

**DRAFT DATE: 28 NOVEMBER 2019**

**BONDHOLDERS' REPRESENTATIVE APPOINTMENT  
AGREEMENT**

**RELATING TO**

**THE BONDS OF EASY BUY PUBLIC COMPANY LIMITED  
NO. 1/2020 DUE [●]**

**[●] JANUARY 2020**

**BETWEEN**

**EASY BUY PUBLIC COMPANY LIMITED  
as Company**

**AND**

**BANK OF AYUDHYA PUBLIC COMPANY LIMITED  
as Bondholders' Representative**

**ALLEN & OVERY**

**Allen & Overy (Thailand) Co., Ltd.**

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**THIS BONDHOLDERS' REPRESENTATIVE APPOINTMENT AGREEMENT** (this **Agreement**) is made on [●] January 2020.

**BETWEEN:**

- (1) **EASY BUY PUBLIC COMPANY LIMITED**, a public limited company incorporated under the laws of Thailand, whose office is at 5th Floor, Sathorn Square Office Tower, 98 North Sathorn Road, Silom, Bangrak, Bangkok 10500 (hereinafter referred to as the **Company**); and
- (2) **BANK OF AYUDHYA PUBLIC COMPANY LIMITED**, a public limited company incorporated under the laws of Thailand, whose head office is at 1222 Rama 3 Road, Bang Phongphang, Yan Nawa, Bangkok 10120 (hereinafter referred to as the **Bondholders' Representative**, which expression shall wherever the context so admits include any new Bondholders' Representative for the time being).

**WHEREAS:**

- (A) The Company is approved by the SEC Office (as defined below) to offer "The Bonds of EASY BUY Public Company Limited No. 1/2020 Due [●]" (the **Bonds**).
- (B) The Bondholders' Representative has all qualifications required by law in order to act as Bondholders' Representative for the Bonds and shall seek to obtain an approval from the SEC Office (as defined below) in respect thereof.
- (C) The Bondholders' Representative wishes to set forth its agreement to perform its duties as Bondholders' Representative in order to protect the benefit of all Bondholders as provided in the SEC Act (as defined below), the Conditions (as defined below) and this Agreement.
- (D) The Company wishes to appoint Bank of Ayudhya Public Company Limited to act as the Bondholders' Representative in relation to the Bonds and Bank of Ayudhya Public Company Limited wishes to accept the appointment of the Bondholders' Representative in accordance with the Conditions (as defined below) and the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS**

In this Agreement (including the recital above), capitalised terms used but not defined herein shall have the same meaning as defined in the Conditions (defined below), unless the context requires otherwise, and in addition to such terms.

**Bondholder** means a person who is for the time being a holder of the Bonds in accordance with the Conditions and **Bondholders** means all of them.

**Bond Register** means a register of the Bondholders.

**Bonds** has the meaning given to that term in **Recital (A)**.

**Business Day** means a day (other than a Saturday, Sunday and public holidays) on which commercial banks are generally open for business in Bangkok.

**Conditions** means the terms and conditions governing rights and obligations of the Company and the Bondholders of the Bonds to become effective on the Issue Date, substantially in the form set out in Schedule 1 (Terms and Conditions of the Bonds), as may be amended, supplemented or modified from time to time.

**Event of Default** means any of the events of default listed in the Conditions.

**Expense** means any cost, out-of-pocket expense, disbursement, fees including legal fee and professional fee (other than the Bondholders' Representative Fee (as defined in Clause 5.1)) or any other money incurred or payable by the Bondholders' Representative or incurred in connection with the Bonds under this Agreement and/or the Conditions including expenses relating to transportation, meeting of Bondholders, or enforcement of this Agreement and the Conditions.

**Issue Date** means the date on which the Company issues the Bonds under the Conditions.

**Registrar** means Bank of Ayudhya Public Company Limited as appointed under the Registrar Appointment Agreement or any successor or replacement entity thereto.

**Registrar Appointment Agreement** means the Registrar Appointment Agreement dated on [●] January 2020 and entered into or to be entered into between the Company and the Registrar in connection with the issue of Bonds.

**SEC** means the Securities and Exchange Commission and/or the Capital Market Supervisory Board (as the context may be applicable).

**SEC Act** means the Securities and Exchange Act B.E. 2535, including rules and regulations or law issued by virtue of the SEC Act and all amendments.

