

# Deed of Variation and Undertakings

Relating to the Bond Instrument and the Rights Issue

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Titan Invo Technology Limited (**Issuer**)

Ma Chi Kong Karl (**Subscriber**)

# Deed of Variation

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# Details

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Date 30 November 2021

## Parties

Name	<b>Titan Invo Technology Limited (formerly known as TUS International Limited 啟迪國際有限公司)</b>
Short form name	<b>Issuer</b>
Place of incorporation	Cayman Islands
Address	Room 707-711, 7/F, TusPark Workhub, 118 Wai Yip Street, Kwun Tong, Hong Kong
Name	<b>Ma Chi Kong Karl (Subscriber)</b>
Short form name	<b>Subscriber</b>
Nationality	Hong Kong, China
Address	15/F, Shanghai Commercial Bank Tower, 10-12 Queen's Road Central, Central, Hong Kong

## Background

- A As at the date of this deed:
- (i) the Issuer is listed on the Hong Kong Stock Exchange; and
  - (ii) the Subscriber is a director of the Issuer and is interested in 210,718,000 issued Shares ("**Current Shares**").
- B The Company, the Subscriber and others entered into a subscription agreement written in Chinese and entitled 《有关认购启迪国际有限公司 TUS International Limited 395,000,000 股普通股及 2023 年到期 0% 可换股债券的认购协议》 dated 17 April 2018 (the "**Subscription Agreement**") pursuant to which the Subscriber agreed to subscribe for the Bonds and 145,000,000 new Shares.
- C Completion of the subscription of the Bonds by the Subscriber occurred on 21 June 2018 and the Issuer issued the Bond Instrument setting out the terms and conditions of the Bonds by way of deed poll in accordance with the Subscription Agreement.
- D The Subscriber and the Company propose to vary the definition of "Conversion Price" under the Bond Instrument by changing the initial Conversion Price from HK\$0.537 to the Revised Conversion Price.
- E The Company proposes to raise funds by way of the Rights Issue.
- F On the basis that, among other things, the New Conversion Shares have been issued to the Subscriber on or before the Record Date, it is expected that there will be a minimum of

1,300,307,641 Rights Shares and a maximum of 1,311,267,641 Rights Shares under the Rights Issue.

- G The Parties intend to have the Committed Shares provisionally allotted to the Subscriber for subscription under the Rights Issue.
- H The Subscriber proposes to apply for a waiver ("**Whitewash Waiver**") from the Executive pursuant to Note 1 on dispensations from Rule 26 of the Takeovers Code in respect of his obligation to make a mandatory general offer under Rule 26.1 of the Takeovers Code for all the securities of the Company not already owned or agreed to be acquired by him and parties acting in concert with him as a result of, among other things, the Subscriber's conversion of the Bonds as varied by this deed and subscription for the Rights Shares under the Rights Issue.
- I (i) Subject to the terms and conditions hereof, the Company and the Subscriber have agreed to vary the terms of the Bond Instrument and (ii) the Subscriber has agreed to give certain undertakings to the Company in relation to the Bonds and the Rights Issue.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Defined terms in the deed

In this deed, a word or expression has the meaning given to it in the Bond Instrument unless otherwise defined in this deed.

### 1.2 Other defined terms

In this deed:

**acting in concert** has the meaning given to it under the Takeovers Code

**associate** has the meaning given to it under the Listing Rules.

**Bond Instrument** (referred to as 可换股债券契据 in the Subscription Agreement) has the meaning given to it under the Subscription Agreement.

**Bonds** means bonds of the Issuer comprising an aggregate principal amount of HK\$53,700,000 due 2023 convertible into Shares and referred to as 可换股债券 in the Subscription Agreement.

**Committed Shares** means the anticipated number of the Rights Shares that will be provisionally allotted to the Subscriber by the Company for subscription under the Rights Issue, being (i) 373,859,000 Rights Shares where the total number of the Rights Shares is 1,300,307,641 or (ii) 378,499,000 Rights Shares where the total number of the Rights Shares is 1,311,267,641.

