

Annex B: Deed of Subordination (Revolving Credit Facility)

THIS DEED is made the [] day of [] 200_

Between

- (A) [], a company incorporated in [] and having a place of business at [] (hereinafter called the “Lender”); and
- (B) [], a company incorporated in [] and having its registered office at [] (hereinafter called the “Member”).

WHEREAS

- (1) The Member is a corporate member of [] (hereinafter called the “Exchange”) and is required to comply with the Rules of the Exchange (hereinafter called the “Rules”) and inter alia, the Securities and Futures Act and the Regulations made thereunder (hereinafter called the “Act”).
- (2) This Deed is made in substitution of the Deed made on the [date] between the Lender and the Member for the purpose of compliance with the requirements of the Exchange and the Rules and the Act.

[The Member has agreed to procure and the Lender has agreed to subordinate the Loan to be made to the Member in order that the Member meet the financial requirements as prescribed by the Rules and the Act.¹]

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings as follows: -

- “Advance” means an amount drawn or to be drawn down by the Member or otherwise made available by the Lender under the Loan;
- “Authority” means The Monetary Authority of Singapore;
- “Expiry Date” means the maturity date of the Loan referred to in Clause 3.1 hereof;
- “Loan” means the amount advanced/[or to be advanced] to the Member pursuant to Clause 2.1 or as the context may require the amount for the time being outstanding in respect thereof which has been approved by the Exchange as a qualifying subordinated loan pursuant to the Rules and Act;
- “Senior Debts” means the unpaid claims of all the creditors for the time being of the Member howsoever incurred;

¹ This clause is to be used instead if it is not a replacement of an existing Deed.

“Senior Creditors
or Unsubordinated
Creditors”

means those creditors who for the time being hold or are entitled to the Senior Debts.

- 1.2 Words importing the singular number include the plural number and vice versa and references to the male gender shall include the female and neuter genders.
- 1.3 Headings are provided for ease of reference only and shall not affect the interpretation or construction of this Deed.
- 1.4 References to schedules, clauses and appendices shall, unless otherwise identified, refer to the Schedules and Clauses of, and Appendices to, this Deed.
- 1.5 Where, in this Deed, the Lender consists of two (2) or more Persons, the covenants and conditions contained herein shall bind them jointly and severally.

2. LOAN

- 2.1 The Lender hereby covenants that the Lender will make available to the Member a revolving credit facility whereby the Lender will make Advances to the Member (the “**Loan**”) to enable the Member to perform its obligations under the Rules and the Act.
- 2.2 The maximum aggregate amount of all Advances outstanding at any time under the Loan shall not exceed [].
- 2.3 Any Advance requested by the Member under the Loan shall be made known to the Lender by giving an irrevocable written notice of at least [] days (“**Notice**”) specifying the principal sum to be advanced subject to the maximum aggregate amount referred to in Clause 2.2 and the date of drawdown of such Advance, which shall not be fixed at any time after the Expiry Date.
- 2.4 The Lender shall make available and lend to the Member on the date of the drawdown the amount specified in the Notice.
- 2.5 For each Advance so requested in accordance with Clause 2.3, the Member shall forthwith, at the time of providing the Notice to the Lender, provide a copy of such Notice for purposes of notification to the Exchange and shall promptly notify the Exchange of the actual drawdown of the Advance sum including the repayment date of such Advance as determined by the Lender (“**Repayment Date**”).

3. EXPIRY DATE

- 3.1 The Loan shall only mature on *[to insert date which shall not be less than two (2) years from the date the Loan is provided by the Lender to enable the Member to meet the financial requirements as prescribed by the Rules and the Act]*.
- 3.2 Unless otherwise agreed by the Lender and Borrower in writing any time prior to a relevant anniversary, the Lender and Borrower agree that on the 1st anniversary of the date of this Deed (and on each subsequent anniversary thereafter), the Expiry Date shall be automatically extended by one (1) additional year and the Loan shall expire on this later date as if this date had been the date set out in Clause 3.1 above.