**SEC Office** means the Office of the Securities and Exchange Commission.

## 2. OBLIGATIONS UNDER CONDITIONS

The Company and the Bondholders' Representative agree to be bound by and shall have all powers, duties, obligations and responsibilities as specified in the Conditions and this Agreement and the Bondholders' Representative shall act at all times in accordance with the Conditions, this Agreement and any applicable laws at a professional level for the benefit of the Bondholders. The Conditions and any amendment thereof in writing shall form an integral part of this Agreement.

## 3. POWERS AND DUTIES OF THE BONDHOLDERS' REPRESENTATIVE

It is agreed that, in addition to the powers and duties of the Bondholders' Representative as set forth in the Conditions:

(a) Appointment of Advisors:

The Bondholders' Representative may appoint advisors including legal counsel (and the fees and charges owed to such advisors shall be for the account of the Company) in respect of:

- (i) the enforcement of any provisions of this Agreement and/or the Conditions;
- (ii) any actual or proposed amendment, waiver or consent relating to this Agreement and/or the Conditions; or
- (iii) any Event of Default or breach of, or default under, the Conditions or any dispute that may arise in connection with the Bonds.

- (b) Performance:
- (i) The Bondholders' Representative shall, for and on behalf of and for the benefit of the Bondholders, carry out its duties and obligations to accept, take, hold, suspend, attach, seize, enforce, release or discharge any collateral given or to be given by the Company including the withdrawal, amendment, substitution or increase in any security for the benefits of the Bondholders as set forth in this Agreement and/or the Conditions.
  - (ii) The Bondholders' Representative shall, promptly and in any event no later than 7 (seven) Business Days, notify each Bondholder of the occurrence of any Event of Default or breach of or default under the Conditions, which occurrence has actually been notified by the Company or comes to the attention of the Bondholders' Representative, including the actions taken by the Bondholders' Representative due to such occurrence.
  - (iii) If the Company fails to comply with any term of the Conditions (other than its payment obligations), the Bondholders' Representative shall institute a claim for damages incurred therefrom for the benefit of all Bondholders within 90 (ninety) days unless the Conditions specifies otherwise.
  - (iv) If the Company fails to comply with its payment obligations, the Bondholders' Representative shall institute a meeting of Bondholders to acquire the applicable resolutions as provided in the Conditions.
  - (v) At any time after an Event of Default (or any event which, with the lapse of time and/or upon the giving of notice and/or the issuing of a certificate, would be an Event of Default) shall have occurred the Bondholders' Representative may by notice in writing to the Company require it to make all subsequent payments in respect of the Bonds to or to the order of the Bondholders' Representative and not to the Registrar (if any); with effect from the issue of any such notice to the Company.
  - (vi) The Bondholders' Representative shall arrange meetings with the Bondholders and shall perform any other duties in accordance with the Conditions.
  - (vii) The Bondholders' Representative shall act as liaison for all communications between the Company and the Bondholders, which are necessary for the transactions contemplated to be carried out under this Agreement.
  - (viii) Subject to Clause 4 (Payment from the Enforcement of the Bonds), the Bondholders' Representative shall distribute to each Bondholder pro rata according to its holding percentage of the Bonds, the proceeds derived from the result of claims made against the Company, the enforcement of the right of the Bondholders under the Bonds, the provisions of this Agreement and/or the Conditions (the **Proceeds**). The Bondholders' Representative shall also keep record of steps taken to collect and distribute the Proceeds including related expenses incurred.
  - (ix) The Bondholders' Representative shall comply with all laws and regulations applicable to the Bondholders' Representative in such capacity including the Notification of the SEC No. TorJor. 37/2552 Re: Qualifications of the Bondholders' Representative and Actions Taken by the Bondholders' Representative according to Its Power and Duties dated 3 August 2009, as may be amended and supplemented from time to time.

