**LOAN AGREEMENT**

[*This loan agreement is for a loan that is not impacted by the National Credit Act ie for a loan amount exceeding R250 000*]

entered into between

***[insert name of company]***

***Registration Number [insert registration number]***

(herein duly represented by *[insert name of representative]* (ID no: *[insert ID no]*), who warrants that he or she has authority)

(“the Lender”")

and

***[insert name of company]***

***Registration Number [insert registration no]***

(herein duly represented by *[insert name of representative]* (ID no: *[insert ID no*]), who warrants that he or she has authority)

(“the Borrower”)

1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context clearly indicates a contrary intention:

the following terms and abbreviations shall have the following meanings and cognate expressions bear corresponding meanings:

**“Agreement”** means the loan agreement contained in this document;

**“Borrower”** means *[insert name of company]*, a company duly incorporated in terms of the company laws of South Africa, with its registered office at *[insert registered address of company]*;

**“Designated Account”** means the bank account of the Borrower

**“Lender”** means *[insert name of company]*, a company duly incorporated in terms of the company laws of South Africa, with registered offices at *[insert registered address of company]*;

**“Loan Amount”** means the amount of*[insert amount in Rands]*;

**“Outstanding** **Amount”** means, at any time, the aggregate of all amounts (whether in respect of interest, capital or otherwise) which are then owing by the Borrower to the Lender in terms of this Agreement;

**“Prime Rate”** means the publicly quoted prime rate of interest, compounded monthly in arrears and calculated on a per annum basis and on a 365-day year irrespective of whether or not the year is a leap year, from time to time published by First National Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose authority, appointment and designation it shall not be necessary to prove;

**“Parties”** means the parties to this Agreement and **“Party”** shall mean either one of them;

**“Repayment Commencement Date”** means six (6) consecutive calendar months calculated from day on which the Loan Amount is first paid into the Designated Account by the Lender;

**“Repayment Period”** means three (3) consecutive calendar months calculated from the Repayment Commencement Date;

**“Signature Date”** means the date of signature of this Agreement by the Party last signing.

clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;

an expression which denotes–

any gender includes the other genders;

a natural person includes a juristic person and *vice versa*;

the singular includes the plural and *vice versa*;

a Party includes a reference to that Party’s successors in title and assigns allowed at law; and

a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.

any reference to–

**“business hours”** means the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;

**“days”** means calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, a Sunday or a public holiday as gazetted by the government of South Africa from time to time;

**“laws”** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and “**law”** shall have a similar meaning; and

**“person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;

**“years”** and **“months”** mean calendar years and months;

the words **“include”** and **“including”** mean “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it: the application of the *eiusdem generis* rule is excluded;

any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement;

words, expressions, acronyms, phrases or descriptions that are not defined but that have a normal trade or industry usage shall bear such trade or industry usage meaning;

unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;

a reference to any statutory enactment means a reference to that enactment as at the Signature Date and as amended or substituted from time to time;

unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;

if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the next succeeding business day;

where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

the rule of construction that an agreement shall be interpreted against the Party responsible for the drafting of such agreement shall not apply to this Agreement;

recordals are binding on the Parties and are not merely for information purposes;

no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement;

any reference in this Agreement to **“this Agreement”** or any other agreement or document means a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time;

the words **“clause”** or **“clauses”** and **“schedule”** or **“schedules”** refer to clauses of and schedules to this Agreement.

1. recital

The Lender conducts business as *[insert nature of business]*.

The Borrower is a *[insert nature of business]* who has requested the Lender to advance the Loan Amount to the Borrower in order to *[insert reason for loan]*.

The Lender wishes to contribute to *[insert reason for loan]* by advancing the Loan Amount to the Borrower, subject to the terms and conditions set out herein.

The Parties wish to record their agreement in respect of the above and related matters in writing.

1. duration

This Agreement shall commence on the Signature Date and will expire once the Parties have exercised their respective rights and fulfilled their respective duties and obligations.

1. LOAN

The Lender hereby lends to the Borrower and the Borrower hereby agrees to borrow the Loan Amount (the **“Loan”**) on and subject to the terms and conditions hereinafter set out.

The Lender shall advance the Loan Amount by payment thereof into the Designated Account of the Borrower.

1. INTEREST

The Loan will bear no interest, except in the case of repayment having been demanded in term of clause 6 below and such repayment not occurring within the required period. In such event, the Loan will automatically accrue and bear interest at seven (7) percentage points above the Prime Rate, from the due date of repayment until the date of receipt of payment.

1. Repayment AND PREPAYMENT

The Borrower will be obliged to repay the Loan Amount on the Repayment Commencement Date and the Loan Amount shall be settled by means of the payment of *[insert number of instalments in words (numerals)]* equal instalments of*[insert amount in rands]* at the end of each month in the Repayment Period.

Notwithstanding anything to the contrary herein, the Borrower shall be entitled at any time and from time to time to repay all or any part of the Outstanding Amount.

