

## Translation

### Securities Borrowing and Lending Agreement to Cover Failure

This Agreement is made and entered into on..... at Thailand Securities Depository (Thailand) Co., Ltd.

By and between

Thailand Securities Depository (Thailand) Co., Ltd. by..... (title), and.....(title), having its registered office located at The Stock Exchange of Thailand (SET), 62 Ratchadapisek Road, Klong Toey, Bangkok 10110, hereinafter referred to as the “TSD”

and

..... by ..... (title), and.....(title), having its registered office located at....., hereinafter referred to as the “**Company**” or “**Borrower**” or “**Lender**”, as the case may be, which is:

- **A general member of Clearing House**, qualified in accordance with the rules and regulations of TSD, Re: Providing of Services by the Clearing House for Trading of Listed Securities.
- **A depositor**, qualified in accordance with the rules and regulations of TSD, with its lending system being able to connect to TSD’s Securities Borrowing and Lending (SBL) system, and intending to lend securities as identified in this Agreement.

#### WHEREAS:

TSD has provided SBL service for Clearing House’s members to be able to (i) deliver securities to Clearing House in accordance with the rules and regulations of TSD, Re: Providing Services by the Clearing House or (ii) to redeliver securities borrowed from TSD; and

The Company desires to borrow and/or lend securities via TSD’s SBL service system.

Both parties agree to the following:

#### 1. Definitions

In this Agreement, unless specified otherwise:

“Clearing House” means a clearing house qualified in accordance with the rules and regulations of TSD, Re: Providing of Services by the Clearing House for Trading of Listed Securities.

“Unit” means a unit in accordance with 1) the rules and regulations of the Stock Exchange of Thailand, Re: Trade, Payment, and Delivery of the Securities within the Stock Exchange of Thailand and 2) the rules and regulations of the Stock Exchange of Thailand, Re: Trade in the Main Board.

“Borrower” means a person who borrows securities from TSD in order to deliver the securities to Clearing House where TSD has agreed to process such a procedure.

“Lender” means a person who loans securities to TSD, where TSD has agreed to borrow such securities from that person.

“Rules and Regulations” mean rules and regulations of TSD regarding the provision of the SBL service system for securities delivery to Clearing House.

## **2. General provision**

- (1) The Company agrees to borrow from and/or lend securities to TSD in order to deliver such securities to Clearing House. TSD agrees to process such a procedure and not to disclose the identity of the Company.
- (2) The Company agrees to borrow and/or lend securities or redeliver and/or receive securities in whole Units.

## **3. Securities Borrowing**

- (1) The Borrower agrees to borrow securities under the following conditions:
  - (a) When the Borrower fails to deliver securities in accordance with the rules and regulations of TSD, Re: Providing Services by Clearing House for Trading of Listed Securities:  
  
In case the Borrower’s shortfall in delivering securities to Clearing House is less than one Unit, the Borrower agrees round up the amount borrowed to one Unit;
  - (b) When the Borrower expresses his intention to borrow securities from TSD in accordance with the Rules and Regulations.
- (2) The Borrower agrees to borrow securities from TSD in order to deliver such securities to Clearing House.
- (3) After completing the borrowing process, the Borrower agrees to:
  - (a) Allow TSD to transfer such securities into the Company’s securities depository account for delivery and acceptance of securities opened with TSD.

