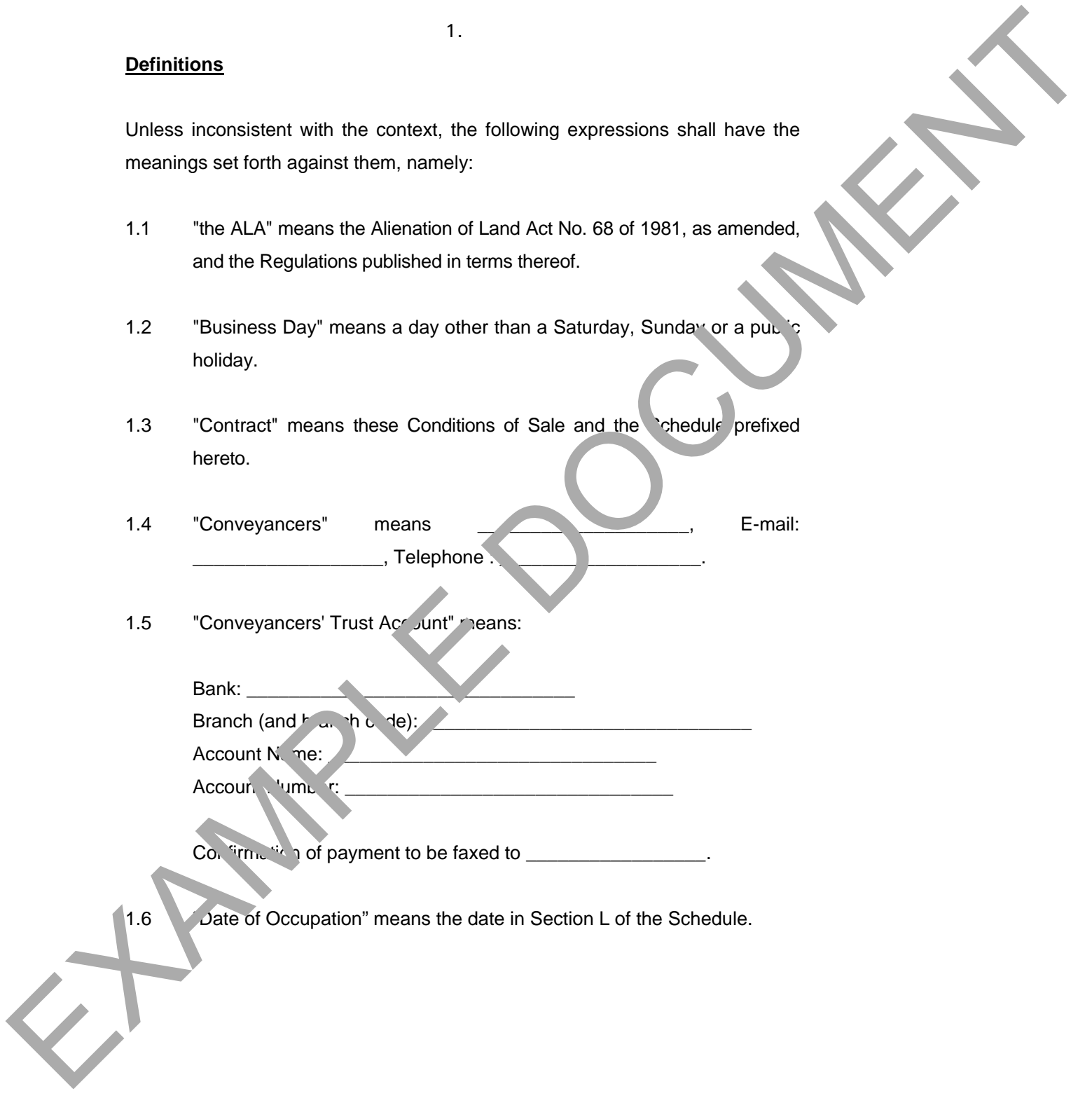
Branch (and branch code): \_\_\_\_\_

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Confirmation of payment to be faxed to \_\_\_\_\_.

1.6 "Date of Occupation" means the date in Section L of the Schedule.



- 1.7 "Date of Recording" means the date the Contract is recorded in the Deeds Office against the title deeds of the Seller.
- 1.8 "Date of Signature" means the last date of signature hereto by one of the parties hereto.
- 1.9 "Date of Transfer" means the date upon which registration of transfer of the Property into the name of the Purchaser is registered in the Deeds Office.
- 1.10 "Day" means a calendar day.
- 1.11 "Electrical Installation Regulations" means the Regulations published from time to time in terms of the Machinery and Occupational Safety Act No. 6 of 1983.
- 1.12 "FICA" means the Financial Intelligence Centre Act No. 38 of 2001.
- 1.13 "Loan" means a loan arranged by the Seller for the Purchaser in terms of section 15(2) of the ALA which will enable the Purchaser to take transfer of the Property.
- 1.14 "Municipality" means the municipality of the area in which the Property is situate.
- 1.15 "NCA" means the National Credit Act No. 34 of 2005, as amended, together with the regulations and notices promulgated from time to time in terms thereof.
- 1.16 "Offer Letter and Quotation" means the Offer Letter and Quotation issued by the Seller to the Purchaser in terms of Section 92 of the NCA dated the \_\_\_\_\_ and accepted by the Purchaser on the \_\_\_\_\_, a copy of which is prefixed hereto.



