

**OFFER TO PURCHASE AN ENTERPRISE AGREEMENT  
IN RE: LOWLANDS BEEF CC (IN LIQUIDATION)**

The undersigned Offeror:

**OFFEROR'S NAME:** \_\_\_\_\_  
**IDENTITY/REGISTRATION NUMBER:** \_\_\_\_\_

(“hereinafter referred to as the **Offeror**”)

hereby offers to purchase from:

**LOWLANDS BEEF CC (IN LIQUIDATION)**

Registration Number: 2008/123071/23

Masters Ref: N000242/2023

duly represented by

Glen Vivian Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O.  
in their capacities as the appointed under Master’s Reference: N000242/2023 as the joint  
Liquidators of Lowlands Beef CC (in liquidation), registration number: 2008/123071/23,

(“hereinafter referred to as the **Offeree**”)

the Enterprise upon the terms and conditions contained in this Offer to Purchase:

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## 1. DEFINITIONS AND INTERPRETATION

The words and expressions set out below shall for the purpose of this Offer to Purchase have the meanings assigned opposite them unless the context clearly indicates a contrary intention:

- 1.1. **“Acceptance Deposit”** means the payment of a non-refundable deposit equal to ten percent (10%) of the Purchase Price payable to the Conveyancers by the Offeror within three (3) days of the Acceptance Notice being delivered;
- 1.2. **“Acceptance Notice”** means the written notice issued by the Liquidators, informing the Offeror that the Offeree has accepted this Offer;
- 1.3. **“Auctioneers”** means Devhula Auctioneers Proprietary Limited, registration number: 2017/220005/07, situated at Block A, Equity Park, 257 Brooklyn Road, Brooklyn, Pretoria, with VAT number: 4280291438, who are charged with administering the tender process, which is the subject of the Invitation to Tender;
- 1.4. **Balance of the Purchase Price** means in relation to an Offer accepted by the Offeree, the amount of the full Purchase Price LESS the Acceptance Deposit;
- 1.5. **“Business Day”** means any day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;
- 1.6. **“Cattle”** means the cattle which are the subject of the Offer to Purchase detailed in **Annexure ‘C’**, of which 40% (forty percent) is owned by Lowlands Beef and 60% (sixty percent) is owned by the Lowlands Farming;

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- 1.7. **“Commission”** means the commission payable by the Offeree to the Auctioneers, as detailed in the Invitation to Tender;
- 1.8. **“Conveyancers”** means Tim Du Toit Attorneys, 433 Rodericks Rd, c/o Sussex Ave, Lynwood, Pretoria, 0081, marked for the attention of Jacques Nel;
- 1.9. **“Conveyancer’s Trust Account”** means the trust bank account into which the Purchase Price is to be paid, which shall be the bank account as nominated by the Conveyancers in writing;
- 1.10. **“Date of Transfer”** means on the date of registration of Transfer of the Farms into the Offeror’s name;
- 1.11. **“Enterprise”** means collectively all the Farms, Cattle and Farming Equipment;
- 1.12. **“Expiry Date”** means the date on which the this Offer to Purchase will expire, being **31 January 2024**;
- 1.13. **“Farming Equipment”** means the moveable property detailed in **Annexure ‘E’**;
- 1.14. **“Farms”** means the immovable properties as described in **Annexure ‘B’** attached hereto, which are owned by the Offeree, being Lowlands Beef CC and includes the centre-pivot irrigation systems situated on such Farms, if any;
- 1.15. **“Final Payment Date”** means sixty (60) calendar days calculated from the date of the Acceptance Notice;
- 1.16. **“Information Schedule and Consent Form”** means the document headed Tenderer Information Schedule and Consent Form, containing the Offeror’s details which was

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submitted by the Offeror as part of its Tender.

- 1.17. **“Invitation to Tender”** means the document titled *“Invitation to Tender”* dated 23 November 2023, together with the annexures attached thereto, in terms of which the Liquidators called for tenders for the purchase of *inter alia* the Enterprise;
- 1.18. **“Liquidators”** mean Glen Vivian Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O. collectively, in their capacities as the duly appointed joint liquidators of Lowlands Beef;
- 1.19. **“Lowlands Beef”** means Lowlands Beef CC (In Liquidation), registration number: CK2008/123071/23;
- 1.20. **“Lowlands Farming”** means Lowlands Farming Partnership;
- 1.21. **“Offer to Purchase”** or **“Offer”** means this offer to purchase together with the annexures hereto;
- 1.22. **“Parties”** means the Offeree and the Offeror and **“Party”** shall mean either one of them, as the context indicates;
- 1.23. **“Purchase Price”** means the purchase price detailed in **Annexure ‘A’** hereto, stated exclusive of VAT, which the Offeror offers to the Offeree for the Enterprise;
- 1.24. **“Offeror”** means the party described as such on the first page of this Offer to Purchase an Enterprise Agreement;
- 1.25. **“Offeree”** means the party described as such on the first page of this Offer to

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Purchase an Enterprise Agreement;

- 1.26. **“Registration Deposit”** means the deposit of R100,000.00 (one hundred thousand Rand) paid by the Offeror to the Auctioneers in terms of the Invitation to Tender to participate in the Tender process.
- 1.27. **“Signature Date”** means the date on which both the Offeror and Offeree have signed this Offer to Purchase an Enterprise Agreement;
- 1.28. **“Tender”** means the tender which is the subject of the Invitation to Tender;
- 1.29. **“Transfer/Transferred”** insofar as it relates to the Farms, means the registration of the Farms into the name of the Offeror in the Deeds Registry, Pietermaritzburg; and
- 1.30. **“VAT”** means value added tax as contemplated in the **Value Added Tax Act No. 89 of 1991** (as amended).