- (b) Place valid collateral with TSD in the type and rate prescribed under the rules and procedures of TSD in order to guarantee its obligations to deliver securities and cover any damages that might occur.
- (4) In case the Borrower fails to place valid collateral as specified in clause 3 (3) (b), the Borrower agrees that TSD has a right to confiscate the following assets as collateral for the redelivery of securities borrowed and payment of damages:
  - (a) Money that the Borrower is entitled to receive from the borrowing or lending of securities according to the Rules and Regulations.
  - (b) Money, securities or collateral that the Borrower places or is entitled to receive in accordance to the Rules and Regulations, Re: Providing Services by Clearing House for Trading of Listed Securities.
  - (c) Securities maintained in the Company's securities depository account for delivery and acceptance of securities traded.
  - (d) Securities of the Company in the Company's securities depository account for the deposit, withdrawal or transfer of securities.
- (5) In order to place valid collateral as identified in clause 3 (3) (b) and clause 3 (4), the Borrower agrees to place such collateral by transferring such collateral to TSD in accordance with rules and procedures prescribed by TSD, and TSD agrees to redeliver such collateral to the Borrower after the Borrower redeliver such borrowed securities to TSD.
- (6) The borrowing process shall be valid when TSD transfers securities borrowed to the Company's securities depository account for delivery and acceptance of securities traded.
- (7) To place valid collateral as identified in clause 3 (5), the Borrower agrees that TSD has a right to proceed the followings:
  - (a) To seize collateral deposited with TSD if the Borrower defaults on its obligation under this Agreement.
  - (b) To stop paying or compensating for any manufactured income to the Borrower unless such collateral is in the form of securities having already been transferred to TSD and the issuers of those securities gave benefits to securities holders. In such a case, TSD agrees to pay and compensate the Borrower in the amount equivalent to such benefits following the same

rules and procedures that the manufactured income was paid to the Lender.

#### **4. Securities Lending**

- (1) The Lender agrees to lend securities to TSD through the SBL service system when the Lender transfers such securities into its securities borrowing and lending account opened with TSD.

When the Lender lends securities to TSD as identified in clause 4 (1) above, the Lender agrees that TSD has a right to proceed in order to bring such securities to be borrowed in TSD's SBL service system.

- (2) If more than one lender offers securities to cover failed transactions, TSD will select a lender with the random process in accordance with the rules and procedures prescribed by TSD.
- (3) When the Lender loans its securities to TSD's SBL service system, the Lender reserves the right to receive collateral in the type and rate prescribed under the rules and procedures of TSD, and the Lender agrees that such securities shall be in TSD's custody.
- (4) The Lending process shall be valid when TSD withdraws securities in the lending amount from the Lender's securities borrowing and lending account.
- (5) The Lender warrants to TSD as follows:
  - (a) The Lender has the right to lend securities under this Agreement and is allowed to do any necessary procedure to facilitate such lending;
  - (b) The Lender's systems are able to connect to TSD's SBL service system;
  - (c) The Lender owns the securities loaned or has been authorized by the securities owner; and
  - (d) The securities loaned are free from any preferential right and burden of obligation.

#### **5. Redelivery of securities and collateral**

- (1) The Borrower has the obligation to redeliver securities loaned to TSD by maintaining the equivalent securities loaned in the Borrower's securities depository account for delivery and acceptance of securities traded on the due date as identified in clause 9.
- (2) The Borrower may redeliver securities loaned before the due date as identified in clause 9 by the following procedure:

- (a) The Borrower has the obligation to inform TSD in advance in accordance with the rules and procedures prescribed by TSD.
  - (b) On the redelivery date, the Borrower has the obligation to maintain the same level of securities loaned in the securities borrowing and lending account as the Borrower has informed TSD.
- (3) Redelivery shall be valid when TSD withdraws the securities from the securities depository account as identified in clause 5 (1) or 5 (2) (b), as the case may be, and TSD subsequently returns the collateral to the Borrower.
  - (4) The Lender has the right to receive the same securities loaned on the due date in accordance with clause 9, or when TSD receives the borrowed securities before the due date.

When the Lender validly receives borrowed securities, the Lender agrees to allow TSD to redeliver collateral to the Borrower, pro rated in accordance with the amount of securities returned under the rules and procedures prescribed by TSD.

## **6. Adjustment of redelivered securities and collateral value**

- (1) If any of the following circumstances which can affect the benefits returned after redelivery of securities or collateral occur, the Borrower and Lender agree to allow TSD to adjust the value of securities loaned or collateral before the due date:
  - (a) Exercise of pre-emption rights;
  - (b) Change in share par value;
  - (c) Redemption of securities;
  - (d) Merger, acquisition or amalgamation;
  - (e) Share dividend payment;
  - (f) Conversion of securities; or
  - (g) Any other case similar to (a) - (f) above.
- (2) The Borrower and Lender agree that TSD has a right to calculate on every business day (a) the value of securities loaned and (b) the value of securities placed as collateral in accordance with TSD's rules and procedures.
- (3) In case the value of collateral covering securities loaned at any time is less than that prescribed by TSD, the Borrower shall place additional collateral with TSD in accordance with TSD's rules and procedures.
- (4) In case the value of collateral covering securities loaned at any time is greater than that prescribed by TSD, the Lender agrees to allow TSD, on behalf of the Lender, to return the excess collateral to the Borrower.

