

PAYROLL DEDUCTION SUB-AGREEMENT TO THE MAIN AGREEMENT

Between

(Registration number:)
(Herein referred to as "the Employer")

and

FIRSTRAND BANK LIMITED, REPRESENTED BY FNB LOANS

(Registration number: 1929/001225/06)
(Hereinafter referred to as the "the Bank")

WHEREAS:

The Independent Schools Association of Southern Africa Pension Scheme and Independent Schools Association of Southern Africa Provident Fund (Registration numbers: 18/204/6603 and 18/204/22493) (Herein referred to as "the Funds") and FirstRand Bank Limited (Registration number: 1929/001225/06) (represented by FNB Loans) have entered into a Smart Housing Plan Surety Agreement dated 18th March 2015 whereby the Bank shall provide Smart Housing Plan Loans to qualifying Members of the Fund in accordance with the Pension Funds Act 24 of 1956, the Fund rules and the Bank's credit policies that are applicable to the Smart Housing Plan Loan Product.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following words and phrases shall have the following meanings set out below, unless the context requires otherwise:
 - 1.1.1. **"the Act"** means the Pension Funds Act, No. 24 of 1956, as amended;
 - 1.1.2. **"Authority to Deduct"** means the written authorisation by the Employee, authorising the Employer to make deductions from his salary or wages;
 - 1.1.3. **"Credit Agreement / Credit Transaction"** means an agreement between a credit provider and a consumer concluded under the National Credit act 34 of 2005 and shall bear the same meaning in this Agreement as they bear in the National Credit act;
 - 1.1.4. **"the Agreement"** means this Agreement together with all the annexures, applications, letters, schedules, addendums and notices given from time to time, all read together and signed by the parties to this Agreement;
 - 1.1.5. **"the Bank"** means FirstRand Bank Limited (Registration Number: 1929/001225/06), herein represented by FNB Loans, a Business Unit of First National Bank, its successors in title or assigns;
 - 1.1.6. **"Commencement Date"** means the final date of signature of this Agreement;

- 1.1.7. **“Confidential Information”** all information of a confidential, sensitive or proprietary nature, including but not limited to the terms of this Agreement, financial information, marketing and business strategies, minutes of meetings, corporate memoranda, and other information relating to either the Employer or the Bank or to Employees, including without limitation certain personal information of Employees, the Employer and/or third parties.
- 1.1.8. **“Data”** shall mean any data, including any personal data as defined in the Electronic Communications and Transactions Act, 2002 any customer data and any other legislation related to the protection of data supplied to the Employer, or any third party, by the Bank or stored, collected, collated, accessed or processed on behalf of the Bank by the Employer.
- 1.1.9. **“the Employer”** means (Registration Number:) who is a participant in the Fund, including its subsidiaries and associated companies;
- 1.1.10. **“the Fund”** means **Independent Schools Association of Southern Africa Pension Scheme and Independent Schools Association of Southern Africa Provident Fund** (Registration numbers: 18/204/6603 and 18/204/22493) registered as a pension and provident fund organisation in accordance with the Act;
- 1.1.11. **“the Fund Administrator”** means the Administrator approved in terms of section 13B of the Act, appointed by the Trustees of the Fund to administer the fund from time to time;
- 1.1.12. **“Fund Rules”** means shall bear the same meaning in this Agreement as they bear under the definition of **“rules”** in the Act;
- 1.1.13. **“Loan(s)”** means the Credit Agreements entered into by and between the Bank and Employees pursuant to this Agreement;
- 1.1.14. **“Loan application”** means the Bank documentation required to apply for a Smart Housing Plan Loan;
- 1.1.15. **“Member”** means an employee of the Employer who has been admitted to membership of the Fund in accordance with the eligibility requirements set out in the Fund Rules;
- 1.1.16. **“NCA”** means the National Credit Act No 34 of 2005, as amended;
- 1.1.17. **“Repayment Letter”** means the document given to an Employee that lists the Employee's monthly instalment, interest rate applicable to the loan and the terms and conditions applicable to the loan read together with the Credit Agreement;
- 1.1.18. **“Repayment Schedule”** means the document given to the Employer's payroll officer, which contains details of all the instalments due by all the Employees of the company;
- 1.1.19. **“Party/Parties”** means the Parties to this Agreement or either of the Bank or the Employer, as the case may be;
- 1.1.20. **“the Employee(s)”** means a person employed by the Employer, who is a member of the Fund as defined in the Act;
- 1.1.21. **“Remuneration”** means the salary/wages paid by the Employer to its Employee's from time to time;
- 1.1.22. **“Bank Representative”** means an FNB Loans staff member qualified and

contracted to represent FNB Loans External Sales "Smart Housing Plan Loan Product".

