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LOAN AGREEMENT

1.	The Lender:	
	Registration/Identity Number:	
	Contact person (if the Lender is not a private individual):	
	Physical address:	
	Postal address:	
	Phone number:	
	Email address:	
2.	The Borrower:	
	Registration/Identity Number:	
	Contact person (if the Borrower is not a private individual):	
	Physical address:	
	Postal address:	
	Phone number:	
	Email address:	
3.	Commencement Date:	
4.	Loan Amount:	
5.	Interest Rate:	

6.	Instalment Dates:	
7.	Instalment Amount:	
8.	Final Repayment Date:	
9.	Lender's Banking Account:	
10.	Borrower's Banking Account:	
11.	Province where Arbitration will be held	

(collectively referred to as the "Parties")

Definitions

1.1 In this Agreement, including the annexures to this Agreement, the following words and phrases shall, unless the contrary intention appears, have the following meanings:

1.1.1 "**Agreement**" means this Agreement and all annexures thereto, which annexures are not pre-defined in the Agreement;

1.1.2 "**Borrower**" means the Borrower as defined in item 2 of the Table;

1.1.3 "**Business Day**" means any day that is not a Saturday, Sunday or South African public holiday;

1.1.4 "**Commencement Date**" means the date on which the Lender advances the Loan Amount to the Borrower in terms of this Agreement as defined in item 3 of the Table, irrespective of the signature date of this Agreement;

1.1.5 "**Encumbrance**" includes any –

1.1.5.1

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

1.1.5.2 any arrangement under which money or claims to, or for the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person or entity; and

1.1.5.3 any other type of preferential agreement or arrangement.

1.1.6 “**Event of Default**” means an event as envisaged in clause 10 of this Agreement;

1.1.7 “**Final Repayment Date**” means the date upon which the last instalment in respect of the Loan Amount shall be made to the Lender as defined in item 8 of the Table.

1.1.8 “**Instalment Amount**” means the monthly instalment payable by the Borrower to the Lender as defined in item 7 of the above Table;

1.1.9 “**Instalment Date**” means the date of each month on which the Instalment Amount is to be paid to the Lender;

1.1.10 “**Interest**” shall mean the amount calculated at the Interest Rate on the Loan Amount per annum compounded monthly in arrears;

1.1.11 “**Interest Rate**” means the interest rate as set out in item 5 of the Table;

1.1.12 “**Lender**” means the Lender as defined in item 1 of the Table;

1.1.13 “**Loan Amount**” means the amount as set out in item 4 of the Table, which amount shall be advanced to the Borrower by the Lender in the form of a loan;

1.1.14 “**Material Adverse Effect**” means any event, matter or circumstance (or combination of events, matters or circumstances) which, in the reasonable opinion of the Lender, has or may have a material adverse effect on –

1.1.14.1 [REDACTED]

[REDACTED];

1.1.14.2 the ability of the Borrower and/or the Surety to perform in a timely manner all or any of its obligations (including its payment obligations) under and in terms of this Agreement;

1.1.14.3 the ability of the Lender to exercise and/or enforce any right granted or intended or purported to be granted to it in terms of this Agreement; or

1.1.14.4 [REDACTED]
[REDACTED]
[REDACTED].

1.1.15 "**NCA**" means the National Credit Act 34 of 2005 and its regulations, as amended or replaced from time to time;

1.1.16 "**Parties**" means the Lender and the Borrower collectively, and "**Party**" means any one of them, as the context indicates;

1.1.17 "**Repayment Amount**" means the total amount to be paid by the Borrower to the Lender which comprises the Loan Amount together with Interest; and

1.1.18 "**Table**" means the Table set out on the first page of this Agreement.

1.2 In this Agreement, except to the extent that the context otherwise requires or is otherwise expressly stipulated, words denoting any one gender include all other genders and words denoting the singular shall include the plural and *vice versa*.

1.3 The headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

1.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

- 1.5 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be calculated exclusive of the first day and inclusive of the last day, unless 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.
- 1.6 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 1.7 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 the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.8 This Agreement is subject to the NCA and all other applicable legislation from time to time. If any provision of this Agreement conflicts with any provisions of the NCA, the provisions of the NCA shall apply to the extent of such inconsistency.

1. Introduction

- 1.1. It is recorded that:
 - 1.1.1. the Borrower is desirous of making a loan from the Lender;
 - 1.1.2. the Lender has agreed to advance to the Borrower the Loan Amount subject to the terms and conditions stated herein; and
 - 1.1.3. the Parties are desirous of recording the terms and conditions of their agreement in writing.

2. The Loan Amount

- 2.1. With effect from the Commencement Date, the Lender hereby agrees, subject to the terms of this Agreement, to advance the Loan Amount to

the Borrower.