**Concert Group** means the Subscriber, Tuspark Venture Investment Limited (a company incorporated in the British Virgin Islands) and parties acting in concert with any of them.

**Current Shares** has the meaning given to it in Background A(ii).

**Effective Date** means the date on which the last of the Variation Conditions is fulfilled (or waived, if applicable).

**EGM** means the extraordinary general meeting of the Issuer to be held for the eligible Shareholders to consider and, if thought fit, approve (among other things) the Variation, the Rights Issue and the Whitewash Waiver.

**Executive** means the Executive Director of the Corporate Finance Division of the SFC or any of his delegate.

**Force Majeure Event** means any act of God, war, riot, public disorder, civil commotion, fire, flood, earthquake, tsunami, volcanic eruption, ice-storm, explosion, outbreak of disease or pandemic or epidemic, acts of government, labour dispute, strike or lock-out which, in each case or in aggregate, in the sole and absolute opinion of the Subscriber is materially adverse to the business, operations or financial condition of the Company and its subsidiaries taken as a whole.

**HKIAC** has the meaning given to it under clause 15.1.

**HKSCCNL** means HKSCC Nominees Limited.

**Independent Shareholders** means Shareholders who are not involved in, or interested in, the transactions to be considered at the EGM other than their interests as a Shareholder and who are entitled to attend and vote at the EGM under all the applicable laws and rules (including without limitation the Listing Rules and the Takeovers Code).

**Latest Time for Acceptance** means the latest time for acceptance of, and payment for, the Rights Shares as will be set out in the Prospectus Documents, which is expected to be 4:00 p.m. on 16 February 2022 as at the date of this deed.

**Long Stop Date** means (i) the second Business Day immediately before the first day of the closure of the register of the members of the Company for determining entitlement to participate in the Rights Issue, which is expected to be 19 January 2022 as at the date of this deed or (ii) such other date as the Parties may agree in writing.

**New Conversion Shares** means an aggregate of 537,000,000 Shares issuable to the Subscriber upon full conversion of the Bonds at the Revised Conversion Price.

**Party** means either the Issuer or the Subscriber, and **Parties** means collectively, the Issuer and the Subscriber.

**Posting Date** means 28 January 2022 or such other date as the Company may determine for the dispatch of the Prospectus Documents.

**Prospectus Documents** means the prospectus, the renounceable provisional allotment letters and the excess application forms in relation to the Rights Issue.

**Qualifying Shareholders** means those Shareholders who are qualified to participate in the Rights Issue as described in the announcement(s), circular and/or the prospectus of the Company in relation to the Rights Issue.

**Record Date** means 27 January 2022, being the date for determining Shareholders' entitlements to the Rights Issue (or such other date as the Company may announce).

**Revised Conversion Price** means HK\$0.10.

**Rights Issue** means the proposed issue by way of rights on the basis of one (1) Rights Share for every two (2) existing Shares in issue and held on the Record Date at the price of HK\$0.07 per Rights Share.

**Rights Shares** means the new Shares to be issued and allotted under the Rights Issue.

**Shareholder** means a holder of the Shares.

**SFC** means the Securities and Futures Commission established under section 3 of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong).

**Specific Mandate** means the specific mandate to be sought from the Shareholders at the EGM under which the New Conversion Shares may be issued.

**Subscription Agreement** has the meaning given to it in Background B.

**Takeovers Code** means the Code on Takeovers and Mergers approved by the SFC.

**Variation** means the variation to the Bond Instrument provided under clause 2 of this deed.

**Variation Conditions** means the conditions to the Variation set out in clause 3.1 of this deed.

**Whitewash Waiver** has the meaning given to it in Background H.

### 1.3 Interpretation

In this deed:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause or annexure is to a clause or annexure to this deed and a reference to this deed includes any annexure;
- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to time is to Hong Kong time;
- (f) a reference to a Party to this deed, and a reference to that Party to a document includes that Party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (i) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this deed or any part of it.

