

ZA-LDGloa16

Loan agreement: company; secured on financial instruments

Borrower: [\[Name\]](#)

Lender: [\[Name\]](#)

Date: [\[Date\]](#)

This agreement is dated [date] :
[ABC] Limited, a company incorporated in the Republic of South Africa [under company registration number [number] and] [] (“ ”)

And

[DEF] Ltd, a company incorporated in the Republic of South Africa [under company registration number [number] and] [], (“ ”).

And

[Doe Ray-me] of [full], (“ ”)

Background:

The purpose of this agreement is to set out the contractual terms under which the Lender will lend and the Borrower will borrow the sum of the Initial

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings,
:

“Advance” means a part of the Loan drawn down by the

“Basic Rate” means Interest at the rate of [number]

“Concessionary Rate” means Interest at the rate of [number]

“Financial Information” means all information relating to the financial affairs of the Borrower including the Borrower’s audited [consolidated] financial statement as on [date], consisting of a balance sheet as on that date and a statement of income and

“Initial Loan”	means the principal sum agreed to be lent
“Loan”	means the total amount of money outstanding at any time and due
“Repayment”	means a sum paid by the Borrower to the Lender which has
“Security”	means a financial instrument or other valuable right.
“Default”	means the one of the circumstances as set

9

2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. A reference to one gender shall include any or all genders and a reference to the singular may be interpreted
- 2.2. A reference to a person includes a human individual, a corporate entity and any organisation
- 2.3. A reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a
- 2.4. A reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context
- 2.5. The headings to the paragraphs and schedules (if any) to this agreement are inserted

- 2.6. Any agreement by any party not to do or omit to do something includes an obligation not to allow some
- 2.7. [\[Except where stated otherwise,\]](#) any obligation of any person arising from this
- 2.8. A reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
- 2.9. A reference to an act or regulation includes new law of substantially the same
- 2.10. All money sums mentioned in this agreement are calculated net of VAT, which
- 2.11. This agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or

3. Borrower's warranties

The Borrower represents and warrants that:

- 3.1. It has power to enter into this agreement [\[and has obtained \]](#).
- 3.2. It is not aware of anything within
- 3.3. It is not insolvent and knows of no circumstance which would
- 3.4. Every subsidiary and associated company of the
- 3.5. The execution of this agreement, the borrowing, and the performance by the Borrower of its obligations are fully

3.6. The Financial Information fairly represents the financial state of

3.7. The Financial Information has been prepared in conformity with generally accepted accounting principles applied

3.8. The Borrower has no undisclosed contingent obligations.

3.9. There are no material,

3.10. The Borrower will advise the Lender

3.11. No litigation, arbitration proceedings or governmental proceedings are pending

3.12. None of the assets of the Borrower is subject

3.13. The Borrower has filed all tax returns,

3.14. The proceeds of the

[].

4. Amount of Loan and Advances

4.1. The Initial Loan []
].

4.2. The Loan shall be advanced in

OR

4.3. The Loan shall be drawn

OR

4.4. The initial draw down of the Loan shall

AND/OR

4.5. Before any new Advance may be drawn , / ,
:

[specify information required].

5. Security

5.1. The Borrower pledges

5.2. The Securities are listed in Schedule 1 where each is marked

5.3. Whilst ever any part of the Loan remains outstanding,

5.4. If the Borrower is asked to transfer title in a

5.5. If the transfer of title to any Security results in either any payment by,

,

,

.

5.6. If and whenever the value of the Security, as published in a recognised publication or by a recognised market, falls below [80]% of the value today,

[]

,

.

6. Interest payable

6.1. Interest at the

.

OR

6.2. Interest at the rate [number] per cent per

[]

.

6.3. Interest shall be [] [].

6.4. Interest shall be []

.

6.5. Interest shall be calculated

.

AND / OR

6.6. If and so long as the Borrower complies

,

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7. Repayment

7.1. The Loan shall

[]

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OR

7.2. The Loan shall be
2 .

OR

7.3. The Loan shall be
:
[here set out the trigger events, such
,
]

7.4. The Loan may be repaid in
,

7.4.1 in multiples of R[number];

7.4.2 a minimum of R[number];

7.4.3 applied to any instalments

;

7.5. The Borrower may, not more than once in every [two calendar months],
demand a statement from the Lender
,

7.6. All payments due to the Lender of both capital and interest shall be

7.7. The Borrower may repay all or part of the Loan before the due date for
repayment provided that

8. No change to capital structure and administration

Until the Loan

:

8.1. make any share issue by way

;

8.2. issue new share capital nor modify the rights attaching to

;

8.3. reduce its share capital or any uncalled

,

;

8.4. change the location

;

8.5. sell its undertaking or any fixed

[000];

8.6. change its accounting system

;

8.7. make any other

.

