



MAYBANK KIM ENG SECURITIES (THAILAND) PLC.

SECURITIES BORROWING AND LENDING AGREEMENT

**SECURITIES BORROWING AND LENDING AGREEMENT**

Account No. \_\_\_\_\_

**This Agreement** is as of the date set forth below by and between Maybank Kim Eng Securities (Thailand) Public Company Limited, a public company limited incorporated under the laws of Thailand whose registered address is 999/9 The Offices at Central World 20<sup>th</sup>-21<sup>st</sup>, 24<sup>th</sup> Floor, Rama 1 Road, Bangkok 10330 (hereinafter referred to as the "Company" or the "Lender" or the "Borrower", as the case may be) and

\_\_\_\_\_ whose registered address is \_\_\_\_\_

\_\_\_\_\_ the undersigned Counterparty (hereinafter referred to as the "Counterparty" or the "Lender" or the "Borrower", as the case may be).

**Whereas**, the parties intend to enter into securities loan transactions whereby either party may act as lender or borrower, as the case may be.

**Now, therefore**, the parties agree as follows:

**1. General Agreement**

- (a) The Lender shall lend Securities (the "**Loaned Securities**" or "**Loaned Shares**") to the Borrower from time to time against receipt of Collateral to be provided by the Borrower and the Borrower shall be obliged to deliver Equivalent Securities to the Lender, subject to the terms and conditions in this Agreement and the Confirmation.
- (b) Any and all securities borrowings and lendings between the parties (individually, a "Securities Loan" and collectively, the "Securities Loans") shall be governed by the terms and conditions of this Agreement as may be supplemented, amended or modified by the parties in the Confirmation.
- (c) All transactions hereunder are entered into in reliance on the fact that this Agreement and all Securities Loans form a single agreement between the parties.
- (d) All Collateral delivered under this Agreement shall serve as security for any and all present or future claims relating to Securities Loans.
- (e) In this Agreement:
  - (i) A "Business Day" shall mean any day on which the Stock Exchange of Thailand is open;
  - (ii) A "Market Professional" shall mean any of the juristic persons listed in Section 9/1 of the Notification of the Securities and Exchange Commission No. Gor.Dor.29/2540 dated 31 July 1997, as may be amended; and
  - (iii) the "Rules" shall mean the Securities and Exchange Act B.E. 2535 (A.D. 1992) as such may be amended, the regulations of the Securities and Exchange Commission and/or the Office of Securities and Exchange Commission and other laws and regulations governing securities lending and borrowing, as may be amended, including the Royal Decree Issued Under Revenue Code Governing Reduction of Rates of Taxes and Duties (No. 331) B.E. 2541 (1998) and other relevant laws, notices and regulations relating to taxation, as may be amended.

**2. Eligible Securities and Purposes of the Borrowings**

- (a) "**Securities**" shall be all types of securities that are defined or designated as such in the Securities and Exchange Act B.E. 2535 (A.D. 1992) as amended in respect of which the Thailand Securities Depository Company Limited or the Bank of Thailand acts as the registrar or such other securities permitted for borrowings or lendings pursuant to the Rules.
- (b) **Eligible Purposes.** Securities Loans may be for the following purposes:
  - (i) To enable the Borrower or another person to meet a delivery requirement under a sale transaction;
  - (ii) To enable the Borrower or another person to return securities under a previous securities lending transaction; or
  - (iii) To enable the Borrower to fulfil any purpose as may be permitted by the Rules.

**3. Transactions Entered into as Agent**

- (a) Subject to the following provisions of this Clause, the Lender may enter into loans as agent (in such capacity, the "**Agent**") for a third person (a "**Principal**"), whether as custodian or investment manager or otherwise (a loan so entered into being referred to in this clause of an "**Agency Transaction**").

- (b) A Lender may enter into an Agency Transaction if, but only if:-
- (i) if specifies that loan as an Agency Transaction at the time when it enters into it
  - (ii) it enters into that loan on behalf of a single Principal whose identity is disclosed to the Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the loan; and
  - (iii) it has at the time when the loan is entered into actual authority to enter into the loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in (d)(ii) below.
- (c) The Lender undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:-
- (i) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
  - (ii) of any breach of any of the warranties given in Clause 3(e) below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts;

it will inform the Borrower of that fact and will, if so required by the Borrower, furnish it with such additional information as it may reasonably request.