## 1.4 Headings

Headings are for ease of reference only and do not affect interpretation.

## 2. Variation to the Bond Instrument

On and with effect from the Effective Date, the definition of "Conversion Price" under clause 1.1 of the Bond Instrument is varied by replacing "HK\$0.537" with the Revised Conversion Price.

## 3. Variation Conditions

### 3.1 Variation Conditions

The coming into effect of the Variation is conditional upon fulfillment (or waiver, where applicable) of each of the following conditions on or before 5:00pm on the Long Stop Date:

- (a) the passing of a resolution at the EGM to approve the Variation and the Specific Mandate by more than 50% of the votes cast by the Independent Shareholders by way of poll;
- (b) the passing of a resolution at the EGM to approve the Rights Issue and all the transactions contemplated thereunder or incidental thereto, including the allotment and issue of the Rights Shares in their nil-paid and fully-paid forms, by more than 50% of the votes cast by the Independent Shareholders by way of poll;
- (c) the passing of a resolution at the EGM to approve the Whitewash Waiver by at least 75% of the votes cast by the Independent Shareholders by way of poll;
- (d) the Hong Kong Stock Exchange having granted its approval of the Variation pursuant to Rule 28.05 of the Listing Rules;
- (e) the Listing Committee of the Hong Kong Stock Exchange having granted the approval for the listing of, and the permission to deal in, the New Conversion Shares on the Hong Kong Stock Exchange;
- (f) all other necessary consents, approvals or waivers required by the Issuer for the transactions contemplated under this deed having been obtained and where any consent, approval or waiver is subject to conditions, such conditions being acceptable to the Issuer;



- (g) the Whitewash Waiver having been granted by the Executive and all the applicable conditions (if any) attached to the Whitewash Waiver having been satisfied; and
- (h) all other necessary consents, approvals or waivers required by the Subscriber for the transactions contemplated under this deed having been obtained and where any consent, approval or waiver is subject to conditions, such conditions being acceptable to the Subscriber.

### **3.2 Responsibilities to fulfil the Variation Conditions**

- (a) The Issuer is responsible to fulfil the Variation Conditions set out in clauses 3.1(a) to 3.1(f).
- (b) The Subscriber is responsible to fulfil the Variation Conditions set out in clauses 3.1(h) and 3.1(i).
- (c) Each Party must use all reasonable efforts within its own capacity to ensure that the Variation Conditions which it is responsible to fulfil are fulfilled by 5:00pm on the Long Stop Date.

### **3.3 Waiver of the Variation Conditions**

- (a) None of the Variation Conditions set out in clauses 3.1(a) to 3.1(e) or clause 3.1(g) can be waived by any Party.
- (b) Subject to clauses 3.3(a) and 3.3(e), each Party may waive any of the Variation Conditions which the other Party is responsible to fulfil.
- (c) The Issuer may waive the Variation Condition set out in clause 3.1(h) in accordance with clause 3.3(e).
- (d) The Subscriber may waive the Variation Condition set out in clause 3.1(i) in accordance with clause 3.3(e).
- (e) A Variation Condition may only be waived in writing by a Party and will be effective only to the extent specifically set out in that waiver.

### **3.4 Failure of Variation Conditions**

If any of the Variation Conditions is not fulfilled (or waived, where applicable) by 5:00pm on the Long Stop Date:

- (a) the provisions of this deed, except for clauses 1, 9 to 15, 16.3, 16.4, 16.5, 16.8, 16.9 and 16.10 which shall remain in full force and effect, shall from such time cease to have any effect; and
- (b) no Party shall have any claim against the other Party except in respect of:
  - (i) claims arising out of any antecedent breach of any of the provisions of this deed; or
  - (ii) claims arising out of the continuing provisions mentioned in clause 3.4(a) above.