9. Event of Default

An “Event of Default” occurs when:

9.1. the Borrower fails to pay in full and on the

[

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;

9.2. a petition is presented

;

9.3. one or more Security is dealt with

;

9.4. in the opinion of the Lender,

;

9.5. a receiver is appointed to the Borrower;

;

9.6. a petition is presented for the

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10. Notice of Default

10.1. Where an Event of Default has occurred the Lender may issue a “
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10.2.

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10.3.

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10.4.

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11. Consequences of Default

11.1.

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11.1.1

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11.1.2

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11.1.3

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11.2.

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11.3.

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11.4.

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12. Assignment

12.1.

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12.2.

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12.3.

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13. Promise to provide information

- 13.1. [] / ,
- 3 ;
- 13.2. [] ,
- (
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- 13.3.
- ;
- 13.4.
- .

14. Guarantor

The Guarantor agrees:

- 14.1.
- ;
- 14.2.
- ;
- 14.3.
- ;
- 14.4.
- .

14.5.

[28]

14.6.

15. Miscellaneous matters

15.1.

15.2.

15.3.

15.4.

15.5.

15.6.

, [/] [] . , ,

15.7.

15.8.

15.9.

It shall be deemed to have been delivered:

;
;
72 ;
24 ;
-
- : 24
-
.[
- .
]

15.10.

15.11.

15.12.

Signed by [personal name] on behalf of [named Lender] as its / its representative who personally accepts liability for the proper authorisation by [named Lender] to enter into this agreement.

Signed by [personal name] on behalf of [named Borrower] as its / its representative who personally accepts liability for the proper authorisation by [named Borrower] to enter into this agreement.

Signed by [personal name] on behalf of [named Guarantor] as its / its representative who personally accepts liability for the proper authorisation by [named Guarantor] to enter into this agreement.

Schedule 1: the Securities

1

2

3

4

Schedule 2: Loan Repayment

Dates	Amount to paid
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-	-
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-	-
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-	-
---	---

-	-
---	---

-	-
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Schedule 3: example financial report

[

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Explanatory Notes:

Loan agreement: company; secured on financial instruments

General notes

1. A shareholders' agreement too

If the Lender is a shareholder in the borrower, then it should be a party to a shareholders' agreement. This will provide as high a level of control over the

Paragraph specific notes

Notes relating to the numbered paragraphs

1. Definitions

Note that the definition of "Loan" includes all money outstanding, which may of course

When you edit the document, be careful how you use the word "security". We have not been able to avoid the two distinct meanings in this document. On the one hand "security" means the thing lodged to secure the loan. On the other

The definition of interest rates is important. It is not lawful to specify a "penalty" in any contract, no matter what you call it. A claimant is only ever entitled to his "

It follows that the lender cannot charge "penalty interest". In this document we have gone some way to enabling the lender to charge a higher rate by providing for a basic rate of interest, which is the sum "normally" due, and for a concessionary rate for good behaviour. In fact, we would expect

() 5 %

The result is of course that the lender gets an additional [5]% if he has the problems associated with a defaulting borrower. This could be challenged by the borrower only if he could prove that the basic rate was a penalty rate. That would depend on all the facts, including the actual rates. In practice the fear of

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this agreement and has been included for a purpose.

3. Borrower's warranties

The lender will want to be certain that assumptions it has made

The provision dealing with subsidiaries will prevent a subsidiary from finding a reason to upset the agreement, but will not necessarily make that subsidiary liable for the obligations of the borrower. If that

Note that there is an obligation by the borrower to

“ ”

The requirement to specify the purpose of the loan can be loose or

4. Advances

Provides for alternative draw down arrangements. The

If the Lender requires further information, you

A provision for scheduled repayments by date is usually simplest to administer. If you go for other trigger events, they should be carefully

5. Security

We have no idea what securities will be lodged as security. Shares in a private company are usually evidenced by a certificate. Shares in public companies are

To strengthen the lender's position, we have provided for the possibility of securities being transferred into the name of the lender for the duration of the loan. This will not always be possible or practical. We have therefore also provided for the lender to be able

If the security or part of it, is quoted publicly and falls

6. Interest payable

The provision for cumulation of interest should have careful attention, particularly if the interest rate is high. Cumulation has the effect of adding the interest to the capital, so that the

7. Repayment

We have provided a menu of suggestions. The actual

8. No change to capital structure and administration

This is obviously an important provision for a corporate borrower. If the lender

9. Event of Default

Provisions for "what happens if things go wrong" are very important

10. Notice of default

We have no comment.

11. Consequences of default

The last sub paragraph is the law.

12. Assignment

We have no comment.

13. Promise to provide information

It is a matter for the lender's choice what info he requires.

14. Guarantor

Delete if no guarantor. Otherwise,

15. Miscellaneous matters

A number of matters each

Schedule 1: the Securities

List the securities , /

Schedule 2: Loan Repayment

This covers the option mentioned in the agreement.

Schedule 3: example financial report

Delete if not required.

End of notes