Date : \_**13 June 2016**\_

**BPO Agreement**

[ Customer name ] (hereinafter referred to as the “Company”) and Bank of Ayudhya Public Company Limited (hereinafter referred to as the “Bank”) agree to abide by, in addition to the terms and conditions set forth in the Agreement on Bank Transactions, the Agreement on Foreign Exchange Transaction, the TSU Payment Service Agreement (the “TSU Agreement”) and such other contracts as entered into by and between the Company and the Bank, the terms and conditions set out below.

**Article 1 General Terms and Conditions**

Section 1 Definition

Terms defined in, or incorporated by reference to, the TSU Agreement have the same meaning when used in this Agreement unless otherwise defined in this Agreement or the context otherwise requires.

(1) “Bank Payment Obligation” or “BPO” means

An irrevocable and independent undertaking by a bank (the “Obligor Bank”) to pay a bank of an exporter (the “Recipient Bank”) an amount equal to a part or all of the amount of the Trade Transaction that an importer shall be liable, which is provided based on and pursuant to URBPO and other agreements or established practice among banks participating in TSU.

(2) “Obligation of Compensation”

The Company’s obligation to pay compensation to the Bank if the Bank is the Obligor Bank pursuant to the provisions of Section 7 and 8 of this Agreement.

(3) “URBPO”

The “Uniform Rules for Bank Payment Obligations” of the International Chamber of Commerce as amended, supplemented or restated from time to time.

**Article 2 BPO**

Section 2 BPO Transaction

BPO is a separate obligation from the relevant Trade Transaction which the Obligor Bank is obliged to pay the Payment Amount with respect to the Trade Transaction for which the Obligor Bank has issued a BPO to the Recipient Bank of such Trade Transaction pursuant to the terms and conditions of that BPO.

Section 3 Requests for Issuance of BPO

Each Company’s request to have the Bank issue a BPO with respect to a Trade Transaction in which the Company is an importer shall be made by specifying its request in the TSU Payment Service Application which shall be submitted to the Bank, in accordance with the TSU Agreement and the procedures separately established by the Bank.

Section 4 Issuance of BPO

1. Upon receipt of a written request for issuance of a BPO from the Company, the Bank shall consider and determine whether or not it will issue a BPO based upon such request. The Bank has an absolute discretion in determining whether it will issue a BPO and the Company cannot make any objection to the Bank’s determination.

2. If the Bank agrees to issue a BPO, the Bank shall issue a BPO for the relevant Trade Transaction in accordance with the provisions of the Rulebook for TSU prepared by SWIFT, URBPO and other agreements and established practice among banks participating in TSU.

Section 5 Amendment and Cancellation of BPO

Any cancellation of or amendment to an issued BPO shall be subject to the Rulebook for TSU prepared by SWIFT, URBPO and other agreements or established practice among banks participating in TSU, and cannot become effective without consents from the relevant Recipient Bank and other parties involved with the BPO. Any and all losses or damages incurred by the Bank arising from such cancellation or amendment of the BPO shall be borne by the Company.

Section 6 Performance of BPO

The Bank shall, as an Obligor Bank, pay the Payment Amount with respect to the Trade Transaction for which the Bank has issued a BPO to the Recipient Bank of that BPO only if the Data Match has occurred with respect to the Trade Transaction.

Section 7 Compensation

1. If the Bank pays the Payment Amount with respect to the Trade Transaction pursuant to Section 6 of this Agreement, the Company shall be obligated to immediately compensate the Bank.

2. The scope of the Company’s Obligation of Compensation shall include the amount of the BPO discharged by the Bank and delayed interest on such amount from the next date of the day on which such BPO is discharged by the Bank (inclusive) to the date the Bank has actually received the full amount of the BPO discharged by the Bank and any costs, losses, expenses incurred by the Bank.

Section 8 Compensation Before Discharge of BPO

If any event prescribed in Article 5 of the Agreement on Bank Transactions has occurred or any representations & warranties made by the Company under this Agreement is incorrect, the Company shall, upon request from the Bank, be obligated to compensate the Bank in advance with the aggregate outstanding amount of all BPOs that the Bank has issued based upon requests from the Company.