4. REPAYMENT

- 4.1 The provisions of this clause are subject in all respects to the provisions of Clause 5.
- 4.2 The Member may repay the whole or any part of any Advance at any time prior to the Expiry Date, provided that no repayment shall be made unless:
- (a) prior written consent of the Exchange has been obtained by the Member for each repayment of any Advance;
 - (b) prior notification has been provided to the Authority for each repayment of any Advance; and
 - (c) the Member has complied with all requirements prescribed by the Rules and/or the Act.
- 4.3 The Member will pay to the Lender interest in respect of the Loan or on any part thereof for the time being remaining due, as specified in Appendix A². Notwithstanding the foregoing, where interest on the Loan is payable, the Member may at its absolute discretion and at its option defer interest payment on the Loan on such terms as the Member deems fit.
- 4.4 Upon the Expiry Date, the Member may repay any amounts advanced hereunder, whether in part or in full, provided that no repayment shall be made unless:-
- (a) the Member has provided the Authority and the Exchange with at least one (1) business day's notice of its intention to make such repayment and the Authority and/or the Exchange does not object to the same in writing; and
 - (b) the Member has complied with all requirements prescribed by the Rules and/or the Act.

5. COVENANTS AND REPRESENTATIONS

- 5.1 The Lender hereby covenants for the benefit of the Senior Creditors as follows:-
- (a) that the Loan shall henceforth at all times be fully subordinated to the Senior Debts;
 - (b) that except with the prior written consent of the Exchange, the Lender shall not at any time do or be permitted to do any and all the following things or acts in connection with the Loan:-
 - (i) except as provided for in Clause 4, and provided further that prior written consent of the Authority has been obtained, demand, receive or collect any repayment including by way of set-off or in any other manner from the Member or take any steps, actions or proceedings anywhere, directly or indirectly, to recover or enforce repayment or payment of the same in any way;
 - (ii) assign or charge or allow to subsist any encumbrance or commence execution proceedings or purport to do any of the foregoing matters;

² To list the details of the interest calculations and the manner of the repayment of interest and other relevant details.

- (iii) combine or consolidate, or purport to so combine or consolidate, the Loan with any of its liabilities to the Member or set off the Loan in satisfaction of all or any of its liabilities to the Member;
 - (iv) take, have or allow to subsist or purport to so take, have or allow to subsist, any charge, mortgage, lien or any security on or over any moneys and/or property, movable or immovable of or belonging to the Member as security for the repayment of the Loan, if any;
 - (v) borrow, take or accept any loans or advances, whether directly or indirectly, from the Member or take or accept any gift, in cash or in kind, or obtain or procure any guarantee, indemnity or security to be given or issued by the Member for or in connection with any of the indebtedness or liabilities of the Lender;
 - (vi) cause, procure, permit or suffer the Member to sell, transfer or in any way dispose of any of the Member's property or assets to the Lender in any manner save and except at arm's length and for good, valuable and adequate consideration which shall be fully paid for in cash;
 - (vii) amend, cancel or replace the terms of this Deed or the terms of any document evidencing or providing for the Loan;
 - (viii) subject the Loan to any cross-default or negative pledges; and
 - (ix) take or omit to take any action whereby the subordination as provided for in Clause 5.1(a) might be terminated, impaired or adversely affected.
- (c) that all payments (whether in cash or in kind) collected or received by the Lender from or for account of the Member in breach of this Deed, shall be deemed to be held in trust for the Senior Creditors but until such payments are actually paid or handed over to the Senior Creditors, the collection or receipt thereof by the Lender shall not reduce or affect in any way the indebtedness of the Member to the Senior Creditors; and
- (d) that in the event of a winding up or liquidation or dissolution or re-organisation of the Member, the Senior Debts shall be paid in full before any payment or distribution in respect of the Loan, and in order to implement the foregoing, all payments and distribution of any kind or character in respect of or to account of the Loan or any part thereof, which the Lender would be entitled to, if the Loan were not subordinated or postponed pursuant to this Deed, shall be made directly to the Senior Creditors who may otherwise demand, sue for, recover, collect and receive any and all proceedings with respect to any and all actions relating to the Loan.