## **7. Payment of manufactured income**

- (1) When the issuer of securities loaned pays any benefits, the Borrower shall return such benefits or manufactured income to TSD in the same amount(s) as received from the issuer.

Payment of any benefit or manufactured income, per the above, shall have the following procedures:

- (a) In case manufactured income is in the form of a right to receive a dividend or share dividend, the Borrower, as informed by TSD, has the obligation to (i) pay money in the same amount as the dividend, (ii) deliver share dividend, or (iii) deliver the equivalent share dividend by transferring into to the securities depository account.
  - (b) In case the manufactured income is a right to receive subscription shares, and TSD expresses its intention to exercise pre-emption rights and pay the Borrower, the Borrower, as informed by TSD, must transfer securities which are of the same type as the subscription share issued by the issuer to the securities depository account. However, the Borrower has a right to receive money in the same amount as paid for the subscription-rights.
  - (c) In case the manufactured income is a right to attend a shareholders meeting(s) and TSD has stated its intention to have a right to participate in such meeting, the Borrower shall make his best effort to complete any procedures necessary for TSD to exercise that right.
- (2) If the Borrower does not perform the obligations as identified in clause 7 (1) (b), the Borrower shall return the payment of subscription rights paid by TSD to TSD and the Borrower agrees to pay damages incurred to TSD.
  - (3) If the Borrower does not perform the obligations as identified in clause 7 (1) (a) or (b) or clause 7 (2) within the time specified by TSD, the Borrower shall pay a penalty to TSD at the rate and within the time specified by TSD.
  - (4) When the issuer of securities loaned pays any benefits or manufactured income while the securities are held by the Borrower, within the period prescribed by TSD, the Lender has the right to receive such benefits or manufactured income equivalent to the securities loaned to TSD in the amount equivalent to such benefits that the Lender will receive from the issuer if the Lender still holds such securities.

In order to receive manufactured income as mentioned above, the Lender shall have rights as follows:

- (a) In case the manufactured income is a right to receive a dividend or share dividend, the Lender has the right to receive money or securities, as the case may be, in the same amount and of the same type as the manufactured income. If the manufactured income is a share dividend, it shall receive such share dividends through the securities depository account which it had specified to TSD for this purpose.
- (b) In case the manufactured income is a subscription right, the Lender has the right to receive securities which are of the same type and amount as the subscription share through the securities depository account which it had specified to TSD for this purpose. Such subscription shall not exceed the proportion subscribed to in the original issue. The Lender has the obligation to inform TSD of its intention to subscribe prior to the expiry date of the subscription period, or the due date to return the securities as specified in the contract, whichever comes first.

To use the pre-emption right, the Lender shall pay TSD in the same amount as the value of the pre-emption right paid prior to the expiry date of such rights or within the period specified by TSD.

- (c) In case the manufactured income is the right to participate in a shareholders meeting and the Lender will be able to participate in such meeting only if TSD is able to arrange for the Lender to participate in such meeting. However, the Lender shall notify its intention to participate in such meeting to TSD prior to the period prescribed by TSD and the shareholders meeting date.
- (5) For any manufactured income other than that defined in clause 7 (1) – (4), the Company agrees to follow rules and procedures prescribed by TSD.

## **8. Recall of securities before due date**

Prior to the due date, TSD has the right to recall securities loaned, either in part or in whole, from the Borrower by informing the Borrower in advance at the time specified by TSD.

## **9. Due date of cover failure transaction**

Whenever the following date occurs, the parties agree to acknowledge such an event as a due date:

- (a) The date identified in the notice of recalling securities, as identified in clause 8.
- (b) The sixth business day after the securities borrowing, which TSD, with reasonable cause, may change by informing the parties in writing at least three (3) business days prior to the due date.
- (c) The date that the Borrower redelivers securities loaned before the due date.
- (d) The date that any event occurs that causes the Borrower to be under the process of insolvency or bankruptcy, or similar circumstances.

