

WAKALAH AGREEMENT

THIS WAKALAH AGREEMENT is made on the day and year stated in Section 1 of Schedule 1 (hereinafter shall be referred to as "**Wakalah Agreement**") hereof

BETWEEN

Small Medium Enterprise Development Bank Malaysia Berhad (Company No.:49572-H), a company incorporated in Malaysia and having its registered office at Aras 22, Menara SME Bank, Jalan Sultan Ismail, 50250 Kuala Lumpur (hereinafter shall be referred to as "**Bank**") of the one part;

AND

THE PARTY whose name and description as stated in Section 2 of the Schedule 1 hereof (hereinafter shall be referred to as "**Customer**") of the second part.

WHEREAS:

- A. By the notification ("**Notification Letter**") issued by the Bank to the Customer, the Bank has approved and has agreed to grant and make available to the Customer the facility stated therein for the maximum aggregate sum stated in Section 3 of Schedule 1 hereof (hereinafter shall be referred to as the "**Facility Amount**") under the *Shariah* principle of *Murabahah* via *Tawarruq* arrangement upon the terms and conditions imposed by the Bank.
- B. The Customer hereby agrees to appoint the Bank as the Customer's agent and the Bank hereby accepts the appointment as the Customer's agent subject to the terms and conditions of this Wakalah Agreement.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES HERETO as follows:

1. Interpretations and Definitions

1.1 Interpretation

- 1.2 English is the governing language of this Wakalah Agreement and for all correspondence, notices, communication or other documents required or permitted hereunder issued under any other language, the English language shall prevail.
- 1.3 Any terms defined or used in the Notification Letter, Terms and Conditions, Murabahah Sale Contract and Disbursement Request are applicable in this Wakalah Agreement.

2. APPOINTMENT OF THE BANK AS AN AGENT

- 2.1 The Parties hereby agree that the Customer may with any or each disbursement request (as attached), appoint the Bank as its agent for any and/or all of the roles stated in this clause.

2.2 **Bank as an Execution Agent**

In the event that the Customer appoints the Bank as its execution agent to execute the *Murabahah* Sale Contract for the purpose of the purchasing of the commodity (“**Commodity**” reference made in the Notification Letter as “Underlying Asset”) from the Bank at the Bank’s sale price (“**Bank’s Sale Price**” reference made in the Notification Letter as “Selling Price”), the Bank shall at all times act as the Customer’s agent (disclosed or undisclosed) and the Bank shall:-

- (a) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with or imposed under any agreement of purchase of the Commodity; and
- (b) be authorized to delegate its rights and duties as an agent herein to any third party to do all acts necessary for the completion of the required transactions; and
- (c) be required to do all the administrative duties regarding the purchasing of Commodity and subsequently holding the Commodity; and
- (d) take possession (physical or constructive) of the Commodity (if any).

2.3 **Bank as a Sale Agent**

2.3.1 In the event that the Customer appoints the Bank as its disposal agent to dispose-off Commodity to any third party at the price equivalent to the Facility Amount, on behalf of the Customer, the Bank shall at all times act as the Customer’s agent (disclosed or undisclosed) and the Bank shall:-

- (a) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with or imposed under any agreement of sale of the Commodity to any commodity trader or the third party; and
- (b) be authorized to delegate its rights and duties as a agent herein to any third party to do all acts necessary for the completion of the required transactions; and
- (c) be required to do all the administrative duties regarding the selling of the Commodity; and
- (d) receive proceeds from the sale of the Commodity on the Customer’s behalf; and
- (e) deliver or cause to deliver possession (physical or constructive) of and title in and to the Commodity to any purchaser of the Commodity.

2.4 **Bank as a Payment Agent**

In the event that the Customer appoints the Bank as its payment agent to make payment (from the proceeds) from the disposal of the Commodity (hereinafter shall be referred to as “**Sale Proceeds**”) on behalf of the Customer, the Bank shall at all times act as the Customer’s agent (disclosed or undisclosed) and the Bank shall be authorized to make such payment to the party, for the purpose and in the amount, manner and mechanism stated in the disbursement request.

2.5 **Disclosure of the agent's authorization**

Pursuant to the Clause 2.3 and Clause 2.4 above, the rights and responsibilities arising from the transaction with a third party by the Bank on behalf of the Customer must be assumed by the Customer and any intended effect of the transaction entered into by the Bank pursuant to the appointment and authorization under Clause 2.3 and Clause 2.4 above shall be binding on the Customer.

