

LOAN AGREEMENT

entered into between

(Hereinafter referred to as "the Lender")

and

(Identity Number: _____)

(Hereinafter referred to as "the Borrower"),

LOAN SCHEDULE

BORROWER INFORMATION

NAME: _____

IDENTITY NUMBER: _____

PHYSICAL ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

EMPLOYER: _____

EMPLOYER PHYSICAL

ADDRESS: _____

EMPLOYER CONTACT

NUMBER: _____

COST OF CREDIT

(Provided in terms of sections 92 and 93 of the National Credit Act, No. 34 of 2005, read with the regulations made under the Act)

-

Total Amount Repayable: R _____

-

Service fee: _____

Initiation fee: _____

interest rate per annum: _____%

Monetary value of interest R _____

Total cost of proposed agreement (debt plus interest): The sum of R _____ + R _____

Number of instalments to be paid:

Instalment amounts: R _____

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

- 1.1.1 **“Advance Date”** means the date upon which the Capital Amount is paid to the Borrower by the Lender;
- 1.1.2 **“Agreement”** means this Loan Agreement and Annexures thereto;
- 1.1.3 **“Borrower”** means the person as more fully described in the Loan Schedule;
- 1.1.4 **“Business day”** means any day other than a Saturday, Sunday or official South African public holiday;
- 1.1.5 **“Credit Act”** means the National Credit Act, No. 34 of 2005, together with the regulations made under it;
- 1.1.6 **“Lender”** means _____,
with its registered office situated at

_____;
- 1.1.7 **“Law”** means the common law and any applicable constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgment or order having force of law in South Africa, and any interpretation of any of them by any court or forum of law;
- 1.1.8 **“Party” or “Parties”** means the Lender or the Borrower, or both of them, as the context may require.

1.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 1.2.1 Unless otherwise defined herein, any phrase or word defined in the Act, has the same meaning in this Agreement.
- 1.2.2 References to “**Parties**” shall include the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 1.2.3 References to a “**person**” shall include an individual, firm, company, corporation, juristic person, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 1.2.4 References to “**clauses**”, “**sub-clauses**” and “**schedules**” are references to the clauses, sub-clauses and schedules of this Agreement.
- 1.2.5 References to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 1.2.6 Words in parentheses and italics appearing after a clause reference or a reference to a Schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 1.2.7 The headings of clauses, sub-clauses and schedules are included for convenience only and shall not affect the interpretation of this Agreement.
- 1.2.8 The schedules to this Agreement are an integral part of this Agreement and references to this Agreement shall include the schedules.
- 1.2.9 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 1.2.10 Words importing the singular number shall include the plural and *vice versa*, and words importing either gender or the neuter shall include both genders and the neuter.

- 1.2.11 References to “**this Agreement**” shall include this Agreement as amended, varied, novated or substituted in writing from time to time.
 - 1.2.12 General words preceded or followed by words such as “**other**” or “**including**” or “**particularly**” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.
 - 1.2.13 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.
 - 1.2.14 If any definition in clause 3.1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.
 - 1.2.15 Words defined in a specific clause have the same meaning in all other clauses of this Agreement.
- 1.3 If any provision of this Agreement is or may be held to be unlawful, invalid or unenforceable in terms of any Law, such provision or provisions shall to the extent possible, be regarded as severable from the remainder of this Agreement which shall still remain enforceable between the Parties.

2. RECORDAL

- 2.1 The Lender has agreed to loan and advance the Capital Amount to the Borrower on the terms and conditions of this Agreement.
- 2.2 The Parties are entering into this Agreement to record the terms and conditions of the loan and ancillary matters.

3. DISCLOSURE OF ADMINISTRATION

- 3.1 The Borrower confirms that his/her estate has not been placed under administration as contemplated by Section 74 of the Magistrate’s Court Act 32 of 1944 before signature hereof, and furthermore that no such application is pending or foreseen.
- 3.2 The Borrower further confirms that he/she is aware that should the aforementioned statement be false, he/she may be found guilty of an offence, and on conviction be

liable to imprisonment or to be fined as contemplated in terms of S74 of the Magistrate Court Act.

4. INTEREST AND CHARGES

4.1 Additional interest, being arrear interest, will be charged on all overdue amounts at the rate as set out in the Loan Schedule and the total amounts of interest and service fees will increase accordingly.

4.2 In addition, an initiation fee and monthly administration fees will be charged as reflected in the Loan Schedule.

4.3 The Lender will be entitled to capitalize any charges permissible under the Credit Act to the maximum extent permitted by the Credit Act, including, without limitation, services fees, default administration charges and collection costs during:

4.3.1 the term of the loan;

4.3.2 any period for which the loan may be extended; and

4.3.3 after judgment is obtained against you, until the total amount outstanding is paid in full.