- 1.17 "Owner of the Property" means the Seller unless the Seller is an intermediary.
- 1.18 "Property" means the immovable property together with all improvements thereon described in Section I of the Schedule and situate at the physical address in Section J of the Schedule.
- 1.19 "Purchaser" means the party referred to in section E of the Schedule, whose residential / business address is described in section F (a) of the Schedule.
- 1.20 "Repayment Date" means the date recorded in section N(g) of the Schedule, namely the date on which the Purchaser is obliged or may be compelled to take transfer of the Property against simultaneous payment of all amounts owed by the Purchaser in terms of this Contract.
- 1.21 "SARS" means the South African Revenue Service.
- 1.22 "Savings Account" means a corporate saver account with \_\_\_\_\_
- 1.23 "Schedule" means the schedule prefixed to these Conditions of Sale.
- 1.24 "Seller" means the party referred to in section A of the Schedule, whose residential or business address is described in section B(a) of the Schedule.
- 1.25 "Seller's Bank Account" means the bank account described in Section Q of the Schedule.
- 1.26 "VAT" means Value Added Tax in accordance with the provisions of the Value Added Tax Act of 1991.

Comment [SF2]: ALA section 6(1)(s)

2.

**Sale**

The Seller hereby sells to the Purchaser who hereby purchases the Property.

3.

**Purchaser as Trustee for a Company or Close Corporation to be formed**

Comment [S. 3.1]: optional

Should the Purchaser sign this Contract as trustee for a company or close corporation to be formed, the Purchaser agrees and undertakes by the Purchaser's signature hereof, in the Purchaser's personal capacity:

- 3.1 To effect registration of the company (which shall contain as one of its objects the adoption and ratification of this Contract) or close corporation within thirty (30) days of the Date of Signature.
- 3.2 To obtain the adoption and ratification, as the case may be, by the company or close corporation of this Contract not later than seven (7) days after the date of incorporation or registration as the case may be.
- 3.3 That should registration of the company or close corporation not be effected within the period of thirty (30) days aforesaid, or should the company or close corporation when so registered fail to adopt and ratify this Contract within the further period of seven (7) days aforesaid, or should the company or close corporation fail in any way whatever to implement the terms of this Contract, then the Purchaser in the Purchaser's personal capacity will be liable as Purchaser as if this Contract were made with the Purchaser in the Purchaser's personal capacity.

4.

**Resolutions**

Comment [SF4]: optional

- 4.1 Persons signing this Contract on behalf of any of the parties hereto warrant that they are authorised in writing to sign on behalf of their principals.
- 4.2 If applicable, the sale of the Property to the Purchaser will be authorised by a special resolution of the shareholders of the Seller to be passed and registered with the Registrar of Companies in terms of Section 228 of the Companies Act of 1973.

5.

**Ownership of the Property and Mortgage Bonds**

- 5.1 The Property is registered in the name of the Seller.
- 5.2 There is/are \_\_\_ mortgage bond/s registered over the Property, namely:
- (a) Mortgage bond No. B\_\_\_\_\_ in favour of \_\_\_\_\_ whose address is \_\_\_\_\_

6.

**Purchase Price**

The purchase price of the Property is the sum referred to in Section M of the Schedule inclusive of VAT (if applicable), which shall be payable in the following manner:

- 6.1 A cash deposit in the sum referred to in Section N(a) of the Schedule shall be payable into the Conveyancers' Trust Account within seven (7) days of the Date of Signature, to be held in trust by the Conveyancers

who are authorised to invest such sum in a Savings Account, the interest to accrue to the Purchaser, until the Date of Recording.

6.2 Should a further deposit be payable as recorded in Section N(b), that deposit shall be dealt with in the same manner as in clause 6.1.

6.3 The balance of the purchase price together with the interest thereon shall be payable in the monthly instalments recorded in Section N(c) of the Schedule, the first instalment to be paid on or before the date reflected in Section N(d) of the Schedule and subsequent instalments to be paid on the day of each and every succeeding month specified in Section N(e) of the Schedule. The total instalments payable during any of the successive periods of twelve (12) months following the Date of Signature shall not be less than the interest which would be due and payable in terms of this Contract for that period of twelve (12) months.

Comment [SF5]: ALA section 6(3)

6.4 From the first day of the month following the month in which the Date of Recording occurs, interest on the balance of the purchase price owing from time to time shall be calculated monthly in advance at the maximum rate prescribed by regulation in terms of the ALA (subject to the NCA), the commencing rate being recorded in Section N(f) of the Schedule. Interest shall also be calculated for the period from the Date of Recording to the last day of the month in which the recording occurs.

Comment [SF6]: ALA Regulation 9; NCA section 103

6.5 Should the rate of interest payable in terms of this Contract be increased, then the Seller shall give the Purchaser thirty (30) business days notice thereof in writing, whereafter the monthly instalments payable by the Purchaser shall be increased to ensure that the same rate of capital redemption is maintained. The instalments will however not be reduced should the rate of interest decrease.

Comment [s7]: NCA section 104; NCA Regulation 36

6.6 Each instalment shall be allocated firstly towards the payment of interest, secondly towards any fees or charges and thereafter in reduction of the purchase price.

6.7 Until the Date of Recording, the monthly instalments shall be paid to the Conveyancers to be held in trust. On the Date of Recording, the Conveyancers shall:

Comment [SF8]: ALA section 2(1)

(a) Pay the instalments held in trust to the Seller together with the deposit (less any amount due to SARS in terms of clause 8 hereof); and

Comment [SF9]: This allows the Conveyancer to control payment of any withholding tax

(b) Pay the interest earned on the deposit to the Purchaser.

6.8 The Purchaser at all times shall be entitled to make a payment before the date on which it is due in terms of this Contract or to make larger payments than the payments for which this Contract provides or, if the Property is registrable, the Purchaser may tender payment of all amounts owing in terms of this Contract and claim transfer of the Property against payment of such amounts.