## 2. INTERPRETATION

In this Offer to Purchase:

- 2.1. words importing natural persons shall include a reference to bodies corporate and other legal *personae* and *vice versa*;
- 2.2. a reference to any one gender shall include a reference to the other gender;
- 2.3. a reference to the singular shall include a reference to the plural and *vice versa*;
- 2.4. annexures to this Offer to Purchase shall be deemed to have been incorporated herein and shall form an integral part hereof;

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- 2.5. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 2.6. where there is reference to a “day” or “days”, such days are ordinary calendar days which include Saturdays, Sundays and Public Holidays in the Republic of South Africa;
- 2.7. when any number of days is prescribed in this Offer to Purchase, same shall be reckoned exclusively of the first and inclusively of the last day;
- 2.8. a reference to a document, including but not limited to the Invitation to Tender, includes an amendment or supplement to or a replacement or novation of that document;
- 2.9. the clause headings appearing in this Offer to Purchase are for reference purposes only and shall not affect the interpretation hereof;
- 2.10. if any provision in any definition set out in the definitions clause of this Offer to Purchase or any other clause in this Offer to Purchase is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it may be set out only in the definitions clause or such other clause, effect shall be given thereto as if it were a substantive provision set out in the body of this Offer to Purchase;
- 2.11. this Offer to Purchase shall be binding and enforceable by the estates, heirs, executors, administrators, trustees, assigns or liquidators of the Parties as fully and effectually as if they made the Offer to Purchase and reference to any Party shall be deemed to include such Party’s executors, administrators, trustees, assigns or

liquidators, as the case may be;

- 2.12. where any term is defined within the context of any particular clause in this Offer to Purchase, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Offer to Purchase, notwithstanding that such term has not been defined in the clause setting out definitions;
- 2.13. any reference in this Invitation to Tender to the Enterprise being sold voetstoots shall mean that the Offeror accepts that it purchases the Enterprise as it stands and thereby indemnifying the Liquidators the Auctioneers, Lowlands Farming and ABSA Bank Limited against all claims for damages in respect of any defects in relation to the Enterprise, whether patent or latent, including all defects disclosed in the Tender Packs. Patent defects are those defects that are visible whereas latent defects are hidden and not discoverable through reasonable inspection;
- 2.14. the rule of interpretation that a contract will be interpreted against the party responsible for the drafting shall not apply to this Offer to Purchase and the Parties waive any rights they have to rely on such rules; and
- 2.15. the termination or expiry of this Offer to Purchase shall not affect those provisions of this Offer to Purchase which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

### 3. INVITATION TO TENDER

- 3.1. This Offer to Purchase shall be read together with the Invitation to Tender and the Offeror acknowledges that it has read and understood the contents of the Invitation to Tender and agrees to be bound by the provisions of the Invitation to Tender.
- 3.2. If there is a conflict between the provisions of this Offer to Purchase and the Invitation to Tender, the provisions of the Invitation to Tender shall prevail.

### 4. SALE

- 4.1. The Offeror hereby offers to purchase the Enterprise from the Offeree on the terms and subject to the conditions contained in this Offer to Purchase.
- 4.2. The Offer to Purchase shall remain valid and capable of being accepted by the Offeree at any time up to and including the Expiry Date.
- 4.3. This Offer to Purchase constitutes an irrevocable offer by the Offeror to purchase the Enterprise and will become a binding agreement of sale if signed by the Offeree.

### 5. PURCHASE PRICE AND PAYMENT

- 5.1. The Offeror offers to pay the Offeree the Purchase Price for the Enterprise.
- 5.2. The Offeree is registered as a vendor as defined in terms of the **Value Added Tax Act No. 89 of 1991**, with VAT number: 4910250812 and accordingly this transaction shall attract VAT at the prevailing rate of fifteen percent (15%).
- 5.3. The Purchase Price shall be paid as follows:

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- 5.3.1. The Offeror shall pay the Acceptance Deposit to the Conveyancer's Trust Account within 3 (three) days of the date of the Acceptance Notice, by way of an irreversible electronic bank transfer in immediately available funds;
- 5.3.2. The Balance of the Purchase Price shall either:
- 5.3.2.1. be paid by the Offeror in immediately available funds by way of an irreversible electronic bank transfer into the Conveyancer's Trust Account on or before the Final Payment Date; or
- 5.3.2.2. be secured by way of an irrevocable and unconditional bank guarantee which guarantee shall be furnished to the Conveyancers on or before the Final Payment Date. The guarantee shall be:
- 5.3.2.2.1. in the usual or customary form;
- 5.3.2.2.2. from a recognised financial institution in the Republic of South Africa;
- 5.3.2.2.3. subject to the approval of the Liquidators; and
- 5.3.2.2.4. expressed to be payable to the Offeree on the date on which the Conveyancers notify the financial institution issuing such guarantee in writing that the Farms has been Transferred.
- 5.3.3. Should the Offeror fail to pay the Acceptance Deposit within the 3 (three) day period contemplated in clause 5.3.1 above or should the Offeror have paid the Acceptance Deposit but failed to fulfil its obligations in terms of clauses 5.3.2.1 or 5.3.2.2, the Offeree may, without prejudice to any other right it may

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have in law, immediately cancel this Offer to Purchase An Enterprise Agreement on written notice to the Offeror, without having to first place the Offeror in breach in terms of clause 17 (Breach).

- 5.4. Any and all payments made by the Offeror to the Offeree in terms of this Offer to Purchase shall, unless otherwise specified, be paid into the Conveyancer's Trust Account, free of deduction, demand, set off or bank charges of any nature whatsoever by way of irreversible electronic bank transfer, save that the Offeror shall be entitled to set off the Registration Deposit against the total purchase price payable by the Offeror to the Offeree in respect of all successful offers made by the Offeror in terms of the Invitation to Tender and which were accepted by the Liquidators.
- 5.5. All monies paid into the Conveyancer's Trust Account by the Offeror in terms of this Offer to Purchase shall be invested in an interest-bearing account for the benefit of the Offeree in terms of section 86 (4) of the **Legal Practice Act 28 of 2014** (as amended).

## **6. TRANSFER OF THE FARMS**

- 6.1. All documents required in connection with the Transfer shall be prepared and registered by the Conveyancers. The Parties shall, upon request by the Conveyancer, sign all documents required to be signed in connection with the Transfer within 7 (seven) days of being requested to do so.
- 6.2. The costs of and incidental to such Transfer shall be paid by the Offeror and such costs shall include, but not be limited to, conveyancing fees, VAT and any other duties which may be levied in connection with the Transfer of the Farms. The Offeror agrees to pay such costs within 7 (seven) days of receiving from the Conveyancers a request to make such payment.

