

## **PART D**

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## **APPENDICES**

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## **APPENDIX I**

*(Section 4.3 of Part A of the Pension Rules for Service Providers)*

### **Annex V**

#### **SPECIMEN SUBORDINATED LOAN AGREEMENT**

**THIS SUBORDINATION LOAN AGREEMENT is made on the    day of    20    .**

**BETWEEN:**

- (1) [ *Name* ] of [ *Address* ] ("the Lender");
- (2) [ *Name* ] of [ *Address* ] ("the Borrower").

**WHEREAS**

- (A) The Borrower is a [ ] / has applied for [ ] under the [ insert applicable law ].
- (B) The Borrower is required to maintain financial resources to meet the provisions of its [ ] as they apply to the Borrower at any particular time.
- (C) The Lender has agreed to lend to the Borrower an amount as set herein upon and subject to the terms and conditions contained in this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

**1. The LOAN**

- (a) On completion of this Agreement, the Lender hereby advances by way of loan to the Borrower, who accepts, the principal amount of [ ] (the "Principal Amount") upon and subject to the terms and conditions contained in this Agreement.
- (b) Each of the Lender and the Borrower hereby undertakes that forthwith upon request by the MFSA it will provide to the MFSA details in writing of all principal and interest in respect of the loan outstanding for the time being and all payments of any amount made in the period specified by the MFSA in the request.

## **2. INTEREST**

Subject to the provisions of Clause 5 of this Agreement, the Borrower shall, until repayment of the loan in full, pay to the lender annual interest on the loan or on any part or parts thereof for the time-being remaining due hereunder. At no time during the continuance of this Agreement shall the rate of interest exceed an annual rate of [(8% or other maximum rate set by the MFSA)].

## **3. PREPAYMENT**

Subject to the provisions of Clause 5 of this Agreement, the Borrower may prepay the whole or any part of the loan provided that the written consent of the MFSA to such prepayment is first obtained by the Borrower.

## **4. REPAYMENT OF THE LOAN**

Subject to the provisions of Clause 5 of this Agreement, the loan shall be repayable provided that prior written notice has been given to the MFSA and the prior written consent of the MFSA to such repayment has been obtained by the Borrower.

## **5. SUBORDINATION**

Notwithstanding the provisions of Clauses 3 and 4 of this Agreement, the rights of the Lender in respect of the loan are subordinated in all respects to all the creditors of the Borrower in respect of amounts outstanding to them payable by the Borrower ("Senior Liabilities") and accordingly payment of any amount of the loan shall be in all respects conditional on the express prior written consent of the MFSA to such payment.

## **6. PAYMENTS**

- (a) Subject to the provisions of Clause 5 of this Agreement all sums payable by the Borrower hereunder shall be paid in full without set off or counter claim and free and clear of and without deduction or withholding for or on account of any present or future taxes, duties or other charges. If any payment shall be subject to any such tax or if the Borrower shall be required by law to make any such deduction or withholding, the Borrower will pay such tax, will ensure that such payment, deduction or withholding, will not exceed the minimum legal liability therefore and will simultaneously pay to the Lender such additional amounts as will result in the Lender receiving a net amount

equal to the full amount which the Lender would have received had no such payment, deduction or withholding been required.

- (b) The Borrower shall ensure that its auditor provides the necessary assurances to the MFSA in relation to the proposed payment as and when the MFSA may require.

## **7. COVENANTS**

- (a) The Borrower hereby undertakes that it will not without the prior written consent of the MFSA:
- (i) secure all or any part of the loan;
  - (ii) amend or concur in amending the terms of this Agreement;
  - (iii) repay all or any part of the loan otherwise than in accordance with the terms hereof;
  - (iv) take or omit to take any action whereby the subordination of the loan or any part thereof as provided for in Clause 5 of this Agreement might be terminated, impaired or adversely affected; or
  - (v) take or attempt to take any action the effect of which may lead, directly or indirectly, to the revocation or annulment of this Agreement or any terms hereof.
- (b) The Lender hereby undertakes that it will not without the prior written consent of the MFSA:
- (i) assign or purport to assign to any person this Agreement or the whole or any part of its rights against the Borrower in respect of the loan;
  - (ii) 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 Agreement;
  - (iii) amend or waive or concur in amending or waiving the terms of this Agreement;

- (iv) attempt to obtain repayment of the whole or any part of the loan otherwise than in accordance with the terms of this Agreement;
- (v) take or omit to take any action whereby the subordination of the loan or any part thereof as provided for in Clause 5 of this Agreement might be terminated, impaired or adversely affected; or
- (vi) take any security from any person for all or any part of the loan and so that the Lender shall, upon obtaining security in breach of this Clause, hold the same for the Borrower.

## **8. ENTIRE AGREEMENT**

The Borrower and the Lender confirm that this Agreement forms the entire agreement relating to the loan. If there are any other terms relating to the loan existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect. **This Agreement may only be amended in whole or in part by written consent of the Parties. Such amendment shall be effective as of the date then determined by the Parties.** Any amendments to this Agreement made or purported to be made without the written consent of the MFSA shall be null and void.

## **9. CONTINUING OBLIGATIONS**

The obligations of the Borrower and Lender hereunder shall be continuing obligations and shall be and remain fully effective until the repayment of the Loan in full in accordance with the provisions of this Agreement. The parties hereby signify their consent and understanding of the above provisions.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

(Lender)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

(Borrower)

DRAFT