

De. yako.
16/2/17



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Ring-Fencing Agreement

(Version 3: Non-current)

Entered into by and between

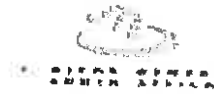
The Auditor-General of South Africa duly established in terms of Section 181(1)(e) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), read with the Public Audit Act, 2004 (Act No. 25 of 2004)

(Hereinafter referred to as "the AGSA")

And

Karoo Hoogland Municipality
(Hereinafter referred to as "the Debtor")

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context, the following terms shall have the meanings assigned to them hereunder and cognitive expressions shall have corresponding meanings, namely:

1.1.1 "Agreement" - This written agreement together with all written and signed appendices, annexures, exhibits or amendments attached to it from time to time;

1.1.2 "Audit Fees" - the fees (inclusive of VAT) that are recoverable by the AGSA from the Debtor in terms of section 23(2) of the Public Audit Act, 2004 (Act No. 25 of 2004)(PAA), for the performance of an audit or other function in terms of the PAA;

1.1.3 "Commencement Date" - notwithstanding the signature date, the date with effect from which the Debtor acknowledges its indebtedness for the ring-fenced amount in terms of this Agreement being 07 March 2017.;

1.1.4 "Interest Rate" - the rate per annum prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975);

1.1.5 "Ring-Fenced Amount" - the total amount R1 855 479.00[^] (One million, six hundred and fifty five thousand, four hundred and seventy nine Rand) being the Debtor's indebtedness to the AGSA for the audit conducted in terms of the PAA, which indebtedness is acknowledged by the Debtor in terms of this Agreement;

1.1.6 "Ring-Fenced Instalment" - the monthly payment of R180 000.00[^] (One hundred and eighty thousand Rand) (8 instalments) and R35 479.00 (Thirty five thousand, four hundred and seventy nine rand) (1 instalment) that the Debtor undertakes to pay to the AGSA in reduction of the Ring-Fenced Amount, as set out herein;

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- 1.1.7 "Ring-Fenced Period" - notwithstanding the Signature Date, a period of 10 (ten) months commencing on the Commencement Date up to and including the 07 day of December, 2017 during which period the Ring-Fenced Amount must be paid in full;
- 1.1.8 "the Signature Date" - the date on which this Agreement is signed by the party signing last in time;
- 1.1.9 "Parties" - the AGSA and the Debtor;
- 1.1.10 "VAT" - Value-added tax as governed by the Value-added Tax Act, 1991 (Act No. 89 of 1991).
- 1.2 Any reference to:
- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 natural persons shall include legal persons and vice versa;
- 1.2.3 any provision of a statute, rule or regulation shall be construed as a reference to that provision as from time to time amended or extended; and
- 1.2.4 the parties shall include their respective members, directors, officers, employees, agents and sub-contractors.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the Interpretation and definitions clause.
- 1.4 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless

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the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.7 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.8 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement shall not apply.
- 1.9 The following documents are annexures to this Agreement and constitute an integral part thereof and reflect the indebtedness of the Debtor to the AGSA:

Annexure "A": Plan for payment of Ring-Fenced Amount and Annexure "B": Analysis for revised Ring-Fenced amount and Ring-Fenced period

2. RECORDAL

- 2.1 The financial statements, reports on performance against pre-determined objectives and compliance with legislative requirements of the Debtor are subject to annual audits

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by the AGSA in terms of the provisions of section 188 of the Constitution, read with sections 4 and 20 of the PAA.

- 2.2 The AGSA conducted an audit of the Debtor for the 15/16. financial year, pursuant to which an invoice for its Audit Fees was sent to the Debtor for payment.
- 2.3 The Debtor has failed to pay the Audit Fees reflected in the invoice referred to in clause 2.2, within 30 (Thirty) days from the date of the invoice as is required by section 23(2) of the PAA.
- 2.4 The AGSA has charged interest on the outstanding Audit Fees calculated at the Interest Rate, in terms of section 23(3) of the PAA.
- 2.5 The AGSA has agreed to ring-fence the outstanding amounts due and owing by the Debtor to the AGSA as at the Commencement Date (including interest which has accrued thereon), which amounts are set out in annexures "A" and "B".
- 2.6 Ring-Fencing relates to an agreement to cease the running of interest on the debt due, owing and payable from time to time by the Debtor to the AGSA. The AGSA has agreed to such ring-fencing as an act of good faith and to enable the Debtor to settle its indebtedness towards the AGSA as efficiently as possible.
- 2.7 The Parties wish to regulate their relationship regarding the acknowledgement by the Debtor of its indebtedness and the payment thereof to the AGSA in this Agreement.