- 6.3. The Offeror shall be responsible for the costs of securing the supply of electricity to the Farms including paying all deposits, transfer fees, connection fees, line charges and any other costs and/or charges in this regard.
- 6.4. The Offeree records that it is unaware as to whether plans, permits and consents exist in relation to improvements on the Farms including but not limited to houses, sheds, dams and reservoirs. If plans, permits and consents do exist, the Offeree does not know whether they are valid or whether they have expired. In the event that any plans, permits and/or consents are required, the Offeror shall at its expense be liable for procuring such plans, permits and consents at its cost and where necessary before registration of Transfer.
- 6.5. The Parties undertake to produce to the Conveyancer all documents required for the purposes of Transfer within 7 (seven) days of being requested to do so.
- 6.6. The Offeree shall, within 7 (seven) days of being requested to do so, pay the costs of releasing the Farms from the operation of any existing bond or bonds and/or the costs of cancelling any existing bond or bonds over the Farms.
- 6.7. The Offeree shall be entitled to withhold Transfer to the Offeror, or lodgement of the Transfer documents, until the Purchase Price and all other charges due by the Offeror are paid or secured to the reasonable satisfaction of the Offeree in accordance with this Offer to Purchase Farms Agreement.

## **7. DELIVERY OF FARMING EQUIPMENT AND CATTLE**

- 7.1. The Offeror shall take delivery of the Farming Equipment and the Cattle at the Farms on the Date of Transfer.

- 7.2. The Offeror shall be solely responsible, at its costs, for taking all actions necessary for transferring all Farming Equipment into the name of the Offeror, including but not limited to transferring any vehicles forming part of the Farming Equipment into the name of the Offeror with the relevant traffic department. The Offeree undertakes to provide the Offeror with all the necessary information so as to enable the Offeror to take transfer of the Farming Equipment into its name.

## **8. VOETSTOOTS, REPRESENTATIONS, WARRANTIES AND SPECIFIC CONDITIONS**

- 8.1. The Enterprise is sold *voetstoots* without guarantee or warranty and at the Offeror's risk.
- 8.2. The Farms are sold to the Offeror subject to all the conditions of title detailed in the applicable title deed or title deeds, including but not limited to all servitudes and other restrictions, if any, as held by the Offeree.
- 8.3. The Offeree confirms that copies of the Title Deeds and survey diagrams in relation to the Farms have been made available to it by the Auctioneers.
- 8.4. The Offeree shall not be liable for any defects, latent or otherwise, in the Farms and/or the buildings and other improvements on the Farms.
- 8.5. The Offeree shall not be liable for any damage occasioned to or suffered by the Offeror by reason of any defects, latent or otherwise, in the Farms and/or the buildings and other improvements on the Farms.
- 8.6. In the event that the Farms are re-surveyed, and it is found to differ from that stated in the current title deed of the Farms or this Offer to Purchase, the Offeree shall not

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be liable for any shortfall, and neither shall the Offeree be entitled to claim additional compensation for any excess.

- 8.7. The Offeree shall not be responsible for pointing out the boundaries on the Farms to the Offeror and the Offeror shall, at its own cost, to establish the location of such boundaries should it wish to do so
- 8.8. The Offeree makes no representations as to the condition of the Farming Equipment, including any latent (hidden) physical defects, save as detailed in this Offer to Purchase.
- 8.9. The Offeree gives no warranties that any vehicles forming part of the Farming Equipment are licensed or in a roadworthy condition.
- 8.10. The Offeree makes no representations as to the health or condition of the Cattle, including any latent (hidden) physical defects, diseases or illness, save as detailed in this Offer to Purchase.
- 8.11. The Offeror acknowledges that:
- 8.11.1. it has independently verified all aspects that are of any importance in relation to offering to purchase the Enterprise prior to making this Offer to Purchase;
- 8.11.2. it has inspected the Enterprise and it is satisfied with the condition thereof;
- 8.11.3. it will not hold the Offeree, the Liquidators and/or the Auctioneers responsible for any, damage, destruction, deterioration, death or theft of the Farming Equipment or the Cattle between the date of this Offer and the Date of Transfer;

- 8.11.4. no representations have been made to the Offeror, by the Offeree, the Liquidators and/or the Auctioneers to induce the Offeror into concluding this Offer to Purchase other than as set out in this Offer to Purchase and the Invitation to Tender; and
- 8.11.5. no warranties have been given to the Offeror, by the Offeree, the Liquidators and/or the Auctioneers other than those set out in this Offer to Purchase and the Invitation to Tender, if any.
- 8.12. All lease agreements, which may be in force on the Farms as at the date of submission of the Tender by the Offeror shall remain in force and the onus is on the Offeror to familiarise itself with the terms of such leases.
- 8.13. No representations are made by the Offeree in regard to water rights and water usage on the Farms. The Offeror shall be responsible for contacting the Department of Water and Sanitation for information in this regard. The Offeror shall, at its cost, be obliged to secure the transfer of all water rights and use rights into its name, in so far as it is possible to do so, and the Offeror shall do so as soon as is reasonably possible after the Date of Transfer. In the event that there are any costs associated with transferring water licences, water right and use rights, if any, the Offeror shall be responsible for such costs.
- 8.14. The Offeree discloses that:
- 8.14.1. certain Cattle have tested positive for *Brucellosis* (commonly referred to as 'contagious abortion' or 'CA');
- 8.14.2. not all the Cattle have been tested for *Brucellosis*;
- 8.14.3. the Cattle are sold without any warranties that the Cattle are free of

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*Brucellosis* or any other illness; and

- 8.14.4. the most recent test results and quarantine documents are available from the Auctioneers on written request.

## **9. ABSA'S NOTARIAL BOND**

- 9.1. The Cattle are owned by Lowlands Beef and Lowlands Farming, with Lowlands Beef owning 40% (forty percent) of the Cattle and Lowlands Farming owning 60% (sixty percent).
- 9.2. It is recorded that that Cattle are subject to a notarial bond in favour of ABSA Bank Limited, which notarial bond has been perfected in terms of a Perfection Order.
- 9.3. ABSA Bank Limited is entitled to sell the Cattle by virtue of the Perfection order and has agreed with the Liquidators that the Cattle may be sold and the Liquidators shall pay sixty percent (60%) of the nett proceeds from the sale of the Cattle to ABSA Bank Limited, which is a *stipulatio alteri* in favour of ABSA Bank Limited, which is deemed to have been accepted by ABSA Bank Limited.

## **10. FARMS UNDER QUARANTINE**

The Offeror acknowledges and accepts that:

- 10.1. the Farms are currently under quarantine;
- 10.2. none of the Cattle may be removed from the Farms without the prior written permission of the State Veterinarian and/or any other authority having jurisdiction

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in this regard;

- 10.3. it is responsible for obtaining whatever permission, consent or permit that is required to remove the Cattle, at its cost; and
- 10.4. the Cattle situated on the Kamberg Farms have not been tested for Brucellosis or for any other disease and are sold without any warranties that the Cattle are free of Brucellosis or any other illness.