- (d) (i) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction, but this is without prejudice to any liability of the Lender under any other provision of this Clause.
- (ii) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the Borrower in all respects identical with this Agreement other than this paragraph and as if the Principal were Lender in respect of that agreement,
- provided that:
- if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if the Borrower served written notice under any sub-Clause of Clause 14, the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to the Lender in accordance with Clause 19) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If the Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given.
- (iii) The foregoing provisions of this Clause do not affect the operation of the Agreement as between the Borrower and the Lender in respect of any transactions into which the Lender may enter on its own account as principal.
- (e) The Lender warrants to the Borrower that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in (d) (ii).

#### 4. Confirmation

- (a) If the parties have agreed on the terms and conditions of a Securities Loan, the Company shall promptly send to the Counterparty a confirmation (the "**Confirmation**") in the form attached hereto as Appendix I specifying the terms and conditions of such transaction and particulars of the Collateral (as defined herein) to be provided by the Borrower.
- (b) Unless the Counterparty objects to the contents of the Confirmation no later than the next Business Day after the sending of a telefax transmission of the Confirmation, provided that a copy thereof has been sent by post on the transmission date or the next Business Day, the terms and conditions set out in the Confirmation shall be binding on the Lender and the Borrower.
- (c) In case of conflict or inconsistency between the terms and conditions in this Agreement and in the Confirmation, the terms and conditions in the Confirmation shall prevail.

#### 5. Delivery of Loaned Securities

- (a) The Lender shall deliver, or procure the delivery of, the Loaned Securities to the Borrower on the date specified in the Confirmation by endorsing on, or procuring an endorsement on, the certificates representing the Loaned Securities, which are in certificated form, or causing the Loaned Securities, which are in scripless form, to be credited to the securities account designated by Borrower.
- (b) The Lender does hereby undertake to execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in the Loaned Securities shall pass to the Borrower on delivery of the same in accordance with this Agreement free from all liens, charges and encumbrances.

**6. Fees**

- (a) The Lender may charge a lending fee (the "**Fee**") on a Securities Loan payable at the rate agreed between the parties as set forth in the Confirmation.
- (b) Unless the parties have otherwise agreed as set forth in the Confirmation, the Lender shall calculate the Fee at the beginning of each month for the preceding month. Unless otherwise agreed to by the parties, the Fee shall be payable by the Borrower no later than the Business Day that is one week after last Business Day of the calendar month to which such payment relates.

**7. Collateral**

- (a) The Borrower shall be obligated to provide the Lender with assets acceptable to the Lender (the "**Collateral**") with a Value (as defined herein) equal to the Required Collateral Value against delivery of the Loaned Securities unless, if permitted by the Rules where the Lender is a Market Professional, the parties may agree otherwise as set forth in the Confirmation in which the Lender must represent and warrant that it is a Market Professional. The Lender shall pay interest on cash collateral at the rate agreed upon by the parties. "**Required Collateral Value**" shall be equal to the Value of the Loaned Securities plus an agreed security margin (the "**Margin**").
- (b) Unless the parties agree otherwise as set forth in the Confirmation, the Borrower undertakes to deliver the Collateral to the Lender against delivery of Loaned Securities and shall execute and deliver all necessary documents and give instructions to procure that all right, title and interest in the relevant Collateral shall pass to the Lender free from all liens, charges and encumbrances.
- (c) Collateral shall be of the type listed on Schedule I. If the Collateral consists of cash collateral, such cash collateral may be forfeited or repaid, whether in whole or in part, pursuant to the terms and conditions hereof.
- (d) Collateral to be provided in respect of any Securities Loan shall be agreed upon between the parties as set forth in the Confirmation and substitution thereof is permitted in accordance with Clause 9(f).
- (e) Except as otherwise provided in the Rules, for purposes of calculation of Value (i) for cash collateral, a letter of guarantee, or a stand-by letter of credit denominated in Thai Baht, value shall be their respective nominal value and (ii) for Securities, the reference price shall unless otherwise stated therein, be the closing price of such Securities as reported by the secondary market for such Securities for the Business Day prior to the relevant date of calculation or, if such closing price is not available, then either the best bid price or the last execution price that was available at the close of any Business Day closest to the relevant date of calculation, or if both prices were available on such date, the best bid price shall be referred to as the reference price; provided, however, that the aforesaid date shall not be longer than fifteen (15) Business Days before the date of calculation.
- (f) The term "**Value**" as used in this Agreement in relation to any Securities or Collateral shall be interpreted to mean the reference price or value thereof established in accordance with the foregoing paragraphs.

