

# TERMS AND CONDITIONS OF THE CREDIT AGREEMENT

IN TERMS OF THE NATIONAL CREDIT ACT 34 OF 2005, AND REGULATIONS, AS AMENDED

## 1. Definitions

In this agreement, unless the context indicates otherwise:-

- 1.1. **"Credit agreement"** or "pre-agreement statement" or "credit facility" means this agreement, as contained in the Quotation and these Terms and Conditions, which are, and are to be read together as, one document;
- 1.2. "Initiation fee" means a fee in respect of costs of initiating a credit agreement, and charged to the consumer by the credit provider, or paid to the credit provider by the consumer upon entering into the credit agreement, and which does not exceed the prescribed amount in terms of the Act, plus VAT;
- 1.3. "Interest" means the maximum interest rate payable, in terms of the Act;
- 1.4. "Payment date" means the date, on or before which, the instalment is due and payable to the credit provider by the consumer;
- 1.5. "Principal debt" means the loan amount, plus the value of the initiation fee, if the consumer has been offered and declined the option of paying that fee separately, including VAT;
- 1.6. "Quotation" means the application for the loan made by the consumer;
- 1.7. "Regulations" means the Regulations under the Act;
- 1.8. "Service fee" means the monthly fee that may be charged by a credit provider in connection with the routine administration cost of maintaining a credit agreement, and which does not exceed the prescribed amount in terms of the Act, plus VAT;
- 1.9. "Settlement value" means the amount the consumer would need to repay to the credit provider on any given date, in order to satisfy all of the consumer's obligations in terms of this agreement;
- 1.10. "Terms and conditions" means the terms and conditions of this credit agreement;
- 1.11. "The Act" means the National Credit Act, 34 of 2005, and Regulations, as amended;
- 1.12. "The consumer", or "you" or "your" means the credit receiver, being the applicant, the holder of the loan account, and the person identified in the Quotation, including the executor of their estate in the event of their death, and the liquidator in the event of their sequestration;
- 1.13. **"The credit provider"**, "CF", "we", "us", or "our" means Challenor Finance CC, (registration number NCR CP314), who is the credit grantor, and where relevant, any person to whom we transfer any of our rights or obligations under this agreement.

## 2. Type of Agreement

- 2.1. Every credit agreement is characterised as a small agreement, an intermediate agreement, or a large agreement, as described in the Act.
- 2.2. This credit agreement is a small agreement if:-
  - 2.2.1. the credit limit under this credit facility falls at or below R15,000.00; or
  - 2.2.2. the credit limit under this credit facility falls at or below the lower of the thresholds, as determined by the Minister, by notice in the Gazette.
- 2.3. This credit agreement is an intermediate agreement if:-
  - 2.3.1. the credit limit under this credit facility falls above R15,000.00; or
  - 2.3.2. the credit limit under this credit facility falls above the lower of the thresholds, as determined by the Minister, by notice in the Gazette.
- 2.3.3. If this credit agreement fits the definition of a large credit agreement, as set out below, then this credit agreement is a large credit agreement and not an intermediate credit agreement.
- 2.4. This credit agreement is a large agreement if:-
  - 2.4.1. the credit limit under this credit facility falls at or above R250,000.00; or
  - 2.4.2. the credit limit under this credit facility falls at or above the higher of the thresholds, as determined by the Minister, by notice in the Gazette.

## 3. Payment Schedule

- 3.1. The payment schedule, as contained in the Quotation, sets out the information relating to the credit extended and is, and must be read as, part of this agreement.

## 4. Payments

- 4.1. The number of instalments, the sum of the instalments, and payment date of the instalments are as indicated in the Quotation.
- 4.2. The date on which the first instalment is due and payable by the consumer, is on the first payment date after the loan amount has been advanced.

## 5. Early Payments and Crediting of Payments

- 5.1. At any time, without notice or penalty, you may prepay any amount owed to us under this credit agreement.
- 5.2. We must accept any payment under this credit agreement when it is tendered, even if that is before the date on which the payment is due.

- 5.3. We must credit each payment made under this credit agreement to you, as of the date of receipt of the payment as follows:-
  - 5.3.1. Firstly, to satisfy any due or unpaid interest charges;
  - 5.3.2. Secondly, to satisfy any due or unpaid fees or charges; and
  - 5.3.3. Thirdly, to reduce the amount of the principal debt.