## 11. LOSSES, DAMAGE AND DESTRUCTION

- 11.1. The Offeror acknowledges and accepts that during the period from the Acceptance Notice to the Date of Transfer, the Farming Equipment may become lost, stolen, damaged and/or destroyed and some of the Cattle may die, become lost or be stolen ("**Losses**").
- 11.2. In the event that there are any Losses during the period from the issuing of the Acceptance Notice to the Date of Transfer, the Purchase Price shall be adjusted by the Offeree so as to account for such Losses.
- 11.3. The Offeree, the Liquidators and the Auctioneer shall not be responsible for any such Losses howsoever arising and the Offeree waives any claim that it may have in this regard.

## 12. EMPLOYEES

- 12.1. The Offeror acknowledges that the employees of the Offeree employed on the Farms as at the date of submission of the Offeror's Tender, shall remain on the Farms and the Offeror shall take transfer of those employees in accordance with the provisions of section 197 (2) of the **Labour Relations Act 66 of 1995** on the Date

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of Transfer. Accordingly:

- 12.1.1. The Offeror shall make the necessary enquiries as to which employees will be transferred to the Offeror;
- 12.1.2. all the rights and obligations between the Offeree, as the “old employer”, and each of the employees employed on the Farms (“**Employees**”), will continue in force as if they were rights and obligations between the Offeror, as the “new employer”, and each of the Employees; and
- 12.1.3. anything done before the Date of Transfer of the Farms, by or in relation to the Offeree as the ‘old employer’, will be considered to have been done by or in relation to the Offeror as the ‘new employer’.
- 12.2. The Offeror shall be liable for accrued leave, accrued portions of bonuses, any claim for any monies owing in respect of wages, salaries or overtime, employer contributions to pension or provident funds, medical aid contributions (if any) and any liability of the Offeree to any of the Employees imposed by any third party in respect of any dispute between the Offeree and any of the Employees, in respect of the Employees and the Offeror hereby indemnifies the Offeree against all such liabilities and claims.

**13. WARRANTIES BY THE OFFEROR AND THE PERSON SIGNING THIS DOCUMENT ON BEHALF OF THE OFFEROR**

- 13.1. The Offeror warrants and represents to the Offeree that as at the date of the Acceptance Notice and the Date of Transfer (and at all times between such dates):
  - 13.1.1. where the Offeror is a juristic person, it is duly incorporated as a company/close corporation/trust (whichever is applicable) and validly

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existing under the laws of the Republic of South Africa;

- 13.1.2. where the Offeror is a juristic person, it has the legal capacity and power to enter into and perform its obligations under this Offer to Purchase;
- 13.1.3. where the Offeror is a juristic person, it has taken all necessary actions (whether corporate, internal or otherwise) to authorise its entry into and performance of this Offer to Purchase;
- 13.1.4. the execution of this Offer to Purchase and the performance of its obligations hereunder do not and shall not –
- 13.1.4.1. contravene any law or regulation to which the Offeror is subject; or
- 13.1.4.2. contravene any provision of the Offeror's constitutional documents; or
- 13.1.4.3. result in a breach of any of the Offeror's contractual obligations contained in any other agreement to which it is a party and bound;
- 13.1.5. this Offer to Purchase constitutes, an agreement which is valid and binding on it and is enforceable against it in accordance with its terms; and
- 13.1.6. it is entering into, and will be performing its obligations under, this Offer to Purchase as principal and not as agent.
- 13.2. Each warranty contemplated in clause 13 is a separate warranty and shall not be limited to or restricted by inference or otherwise by the terms of any other warranty.
- 13.3. The Offeree has entered into the Offer to Purchase on the strength of the

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warranties, representation and undertakings given to the Offeree in terms of clause 13, on the basis that such warranties are correct as at the date of the Acceptance Notice and the Date of Transfer and the entire period between those dates.

- 13.4. All of the warranties given by the Offeror to the Offeree in terms of clause 13 of this Offer to Purchase shall be deemed to be material.
- 13.5. If the Offeror is a juristic person or a trust, the signatory hereby binds himself/herself personally as Offeror in terms of this Offer to Purchase, should the Offeror not be bound hereby for any reason whatsoever.
- 13.6. This Offer is conditional upon the signatory for the Offeror signing the deed of suretyship attached hereto marked **Annexure 'D'**, binding himself/herself as surety for and co-principal debtor with the Offeror for the due and proper discharge of all the Offeror's obligations arising from this Offer to Purchase, but only in the event that the Liquidators demand this in writing in which case the signatory for the Offeror shall sign such deed of suretyship within seven (7) days of being requested to do so by the Liquidators.
- 13.7. In the event that the Offeror is a juristic person, where the signatory for the Offeror has not been duly authorised by the juristic person, such signatory shall, upon signature of this Offer to Purchase, be deemed to have purchased the Enterprise in his/her personal capacity and shall accordingly be bound by all of the provisions of this Offer to Purchase.
- 13.8. For the purposes of clauses 13.5 to 13.7 above, the signatory to this Offer to Purchase will be required to disclose his/her name, particulars and all relevant "FICA Documents" as detailed in the Information Schedule and Consent Form.

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**14. POSSESSION, OCCUPATION OF THE FARMS AND RISK IN AND TO THE ENTERPRISE**

- 14.1. The Offeror shall be entitled to possession and occupation of the Farms on the Date of Transfer, subject to the rights of any existing tenant/s which the Offeror declares itself to be fully aware of.
- 14.2. Ownership in and to the Farming Equipment and the Cattle shall pass from the Offeree to the Offeror on the Date of Transfer.
- 14.3. From date of the payment of the Acceptance Deposit, all the benefits and risks of ownership of the Enterprise shall pass from the Offeree to the Offeror, who shall then be entitled to all the income accruing from the Enterprise and shall be liable for all expenses, insurance and rates, taxes and other imposts in respect thereof.