**8. Adjustment of Collateral**

- (a) If, at the end of any Business Day, the aggregate Value of the Collateral in respect of all outstanding borrowings on such date is less than the aggregate Required Collateral Value, the Borrower shall, upon request by the Lender, provide further Collateral to the Lender in the amount, of the type and on such date as may be reasonably required by Lender as will eliminate the deficiency.
- (b) If, at the end of any Business Day, the aggregate Value of the Collateral in respect of all outstanding borrowings on such date exceeds the aggregate Required Collateral Value, the Lender shall, upon request by the Borrower, repay such cash collateral or deliver to the Borrower such Equivalent Collateral as may be reasonably required by the Borrower as will eliminate the excess.
- (c) If a party (the "**First Party**") would be required to repay cash collateral, deliver Equivalent Collateral or provide further Collateral in circumstances where the other party (the "**Second Party**") would also be required to repay cash collateral or deliver Equivalent Collateral or provide further Collateral, then the Value of cash collateral or Equivalent Collateral or further Collateral deliverable by the First Party ("**X**") shall be set-off against the Value of the cash collateral or Equivalent Collateral or further Collateral deliverable by the Second Party ("**Y**") and the only obligation of the parties shall be, where X exceeds Y, an obligation of the First Party, or where Y exceeds X, an obligation of the Second Party to repay cash collateral, deliver Equivalent Collateral or to deliver further Collateral having a Value equal to the difference between X and Y.

**9. Delivery of Equivalent Securities or Collateral**

- (a) The term "**Equivalent**" shall mean Securities issued by the same issuer of an identical type, nominal value, description and amount to the Loaned Securities or Securities forming part of the Collateral, as the case may be. If and to the extent that such Securities have been converted, subdivided, consolidated, redeemed, made the subject of a tender offer in a business take-over, change of a par value or denomination, capitalisation issue, rights issue, amalgamation or other forms of merger or any event of analogous nature to the foregoing and the Lender would have been entitled to have participated in any of those activities or changes had the Lender retained title to the Securities, the expression shall have the following meaning:

- (i) in the case of a conversion, subdivision or consolidation or change of par value, the securities into which the Loaned Securities have been converted, subdivided or consolidated; provided that, where such conversion, subdivision or consolidation is voluntary, a notice must have been given pursuant to Clause 11(c);
  - (ii) in the case of redemption, a sum of money equivalent to the proceeds of the redemption, provided that, where such redemption is an early redemption upon application therefor, a notice must have been given pursuant to Clause 11(c);
  - (iii) in the case of a tender offer in a business take-over, a sum of money or securities, being the consideration or alternative consideration of which the party who is the Lender or the Borrower has given a notice in accordance with Clause 11(c);
  - (iv) in the case of a capitalisation issue, share dividend or bonus share, the Loaned Securities together with the securities allotted by way of share dividend or bonus share thereon;
  - (v) in the case of a rights issue, the Loaned Securities together with the securities allotted thereon, provided that the notice has been given in accordance with Clause 11(a) and the Lender or the Borrower, as the case may be, has paid to the other party all and any sum due in respect thereof;
  - (vi) in the case of amalgamation or other forms of merger, securities and/or a sum of money equivalent to that received in respect of such Loaned Securities as a result of such amalgamation or merger; provided, that where entitlement to such securities and/or cash is voluntary, a notice must have been given pursuant to Clause 11(c);
  - (vii) in the case of any event of analogous nature to the foregoing, the Loaned Securities together with or replaced by a sum of money or securities equivalent to what would have been received by the Lender in respect of such Loaned Securities resulting from such event had Lender retained title to such Securities.
- (b) If as a result of such events specified in the first paragraph hereof, any Securities lent under any Securities Loan shall be replaced entirely by cash, the loan transaction in respect of such Securities shall terminate and the Borrower shall pay such cash amount to the Lender within the number of Business Day(s) agreed by the parties after the date fixed for payment by the issuer of such securities. If, as a result of such event, any Securities forming part of the Collateral are replaced by cash, the Lender may continue to hold such cash amount as Collateral in substitution of such Securities so replaced.
- (c) Subject to Clause 9(b) hereof, the Borrower undertakes to deliver Equivalent Securities in accordance with this Agreement and the terms of the Confirmation or, if permitted by the Rules, upon call by the Lender. Notwithstanding the foregoing, the Borrower undertakes to deliver Equivalent Securities under any loan transaction to ensure that such loan transaction shall not remain outstanding for a period in excess of the period permitted by the Rules. When making a delivery of Equivalent Securities, the Borrower shall execute and deliver all necessary documents and give instructions to procure that all right, title and interest in the Equivalent Securities pass to the Lender free from all liens, charges and encumbrances.
- (d) Subject to Clause 14 and the terms in the Confirmation, the Lender may call for the delivery of all or any Equivalent Securities at any time by giving an advance notice on any Business Day specifying the expected date of delivery which shall not be shorter than the standard settlement time for such Securities. The Borrower shall deliver such Equivalent Securities not later than the expiry of the period specified in the notice.
- (e) The Lender undertakes to deliver Equivalent Collateral in accordance with this Agreement and the other terms specified in the Confirmation.
- (f) The Borrower may from time to time call for the repayment of cash collateral or the delivery of Equivalent Collateral prior to the date on which the same would otherwise have been repayable or deliverable; provided that at the time of such repayment or delivery, the Borrower shall have delivered or delivers alternative Collateral acceptable to the Lender.

It is further agreed that:

- (i) Where the Collateral (other than cash collateral) is delivered in respect of which any income may become payable, the Borrower shall call for the delivery of Equivalent Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to the relevant record date fixed to determine entitlement to payment of such income. At the time of such delivery, such Borrower must simultaneously deliver alternative Collateral acceptable to the Lender; and
  - (ii) Where Equivalent Collateral is not delivered in accordance with Clause 9(f)(i) above, then the Lender shall pay to the Borrower by the date fixed for payment of such income by the issuer thereof a sum equal to such income.
- (g) Subject to Clause 14 and the terms in the Confirmation, the Borrower may at any time terminate any particular Securities Loan and deliver all and any Equivalent Securities to the Lender and the Lender must accept delivery and simultaneously therewith repay cash collateral or, as the case may be, deliver Equivalent Collateral to the Borrower; provided, however that the Borrower must give a written notice to the Lender at least one (1) Business Day in advance.
- (h) In the event that the Borrower fails to deliver Equivalent Securities on the date such delivery is due, the Lender may (but is not obliged to), after giving prior notice and the lapse of a grace period of not less than the standard settlement time for the Equivalent Securities, purchase a corresponding number of Equivalent Securities on the trading day immediately succeeding the lapse of the grace period specified in notice and the Borrower shall be responsible to reimburse to the Lender all costs and expenses, excluding all taxes, incurred by the Lender as a result of such purchase within such period notified by the Lender.
- (i) The Lender shall pay to the Borrower interest on any cash collateral at the rate specified in the Confirmation or at such rate as may be agreed upon in writing between the parties from time to time. Interest will accrue from and including the date on which such cash collateral is received by the Lender to and until, but not including, the day it is repaid to the Borrower and such interest shall be calculated on the basis of 360 day year and actual number of days elapsed.