Section 9 Representations and warranties

The Company hereby represents and warrants to the Bank as of the date hereof, and shall be deemed to represent and warrant to the Bank as of the date of each request for BPO, the following matters:

(1) The Company is a limited company legally incorporated and validly continuing to exist under the law of Thailand, and has the authority to own its property and to operate the service it is presently engaged in.

(2) The Company has the authority and capacity to validly enter into and to perform this Agreement.

(3) The execution and performance of this Agreement by the Company is done upon the completion of all authorizations, approvals, reports and other procedures required by governmental bodies, courts and other third parties, where such are required.

(4) The execution and performance of this Agreement by the Company does not violate any laws or other regulations that apply to the Company or in breach of any agreement, etc. that binds the Company.

(5) Financial statements of the Company in relation to accounting are all properly prepared in accordance with accounting principles that are generally accepted in Thailand as fair and appropriate and are continually applied, and completely and accurately represent financial situation and profit and loss situation of the Company.

(6) No lawsuit, arbitration or administrative procedures to which the Company is a party and that present the likelihood of having a material adverse effect on (i) the Company’s financial condition, or (ii) the validity, legality or enforceability of the execution or performance of this Agreement or the transactions contemplated in this Agreement, are pending and there is no likelihood thereof.

(7) No event prescribed in Article 5 of the Agreement on Bank Transactions has occurred or is pending with respect to the Company, and there is no likelihood thereof; further, there is no other event that would have a material adverse effect on financial or business situation of the Company.

(8) The Company is not in a situation of insolvency when entering into this Agreement and it will not cause the Company to be insolvent or unable to generally perform its obligations when they become due and payable.

(9) The information that the Company provides the Bank in connection with the execution and performance of this Agreement is true and accurate.

(10) This Agreement constitutes the Company’s legal, valid and binding obligations that are enforceable in accordance with their provisions.

Section 10 Collateral, ETC.

1. The Company hereby agrees to assign goods and documents relating to goods to the Bank, as collateral to secure the obligations owed by the Company under any and all BPO transactions and the payments of interest, discount premiums, damages, commissions, guaranty fees and other expenses incidental to such BPO transactions. If there is any residual amount after the Bank enforces such security interest in goods and documents relating to goods and applies the proceeds arising therefrom to the payments of the obligations owed by the Company under any and all BPO transactions and the payments of interest, discount premiums, damages, commissions, guaranty fees and other expenses incidental to such BPO transactions, the Bank is entitled to apply such residual amount to the payments of any other obligations owed by the Company to the Bank irrespective of the order of application provided by law.

2. Upon the Bank’s request, in connection with a Trade Transaction in which the Company is an importer, the Company shall deliver the Bank promissory notes in such form and substance as separately designated by the Bank prior to the fulfillment by the Bank of the BPO with respect to such Trade Transaction.

Section 11 Export Receivable with BPO

In a transaction of purchasing of export receivables by the Bank from the Company in respect of which BPO is issued, the Obligor Bank of such BPO shall be treated as “Payment Obligors” with respect to the export receivables.

If the Bank, as a Recipient Bank of a BPO with respect to a Trade Transaction in which the Company is an exporter, has received funds under the BPO from the Obligor Bank of the BPO, the Bank shall immediately credit the funds to such account of the Company with the Bank as designated by the Company except where delivery of the funds to the Company violates any applicable laws, regulations or rules of any jurisdiction (whether domestic or otherwise). In the event that the Obligor Bank does not perform the relevant BPO that has become due and payable, the Bank, as a Recipient Bank, shall not be obligated to assert any claim or to take any action against the Obligor Bank.

**Article 3 Miscellaneous**

Section 12 Responsibility for Trade Transaction

The Bank is not involved with, or does not have any responsibility for, a Trade Transaction between the Company and the Counterpart of the Company (including, without limitation, the arrangement for utilizing the TSU Payment Service or BPO for the relevant Trade Transaction).