Comment [SF10]: ALA section 17; NCA section 126

6.9 Notwithstanding anything to the contrary contained herein, all amounts owing under and in terms of this Contract shall be paid to the Seller by not later than the Repayment Date recorded in Section N(g) of the Schedule. The Purchaser shall be entitled and obliged to take transfer of the Property against the payment of such amounts.

6.10 All payments are to be made in South African currency free of bank charges and other expenses. The Purchaser acknowledges that the Conveyancers are precluded from investing the deposit in a Savings account until the Purchaser has provided the Conveyancers with all documents required in terms of FICA.

6.11 Subject to the NCA, the Purchaser shall not have the right to defer or withhold payment of any amounts due and payable in terms of this Contract.

7.

**Place of Payment**

All instalments due by the Purchaser to the Seller in terms of the Contract shall be paid into the Seller's Bank Account without deduction or demand or at such other place as the Seller may from time to time by written notice appoint.

8.

**Withholding Tax**

**Comment [SF11]:** Optional. If applicable, the Conveyancers should provide for a large enough deposit to cover the withholding tax liability

**EITHER:**

8.1 The Seller warrants that the Seller is a resident of the Republic of South Africa as defined in Section 1 of the Income Tax Act, 1962, and the Seller hereby indemnifies and holds the Conveyancers harmless against any claim for payment of withholding tax which may be made by SARS.

8.2 Notwithstanding the Seller's warranty, should the Conveyancers believe that the Seller is a non-resident, the parties hereby irrevocably authorise and instruct the Conveyancers upon registration of transfer to withhold the prescribed percentage of the purchase price and, within 14 (fourteen) days of Date of Transfer, to pay this sum to SARS on behalf of the Seller.

**OR**

8.3 The Seller is not a resident of the Republic of South Africa for the purposes of the Income Tax Act, 1962, and the Seller acknowledges

that the Purchaser is obliged to withhold from the purchase price the amount prescribed in section 35A of the Income Tax Act, 1962, and on registration of transfer to pay such amount to SARS unless the amount has been reduced (or the requirement to withhold waived) by SARS.

- 8.4 The Conveyancers are hereby irrevocably and in rem suam authorised to deduct the withholding tax from the deposit or the proceeds of the selling price and to pay such tax to SARS. If the Seller is a natural person, the amount to be withheld will be 5% of the selling price of the Property, if a company 7,5% and if a trust 10%.

Comment [SF512]: This allows the Conveyancers to deduct the amount of any withholding tax.

9.

**Fixtures and Fittings**

Comment [SF13]: optional

The Property is purchased together with all fixtures and fittings of a permanent nature such as TV aerials, burglar guards, light fittings, fitted cupboards, pelmets, fitted carpets, air-conditioning units, security systems, gate controls, swimming pool equipment and any other fixtures, trees, shrubs or plants, as the case may be.

10.

**Voetstoots**

- 10.1 Subject to and apart from any warranties given in terms of this Contract, the Property together with all improvements thereon is sold voetstoots, subject to all defects whether patent or latent, and subject to all servitudes and conditions whether contained in the title deeds or otherwise. The Purchaser acknowledges being fully acquainted with the Property, its extent and locality.

10.2 Notwithstanding the foregoing, the Seller warrants that to the best of the Seller's knowledge and belief, the Municipality has given its approval to building plans of all buildings and structures situate on the Property for which building plans are required. If it is discovered that as built building plans are outstanding, the Seller undertakes forthwith to have such plans drawn and approved by the Municipality at the Seller's cost.

11.

**Title Deeds**

Comment [SF14]: optional

This Contract is subject to and conditional upon the Seller supplying the Purchaser with a copy of the title deeds and diagram of the Property within seven (7) days of the Date of Signature and the Purchaser within a further period of five (5) days confirming to the Seller that the Purchaser is satisfied that the title deeds do not contain any onerous terms or conditions.

12.

**Beacons**

Comment [SF15]: optional

The Seller undertakes at the Seller's cost to flag and locate the beacons on the boundaries of the Property within ten (10) days of the Date of Signature. Should the boundaries be different to those pointed out by the Seller, the Purchaser shall have the right to resile from the purchase of the Property.

13.

**Electrical Clearance Certificate**

Comment [SF16]: optional

Within thirty (30) days of the Date of Signature, the Seller at the Seller's expense shall provide the Purchaser with a Certificate of Compliance issued by an authorised electrician who is an accredited person in terms of the Electrical Installation Regulations to the effect that the electrical installations in the Property comply with the provisions of Regulation 4 (1) or that the installations are



reasonably safe, as the case may be. Should remedial work be required prior to the issue of the certificate, such work shall be carried out at the expense of the Seller.

14.

**Pest Control Certificate**

Comment [SF17]: optional

The Seller shall at the Seller's expense, within thirty (30) days of the Date of Signature, provide the Purchaser with a certificate by a suitably qualified inspector to the effect that the buildings on the Property are either visibly free of infestation by wood destroying insects and fungi or that any affected wood has been removed and replaced with satisfactorily pre-treated wood of suitable quality and that all other wood has been treated against possible infestation by a duly registered pest control operator to the satisfaction of the inspector. The delivery to the Purchaser of such a Certificate shall constitute full compliance by the Seller of the Seller's obligations in terms of this clause.

15.

**Warranties**

Comment [SF18]: optional

The Seller warrants that, to the best of the Seller's knowledge and belief:

15.1 No person and no representative of any community has, in terms of the Restitution of Land Rights Act No. 22 of 1994, lodged a claim for the restitution of the Property or any right in the Property. The Seller is not aware of any pending claim for restitution.

15.2 The Seller is not aware of any encroachments nor of any pending expropriation of the Property or of any portion thereof nor is the Seller aware of any proposed rezoning of the Property. The Seller has disclosed to the Purchaser all information available to the Seller concerning the Property and its use.