## 6. Changes to interest, credit fees or charges

- 6.1. In the event that the rate of interest, the amount of a credit fee or charge, or the frequency or time for payment of a credit fee or charge, changes, we will give written notice of at least five business days to you, setting out the particulars of such change.
- 6.2. In the event that this credit agreement has a variable interest rate, we will give written notice to you, no later than 30 business days after the day on which a change in the variable interest rate takes effect, setting out:-
  - 6.2.1. the new rate and any further prescribed information; or
  - 6.2.2. if a rate is determined by referring to a reference rate, as contemplated in the Act, the new reference rate.

## 7. Account Statements

- 7.1. You will be provided with monthly statements of account, which statements will be sent to your address stated in the Quotation or via email to your stated email, which will:-
  - 7.1.1. Show all transactions relating to your account;
  - 7.1.2. Show the current amount due;
  - 7.1.3. Show all interest and other charges debited by us to your account;
  - 7.1.4. Show all payments made as well as the balance outstanding; and
  - 7.1.5. Inform you of the amount which you must pay to us on or before the due date stated thereon.
- 7.2. You agree to check the monthly statements of account.
- 7.3. You undertake to notify us, in writing, within 30 days of the date on the statement, or as soon as reasonably possible thereafter, should you deny your liability for any debit appearing on the statement.
- 7.4. Non-receipt of the statement does not free you from your obligation to pay any amount due to us, in terms of this credit agreement.
- 7.5. Information with regard to your credit facility account and outstanding amount, may also be obtained from us by visiting our offices, by phoning us, by email, or via otherwise contacting us.

## 8. Default Administration Costs

- 8.1. If you are in default in terms of this agreement we will advise you of this in writing.
- 8.2. A default administration cost, if applicable, can, in the case of default, be charged by us, in which event:-
  - 8.2.1. default administration charges will be equal to the amount payable in respect of a registered letter of demand in undefended actions in terms of the Magistrate's Court Act, 32 of 1944, and any then applicable amendments thereto, in addition to any reasonable and necessary expenses incurred in delivering such letter;
  - 8.2.2. default administration charges will be imposed in respect of each letter necessarily written in terms of Part C of Chapter 6 of the Act, namely:-
    - 8.2.2.1. if you are in default under this credit facility agreement, we may draw such default to your notice in writing and propose that you refer this facility to a Debt Counsellor, alternatively a Dispute Resolution Agent, Consumer Court or Ombudsman with jurisdiction;
    - 8.2.2.2. If you are in default under this credit facility, in the event that it is being reviewed in terms of Section 86 of the Act, we may, in respect of this facility, give you notice to terminate such review in the prescribed manner.

## 9. Acts of Default

- 9.1. Any of the following acts will place you in default of this credit agreement if you do not rectify them (if possible) within 15 days of receiving written notice from us to do so:-
  - 9.1.1. failing to pay any amount owing to us when it is due;
  - 9.1.2. you or any surety commit an act of insolvency mentioned in the Insolvency Act 24 of 1936, as amended;
  - 9.1.3. you or any surety are provisionally or finally sequestered / liquidated (whether voluntarily or compulsorily), placed under judicial management or administration or, being a partnership, dissolved;
  - 9.1.4. you or any surety apply for assistance in terms of the Agricultural Credit Act 28 of 1966, as amended;
  - 9.1.5. you or any surety have furnished information, in this credit facility application, that is incorrect, or you have failed to disclose material information that would have influenced our decision to grant the credit facility granted;
  - 9.1.6. you or any surety generally do or allow anything to be done that may prejudice our rights, in relation to this credit agreement.

## 10. Consequences of Default

- 10.1. If you are in default of any provision of this credit agreement, we may take the steps as set out in Part C of Chapter 6 of the Act. In addition, if you are in default, since

your credit facility is a credit facility in terms of the Act, we can at any time, with least 10 business days' written notice to you, terminate your credit facility or thereafter claim the full outstanding amount of your credit facility, without affecting any of our other rights.