## **4. Continued force and effect of the Bond Instrument**

This deed is supplemental to the Bond Instrument and (i) except as varied under clause 2, the Bond Instrument shall remain in full force and effect and (ii) this deed and the Bond Instrument shall be read and construed together as one document.

## 5. Delivery of the Bond Instrument varied by this deed

The Issuer shall deliver a copy of the Bond Instrument varied by this deed to the Subscriber within three Business Days after the Effective Date.

## 6. Undertakings to convert the Bonds

The Subscriber hereby unconditionally and irrevocably undertakes to the Issuer that he shall convert the Bonds in full within five Business Days after the Effective Date and in any event not later than the Long Stop Date.

## 7. Undertakings in relation to the Rights Issue

### 7.1 Undertaking not to sell or deal with the Shares and the Bonds

The Subscriber hereby unconditionally and irrevocably undertakes to the Issuer that:

- (a) he shall remain the beneficial owner of the Current Shares and such Shares shall remain registered in his name or in the name of HKSCCNL as his nominee from the date of this deed and up to and including the Record Date;
- (b) (after the Bonds have been converted in full at the Revised Conversion Price) he shall remain the beneficial owner of the New Conversion Shares and such Shares shall remain registered in his name or in the name of HKSCCNL as his nominee up to and including the Record Date;
- (c) he will not (i) sell or dispose of or otherwise deal with the Current Shares or any part thereof; (ii) sell or dispose of or otherwise deal with the Bonds or any part thereof except as contemplated under this deed; or (iii) sell or dispose of or otherwise deal with the New Conversion Shares, in each case on or before the Record Date; and
- (d) he will promptly (and in any event within 21 days of the date of this deed) apply to the Executive for the Whitewash Waiver.

### 7.2 Conditional undertakings

The Subscriber further irrevocably undertakes to the Company that subject to (I) the Company despatching the Prospectus Documents to the Shareholders who are eligible to participate in the Rights Issue; (II) the Whitewash Waiver having been granted prior to the Posting Date and not been revoked or withdrawn; and (III) clause 7.3:

- (a) he and/or HKSCCNL shall accept, subscribe for or procure the subscription for the Committed Shares in accordance with the Prospectus and the PAL;
- (b) he and/or HKSCCNL shall deliver to the Company the duly completed and signed provisional allotment letter and all relevant documents and shall pay all relevant sums (including the subscription price) for the Committed Shares on or before the Latest Time for Acceptance; and
- (c) in the event that he and/or HKSCCNL do not deliver to the Company the provisional allotment letter or all relevant documents or do not pay all relevant sums for the Committed Shares on or before the Latest Time for Acceptance, he irrevocably authorise and appoint the Company as his attorney with full power:
  - (i) to treat this deed as the application for the Committed Shares in accordance with the Rights Issue;

- (ii) subject to receipt of the subscription price, to allot and issue to him and/or HKSCCNL the Committed Shares in accordance with the Rights Issue; and
- (iii) subject to receipt of the subscription price, to procure the registration of his name and/or the name of HKSCCNL in the share register of the Company as the shareholder of the Committed Shares.

### **7.3 Termination of undertakings**

The Subscriber may at his absolute discretion, upon giving notice in writing to the Company before the Latest Time for Acceptance, terminate his undertakings given under clause 7.2 above with immediate effect if any of the Force Majeure Events occurs before the Latest Time for Acceptance.

## **8. Timetable for the Rights Issue**

The Subscriber:

- (a) acknowledges that the timeline in relation to the Rights Issue specified in this deed is indicative only and is subject to changes; and
- (b) agrees and accepts that the Company has absolute discretion to determine the timetable for the Rights Issue and may make such changes to the timetable as it deems appropriate from time to time without having to obtain his consent or to notify him.