- 15.3 The Property is unoccupied and no person may claim to be an occupier of the Property in terms of the Extension of Security of Tenure Act No. 62 of 1997.
- 15.4 The Property is free of squatters and no person may claim to be an unlawful occupier in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998.
- 15.5 No person has an option or pre-emptive right to purchase the Property

16.

**Agent**

**EITHER**

This Contract was concluded without the assistance of an estate agent and no selling commission is payable. The Purchaser warrants that no one introduced the Purchaser to the Seller in circumstances which could give rise to a claim for the payment of an introductory fee or selling commission.

**OR**

This Contract was concluded with the assistance of the Estate Agent and the Broker recorded in Sections P and Q of the Schedule. The agreed selling commission will be due and payable by the Seller upon the Date of Recording. Should the Purchaser breach any of the terms and conditions of this Contract and the Seller cancel the sale in consequence thereof, the Purchaser will be liable to the Seller for the payment of damages equal to the commission and VAT which would have been payable by the Seller.

17.

**Rights of the Purchaser**

In addition to the other rights of the Purchaser which are recorded in this Contract, it is acknowledged that :

17.1 The Purchaser is entitled to choose the official language in which the Contract is to be drawn up. The Purchaser confirms having chosen English.

Comment [SF19]: ALA section 5;  
NCA section 63

17.2 The Purchaser is entitled to perform the obligations of the Owner of the Property or of an intermediary in terms of Section 11 of the ALA;

17.3 The Purchaser is entitled to receive a free copy of this Contract within thirty (30) days of the Date of Signature. If the Seller fails to deliver a copy after receiving fourteen (14) days written notice by registered post to furnish the Purchaser with a copy, the Purchaser shall not be liable for the payment of interest in terms of this Contract until such time as the Purchaser receives a copy of the Contract from the Seller;

Comment [SF20]: ALA section 13;  
NCA section 93

17.4 If the Property is encumbered by a mortgage bond or bonds, the Purchaser is entitled to receive from the Seller, within thirty (30) days of the Date of Signature, a Certificate by the mortgagee or mortgagees drawn in accordance with the provisions of Section 7 of the ALA. The Purchaser acknowledges having received the Certificate.

17.5 If the Seller is an intermediary, the Seller shall, within thirty (30) days of the Date of Signature, forward to the Purchaser a Certificate prepared by the Owner of the Property in compliance with the provisions of Section 8 of the ALA.

17.6 The Purchaser at any time and on payment of the prescribed fee may require a mortgagee to furnish the Purchaser with a certificate in terms

of section 9(3) of the ALA, which records the amount of the Seller's indebtedness to the mortgagee.

18.

**Obligations of the Purchaser**

In addition to any other obligations contained elsewhere in this Contract, the Purchaser shall be obliged:-

18.1 In terms of Section 9 of the ALA and at the Purchaser's cost, forthwith to notify the mortgagee of the conclusion of this Contract, of the Purchaser's domicilium address and such other particulars as the mortgagee reasonably may require.

18.2 If the Purchaser is a remote Purchaser, i.e. if the Purchaser has purchased the Property from an intermediary who is not the Owner of the Property, the Purchaser shall, in terms of Section 21 of the ALA, forthwith notify the Owner of the Property, of the conclusion of this Contract, the Purchaser's domicilium address and the name and address of the intermediary.

19.

**Statement by Purchaser**

The Purchaser:

19.1 understands the risks and the costs as well as the Purchaser's rights and obligations under this Contract;

19.2 states that entering into this Contract will not cause the Purchaser to become over-indebted as contemplated in the NCA;

- 19.3 fully and truthfully has answered all requests for information made to the Purchaser by or on behalf of the Seller which led to the conclusion of this Contract;
- 19.4 acknowledges that the Seller has given the Purchaser a pre-agreement statement and quotation (in the form of the Offer Letter and Quotation);
- 19.5 has the necessary legal capacity to enter into this Contract and is not subject to an administration order in terms of Section 74 of the Magistrates' Courts Act and has not been sequestrated as insolvent;
- 19.6 did not receive an offer from the Seller which automatically will result in an agreement if the Purchaser does not decline the offer;
- 19.7 was not induced, harassed or forced to enter into this Contract;
- 19.8 has not been required or induced to enter into any supplementary agreements to this Contract and the Offer Letter and Quotation;
- 19.9 records that this Contract was completed in full at the time the Purchaser signed it; and
- 19.10 is aware that, when this Contract takes effect, the Seller must report the relevant details hereof required in terms of Section 69(2) of the NCA to the National Credit Register or a registered credit bureau.

Comment [SF21]: NCA section 74

20.

**Joint and Several**

Comment [SF22]: optional

Should there be more than one Purchaser, the obligations of the Purchasers hereunder shall be joint and several.

21.

**Right of Termination by the Purchaser**

21.1 Notwithstanding anything to the contrary contained herein, the Purchaser shall have the right, in terms of Section 121 of the NCA and Section 29A of the ALA, to terminate this Contract by written notice delivered to the Seller within five (5) Business Days of the Date of Signature.

21.2 The notice will be effective only if it:

- (a) Is signed by the Purchaser or the Purchaser's agent acting on the Purchaser's written authority;
- (b) Identifies this Contract as the agreement to be revoked; and
- (c) Is unconditional; and
- (d) Contains a tender to return the Property to the Seller, if possession has been transferred.