**10. Manufactured Income**

- (a) **Manufactured Interest:** If the Loaned Securities are interest bearing debt securities and they have not been called before the relevant record date pursuant to Clause 9, the Lender shall be entitled to receive a sum equivalent to any interest payment made in respect of such Securities whether or not the same was received by the Borrower. Unless otherwise agreed in writing by the parties, the Borrower shall pay such sum (less any tax deduction pursuant to Clause 12 hereof) to the Lender as soon as practicable after the date fixed by the terms of such Securities as the payment date. In case of default of such payment, the defaulting party shall be liable to pay interest on such sum at the rate equal to the non-defaulting party's cost of funds (24% per annum) from the date on which such payment is due.
- (b) **Manufactured Dividend:** If the Loaned Securities are shares, the Lender shall be entitled to receive a sum equivalent to any cash distribution on such shares that form the Loaned Securities whether or not the same was received by the Borrower. Unless otherwise agreed in writing by the parties, the Borrower shall pay such sum equivalent to such distribution (less any tax deduction pursuant to Clause 12 hereof) to the Lender as soon as practicable after the date fixed by the issuer of shares as the payment date. In case of default of such payment, the defaulting party shall be liable to pay interest on such sum at the rate equal to the non-defaulting party's cost of funds (24% per annum) from the date on which such payment is due.

**11. Rights Issue and Voting Proxy**

- (a) **Rights Issue:** If the Loaned Securities or Collateral are shares and there is a rights offering by the issuer of such shares, the Lender or Borrower, as the case may be, (who would have been entitled to participate in such rights offering had such party retained title to the Securities) shall give the other party a notice of the intention to subscribe for new shares or other securities at least five (5) Business Days before the relevant record date and simultaneously make payment of the subscription price in full for the amount of shares or other securities which are to be subscribed. Upon receipt of such notice and payment, such other party shall use its best endeavours to arrange for the subscription of such shares or securities under the rights offering, provided however that the Lender or the Borrower must be able to prove that it was the holder of record of the Loaned Securities or Collateral as the case may be. Failing such notice and/or payment within the specified period, the Lender or the Borrower, as the case may be, shall not be required to subscribe for such new shares or securities.
- (b) **Voting Proxy:** Each party undertakes that where it holds, in its proprietary account, Securities of the same description as Securities borrowed by it or transferred to it by way of Collateral at a time when a right to vote arises in respect of such securities, it shall use its best endeavours to arrange for the voting rights attached to such Securities to be exercised in accordance with the instructions of the other party who is the Lender or Borrower, as the case may be, or execute a proxy form to allow such other party to exercise the voting rights; provided, however, that such other party would have been entitled to vote had such party retained title to the Securities and it shall have given notice to the first party at least five (5) Business Days before the relevant record date. Failing such notice within the specified period, the Lender or the Borrower, as the case may be, shall not be required to exercise such vote or provide such proxy.
- (c) **Other Rights:** Where in respect of any Loaned Securities or any Collateral, any rights relating to conversion, subdivision, consolidation, change of par value or denomination, early redemption, rights arising under a takeover offer, amalgamation or other forms of merger or other rights that require election by the holder become exercisable, then the Lender or the Borrower, as the case may be (who would have been entitled to such rights had such party retained title to the Securities), shall at least five (5) Business Days before the relevant record date give a written notice of its election to the other party. Upon receipt of such notice, such other party shall use its best endeavours to exercise or pursue such rights. Failing such notice, such other party shall not be required to exercise or pursue such rights.

**12. Taxation**

- (a) Any and all payments to and from either party hereto shall be subject to applicable Thai withholding tax; and, unless otherwise agreed in the Confirmation, the Lender, who is either (a) an individual who is a resident of Thailand for tax purpose or (b) any individual or corporate entity who is not a resident of Thailand for tax purpose, does hereby declare that it wishes to enjoy benefits of exemption of tax on capital gain as a result of a securities loan hereunder and authorise the Borrower to make a deduction at the applicable tax rate on any payment of manufactured dividends or on any payment of manufactured interest, as the case may be, and remit such sum so deducted to the Revenue Department in Thailand for and on behalf of the Lender. Where manufactured dividends are not payable in cash, this provision shall not apply.
- (b) All payments and rates set out in this Agreement are stated as inclusive of applicable value added taxes, if any, and the party who receives payment from the other party must, if so required by the Revenue Code, provide such other party with a tax invoice evidencing its collection of value added tax in such form and substance prescribed by the Revenue Code.

