

# LOAN AGREEMENT

## PARTIES

1. The **PARTIES** to this **AGREEMENT** are:

1.1 \_\_\_\_\_  
The "**LENDER**"

**AND**

1.2 \_\_\_\_\_  
The "**BORROWER**"

## GENERAL

### INTERPRETATION

2.1 In this **AGREEMENT** the following terms and expressions shall have the meanings described to them hereunder unless the context specifically requires otherwise

2.1.1 the **LENDER** the **PARTY** referred to in Clause 1.1;

2.1.2 the **BORROWER** the **PARTY** referred to in Clause 1.2;

2.1.3 **PRINCIPAL DEBT** the amount of money constituting the **PRINCIPAL DEBT** as set out in Clause 6 hereof;

2.1.4 the **PARTIES** a collective reference to the **LENDER** and the **BORROWER**;

2.1.5 the **AGREEMENT** the Instrument of Debt between the **LENDER** and the **BORROWER** as set out in this document.

2.2 When necessary the masculine gender shall include the feminine, the singular the plural and visa versa.

### CLAUSE HEADINGS

3. The headings in this **AGREEMENT** are used only for the purpose of reference and shall in no way effect or govern the construction or interpretation of this **AGREEMENT**.

### EXCLUSION OF OTHER AGREEMENTS

4. This **AGREEMENT** cancels and super cedes all other contracts of the same nature entered into between the **PARTIES** hereto before. No amendments, additions hereto

or consensual cancellation will be of any force or effect unless it appears in writing and is signed by both **PARTIES** hereto.

#### **NON WAIVER**

- 5.1 No indulgence or relaxation of any of the provisions of this **AGREEMENT** by any party will constitute a waiver or abandonment of such **PARTIE'S** rights to require strict and punctual performance of all the provisions of this **AGREEMENT**.
- 5.2 A waiver by either party of a breach of any provision of this **AGREEMENT** will not be, or deem to be a continuing waiver in respect of a similar breach committed on a latter occasion.

#### **LOAN**

6. The **LENDER** hereby agrees to advance to the **BORROWER** an amount of money constituting the **PRINCIPAL DEBT** and which consists of the following:
- 6.1.1 The amount of R \_\_\_\_\_  
( \_\_\_\_\_ **RAND**) arising from monies lent and to be advanced.

#### **INTEREST**

7. Interest will be charged on the outstanding balance of the **PRINCIPAL DEBT** due in terms of the provisions of this **AGREEMENT** at \_\_\_\_\_% ( \_\_\_\_\_ **PERCENT**) per annum and calculated from THE FIRST OF \_\_\_\_\_. The interest payment per month will be R \_\_\_\_\_, being the total interest per year divided into twelve months.

#### **REPAYMENT**

8. The **PRINCIPAL DEBT** and finance charges in terms of this **AGREEMENT** are repayable as follows, namely:
- 8.1.1 Both the **PRINCIPAL DEBT** and the interest as set out in Clause 7 is payable in \_\_\_\_\_ ( \_\_\_\_\_ ) monthly instalments. The instalments will be calculated by dividing the principal debt plus interest by \_\_\_\_\_ ( \_\_\_\_\_ ) and will fluctuate subject to payments made in advance by

the **BORROWER**.

8.1.2 The monthly instalment amount is

Principal debt amount per month: R \_\_\_\_\_  
( \_\_\_\_\_  
\_\_\_\_\_ RAND )

AND

Interest amount per month: R \_\_\_\_\_  
( \_\_\_\_\_  
\_\_\_\_\_ RAND)

Total payable per month: R \_\_\_\_\_  
( \_\_\_\_\_  
\_\_\_\_\_ RAND)

8.1.3 The first instalment is payable not later than the \_\_\_\_th of the month following payment of the **PRINCIPLE DEBT** and thereafter on or before the \_\_\_\_\_<sup>th</sup> day of each consecutive month.

8.1.4 Instalments must be paid directly into such bank account as the **LENDER** from time to time gives written notice to the **BORROWER**.