21.3 Should the Contract be terminated pursuant to sub-clause 21.1 above, the following provisions shall apply:

- (a) Any amount paid or deposited by the Purchaser shall be refunded to the Purchaser within seven (7) business days.
- (b) The Purchaser shall be obliged to pay to the Seller:
  - (i) the reasonable cost of returning the Property to the Seller;

Comment [SF23]: ALA allows 10 days but NCA prevails

- (ii) a reasonable rental for the occupation of the Property for the time that the Purchaser was in occupation thereof.
- (c) No penalty or cancellation fee shall be payable by either party to the other.

22.

**Credit Bureaux**

22.1 The Purchaser confirms that the Seller may transmit to registered credit bureaux information concerning:

- (a) this Contract; and
- (b) any non-compliance by the Purchaser with the terms of this Contract.

22.2 The Purchaser acknowledges that a credit bureau will provide the Seller with a credit profile and possibly a credit score on the creditworthiness of the Purchaser. The Purchaser has the right to contact the credit bureau to have the credit records disclosed and to correct any inaccurate information.

Comment [SF24]: NCA section 72

23.

**Contact Details**

Comment [SF25]: NCA Regulation 32(2)(q)(iii)

The Purchaser is provided with the following contact details:

23.1 the National Credit Regulator – Tel: (011) 647 4400  
Fax: (011) 484 6122  
PO Box 2694  
Houghton  
2041

23.2 the National Consumer Tribunal – Tel: (0860) 627 627;

23.3 Credit Bureaux:

- (a) Experian – (0861) 105 665;
- (b) Trans Union ITC – (086) 148 2482.

24.

**Destruction**

Comment [SF26]: optional

Should any buildings or improvements on the Property be substantially damaged or destroyed prior to the Date of Recording, the Purchaser shall be entitled, on written notice to the Seller, to rescind from this Contract and neither party shall have any further claim against the other.

**Recording of Contract**

25.1 The Purchaser is entitled to have this Contract recorded against the title deeds of the Property in terms of Section 20 of the ALA. The Seller and Purchaser jointly undertake to instruct the Conveyancers to attend to the recording of this Contract, and will sign the documents necessary to procure the recording.



- 25.2 The Seller undertakes not to encumber or further encumber the Property by a Mortgage Bond on or before the Date of Recording.
- 25.3 To facilitate compliance with FICA, the parties undertake forthwith to supply the Conveyancers with copies of the documents reflected on the Document Schedule annexed hereto.
- 25.4 The parties warrant that all VAT (if applicable) and income tax returns they are obliged to submit to SARS have been duly submitted and all VAT (if applicable) and income tax due by each party to SARS has been paid.
- 25.5 The Conveyancers will not be required to ensure that the certificates referred to in clauses 13 and 14 have been issued prior to the Date of Recording.

Comment [SF27]: optional

## 26.

### **Possession and Occupation**

- 26.1 Possession and vacant occupation of the Property shall pass to the Purchaser on the Date of Occupation from which date the Purchaser shall be entitled to all income from the Property and from which date the Purchaser shall be liable for and shall pay rates, levies, the cost of insurance and all other outgoings in respect of the Property. Prepaid income and expenses and expenses which have accrued but have not been paid by the Seller shall be adjusted between the Purchaser and the Seller at that date.
- 26.2 The risk in and to the Property shall pass to the Purchaser on the Date of Occupation.

Comment [SF28]: NCA section 102

## 27.

**Insurance**

Comment [SF29]: NCA section 102; NCA Regulation 33

- 27.1 Until the Property has been registered in the Purchaser's name, the Seller shall insure the Property with an insurance company selected by the Seller against such risks and perils as the Seller may require and for such sums as the Seller may determine (subject to section 106 of the NCA). The premiums shall on request be paid by the Purchaser.
- 27.2 The Purchaser shall be entitled to request that the amount of insurance be increased provided the Seller pays the increase in premiums arising from the increase in the amount of insurance. The Seller will not be liable to the Purchaser or any other person for any omission, inadequacy or invalidity of insurance effected or procured in terms of this clause.
- 27.3 The Seller and any mortgagee shall be entitled to receive from the insurer all moneys payable from any claim arising out of the loss of or damage to the Property to the extent of their respective interests. Moneys so received shall at the discretion of the Seller and/or mortgagee be applied wholly or partially towards the restoration of the buildings on the Property on such terms and conditions as they determine or in reduction of the Purchaser's indebtedness hereunder.
- 27.4 Although not compulsory, the Purchaser acknowledges that it is to the Purchaser's benefit to obtain and have life assurance throughout the duration of the Contract, so that on the death of the Purchaser, the outstanding obligations under the Contract can be settled. An existing policy can be used or a new life assurance policy obtained through an insurer of the Purchaser's choice.

28.

**Statements of Account**

The Seller is obliged, free of charge, not later than six (6) months from the Date of Signature and thereafter within thirty (30) days of the end of each successive period of six (6) months following the date of the first statement of account, to send to the Purchaser at the Purchaser's domicilium address, a statement of account drawn in accordance with the provisions of Section 16 of the ALA and Section 109 of the NCA. If the Seller fails to furnish the Purchaser with a statement of account after having received thirty (30) days written notice sent by registered post to furnish the statement, the Purchaser shall not be liable for the payment of interest in terms of this Contract until such time as the Purchaser receives the statement from the Seller.

Comment [SF30]: ALA section 16, NCA section 108; NCA Regulation 35

29.

**Maintenance of Property**

The Purchaser shall not make any improvements and/or additions to the Property without the prior written consent of the Seller. The Purchaser at all times shall maintain and keep the land comprised in the Property tidy and in good order and condition and shall keep all buildings and structures, piping, fences and other improvements on the Property in a good state of repair. The Seller or the Seller's duly authorised agents at all reasonable times shall be entitled to enter upon and inspect the Property. If the Purchaser has failed to comply with the provisions of this clause, the Seller may, at the cost of the Purchaser undertake the necessary maintenance or repairs to the Property.