4.4 Any tracing fees incurred by the Lender will be recovered from the Borrower, including attorney's costs and/or debt collector's costs.

4.5 This clause shall survive termination of this Agreement for any reason whatsoever.

5. REPAYMENT OF LOAN

5.1 The first instalment under this Agreement shall be due on the _____ (insert date), and payment shall be due thereafter on a monthly basis on or before the ____ (insert day) day of every month.

5.2 if the instalments is not received by the Lender on the due date, the Lender may, in its sole discretion (but shall not be obliged to), elect to write off arrear interest on overdue amounts if the full amount of the instalment is received by the Lender within 5 days, or such shorter period as the Lender may determine in its sole discretion, of the date on which the instalment was due and payable.

- 5.3 Payment of any amount due under this agreement shall be deemed to have been made only when the relevant amount has been duly credited to the banking account of the Lender or its nominee.
- 5.4 The Borrower shall not be entitled to withhold any payments due in terms of this agreement and all payments shall be made without set-off or deduction of any nature and free of exchange.
- 5.5 Where the Borrower does not make payment of all instalments, the Lender will be entitled to, without prejudice to any other rights they may have, extend the terms of the Agreement to collect any outstanding amounts and may during this extended term, charge monthly services fees where applicable.

6. EARLY SETTLEMENT

- 6.1 The Borrower may prepay any amount to the Lender under the Agreement at any time and without notice or penalty.
- 6.2 The Lender will credit each payment made under the Agreement as of the date of receipt of payment as follows:
- 6.2.1 firstly, to satisfy any due or unpaid interest charges;
- 6.2.2 secondly, to satisfy any due or unpaid fees or charges; and
- 6.2.3 thirdly, to reduce the amount of the principal debt.
- 6.3 The Borrower may settle the loan early by paying the settlement amount which amount will be confirmed by the Lender in writing.

7. PERSONAL INFORMATION AND CONSENT

- 7.1 The Borrower warrants and guarantees that all information supplied in the application, relevant and relating documents as well as for this Agreement is true and correct. The Borrower specifically warrants and guarantees the correctness of all income and expense information provided.
- 7.2 The Borrower agrees to immediately inform the Lender in writing if there are any changes of whatsoever nature in any of his/her personal information, including a change in the physical address or contact details.

- 7.3 As and when necessary the Borrower consents to the Lender obtaining, using, storing and/or disclosing their personal information, provided as follows:
- 7.3.1 to either credit grantors and/or credit bureaux's and/or other financial institutions in order to ascertain information relating to the Borrower's credit worthiness or for the prevention of fraud;
 - 7.3.2 to attorneys and/or debt collection agencies if the Borrower breaches the Agreement;
 - 7.3.3 to the Lender's agents and/or consultants and/or trade partners and/or service providers.
- 7.4 The Borrower has the right in terms of the Credit Act to contact the credit bureaux, to have its credit records disclosed and correct inaccurate information.
- 7.5 The Borrower consents to the Lender contacting the employer in order to obtain or confirm details relating to the Borrower's employment, including but not limited to, the status of employment, remuneration, and date of payment of salary.

8. BREACH

- 8.1 If the Borrower:
- 8.1.1 fails to make a payment to the Lender on or before the due date; or
 - 8.1.2 commits any other breach of this agreement (whether material or not) and fails to remedy the breach within seven days after receipt of a written notice from the Lender advising her to do so; or
 - 8.1.3 is or becomes insolvent; or
 - 8.1.4 commits an act which constitutes an act of insolvency in terms of the Insolvency Act, No. 24 of 1936; or
 - 8.1.5 allows a judgment against her to remain unsatisfied for more than five business days; or
 - 8.1.6 sells or disposes of the major portion of her assets without the prior written consent of the Lender; or

8.1.7 is provisionally or finally wound-up or sequestrated or placed under provisional or final business rescue proceedings or curatorship; then from the date of such event, clause 8.2 shall apply

8.1.8 employment is terminated;

8.2 From the date of occurrence of any of the events set out in clause 8.1:

8.2.1 the outstanding balance of the Capital Amount together with all accrued interest thereon shall become immediately due and payable, without demand; and

8.2.2 the Borrower hereby consents, in terms of section 58 of the Magistrate's Court Act, No. 32 of 1944, to judgment in favour of the Lender for the outstanding balance of the Capital Amount, the unpaid interest and other charges that have accrued up to such date, and any other amounts that are due and payable by the Borrower to the Lender arising from this agreement; or

8.2.3 without prejudice to any of its other rights arising out of such event, the Lender shall be entitled to cancel this agreement with immediate effect by written notice to the Borrower.

9. CERTIFICATE OF INDEBTEDNESS

A certificate signed by the Lender or the accountant of the Lender (whose appointment, signature and authority need not be proved) setting out any amount(s) due and payable by the Borrower at any time under this acknowledgement shall be *prima facie* proof of such facts and shall constitute a liquid document for the purpose of provisional sentence or summary judgment proceedings or for any other purpose.

