

To: The Manager
The Hongkong and Shanghai Banking Corporation Limited, Offshore Banking Unit, Labuan

APPLICATION OF MARGIN PAYMENTS

1. In consideration of The Hongkong and Shanghai Banking Corporation Limited, Offshore Banking Unit, Labuan (“**HSBC**”) agreeing to issue and/or arranging and/or having issued and/or arranged for the issuance of [documentary letters of credit / documentary letters of credit inclusive of associated shipping guarantee / bank guarantees / bonds standby letters of credit / shipping guarantee]¹ for the amount of _____² (the “**Instrument**”) at the Customer’s request as per the Customer’s application on _____³ (whether for itself or on behalf of a third party and/or whether or not it is for antecedent, current or future issuance/effective dates), the Customer hereby acknowledges, agrees and undertakes that for the purpose of providing HSBC with cash cover/cash margin (“**Margin Payments**”) (of such amount that is equivalent to the Instrument’s amount or such other amount as required by the Bank) in respect of the liabilities of the Customer to HSBC under the Instrument, whether as principal, or surety or otherwise and whether such liabilities be present or future, actual or contingent, primary or collateral and several or joint (“**Liabilities**”):-
 - (a) all transfer of Margin Payments by the Customer shall be made upon demand by HSBC and in accordance with the instructions of HSBC;
 - (b) agrees that in the event any transfer of Margin Payment out of, or into, the current account from which a Margin Payment is to be debited (the “**Account**”) requires the conversion of one currency into another, such conversion shall be calculated at HSBC’s then prevailing spot of exchange (as determined by HSBC) for such currencies at the time of transfer and HSBC shall be entitled to increase the amount of Margin Payments required to be held by HSBC as are necessary to take into account any currency exchange risk;
 - (c) upon transfer of the Margin Payments to HSBC, all rights, title and interest in and to any Margin Payments shall vest in HSBC free and clear of any liens, claims, charges or encumbrances or any other interest of the Customer or of any other third party. Accordingly, all Margin Payments are advanced payments by the Customer to HSBC in respect of the Liabilities and the Customer hereby agree that HSBC shall be entitled to apply such advanced payments, i.e. the Margin Payments towards the satisfaction of the Liabilities at any time as HSBC thinks necessary;
 - (d) HSBC is not required to first make payment from its own funds before it shall be entitled to apply the Margin Payments towards the satisfaction of the Liabilities;
 - (e) no interest shall accrue on the Margin Payments;
 - (f) Margin Payments transferred to HSBC do not constitute a debt obligation owed by HSBC to the Customer and shall not represent a full or complete discharge of the Customer’s Liabilities. HSBC shall have no obligation to transfer all or any part of the Margin

¹ Delete where inapplicable

² Insert instrument amount

³ Insert date of application of instrument

Payments to the Customer until such time HSBC determines that the Liabilities have been discharged and/or repaid in full, provided always that HSBC shall not be precluded the right to seek full payment or reimbursement of any monies payable to it by the Customer should there be any such further amounts payable beyond the Margin Payments; and

- (g) any un-utilised amount of the Margin Payments shall be credited to the Account upon HSBC's determination that the Liabilities have been discharged and/or repaid in full.
2. It is agreed that nothing in this letter is intended to create or does create in favour of either party any mortgage, charge, lien, pledge, encumbrance or other security interest in any Margin Payment transferred to HSBC pursuant to this letter. Notwithstanding the foregoing, nothing herein shall restrict the operation of any general lien, set-off or other rights or remedies available to HSBC, whether by law or otherwise, and this letter is in addition and without prejudice to any lien, guarantee, mortgage or security now or hereafter held by HSBC.
 3. The Customer acknowledges that all Margin Payments are not deposits placed with HSBC and are not insured deposits for the purposes of the Malaysia Deposit Insurance Corporation Act 2011 (Act 720 of Malaysia).
 4. Where the Customer provides its personal data and/or personal data which relates to any relevant individual to HSBC, the Customer:
 - (a) understands that HSBC, its agents and authorised service providers as well as relevant third parties will collect, use and disclose such personal data in accordance with HSBC's prevailing policy on collection, processing and sharing of customer information found in the HSBC Generic Terms & Conditions which is accessible at www.hsbc.com.my;
 - (b) hereby consents to, confirms and warrants that the relevant individuals have consented to, the collection, use and disclosure of the personal data provided from time to time in connection with this letter, for the purposes (i) set out in HSBC's prevailing policy on collection, processing and sharing of customer information and (ii) reasonably required by HSBC to provide the credit or banking facilities or other accommodation to it and/or, at the Customer's request (whether for itself or on behalf of a third party), to any other person, firm, corporation or customer of any kind, and any other purpose directly related to it;
 - (c) understands that the HSBC's policy on collection, processing and sharing of customer information forms a part of the terms and conditions governing its relationship with HSBC and should be read in conjunction with this letter; and
 - (d) confirms that it has read, understood and consent to the relevant Notice Relating To The Personal Data Protection Act 2010 which is accessible at <https://www.business.hsbc.com.my/en-gb/my/generic/hsbc-labuan>.
 5. This letter shall be governed by and shall be construed in accordance with the laws of Malaysia and the Customer hereby irrevocably submits to the jurisdiction of the Malaysian Courts, but it shall be open to HSBC to enforce the terms hereof in the Courts of any other competent jurisdiction.
 6. The terms and conditions of this letter may be varied by HSBC with notice to the Customer.

7. [The Customer shall, on HSBC's request, nominate an agent with an address in Malaysia to accept service of any legal process in Malaysia on behalf of the Customer and such agent shall acknowledge in writing to HSBC its appointment as such agent and service of legal process on such agent shall be deemed to constitute service on the Customer.]⁴
8. If any one or more provisions of this letter, or any part thereof, shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate any of the other provisions hereof, which shall remain in full force, validity and effect.
9. This letter will remain valid to your successor in title or assignee to the extent of any debt or liability outstanding now and in the future in respect of the Liabilities.
10. This letter shall be in addition and without prejudice to the terms contained in the HSBC's Standard Trade Terms applicable to the Instrument issued and/or arranged at the Customer's request.
11. The Customer confirms and understands that it has the rights to obtain and/or has obtained independent legal advice before entering into this letter.
12. The Customer confirms that the signatory(ies) below is/are authorised by the Customer to sign, execute and deliver this letter and such other documents, notices or statements required from the Customer by HSBC from time to time, and to communicate to deal with HSBC on the Customer's behalf generally.

Dated this _____ day of _____, 20 _____.

Signed by
For and on behalf of ⁵ _____
(the "**Customer**")

Authorised Signature(s)
Name(s):
Designation(s):

⁴ Delete if inapplicable

⁵ Insert Customer Name