

**LOAN AGREEMENT**

between

**DCI AGENCIES CC**  
(Registration Number: 2006/049776/23)

and

**FASHION X MANUFACTURING (PTY) LTD**  
(Registration Number 2017/443761/07)

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1. **Interpretation**

1.1 In this Agreement:

- (a) headings are included for the purposes of convenience only and will not be used in its interpretation;
- (b) unless the context indicates otherwise, a reference to the singular includes the plural and vice versa, a reference to a natural person includes a corporate entity and vice versa and a reference to any gender includes the other genders;
- (c) if a definition is substantive, conferring rights and/or imposing obligations on any Party, effect will be given to it as if it were a substantive term in the body of this Agreement;
- (d) any reference to any statute, regulation or other legislation will be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time; and

1.2 The termination of this Agreement will not affect those terms of this Agreement which expressly provide that they will operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding the fact that the clauses themselves do not expressly provide this.

1.3 Each of the terms of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract will be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the contract (i.e. the *contra proferentem* rule), will not apply.

2. **Definitions**

In this Agreement:

2.1 "Act" means the Companies Act, No. 71 of 2008;



- 2.2 "Agreement" means this Loan Agreement and any annexures;
- 2.3 "DCI" means DCI Agencies CC, registration number 2006/049776/23, represented herein by its member, Martin Wilhelm Schulze;
- 2.4 "FXM" means Fashion X Manufacturing (Pty) Ltd, registration number 2017/443761/07, represented herein by its business rescue practitioner, Pierre de Villers Berrange;
- 2.5 "Parties" means DCI and FXM, and "Party" means any one of them as the context requires;
- 2.6 "Signature Date" means the date of signature of this Agreement by the Party last signing.

3. **Introduction**

- 3.1 FXM commenced business rescue proceedings with effect from 10 September 2020.
- 3.2 Subsequent to the commencement of business rescue, DCI will advance a loan to FXM (a portion of which was advanced prior to the Signature Date), to enable FXM to continue its business whilst under business rescue, which loan is subject to the terms and conditions of this Agreement.

4. **Loan**

- 4.1 DCI will loan FXM an amount not exceeding R30 million (thirty Million rand) in total ("Loan").
- 4.2 The Loan will not accrue interest.
- 4.3 The Loan will be a combination of cash advances and the provision of goods and services to FXM on credit.
- 4.4 The Parties record that, as of the Signature Date, DCI has advanced to FXM R13 758 938.88 of the total Loan, which amount has been received by FXM.



4.5 At any given time, the outstanding balance of the Loan will be determined by the duly authorised representatives of the Parties agreeing to a certificate of balance specifying the amount of the Loan which remains unpaid.

4.6 In the event of a dispute between the Parties regarding the outstanding balance of the Loan:

- (a) the outstanding balance of the Loan will be determined by the auditor of FXM, at the written request of either Party;
- (b) in making such determination, the auditor will act as an expert and not as an arbitrator and its decision, save for manifest error, will be final and binding on the Parties;
- (c) the Parties must endeavour to ensure that the auditor makes such determination within 10 (Ten) Business Days of being requested to do so.

5. **Use of Loan**

The Loan will be used by FXM exclusively to fund its working capital requirements and ensure the continuation of its business during the business rescue process which commenced with effect from 10 September 2020.

6. **Post-Commencement Finance and Security**

6.1 The Loan will be considered post-commencement financing in accordance with section 135 of the Act.

6.2 As security for the repayment of Loan (including any amount of the Loan already advanced to FXM or to be advanced after the Signature Date), FXM will cede to DCI its reversionary rights in and to all of its accounts receivable of any kind (whether existing or future). It being recorded that The Standard Bank of South Africa Limited holds the first cession of such accounts receivable.

## 7. Repayment

- 7.1 FXM must repay the Loan from sales generated and its excess cash resources.
- 7.2 FXM will immediately be obliged to repay the full outstanding balance of the Loan if any one of the following circumstances occurs:
- (a) an application is made for a provisional or final order for the winding-up of FXM;
  - (b) a provisional or final order for the winding-up of FXM is made by any competent court or authority;
  - (c) FXM passes a resolution for its voluntary winding-up;
  - (d) business rescue proceedings are commenced in respect of FXM by any lawful means, apart from the business rescue proceedings which commenced with effect from 10 September 2020; or
  - (e) FXM submits an offer of compromise or similar offer to its creditors generally or otherwise becomes party to a compromise arrangement with its creditors generally, apart from any such arrangement in terms of the business rescue proceedings of FXM which commenced with effect from 10 September 2020.