## **9. Representations by the Issuer**

The Issuer represents and warrants to the Subscriber that:

- (a) it is validly existing under the laws of its place of incorporation;
- (b) it has the corporate power and (subject to the fulfillment (or waiver, if applicable) of the Variation Conditions which the Issuer is responsible to fulfil) authority to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
- (c) subject to the fulfillment (or waiver, if applicable) of the Variation Conditions which it is responsible to fulfil, it has taken all necessary action to authorise its entry into and performance of this deed and to carry out the transactions contemplated by this deed;
- (d) its obligations under this deed are valid and binding and enforceable against it in accordance with their terms; and
- (e) subject to the fulfillment (or waiver, if applicable) of the Variation Conditions which it is responsible to fulfil the entry into and performance by the Issuer of, and the transactions contemplated by this deed, do not and will not conflict with:
  - (i) any law or regulation applicable to it;
  - (ii) its constitutional documents; or
  - (iii) any material agreement or instrument binding upon it or any of its assets.

## **10. Representations by the Subscriber**

The Subscriber represents and warrants to the Issuer that:

- (a) he is the sole legal and beneficial owner of the Bonds;
- (b) he is of full age and is not incapable of managing his own affairs by reason of illness or incapacity (whether mental or physical);
- (c) he has the capacity to enter into and perform his obligations under this deed and to carry out the transactions contemplated by this deed;
- (d) subject to the fulfillment (or waiver, if applicable) of the Variation Conditions which he is responsible to fulfil, he has taken all necessary actions for his entry into and performance of this deed and to carry out the transactions contemplated by this deed;
- (e) his obligations under this deed are valid and binding and enforceable against it in accordance with their terms; and
- (f) subject to the fulfillment (or waiver, if applicable) of the Variation Conditions which he is responsible to fulfil, the entry into and performance by him of, and the transactions contemplated by this deed, do not and will not conflict with:
  - (i) any law or regulation applicable to him; or
  - (ii) any material agreement or instrument binding upon him or any of his assets.

## 11. Confidentiality

A Party may only use confidential information of other Party for the purposes of this deed, and shall keep the existence and the terms of this deed and any confidential information of other Party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this deed) or the Party has independently created the information; or
- (b) disclosure is required by law or a competent regulatory body (including a relevant stock exchange); or
- (c) disclosure is made to a person who must know for the purposes of this deed on the basis that the person keeps the information confidential; or
- (d) disclosure is required by a Party in the normal course of its internal decision making and reporting process on the basis that the person(s) receiving the information keeps it confidential.

## 12. Publicity

A Party must not make or authorise a press release or public announcement relating to the negotiations of the Parties or the subject matter or provisions of this deed unless it is required to be made by law or the applicable rules of a competent regulatory body. So far as is practicable, a Party who is making a press release or public announcement relating to the negotiations of the Parties or the subject matter or provisions of this deed as required by law or applicable rules of a competent regulatory body should first obtain the consent of the other Party to the contents of the press release or public announcement.

## 13. Notices

### 13.1 Manner of giving notices

Any notice given pursuant to the terms of this deed must be given in writing to the Party due to receive such notice by delivery to its postal address by registered prepaid post (or airmail if outside the sender's territory by sending the notice through an internationally recognized express mail courier service) or by email to its email address specified in clause 13.3.

### 13.2 Receipt of notice

Any notice:

- (a) addressed to the recipient in the manner prescribed by this deed shall, if sent by internationally recognized express mail courier service, be deemed to have been served or delivered on the day it was so delivered;
- (b) not sent by internationally recognized express mail courier service, but delivered by hand to or left at an address in accordance with this deed, shall be deemed to have been served or delivered on the day it was so delivered or left; and
- (c) sent by email shall be deemed to have been served or delivered at the time it was sent, and in proving such service it shall be sufficient to produce a copy of such email reflecting the date and time of transmission and confirmation of receipt.