3. Release Conditions

3.1.

[REDACTED]
[REDACTED]
[REDACTED] -

3.1.1. the Borrower delivering to the Lender copies of the requisite resolutions pertaining to the Borrower (where applicable) -

3.1.1.1.

[REDACTED]
[REDACTED]
[REDACTED]

3.1.1.2. authorising a specified person or persons to execute this Agreement on behalf of the Borrower (where applicable).

4. Advance, Interest and Repayment

4.1. Payment of Loan Amount by the Lender

4.1.1. On the Commencement Date the Lender shall make payment to the Borrower of the Loan Amount by way of an electronic funds transfer into the bank account as nominated by the Borrower ("the Borrower's Banking Account", [REDACTED]
[REDACTED]
[REDACTED].

4.2. Interest

4.2.1. Interest shall accrue on the Loan Amount at the Interest Rate compounded monthly [REDACTED]
[REDACTED]
[REDACTED].

4.3. Payment of the Instalment Amount

4.3.1. The Instalment Amount due by Borrower to the Lender shall be paid by the Borrower on the Instalment Date until such time as the Repayment Amount is paid in full.

5. Payment Covenants

5.1. The Instalment Amount shall be paid to the Lender by the Borrower by way of EFT of cleared funds into a bank account nominated by the Lender ("the Lender's Banking Account") as set out in item 9 of the Table, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

5.2. On the occurrence of an Event of Default, as provided for in clause 10 of this Agreement, the Repayment Amount shall forthwith become due and payable in full and the Lender may institute proceedings for the recovery thereof in accordance with the provisions set out herein.

6. Certificate of Indebtedness

6.1. A certificate signed by a director or prescribed officer of the Lender (whose appointment, authority or qualification need not be proved) shall be –

6.1.1. [REDACTED]

[REDACTED]

6.1.2. valid, together herewith, for any purpose and as a liquid document (alternatively, as proof of a liquidated amount) in any Court of competent jurisdiction for the purpose of obtaining

provisional sentence, summary judgment or any other judgment against the Borrower; and

6.1.3. [REDACTED]
[REDACTED]

7. **Representations and Warranties**

7.1. The Borrower hereby gives the Lender the following representations and warranties, each of which is deemed to be material and effective on the Commencement Date and thereafter until the Repayment Amount is paid in full –

7.1.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7.1.2. (where applicable) the Borrower is a natural person of full legal capacity, and being fully capable of exercising his/her rights and to perform his/her obligations hereunder;

7.1.3. all acts, conditions and things required to be done, fulfilled and performed in order to enable the Borrower to enter into, exercise its rights under and comply with its obligations contained in this Agreement, have been done, fulfilled and performed as may be the case;

7.1.4. [REDACTED]
[REDACTED];

7.1.5. all information supplied by the Borrower in connection with this Agreement is true, complete and accurate in all material

respects (it being recorded that the Borrower has made all such reasonable enquiries necessary to confirm the accuracy of the information) and the Borrower is not aware of any material facts or circumstances which have not been disclosed to the Lender;

7.1.6. [REDACTED]
[REDACTED]
[REDACTED]

7.1.6.1. conflict with any agreement or other instrument to which the Borrower is a party or which is binding upon the Borrower; and

7.1.6.2. conflict with the Borrower's Memorandum of Incorporation (in the event of the Borrower being a legal entity).

7.1.7. there is no law, decree or similar enactment binding on the Borrower, and no provisions in any document, agreement or otherwise binding on the Borrower or affecting the property thereof which would conflict with or prevent the Borrower from borrowing on the terms and conditions hereof, or which would prevent the Borrower from observing any of its obligations contained herein;

7.1.8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

8. **Undertakings by the Borrower**

8.1. The Borrower hereby undertakes to the Lender that, for so long as there is any amount owing to the Lender in terms of this Agreement, the Borrower will inform the Lender of the occurrence of any Event of

Default as soon as reasonably possibly after the Borrower becomes aware thereof unless specifically waived by the Lender in writing.

8.2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] –

8.2.1. income tax returns; and

8.2.2. Value Added Tax returns.

8.3. The Borrower shall, as soon as is reasonably possible, in writing advise the Lender –

8.3.1. if an Event of Default occurs;

8.3.2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8.3.3. of any occurrence which has, or which could reasonably be expected to have, a Material Adverse Effect.

9. **Event of Default**

9.1. Each and every of the following events, if such event occurs whilst the Borrower is indebted to the Lender for the Repayment Amount in terms of, or arising from, this Agreement, shall constitute an Event of Default

–

9.1.1. [REDACTED]
[REDACTED]
[REDACTED]

9.1.2. if the Borrower commits a breach of a term of this Agreement;

9.1.3.