- (x) The Bondholders' Representative shall perform any other acts to ensure that the Company will perform its duties in accordance with the provision specified in the Conditions, this Agreement and the Registrar Appointment Agreement including demand for payment under the Bonds against the Company on behalf of the Bondholders.
  - (xi) The Bondholders' Representative may act on the opinion or advice of any lawyer, accountant and other experts appointed or selected by the Bondholders' Representative or the Company in order to perform its duties and obligations under this Agreement and the Conditions and shall not have any liability when acting (or refraining from acting) upon any advice by such persons (other than for its gross negligence or wilful misconduct).
- (c) Reliance:
- (i) Except as otherwise expressly provided in the Conditions, the Bondholders' Representative shall be and is hereby authorised to assume without enquiry and it is hereby declared to be the intention that it shall assume without enquiry, in the absence of knowledge or express notice to the contrary, that the Company is duly performing and observing all the covenants and provisions contained in this Agreement and/or the Conditions and that on the date hereof and on the Issue Date no Event of Default, and no event which, with the lapse of time and/or upon the giving of notice and/or the issuing of a certificate, would constitute an Event of Default, has occurred.
  - (ii) The Bondholders' Representative may rely upon any written communication or document believed by it to be genuine and need not investigate any fact or matter stated in the document.
- (d) Liabilities:
- (i) The Bondholders' Representative shall not be responsible for acting upon any resolution purporting to have been passed at any meeting of the Bondholders in accordance with the Conditions even though it may subsequently be found that there was some defect in the constitution of such meeting or the passing of such resolution or that, for any reason, such resolution was not valid or binding upon the Bondholders (except where such act was due to its gross negligence or wilful misconduct).
  - (ii) The Bondholders' Representative shall not be liable to the Company or any Bondholder by reason of having accepted as valid or not having rejected any certificate of Bond purporting to be such and subsequently found to be forged, stolen or not authentic (other than for its gross negligence or wilful misconduct).

#### **4. PAYMENT FROM THE ENFORCEMENT OF THE BONDS**

Unless otherwise provided in the Conditions, any sums received by the Bondholders' Representative in relation to the Bonds under this Agreement and/or the Conditions shall be applied in the following order:

- (a) firstly, reasonable Expenses;
- (b) secondly, remuneration of the Bondholders' Representative under Clause 5 (Remuneration of the Bondholders' Representative) below;

- (c) thirdly, interest due and unpaid on the Bonds in the proportion of the entitlement of each Bondholder up to the date of payment;
- (d) fourthly, outstanding principal amount of the Bonds in the proportion of the entitlement of each Bondholder; and
- (e) finally, balance to be paid to the Company without unreasonable delay, if any.

## **5. REMUNERATION OF THE BONDHOLDERS' REPRESENTATIVE**

- 5.1 The Company shall pay to the Bondholders' Representative a fee for acting as Bondholders' Representative (the **Bondholders' Representative Fee**) in an amount equal to the greater of (i) the amount equal to 0.0005% % (zero point zero zero zero five per cent.) per annum of outstanding principal of the Bonds or (ii) THB 20,000 (Twenty Thousand Baht) per annum, calculated from the Issue Date until the termination of the appointment of the Bondholders' Representative has become effective. The Bondholders' Representative Fee shall be payable to the Bondholders' Representative within 14 (fourteen) days after the Issue Date for the first payment and thereafter on each anniversary of the Issue Date, provided that the invoice of relevant payments has been provided to the Company. If any payment date would otherwise fall on a day which is not a Business Day, the relevant amount of the Bondholders' Representative Fee shall be paid to the Bondholders' Representative on the next day which is a Business Day.
- 5.2 If the Company requests the Bondholders' Representative to perform or do any acts beyond the scope of the ordinary powers, duties and responsibilities of the Bondholders' Representative as set forth in this Agreement and/or the Conditions, the Bondholders' Representative shall not be obliged to perform or do such acts. However, if the Bondholders' Representative, at its sole discretion, determines to perform or do any such acts at the requests of the Company, then the Company agrees to pay additional remuneration to the Bondholders' Representative in the actual amount and under terms of payment as mutually agreed in writing between the Parties, and such written agreement shall form an integral part of this Agreement.
- 5.3 The Bondholders' Representative may incur reasonable Expense in order to perform its duties in accordance with this Agreement, the Conditions and/or the applicable law and the Company agrees to refund to the Bondholders' Representative, within 15 (fifteen) days of the date of receipt of a notice thereof and the relevant supporting documents relating to such Expense from the Bondholders' Representative, any such Expense and agrees to pay all reasonable Expenses, all applicable taxes including but not limited to actual damages incurred by the Bondholders' Representative in performing its duties under this Agreement and the Conditions.
- 5.4 All sums payable by the Company under this Agreement shall carry interest at a rate equal to 15% (fifteen per cent) per annum, (i) in respect of the Bondholders' Representative Fee, from the date of the sum being due and payable, and (ii) in respect of all other sums including the reasonable Expenses, from the due date for payment of such sum. In any case where interest falls to be paid in respect of a period of less than a full year, the amount thereof shall be calculated on the basis of a year of 365 (three hundred and sixty five) days, and in the case of an incomplete month, the number of days elapsed.