## 11. Procedure in the case of Default

- 11.1. Without limiting any rights that we may have in terms of the common law or the Act the following process will be followed should you remain in default for a period long than 20 days:-
  - 11.1.1. we will draw such default to your notice in writing by prepaid registered mail affordir you at least 10 days to rectify such default, alternatively, proposing that you refer you credit facility to a Debt Counsellor, alternatively a Dispute Resolution Ager Consumer Court or Ombudsman with jurisdiction;
  - 11.1.2. should you not rectify your default within at least 10 days from the date as set o above, alternatively avail yourself of any other measure as set out above, we m approach the court for an order to enforce this credit agreement;
  - 11.1.3. the cost of recovery, if incurred, may not exceed the costs incurred by us in collectir the debt to the extent limited by Part C of Chapter 6 of the Act, The Supreme Cot Act 59 of 1959, The Magistrate's Court Act 32 of 1944, The Attorneys' Act 53 of 197 or The Debt Collectors' Act 114 of 1998, whichever is applicable to the Cot approached by us to enforce your credit facility;
  - 11.1.4. we will charge collection costs only in the event of us having to enforce the terms ar conditions of this agreement. Such collection costs will include legal costs, collectic commission, tracing fees and other fees or disbursements incurred by us in collectir any amounts owing by you to us, including value-added tax where applicable; and
  - 11.1.5. The total interest charged by us in the event of default will not exceed the maximu percentage of recoverable interest as stated in your credit facility.

## 12. Consent to Jurisdiction

- 12.1. The parties to this credit agreement, and in relation to any action or procedir arising out of this credit agreement, all consent to the jurisdiction of the Magistrate Cot to determine any action or proceeding otherwise beyond the jurisdiction of th Magistrate's Court.

## 13. Information Sharing Practices and Credit Bureaux

- 13.1. You confirm that we may transmit, to the credit bureaux, data about your applicatio opening and termination of an account;
- 13.2. We confirm that information on non-compliance with the terms and conditions of th credit agreement is transferred to the credit bureaux;
- 13.3. We confirm that the credit bureaux provide a credit profile and possibly a credit sco on credit worthiness of the person subject to the record.
- 13.4. We confirm that where credit bureaux are referred to in this agreement, suc reference is to the following credit bureaux:-
  - 13.4.1. TransUnion Credit Bureau – 0861 482 482; [www.transunion.co.za](http://www.transunion.co.za); Wanders Office Park, 52 Corlett Drive, Illovo, 2196; P.O. Box 4522, Johannesburg, 2000; and
  - 13.4.2. Compuscan, South Africa – 0861 514 131; [www.compuscan.co.za](http://www.compuscan.co.za); [consumercare@compuscan.co.za](mailto:consumercare@compuscan.co.za); Compuscan House, 3 Neutron Avenue, Techno Park, Stellenbosch, South Africa, 7600.
- 13.5. We confirm that you have a right to:-
  - 13.5.1. contact the credit bureaux;
  - 13.5.2. have the credit record disclosed; and
  - 13.5.3. correct inaccurate information.

## 14. Early Settlement / Pre-Payment

- 14.1. You may cancel or settle your credit facility at any time, by paying the amount th you owe in accordance with this credit agreement, with or without giving advanc notice to us.
  - 14.2. The amount required to settle this credit agreement is the total of the following:-
    - 14.2.1. The unpaid balance of the principal debt at that time;
    - 14.2.2. The unpaid interest charges; and
    - 14.2.3. All other fees and charges payable by you to us up to the settlement date; and
    - 14.2.4. In the case that this credit agreement is a large credit agreement:-
      - 14.2.4.1. at a fixed rate of interest, an early termination charge no more than a prescribe charge or, if no charge has been prescribed, a charge calculated in accordanc with 14.2.4.2. hereunder; or
      - 14.2.4.2. other than at a fixed rate of interest, an early termination charge equal to no mo than the interest that would have been payable under the agreement for a peric equal to the difference between:-
        - 14.2.4.2.1. three months; and
        - 14.2.4.2.2. the period of notice of settlement if any, given by you.

## 15. Your right to Terminate the Agreement

- 15.1. You are entitled to terminate this agreement by settling the amount outstanding in fu in respect of your credit facility at any time with or without advance notice to us.
- 15.2. The amount required to settle this credit agreement is the total of the following:-

- 15.2.1. The unpaid balance of the principal debt at that time;
- 15.2.2. The unpaid interest charges; and
- 15.2.3. All other fees and charges payable by you to us up to the settlement date;
- 15.2.4. In the case that this credit agreement is a large credit agreement:-
- 15.2.4.1. at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with 15.2.4.2. hereunder; or
- 15.2.4.2. other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between:-
- 15.2.4.2.1. three months; and
- 15.2.4.2.2. the period of notice of settlement if any, given by you.