30.

**Transfer**

30.1 After the Date of Recording and when the Purchaser is in a position to pay the balance of the purchase price and take transfer of the Property

(which shall not be later than the Repayment Date), the parties shall instruct the Conveyancers to attend to the transfer of the Property. The parties undertake to sign the transfer documents when called upon to do so.

30.2 The Purchaser acknowledges that:

(a) The Property is not the subject of a separate title deed **OMIT IF NOT APPLICABLE**;

(b) The latest date at which the Property shall be registrable in the name of the Purchaser is \_\_\_\_\_ being a date not later than five (5) years from the Date of Signature **OMIT IF SUBCLAUSE A IS NOT APPLICABLE**

Comment [SF31]: ALA section 6(4)

(c) **OMIT IF SUBCLAUSE A IS NOT APPLICABLE** If the Property is not registrable by the date referred to in subclause (b) above, the Purchaser will be entitled to cancel this Contract and in such event, the provisions of Section 28(1) of the ALA shall apply as set out in clause 33 below. Alternatively the Purchaser may abide by the Contract, in which case the Purchaser shall not be required to pay interest from the date referred to in subclause (b) above until the date on which transfer is tendered by the Seller.

Comment [SF32]: ALA section 6(5)

(d) The Purchaser shall not be entitled to transfer of the Property unless the purchase price has been paid in full and/or secured to the satisfaction of the Seller and all transfer and bond costs, if any, have been paid.

30.3 If the Purchaser has paid not less than 50% of the purchase price and if the Property is registrable, the Purchaser shall be entitled to demand from the Seller transfer of the Property on condition that simultaneously

with the registration of transfer there is registered in favour of the Seller a first Mortgage Bond over the Property to secure the balance of the purchase price and interest owing in terms of the Contract. The conditions as to the rate of interest and redemption as well as other conditions of the Mortgage Bond shall not be more onerous than the conditions in this Contract. Failure by the Seller to tender transfer of the Property within three (3) months from the date of the demand by the Purchaser will entitle the Purchaser to cancel the purchase of the Property and invoke the provisions of section 28 of the ALA, as set out in clause 33 below.

Comment [SF33]: ALA section 27

### 31.

#### Loan

31.1 If the Seller at any time arranges the Loan on behalf of the Purchaser, the Purchaser shall;

Comment [SF34]: ALA section 6(1)(t)(v)(bb)

- (a) Within fourteen (14) days after the Purchaser has been requested by written notice sent to the address chosen as the Purchaser's *domicilium citandi et executandi*, complete a Loan application form and provide all necessary information required by the intended Mortgagee for purposes of the Loan and furnish the Seller with the completed Loan application and information; and
- (b) Should the Loan be granted, forthwith sign all documents to facilitate the simultaneous registration of the Mortgage Bond with the transfer of the Property.

31.2 The Loan shall provide for payment of all amounts owed by the Purchaser to the Seller in terms of this Contract as well as the costs of transfer and the costs of registration of the Mortgage Bond. The Loan

shall, as to the rate of interest and redemption, not be more onerous than the terms which at the time of transfer apply in respect of a loan secured by a first Mortgage Bond over Property granted by a registered bank for the amount in question and on the security of the same kind or class of Property.

Comment [SF35]: ALA section 15(2)

31.3 If the Purchaser fails to comply with the provisions of this clause 31, the Seller shall be entitled to cancel this sale and the provisions of Section 28(1) of the ALA, as set out in clause 33, shall apply.

Comment [SF36]: ALA section 28(1)

## 32.

### Costs

32.1 The Purchaser shall pay the costs of transfer including the costs of recording of this Contract, any subsequent cancellation of the recording, transfer duty (OMIT TRANSFER DUTY IF SELLER IS A VENDOR), the costs of negotiation and preparation of this Contract and a proportionate share of the rates referred to in clause 32.3 below. The Purchaser undertakes to pay the pro forma conveyancing account of the Conveyancers upon rendition thereof.

32.2 The Purchaser acknowledges that if the transfer duty reflected in Section R of the Schedule is not paid within a period of six (6) months from the Date of signature, penalty interest will accrue on the transfer duty at the rate of 10% per annum. The Purchaser may through the Conveyancers pay the duty as a deposit.

32.3 The Purchaser acknowledges that for the Conveyancers to obtain a rates clearance certificate, it may be necessary to pay an estimate of future rates and of future utility charges to the Municipality. The amount stated in Section S of the Schedule is the annual amount of municipal

rates on the Property. The Purchaser shall on request, pay the Conveyancers what they estimate to be the Purchaser's share of the rates. Should the Seller pay rates until the Date of Transfer, the Purchaser shall, on request, reimburse the Seller.

32.4 The Seller shall be entitled to raise and the Purchaser shall pay administrative or accounting fees and charges from time to time for the administration of the Instalments as provided for in the NCA.

Comment [S 32.4]: optional

32.5 If the Purchaser defaults on any payment obligation under this Contract, the Seller will levy (and the Purchaser will be liable to pay) default administration charges for each letter the Seller is obliged to write to the Purchaser in terms of the NCA. The charges will be equal to those payable for a registered letter of demand in an undefended action in the Magistrates' Courts Act, together with necessary expenses incurred in delivering the letter.

32.6 Should the Seller instruct an attorney to take action against the Purchaser arising from any breach of the Purchaser's obligations in terms of this Contract, the Purchaser shall be liable for and shall pay all such attorney's fees, including collection charges, as between attorney and own client.

33.