2.6 **Appointment of second agent or sub-agent/another agent**

2.6.1 The Customer hereby agrees that the Bank may :-

- (a) appoint another agent on the Customer's behalf; and
- (b) appoint another agent (sub-agent) for the Bank to perform all/any part of the above appointment from the Customer

2.6.2 The Bank shall not appoint a second agent or delegate his role to a sub-agent except with the consent from the Customer.

2.7 The Customer hereby undertakes to indemnify the Bank from all losses, costs, expenses or damage that the Bank may suffer or incur as a result of fulfilling the Bank's agency function as set out above. The Customer also hereby acknowledges and understands that the Bank may at its own discretion waive or refund the agency fee so collected (mentioned hereinafter) upon the completion of the whole transaction and such waiver or refund shall not in any way nullify or defect this *Wakalah* Agreement.

2.8 In the event the Customer appoints the Bank as its agent under Section 2.2 above and requires the Bank to provide several quotations for the price of the Commodity, the Customer shall clearly specify to the Bank the preferred price quotation. The Bank in providing the quotations to the Customer shall provide information consisting the following details:

- (a) minimum number of quotations to be provided;
- (b) sources of the quotation; and
- (c) duration for the Customer to provide decision on the quotation, and if applicable, the expiration date of the quotations.

2.9A The Customer shall be held liable for the sale and purchase contract entered into by the Bank in accordance with specified terms and conditions agreed upon under this *Wakalah* Agreement. However, the Bank shall not be held liable except in the event of *ta'addi* (misconduct), *taqsir* (negligence) or *mukhalafah al-shurut* (breach of specified terms) for any of the appointment made under Clause 2.1, Clause 2.2 and Clause 2.3 above and in such a case, the Bank shall be liable and shall compensate for loss or damage including any actual cost suffered by the Customer.

- 2.9B In the event that a breach of specified terms results in gain to the Customer (such as selling at the higher price or buying at a lower price) than that the Bank is authorised for, the Bank shall disclose this to the Customer and must not retain any portion of the gains without the consent of the Customer.
- 2.10 Save for the purpose of this appointment, the appointment of the Bank shall not create or be deemed to create a partnership or a joint venture between themselves nor shall it establish a relationship of principal or agent in any other relationship between them.
- 2.11A The appointment of the Bank as an agent of the Customer shall cease/dissolve upon:
- (a) termination of the facility as stated in the Notification Letter; or
 - (b) payment of the proceeds of the sale of the Commodity by the Bank; or
 - (c) taking possession of the Commodity either to itself or delivery to any third party; or
 - (d) demise, dissolution or loss of legal capacity of the Customer; or
 - (e) demise, dissolution or loss of legal capacity of the Bank; or
 - (f) the Customer loses his/their right to appoint the Bank as his/their binding agent; or
 - (g) both the Customer and the Bank mutually agree to terminate this Wakalah Agreement; or
 - (h) the Customer exercises the option to terminate this Wakalah Agreement due to misconduct, negligence or breach of specified terms of the contract by the Bank; or
 - (i) the Bank withdraws from this Wakalah Agreement due to breach of specified terms of the contract by the Customer.
- 2.11B Upon occurrence of the above, any asset or rights entrusted with the Bank shall be returned to the Customer, and the Bank shall be entitled to an agency fee based on the market rate for a similar task, or a fair portion of the agreed fee that commensurate with the task performed, or any rate mutually agreed between the parties.
- 2.12 This Wakalah Agreement shall be deemed complete upon fulfillment of all obligation of the parties under this Wakalah Agreement which include settlement by the Customer of the *wakalah* fee and such settlement can be demonstrated by the following:
- (a) full payment of the agreed sum by the Customer; or
 - (b) waiver of right to receive the outstanding *wakalah* fee by the Bank; or
 - (c) sett-off of obligations between the parties; or
 - (d) transfer of the obligation to pay the fee to a third party through transfer of debt.
- 2.13 Upon completion of this Wakalah Agreement, the parties are free from any contractual obligations under this Wakalah Agreement.

3. AGENCY FEES

- 3.1 As consideration for the appointment of the Bank as an agent of the Customer, the Customer shall at the commencement of the working days and hours when the Bank operates its banking business of each *Murabahah* Sale, pay the agency fee as determined by the Bank.
- 3.2 In the event that the agency fee is not determined by the Bank, the Customer agrees that the Bank shall be entitled to an agency fee based on the market rate for a similar task done.
- 3.3 Notwithstanding that, the Bank may at its own discretion waive or refund the agency fee so collected upon the completion of the whole transaction and such waiver or refund shall not in any way nullify or defect this agency appointment.

