

**MEMORANDUM OF AGREEMENT**

between  
**FULL NAME OF CREDITOR COMPANY (PROPRIETARY) LIMITED**  
**("ABBREVIATION OF CREDITOR COMPANY")**

and

**NAME OF COMPANY (PROPRIETARY) LIMITED WHICH OWES TO CREDITOR COMPANY**  
**("ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY")**

Whereas:

- A. ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY is a subsidiary of ABBREVIATION OF CREDITOR COMPANY, with ABBREVIATION OF CREDITOR COMPANY a substantial creditor thereof.
- B. ABBREVIATION OF CREDITOR COMPANY has agreed to assist ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY by subordinating, subject to certain terms and conditions, its claim(s) against ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY and in favour and for the benefit of other creditors of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY.
- C. It is desirable to record the matters agreed upon.

Now therefore it is agreed as follows:

- 1. It is recorded that as at 29 February 2012, ABBREVIATION OF CREDITOR COMPANY constituted a substantial creditor of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY in the amount of R- for moneys lent or advanced / goods supplied / services rendered.
- 2. In order to assist ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, ABBREVIATION OF CREDITOR COMPANY agrees, subject to the limitations imposed in 4, that:
  - 2.1 it subordinates for the benefit of the creditors of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, both present and future, so much of its claim(s) against ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY as would enable the claims of such other creditors to be paid in full but not exceeding the amount recorded in clause 1.
  - 2.2 ABBREVIATION OF CREDITOR COMPANY hereby warrants that its claims against ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY have not been ceded to any third party and that no third party has any interest in those claims,
  - 2.3 the claims of such other creditors of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, both present and future, will rank preferentially to the subordinated claim of ABBREVIATION OF CREDITOR COMPANY against ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, and

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- 2.4 in the liquidation of or judicial management of or compromise by ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, it will not prove or tender to prove a claim in respect of its subordinated claim, which proof would reduce or diminish any dividend payable to other creditors, whether present or future, and accordingly, ABBREVIATION OF CREDITOR COMPANY hereby abandons that claim to the extent that it would reduce or diminish the dividend payable to those other creditors.
3. It is the intention of the parties that this agreement shall constitute a contract for the benefit of other creditors of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, both present and future, and that the benefit shall therefore be capable of express or implied acceptance by any or all of such creditors who may then enforce any term of this agreement.
4. The subordination referred to in 2 shall remain in force an effect for so long only as the liabilities of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY exceed its assets, fairly valued, and shall lapse immediately upon the date that the assets of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY exceed its liabilities and shall not, except by further agreement in writing, be reinstated if thereafter the liabilities of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY again exceed its assets, provided that the liabilities of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY shall be deemed to continue to exceed its assets unless and until the auditor of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY has certified in writing that he/she has been furnished with evidence which reasonably satisfies him/her that the liabilities do not exceed the assets.
5. ABBREVIATION OF CREDITOR COMPANY hereby agrees that, until such time as the assets of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY, fairly valued, exceed its liabilities, and the auditor's certificate referred to in 4 above has been issued, it shall not be entitled to demand or sue for or accept repayment of the whole or any part of the amount subordinated owing to it by ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY and set-off shall not operate in relation to the subordinated claim in respect of any debts owing by it now or in the future; provided that if the auditor of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY shall certify in writing that he/she has been furnished with evidence that reasonably satisfies him/her that the amount of the subordinated claim exceeds the amount by which the liabilities of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY exceed its assets, such excess portion of the subordinated claim as is specified in the said certificate shall be released from the operation of this agreement. If it is recorded that ABBREVIATION OF CREDITOR COMPANY acknowledges that it is responsible for requesting the auditor to issue the said certificate and for the costs in this connection.
6. It is agreed that from the date of signature hereto no interest is due and payable or will be paid by ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY on all or part of the balance owing to ABBREVIATION OF CREDITOR COMPANY
7. Should all or part of the amount due to ABBREVIATION OF CREDITOR COMPANY be
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repaid, inadvertently or deliberately, then ABBREVIATION OF CREDITOR COMPANY agrees that it will immediately refund to ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY the amount repaid.

8. ABBREVIATION OF CREDITOR COMPANY and ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY undertake that in the event of cancellation or variation of this agreement in any respect, each will, as a condition precedent to the coming into force and effect of such cancellation or variation, advise the auditor of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY in writing forthwith of the cancellation or variation.
9. The costs of and incidental to the preparation and stamping of this agreement shall be borne and paid for by ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY.

SIGNED AT JOHANNESBURG ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ on behalf of ABBREVIATION OF CREDITOR COMPANY:

Being duly authorised hereto by a resolution of the directors passed on 31 May 2012, a certified copy of which is attached.

1. INITIALS AND SURNAME DIRECTOR \_\_\_\_\_

2. INITIALS AND SURNAME DIRECTOR \_\_\_\_\_

SIGNED AT JOHANNESBURG ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ on behalf of ABBREVIATION OF COMPANY WHICH OWES TO CREDITOR COMPANY:

Being duly authorised hereto by a resolution of the directors passed on 31 May 2012, a certified copy of which is attached.

1. INITIALS AND SURNAME DIRECTOR \_\_\_\_\_

2. INITIALS AND SURNAME DIRECTOR \_\_\_\_\_

As witnesses:

1. NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_

2. NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_