3. ACKNOWLEDGEMENT OF DEBT

The Debtor hereby acknowledges its indebtedness to the AGSA for the Ring-Fenced Amount as at the Commencement Date, subject to the terms and conditions set out in

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this Agreement.

4. REPAYMENT OF RING-FENCED AMOUNT

- 4.1 The Debtor undertakes to repay the Ring-Fenced Amount to the AGSA by way of the Ring-Fenced Instalments until the entire Ring-Fenced Amount is settled.
- 4.2 The Ring-Fenced Instalments shall be regular payments, which are made monthly in advance by the Debtor to the AGSA, the first such Ring-Fenced Instalment to be made on the Commencement Date and all subsequent Ring-Fenced Instalments to be made on or before the 7th (Seventh) day of every month following the month during which the Commencement Date occurs or as agreed otherwise in writing between the AGSA and the Debtor in annexures "A" and "B".
- 4.3 Nothing contained in this clause 4 shall prevent the Debtor from making payments in reduction of the Ring-Fenced Amount, of amounts larger than and/or at other dates and intervals than the Ring-Fenced Instalments or to repay the Ring-Fenced Amount (together with any interest on arrears in terms of clause 6.2) before expiry of the Ring-Fenced Period.
- 4.4 The AGSA shall be entitled to appropriate any payments received by it in terms of this Agreement –
- 4.4.1 firstly, to satisfy any due or unpaid interest as contemplated in clause 6.2;
- 4.4.2 secondly, to satisfy any due or unpaid charges;
- 4.4.3 thirdly, to reduce the Ring-Fenced Amount.

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5. REPAYMENT OF CURRENT AUDIT FEES

- 5.1 The amounts not forming part of the Ring-Fenced Amount and the current obligation to pay audit fees for the audit to be conducted for 16/17. financial year will only become due and owing by the Debtor on the termination of this Agreement.
- 5.2 In this event, the Debtor is obligated to enter on the termination of this Agreement into an new Agreement for the amounts due and owing that was not ring-fenced and/or the current audit fees that became due and owing by the Debtor during the duration of this Agreement.

6. INTEREST

- 6.1 The Ring-Fenced Amount outstanding from time to time shall not attract any interest subject to clause 6.2.
- 6.2 Any amount due and payable in terms of this Agreement which is not punctually paid on the due date stipulated for payment herein, shall attract interest calculated at the Interest Rate from the due date for payment until the date of payment, as stipulated in section 23(3) of the PAA.

7. ACCELERATION

In the event of -

- 7.1 the Debtor failing to pay any Ring-Fenced Instalment on the due date for payment thereof; or

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- 7.2 the Debtor failing to pay all amounts outstanding in terms of this Agreement before or on the last day of the Ring-Fenced Period; or
- 7.3 application being made for the winding-up, dissolution of, liquidation of or the placement under administration of the Debtor, whether provisionally or finally or if the Debtor itself adopts the appropriate resolutions for its winding-up, dissolution, liquidation or placement under administration,

then the full outstanding balance of the Ring-Fenced Amount, including all accrued and unpaid interest in terms of clause 5.2 shall immediately, and without any further notice by the AGSA, become due and payable by the Debtor to the AGSA.

8. CERTIFICATE

- 8.1 A certificate signed by any employee from the Finance Business Unit of the AGSA (whose authority, qualification and appointment need not to be proved) setting out any amount of the Debtor's indebtedness to the AGSA, shall be *prima facie* proof thereof in terms of this Agreement, and shall be valid as a liquid document in any court of competent jurisdiction, for the purposes of provisional sentence, summary judgement, business rescue proceedings or for any other purpose against the Debtor.
- 8.2 The Debtor acknowledges its indebtedness towards the AGSA in respect of the Ring-Fenced Amount or any outstanding balance thereof so certified and provides its consent by executing this Agreement, for any application envisaged by the Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

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9. GOVERNING LAW AND JURISDICTION

- 9.1 This Agreement will be governed by and construed in accordance with the laws of South Africa.
- 9.2 The Debtor consents in terms of section 45 of the Magistrate's Court Act, 1944 (Act No. 32 of 1944) to the AGSA taking action or enforcing any of its rights under this Agreement in the Magistrate's Court of any district having jurisdiction in respect of the Debtor, by virtue of section 28(1) of the aforesaid Act.

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10. RENUNCIATION OF BENEFITS

10.1 The Debtor hereby waives the benefits of the legal exceptions that –

- 10.1.1 there is no reason or basis for the claim by the AGSA (*non causa debiti*); or
- 10.1.2 errors have been made in calculating the amount claimed (*errore calculi*); or
- 10.1.3 the amount claimed has not been advanced (*non numeratae pecuniae*).