### 13.3 Addresses and e-mail addresses of the Parties

The addresses and e-mail addresses of the Parties for the purpose of this deed are:

- (a) to the Issuer at:

Address: Room 707-711, 7/F, TusPark Workhub, 118 Wai Yip Street, Kwun Tong, Hong Kong

Email: [project.unicorn@titaninvo-global.com](mailto:project.unicorn@titaninvo-global.com)

marked for the attention of The board of directors

- (b) to the Subscriber at:

Address: 15/F, Shanghai Commercial Bank Tower, 10-12 Queen's Road Central, Central, Hong Kong

Email: [kma@tpfg.com.cn](mailto:kma@tpfg.com.cn)

marked for the attention of Karl Ma

or at any such other address or email address of which it shall have given notice for this purpose to the other party under this clause. Notice of any change shall be effective five Business Days after the date on which it is deemed to have been given in accordance with this clause 13.3, or such later date as may be specified in the notice.

## 14. Governing law

This deed is governed by the law of Hong Kong.

## 15. Dispute resolution

### 15.1 Forum

Any dispute, controversy, difference or claim arising out of or relating to this deed, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (the "HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted, except as amended as follows:

- (a) subject to the overall discretion of the arbitration tribunal, the costs of the arbitration, including the HKIAC's and arbitrators' fees and legal costs, shall be borne by the Party losing the arbitration;
- (b) while such dispute is being arbitrated under this clause, none of the Parties shall be permitted to disclose any information or details relating to such dispute without the written consent of the other Party to the dispute, except as may be required by applicable laws or under the rules of any securities exchange;
- (c) the language to be used in the arbitral proceedings shall be English;
- (d) the number of arbitrators shall be three, with each Party selecting one arbitrator each and the two selected arbitrators jointly selecting one arbitrator, and each selected arbitrator shall be appointed in accordance with the applicable rules of the HKIAC; and
- (e) other than the matter being disputed, the Parties shall continue to perform their respective obligations under this deed, which are not in dispute.

### 15.2 Award of the arbitration tribunal shall be final and binding

The award of the arbitration tribunal shall be final and binding. The Parties shall waive their rights of appeal, if any, to the extent allowed by the applicable law.

## 16. Miscellaneous

### 16.1 Alterations

This deed may be altered only in writing signed by each Party.

### 16.2 Approvals and consents

Except where this deed expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

### 16.3 Assignment

A Party may only assign this agreement or a right under this deed with the prior written consent of the other Party.

### 16.4 Costs

Each Party must pay its own costs of negotiating, preparing and executing this deed.

### 16.5 Survival

Any indemnity or any obligation of confidence under this deed is independent and survives termination of this deed. Any other term by its nature intended to survive termination of this deed survives termination of this deed.

## **16.6 Counterparts**

This deed may be executed in counterparts. All executed counterparts constitute one document.

## **16.7 Further action**

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and any transactions contemplated by it.

## **16.8 Severability**

A term or part of a term of this deed that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this deed continue in force.

## **16.9 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **16.10 Contracts (Rights of Third Parties) Ordinance**

A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) to enforce or to enjoy the benefit of any term of this deed.

# Signing page


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**EXECUTED and DELIVERED as a deed.**

The **Common Seal** of **Titan Invo Technology Limited** is affixed hereunto and signed by HU Bo, a director, duly authorised by the board of directors of **Titan Invo Technology Limited** for and on its behalf


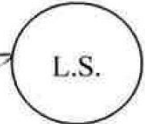


Signature(s) of the authorised representative(s) of  
**Titan Invo Technology Limited**

Signature of witness:  \_\_\_\_\_

Name of witness: CHENG Him Shun Hilson

**Signed seal and delivered by**  
**Ma Chi Kong Karl**

  
\_\_\_\_\_  
**Ma Chi Kong Karl**

Signature of witness: Ivan Kung

Name of witness: Kong Tin Man