**13. Representations and Warranties**

Each party hereby represents and warrants as follows and undertakes to the other on a continuing basis to the intent that its representations and warranties shall survive the completion of any transaction contemplated herein :

- (a) It is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation;
- (b) It is not restricted under the terms of its constitution or in any other manner from borrowing or lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) It is absolutely entitled to pass full legal and beneficial ownership of all Loaned Securities and Collateral provided by it hereunder to the other, as the case may be, free from all liens, charges and encumbrances; and
- (d) As the Borrower, it enters into each and any loan transaction for an Eligible Purpose as stated in Clause 2(b).

#### 14. Event of Default

- (a) Each of the following events occurring in relation to either party (the “**Defaulting Party**”, the other party being the “**Non-Defaulting Party**”) shall be an event of default:
- (i) the Borrower or Lender failing to pay or repay cash collateral or deliver Collateral or Equivalent Collateral or failing to perform any payment or delivery obligations contemplated hereunder, as the case may be, upon the date due, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (ii) an event which is one of the legal presumption of insolvency in the Bankruptcy Act B.E. 2483 as amended occurring with respect to the Lender or the Borrower and (except in the case of an event which is the presentation of a petition for business reorganization winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (iii) any event which is one of the legal presumption of insolvency in the Bankruptcy Act B.E. 2483 as amended occurring with respect to a guarantor in case where a guarantee has been given as collateral or an issuing bank in case where a stand-by letter of credit has been given as collateral or the guarantor or the issuing bank is ordered by the Bank of Thailand or other regulator to suspend any part of its ordinary businesses or any payment under any of its payment obligations or its businesses whether in whole or in part or subject to any form of intervention or control by the Bank of Thailand or other regulator of such financial institution and the Borrower fails to provide a substituted Collateral, acceptable to the Lender, in replacement of the letter of guarantee or stand-by letter of credit issued by such financial institution within a period specified by the Lender;
  - (iv) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have made or repeated;
  - (v) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder; or
  - (vi) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within three (3) Business Days after the Non-Defaulting Party serves written notice requiring it to remedy such failure.
- (b) If an Event of Default occurs in relation to either Party, all payment and delivery obligations of the parties under all securities borrowings and /or lendings governed by this Agreement shall be accelerated and become immediately due at the time of such Event of Default occurs (the “**Termination Date**”). The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at a rate equal to the Non-Defaulting Party’s cost of funds (24% per annum). The Non-Defaulting Party shall calculate the value of the Equivalent Securities and the value of Equivalent Collateral to be delivered as of the relevant date. The amount due from one party shall, after taking into account the value of Loaned Securities, the value of Collateral, outstanding lending fees, legal and other expenses, and other sums incurred or payable as a result of the Default, shall be set off against the amount due from the other party and only the balance shall be payable by the party having the claim valued at the lower amount pursuant to the foregoing and such balance shall be payable on the relevant date.
- (c) The provisions of this Agreement constitute a complete statement of remedies available to each party in respect of any Event of Default. Neither party may claim any sum by way of consequential loss or damage in the event of failure by the other party to perform any of its obligations under this Agreement.
- (d) Parties agree for the following actions in an event of default:
- (i) If the borrower fails to return the borrowed securities and/or benefits derived from borrowed securities to lender, borrower agrees for the lender to take the following actions:
    - (i.i) Borrower agrees for the lender to borrow securities of the same type and for the same amount from other lender and expense will be borne by borrower or agrees for lender to buy the same securities for the same amount to replace the borrowed securities which borrower fails to return and borrower will bear expenses. If lender has advanced the payment on behalf of borrower, borrower agrees to pay back the debt to the lender with interests at the rate stated in No. 14 (b)
    - (i.ii) The borrower agrees for the lender to have the rights to immediately enforce the collateral.
- If collateral is cash, lender has the rights to use that cash to deduct the debt or to use cash to buy securities in the stock market for the amount that the borrower must return, if the cash is not enough, lender may pay for share purchase and commission on behalf of borrower in advance.
- If collateral is not cash, borrower agrees for lender to enforce and sell the collateral which was placed by borrower in order to earn money to pay for securities and expenses incurred according to No. 14 (b) The collateral may be sold in the stock market of Thailand in order to earn money to pay for the debt.
- (ii) If lender fails to return collateral to borrower and/or benefits derived from such collateral, lender agrees for borrower to have the rights to buy securities in the stock market of Thailand for the same type of stock and at the same amount of stock placed as collateral and lender will bear expenses and/or to sell the borrowed securities in the stock market of Thailand in order to earn money to pay debt.