**15. OCCUPANTS AND LAND CLAIMS**

- 15.1. The Offeror acknowledges and agrees that the Farms shall be sold subject to:
- 15.1.1. any claim which has or may in the future be instituted for the restitution of rights to land in respect of the Farms in terms of the **Restitution of Land Rights Act (Act No. 22 of 1994)** as amended;
- 15.1.2. the rights of any labour tenant who has the right to reside on the Farms and who has the right to use cropping or grazing on the Farms in terms of the **Land Reform Act 3 of 1996 (Labour Tenants)**;
- 15.1.3. the right of any farm worker (occupier) who has the right to reside or use the Farms in terms of the **Extension of Security of Tenure Act 62 of 1997**;
- 15.1.4. any existing informal rights to land in terms of the **Interim Protection of Informal Land Rights Act 31 of 1996**;

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- 15.1.5. any other occupation of the Farms, including occupation by the elderly, children, disabled persons and households headed by women in accordance with the provisions of the **Prevention of Illegal Eviction and Unlawful Occupation Act 19 of 1998**; and
- 15.1.6. any other form of occupation of the Farms by any person, whether lawful or unlawful.
- 15.2. The onus is on the Offeror to make itself aware of any of the claims as contemplated in clause 15.1 above, as the Offeree, Liquidators and Auctioneers make no representations or warranties in this regard.
- 15.3. The Offeror warrants that it is fully acquainted with the provisions of the **Restitution of Land Rights Act (Act No. 22 of 1994), Land Reform Act 3 of 1996 (Labour Tenants) and Extension of Security of Tenure Act 62 of 1997.**
- 16. ELECTRICAL INSTALLATION COMPLIANCE CERTIFICATE, ENTOMOLOGIST CERTIFICATE, CERTIFICATE OF GAS CONFORMITY AND ELECTRICAL FENCE COMPLIANCE CERTIFICATE**
- 16.1. The Offeror shall be responsible for securing, at its expense and shall deliver to the Conveyancers, a Certificate of Compliance in terms of Government Regulation No. 2920 of 1992, issued by an accredited person who is registered with the Electrical Contracting Board of South Africa, which is acceptable to the Registrar of Deeds, Local Authority and/or supplier of electricity, certifying that the electrical installation of the improvements situated on the Farms is in accordance with SABS 0142, or are reasonably safe. Should the aforesaid accredited person report that there is a fault or defect in the electrical installation, the Offeror shall be obliged, at its expense, within 21 (twenty one) days of receipt of such report and recommendations, to contract with an electrical contractor or any other qualified

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person, to carry out the repairs as recommended so as to enable the accredited person to issue the Certificate aforesaid.

- 16.2. The Offeree warrants that no addition or alteration to the electrical installation will have been effected after the issue of the compliance certificate.
- 16.3. Where required by the Conveyancer, the Offeror shall be responsible for securing, at its expense and shall deliver to the Conveyancers, an Entomologist Certificate relating to the Farms issued by an accredited person registered with the South African Pest Control Association, certifying that at the date of inspection there is no apparent infestation on the Farms of any wood-destroying termites or insects. Should there be any evidence of infestation the Offeror shall have a 21-day period to cause such infestation to be eradicated at its own expense thereafter, to enable the certificate to be issued.
- 16.4. The Offeror shall be responsible for securing, at its expense and shall deliver to the Conveyancers, a certificate of compliance in terms of the Pressure Equipment Regulations to the Occupational Health and Safety Act 85 of 1993, issued by an accredited person who is registered with the Liquified Petroleum Gas Safety Association of Southern Africa, certifying that all gas fittings are safe and in proper working order. Should the aforesaid registered person report a fault or faults in the gas fittings, then the Offeror shall have a 21-day period to get the faults rectified at its own expense thereafter enabling the accredited person to issue the said certificate.
- 16.5. Where applicable, the Offeror shall be responsible for securing, at its expense and shall deliver to the Conveyancers, a certificate of compliance for any electric fence system installed on the Farms as referred to in Regulation 12(4) of Electrical Machinery Regulations, 2011 to the Occupational Health and Safety Act of 1993, issued by an accredited person certifying that the installation complies with the

provisions of Regulation 13(1) and that the installation is safe and in proper working order. Should the aforesaid registered person report a fault or faults in the electric fence system, then the Offeror shall have a 21-day period to get the faults rectified at its own expense thereafter enabling the accredited person to issue the said certificate.

## 17. BREACH

- 17.1. Subject to clause 5.3.3 above, should a Party be in breach of any of its obligations in terms of this Offer to Purchase ("**Defaulting Party**") and have failed to remedy such breach at the end of a period of 7 (seven) calendar days after delivery by the aggrieved Party ("**Aggrieved Party**") to the Defaulting Party of a notice in writing requiring the Defaulting Party to remedy such breach, then the Aggrieved Party shall be entitled, without further notice to the Defaulting Party and without prejudice to any other right or remedy which may be available to the Aggrieved Party in terms hereof or at law:
- 17.1.1. to cancel this Offer to Purchase forthwith and to claim and recover from the Defaulting Party such damages as the Aggrieved Party shall have sustained in consequence of such default, breach and/or cancellation; or
- 17.1.2. to institute action for specific performance of the provisions of this Offer to Purchase and/or for damages.
- 17.2. Should either Party institute action against the other for payment in terms of this Offer to Purchase, such Party shall be entitled to claim legal costs on an 'attorney and client' scale.
- 17.3. **The Offeror agrees that in the event that the Offer to Purchase is cancelled by the Offeree as a result of a breach by the Offeror, all amounts paid by the Offeror to**

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the Conveyancers in terms of this Offer to Purchase shall, at the option of the Offeree exercised in writing delivered to the Conveyancer, be forfeited to the Offeree as *rouwkoop* and the Offeror hereby irrevocably authorises the Conveyancer to pay same to the Offeree, or alternatively, and in the discretion of the Offeree, be retained on account of any damages suffered by the Offeree.

**18. BROKERAGE OR AGENCY OR AUCTIONEER**

- 18.1. The Auctioneers hold a Fidelity Fund certificate issued by the Property Practitioners Regulatory Authority in terms of the **Property Practitioner's Act, Act 22 of 2019**.
- 18.2. The payment of the Commission shall be strictly in accordance with the terms and conditions of the **Property Practitioner's Act No. 22 of 2019** and the Regulations promulgated thereunder. Should any discrepancy arise between the terms of this Offer to Purchase and the Property Practitioner's Act and Regulations, the Property Practitioner's Act and Regulation shall prevail.
- 18.3. The Commission shall be payable by the Offeree to the Auctioneers. The Commission shall be deemed to have been earned by the Auctioneers on payment of the full Purchase Price by the Offeror in terms of this Offer to Purchase.
- 18.4. The Offeror warrants that it has been introduced to the Enterprise by the Auctioneers only and that the Auctioneer is the effective cause of the sale. The Offeror indemnifies the Offeree against any other claim for commission by any other agent.
- 18.5. The Commission shall be payable by the Offeree within three (3) days calculated from the Date of Transfer, against presentation of an invoice in relation to the Auctioneers Commission. Should the Offeree fail to make payment of the full Commission, the Auctioneers shall be entitled to institute legal proceedings against

the Offeree and recover its legal costs on a scale as between attorney-and-client. The provisions of this clause 18 are a *stipulatio alteri* in favour of the Auctioneers who shall be deemed to have accepted it.

## 19. NOTICES AND *DOMICILIA*

19.1. The Parties choose as their respective physical addresses as their respective *domicilium citandi et executandi* for all purposes of this Offer to Purchase, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

19.1.1. **Offeree:**

Address: **Usher Attorneys in their capacity as the joint liquidators of Lowlands Beef CC (in liquidation) 192 Howick Road, Pietermaritzburg, KZN**

Postal: **PO Box 11703, Dorpspruit, 3206**

Tel: **033 342 3881\9**

E-mail: [glen@usherlaw.co.za](mailto:glen@usherlaw.co.za)

19.1.2. **Offeror:**

The physical address and contact details as set out for the Offeror in the Information Schedule and Consent Form.

19.2. Any notice given in terms of this Offer to Purchase shall be in writing and shall:

19.2.1. if delivered by hand to a responsible person during ordinary business hours (being between 08h00 and 16h30 on a Business Day) be deemed to have been duly received by the addressee on the date of such delivery; and

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- 19.2.2. if transmitted by e-mail be deemed to have been received by the addressee 1 (one) day after despatch.
- 19.3. Any Party may by notice to the other Party change the address chosen as its *domicilium* address to another physical address in the Republic of South Africa (not being a post office box or *post restante*) or e-mail address, provided that the change shall become effective on the 7th (seventh) Business Day from the deemed receipt of the notice by the other Party.
- 19.4. Notwithstanding anything to the contrary in this clause 19, a written notice or other communication actually received by any Party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its *domicilium*.

## **20. INDEPENDENT ADVICE AND RELIANCE**

Each Party hereby acknowledges and agrees that –

- 20.1. they have been free to secure independent legal and other professional advice (including financial and tax advice) as to the nature and effect of all of the transactions contemplated in this Offer to Purchase and that they have either taken such independent advice or have dispensed with the necessity of doing, so assuming all risks involved in such a choice;
- 20.2. all of the provisions of this Offer to Purchase and the restrictions contained herein are fair and reasonable in all of the circumstances and are in accordance with their intentions; and
- 20.3. they have not placed any reliance upon the advice, views and/or opinions expressed by the other of them or the other Party's independent legal, tax and other advisors

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in the preparation, negotiating, executing and implementing of this Offer to Purchase, and accept the duty to verify all representations made to it by anyone whomsoever.

## **21. NO CESSION OR ASSIGNMENT**

Neither Party shall be entitled to cede, delegate or assign all or any of its rights, obligations and/or interests in, under or in terms of this Offer to Purchase to any third party without the prior written consent of the other Party.

## **22. DISPUTE RESOLUTION**

- 22.1. This clause 22 is a separate and divisible agreement from the rest of this Offer to Purchase and shall not become void, voidable or unenforceable by reason of any alleged misrepresentation, mistake, duress, undue influence, impossibility, illegality, immorality, absence of consensus, lack of authority or any other cause relating to the rest of this Offer to Purchase. The Parties intend that any such issue shall be subject to arbitration in terms of this clause 22. This clause 22 shall remain in effect even if this Offer to Purchase terminates or is cancelled.
- 22.2. The Parties agree that if a dispute arises, they shall meet together and to exercise their reasonable endeavours to resolve any difference or dispute that may arise between them in an amicable, informal and expeditious manner and through bona fide negotiation.
- 22.3. Any unresolved dispute which arises out of this Offer to Purchase of any nature whatsoever, including but not limited to: (1) the existence of this Offer to Purchase apart from this clause 22; (2) the interpretation and effect of this Offer to Purchase; (3) the Parties' respective rights and/or obligations under this Offer to Purchase; (4) the rectification of this Offer to Purchase; (5) the breach, termination or

cancellation of this Offer to Purchase or any other matter arising out of the breach, termination or cancellation; (6) damages or any other claim for compensation; and (7) any other dispute that may be as a result of this Offer to Purchase, shall, unless it is resolved in terms of clause 22.2, be finally determined by arbitration.

22.4. Unless the Parties can agree on the nomination of an arbitrator within a period of 7 (seven) calendar days following their meeting in terms of clause 22.2, either Party may refer the dispute to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being. The Parties agree that:

22.4.1. if the matter is primarily of an accounting nature, the arbitrator shall be an independent practising chartered accountant of not less than 15 (fifteen) years standing appointed by the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being; and

22.4.2. if the matter is primarily of a legal nature or any matter which is neither primarily of an accounting nature or a legal nature, the arbitrator shall be an independent practicing senior counsel advocate of not less than 5 (five) years standing appointed by the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being.

22.5. If the Parties fail to agree whether the matter is primarily of an accounting, legal or other nature, the matter shall be deemed to be primarily of a legal nature.

22.6. The request to nominate an arbitrator addressed to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being in terms of clause 22.4 shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware. A copy of the request shall be furnished to the other Party who may within 7 (seven) calendar days, submit written comments on the request to the addressor

of the request and to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being.

- 22.7. The arbitration shall be held at Pietermaritzburg or at any venue agreed to by the Parties in writing.
- 22.8. The arbitration shall be governed by the rules and procedures as determined by the arbitrator, in writing.
- 22.9. The Parties shall use their best endeavours to ensure that the arbitration is completed within 90 (ninety) Business Days after the appointment of the arbitrator.
- 22.10. Notwithstanding anything contained in this clause 22, nothing shall prevent a Party from approaching a court of competent jurisdiction for urgent interim relief.

### **23. GENERAL**

- 23.1. The termination of this Offer to Purchase for any cause shall not release a Party from any liability or claim which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 23.2. No addition to, variation of or agreed cancellation of this Offer to Purchase shall be of any force or effect unless reduced to writing and signed by the Parties in wet ink form. For the avoidance of doubt the Parties expressly agree that no variation, amendment, or consensual cancellation shall arise pursuant to an exchange of "data" by means of an "electronic signature", or an "advanced electronic signature" as envisaged in the **Electronic Communications and Transactions Act 25 of 2002**, as amended ("**ECTA**"), or otherwise by means of electronic correspondence. Further the Parties agree, to the extent allowed in law, that section 13 of ECTA shall not

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apply to this Offer to Purchase. For the purposes of this Offer to Purchase, the Parties agree that the fact that their name or the name of the entity that they represent appears at or near the end of any email, electronic correspondence or other written correspondence shall not in any way be deemed or considered to be their signature or electronic signature.

- 23.3. This Offer to Purchase constitutes the entire agreement between the Parties in regard to its subject matter. No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Offer to Purchase.
- 23.4. No indulgence, leniency or extension of time which any Party ("**the Grantor**") may grant or show another Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 23.5. The failure by any Party to enforce any provision of this Offer to Purchase shall not affect in any way that Party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 23.6. The Parties shall co-operate with each other and execute and deliver to the other Parties such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Offer to Purchase.
- 23.7. This Offer to Purchase may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Offer to Purchase by signing any such counterpart.

- 23.8. The validity of this Offer to Purchase, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.
- 23.9. If any provision of this Offer to Purchase, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law it shall be severable from this Offer to Purchase, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 23.10. Each Party warrants that it has the power, authority and legal right to sign and perform in terms of this Offer to Purchase and that, where applicable, this Offer to Purchase has been duly authorised by all necessary actions of any directors, members or liquidators, as is applicable, and constitutes valid and binding obligations on it in accordance with the terms of this Offer to Purchase.

**SIGNATURE PAGE FOLLOWS**

**SIGNED** by the **OFFEROR** at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023

**As Witnesses:**

- 1. \_\_\_\_\_  
 \_\_\_\_\_  
 For: **OFFEROR**  
**Name:** \_\_\_\_\_
- 2. \_\_\_\_\_  
 \_\_\_\_\_  
**Resolution:** Attached

**OFFEREE ACCEPTANCE AND CONFIRMATION:**

**SIGNED** and accepted by the **OFFEREE** at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023

**AS WITNESSES:**

- 1. \_\_\_\_\_  
 \_\_\_\_\_  
 For: **OFFEREE**  
**G. V. Usher N.O.**
- 2. \_\_\_\_\_  
 \_\_\_\_\_  
 For: **OFFEREE**  
**E. Nel N.O.**
- 3. \_\_\_\_\_  
 \_\_\_\_\_  
 For: **OFFEREE**  
**P. Carolus N.O.**
- 3. \_\_\_\_\_  
 \_\_\_\_\_  
 For: **OFFEREE**  
**S. A. Potgieter N.O.**

**Annexure 'A'**

<b>PURCHASE PRICE</b>
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**The Offeror hereby offers to purchase the Enterprise for the following Purchase Price stated exclusive of VAT, which VAT shall be payable by the Offeror in addition to the Purchase Price:**

**Offer amount in respect of the Farms:** \_\_\_\_\_

**Offer amount in respect of the Cattle:** \_\_\_\_\_

**Offer amount in respect of the Farming Equipment:** \_\_\_\_\_

**TOTAL OFFER AMOUNT:** \_\_\_\_\_

## Annexure 'B'

**FARMS DESCRIPTION**

The Offeror hereby offers to purchase all of the following Farms:

1. PORTION 6 OF THE FARM WUTHERING HEIGHTS 10079 FS  
MEASURING: 325.1155 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
2. PORTION 1 OF THE FARM MAXWELL 15163 FS  
MEASURING: 242.5360 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
3. PORTION 1 OF THE FARM REEKIE LYNN 8335 FS  
MEASURING: 208.4418 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
4. PORTION 2 OF THE FARM MAXWELL 15163 FS  
MEASURING: 380.1742 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
5. THE FARM MAXWELL 16950 FS  
MEASURING: 533.9878 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
6. REMAINDER OF THE FARM ALLENDALE 9846 FS  
MEASURING: 714.6579 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
7. THE FARM LOT 12 3511 FS  
MEASURING: 40.6709 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
8. THE FARM LOT 13 3512 FS  
MEASURING: 41.9862 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
9. THE FARM LOT 14 4957 FS  
MEASURING: 80.9372 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019

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10. THE FARM SHELTER NO 1 9847 FS  
MEASURING: 509.7778 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
  11. REMAINDER OF THE FARM SHELTER NO 2 9661 FS  
MEASURING: 250.3310 HECTARES  
HELD BY DEED OF TRANSFER T31103/2019
  12. REMAINING EXTENT PORTION 238 OF THE FARM WAGENDRIFT 798 FS MEASURING:  
321.2754 HECTARES  
HELD BY DEED OF TRANSFER T41184/2015
  13. REMAINING EXTENT OF THE FARM ROODE POORT SPRUYT 1005 FS  
MEASURING: 1758.4526 HECTARES  
HELD BY DEED OF TRANSFER T14333/2011
  14. REMAINING EXTENT OF PORTION 9 OF THE FARM WELVERDIENT 1929 FS  
MEASURING: 454.5737 HECTARES  
HELD BY DEED OF TRANSFER T2143/2009

## Annexure 'C'

<b>CATTLE DESCRIPTION</b>
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The Offeror hereby offers to purchase all of the following Cattle:

<b>Cattle Description:</b>	<b>Lot Numbers:</b>	<b>Number of Cattle in each Lot</b>
Store Cows (Lowlands)	<b>1</b>	<b>176</b>
Open Heifers (Lowlands)	<b>2</b>	<b>576</b>
Weaner heifers (Lowlands)	<b>3</b>	<b>484</b>
Weaner bull (Lowlands)	<b>4</b>	<b>146</b>
Weaner heifers (Kamberg)	<b>5</b>	<b>231</b>
Weaner bull (Kamberg)	<b>6</b>	<b>50</b>
Cows and Calves (Lowlands)	<b>7</b>	<b>734</b>
Cows (Lowlands)	<b>8</b>	<b>207</b>
Bulls 2-3 / Herd sires (Lowlands)	<b>9</b>	<b>172</b>
Cows and Calves (Kamberg)	<b>10</b>	<b>335</b>
Cows (Kamberg)	<b>11</b>	<b>34</b>
<b>TOTAL</b>		<b>3145</b>

<b>DEED OF SURETYSHIP</b>
---------------------------

**LOWLANDS BEEF CC (IN LIQUIDATION)**

Registration Number: 2008/123071/23

Masters Ref: N000242/2023

duly represented by:

**Glen Vivian Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O.** in their capacities as the appointed joint liquidators under Master’s Reference: **N000242/2023** of **Lowlands Beef CC, Registration Number: 2008/123071/23** (in liquidation)

(hereinafter referred to as “**the Offeree**”)

I, the undersigned,

**NAME OF THE SURETY:** \_\_\_\_\_

**IDENTITY NUMBER:** \_\_\_\_\_

**MARITAL STATUS:** \_\_\_\_\_

**PHYSICAL ADDRESS:** \_\_\_\_\_

(Chosen domicilium citandi et executandi)

(hereinafter referred to as “**the Surety**”),

INITIALS

hereby bind myself jointly and severally *in solidum* to the Offeree as surety for and co-principal debtor with:

**NAME OF THE OFFEROR:** \_\_\_\_\_

**REGISTRATION NUMBER:** \_\_\_\_\_

(hereinafter referred to as “**the Offeror**”) for the due and punctual performance by the Offeror of all the Offeror’s payment obligations to the Offeree arising out of the Offer to Purchase concluded between the Offeror and the Offeree (hereinafter referred to as “**Offer to Purchase**”), to which this Deed of Suretyship is attached.

1. **Interpretation:**

- 1.1 In this Deed of Suretyship, unless the contrary intention appears from the context: words signifying the one gender shall include the other genders; words signifying the singular shall mean and include the plural and *vice versa*; reference to natural persons shall mean and include reference to artificial persons and *vice versa*.
- 1.2 When any number of days is prescribed in this Deed of Suretyship, the number shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or proclaimed public holiday (in the Republic of South Africa) in which event the last day shall be the next succeeding day which is not such a Saturday, Sunday or public holiday.
- 1.3 The rule of interpretation that a contract will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Deed of Suretyship and the Surety hereby waives any rights he has to rely on such rules.

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- 1.4 This Deed of Suretyship shall be binding and enforceable by and against the estates, heirs, executors, administrators, trustees, assigns and liquidators of the parties to this Deed of Suretyship as fully and effectually as if they had signed this Deed of Suretyship in the first instance and reference to any party shall be deemed to include such party's executors, administrators, trustees, assigns or liquidators, as the case may be.
- 1.5 The termination or expiry of this Deed of Suretyship shall not affect those provisions of this Deed of Suretyship which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. **The Surety hereby waives and renounces:**

- 2.1 any right to claim an accounting from the Offeree before making payment;
- 2.2 any benefits to which the Surety is entitled to in law and without detracting from the generality of the foregoing, including the benefits of:
- 2.2.1 excussion;
- 2.2.2 division;
- 2.2.3 cession of action; and
- 2.2.4 being sued together with the Offeror.

3. **Acknowledgement:**

The Surety confirms and acknowledges that he knows and understands the meaning, as well as the effect of waiving and renouncing the benefits referred to in clause 2 above.

**4. Undertaking:**

The Surety undertakes to pay the Offeree any amount due and owing by the Offeror arising out of the Offer to Purchase within 7 (seven) days (excluding Saturdays, Sundays or public holidays) of the Offeree sending a written notice to the Surety to the effect that the Offeror has defaulted in its payment obligations to the Offeree.

**5. Instituting Action:**

The Surety agrees that should he fail or neglect to pay the Offeree the amount claimed by the Offeree, as contemplated in clause 4 above, the Offeree shall be entitled to institute action against the Surety forthwith in terms of this Deed of Suretyship.

**6. Certificate:**

The Surety agrees that a certificate issued by the Offeree, shall be sufficient proof of the Offeror's indebtedness to the Offeree including but not limited for the purposes of any dispute, legal action or application (whether for summary judgement, provisional sentence or any other reason).

**7. Performance:**

If the Offeror fails to discharge any of its obligations to the Offeree or any of its other creditors, the Offeree shall be entitled to demand from the Surety immediate performance of all the obligations then owing by the Offeror to the Offeree whether or not the due date for the performance of the obligations has arrived.

8. **Domicilium citandi et executandi:**

The Surety elects as his *domicilium citandi et executandi* for the purposes of serving any notice or summons, his physical address on the first page of this Deed of Suretyship.

9. **Jurisdiction:**

The Surety consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act, 32 of 1944 (as amended) in respect of any legal proceedings which the Offeree may wish to institute against the Surety arising out of this Deed of Suretyship, notwithstanding the fact that the amount or value of the Offeree's claim might otherwise exceed such jurisdiction. The Surety further agrees that notwithstanding such consent, the Offeree may at its option institute any such proceedings out of the High Court of South Africa.

10. **Legal Costs:**

The Surety agrees that, in the event of the Offeree having to institute proceedings against him arising out of this Deed of Suretyship, the Surety will be liable for all costs incurred by the Offeree as between attorney-and-client.

11. **Legal Advice:**

The Surety acknowledges and agrees that:

- 11.1 he has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Deed of Suretyship and that he has either taken such independent advice or has dispensed with the necessity of doing so;

11.2 this Deed of Suretyship was complete in all respects when it was signed; and

11.3 any payments received by the Offeree shall firstly be applied to the redemption of legal costs, then interest and thereafter capital.

## 12. General Terms:

### 12.1 Severance

If any provision of this Deed of Suretyship, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law it shall be severable from this Deed of Suretyship, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### 12.2 Survival of Rights, Duties and Obligations

Termination of this Deed of Suretyship shall not release the Surety from any liability which at the time of termination had already accrued to the Offeree.

### 12.3 Non Variation

Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Deed of Suretyship or to cancel or terminate it shall be effective unless made in writing and duly signed by both the Surety and the Offeree.

### 12.4 Entire Deed of Suretyship

This Deed of Suretyship constitutes the entire undertaking by the Surety to the Offeree in regard to the subject matter of this Deed of Suretyship. No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Deed of Suretyship.

12.5 Indulgence

No indulgence, leniency or extension of time which the Offeree may grant or show the Surety, shall in any way prejudice the Offeree or preclude the Offeree from exercising any of its rights in the future.

12.6 No Waiver

The failure by the Offeree to enforce any provision of this Deed of Suretyship shall not affect in any way the Offeree's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

12.7 Governing Law

The validity of this Deed of Suretyship, its interpretation and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2023**

\_\_\_\_\_  
**SURETY**

**AS WITNESSES:**

1. \_\_\_\_\_  
**WITNESS SIGNATURE**

2. \_\_\_\_\_  
**WITNESS SIGNATURE**

NAME: \_\_\_\_\_  
ID: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

NAME: \_\_\_\_\_  
ID: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

INITIALS