4. WARRANTIES, REPRESENTATIONS AND INDEMNITY

- 4.1 The Bank shall not be liable to remunerate or reimburse the Customer for any sum or have any other obligation arising by reason of the agency relationship mandated hereby other than those sums due to the Customer unless resulting from the *ta'addi* (misconduct), *taqsir* (negligence) or *mukhalafah al-shurut* (breach of specified terms) of the Bank.
- 4.2 The Customer hereby unconditionally and irrevocably waives all and any rights or claims, whether under law, in equity or otherwise howsoever which the Customer may have against the Bank arising from or in connection with the exercise by the Bank of the authority, discretions and powers granted by this Wakalah Agreement save from those resulting from the *ta'addi* (misconduct), *taqsir* (negligence) or *mukhalafah al-shurut* (breach of specified terms) of the Bank.
- 4.3 The Customer hereby unconditionally and irrevocably undertakes to the Bank that the Customer will, on demand, indemnify the Bank and keep the Bank harmless from and against all and any actions, proceedings, claims, liabilities, losses, costs and expenses (including, without limitation, all costs and expenses incurred in disputing or defending any of the foregoing on a full indemnity basis, but other than those resulting from the *ta'addi* (misconduct), *taqsir* (negligence) or *mukhalafah al-shurut* (breach of specified terms) of the Bank), which may be made or brought against the Bank or which the Bank may suffer or incur as a result of or in connection with the exercise or purported exercise by the Bank of the authority, discretions and power granted by this Wakalah Agreement.

5. TRANSFERABILITY

- 5.1 With the exception of the event as mentioned in Clause 2.6.2 above, the Bank may assign or transfer any of its rights or obligation under this Wakalah Agreement.
- 5.2 The Customer may not assign or transfer any of its rights or obligations under this Wakalah Agreement.

6. MISCELLANEOUS

6.1 Notices

- 6.1.1 Each communication to be made under this Wakalah Agreement shall be made in writing in English language and, unless otherwise stated, shall be by fax or letter to the addresses and fax numbers stated in the financing facility between the Customer and the Bank.
- 6.1.2 Any communication or document made or delivered by the Bank to the Customer under or in connection with this Wakalah Agreement shall be deemed to have been sufficiently given, or made and be deemed received by the party to whom it is given:
- (a) if delivered by hand, when so delivered;
 - (b) if sent by registered post, on the third (3rd) Business Day after posting; and
 - (c) if sent by facsimile when the proper answer code is received by the Bank.

For communication by telephone or email, the Bank shall have the absolute discretion whether to accept, or rely, or act upon any communication received via telephone or email and shall be entitled to request verification of any such communication by any method the Bank deems appropriate.

- 6.1.3 Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank and then only if it is expressly marked for the attention of the department or officer identified with the Bank's signature below (or any substitute department or officer as the Bank shall specify for this purpose).
- 6.1.4 Without prejudice to any other forms of service allowed in law, the service of any writ, summons, statement of claim or any legal process in respect of or arising out of this Wakalah Agreement may be effected on the Customer by forwarding a copy of the writ, summons, statement of claim or other legal process by prepaid registered post to its address stated herein or to the registered address or to the last known address of the Customer.

6.2 Partial Invalidity

If, at any time, any provision of this Wakalah Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

6.3 Remedies And Waivers

No failure to exercise, nor any delay in exercising, on the part of the Bank, of any right or remedy under this Wakalah Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Wakalah Agreement are cumulative and not exclusive of any rights or remedies provided by law.

6.4 Amendments And Waivers

This Wakalah Agreement may only be amended or waived subject to the Standard Terms and Conditions.

6.5 Time

Time wherever mentioned shall be of the essence of this Wakalah Agreement.

6.6 Governing Law

6.6.1 This Wakalah Agreement shall be governed by and construed in all respects in accordance with the laws of Malaysia.

6.6.2 The parties agree that the courts in Malaysia shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes which may arise out of or in connection with this Wakalah Agreement and, for such purpose, irrevocably submit to the exclusive jurisdiction of such courts.

6.6.3 The parties irrevocably waive any objection which they might now or hereafter have to the courts referred to under Clause 6.6.2 being nominated as the forum to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Wakalah Agreement and agree not to claim that any such court is not a convenient or appropriate forum.

6.7 Stamping

Save as expressly agreed by the Bank otherwise, the Customer shall bear all applicable taxes, stamp duties, fees, costs and expenses reasonably and properly incurred in connection with or incidental to the execution, delivery, performance, release, discharge, amendment, enforcement, attempted enforcement or otherwise of this Wakalah Agreement.

[END OF CLAUSES]

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and/or seal the day and year first above written.