- (e) The provision in this agreement has provided complete remedies for each of the party in an event of default. Therefore, either party can not demand for any amount of money to compensate for the consequential loss or damage in an event that the other party fails to pay any debt under this agreement.

**15. Miscellaneous**

- (a) **Arbitration and jurisdiction:** All claims, disputes and differences between the parties arising out of or in connection with this Agreement shall be referred to or submitted for arbitration in Bangkok in accordance with arbitral proceeding under rules on arbitration of the Institute of Arbitration, Ministry of Justice before a sole arbitrator to be agreed between the parties or, in default of agreement, by a sole arbitrator to be nominated by the Civil Court in Bangkok, Thailand on the application of either party; provided, however, that:
  - (i) This clause shall take effect notwithstanding the frustration or other termination of this agreement.
  - (ii) No action shall be brought upon any issue between the parties under or in connection with this agreement until the same has been submitted to arbitration pursuant hereto and an award made.

The cost of the sole arbitrator's service shall be decided by the arbitrator and each party shall have the right to institute suit against the other in the Civil Court in Bangkok, Thailand, to enforce any decision or award rendered in arbitration proceeding.
- (b) **Severance:** If any provision of this agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the agreement and the remaining provisions of this agreement shall remain in full force and effect. The agreement shall, however, thereafter be amended by the parties in such reasonable manner so as to achieve, without illegality, the intention of the parties with respect to that severed provision.
- (c) **Currency:** All payments shall be in Thai Baht.
- (d) **Recording:** The parties agree that each may electronically record all telephonic conversations between them.

**16. Governing Law**

This agreement is governed by, and shall be construed, in accordance with, Thai law.

**17. Specific Performance**

Each party agrees that in relation to legal proceedings it will not seek specific performance of other party's obligation to deliver or redeliver securities, equivalent securities, collateral or equivalent collateral but without prejudice to any other rights it may have.

**18. Notices**

All notices issued under this agreement shall be in writing (which shall include telex or facsimile messages) and shall be deemed validly delivered if sent by prepaid first class post to or left at the addresses or sent to the telex or facsimile number of the parties respectively or such other addresses or telex or facsimile numbers as each party may notify in writing to the other; provided, however that Confirmations shall only be deemed validly delivered if sent in accordance with Clause 4(a).

**19. Assignment**

Neither party may charge assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other party.

**20. Non-waiver**

No failure or delay by either party to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

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IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties hereto on \_\_\_\_\_

On Behalf Of **MAYBANK KIM ENG SECURITIES (THAILAND) PUBLIC COMPANY LIMITED**

**Signed By:** \_\_\_\_\_  
Name: [ ]

**Witnessed By:** \_\_\_\_\_  
Name: [ ]

**COUNTERPARTY**

On Behalf Of

**Signed By:** \_\_\_\_\_  
Name: [ ]

**Witnessed By:** \_\_\_\_\_  
Name: [ ]

**Acceptable Collateral**

- (a) Cash in Thai Baht;
- (b) A stand-by letter of credit (or a first demand bank guarantee) issued by a commercial bank acceptable to or designated by the Lender;
- (c) Treasury Bills and/or BOT Bond and/or Government Bond.