## **6. INDEMNIFICATION OF BONDHOLDERS' REPRESENTATIVE**

The Company shall indemnify and hold harmless the Bondholders' Representative and its officers, directors, employees and agents in respect of all liabilities and expenses reasonably incurred by it or by any such person in the execution of any duties, powers or authorities under this Agreement including the reasonable Expenses and against all actions, proceedings, costs, claims and demands in respect of any matter conducted or omitted in any way relating to this Agreement except to the extent

the liabilities, expenses, actions, proceedings, costs, claims or demands were due to the gross negligence or wilful misconduct of the Bondholders' Representative.

## **7. AMENDMENT OF THE AGREEMENT**

7.1 Subject to the Conditions and applicable laws, any amendment of the terms and conditions of this Agreement shall be mutually agreed in writing and signed by authorised signatories of the parties hereto, but shall only be agreed to by the Bondholders' Representative pursuant to an applicable resolution of the Bondholders except for any amendment which shall not materially adversely affect the interests of the Bondholders.

7.2 Should there be any amendment made to the Conditions, laws, rules, notifications, regulations, order of the SEC Office, the SEC or any other government authority which shall have a material effect on any provisions of this Agreement, the parties hereto shall mutually participate in amending such terms and conditions under this Agreement to be in compliance with the amended Conditions, laws, rules, notifications, regulations or orders.

## **8. DEFAULT**

Subject to Clause 10 (Consequence of Termination), if any party fails to comply with any provision of this Agreement and/or the Conditions or is in breach of this Agreement and/or the Conditions, it shall be deemed that such party is in default and the other party shall be entitled to terminate this Agreement without prejudice to its rights or remedies at law to claim against the party in default for any losses or compensation resulting from its failure to comply with this Agreement and/or the Conditions.

## **9. TERMINATION**

In addition to the right to terminate this Agreement by a non-defaulting party under Clause 8 (Default) and subject to Clause 10 (Consequence of Termination), this Agreement can also be terminated upon the occurrence of the following events:

- (a) all amounts owed in connection with the Bonds have been paid in full;
- (b) either party gives not less than 3 (three) months' prior written notice of termination to the other party;
- (c) a Bondholders' meeting resolves to revoke the appointment of the Bondholders' Representative in accordance with the Conditions;
- (d) any proceeding or other action is commenced against the Bondholders' Representative, seeking reorganisation, receivership, liquidation, dissolution, winding-up, composition and other similar events, or other is any order or judgement for dissolution or suspension of business by the court;
- (e) the Bondholders' Representative lacks any qualification of a bondholders' representative and such disqualification cannot be rectified within 60 (sixty) days; or
- (f) the Bondholders' Representative fails to comply with the terms and conditions of this Agreement or the Conditions and such failure is not rectified within 30 (thirty) days from the date on which the Issuer notified in writing to the Bondholders' Representative.

## **10. CONSEQUENCE OF TERMINATION**

- 10.1 Any termination of the appointment of the Bondholders' Representative under this Agreement, except the termination under Clause 9(a), will not be effective until a successor is appointed. The Bondholders' Representative may assist the Company to nominate a successor bondholders' representative. Subject to the Conditions, if any of the bondholders' representatives nominated by the Bondholders' Representative has not been selected within 3 (three) months from the date of termination notice, it shall be deemed that the last bondholders' representative nominated by the Bondholders' Representative is appointed as the successor bondholders' representative and this Agreement shall terminate, at the expiry of such 3 (three) months' notice.
- 10.2 Upon termination of this Agreement or unless otherwise directed by the Company, the Bondholders' Representative will cease using information and documents provided by the Company and/or the Bondholders (the **Documents**) and return or destroy at the Company's direction all copies of the Documents. The Bondholders' Representative will delete all copies of the Documents residing in memory on any computer at the Bondholders' Representative's site. The Bondholders' Representative will, within 30 (thirty) days from the effective date of the termination, certify in writing that all copies of the Documents have been returned, deleted or destroyed as directed by the Company.
- 10.3 The provision of Clause 5 (Remuneration of the Bondholders' Representative), Clause 6 (Indemnification of Bondholders' Representative), Clause 10 (Consequence of Termination), Clause 11 (Claims and Liabilities), Clause 12 (Notices), Clause 13 (Others) and Clause 14 (Governing Law) shall survive such expiration or termination and remain in full force and effect. If this Agreement expires or terminates pursuant to this Agreement, this Agreement shall be of no further effect and no party shall be under any liability to any other in respect of this Agreement except for (i) any liability arising before or in relation to such expiration or termination of this Agreement and (ii) the liability of a party under the provisions which shall survive the termination of this Agreement.