Section 13 Fees and Expenses

The Company shall pay to the Bank, with respect to BPO, fees, interest, damages, telecommunication costs and other expenses. Such expenses shall include, without limitation, the damages and expenses that the Company shall be liable to pay to the Bank under Section 7 of this Agreement.

Amounts, rates, manners of calculation, due dates, manners of payment and applicable foreign exchange rates with respect to the fees, interest, damages, telecommunication costs and other expenses payable under Paragraph 1 of this Section 13 shall be separately determined by the Bank.

Section 14 Foreign Exchange Rate

Foreign exchange rates applied to conversion of currencies relating or ancillary to BPO shall be determined by the Bank as of the time of such conversion, unless otherwise provided in a forward foreign exchange agreement separately entered into between the Bank and the Company.

Section 15 Amendment

Any amendment to this Agreement shall be made by written agreement with the duly authorized signature and/or company seal (if any) of the parties to this Agreement.

Section 16 Seal and Signature

If the Bank enters into a transaction after it has exercised due care in verifying the signature or chop affixed to an application or other documents relating to BPO with the specimen signature or chop registered by the Company with the Bank, the Bank shall not be responsible or liable for any loss or damage arising from or in connection with forgery, unauthorized alteration or misappropriation of the signature or chop used in such documents and such loss or damage shall be borne by the Company.

Section 17 Notice and Delivery of Electronic Documents

1. The Bank may make any notification to the Company under this Agreement by way of fax or e-mail to the addresses registered by the Company with the Bank, unless otherwise provided for in this Agreement. The Company shall immediately notify the Bank if it wishes to change or eliminate such registered fax number or e-mail address.

2. The Company shall make a notification to the Bank in writing and subject to the mutual written agreement by the Company and the Bank, the Company may give a notification to the Bank by fax. The Bank may regard the documents sent by fax to be formal and valid documents legally and duly authorized by the Company and any losses or damages arising from forgery, alteration or misappropriation of such documents shall be borne by the Company, except where such losses are caused by willful misconduct or negligence of the Bank.

3. The Bank shall not be responsible or liable for any loss or damage arising from or in connection with problems with communication devices, lines or computers, or disconnection of telephone or internet access which are not attributable to the Bank, and such loss or damage shall be borne by the Company.

Section 18 Assignment and Transfer

1. This Agreement shall benefit and be binding on the parties, their respective successors and any permitted assignee or transferee of some or all of a party’s rights or obligations under this Agreement.

2. The Bank may assign or transfer all or any of its rights or obligations under this Agreement to any third parties with 30 days prior notice to the Company.

Section 19 Jurisdiction

Any litigation arising from a dispute between the parties to this Agreement in connection with any transaction under this Agreement shall be adjudicated at the court of Thailand.

Section 20 Governing Law

This Agreement and the transactions under this Agreement shall be governed by, and construed in accordance with the laws of Thailand.

Section 21 Validity of This Agreement

1. The term of this Agreement is one year from the execution date hereof. This Agreement shall be automatically renewed for a further period of one year upon each anniversary of the execution date hereof. Notwithstanding the foregoing, either party may terminate this Agreement at any time by giving at least one month prior notice to the other party.

2. This Agreement shall be terminated by the Bank’s giving three days prior notice upon the occurrence of any of the events set forth in this Paragraph 2 below; provided, however, that any rights or obligations of the parties hereto which have arisen according to this Agreement prior to the date of termination shall survive such termination. As long as such rights or obligations are in effect, this Agreement shall be applicable to them.

(1) The Bank is de-registered as the user of TSU or its usage of TSU is terminated by SWIFT; or

(2) Any of the indebtedness of the Company owed to the Bank has become due and payable.

3. This Agreement shall be terminated automatically upon the termination of TSU Payment Service Agreement.

IN WITNESS WHEREOF, the parties hereto have executed two originals of this Agreement and each party holds one original thereof.

 **Company Name**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signatory: -Authorize Person-

Title : -Authorize Person Title -

**Bank of Ayudhya Public Company Limited**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signatory:

Title :