#### 16. Our right to Terminate the Agreement

- 16.1. If you are in default under this credit agreement, we may take the steps as set out above to enforce and terminate the agreement.
- 16.2. We may terminate this credit agreement before the time provided in this agreement as set out hereunder.
- 16.3. If you are in default under this credit agreement, we may take the steps as set out in Part C of Chapter 6 of the Act to enforce and terminate this agreement.
- 16.4. The unilateral termination of this credit agreement by us, as contemplated above, does not suspend or terminate any of our residual obligations to you under this agreement or the Act.

#### 17. Addresses for receiving of documents

- 17.1. The addresses provided in the Quotation will be the addresses where the parties will accept documents, pleadings and notices relating to this credit agreement.
- 17.2. If you move to another residential address, or if your address of employment changes, you must provide us with written notice of your new address by hand or registered mail to 45 McKenzie Road, Windermere, Berea, 4001; or by email to [billing@challenorfinance.co.za](mailto:billing@challenorfinance.co.za), or by fax to 031 312 5564.
- 17.3. If our address changes, we will also give you written notice.

#### 18. Penalty interest on arrear amounts

- 18.1. Penalty interest on amounts in arrear will be the same as the interest rate charged in respect of this agreement.

#### 19. Alternate Dispute Resolution

- 19.1. You have the right to resolve a complaint by way of alternate dispute resolution, or to file a complaint with the National Credit Regulator, or to make an application to the National Consumer Tribunal.
- 19.2. You may contact The National Credit Regulator on 0860 627 627 or visit their website at [www.ncr.org.za](http://www.ncr.org.za).
- 19.3. You may contact The National Consumer Tribunal on 012 683 8140 / 012 742 9900 or visit their website at [www.thencr.org.za](http://www.thencr.org.za).

#### 20. Debt Counsellor

- 20.1. You are entitled to apply to a debt counsellor, to be declared over-indebted in terms of section 86 of the Act.
- 20.2. An application as set out in this paragraph may not be made in respect of, and does not apply to, a particular agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 of the Act to enforce that agreement.
- 20.3. In order to apply to a debt counsellor, to be declared over-indebted in terms of section 86 of the Act, you are required to fill in an application form that must be submitted to a debt counsellor. This application form can be obtained from the National Credit Regulator whose details appear above
- 20.4. The debt counsellor may require you to pay an application fee before accepting an application.
- 20.5. Upon receipt by a debt counsellor of the application, such debt counsellor must provide you with proof of receipt of the application and notify all credit providers and every registered Credit Bureau of the application.
- 20.6. A consumer who applies to a debt counsellor, and each credit provider contemplated in section 86 (4) (b) of the Act, must-
- 20.6.1. comply with any reasonable requests by the debt counsellor to facilitate the evaluation of the consumer's state of indebtedness and the prospects for responsible debt re-arrangement; and
- 20.6.2. participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement.
- 20.7. A debt counsellor who has accepted an application as set out above must determine, in the prescribed manner and within the prescribed time:-
- 20.7.1. whether the consumer appears to be over-indebted; and
- 20.7.2. if the consumer seeks a declaration of reckless credit, whether any of the consumer's credit agreements appear to be reckless.
- 20.8. If, as a result of an assessment, a debt counsellor reasonably concludes that-