**10. Fee and other expenses**

- (1) The Borrower shall pay to TSD the borrowing and service fees or any other expenses relevant to the securities borrowing, at rates specified by TSD.
- (2) The Lender has the right to receive the lending fee at the rate specified by TSD and has the obligation to pay to TSD the service fee or expenses pertaining to securities borrowing, at rates specified by TSD.

**11. Process after defaulting on redelivery of securities**

In case the Borrower does not redeliver securities loaned as identified in clause 5 (1), the Borrower shall allow TSD to take any of the following actions:

- (1) Randomly select other lender(s) in accordance with the TSD's rules and procedures. Such selected lender agrees to allow TSD to process any action in order to bring the securities to be borrowed by the Borrower who defaults in redeliver such securities.

After TSD has selected another lender, the defaulting Borrower shall borrow securities from such other lender and complete the Borrower's obligations in accordance with this Agreement.

- (2) Enforce collateral placed for redelivery of securities loaned
- (3) Seize and enforce money that the Borrower is entitled to receive from the borrowing in accordance with the TSD's rules and regulations
- (4) Seize and enforce money, securities, or collateral that the Borrower is entitled to receive in accordance with TSD's rules and regulations, Re: Providing of Services by the Clearing House.
- (5) Seize and enforce securities deposited by the Borrower in the Borrower's securities depository account for delivery and acceptance of securities traded.

- (6) Seize and enforce securities in the Borrower's securities depository account for deposit, withdrawal, or transfer of securities

The Borrower agrees to pay any expenses and/or damages incurred resulting from the default, in part or in whole, on the due date in accordance with this Agreement, including costs arising from any conditions stated in clause 11 (1)-(6).

## **12. Reimbursement**

If any party breaches this Agreement or Rules and Regulations, and causes the other party damages, such party shall compensate the other party in full.

## **13. Termination**

- (1) TSD may terminate this Agreement by giving the Company prior written notice of at least three (3) business days.
- (2) The Company, as the Lender in the SBL service system, may terminate this Agreement by giving TSD prior notice of at least three (3) business days.
- (3) In order to terminate this Agreement as mentioned in clause 13 (1) or (2), the party that wishes to terminate this Agreement may allow the other party to complete its obligations under this Agreement within a reasonable time. If such party does not complete its obligations within the time specified, it must compensate the party who has terminated this Agreement any damages incurred within thirty (30) days from the receiving the termination notice.
- (4) The termination of this Agreement shall not prejudice or affect the accrued rights, claims and liabilities of any party to this Agreement or the continuing obligations of any party under this Agreement which are expressed to continue after termination or are otherwise required to continue after termination to fulfill the intent and purpose of this Agreement.

## **14. TSD's duties and liabilities**

If TSD performs its obligation under this Agreement and causes the Company damages, TSD agrees to indemnify the Company from and against any and all damages that the Company may suffer.

## **15. Related rules and regulations**

The Parties agree to comply with the rules and regulations of the Securities and Exchange Commission (SEC) and SET which are applicable to this Agreement. These include those rules and regulations which may be changed

from time to time. If there is any change of the rules and regulations, TSD agrees to inform the Company.

**16. Invalidity**

If any clause of this Agreement is held to be invalid or unenforceable, then such clause shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining clauses of this Agreement.

**17. Disbursement**

The Company agrees to compensate TSD for any disbursement or expenses paid by TSD for the costs arising from the Company's breach of this Agreement, even though there was no prior notice of expenses, including interest, given from the disbursement date to the date that the Company compensates TSD.

The interest rate mentioned above shall be calculated by applying the average amount of five banks' minimum loan rates, based on the rates of the Thai banks ranked as the top five by a credit-rating agency authorized by SEC, plus 4 percent.

**18. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Thailand. Any legal action arising out of or relating to this Agreement shall be brought to Thai court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**Thailand Securities Depository Co., Ltd.** .....

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.....Witness  
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