1.2. In this Agreement, unless the context otherwise indicates:

- 1.2.1. the words '**dependant**', '**member**', '**officer**', '**principal officer**', '**pension fund**', '**registered**', '**retirement date**' and '**rules**' shall bear the same meaning in this agreement as they bear in the Act;
- 1.2.2. the headings to clauses are for convenience only, and shall not be taken into account in the interpretation of this Agreement;
- 1.2.3. reference to "**days**" shall be construed as calendar days, unless qualified by the word "**business**", in which instance a "**business day**" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.2.4. reference to one gender includes the others, a reference to a natural person includes a juristic person, a reference to the singular includes the plural, and vice versa.

2. OBLIGATIONS OF THE EMPLOYER

2.1. In respect of payroll deductions, the Employer shall –

- 2.1.1. upon receipt of the notification of approval of the loan by the Bank and provided that the Employer has a valid Authority to Deduct in respect of the Employee, record the repayment instalments required to be deducted on its payroll data, as set out in the valid Authority to Deduct, and shall deduct and make payment of such instalments to the Bank in accordance with the provisions of clause 2.1.3 and 2.2;
- 2.1.2. retain the Authority to Deduct on file; and
- 2.1.3. on salary date of each month, provided it has received a valid Authority to Deduct equating to the amount set in the repayment schedules, pay to the Bank, by way of a payroll deduction, an amount representing the aggregate of all the monthly instalments due by the Employees as detailed on the repayment schedules furnished by the Bank to the Employer on a monthly basis in respect of the Employees, which schedule shall contain a summary of the repayments in respect of each Employee.

2.2. Employer irrevocably undertakes and warrants to the Bank, subject to receipt of the applicable Authority to Deduct and the acceptable and valid reasons for non-deduction in clause 2.7 below, that it shall deduct from Employees' salary / wages the instalments due by the Employees to the Bank under their loans, into the following bank account nominated by the Bank by EFT.

Account Name :	FNB LOANS
Account No :	62019608514
Branch :	Bank City
Branch Code :	255005

2.3. The Bank shall notify the Employer in writing if the bank account details change before the Employer's next salary run cut-off date.

2.4. When an Employer receives a repayment schedule on or before its monthly salary run cut-off date (which date the Employer shall advise the Bank of in writing), it shall make the first monthly deduction from the Employee's salary in that same month and pay same over to the Bank.

- 2.5. Should the monthly instalments due by any or all of the Employees increase or decrease for any reason, the Bank shall advise the Employer of such change as soon as is reasonably practical and the Employer shall pay such increased or decreased instalments to the bank in the same month, if notice of the increased or decreased instalments is only given to the Employer after its monthly salary run cut-off date, then the Employer shall give effect to the increased or decreased instalment on the salary run in the following month.
- 2.6. The Employer shall notify the Bank, the Fund and the Fund Administrator, should an Employee no longer be employed by the Employer for any reason as soon as the Employer becomes aware of this fact.
- 2.7. The Employer, when effecting the monthly instalment repayment, shall forward a schedule on or the first day after its salary run date, reflecting the names of the Employees from whom deductions were made and the amounts, and the names of Employees from whom deductions were not made and the reasons for the non-deduction. Valid reasons for non-deduction include, but are not limited to, insufficient salary paid due to short time, maternity leave or sick leave exhausted, payments not coinciding with the instructions set out in the Authority to Deduct, or any other reason that has been accepted by the Bank in writing.
- 2.8. Should the Employer fail to make a deduction without a valid reason, as listed in clause 2.7 above, the non-deduction will constitute a breach in terms of clause 7.

3. DISBURSEMENT OF LOAN

The Bank shall pay the amount of the Loan in accordance with the instructions contained in the Smart Housing Plan Loan Credit Agreement, which payment shall be made by way of electronic credit to the Employee's account.

4. REPAYMENTS

- 4.1. The Loan is repayable in equal monthly instalments, which will be allocated to interest, fees, charges and capital, respectively.
- 4.2. The Loan shall be repayable in full by the Fund in lieu of the Main Agreement, on the Employee's termination of employment for whatever reason, including without limitation to, the Employee's resignation, dismissal, death, retrenchment, permanent disablement, retirement or the Member absconding from his/her employment.

5. CONFIDENTIALITY

- 5.1. Both the Bank and the Employer acknowledge that they may from time to time become privy to Confidential Information, the disclosure of which to third parties may be damaging to the discloser of the Confidential Information or to Employees.
- 5.2. Both the Employer and the Bank therefore agree to hold such Confidential Information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to persons reasonably requiring such Confidential Information, and not to release or disclose it to any other party, unless so required by law.
- 5.3. Confidential Information is not meant to include any information which, at the time of disclosure is known by the public and/or any competitors of either party.
- 5.4. Neither party shall use the names, trademarks, or trade names, whether registered nor not, of the other party in publicity releases or advertising or in any other manner including customer lists, without having secured the prior written approval of the other party.