8.1.5 The **BORROWER** shall be at liberty to pay any portion or the total outstanding debt and finance charges before the due date thereof without derogating from any right he may have in terms hereof. Capital paid in advance may only be used to reduce monthly payments and not be claimed from the **LENDER** at a later stage. The interest charged will be adjusted accordingly. Payments in advance will thus only reduce the original capital amount and interest thereon to a lesser amount.

**EXCEPTIONS**

9. The **BORROWER** renounces all the benefits arising from the legal exceptions non cause debiti, non numeratae pecuniae, errore calculi, revision of accounts and no value received, with the full force and effect whereof he declares himself to be fully acquainted with.

## **BREACH**

10. In the event of the **BORROWER** failing to fulfil on due date any of the terms and conditions of this **AGREEMENT**, the **LENDER** or his agent shall have the right immediately and without prior written notice either
  - 10.1.1 To cancel this **AGREEMENT** by giving written notice to the **BORROWER**, in which event the **BORROWER** shall forfeit all moneys paid to the **LENDER** in terms hereof, subject to applicable legal limitations, without prejudice to the **LENDER'S** other legal rights and remedies and the right to claim damages or to claim immediate payment of the balance of the amount outstanding and the fulfilment of all the terms and conditions hereof.

## **DOMICILIUM CITANDI ET EXECUTANDI**

11. For all purposes of this **AGREEMENT**, the **PARTIES** choose the following addresses as their domicilia citandi et executandi
  - 11.1.2 The **LENDER** at: \_\_\_\_\_
  - 11.1.2 The **BORROWER** at: \_\_\_\_\_
  - 11.2 Any notice or letter addressed to any party at his respective address and sent by pre-paid registered post shall be deemed to have been received by that party 5 (**FIVE**) days after posting as aforesaid or, if delivered by hand, on the date of delivery.
  - 11.3 Any party shall be entitled from time to time to change his domicilium citandi et executandi by written notice to the other party, provided that such address is within the Republic of South Africa and provided further that such address is not a Post Box or Poste Restante.

## **COSTS**

12. The **BORROWER** accepts full responsibility for the following and shall pay on demand
  - 12.1.1 All fees and costs of and incidental to the drawing of this **AGREEMENT**, including all attendances.
  - 12.1.2 All foreign exchange charges payable.

- 12.1.3 Any Taxes or any other charges payable on the capital amount as charged by the South African Government.

#### **JURISDICTION**

13. The **LENDER** and the **BORROWER** hereby consent to the jurisdiction of the Magistrates Court for any action that might arise from this **AGREEMENT**. The **LENDER** however reserves the right at his sole discretion to institute action in the Supreme Court and to claim costs on the Supreme Court scale.

#### **SCALE OF COSTS**

14. The **BORROWER** undertakes to pay all attorney and client costs, collection commission and tracing costs, which the **LENDER** might incur in collecting any amount owing in terms of this **AGREEMENT** by the **BORROWER** and which are not paid on the due date thereof.

#### **INTEREST ON OVERDUE PAYMENTS**

15. Should any sum of which the **BORROWER** is liable for in terms hereof (whether for the **PRINCIPAL DEBT** or finance charges) not be paid timeously as provided for in this **AGREEMENT**, the **BORROWER** shall pay interest thereon at the maximum rate as prescribed from time to time by a notice in the Government Gazette by the relevant Minister in terms of the **Prescribed Rate of Interest Act No. 55 of 1975**, from the date such an amount becomes due, until date of receipt of payment.

#### **CERTIFICATE**

16. A certificate which professes to be signed by an Officer of the **LENDER** reflecting the total amount owing by the **BORROWER** in respect of the **PRINCIPAL DEBT**, finance charges and other amounts owing in terms hereof, shall be sufficient and satisfactory proof of the particulars mentioned therein for the purpose of obtaining summary judgement or provisional sentence or for any other purpose.

#### **CESSION**

- 17.1 The **LENDER** may always and without the consent of the **BORROWER** be entitled to cede to any third party any rights which the **LENDER** may enjoy in terms of this

**AGREEMENT.**

17.2 The **BORROWER** shall not be entitled to cede, assign or delegate any of its rights or obligations in terms of this **AGREEMENT** without the prior written consent of the **LENDER**.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
**LENDER**

2. \_\_\_\_\_

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
**BORROWER**

2. \_\_\_\_\_