- 20.8.1. the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;
- 20.8.2. the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or
- 20.8.3. the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders:-
- 20.8.3.1. that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
- 20.8.3.2. that one or more of the consumer's obligations be re-arranged by:-
- 20.8.3.2.1. extending the period of the agreement and reducing the amount of each payment due accordingly;
- 20.8.3.2.2. postponing during a specified period the dates on which payments are due under the agreement;
- 20.8.3.2.3. extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
- 20.8.3.2.4. recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6 of the Act.
- 20.9. If a debt counsellor makes a recommendation in terms of section 86 (7) (b) of the Act and:-
- 20.9.1. the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, file it as a consent order in terms of section 138 of the Act; or
- 20.9.2. if the paragraph above does not apply, the debt counsellor must refer the matter to the Magistrate's Court with the recommendation.
- 20.10. If a debt counsellor rejects an application as contemplated in section 86 (7) (a) of the Act, the consumer, with leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in section 86 (7) (c) of the Act.
- 20.11. If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may, at any time at least 60 business days after the date on which the consumer applied for the debt review, give notice to terminate the review in the prescribed manner to:-
- 20.11.1. the consumer;
- 20.11.2. the debt counsellor; and
- 20.11.3. the National Credit Regulator; and
- 20.12. No credit provider may terminate an application for debt review lodged in terms of the Act, if such application for review has already been filed in a court or in the Tribunal.
- 20.13. As an alternative, please talk to us if you are having financial difficulties by visiting our offices at 45 McKenzie Road, Windermere, Berea, 4001; or by contacting our offices by email at [billing@challenorfinance.co.za](mailto:billing@challenorfinance.co.za), or by fax on 031 312 5564, or by phone on 031 303 2647.
21. **Spousal Consent**
- 21.1. If you are married in Community of Property, or otherwise require your spouse's written consent to enter into a credit agreement in terms of the Act, you undertake to have your spouse consent to your conclusion of this agreement by completing the spousal consent section on the Quotation.
22. **Whole Agreement and Non-Variation**
- 22.1. This agreement is the entire agreement between the parties in relation to this credit agreement.
- 22.2. No amendment, alteration, addition, or variation, or consensual cancellation of this credit agreement shall be of any force or effect unless reduced to writing and signed by the parties.
23. **Waiver**
- 23.1. No waiver (abandonment of rights or relaxation in the exercise of rights) of any of the terms of this credit agreement will be binding for any purpose unless expressed in writing and signed by the party giving it, and any such waiver will be effective only in the specific instance and for the purpose given.
- 23.2. No failure or delay of either party in exercising any right, power or privilege will operate as a waiver.
- 23.3. Any single or partial exercise of any right, power or privilege does not prevent any other or further exercise of the right or the exercise of any other right, power or privilege.
24. **Cession**

- 24.1. You may not cede any rights or delegate any obligations in terms of this credit agreement without our prior written consent.
- 24.2. We may, at any time and without notice to you, cede, delegate or assign any of our rights or obligations in terms of this agreement, provided that such cession does not prejudice your rights in terms of this agreement.

#### 25. Declaration

- 25.1. In signing the agreement, you confirm that:-
- to the best of your knowledge and belief that the information provided to us in respect of this Quotation and agreement is true, accurate and complete;
  - you are able to afford the repayments as set out in the Quotation;
  - you accept the terms and conditions of this credit agreement;
  - from the date of the quote to the acceptance of the quote, no further credit has been extended to you;
  - we have given you an opportunity to provide all relevant information of your income and expenses;
  - we have discussed with you whether you can afford the credit extended in terms of this credit agreement;
  - you can afford the credit offered by us;
  - the features and benefits of the credit facility have been explained to you;
  - the way in which the credit facility works has been explained to you;
  - the fees and charges for opening and operating the credit facility have been explained to you;
  - you have not applied for debt counselling and do not have an administration order or an order for provisional or final sequestration, liquidation or voluntary surrender against your estate;
  - you have read all the terms and conditions governing the credit facility that you have applied for and agree to be bound by them;
  - you undertake to inform us of any change to your information;
  - you understand that we are a different legal person from any third party that you instruct us to pay any amount to on your behalf; you understand, further, that this credit agreement with us is separate from any agreement that you have made with such a third party, and that we are not liable in the event that that third party violates their agreement with you;
  - you have been given the choice to pay the initiation fee upfront; and
  - you have been given the choice to refuse receiving marketing information.
- You have read through, or have hereby been instructed to read through the following paragraphs, including all subparagraphs thereof, which are hereby pointed out to you, and **clauses which may also affect your rights:**
- o 2: as it defines what type of agreement this is; and
  - o 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 21, 22, 23, and 24.

#### ACKNOWLEDGEMENT

I hereby confirm, by signature hereunder, that I have read through the above terms and conditions, and that the clauses in the declaration directly above this clause have either been pointed out to me, or hereby are pointed out to me, and that I understand and agree to them and to all other terms and conditions in this agreement.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Consumer's Signature

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_