[REDACTED];

9.1.4. if the Borrower fails to comply with any undertaking given by it to the Lender pursuant to clause 9 and the Borrower fails to comply within 7 (seven) days from written notice by the Lender to comply; and/or

9.1.5. if the Borrower suffers a Material Adverse Effect;

9.1.6.

[REDACTED];

9.1.7. if the Borrower compromises or attempts to compromise with its creditors, or defers or attempts to defer payment of debts owing by the Borrower to its creditors generally;

9.1.8. if the Borrower repudiates this Agreement or any Deed of Suretyship; and/or

9.1.9.

[REDACTED]

9.1.9.1. which is not appealable;

9.1.9.2. which is appealable but in respect of which the period for the lodging of an appeal has lapsed and

the Borrower has failed to institute appeal proceedings;

9.1.9.3. which is not capable of rescission; or

9.1.9.4. which is capable of rescission but in respect of which the period for applying for rescission has lapsed and the Borrower has failed to apply for rescission or the Borrower has applied for rescission of such judgment and the application for rescission has been denied; and/or

9.1.10. if any property, moveable or immoveable, of the Borrower is attached in execution or by any process of any Court and the judgment is remained unsatisfied within 7 (seven) Business Days;

9.1.11. if the directors and/or shareholders of the Borrower (in the event of the Borrower being a legal entity) proposes or pass a resolution for its sequestration or winding-up;

9.1.12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.1.13. if the Borrower becomes "financially distressed", as defined in section 128 of the Companies Act, or is reasonably likely to become "financially distressed" prior to the Loan Repayment Date;

9.1.14. if the Borrower sells or otherwise alienates or creates any Encumbrance over the whole or a major portion of its assets;

9.1.15. if the Borrower makes an incorrect or untrue statement of

representation in connection with this Agreement or its financial affairs;

9.1.16. [REDACTED]

[REDACTED]

[REDACTED]

9.1.17. if the Borrower does anything that may prejudice the Lender's rights in terms of this Agreement or fails to take steps to ensure that the Lender's rights in terms of this are not prejudiced.

9.2. If an Event of Default occurs, then, notwithstanding, without detraction from, and in addition to any other right which the Lender may have, in terms of or arising from this Agreement or at law, the Lender shall be entitled –

9.2.1. [REDACTED]

[REDACTED]

[REDACTED]

9.2.2. to claim damages from the Borrower.

9.3. If an Event of Default occurs the Lender may, notwithstanding anything to the contrary contained herein elect that the Repayment Amount shall immediately be due and payable by the Borrower to the Lender.

10. Renunciation of Benefits

10.1. The Borrower hereby renounces the benefits of the following legal exceptions –

10.1.1. [REDACTED]

[REDACTED]

[REDACTED]

10.1.2. Revision of accounts and errors of calculation (these defences apply where the Borrower wishes to show that its account has been wrongly drawn up or calculated. When this benefit is renounced, the Borrower bears the burden to prove that the accounts are wrong); or

10.1.3. [REDACTED]

the full force, meaning and effect whereof the Borrower declares itself to be acquainted with.

11. Costs

11.1. [REDACTED]

11.2. Subject to the provisions of 12.1, if in any legal proceedings or arbitration relating to the enforcement by either Party of its rights in terms of this Agreement, a Court or arbitrator awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and client and shall include collection charges, the costs incurred by such Party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection

with the satisfaction or enforcement of any award or judgment awarded in favour of such Party in relation to its rights in terms of or arising out of this Agreement.

- 11.3. For the avoidance of doubt, the Borrower agrees that all costs and expenses paid by the Lender on behalf of the Borrower will be capitalised and will form part of the Repayment Amount.

12. **Breach**

- 12.1. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

13. **Disputes**

- 13.1. Any dispute which arises between the Parties in respect of this Agreement shall be referred to a committee comprising the directors of each of the Parties or alternates appointed by them, who will use their best endeavours to resolve the dispute within 14 (fourteen) Business Days of the dispute having been referred to them.

- 13.2. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- 13.3. Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party. This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 13.4. The arbitration referred to in clause 14.3 shall be held:
 - 13.4.1. at the venue recorded in item 11 of the Table above or other venue agreed by the Parties in writing;
 - 13.4.2. in English; and
 - 13.4.3. immediately and with a view to its being completed within 21 (twenty-one) days after it is demanded.
- 13.5. There will be one arbitrator, who will be, if the question in issue is:
 - 13.5.1. primarily an accounting matter, an independent chartered accountant of at least 10 (ten) years standing;
 - 13.5.2. primarily a legal matter, a practicing advocate or commercial attorney of at least 10 (ten) years standing; and
 - 13.5.3. any other matter, a suitably qualified person.
- 13.6. The Parties irrevocably agree that the decision in arbitration proceedings –
 - 13.6.1. shall be final and binding upon them;
 - 13.6.2. shall be carried into effect; and
 - 13.6.3. may be made an order of any court of competent jurisdiction.