Customer

Signed by the Bank for the Customer,
as agent (wakeel) of the Customer
in the presence of:)

Bank

SIGNED for and on behalf of)
Small Medium Enterprise)
Development Bank Malaysia Berhad)
(Company No. 49572-H))
in the presence of:)
)
)

Small Medium Enterprise
Development Bank Malaysia Berhad
By its representative

Name:
NRIC No.:
Designation:

Schedule 1

(to be taken and construed as an integral part of this Wakalah Agreement)

Section	Item	Particulars
1.	The day and year of this Wakalah Agreement	A day after the expiry of the deemed consent period granted to the Customer in the Notification Letter
2.	Name and particulars of the Customer	As per the Notification Letter as attached together with this Wakalah Agreement
3.	Maximum amount of the Facility	The total amount of the Commodity Murabahah facilities appended to the Notification Letter (and as revised from time to time, if any)

DISBURSEMENT REQUEST

The Customer hereby write to request the disbursement of the Restructured Facility to pay the indebtedness of the Existing Facility to the Bank pursuant to the Notification Letter and the *Wakalah* Agreement (“**Disbursement Amount**”).

Purchase Request and Undertaking

Henceforth, the Customer hereby:

- (i) request the Bank to purchase the Commodity (the details of the commodity as stated in the respective *Murabahah* Sale Contract) from commodity trader (“**Commodity Trader**”); and
- (ii) undertake to fully indemnify and keep the Bank indemnified from or against any expenses, loss, damages or liabilities resulting in connection with this purchase request and undertaking including against any loss in any manner whatsoever which the Bank may suffer as a result of the Bank agreeing to participate in the purchase of the Commodity.

Tawarruq Instruction

The Customer hereby appoints the Bank as the Customer’s agent for each and all of the roles stated below:

(a) Bank as an Execution Agent:

As the Customer’s execution agent to perform and execute the *Murabahah* Sale Contract for the purpose of purchasing the commodity, the details of which stated in the *Murabahah* Sale Contract (“**Commodity**”) by the Customer from the Bank at the Bank’s Sale Price and payable upon such deferred term in accordance with instructions from time to time given by the Customer, subject to the terms and conditions stated in Clause 2.2 of the *Wakalah* Agreement and all other terms and conditions in the Notification Letter and the *Wakalah* Agreement; and

(b) Bank as a Sale Agent:

As the Customer’s sale agent to sell the Commodity on behalf of the Customer to a third party for cash of the Disbursement Amount subject to the terms and conditions stated in Clause 2.3 of the *Wakalah* Agreement and all other terms and conditions in the Notification Letter; and

(c) Bank as a Payment Agent:

As the Customer’s payment agent to make payment from the sale proceeds of the Commodity to pay the indebtedness to the Bank under the Existing Facility.

Non-Appointment of the Bank as an Agent:

The Customer acknowledges that the Customer shall have the option not to appoint the Bank as an Agent where the Customer shall call at the Bank's office on the day of transaction and shall execute the *Murabahah* Sale Contract personally with the Bank. The Customer shall take physical possession of the Commodity after the perfection of the *Murabahah* Sale Contract. The Customer shall do so by its own means and efforts and at its own costs. The Customer shall at its own means, will, costs and effort disposed off the commodity and utilize the proceeds from such sales/ disposals solely for the purpose(s) to pay its indebtedness to the Bank under the Existing Facility. In view that the Customer opt to take physical possession of the Commodity, Clause 2(f) of the *Murabahah* Sale Contract are applies.

Note: Shariah compliant goods and/or commodities acceptable to the Bank and traded at Bursa Suq Al-Sila (BSAS) as follows:

- i. Crude Palm Oil (CPO); or*
- ii. other commodity made available by BSAS.*

The Customer hereby undertake to indemnify the Bank from all losses, costs, expenses or damage that the Bank may suffer or incur as a result of fulfilling the Bank's agency function as set out above. The Customer also hereby acknowledge and understand that the Bank may at its own discretion waive or refund the agency fee so collected (mentioned hereinbefore) upon the completion of the whole transaction and such waiver or refund shall not in any way nullify or defect this Disbursement Request.

This Disbursement Request, once issued, shall be irrevocable and binding on the Customer, its heirs, successors in title, permitted assigns and legal representatives.

By issuing this Disbursement Request, the Customer hereby acknowledge that the Customer fully understand the nature and contents of this Disbursement Request.

All the terms and conditions for disbursement of the said Facility have already been complied with as per enclosed checklist.

All charges related to the disbursement shall be borne by the Customer.

SME Bank hereby accepts the appointment of SME Bank as an Agent of the Customer subject to the terms as stated herein.

[END OF CLAUSES]