10.2 The Debtor declares that it understands the effect of the above waiver in terms of this clause.

11. BREACH

11.1 Should the Debtor breach any terms of this Agreement, the AGSA shall be obliged to notify the Debtor in writing to remedy such breach, and should the Debtor fail to do so within 14 (Fourteen) days of receipt of such notification, the AGSA shall without prejudice and in addition to any other remedies it may have, be entitled to:

11.1.1 cancel this Agreement and to claim damages from the Debtor; or

11.1.2 claim specific performance of any or all of the terms and conditions of this Agreement.

11.2 The Debtor shall be liable for any legal costs occasioned by the AGSA in any legal proceedings against the Debtor for the recovery of the Ring-Fenced Amount or any outstanding balance thereon.

11.3 In any legal proceedings instituted by the AGSA against the Debtor arising from any aspect of this Agreement, the Debtor agrees to pay the AGSA's legal costs on a scale as between attorney and own client as well as collection charges at the maximum rate permissible in law.

Handwritten signatures and initials: "J.", "N.M.", and "MP".



12. DOMICILIA AND NOTICES

- 12.1 Any notice by one Party to the other must be in writing, which shall include, for purposes of this Agreement, without limitation, paper-based or electronically rendered and communicated text.
- 12.2 All notices required to be served on any of the parties shall be given in writing by prepaid registered post or delivered by hand to the following *domicilia citandi et executandi* or sent to the following telefax numbers or e-mail addresses:
 - 12.2.1 In respect of the AGSA:

<u>Postal address</u>	<u>Physical address</u>
P O Box 448	300 Middel Street
Pretoria	Brooklyn
0001	Pretoria
Docex 275	0001

Telephone number: (012) 426 8000
Telefax number: (012) 426 8012
E-mail address:

Marked for the attention of: The Chief Financial Officer

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12.2.2 In respect of the Debtor:

Postal address:
Private Bag X3

Physical address
7 Mulder Street

Williston

Williston

8920

8920

Telephone number: 053-391-3003_

Telefax number: 053-391-3294_

E-mail address: munman@keroohoogland.gov.za

Marked for the attention of: Municipal Manager

12.3 Anyone of the Parties may from time to time change that Party's *domicilium* by delivery of a written notice to the other Party to that effect.

12.4 Any notice addressed by any Party to the other Party shall -

12.4.1 If delivered by hand at the address of its *domicilium* in terms of this clause, be deemed to have been duly received by the addressee on the date of delivery; or

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- 12.4.2 if posted by prepaid registered post to the addressee's *domicilium* in terms of this clause, be deemed to have been received by the addressee on the fifth day following the date of such posting; or
- 12.4.3 if sent by telefax to his telefax number in terms of this clause be deemed to have been duly received by the addressee on date of successful transmission thereof; or
- 12.4.4 If sent by email, be deemed to have been duly received by the addressee on the date of sending if it is received before 5.00 PM on a Business Day, otherwise it will be deemed to have been received on the next Business Day, only if the email notice requests an electronic mail response acknowledging receipt and the responding email message –
- (a) clearly refers to the specific email message to which it is responding; and
 - (b) includes a copy of the text of such message.
- 12.5 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party.

13. GENERAL

13.1 Entire Agreement

The Parties hereby acknowledge that the Agreement concluded between them constitutes the entire agreement between them and that no other conditions, stipulations, warranties nor representations whatsoever, have been made by any Party or that Party's agent, other than as specifically included herein.

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13.2 No Indulgence

No latitude, extension of time or other indulgence which may be given or allowed by the AGSA to the Debtor in respect of any payment provided for in this Agreement or the performance of any other obligation shall under any circumstances be construed to be an implied consent by the AGSA or operate as a waiver or a novation of or otherwise effect any of the AGSA's rights in terms of or arising from this Agreement, or prevent the AGSA from importing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

13.3 No Variation



The Parties agree that no variation of, addition to, consensual cancellation or novation of this Agreement in its entirety or of any term or condition thereof shall be of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the Parties or their authorized representatives hereto.

13.4 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which, when taken together, shall constitute the same instrument.

13.5 Continued Enforceability

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall

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be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

13.8 Warranty

The persons signing this Agreement warrant his/her authority to do so and confirm that all the required internal approval(s) authorising him/her to enter into this Agreement have been obtained.

THIS DONE AND SIGNED AT PRETORIA ON THIS 17 DAY OF FEBRUARY 2017.

FOR THE AUDITOR-GENERAL OF SOUTH AFRICA:

Newman Madankhi
Full name of signatory

[Signature] (CBE-finance)
Designation of signatory

[Signature]
Signature

[Signature] yabo.
Witness 1

[Signature]
Witness 2

[Signature] NM
[Signature] [Signature] [Signature]



THIS DONE AND SIGNED AT Williston ON THIS 13 DAY
OF February 2017.