10. JURISDICTION AND COSTS

10.1 At the election of the Lender, any claim against the Borrower may be brought in any Magistrates' Court having jurisdiction notwithstanding that the amount of the claim may be beyond the jurisdiction of the Magistrates' Court.

10.2 The Borrower shall pay all costs and charges incurred by the Lender in enforcing his rights under or arising out of this agreement, including but not limited to tracing fees,

expenses and any legal costs on the attorney and own-client scale including collection commission.

11. WAIVER OF DEFENCES

The Borrower shall have the onus of proving any of the allegations or defences set out below in the event that they are raised in defence of any legal proceedings based on this agreement:

11.1 no money was paid over by the Lender and/or value received by the Borrower; and/or

11.2 there is no actionable debt or cause for the obligations of the Borrower; and/or

11.3 errors have been made in the calculation of the amount claimed.

12. WAIVER OF PRESCRIPTION

The Borrower hereby waives her right to raise a defence of prescription in terms of the Prescription Act, No. 68 of 1969, in any legal proceedings arising out of this agreement, and hereby declares that she understands the meaning and effect of such waiver.

13. MATRIMONIAL PROPERTY ACT

13.1 If the Borrower is married:

13.1.1 in community of property;

13.1.2 in terms of a customary marriage in which your spouse is not a partner in any other existing customary marriage;

13.1.3 in terms of a customary marriage where you or your spouse is a partner in any other customary marriage and the agreement governing such marriages requires all or any spouses to consent to the conclusion of this Agreement; or

13.1.4 in accordance with the law of a foreign country, you confirm that you have received the written consent of your spouse/s to enter into this Agreement as required by Section 15 of the Matrimonial Property Act, 1984

14. NOTICES AND DOMICILIA

14.1 Each party chooses its respective physical address set out in clause 1 and the Loan Schedule of this agreement as its *domicilium citandi et executandi* for the giving of notices, the serving of legal process and any other purpose arising from this agreement.

14.2 Each party may change its chosen address to any other physical address in South Africa provided that such change shall only take effect ten days after such party has given written notice of the change to the other party/ies.

14.3 Notices in terms of this agreement shall be given in writing at the addressee's chosen address and, unless the contrary is proved, a notice shall be deemed to have been received by the addressee:

14.3.1 at the time of delivery, if delivered by hand;

14.3.2 on the seventh day following the date of posting, if posted by prepaid registered post; and

14.3.3 on the day following the date of transmission, if successfully transmitted by fax or email.

14.4 If a written notice or other document is actually received by a party, such receipt shall be valid even if the notice or document was not given in accordance with this clause.

15. CESSION AND DELEGATION

15.1 The Lender shall be entitled without notice to the Borrower to cede or encumber any of his rights and to delegate any of his obligations under this agreement to any person(s) and the Borrower hereby consents to such cession and delegation.

15.2 The Borrower shall not be entitled to cede or encumber any of her rights or to delegate any of her obligations under this agreement to any person(s) without the prior written consent of the Lender.

16. SEVERABILITY

Each provision of this agreement shall be deemed to be separate and severable. Accordingly, if any provision of this agreement is invalid or incapable of implementation the remaining provisions shall remain in full force and effect and the parties shall act in good faith to render all of the problematic provisions valid and enforceable and shall do all things necessary to amend this agreement accordingly.

17. RELAXATION

No failure to enforce, or delayed or partial enforcement of, a right by any party shall prejudice or derogate from the rights of such party under this agreement, nor shall it constitute a waiver or novation of that party's rights under this agreement and it shall not estop or otherwise prevent such party from enforcing at any time all its rights arising out of this agreement.

18. VARIATION

No addition to or variation, consensual termination or novation of this agreement, and no waiver of any right arising from this agreement or its breach or termination shall be valid or enforceable unless it is in writing and signed by all the parties or their duly authorised representatives.

19. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties in relation to the subject matter hereof and no party shall be bound by any representations, warranties, undertakings or the like not recorded herein.

20. SIGNATURE IN COUNTERPARTS

This agreement may be signed in one or more counterparts and the signature of a counterpart by any party shall have the same effect as if that party had signed the same document as the other party/ies.

21 COSTS AND STAMP DUTY

The Borrower shall pay on demand all the costs incurred in the negotiation, drafting and finalisation of this agreement, any security and any other documents relating to this agreement as well as other incidental costs, including any stamp duties payable.

DATED AT on this day of
..... (insert month)(insert year)

LENDER:

.....

Print name:

(Who warrants that he/she is duly authorised)

DATED AT on this day of
.....(insert month)(insert year)

BORROWER:

.....

Print name: