

**IMPORTANT NOTICE:** THE TERMS OF THIS AGREEMENT FORM A LEGALLY BINDING AGREEMENT BETWEEN THE BORROWER AND THE BANK. PLEASE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE SIGNING IT. IF YOU DO NOT UNDERSTAND ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY SEEK THE BANK'S CLARIFICATION ON SUCH TERMS AND CONDITIONS.

THIS AGREEMENT is made the date on as stated in **Item 1 of Schedule 1**

between

The person(s) named and having his (their) address as stated in **Item 2 of Schedule 1** (hereinafter referred to as the "**Borrower**") of the one part

and

CIMB BANK BERHAD (Company No. 13491-P), a licensed bank incorporated in Malaysia and having its registered office at Level 13, Menara CIMB, Jalan Stesen Sentral 2, Kuala Lumpur Sentral, 50470 Kuala Lumpur (hereinafter referred to as the "**Bank**") and through such branch as identified in the Letter of Offer (as hereinafter defined) of the other part.

WHEREAS the Borrower has applied to the Bank for the Facilities of the description and for such aggregate amount as stated in the Letter of Offer, and the Bank has approved the application upon the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, except where there is a specific provision to the contrary or where the context otherwise requires, each of the expressions set out in the left hand column below shall bear the meaning shown opposite it in the right hand column:

<b>Applicable Laws</b>	any laws or any directives, guidelines, circulars, notes, directions, requests, requirements, orders, rules, rulings and/or regulations (in each case, whether or not having the force of law) of any governmental and/or regulatory authority and/or other persons or body having authority or jurisdiction over the Bank, the Borrower and/or the Security Party, as the case may be.
<b>Assignment</b>	an assignment relating to any contract, agreement and/or property including but not limited to the Land, to be created by the Borrower and/or any third parties as the Bank may in its discretion specify, in favour of the Bank and in form and content acceptable to the Bank, duly executed by the Assignor as security for the Facilities and the Indebtedness.
<b>Assignor</b>	the person(s) named in the Letter of Offer, and shall include the Assignor's personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>Availability Period</b>	the period of time for which the Facilities shall be available to the Borrower as specified in this Agreement.
<b>BA Facility</b>	the Bankers Acceptance Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Bank Guarantee</b>	the Bank Guarantee to be issued by the Bank under the Bank Guarantee Facility in the form and content acceptable to the Bank, or in such form and content as the Bank may prescribe from time to time, and the expression shall include any extensions or renewal thereof.
<b>Base Lending Rate or BLR</b>	the rate of interest per annum prescribed by the Bank (and subject to the terms of this Agreement, as varied from time to time at the discretion of the Bank) as an indicator rate against which rates of interest for loans made in Ringgit Malaysia to customers of the Bank or the rate (by whatever name called) that is from time to time quoted by the Bank as its base lending rate.
<b>BG Facility</b>	the Bank Guarantee Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>BL Facility</b>	the Bridging Loan Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>BNM</b>	Bank Negara Malaysia, and shall include its successors-in-title, assigns and/or persons deriving title thereunder, as the case may be.
<b>Borrower</b>	the person(s) named and having his (their) address as stated in <b>Item 2 of Schedule 1</b> , and shall include the Borrower's personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>Business Day</b>	a day on which banks are open (other than a Saturday or Sunday or public holiday) for general

business in Kuala Lumpur for the transaction of business of the nature required by this Agreement.

<b>Charge</b>	a legal Charge on the Land in favour of the Bank in the form and content acceptable to the Bank, duly executed by the Chargor as security for the Facilities and the Indebtedness.
<b>Chargor</b>	the person(s) named in the Letter of Offer, and shall include the Chargor's personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>CF Facility</b>	the Contract Financing Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Constitution</b>	has the meaning ascribed to it in the Companies Act 2016.
<b>Cost of Funds</b>	the rate of interest incurred to the Bank for obtaining funds in the relevant interbank market, to fund the amount and for the tenure of the loan applicable to the interest period or any overdue amount, as the case may be and to which shall be added the cost of maintaining statutory reserves and complying with liquidity and other requirements imposed at any time by BNM and/or any other authorities having jurisdiction over the Bank in Malaysia.
<b>DBD Facility</b>	the Domestic Bills Discounting Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>DBP Facility</b>	the Domestic Bills Purchased Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>DC Facility</b>	the Documentary Credit Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Debenture</b>	a fixed and a floating charge over all the assets, property and undertakings of the Borrower and/or the Security Party in favour of the Bank, in the form and content acceptable to the Bank, to be executed by the Borrower and/or the Security Party as security for the Facilities and the Indebtedness.
<b>Deed of Assignment of Benefit of Contract</b>	the Deed of Assignment of Benefit of Contract, which shall be in a form and content acceptable to the Bank, to be executed by the Assignor in favour of the Bank, as security for the Facilities and the Indebtedness.
<b>Default Rate</b>	the default rate of interest as specified in this Agreement and includes such other rate or rates as may be prescribed by the Bank from time to time.
<b>Depositor</b>	the person(s) named in the Letter of Offer or to be named from time to time, and shall include the Depositor's personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>Designated Account</b>	the account maintained to reflect the amount due to the Bank or the current account opened and maintained with the Bank for the OD Facility.
<b>Documentary Credit</b>	the Documentary Credit to be issued by the Bank under the DC Facility in the form and content acceptable to the Bank, or in such form and content as the Bank may prescribe from time to time, and the expression shall include any extensions or renewal thereof.
<b>Drawing</b>	a drawing made under any Facility and/or the issue of a Bank Guarantee or Documentary Credit to be made or deemed made in accordance with the terms and/or conditions of this Agreement.
<b>Drawing Notice</b>	a notice of drawing in relation to the relevant Facility in the form and content acceptable to the Bank, duly completed and signed by or on behalf of the Borrower.
<b>ECR Facility</b>	the Export Credit Refinancing Pre-Shipment and Post-Shipment Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Event of Default</b>	any of the events mentioned in Clause 10 or any event which, with a lapse of time and/or the giving of notice and/or a determination being made under the relevant paragraph, would constitute any of the events mentioned in Clause 10.
<b>Exim Bank</b>	Export-Import Bank of Malaysia Berhad, and shall include its successors-in-title, assigns and/or persons deriving title thereunder, as the case may be.
<b>Facilities</b>	the facility or facilities stated in the Letter of Offer to be granted by the Bank to the Borrower subject to the terms and conditions of this Agreement (including but not limited to the relevant provisions of <b>Schedule B</b> ), and where the context so requires or admits, references to the Facilities shall be construed as a reference to one or more of the Facilities or all the Facilities and " <b>Facility</b> " shall be construed accordingly.
<b>FBD Facility</b>	the Foreign Bills Discounting Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.

<b>FBP Facility</b>	the Foreign Bills Purchased Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>FCL Facility</b>	the Foreign Currency Loan Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>FECL Facility</b>	the Foreign Exchange Contract Limit Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>FLEXI Facility</b>	The Flexi Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement
<b>Guarantee</b>	a guarantee in favour of the Bank in the form and content acceptable to the Bank, duly executed by the Guarantors.
<b>Guarantors</b>	the person(s) named in the Letter of Offer, and shall include the Guarantors' personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>Indebtedness</b>	the aggregate of all monies, whether principal, interest, capitalized interest, commission, commitment fees, cost, charges or other monies due, outstanding or payable or agreed to be payable by the Borrower and /or any Security Party to the Bank from time to time whether solely or jointly with any other person and whether as principal or surety and includes all liabilities, obligations and indemnities whether present or future or actual or contingent for the repayment and payment of all or any monies by the Borrower and/or Security Parties in respect of or arising from the Facilities and shall include any part thereof.
<b>Insurance Policy</b>	the insurance policy and/or any form of insurance coverage from the Insurer in form and content acceptable to the Bank.
<b>Insurer</b>	the person(s) in the Bank's panel or as agreed by the Bank and shall include the Insurer's personal representatives, successors-in-title, permitted assigns and/or persons deriving title thereunder, as the case may be.
<b>Interest Payment Date</b>	any date stated in this Agreement for payment of interest, and unless so stated, Interest Payment Date will mean the last day of each month or any other date specified by the Bank.
<b>Labuan FSA</b>	the Labuan Financial Services Authority, and shall include its successors-in-title, assigns and/or persons deriving title thereunder, as the case may be.
<b>Land</b>	such land bearing the particulars and description as set out in the Letter of Offer.
<b>Letter of Offer</b>	the letter of offer issued by the Bank to the Borrower and bearing the date stated in <b>Item 3 of Schedule 1</b> , and includes any supplementals, amendments, variations or additions thereto.
<b>MCTL Facility</b>	the Multi Currency Trade Loan Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Memorandum of Charge over Fixed Deposit</b>	the Memorandum of Charge over Fixed Deposit in favour of the Bank in form and content acceptable to the Bank, duly executed by the Depositor as security for the Facilities and the Indebtedness.
<b>OD Facility</b>	the Overdraft Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Power of Attorney</b>	the power of attorney to be issued/executed by the Security Party in favour of the Bank, in form and content acceptable to the Bank.
<b>Prevailing Rate</b>	the rate or rates of interest specified in this Agreement in respect of the various Facilities, and includes such other rate or rates of interest as may be prescribed by the Bank from time to time.
<b>RC Facility</b>	the Revolving Credit Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Restricted Party</b>	refers to a person: <ul style="list-style-type: none"> <li>(i) that is listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;</li> <li>(ii) that is located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions;</li> <li>(iii) with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities;</li> </ul>

or

- (iv) that is listed or restricted under the Bank's policy or persons acting on behalf of or a person located in prohibited or restricted countries under the Bank's policy or persons acting on behalf of a person dealing in prohibited business or currencies under the Bank's policy or persons acting on behalf of such person.

<b>Repayment Date</b>	the repayment date or dates specified in this Agreement for the various Facilities.
<b>Ringgit Malaysia and RM</b>	the lawful currency of Malaysia.
<b>Sanctions</b>	the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority.
<b>Sanctions Authority</b>	refers to: <ul style="list-style-type: none"> <li>(i) the US government;</li> <li>(ii) the United Nations;</li> <li>(iii) the European Union;</li> <li>(iii) the United Kingdom government;</li> <li>(v) the Malaysian Government;</li> <li>(vi) the Government of countries in which CIMB Group has presence or dealings;</li> <li>(vii) the respective Governmental Agencies and governmental institutions of any of the foregoing, including, the Office of Foreign Assets Control of the US Department of Treasury, the US Department of State and Her Majesty's treasury of the United Kingdom; or</li> <li>(viii) and other enforceable authority.</li> </ul>
<b>Sanctions List</b>	refers to <ul style="list-style-type: none"> <li>(i) the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the US Department of Treasury and published from time to time on its website at <a href="http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx">http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx</a> (or any replacement website or page);</li> <li>(ii) the consolidated list of financial sanctions targets and the investment ban list maintained by Her Majesty's treasury of the United Kingdom and published from time to time on its website at <a href="http://www.hm-treasury.gov.uk/fin_sanctions_index.htm">http://www.hm-treasury.gov.uk/fin_sanctions_index.htm</a> (or any replacement website or page); or</li> <li>(iii) any similar list maintained by, or public announcement of Sanctions designation made by, any Sanctions Authority controlled, prohibited or restricted goods list maintained by law enforcement agencies.</li> </ul>
<b>Security Documents</b>	the agreements and documents stated in the Letter of Offer, including (where applicable) the Charge, the Assignment, Deed of Assignment of Benefit of Contract, Debenture, the Memorandum of Charge over Fixed Deposit, the Power of Attorney, the Guarantee and/or the Insurance Policy, all in form and content acceptable to the Bank, and/or any documents for the time being or from time to time constituting security whether by way of substitution or in addition to any Security Interest in favour of the Bank for the obligations and liabilities of the Borrower under this Agreement for the Facilities and the Indebtedness, and references to the Security Documents include reference to any of them.
<b>Security Interest</b>	any guarantee, mortgage, pledge, lien, right of set-off, sale with right of retention (other than a lien, right of set-off or sale with right of retention arising by operation of law and in the normal course of business), charge (whether legal or equitable, fixed or floating), assignment, debenture, hypothecation, deposit, insurance policy and/or any security interest of any kind (including without prejudice any "hold-back" or "flawed assets" arrangement title retention, assignment or transfer by way of security, sale and lease-back, sale and repurchase on credit terms) and/or any other arrangement having substantially the same legal or economic effect as any of the foregoing, and "secured" shall be construed accordingly.
<b>Security Party</b>	the Assignor, Chargor, Depositor, Guarantors, Insurer, and/or any other persons presently or in future executing or providing any Security Documents, Security Interest and/or any form of security to the Bank for payment of the Indebtedness, and any reference to the Security Party

includes references to any of them.

<b>SG Facility</b>	the Shipping Guarantee Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>Shipping Guarantee</b>	the Shipping Guarantee to be issued by the Bank under the SG Facility in the form and content acceptable to the Bank, or in such form and content as the Bank may prescribe from time to time, and the expression shall include any extensions or renewal thereof.
<b>STA Facility</b>	the Short Term Advance Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>TL Facility</b>	the Term Loan Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>TR Facility</b>	the Trust Receipt Facility to be granted by the Bank to the Borrower subject to the terms and conditions in this Agreement.
<b>United States Dollar and USD</b>	the lawful currency of the United States of America and in relation to all payments to be made under this Agreement, same day funds settled through the New York Clearing House System or such other funds as may for the time being be customary for the settlement in New York City of international payments in such currency.

## 1.2 Interpretation

In this Agreement (unless the context otherwise requires):

- (a) words applicable to natural persons shall include any body of persons, companies, corporations, firms or partnerships, states, administrative and governmental entities, and vice versa;
- (b) references to the masculine gender include the feminine and neuter genders and vice versa, and references to the singular number include the plural and vice versa;
- (c) references to any Schedule, Clauses, sub-clauses, paragraphs and sub-paragraphs are references to the schedules, clauses, sub-clauses, paragraphs and sub-paragraphs of this Agreement;
- (d) the headings of clauses and the underlined introductory words to sub-clause are inserted for ease of reference only and shall be ignored in construing this Agreement;
- (e) references to any statute, law, enactment, rule or regulation include the statute, law, enactment, rule or regulation as reenacted, amended or extended from time to time;
- (f) references to any document shall be deemed to include references to such document as varied supplemented or replaced from time to time;
- (g) all annexures, schedules or appendices to this Agreement shall be taken, read and construed as essential parts of this Agreement;
- (h) where two or more persons or parties are included or comprised in any agreements, terms, stipulations and undertakings expressed to be made to such persons or parties the same shall be enforceable by them jointly and severally and all agreements, stipulations and undertakings expressed to be made by or on the part of such persons or parties shall be deemed to be made by and binding upon such person or parties jointly and severally; and
- (i) words denoting an obligation on a person or party to do any act, matter or thing include an obligation to procure that it be done and words placing a person or party under a restriction include an obligation not to permit infringement of that restriction.

## 2. CONDITIONS PRECEDENT AND DISBURSEMENT

### 2.1 Conditions Precedent

The Facilities shall become available to the Borrower when all the conditions in Schedule A have been fulfilled, the Bank has received the documents and evidence listed in Schedule A, in each case in form and content satisfactory to the Bank, and upon fulfilment of the conditions set out in Clause 2.4.

### 2.2 Waiver of Conditions Precedent

The terms and conditions set out in Schedule A, Clauses 2.1 and 2.4, are inserted and may be waived by the Bank in whole or in part in respect of any Facility with or without terms or conditions, without prejudicing the rights of the Bank to assert such terms and conditions in whole or in part in respect of any other Facility or with regard to subsequent Drawings in respect of the same Facility.

### 2.3 Cancellation Pending Compliance

Pending the fulfilment in manner satisfactory to the Bank of the conditions precedent hereinbefore specified, the Bank may at its discretion terminate the Facilities or suspend the Drawing of the Facilities or any part thereof by notice to the Borrower.

## 2.4 Conditions for Utilisation

If:

- (a) no Event of Default has occurred or would occur as a result of the utilisation of any of the Facilities;
- (b) the conditions precedent in Schedule A, have been fulfilled by the Borrower to the satisfaction of the Bank;
- (c) all fees and expenses payable hereunder which have become due have been paid in full;
- (d) there has been no material adverse change in the financial condition of the Borrower;
- (e) each of the representations and warranties set out in Clause 6.1 remain accurate at the date of utilisation as if given on that date by reference to the facts and circumstances then existing; and
- (f) there has been no change in circumstances or law which may affect the ability of the Bank to grant the Facilities or which may increase the costs to the Bank in doing so;

then subject to the provisions of this Agreement, and in particular to the specific terms and conditions set out in relation to the particular Facility, the Borrower may on a Business Day during the duration of the Facility or the Availability Period (as the case may be) utilise or continue to utilise the Facility.

## 2.5 Disbursement

The Borrower hereby authorises the Bank to pay any amounts of the Facilities in such manner and upon such terms and/or conditions as determined by the Bank, to any financial institution, firm of solicitors, developer or vendor, builder, contractor, architect and/or any such persons as the Bank may in its discretion decide, and/or by progressive release or otherwise as determined by the Bank.

The Borrower shall not request the Bank to stop or defer any disbursement of the Facilities if the Bank has already given any undertaking to any third parties to disburse the Facilities.

The Borrower shall indemnify the Bank for all costs, expenses, claims and demands made on the Bank pursuant to the Bank giving any express or implied undertaking for and on behalf of the Borrower to any financial institution or developer or vendor or their solicitors or firm of solicitors purporting to act for any of them.

## 3. THE FACILITIES

### 3.1 Amount

Subject to the terms and/or conditions of this Agreement (including but not limited to **Schedule B**), the Bank agrees to make available to the Borrower and the Borrower agrees to accept the Facilities in the maximum aggregate amount stated in the Letter of Offer.

### 3.2 Purpose

The Borrower undertakes and agrees that the Facilities shall be used solely for the purposes herein stated. Despite the foregoing provision:

- (a) the Bank shall not be obliged to enquire as to the utilisation by the Borrower of the Facilities or to ensure that they are in fact utilised as envisaged; and
- (b) the liability of the Borrower under this Agreement shall not be in any way prejudiced, affected or diminished by reason that all or any part of the Facilities are utilised for some other purpose (whether or not the Bank has notice of that fact).

## 4. INTEREST, COMMISSION AND VARIATION OF INTEREST AND COMMISSION

### 4.1 Payment of Interest

Unless any other interest payment period is specified by the Bank, the Borrower shall pay to the Bank the interest, commission, bank charges and such other charges whatsoever set out in the relevant Letter of Offer and chargeable under this Agreement. The interest period for each Drawing under the Facility shall be divided into successive interest periods of one (1) month. The Bank may revise the duration of the interest periods by giving the Borrower not less than twenty-one (21) calendar days' prior written notice.

Any unpaid interest on the Facilities for the time being hereby secured, including capitalised interest, shall at the end of each calendar month, or at the end of any other interest payment period, as determined by the Bank be capitalised and added for all purposes to the Facilities or Facility then owing and shall thenceforth bear interest and be secured and payable accordingly, and all the undertakings and conditions contained in or implied by these presents and all rules of law or equity in relation to the Facilities and interest thereon shall equally apply to such capitalised interest and to interest on such arrears. All capitalised/compounded interest shall be deemed as interest and not principal for determining whether the principal sums secured under any security given to the Bank has been exceeded or not.

#### 4.2 Right to Recall

Despite the provision of Clause 4.1 above, the Bank may by notice to the Borrower recall the Facilities upon any non-repayment of interest, capitalised or otherwise, and/or principal sums and/or disbursements when due to the Bank.

#### 4.3 Rate

The rate of interest, bank charges and other charges payable by the Borrower to the Bank on the Indebtedness shall, subject to the Bank's right of variation under this Clause 4, be calculated in the manner set out in the Letter of Offer and under the applicable terms in Schedule B.

#### 4.4 Variation

Despite the provisions relating to the rates of interest or commissions or discount rates or other bank charges provided in this Agreement or elsewhere in any other documents, the Bank may at any time and/or from time to time vary at its discretion such rates of interest or commissions or discount rates or other bank charges (which variation may take place by either varying the Base Lending Rate or Cost of Funds or the margins or spreads above the Base Lending Rate or Cost of Funds or any of the foregoing, or in the manner or mode of computation or charging or howsoever) by any of the following methods of notification to the Borrower:

- (a) in respect of any variation of the Base Lending Rate by placing in one issue of a daily national newspaper or by displaying at the premises of the Bank or posted on CIMB Malaysia Group's website, a general notice of change of the Base Lending Rate addressed to the public generally and the variation shall take effect on the date specified therein which date shall not fall any earlier than twenty-one (21) calendar days' from the date of such notice. Such notice shall be deemed given on the first date of: (i) such publication made in the newspaper in which publication is required, (ii) the public display at the Bank's premises; or (iii) posting on CIMB Malaysia Group's websites;
- (b) in respect of any variation of the margin or spread imposed above the Base Lending Rate or the rates of interest, commissions, discount rates or other bank charges or otherwise, by giving not less than twenty-one (21) calendar days' prior written notice (which need not be signed if sent by computer generated advice) on the Borrower and the said notice may be sent by ordinary mail at the Borrower's last known address. The variation shall take effect from the date specified in the notice; and
- (c) in respect of any variation of the Cost of Funds, and/or any variation of the margin or spread imposed above the Cost of Funds, the Bank may vary the Cost of Funds, and/or the margin or spread imposed above the Cost of Funds, by notice to the Borrower.

In the event of any delay on the part of the Bank to give any notice to the Borrower regarding any variation as stated above shall not relieve the Borrower from its obligation to pay the interest, commissions, discount charges or other bank charges at the varied rates. The decision and certificate or confirmation of the Bank as to what at any time is the rate of interest chargeable or commission or bank charges or other charges or the amount of interest or commission or bank charges or other charges payable by the Borrower shall in the absence of manifest error be final and conclusive and binding upon the Borrower.

#### 4.5 Changes to Repayment Terms Consequential to Variation of Interest

Subject to Clause 4.4 above, if as and when the rate of interest payable by the Borrower under this Agreement is varied by the Bank, the Bank may in its discretion, by notice to the Borrower make the necessary adjustments consequential to such variation by:

- (a) varying the amount of any instalments; or
- (b) varying the number of instalments; or
- (c) varying the time for repayment;
- (d) or all of the above

#### 4.6 Method of Calculating Interest

Interest shall be calculated on the basis of actual days elapsed and shall be paid by the Borrower (which the Borrower hereby undertakes to do) to the Bank at the end of each interest period.

Despite the above, the Borrower hereby agrees that the method or manner of calculation of interest and all other banking charges payable herein shall be by such method or manner as the Bank shall adopt from time to time in the discretion of the Bank and the decision of the Bank shall in the absence of manifest error be final and conclusive.

#### 4.7 Late Interest

If the Borrower draws in excess of the limit or sub-limit prescribed by the Bank (whether such excess has arisen as permitted from time to time by the Bank or by any debit to the account of the Borrower which the Bank is entitled to make) and/or there is a default in the payment of any instalment, interest and/or any other moneys agreed to be paid by the Borrower under the Facilities or a demand is made by the Bank of the Indebtedness or any part thereof, the Borrower shall pay to the Bank additional interest at the rate prescribed in the Letter of Offer and Schedule B or such other rate as may be determined by the Bank from time to time at its discretion, by notice to the Borrower. Such interest is calculated from the date such payment is overdue/excess is incurred until the date of full payment both before as well as after any demand or judgment and in spite of the fact that the banker and borrower relationship may have ceased or been terminated. Unpaid interest is compounded on a monthly basis unless otherwise determined by the Bank, by notice to the Borrower.

#### 4.8 Late Payment Interest for Foreign Currency Facilities

The respective late payment interest (calculated on a monthly rest basis) for the foreign currency facilities shall be payable if there is a default in the payment of any instalment, interest and/or any other moneys agreed to be paid by the Borrower under the relevant Facility or a demand is made by the Bank of the Indebtedness or any part thereof in connection with or arising from the foreign currency facilities. Such late payment interest shall be payable by the Borrower within seven (7) calendar days of receipt of a demand being made by or on behalf of the Bank and until demanded as aforesaid, monthly, calculated as from the date such monies are due up to the date of the Bank's actual receipt of the full amount thereof from the Borrower (both before as well as after demand or judgment and irrespective of whether or not the banker and borrower relationship exists or subsists or has been terminated) by way of indemnity.

### 5. SECURITY

#### 5.1 Undertaking Relating to Security

In consideration of the Bank granting the Facilities and as continuing security for the payment by the Borrower of the Facilities and the Indebtedness, the Borrower shall in addition to this Agreement prior to or contemporaneously with the execution of this Agreement, and/or as and when required by the Bank, execute and/or provide, or cause the Security Parties to execute and/or provide, the Security Documents.

#### 5.2 Continuing Security

Any form of security created by or under the Security Documents is intended to be and shall be a continuing security for all monies whatsoever now or hereafter and from time to time owing to the Bank under the Facilities and the Indebtedness and is in addition to, and shall not be merged in, or in any way prejudice, any other security which the Bank may now or hereafter hold or have with the Borrower or any other person in respect of the amount due under this Agreement.

#### 5.3 Restriction against Other Security Interest

The Borrower hereby declares that there is no subsisting encumbrance whatsoever upon any of its assets secured by the Security Interest or Security Documents to which it is a party and the Borrower shall not during the term of this Agreement, the Security Interest and the Security Documents, without the consent in writing of the Bank, execute or grant any form of encumbrances in respect of any of its assets secured by the Security Documents and shall procure that each Security Party similarly does not do so in respect of any assets of that Security Party secured by the Security Documents.

#### 5.4 Undertaking to Provide Further Security

If the Bank shall determine that further or additional security is required from the Borrower and/or the Security Party to secure the Facilities or Indebtedness for whatever reasons including any increase in the liabilities, commitment and/or obligations of the Bank under this Agreement or there has occurred or is likely to occur any dilution, reduction, decrease or failure in any Security Interest, the Borrower and/or the Security Party, shall upon receipt of prior written notice from the Bank-

- (a) provide and/or execute in favour of the Bank or as the Bank shall direct, any further Security Interest, including but not limited to any charges, mortgages, assignments, transfers or agreements in relation to the estate, assets or business, which now or in future will belong to the Borrower and/or the Security Party and the benefit of all licences held in connection with such estate, assets or business as the Bank shall require, to secure all moneys and liabilities hereby agreed to be paid or intended to be hereby secured, such Security Interest to be prepared by or on behalf of the Bank at the cost of the Borrower and to contain all such terms and conditions as the Bank may require.
- (b) procure the Security Party to, at any time if and when required by the Bank so to do, deposit with the Bank the documents of title of any or all immovable properties vested in the Borrower or the Security Party for any tenure and all or any debentures shares stocks or other investments or securities to the Borrower or the Security Party. Such deposit may be by way of collateral security for the repayment of moneys and liabilities hereby secured and may also or otherwise be for the purpose of securing any other moneys owing to the Bank by the Borrower and not secured hereunder.

#### 5.5 Agreement not to prejudice existing or collateral security.

This Agreement and the Security Documents shall be without prejudice to any security which may already or hereafter be given by the Borrower or a Security Party whether the same be for securing the repayment of the Indebtedness or any part thereof or any other money agreed to be paid and whether such security is taken as additional or collateral security or otherwise howsoever.

### 6. REPRESENTATION AND WARRANTIES

#### 6.1 Representations and Warranties

The Borrower acknowledges that the Bank has entered into this Agreement and granted the Facilities in full reliance on representations by the Borrower in the following terms and the Borrower now represents and warrants to the Bank that:

##### (a) Powers and authorisations

the Borrower and/or the Security Party have the power and/or authority to execute, deliver and perform the terms and



conditions of this Agreement and/or the Security Documents, and have taken all necessary corporate and/or other actions to authorise the execution, delivery and performance of this Agreement and/or the Security Documents;

(b) Non-Violation

this Agreement and/or the Security Documents constitute the legal, valid and binding obligations of the Borrower and/or the Security Party, and the execution, signing, delivery and/or performance of this Agreement and/or the Security Documents by the Borrower or the Security Party, does not or will not exceed the power or authority granted to them by or violate the provisions of:

- (i) any law by which they or any of their assets are subject to, bound or affected;
- (ii) their Constitution (where the Borrower and/or the Security Party, as the case may be, has a Constitution); and/or
- (iii) any agreement to which they are parties or by which any of their assets are bound;

(c) Consents

no authorisation, approval, consent, license, exemption, recording, filing or notarisation and no payment of any duty or tax and no other action whatsoever is necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Borrower and/or the Security Party, or the rights of the Borrower and/or the Security Party, under this Agreement or the Security Documents;

(d) No Default

no event has occurred which constitutes, or which with the giving of notice and/or the lapse of time and/or a relevant determination would constitute, a contravention of, or default under, any agreement or instrument by which the Borrower or the Security Party or any of their assets are bound or affected, being a contravention or default which might either have an adverse effect on the business, assets or condition of the Borrower or the Security Party or their ability to perform their obligations under this Agreement or the Security Documents to which they are a party, and without in any way limiting the generality of the foregoing, the Borrower and/or the Security Party is not in default of any sale and purchase agreement relating to the Land and/or any agreement which may constitute or form the basis of any Security Interest to be provided by the Borrower and/or the Security Party to the Bank under this Agreement;

(e) Litigation

no litigation (whether civil or criminal), arbitration or administrative proceeding or claim, which might by itself or together with any other such proceedings or claims, either have an adverse effect on the Borrower's or the Security Party's business, assets or conditions, or adversely affect their ability to observe or perform their obligations under this Agreement or the Security Documents to which they are parties, is presently in progress or pending or, to the best of the knowledge, information and belief of the Borrower, threatened against the Borrower or the Security Party or any of their assets;

(f) Tax Liabilities

all necessary returns have been delivered by or on behalf of the Borrower and/or the Security Party to the relevant taxation authorities and the Borrower is not in default in the payment of any taxes, assessments, fees and other governmental charges assessed against each of them or upon any of their respective properties, assets, business or income, and no claim is being asserted with respect to taxes which is not disclosed in the financial statements referred to in paragraph (g) below;

(g) Accounts

the audited financial statements (including the income statement and balance sheet) of the Borrower if so required by the Bank have been prepared on a basis consistently applied in accordance with generally accepted accounting principles in Malaysia and give a true and fair view of the results of its operations for the period stated and the state of its affairs at that date, and in particular accurately disclose or reserve against all the liabilities (actual or contingent) of the Borrower;

(h) Assets

the Borrower and/or the Security Party are the beneficial owners and have title to all their assets and/or property, and that the Land and/or any other property provided by the Borrower and/or the Security Party as security for the repayment of the Facilities, is free from any other Security Interest and/or any other encumbrances other than those created pursuant to this Agreement;

(i) No Security

save and except as disclosed to the Bank, none of the assets of the Borrower are affected by any Security Interest, and the Borrower is not a party to, nor is it or any of its assets bound by, any order, agreement or instrument under which the Borrower is, or in certain events may be, required to create, assume or permit to arise, any Security Interest, other than those created pursuant to this Agreement and any permitted under Clause 7.1 herein;

(j) Change in Borrower

since the date the Borrower applied for the Facilities there has been no material alterations or changes in the constitution, condition, business, operating environment, management or other affairs of the Borrower which could or might adversely affect the ability of the Borrower to perform its obligations under this Agreement and/or the Security Documents to which it is a party;

(k) Change in Law

no extraordinary circumstances or change of law or other government action has occurred which shall make it improbable that the business of the Borrower can be carried out or that the Borrower will be able to observe and perform the undertakings and obligations on its part to be performed and observed under this Agreement and/or the Security Documents to which it is a party;

(l) Information

the information furnished and declarations made by the Borrower in connection with the Facilities does not contain any untrue statements or omit to state any fact the omission of which makes the statements therein, in the light of the circumstances under which they were made, misleading, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful enquiry by the Borrower;

(m) Disclosure

the Borrower has fully disclosed in writing to the Bank all facts relating to the Borrower which the Borrower knows or should reasonably know and which are material for disclosure to the Bank in the context of the Facilities;

(n) No Event of Default

that no Event of Default has occurred or will occur as a result of the Bank making available or continuing to make available the Facilities;

(o) Receivership/Winding Up

no petition has been filed and no steps have been taken or any order made, for any voluntary arrangement, judicial management, scheme of compromise, arrangement, reorganization, reconstruction, amalgamation, bankruptcy, insolvency, winding up or liquidation of the Borrower and/or Security Party as the case may be, and/or to appoint a trustee, nominee, supervisor, judicial manager, manager, administrator, receiver, receiver and manager or similar officer to take over the assets of the Borrower and/or the Security Party, and/or to appoint a Liquidator and/or Provisional Liquidator of the Borrower or Security Party;

(p) Illegality

that neither the Borrower nor any Security Party is involved in any illegal activities and all moneys and properties provided to the Bank are not derived in any way from illegal activities.

(q) Connected Persons

none of the directors, partners, executive officers, agents and/or guarantors of the Borrower and/or the other Security Party (including their respective close relatives) is a director, controlling shareholder, influential shareholder, executive officer and/or officer of the Bank or is in any way otherwise connected with the Bank in accordance with the BNM's regulations. Close relatives means those family members who may be expected to influence or be influenced by the individual, as well as dependents of the individual. This includes the individuals' respective spouse and dependents of the spouse, child (including step children and adopted children) and spouse of the child, parent and brother or sister and their spouses.

(r) Sanctions

neither it nor any of its related corporations, nor any of their respective directors, officers or employees nor, to its knowledge, any persons acting on any of their behalf:

- (i) is a Restricted Party;
- (ii) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority; or
- (iii) deals with prohibited, restricted or controlled and dual goods or services, business, countries, currencies or vessels, without appropriate approvals, permits or consent.

6.2 Repetition

Each of the above representations and warranties will be correct and complied with by the Borrower and the Security Party in all respects on (a) each date on which a Drawing is requested or to be made (b) each Interest Payment Date, (c) the Repayment Date, and (d) in any case, on each day on which the Facilities are utilised, as if repeated then by reference to the then existing circumstances, except that each reference to financial statements in Clause 6.1(g) above shall be construed as a reference to the then latest available audited financial statements.

6.3 Survival

The representations and warranties of the Borrower set out in this Agreement shall be correct and complied with in all material respects on each day on which the Facilities are utilised as if repeated then by reference to the then existing circumstances, shall survive and continue to have full force and effect after the execution and delivery of this Agreement and in spite of any investigation by or on behalf of the Bank or any disclosure made by the Borrower or a Security Party.

## 7. UNDERTAKINGS

### 7.1 Affirmative Undertakings

The Borrower agrees and undertakes with the Bank as follows:

(a) Ranking

the Borrower will ensure that the liabilities of the Borrower under this Agreement rank and will rank (and would rank if the Security Documents were neither executed nor required) at least equally and rateably (*pari passu*) in point of priority and security with all its other liabilities (both actual and contingent) except such secured liabilities permitted to be created under this Agreement;

(b) Preparation of Accounts

the Borrower will prepare the financial statements referred to in Clause 6.1(g) on a basis consistently applied in accordance with generally accepted accounting principles in Malaysia and those financial statements shall give a true and fair view of the results of the operations of the Borrower for the period in question and the state of its affairs for the period to which the financial statements are made up, and shall disclose or reserve against all the liabilities (actual or contingent) of the Borrower;

(c) Information

the Borrower will deliver to the Bank in sufficient copies:

- (i) as soon as they become available (and in any event within such number of months as stated in the Letter of Offer after the end of each of its financial periods), copies of its financial statements for that period which shall contain an income statement and a balance sheet and be audited by a firm of independent accountants;
- (ii) as soon as they become available after the end of each half year of its financial year, copies of a full report on its business for that period which shall contain full particulars of its business and an income statement and a balance sheet; and
- (iii) promptly, such financial or other information relating to the Borrower and available to the Borrower as the Bank may require from time to time, in addition to that expressly provided for herein;

(d) Consent

the Borrower will obtain and promptly renew from time to time, and will promptly deliver to the Bank certified copies of, any authorisation, recording, filing or notarisation as may be necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Borrower or the rights of the Bank under this Agreement and/or the Security Documents, and the Borrower shall comply with the terms and/or conditions of the same;

(e) Default

if the Borrower becomes aware of the occurrence of an Event of Default, it will forthwith notify the Bank and provide the Bank with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Event of Default or the delay or suspension or otherwise in connection therewith;

(f) Insurances

the Borrower shall maintain such insurances as reasonably required by the Bank and such additional insurances in respect of its assets and business against all risks (including third party risks and workmen's compensation) which a prudent company carrying on a similar business would normally insure, and all such insurances shall be in amounts, on such terms and/or conditions and/or with policies and/or Insurers acceptable to the Bank, and the Borrower will not do or omit to do anything or suffer anything to be done which might render any such insurance policies to be void or avoidable;