FOR THE DEBTOR:

G. W. von MÖLLENDORF
Full name of signatory

Municipal Manager
Designation of signatory

[Signature]
Witness 1

[Signature]
Signature

[Signature]
Witness 2

⊕ [Signature] NM
⊕ [Signature] ⊕ [Signature]

ANNEXURE "A"



KAROO HOOGLAND MUNISIPALITEIT
MUNICIPALITY
In Engelsmannek en Fransoos, Zuidoos, Oos en West-Kaapland
As Administrasie van Pekaarsburg, Saksariaan, Willems en Omliggende lande

Private Bag 203
WELLINGTON, 8220
T. 063 3913 008 / F. 063 3913 284
E. munras@karoohoogland.gov.za
www.karoohoogland.gov.za

NAVRAE-
ENQUIRIES: Mr GW Van Mollendorf

VERW.NR.:
REF. NO.:

23 January 2017

Office of the Auditor General
KIMBERLEY
8300

To whom it may concern

Payment Plan for outstanding audit fees

With reference to your email dated 18 January 2017.

The following schedule is the proposed payment plan from Karoo Hoogland Municipality for the down payment of outstanding audit fees:

Number	Date	Payment	Balance
1	07-Feb-17	180 000.00	1 855 479.07
2	07-Mar-17	180 000.00	1 475 479.07
3	07-Apr-17	180 000.00	1 295 479.07
4	07-May-17	180 000.00	1 115 479.07
5	07-Jun-17	160 000.00	985 479.07
6	07-Jul-17	180 000.00	755 479.07
7	07-Aug-17	180 000.00	575 479.07
8	07-Sep-17	180 000.00	395 479.07
9	07-Oct-17	180 000.00	215 479.07
10	07-Nov-17	180 000.00	35 479.07
11	07-Dec-17	35 479.07	0.00
		<u>1 855 479.07</u>	

The Municipality will settle the amount of R 1 855 479.07 in 11 months commencing on 7 February 2017. The down payment amount will be fixed at R 180 000.00 per month except for month 11 which will be R 35 479.07. Monthly payments will be done before or on the seventh of each month.

The Municipality request that interest to the amount of R 134 536.87 be written -off and also request that current amounts which become due and payable be excluded from the RFA after the signing of RFA.

The Municipality hereby commits to the AGSA that the Municipality agrees to enter into a new RFA after the first RFA lapses.

Big alle korrespondensie aan: **Munisipale Administrasie, Private Bag 203 WELLINGTON 8220**
Address all correspondence to:

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The Municipality will unfortunately not be in a financial position to pay the instalment plus the current amounts which are still going to be billed over the period of the proposed payment plan.

We humbly request your assistance in this regard.

Yours Sincerely


Mr G. von Möllendorf
MUNICIPAL MANAGER

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Annexure "B": Analysis for revised ring-fenced amount and ring-fenced period

The initial proposed payment plan, as per memorandum approved by the Corporate Executive (CE) was R1 835 478.00

Excluded from this total was an amount of R134 536.87 which related to accrued interest on the account. The Karoo Hoogland Municipality requested that this accrued interest be considered for write-off when seeking approval from CE. Before the CE approved this condition stipulated in the memorandum submitted, our Finance department reversed this interest amount as a result of the contribution made by National Treasury.

Before the CE approval was obtained to enter into in a ring-fencing agreement with the Karoo Hoogland Municipality, the Karoo Hoogland Municipality already made a payment in reducing their outstanding debt amounting to R180 000.00.

Due to the above mentioned payment, the new amount to be ring-fenced is R1 655 478.00 and the new ring-fenced period will be decreased to ten months commencing on the commencement date, 07 March 2017 up to and including the 07 December 2017 during which period the ring-fenced amount must be paid in full.

See tables below for details:

Balance as per the Municipality proposed payment plan (initial proposed amount to be ring-fenced amount)	1 835 478.00
Less: Payment made 02/02/2017	-180 000.00
Revised amount to be ring-fenced	1 655 478.00

Revised monthly ring-fenced instalment payment amounts to be made (R)	Revised ring-fenced period	Revised monthly ring-fenced instalment payment due dates
1 655 478.07	10 months	
180 000.00	1	07-Mar-17
180 000.00	2	07-Apr-17
180 000.00	3	07-May-17
180 000.00	4	07-Jun-17
180 000.00	5	07-Jul-17
180 000.00	6	07-Aug-17
180 000.00	7	07-Sep-17
180 000.00	8	07-Oct-17
180 000.00	9	07-Nov-17
35 478.07	10	07-Dec-17

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