**Section 28 of the ALA**

33.1 If either party elects to invoke the provisions of section 28 of the ALA, then:

- (a) Each party shall be entitled to recover from the other that which the party has performed under the Contract;

- (b) The Purchaser may recover from the Seller:
- (i) interest at the prescribed rate on any payment that the Purchaser has made in terms of the Contract from the date of payment to the date of recovery; and either
  - (ii) reasonable compensation for necessary expenditure the Purchaser has incurred, with or without the Seller's authority, in regard to the preservation of the Property or any improvement thereon; or
  - (iii) reasonable compensation for any improvement effected by the Purchaser with or without the Seller's express or implied consent which enhances the market value of the Property
- (c) The Seller may recover from the Purchaser:
- (i) reasonable compensation for the Purchaser's occupation, use or enjoyment of the Property; and
  - (ii) compensation for any damage caused intentionally or negligently to the Property by the Purchaser or any person for the actions of whom the Purchaser may be liable.

34.

**Debt Counsellor**

If the Purchaser experiences difficulty in meeting repayments, the Seller invites the Purchaser to contact the Seller without delay. The Purchaser has the right to apply to a debt counsellor to be considered for an order to be declared



over-indebted in terms of Section 86 of the NCA in accordance with the process set out in that Section.

35.

**Dispute Resolution**

The Purchaser shall be entitled to:

- 35.1 resolve a dispute by alternative dispute resolution in terms of the NCA; and
- 35.2 file a complaint with the National Credit Regulator or the National Consumer Tribunal.

36.

**Special Conditions**

The special conditions reflected in Section 1 of the Schedule shall be part of this Contract and the failure by any party to comply with any of those conditions shall constitute a breach of this Contract.

37.

**Breach**

37.1 Should the Purchaser:

- (a) breach any of the terms and conditions of the Offer Letter and Quotation, or of this Contract including any annexures hereto;
- or

- (b) compromise or attempt to compromise with any of the Purchaser's creditors; or
- (c) be sequestrated or voluntarily surrender the Purchaser's estate,

then the Purchaser will be in default of the Purchaser's obligations under this Contract and all amounts owing under this Contract shall, after thirty (30) days of delivery of the notice referred to in clause 37.2 and without any further action by either party, forthwith be due, owing and payable.

37.2 If the Purchaser is in default, the Seller may give the Purchaser written notice (by hand delivery or by registered post) of such default and may propose that the Purchaser refer this Contract to a debt counsellor, alternative dispute resolution agent, consumer court or court of jurisdiction, with the intent that the parties resolve any dispute under this Contract or develop and agree on a plan to bring payments up to date;

Comment [SF38]: NCA section 129

37.3 if:

- (a) the Seller has given the Purchaser notice referred to in clause 37.2 above or the Seller has given notice to terminate any debt review process under Section 86 of the NCA which may then be under way in respect of this Contract; and
- (b) the Purchaser has been in default under this Contract for at least 20 (twenty) business days; and
- (c) at least 10 (ten) business days have elapsed since the Seller delivered the notice contemplated in clause 37.2 above; and

- (d) in the case of a notice in terms of clause 37.2 above, the Purchaser has not responded to that notice, or has responded to the notice by rejecting the Seller's proposal;

then the Seller may commence legal proceedings to:

- (a) enforce this Contract and recover legal costs and default administration charges from the Purchaser; or
- (b) cancel this sale; and
- (c) institute action for damages.

37.4 If the Seller in the same calendar year has handed to or sent to the Purchaser two notices at intervals of more than thirty days, the Seller may in any subsequent notice handed or sent to the Purchaser in that calendar year, make demand on the Purchaser to carry out the Purchaser's obligations within a period of not less than seven days calculated from the date on which the notice was handed or sent to the Purchaser.

37.5 Should the Seller cancel this sale as aforesaid, the Seller shall be entitled (subject to section 151 of the NCA) to retake possession and occupation of the Property and in addition the Seller shall be entitled either:-

- (a) declare all moneys paid by the Purchaser to the Seller, including the interest thereon, or deposited in trust, including any interest earned on moneys deposited in trust with the Conveyancers, to be forfeited to the Seller and to recover all arrear instalments and other amounts due but unpaid at the date of cancellation. The Purchaser in such event hereby

authorises the Conveyancers holding such moneys in trust to pay the moneys to the Seller; or

- (b) To claim damages the Seller may have suffered (subject to section 12 of the ALA) and to this end to re-sell the Property either by public auction or by private treaty in which event the Seller shall be entitled to retain all payments made on account of the purchase price by the Purchaser (and/or to receive all moneys, including interest, being held in trust on account of the purchase price, the Purchaser hereby authorising the Conveyancers to make payment of such moneys to the Seller and to retain such moneys) until such time as the Seller's damages have been ascertained, whereupon the aforesaid payments made by the Purchaser shall be set off against the damages.

38.

**Domicilia**

38.1 The parties choose as their *domicilia citandi et executandi* for the service of notices given in terms of this Contract and legal processes the following addresses:

Comment [SF39]: ALA section 23;  
NCA section 96

- (a) Seller: the address reflected in Section A(b) of the Schedule
- (b) Purchaser: the address reflected in Section A(b) of the Schedule

38.2 Any notice sent to the above addresses by prepaid registered post shall be deemed to have been received five (5) days after the date of

posting. Alternatively a notice may be delivered by hand at the above addresses which will be the date of receipt by the addressee.

39.

**Jurisdiction**

The parties consent in terms of Section 45 of the Magistrates' Courts Act of 1944 to any legal proceedings being instituted in the Magistrate's Court of any district having jurisdiction in respect of the Purchaser by virtue of the provisions of Section 28 (1) of the said Act. Notwithstanding such consent, the Seller shall have the option of instituting proceedings against the Purchaser in the High Court of South Africa unless the matter falls within the jurisdiction of the Magistrates' Court.

40.