14. Contact Details

- 14.1. Please take note of the following contact details:
 - 14.1.1. National Credit Regulator: 0860 627 627 or 0860 NCR;
 - 14.1.2. National Consumer Tribunal: 012 394 1450;

14.1.3. Credit bureau(s): ITC Transunion 0861 482 482; XDS 011 645 9100 and Experian 0861 10 56 65.

15. Process to follow if the Borrower has a Complaint

15.1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. The Borrower signed this Agreement Voluntarily

16.1. The Borrower confirms that:

16.1.1. [REDACTED]

[REDACTED]

[REDACTED]

16.1.2. the Borrower understands that the Lender must report certain information about the Borrower and this Agreement to the National Credit Register or a registered credit bureau; and

16.1.3. the Lender did not ask the Borrower to sign any additional (supplementary) agreements or documents that are not referred to in the Agreement.

16.2. [REDACTED]

[REDACTED]

[REDACTED]

17. Reference Rate

17.1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17.2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. The Lender's Rights if the Borrower Defaults

18.1. If the Borrower is in default, the Lender may:

18.1.1. give the Borrower written notice of such default and may propose that the Borrower refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intention that the Parties resolve any dispute under this Agreement or develop and agree on a plan for repayment;

18.1.2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.1.2.1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.1.2.2. the Borrower has been in default under this Agreement for at least 20 (twenty) business days; and

- 18.1.2.3. at least 10 (ten) business days have elapsed since the Lender delivered the notice contemplated in clause 19.1.1; and
- 18.1.2.4. in the case of a notice in terms of clause 19.1.1, the Borrower:
 - 18.1.2.4.1. has not responded to that notice; or
 - 18.1.2.4.2. has responded to the notice by rejecting the proposal.

19. General Declarations

- 19.1. The Borrower understands its rights and duties under this Agreement.
- 19.2. The Borrower has received a copy of this Agreement.
- 19.3. The Borrower has the legal capacity (and where relevant, the authority) to enter into this Agreement.
- 19.4. The Borrower confirms that entering into this Agreement will not cause the Borrower to become over indebted as contemplated in the NCA.
- 19.5. The Borrower has fully and truthfully answered all and any requests for information made of the Borrower with a view to entering into this Agreement.

20. Notices

- 20.1. Each of the Parties choose as its *domicilium citandi et executandi* the respective address set out in this clause for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of, or in connection with, this Agreement.

- 20.2. Each of the Parties shall be entitled from time to time to vary its *domicilium citandi et executandi* to any other address within the Republic of South Africa which is not a Post Office Box or *post restante*.
- 20.3. For purposes of this Agreement the Parties' respective *domicilium citandi et executandi* shall be those as set out in item 2 of the Table in respect of the Borrower together with item 1 of the Table in respect of the Lender.
- 20.4. Any notice given in terms of this Agreement shall be in writing and shall
-
 - 20.4.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 20.4.2. if sent by courier be deemed to have been received on the date of delivery by the courier service concerned;
 - 20.4.3. if transmitted by electronic mail message, be deemed to have been delivered to and received by the addressee upon receipt of an automated acknowledgement of receipt by the sender from the addressee or any conduct of the addressee sufficient to indicate to the sender that the electronic mail message has been received,

unless the contrary is proved.

- 20.5. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission shall be adequate written notice or communication to such Party.

21. **General**

- 21.1. The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide

that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

21.2.

[REDACTED]

21.3. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

21.4. No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights and enforcing the obligations of the other Party in terms of this Agreement.

21.5.

[REDACTED]

22. Cession and Assignment

22.1. The Lender may on written notice to the Borrower cede all or any of its rights in terms of this Agreement, as well as any and/or all security held by the Lender for the obligations of the Borrower in terms of this Agreement, to any other person or entity, without the consent of the

Borrower.

22.2. The Borrower may not cede, assign, delegate, alienate, transfer, sub-contract or otherwise part with any of its rights or obligations in terms of this Agreement, other than with the express prior written consent of the Lender.

23. Signature

23.1. This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.

23.2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

23.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED AT _____ on the _____ day of _____ 20____:

For and on behalf of **THE LENDER**

Being duly authorised hereto

SIGNED AT _____ on the _____ day of _____ 20____:

For and on behalf of **THE BORROWER**

Being duly authorised hereto