(g) Conduct of Business

the Borrower will carry out and operate its business and affairs with due diligence and efficiency and in accordance with its Constitution (if the Borrower has a Constitution) and sound financial and industrial standards and practices and will keep or cause to be kept all its properties and assets in a good state of repair and condition in accordance with good commercial practice;

(h) Notification of Disputes

the Borrower will, by written notice, inform the Bank of:

- (i) any legal proceeding, litigation or claim, involving the Borrower;
- (ii) any dispute between the Borrower and the Government or any statutory body in respect of any of the Borrower's lands and other assets;
- (iii) any labour controversy which might result in a strike against the Borrower; and/or
- (iv) any matter which has adversely affected or may adversely affect the Borrower's ability to fulfil its obligations under this Agreement, its financial position or its ability to repay the Facilities;

(i) Payment of Outgoings

the Borrower will punctually pay all quit rents, assessments, rates, licence fees, taxes, utility charges, premiums and all other outgoings whatsoever payable from time to time in respect of its business and assets as and when the same shall become due and payable and produce the receipts to the Bank as and when so requested by the Bank;

(j) Valuation of Land

the Borrower will if the Bank shall from time to time, deem necessary for the Bank's commitment under the Facilities, have the Land valued at the expense of the Borrower by a valuer or firm of valuers acceptable to the Bank;

(k) Security Coverage

the Borrower shall at all times maintain a security coverage of not less than such number of times of the total amount of moneys owing under the Facilities as may be determined by the Bank from time to time at its discretion by notice to the Borrower

(l) Notification of Employment

the Borrower will, by written notice, inform the Bank forthwith upon it becoming aware of any director or shareholder or any of the director's or shareholder's parents, spouse or children becoming a director, officer employee of the Bank;

(m) Consent of Bank on Investment

the Borrower shall:

- (i) inform the Bank in the event of any acquisition of assets of a substantial amount;
- (ii) obtain the Bank's prior consent in respect of any investment to be made by the Borrower with the Facilities;
- (iii) supply details and all information required by the Bank in relation to any investment to be made by the Borrower with the Facilities; and
- (iv) obtain the Bank's written consent before selling or purporting to sell any of the properties acquired with the Facilities;

(n) Directive

the Borrower shall comply with any directive of the Bank which may be issued from time to time in connection with this Agreement or the Facilities which the Bank deems necessary to preserve the rights of the Bank under the Facilities, this Agreement and/or the Security Documents;

(o) Entry

the Borrower, upon receipt of not less three (3) calendar days' written notice from the Bank, will permit the Bank and the Bank shall have the right to enter into and upon any land or premises belonging to or in the control of the Borrower and in respect of the same, to inspect all accounts, books, records and statements of the Borrower wherever the same may be situate, and the Borrower shall pay all costs, fees and other expenses whether legal or otherwise in respect of such inspection;

(p) Access

the Borrower shall give to the Bank such written authorities or directions and provide such facility and access as the Bank may require for the aforesaid inspection;

(q) Licences

the Borrower will obtain all necessary licences and approvals and comply with all regulations relating to the carrying on of its business;

(r) Terms and Conditions of Agreements

the Borrower shall, and/or shall cause the Security Party to, observe and perform all the terms and conditions contained in the Security Documents and/or in any agreements which may constitute or form the basis of any Security Interest to be provided by the Borrower and/or the Security Party to the Bank under this Agreement;

(s) Auditors

the Borrower will appoint from time to time such auditor or firm of auditors acceptable to the Bank and authorise such auditor or firm of auditors to supply the Bank with a certified copy of any communication sent by such auditor to the Borrower and further to communicate directly with the Bank at any time in respect of any matter connected with the accounts and operations of the Borrower;

(t) Annual Return

the Borrower will submit to the Bank a certified true copy of its annual return and return of allotment of shares as submitted to the Companies Commission of Malaysia;

(u) Authorised Signatories

the Borrower will forthwith notify the Bank in the event that any of its authorised signatories are no longer authorised to sign any documents or to otherwise act on the Borrower's behalf thereunder;

(v) Change in Residential Status

the Borrower will promptly notify the Bank in the event of any change in its residential status or tax jurisdiction;

(w) Operation of Accounts

the Borrower will ensure that the operation of the current account or any other accounts of the Borrower with the Bank is active and satisfactory and that the approved limit of the Facilities is observed at all times;

(x) Adverse Changes

the Borrower will promptly notify the Bank of any material event or adverse change in the condition (financial or otherwise) of the Borrower or any of the Borrower's related companies or of the Security Party, and of any litigation or other proceedings of any nature whatsoever being threatened or initiated against the Borrower or any of the Borrower's related companies or the Security Party, before any court, tribunal or administrative agency, which may materially affect the operations or financial condition of the Borrower or any of the Borrower's related companies or the Security Party; and the amount of any contingent liability if such amount is ascertainable, and such notification shall be given to the Bank not later than fourteen (14) days after the Borrower has knowledge of the change or of the litigation or other proceedings or threat thereof; and

(y) Subordination of Loans

the Borrower will procure and ensure that all present and future loans granted to it by related and/or associated companies or shareholders will be subordinated to the Indebtedness and such loans will not be repaid in full or in part without the prior written consent of the Bank until all moneys owing to the Bank under this Agreement and/or the Security Documents have been paid up in full.

