

DRAFT AGREEMENT FOR DISCUSSION PURPOSES ONLY

SUBORDINATED LOAN AGREEMENT

between

[_____]

(as Lender)

and

[_____]

(as Borrower)

SUBORDINATED LOAN AGREEMENT

This Subordinated Loan Agreement (the "**Agreement**") is made this _____ between the Undersigned:

1. [____], a limited liability company under the laws of Thailand, having its statutory seat and its offices at _____, hereinafter referred to as: "**Lender**", hereinafter duly represented by _____;

And

2. [____], a private limited liability company in incorporation ("*besloten vennootschap met beperkte aansprakelijkheid in oprichting*") under the laws of the Netherlands, having its statutory seat and offices at _____, hereinafter referred to as: the "**Company**" and/or the "**Borrower**", hereinafter duly represented by _____

WHEREAS:

- A. On the date hereof the Lender and the Borrower have entered into a Purchase-Investment Agreement (the "**Purchase/Investment Agreement**");
- B. It is a condition under the Purchase Agreement/ Investment Agreement that the Borrower and the Lender enter into this Agreement on the signing date of the Investment Agreement, pursuant to which the Borrower confirms to the Lender that the principal amount owed to the Lender amounts to Euro [_____] (the "Loan");
- C. The Parties wish to lay down the conditions of the present loan by means of this Agreement.

HAVE AGREED AS FOLLOWS:

1 The Loan

- 1.1 The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the sum of Euro [_____] ([_____] Euro). The amount thus to be provided, or the outstanding portion thereof, will hereinafter be referred to as the "**Loan**".
- 1.2 The amount of the Loan to be advanced under this Agreement, may (in part) be advanced by a third party, inter alia a bank or to a third party account of a civil law notary.

- 1.3 The Loan shall be advanced within 1 day after the date on which this Agreement has been duly signed and executed by the Lender and the Borrower/on the date of signing the Investment Agreement.

2 Interest rate

- 2.1 *The interest rate applicable to the Loan is [____] per cent ([__] %) per annum. Interest shall be calculated on the basis of the outstanding balance of the Loan and shall accrue from day to day, and be calculated on the basis of a year of 360 days and the actual number of days elapsed.*
- 2.2 *Accrued interest on the Loan is payable by the Borrower on [__date__] ("**Interest Payment Date**"). For the avoidance of doubt, the claim for payment of accrued interest on the Loan is subordinated in accordance with Clause ____ of this Agreement.*

3 Repayment

The Loan is granted for a undefined period. The Borrower is not obliged to repay the Loan to the Lender in installments or amounts except in the event of default as set forth in Clause 4.

4 Event of default

- 4.1 Each of the following events constitutes an event of default:
- (i) the Borrower ceases, or threatens to cease to carry on its business or substantially the whole of its business;
 - (ii) the Borrower merges or legally merges (*juridisch fuseren*) or consolidates with any company or enters into a legal division (*juridische splitsing*), without the prior written consent of the Lender;
 - (iii) any event or series of events occurs which, in the reasonable opinion of the Lender, might have a material adverse effect;
 - (iv) the Borrower: (i) is unable to pay its debts as they fall due in all events of insolvency and bankruptcy, however, defined, or admits inability to pay its debts as they fall due, (ii) suspends making payments on all or any class of its debts or announces an intention to do so, or files for or is granted a moratorium of payments (*surséance van betaling*), (iii) makes a proposal to one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness, (iv) is involved in legal proceedings (or formal steps have been taken to that extent) for the liquidation or dissolution of the Borrower, or (v) ceases to conduct its business as presently conducted;

