

Dated

1.23

[LENDER] (1)

[B

WHEREAS

- (1) The Borrower is a licensed corporation carrying on [Type 1, 2, 3, 4, 5, 6, 7, 8, 9

"Subordinated Liabilities" means all present and future sums liabilities and obligations payable or owing by the Borrower to the Lender (whether actual or contingent, jointly or severally or otherwise) in respect of the Loan and all [interest]* costs charges and expenses due and payable thereon.

(2) Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Clause Headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
- (b) References to Clauses are to be construed as references to Clauses of this Agreement;
- (c) Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa; and
- (d) Any reference to an ordinance or subsidiary legislation shall be deemed to be a reference to that ordinance or subsidiary legislation as from time to time amended, re-enacted or substituted.

2. THE FACILITY

The Lender hereby offers to the Borrower until the Expiry Date an irrevocable revolving credit facility of [insert currency and dollar amount] under which the Lender will, when called upon to do so, make unsecured loans to the Borrower in accordance with and subject to the terms of this Agreement (**"Facility"**).

3. THE LOAN

- (1) Whenever the Borrower desires to draw on the Facility it shall give to the Lender [insert appropriate period]* irrevocable written notice specifying the amount required by the Borrower, which shall be a minimum of [insert currency and dollar amount] and an integral multiple of [insert currency and dollar amount] and the proposed date of drawdown.
- (2) Subject to the terms of this Agreement the Lender shall on the date of drawdown advance to the Borrower, by way of unsecured loan the amount specified in the notice given under Clause 3(1) hereof (an **"Advance"**).
- (3) The Borrower shall at the time it delivers a notice to the Lender under Clause 3(1) hereof simultaneously deliver to the Commission a copy of such notice.

- (4) Forthwith upon the making of an Advance to the Borrower the Borrower shall give to the Commission written notice confirming the amount of the Advance and the date of drawdown and the Borrower shall provide to the Commission such documents and information in relation to the Advance and within such time as prescribed in the letter of approval. The Borrower undertakes to the Commission that forthwith upon receiving a written request by the Commission to do so it will provide to the Commission any further documents and information in relation to the Advance as the Commission may require and within such time as the Commission may specify.
- (5) The aggregate amount of all outstanding Advances shall not exceed at any time the amount of the Facility.
- (6) The Borrower undertakes to the Commission that forthwith upon receiving a written request by the Commission to do so it will provide to the Commission any further documents and information in relation to the Advance as the Commission may require and within such time as the Commission may specify.

Interest shall be paid [monthly/ other (specified) period or intervals]* and any

6. SUBORDINATION

In the event of the Borrower's insolvency or the Borrower becoming unable at any time to comply with any applicable provisions of the Financial Resources Rules, the rights of the Lender in respect of the Subordinated Liabilities will be subordinated in all respects to the rights of Senior Creditors in respect of the Senior Liabilities. Accordingly any [payment under Clause 4 or]* repayment under Clause 5 is conditional upon the solvency of the Borrower and compliance by the Borrower with all applicable provisions of the Financial Resources Rules both at the time of such [payment or]* repayment and immediately thereafter and such [payment/ repayment] shall not be made unless this condition is satisfied.

7. ENFORCEMENT

- (1) If the Borrower fails to pay any principal [interest]* costs charges or expenses in respect of the Loan under the terms of this Agreement within [insert number] days of the date upon which it is due and payable, the Lender may, in order to enforce payment, at its discretion and after taking such preliminary steps or actions as may be necessary, institute any judicial or other proceedings for the insolvency of the Borrower provided

- (c) amend, cancel or replace the terms of this Agreement or the terms of any document evidencing or providing for the Subordinated Liabilities;
 - (d) make any repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement; or
 - (e) take or omit to take any action whereby the subordination as provided for in Clause 6 might be terminated, impaired or adversely affected.
- (2) The Lender hereby covenants with the Commission that it will comply with the terms of this Agreement and will not, without the prior written consent of the Commission:
 - (a) assign, transfer or otherwise dispose of this Agreement or all or any of the rights, benefits or obligations hereunder including the whole or any part of the Subordinated Liabilities nor purport to do so;
 - (b) retain or set-off or purport to retain or set-off at any time any amount of the Loan against any amount otherwise payable by it to the Borrower except to the extent that payment of such amount of the Loan would be permitted at such time by this Ag

- (b) to notify the Commission forthwith of any breaches which come to the attention of the Lender in the performance by the Borrower of its obligations under this Agreement.
- (4) The Borrower and the Lender hereby jointly and severally agree and acknowledge the right of the Commission at any time to withdraw its approval of the Loan as an approved subordinated loan for the purposes of compliance by the Borrower with the Financial Resources Rules in the event of either the Borrower or the Lender failing to comply with any of the terms of this Agreement (including without limitation the failure by the Borrower to furnish the Commission with the requisite documents and information pursuant to the provisions of Clause 3) or in the event of the Borrower failing to comply with any of the terms and conditions contained in the letter of approval.