## **11. CLAIMS AND LIABILITIES**

- 11.1 If the Company is in default of the Conditions and the Bondholders or the Bondholders' Representative suffer any losses, costs, expenses or damage therefrom, the Bondholders' Representative and/or the Bondholders shall be entitled to claim against the Company, subject to the terms and conditions of the Conditions.
- 11.2 The Bondholders' Representative shall only be liable to the Bondholders in relation to the damages incurred from wilful misconduct or gross negligence in the performance of its obligations as provided in the Conditions, applicable laws and this Agreement.
- 11.3 The Bondholders' Representative in performing its duties under the Conditions:
- (a) shall not have any responsibility or liability in respect of any failure or delay by the Company in performing its respective obligations hereunder or under the Conditions or other agreements relating thereto and hereto; and
  - (b) shall not have any responsibility or liability in respect of the execution, effectiveness, enforceability, sufficiency, legality, validity or genuineness of the Conditions, the agreements and documents referred to herein and therein, or of any certificate, report, document of title or other document delivered hereunder or thereunder, any statement of the Company herein or therein, or the accuracy or completeness of any information was or is circulated by the Bondholders' Representative.

## 12. NOTICES

All correspondence and notices between the Bondholders' Representative and the Company shall be made in writing and validly given by registered mail or by hand or by facsimile to the other party at the following addresses or any address (in case of change of address) which is notified in writing to the other party by not less than 7 (seven) days in advance.

- (a) if to **Bondholders' Representative:**

**BANK OF AYUDHYA PUBLIC COMPANY LIMITED**

1222 Rama 3 Road  
Bang Phongphang, Yan Nawa  
Bangkok 10120, Thailand (AA Floor)

Tel: +66-2 296-3582

Fax: +66-2 683-1298

Attention: Mrs. Srisunan Dutiyabodhi

- (b) if to the **Company:**

**EASY BUY PUBLIC COMPANY LIMITED**

5th Floor, Sathorn Square Office Tower  
98 North Sathorn Road  
Silom, Bangrak  
Bangkok 10500, Thailand

Tel: +66-2 684-3333

Fax: +66-2 695-0180

Attention: Chief Financial Officer, Finance Department

Any correspondence and notices shall be deemed to be duly received by the addressee, in case of facsimile, when the sender's fax machine has generated a confirmed delivery report, in the case of personal delivery, at the time of delivery, and, in the case of postage prepaid registered mail, on the 7th (seventh) day after it was registered for mail.

## 13. OTHERS

- 13.1 The Company shall be responsible for reasonable and actual costs and expenses in relation to preparation, negotiation and appointment of the Bondholders' Representative.
- 13.2 The payment of the Bondholders' Representative remuneration shall be made without any withholding or deduction (except where such withholding or deduction is required by law) plus the applicable value added tax. The Company shall be responsible for and shall remit to the Revenue Department of Thailand all applicable withholding taxes in relation to the Bondholders' Representative Fee as required by the Thai Revenue Code.
- 13.3 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**14. GOVERNING LAW**

This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Thailand.

**15. EFFECTIVE DATE**

This Agreement shall be effective from the Issue Date.

**IN WITNESS WHEREOF**, the parties have set their hands and seals on the date and year first above written.

**SCHEDULE 1**  
**TERMS AND CONDITIONS OF THE BONDS**

## SIGNATORIES

### THE COMPANY

SIGNED for and on behalf of  
**EASY BUY PUBLIC COMPANY LIMITED**

By: \_\_\_\_\_  
Name: Mr. Yoshiro Yamaguchi  
Title: Chief Financial Officer

### WITNESS

By: \_\_\_\_\_  
Name: Mrs. Pornthip Jirayucharoensak  
Title: Assistant Vice President

### THE BONDHOLDERS' REPRESENTATIVE

SIGNED for and on behalf of  
**BANK OF AYUDHYA PUBLIC COMPANY LIMITED**

By: _____	By: _____
Name: Mrs. Banchoi Pattanapongpaibul	Name: Mrs. Srisunan Dutiyabodhi
Title: Senior Vice President, Office of the President and CEO	Title: Senior Vice President, Head of Department

### WITNESS

By: \_\_\_\_\_  
Name: Miss Benjamaporn Potranun  
Title: Vice President