- (v) a shareholders' meeting is convened of the Borrower for the purpose of considering any resolution for (or to petition for) filing bankruptcy (*faillissement*);
 - (vi) anyone requests the competent court to declare the Borrower bankrupt (*in staat van faillissement te verklaren*), which request has not been dismissed within thirty days;
 - (vii) the Borrower is declared bankrupt (*failliet verklaard*);
 - (viii) any material asset of any of the Borrower is attached, which attachment is not discharged within thirty days;
 - (ix) if the Borrower violates any covenant made in this Agreement and such violation has not been remedied by the Borrower within 15 Business Days after giving notice by the Lender;
 - (x) if a change of control of the Borrower occurs. A change of control means a change in the shareholding of the Borrower in excess of 20% and such change involves a party which is not a shareholder of the Borrower on the signing date of this Agreement;
- 4.2 Upon the occurrence of an event of default within the meaning of Clause 4.1 and at any time thereafter for so long as such event of default is continuing, the Lender may, by notice to the Borrower, demand that the Loan, *<together with accrued interest>* and all other amounts accrued under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable. For the avoidance of doubt, the Borrower may only pay any amount as a result of an event of default (as mentioned in Clause 4.1) and the Lender may only demand and/or receive such payment in accordance with this Clause.

5 Subordination [Please be aware that the interest and loan can be subordinated]

- 5.1 Lender herewith subordinates all its present and future claims on the Borrower under or in connection with this Agreement (the "**Claims**") to the present and future claims of any creditor on the Borrower pursuant to one or more loan agreements and/or facility agreements and the Borrower have entered into or will enter into provided any repayments are made in accordance with Clause 5.2.
- 5.2 The claims of the Lender under this Agreement may be repaid if (i) such repayment consists of the annual repayment in accordance with the stipulations of this Agreement and/ or (ii) another creditor has given his previous written consent to such a repayment if this is agreed upon with this creditor or he has been informed about the subordination as such. If Lender request for this consent, the creditor referred to above will decide on

such request within three weeks after having received the unqualified annual report of the Borrower regarding the year to which the annual repayments relates.

- 5.3 Parties acknowledge the subordination as mentioned under 5.1 and will act accordingly. The Borrower shall make no payment whatsoever to the Lender in relation to any Claim and the Lender will claim and/or receive none.
- 5.4 The Borrower and the Lender each warrant towards the Bank that the information which each of them have provided to the Bank in respect of this Subordinated Loan Agreement, correctly and completely reflects their mutual (legal) relationship concerning this Agreement.
- 5.5 The subordination as mentioned in this Clause will terminate upon written notification of release by Borrower to the Lender, provided that other creditors who were informed on the subordination referred to herein, have agreed thereupon as well.
- 5.6 The Borrower shall pay any and all reasonable costs associated with the conclusion, performance and execution of the subordination mentioned in this Clause, including the costs of litigation and internal or external costs of legal assistance, regardless whether these reasonable costs have been made towards the Borrower or third parties.

6 Miscellaneous

- 6.1 The headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement. References in this Agreement to Clauses and Schedules are references to Clauses and Schedules of this Agreement.
- 6.2 If any provision of this Agreement should be invalid or in any other way unenforceable, such provision shall be ineffective only to the extent of such unenforceability or invalidity and shall in no way affect the enforceability or validity of the remainder of such provision nor of the other provisions of this Agreement. In that event the parties shall after mutual consultation amend such provision, taking into account the spirit of the Agreement, and replace the provision that is invalid or unenforceable by a provision that resembles the invalid or unenforceable provision as closely as possible.
- 6.3 No failure on the part of any party to this Agreement to exercise, and no delay in exercising, any right under this Agreement, in the event of breach of contract by any party hereto, will operate as a waiver of such right under this Agreement.
- 6.4 The parties to this Agreement waive their right to rescind (*ontbinden*) this Agreement under section 6:265 *et seq.* Dutch Civil Code.

6.5 The Parties may not assign or transfer any of their rights or obligations under this Agreement.

7 Notices

All notices or other communications under or in connection with this Agreement shall be sent by registered mail or fax to the following addresses:

Borrower:

[_____]

Lender

[_____]

8 Governing law and competent court

8.1 This Agreement shall be construed in accordance with and be governed by the laws of the Netherlands.

8.2 In the event of a dispute arising out of or in connection with this Agreement or further agreements resulting thereof, the parties will use their best efforts to resolve the matter amicably before referring the matter to court as meant in Clause 8.3.

8.3 All disputes that should arise in connection with this Agreement, or of agreements relating thereto, shall be submitted to the competent court in Amsterdam.

Thus agreed and signed in twofold on _____ 20__.

[illegible]