**Conflict**

Comment [SF40]: NCA section 172, schedule 1

Should there be any conflict between a clause of this Contract which complies with the ALA and a clause which complies with the NCA, the clause which complies with the NCA shall prevail.

41.

**Severability**

The setting aside or suspension of any provision contained in this Contract shall not render the Contract void but instead the provision shall be severed from this Contract or altered by a court of competent jurisdiction (if it is reasonable to do so having regard to the Contract as a whole).

42.

**Variations**

Comment [SF41]: NCA sections 116 and 117

This Contract contains all of the terms and conditions of the agreement between the Seller and the Purchaser and is the whole and only contract between them. Save as otherwise provided in the NCA, no amendments to or variations of this Contract shall be binding upon the parties unless reduced to writing and signed by each of the parties.

43.

**Representations**

The Purchaser acknowledges that the Purchaser has not relied upon any representations or warranties other than those contained in this Contract.

44.

**Indulgences**

No indulgence, leniency or extension of time which the Seller may grant to the Purchaser in any way shall preclude the Seller from exercising the Seller's rights in terms of this Contract and shall not be deemed to be a waiver of the Seller's rights hereunder.

EXAMPLE DOCUMENT



**INFORMATION FOR CONVEYANCERS**

**Seller**

1. FULL NAMES: \_\_\_\_\_
  2. INCOME TAX REFERENCE NO: \_\_\_\_\_
  3. COUNTRY OF RESIDENCE: \_\_\_\_\_
- If married:
4. FULL NAMES OF SPOUSE: \_\_\_\_\_
  5. WHETHER MARRIED IN OR OUT OF COMMUNITY (BY ANC): \_\_\_\_\_
  6. PHYSICAL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
  7. POSTAL ADDRESS: \_\_\_\_\_
  8. OFFICE HOURS TELEPHONE: \_\_\_\_\_
  9. FAX: \_\_\_\_\_
  10. E-MAIL: \_\_\_\_\_
  11. NAME, BRANCH & LOAN ACCOUNT OF THE BANK WHICH HOLDS THE TITLE DEEDS: \_\_\_\_\_
  12. RATE ACCOUNT NO: \_\_\_\_\_
  13. ELECTRICITY ACCOUNT NO: \_\_\_\_\_
  14. WATER ACCOUNT NO: \_\_\_\_\_

**Purchaser**

1. FULL NAMES: \_\_\_\_\_
  2. INCOME TAX REFERENCE NO: \_\_\_\_\_
  3. COUNTRY OF RESIDENCE: \_\_\_\_\_
- If married:
4. FULL NAMES OF SPOUSE: \_\_\_\_\_
  5. WHETHER MARRIED IN OR OUT OF COMMUNITY (BY ANC): \_\_\_\_\_
  6. PHYSICAL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
  7. POSTAL ADDRESS: \_\_\_\_\_
  8. OFFICE HOURS TELEPHONE: \_\_\_\_\_
  9. FAX: \_\_\_\_\_
  10. E-MAIL: \_\_\_\_\_



**DOCUMENTS SCHEDULE - THE FINANCIAL INTELLIGENCE CENTRE ACT**

1. NATURAL PERSON
  - (a) Copy of identity document;
  - (b) Copy of marriage certificate and Ante-Nuptial contract, if applicable;
  - (c) Copy of document reflecting residential address, such as electricity or water account or any other account addressed to residential address;
  - (d) Copy of a document issued by the South African Revenue Service on which income tax number is recorded;
  - (e) Details of nationality if not a South African citizen.
  
2. COMPANY
  - (a) Copy of Certificate of Incorporation (CM1);
  - (b) Copy of Notice of Registered Office and Postal Address (CM22);
  - (c) Copy of Form CM29 (Register of Directors);
  - (d) Full names of the Directors of company;
  - (e) Full names of the Shareholders of company;
  - (f) Document depicting trade name and operating address of the company, such as a utility bill, Telkom account or bank statement;
  - (g) Copy of identity document of the manager and all authorised representatives of the company (the directors) and all individuals who hold 25% or more of the voting rights in the company (the shareholders) and advice as to the nationality of each;
  - (h) Copy of VAT Registration Certificate;
  - (i) Copy of document issued by the South African Revenue Service on which the company income tax number is recorded;
  - (j) Residential addresses of the manager and of the individuals who hold more than 25% of the voting rights i.e. the Directors and Shareholders.
  - (k) If a company or close corporation holds 25% or more of the voting rights, then similar information concerning the company as set out above including information on shareholders and directors or a copy of the Founding Statement if it is a close corporation and addresses of the local office and head office of the company or close corporation.
  
3. CLOSE CORPORATION
  - (a) Copy of Founding Statement (CK1), and any Amended Founding Statement (CK2);
  - (b) Document containing trade name and operating address of the close corporation, such as utility bill, Telkom account or bank statement;
  - (c) Copy of identity document for each member of the close corporation and all authorised representatives and advice as to the nationality of each;
  - (d) Copy of VAT Registration Certificate;
  - (e) Copy of document issued by the South African Revenue Service on which the close corporation income tax number is recorded.
  
4. TRUST
  - (a) Copy of Deed of Trust;
  - (b) Copy of Letters of Authority issued by the Master of the High Court;
  - (c) Copies of identity documents in respect of founder of the trust, each trustee and each beneficiary who can be determined;
  - (d) Nationality and residential addresses of the foregoing persons;
  - (e) Copy of document issued by the South African Revenue Service on which the income tax number of the trust is recorded;
  - (f) Copy of the VAT Registration Certificate (if any);
  - (g) Copy of the death certificate if the founder of the trust has died;
  - (h) If a trustee or beneficiary is a legal person, copy of the founding document and the addresses of the registered office and local office of the legal person.