10. DOCUMENTATION

The parties hereto jointly and severally acknowledge that this Agreement forms the entire agreement relating to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement, such terms shall be of no further force and effect. No amendment to this Agreement shall be of any effect unless it is in writing subscribed to by all the parties hereto. Any amendment to this Agreement made or purported to be made without the prior written consent of the Commission shall be void, and at any time after the Commission shall have become aware of any such amendment it shall be entitled to declare by notice in writing to the Borrower and the Lender that the Loan will no longer be taken into account for the purposes of determining compliance by the Borrower with the Financial Resources Rules. Any such declaration shall be without prejudice to any other rights or any other action which the Commission might be entitled to take or to exercise in respect of a breach of this Agreement constituted by any such purported amendment and no failure or delay on the part of the Commission with respect to the making of such declaration shall prejudice its rights in relation to the Borrower and/or the Lender either generally or pursuant to this Agreement.

11. CONTINUING OBLIGATIONS AND TERMINATION

- (1) The obligations of the Borrower and the Lender hereunder shall be continuing obligations and shall be and remain fully effective until the Expiry Date (insofar as such obligations refer to the Facility) and the repayment of the Loan in full in accordance with the provisions of this Agreement (insofar as such obligations refer to the Loan).
- (2) This Agreement may be terminated at any time by the Lender and the Borrower upon agreement provided that the Commission has given its prior written consent to the termination. Termination of this Agreement shall be without prejudice to the rights and claims of the Commission accrued or made at or prior to the date of termination.

12. THE COMMISSION

- (1) The Commission is a party to this Agreement only for the purpose of ensuring the enforceability of the provisions of this Agreement so as to satisfy itself that the requirements of the Financial Resources Rules as are applicable to the Borrower are met and the Commission is not, and shall not be deemed to be, a trustee for, or to have any obligation of any nature to, the Senior Creditors or any of them.
- (2) Each of the Lender and the Borrower shall on demand indemnify the Commission against all claims, losses, costs, expenses and other liabilities made against or incurred by the Commission as a consequence of the Commission being a party to, or taking or omitting to take any action under, this Agreement.

13. PARTIAL INVALIDITY

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provisions of this Agreement.

14. NOTICES

- (1) Any notice or document to be served under this Agreement shall be:
 - (a) delivered by hand;
 - (b) sent by registered post;to the party's address as specified above or as notified in writing to the other parties for the purposes of this Clause; or
 - (c) sent by facsimile transmission to the party's facsimile number notified in writing to the other parties for the purposes of this Clause.
- (2) Any such notice or document shall be deemed to have been served:
 - (a) if delivered by hand, at the time of delivery; or
 - (b) if sent by registered post, at 10 a.m. on the second business day after the date it is posted; or
 - (c) if sent by facsimile transmission, one hour after the time of dispatch, if dispatched before 4 p.m. on any business day, and in any other case at 10 a.m. on the business day following the day of dispatch.
- (3) In proving service, it shall be sufficient to prove :
 - (a) in the case of delivery by hand, that delivery was made;

(b) in the case of registered post, that the envelope containing the notice or

The Borrower

Signed Sealed and Delivered by
[Full name of the individual Borrower] in the presence of:

or

The Common Seal of [name of corporate Borrower] was
hereunto affixed in the presence of:

The Commission

Signed by:
Executive Director/Senior Director*
For and on behalf of the Securities and Futures Commission

[Notes:

- 1. The statement that “the parties have set their respective hands and seals” is applicable where the Lender/Borrower is an individual; whereas “the parties have caused their respective Common Seals...” is applicable where the Lender/Borrower is a corporation.**

2. **Where the Lender and/or the Borrower are corporations, they should check their Articles of Association (if applicable) regarding the correct mode of execution of contracts that apply to them.]**