## 8. Breach

- 8.1 Should any Party breach a provision of this Agreement and fail to remedy such breach within 10 (Ten) Business Days of receiving written notice from any other Party requiring it to do so, the other Party may, without prejudice to any other right it may have in law:
- (a) Institute a claim for specific performance;
  - (b) Institute a claim for damages;
  - (c) Cancel this Agreement and claim damages if the breach is material.

  
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8.2 Any termination of this Agreement will be without prejudice to any claim a Party may have in respect of any prior breach of the terms of this Agreement by the other Party.

9. **Dispute Resolution**

9.1 Any dispute arising from or in connection with this Agreement will be finally resolved by arbitration.

9.2 The arbitrator will be such person as may be agreed between the Parties.

9.3 Failing agreement on the identity of the arbitrator within 10 (Ten) Business Days of a request for such agreement being made by either Party, the arbitrator will be appointed by the Arbitration Foundation of Southern Africa at the request of either Party.

9.4 The arbitration will be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa for Commercial Arbitrations.

9.5 The place of the arbitration will be Durban and the language English.

9.6 A written notice by a Party to the other Parties that a dispute be submitted to arbitration will be deemed to be a legal process for the purpose of interrupting prescription.

9.7 Nothing contained in this 9 will prohibit a Party from approaching any court of competent jurisdiction for urgent Interim relief pending determination of the dispute by arbitration and, in this regard, the Parties consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, KwaZulu-Natal Local Division, Durban.

10. **Notices and Addresses**

10.1 Any notice or other communication in connection with this Agreement (Notice) must be in writing.


10.2 A Notice must be sent to a Party at one of the following addresses:

(a) DCI:

Physical Address: 218 Mathews Meyiwa Rd, 2nd Floor, San Angelo Building, Stamford Hill, Durban

Email: [martin@contracon.net](mailto:martin@contracon.net)

Attention: Martin Schulze

(b) FXM:

Care of: Pierre de Villers Berrange

Physical Address: Suite 9, 2nd Floor, Block C, Town Bush Office Park, 460 Town Bush Road, Pietermaritzburg

Email: [pierre@b-inc.co.za](mailto:pierre@b-inc.co.za)

Attention: Pierre Berrange

10.3 Unless the contrary is proved, any Notice will:

- (a) if delivered by hand be deemed to have been received by the addressee on the date of delivery;
- (b) if sent by email, be deemed to have been received once the email enters an information system outside the control of the Party sending it.

10.4 Notwithstanding anything to the contrary, a written notice or communication actually received by a Party will be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address.

10.5 A Party may give written notice to change their address details set out in clause 10.2, provided that any such change will take effect on the 10<sup>th</sup> (Tenth) day after the receipt of the notice by the addressee and any physical address must be located within South Africa.



10.6 Each Party chooses its physical address set out in clause 10.2, as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be delivered.

11. **General**

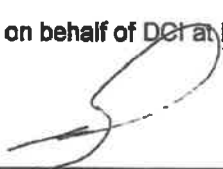
- 11.1 This Agreement contains the entire agreement amongst the Parties in regard to its subject matter.
- 11.2 No Party may cede or assign its rights under this Agreement without the prior written consent of the other Parties.
- 11.3 No Party will be bound by any express or implied term, undertaking, representation, warranty or promise not recorded in this Agreement.
- 11.4 No amendment or consensual cancellation of this Agreement or any term will have any effect unless reduced to writing and signed by the Parties.
- 11.5 No failure by any Party to enforce any term of this Agreement will constitute a waiver of such term or affect in any way such Party's right to require the performance of such term at any time in the future, nor will a waiver of a subsequent breach nullify the effectiveness of the term itself.
- 11.6 If any part of this Agreement is for any reason whatsoever, including a decision by any court, any legislation or any other requirement having the force of law, declared or becomes unenforceable, invalid or illegal, the Parties must negotiate and effect the amendment of this Agreement such that it is lawful and enforceable, retaining its essential terms.
- 11.7 Each Party confirms that it is acting as principal in its own right and not as agent for any other person or for any other Party.
- 11.8 The Parties acknowledge that they have been free to secure independent legal, tax and other advice as to the nature and effect of all the terms of this Agreement and that they have either taken such independent legal, tax and other advice or dispensed with the necessity of doing so.



**12. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original, but all of which together will constitute one and the same instrument.

Signed for and on behalf of DCI at DURBAN on 16 October 2020:

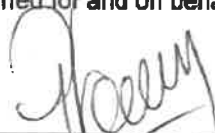


Name: Martin Wilhelm Schulze

Capacity: Member

*Duly Authorised and Warranting Authority*

Signed for and on behalf of FXM at DURBAN on 16 October 2020:



Name: Pierre de Villiers Berrange

Capacity: Business Rescue Practitioner

*Duly Authorised and Warranting Authority*