The Outstanding Amount will automatically become due, owing and payable by the Borrower, notwithstanding that it would not otherwise be due, owing and payable, upon the occurrence of any one or more of the following events of default:

The Borrower fails to make any or all payments during the Repayment Period and such amount remains outstanding after a notice calling upon the Borrower to settle the amount within ten (10) days;

there is a change of shareholding of the Borrower without the prior written consent of the Lender;

the Borrower does not pay on the due date any amount payable by it under this Agreement;

any representation or warranty made by the Borrower in and connection with this Agreement is or proves to have been incorrect or misleading in any material respect;

the Borrower is deemed by any applicable law to be insolvent or unable to pay its debts as they fall due;

any corporate action, legal proceedings or other procedure or steps are taken in relation to the liquidation, winding-up, dissolution, administration or business rescue of the Borrower;

if the Borrower's assets are attached in execution and the Borrower fails to apply for rescission of the relevant judgment within fourteen (14) days of such attachment or, having so applied, the Borrower fails to successfully prosecute such application within ninety (90) days of the judgment; and/or

if a judgment is given against the Borrower and such judgment is not discharged within fourteen (14) days or if application for rescission of such judgment is not made within fourteen (14) days or, having so applied, the Borrower fails to successfully prosecute such application within ninety (90) days of the judgment.

Notwithstanding anything to the contrary, all payments to be made in terms hereof shall be made to the Lender unconditionally without deduction or set-off and to the Designated Account of the Lender, as designated in writing to the Borrower from time to time.

1. operational undertakings

Until such time as all Outstanding Amounts due by the Borrower to the Lender in terms of or arising from this Agreement have been paid or repaid in full–

the Borrower undertakes that it shall–

deliver to the Lender any information and documentation regarding any of the affairs of the Borrower which the Lender requests disclosure of, within five (5) business days of receipt of a written demand from the Lender;

immediately advise the Lender of the occurrence of any facts or circumstances which could reasonably be expected to result in the occurrence of an event of default, as soon as it becomes aware of such facts and/or circumstances;

at all times maintain and preserve its corporate existence and accounting policies, procedures and records, in accordance with acceptable accounting practices;

at all times conduct its business in a lawful and responsible manner and not materially change the nature of its business from that which it carried on as at the Signature Date; or

not conclude any transaction with any person other than on an arm's length basis.

1. WARRANTIES

Each Party hereby warrants to and in favour of the other that–

it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

the execution of this Agreement and the performance of its obligations hereunder does not and shall not:

8.1.2.1 contravene any law or regulation to which that Party is subject;

8.1.2.2 contravene any provision of that Party’s constitutional documents; or

8.1.2.3 conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and

to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;

it is entering into this Agreement as principal and not as agent on behalf of any other party; and

it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

Each of the representations and warranties given by the Parties in terms of clause 8.1 shall–

be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;

continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

*prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.

1. RENUNCIATION OF BENEFITS

The Borrower hereby renounces in favour of the Lender the benefits of the defences and exceptions of no value received, *non numeratae pecuniae*, *non causa debiti*, errors of calculation, and revision of accounts.

The Borrower acknowledges that the Lender has brought to its attention that it is incumbent upon the Borrower to acquaint itself with the meaning and effect of all the terms and conditions of this Agreement, and specifically clause 9.1.

1. PUBLICITY

Subject to clause 10.3, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by one Party to the other pursuant to this Agreement.

No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law or by the rules of any recognised securities exchange, in which event the Party obliged to make such statement will first consult with the other Party in order to enable the Parties in good faith to attempt to agree on the content of such announcement, which (unless otherwise agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause 10.

This clause 10 shall not apply to any disclosure made by a Party to:

10.3.1 its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or

10.3.2 to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

1. NOTICES AND DOMICILIa

The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement and email addresses–

**The Lender:**

Physical address: *[insert registered address]*

E-mail: *[insert email address]*

Attention: *[insert name of representative]*

**The Borrower:**

Physical address: *[insert registered address]*

 E-mail: *[insert email address]*

Attention: *[insert name of representative]*

Any Party may change its *domicilium* or its address for the purposes of notices to any other physical address, email address or telefax number by written notice to the other Party to that effect. Such change of address will be effective five (5) business days after receipt of the notice of the change.

All notices to be given in terms of this Agreement will be given in writing, in English, and will–

be delivered by hand, by telefax or by way of email;

if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day;

if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

1. COSTS

The Borrower will bear all costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

1. applicable law and jurisdiction

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town in any dispute arising from or in connection with this Agreement.

1. GENERAL

This Agreement constitutes the sole and entire record of the agreement between the Parties with regard to the subject matter thereof and, except where otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

This Agreement supersedes, overrides and replaces all prior agreements and negotiations, terms, conditions, offers, promises, representations, quotations, agreements and understandings of the Parties with respect thereto, whether written or oral.

Where in this Agreement provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and signed by the duly authorised representative(s) of such Parties. The Parties specifically agree that such signed agreement or approval may be communicated to the other Party by e-mail.

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.

In the event that any provision of this Agreement conflicts with applicable laws or if any such provision is held invalid by an arbitrator or a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties, but in accordance with applicable laws. The remainder of this Agreement shall remain in full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

No variation of the Agreement and no agreed cancellation of the Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the authorised representatives of the Parties. For the purposes of this clause “signed” shall mean a signature executed by hand on paper containing the document or an advanced electronic signature applied to the document by the signatory.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate either as an estoppel against any Party in respect of its rights under this Agreement, or so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced a Party to enter into the Agreement and/or whether it was negligent or not.

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be assigned, ceded, or dealt with or otherwise transferred by any other party without the prior signed written consent of the other Party.

The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED on the day of 202 at . *[insert date, year, place]*

For and on behalf of

*[insert name of company that is lending money]*

|  |
| --- |
| Signature |
| Name of signatory |
| Designation of signatory |

SIGNED on the day of 202 at . *[insert date, year, place]*

 For and on behalf of

*[insert name of company that is borrowing money]*

|  |
| --- |
| Signature |
| Name of signatory |
| Designation of signatory |