- 5.5. The parties' obligations of confidentiality under this Agreement shall survive the termination of this Agreement for any reason.
- 5.6. The Bank and the Employer each indemnify one another against any unauthorised disclosure of Confidential Information by either of them or by their agents, service providers, representatives or appointees, provided that the Bank and the Employer exercise the same standard of care with the other party's Confidential Information as they do with their own.

6. DATA PROTECTION

- 6.1. The Parties acknowledge that they may be exposed to the Data of employees, customers and clients.
- 6.2. The Parties specifically record that all Data provided by the one Party to the other, or to which the Parties may be exposed, shall constitute confidential information and where applicable, Intellectual Property belonging to the other Party.
- 6.3. The Parties hereby warrant in favour of each other that they will all times strictly comply with all applicable legislation and with all the provisions and requirements of any data protection policies and procedures which may be in force from time to time.
- 6.4. The Parties hereby warrant and undertake that they will not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the other Party.
- 6.5. The Parties warrant that it shall immediately inform the other Party, should any Data it has access to be compromised in any manner or form. Both Parties further undertake to also immediately inform the other Party as to how it will manage such compromise and what steps will be taken to rectify the situation to the satisfaction of the other Party.
- 6.6. The Parties further warrant that they will ensure that all systems and operations which in use, including all systems on which Data is copied, compiled, collated, processed, transmitted, stored, collected, mined, altered, or deleted or otherwise used, shall at all times be of a minimum standard required by law and be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Data.
- 6.7. The Parties' obligations under this clause will survive the termination of this Agreement for any reason.

7. BREACH

In the event of any of the parties ("the Defaulting Party") committing a breach of any of the terms, conditions or warranties contained in this Agreement, any other party to this Agreement ("the Aggrieved Party") shall give the Defaulting Party notice of the alleged breach, and shall notify all other parties to this Agreement of the alleged breach, and should the Defaulting Party fail to remedy such breach within a period of 10 (Ten) days after receipt of a written notice from another party calling upon the Defaulting Party to remedy the breach, then the Aggrieved Party shall be entitled, without limiting any other rights that party may have in law, to claim specific performance or to cancel this agreement and institute a claim for damages against the Defaulting Party.

8. TERMINATION

This Agreement shall continue indefinitely although either party may on 60 (Sixty) days notice to the other party, terminate this Agreement, provided that all the obligations of the parties as set out in this Agreement and as they pertain to Loan credit agreements already concluded shall remain in full force and effect.

9. NOTICES

Any notices or communications required or permitted to be given in terms of this Agreement, will be valid and effective only if sent by email and confirmed in writing, and delivered by hand or fax to the addresses as set out in clause 10 below.

10. ADDRESSES FOR SERVICES

The Parties hereby nominate the address and representatives as set out below to which all notices and other communications must be delivered relating to this Agreement:

The Bank

Address:	FNB Towers, 4th Floor, 27 Diagonal Street, Johannesburg, 2001
Representative:	FNB Loans
Email:	shp@fnb.co.za

The Employer

Address:
Representative:
Telefax:
Email:

11. GENERAL

- 11.1. A certificate signed by any manager of the Bank, whose appointment need not be proved, as to any amounts outstanding under any of the Loans shall be prima facie proof of the facts stated therein for all purposes. It is recorded that the obligations of the Employer shall be limited to the amounts set out in a valid Authority to Deduct. It is recorded that the obligations of the Employer shall be limited to the amounts set out in a valid Authority to Deduct in the loan credit agreement.
- 11.2. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof and no variation, amendment or cancellation of this Agreement shall be binding unless reduced to writing and signed by all the parties.
- 11.3. Should any provision in this Agreement be found to be invalid it shall be severed from the Agreement and shall not affect the validity of the remaining provisions.
- 11.4. The *contra preferentium* rule shall not apply in the interpretation of this Agreement.
- 11.5. Notwithstanding anything to the contrary, all parties hereto will comply with all applicable legislation from time to time.
- 11.6. The Employer is indemnified and will be held harmless against all/any claim/s that may arise from the Fund, the Members or any third party pursuant to the incorrect details in respect of the Employer's obligations having been furnished to the Employer.

12. EXECUTION

This Agreement is executed for and on behalf of

Signed at:-	
Date:-	
For and on behalf of The Bank	
Signature	
Full Name	
Position	
Date of Birth	
By signing above I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	
Full Name	
Date of Birth	

Signed at:-	
Date:-	
For and on behalf of The Bank	
Signature	
Full Name	
Position	
Date of Birth	
By signing above I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	
Full Name	
Date of Birth	

Signed at:-	
Date:-	
For and on behalf of The Employer	
Signature	
Full Name	
Position	
Date of Birth	
By signing above I warrant that I have been duly authorised to sign this Agreement	
Witness Signature	
Full Name	
Date of Birth	