5.2 The Member hereby covenants and declares that the Member is bound by the covenants and conditions contained in Clause 5.1 and that the Member shall observe and perform the same, and in particular and without limiting the generality of the foregoing, the Member hereby covenants that except with the prior written consent of the Exchange, the Member shall not at any time do or be permitted to do any and all the following things or acts in connection with the Loan:-

- (a) except as provided for in Clause 4, and provided prior written consent of the Authority has been obtained, pay or purport to pay in any way directly or

indirectly made to it the Loan whether in cash or in kind or in any way to discharge or purport to discharge the Loan;

- (b) make any loans or advances or give any credit facilities, whether directly or indirectly, to the Lender or provide it with any guarantee, indemnity or security for or in connection with the Loan or any indebtedness or liability of the Lender;
- (c) sell, transfer or in any way dispose of any of its property or assets to the Lender in any manner save and except at arm's length and for good, valuable and adequate consideration which shall be fully paid by it in cash;
- (d) make any cash payment, whether by way of dividend or return of capital, to the Lender;
- (e) amend, cancel or replace the terms of this Deed or the terms of any document evidencing or providing for the Loan;
- (f) subject the Loan to any cross-default or negative pledges; and
- (g) take or omit to take any action whereby the subordination as provided for in Clause 5.1(a) might be terminated, impaired or adversely affected.

5.3 The Lender and the Member hereby concede in favour of Senior Creditors that, if the Authority and the Exchange so require, the Loan shall be converted or deemed converted (as the case may require) automatically into capital (in the form as may be approved by the Authority and the Exchange) of the Member ("New Shares") upon the Member failing to effect any reconstruction acceptable to the Authority when the same is required by the Authority pursuant to the Act for the provision of losses arising from bad and doubtful debts of the Member.

5.4 The Member hereby covenants that it shall (in so far as required to give effect to the conversion or deemed conversion aforementioned) take all steps necessary to effect the said conversion of the Loan to New Shares including but not limited to the issue and allotment of New Shares to the Lender.

5.5 The Lender hereby acknowledges that upon the issue and allotment of New Shares to the Lender, the Loan and all rights and interest relating thereto (including right of set-off, withholding and any accrued rights of the Lender) shall be regarded as extinguished.

5.6 The Lender and the Member hereby declare that the covenants contained in this Deed are made for the benefit of the Senior Creditors and any or all of them may sue on this Deed notwithstanding that they are not parties hereto.

6. THE EXCHANGE

6.1 The Lender and the Member hereby jointly and severally acknowledge and covenant that the Exchange shall have the right at any time to withdraw its approval of the Loan as a qualifying subordinated loan for the purposes of compliance by the Member with the Rules and/or Act in the event either the Member or the Lender fails to comply with any of the terms of this Deed.

7. RIGHTS OF THIRD PARTIES

7.1 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any term of this Deed. Where third parties are conferred rights under this Deed, those rights are not assignable or transferable.

8. GOVERNING LAW

8.1 This Deed shall be governed by and construed in all respects in accordance with the laws of Singapore and the parties hereto irrevocably submit to the jurisdiction of the Singapore courts in relation to any disputes howsoever arising out of, or in connection with this Deed.

IN WITNESS WHEREOF the parties have caused their respective Common Seals to be hereunto affixed the day and year first above written.

The Common Seal of _____)
Was hereunto affixed in the)
Presence of)

Director

Secretary

The Common Seal of _____)
Was hereunto affixed in the)
Presence of)

Director

Secretary

Appendix A

1. Rate and Calculation of Interest
(list details)
 2. Payable
(list details)
 3. Default Rate of Interest
(list details)
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