7.2 Negative Undertaking

The Borrower further agrees and undertakes with the Bank, it will not without prior written consent of the Bank first had obtained:

(a) Loans to others

make any loans to, or provide any guarantee or financial assistance in favour of, any person;

(b) Dividends

declare, make or pay any dividend or other distribution to its shareholders in the event of any outstanding and continuing default as determined by the Bank under the loans;

(c) Liability to others

incur any other form of liability or enter into any guarantee in respect of any liability of any person, apart from the Indebtedness arising out of the provisions of this Agreement, unless such liability is:

- (i) a short-term debt owing to a non-financial institution and payable on demand or maturing by its term within twelve (12) months after the date on which it is originally incurred; and
- (ii) regarded by the Borrower to be necessary for the normal course and conduct of its operations and the Borrower shall have evidenced the necessity thereof to the satisfaction of the Bank;

(d) Alteration to Memorandum or Articles of Association

Where the Borrower has a Constitution, to alter its Constitution;

(e) Change in Shareholdings and/or Management

allow any change in its existing shareholders or their shareholdings and/or its directors and/or its management line-up;

(f) Change of Business, Divestment of Assets, and Mergers

change the nature of its existing business, or sell, transfer or otherwise dispose of, or in any way cease to exercise control over, whether by a single transaction or a number of transactions, related or not, the whole or part (being in the aggregate a substantial part in relation to the Borrower) of its undertaking, business or assets, (except by the disposal of assets in the ordinary course of business), or undertake or permit any merger, amalgamation, reconstruction, consolidation or reorganisation;

(g) Share Capital

alter (other than by way of an increase), its issued shares in existence at the date hereof whether by varying the amount, structure or value thereof or the rights attached thereto, or by way of any alteration or variation of its share capital into stock, or by consolidating, dividing or subdividing all or any of its shares;

(h) Restriction on Transactions

enter into any transaction with any person, firm or company except in the ordinary course of business on ordinary commercial terms and on the basis of arm's length arrangements, or establish any exclusive purchasing or sales agency, or enter into any transaction whereby the Borrower might pay more than the ordinary commercial price for any purchase or might receive less than the full commercial price for its products; or

(i) Negative pledge

create or permit to exist over all or any part of its business or assets any Security Interest other than those created pursuant to this Agreement or any arising from the following:

- (i) liabilities which are subject to liens or rights of set-off arising in the normal course of trading and the aggregate amount of which is not material;
- (ii) liabilities which are preferred solely by Malaysian law and not by reason of any Security Interest; and
- (iii) any other security created or outstanding with the prior written consent of the Bank,

Provided always that in spite of the above, neither the Borrower nor the Security Party shall during the subsistence of this Agreement, the Security Interest and the Security Documents, execute or grant any form of encumbrances in respect of any of its assets secured by the Security Documents.

(j) Sanctions

the Borrower shall not, and shall not permit or authorize any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of Facilities or other transaction(s) contemplated by this Agreement to fund any trade, business or other activities:

- (i) involving or for the benefit of any Restricted Party;
- (ii) in any other manner that would reasonably be expected to result in the Borrower or the Bank being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Restricted Party; or
- (iii) deals with prohibited, restricted or controlled and dual goods or services, business, countries, currencies or vessels, without appropriate approvals, permits or consent.

**8. CHANGES IN CIRCUMSTANCES**8.1 Illegality

Where the application, introduction, imposition or variation of any law or any change in the interpretation or application of any law makes it unlawful or impractical without breaching such law for the Bank to allow all or part of the Facilities to remain outstanding or to fund all or part of a Drawing or the Facilities or to carry out all or any of its other obligations under this Agreement or to charge or receive interest at the rate applicable, upon the Bank notifying the Borrower:

- (a) the Bank's obligation to fund any future Drawings shall forthwith be suspended and the Facilities shall be suspended to such extent; and
- (b) the Borrower shall, upon being so notified, prepay to the Bank all of the Facilities in accordance with Clause 8.3 on such date as the Bank shall certify to be necessary to comply with the relevant law and the Bank's obligation to fund any future Drawings shall terminate and the Facilities shall be cancelled to such extent.

8.2. Increased Costs

Where the Bank determines that, as a result of the application, introduction, imposition or variation of any law or any change in the interpretation or application of any law, or compliance with any request (whether or not having the force of law) from any central bank or other fiscal, monetary or other authority or agency, the cost to the Bank of making or maintaining or funding its participation in the Facilities is increased or the amount of any sum received or receivable by it in respect of its granting the Facilities or the effective return to it under this Agreement is reduced or it is obliged to make any payment (except in respect of tax on its overall net income) or foregoes any interest or other return on, or calculated by reference to, the amount of any sum received or receivable by it from the Borrower under this Agreement, then:

- (a) the Bank shall have the right to notify the Borrower of such event;
- (b) the Borrower shall on receipt of not less than three (3) calendar days' prior written notice from the Bank, pay to the Bank on such date as the Bank shall certify (including after a prepayment of the Facilities), such amounts to compensate the Bank for such increased cost, reduction, payment or foregone interest or return;
- (c) at any time thereafter, so long as the circumstances giving rise to the obligation to make the compensating

payment continues:

- (i) at the Borrower's irrevocable election (by giving notice in writing to the Bank), the Bank's obligation to fund any further Drawings shall terminate and the Facilities shall be cancelled to such extent; and
- (ii) the Borrower may, upon giving the Bank not less than thirty (30) calendar days' prior written notice which shall be irrevocable, prepay to the Bank all the Facilities in accordance with Clause 8.3.

### 8.3 Prepayment in the Event of Changes in Circumstances

Where there is any prepayment of any Facilities pursuant to Clauses 8.1 and/or 8.2 above;

- (a) the Borrower shall provide the Bank with satisfactory evidence that all authorisations necessary for the prepayment have been unconditionally obtained;
- (b) the amount of the prepayment shall become due on expiry of any period specified in any notice of prepayment to the Bank;
- (c) the Bank's obligations to fund further Drawings shall terminate and the Facilities shall be cancelled to such extent; and
- (d) on any prepayment of any Facilities, the Borrower shall pay to the Bank any accrued interest on the Facilities together with all other amounts due to the Bank.

## 9. REPAYMENT OF FACILITIES

### 9.1 Repayment by the Borrower

Despite anything stated herein, the Facilities in so far as they are not otherwise repaid or discharged by the Borrower in accordance with the terms and/or conditions of this Agreement, shall be repaid by the Borrower on demand by the Bank and until such demand is made, the Borrower shall repay the Facilities together with any interest thereon at the Prevailing Rate and any other charges stated under this Agreement, so that the Indebtedness of the Borrower shall have been fully discharged on the expiry of the tenor or duration of the Facilities.

### 9.2 Payments by the Borrower

Any payments to be made by the Borrower pursuant to this Agreement shall be made in immediately available funds in Ringgit Malaysia (or in the case of foreign currency facilities taken by the Borrower, in the relevant currency of the Facility) on the date the same shall become due and payable unless the day on which such payment would otherwise be due is not a Business Day, in which case it shall be due on the next succeeding Business Day. All payments by the Borrower whether in respect of principal, interest, fees or any other item shall be made in full, without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes, charges, or otherwise whatsoever) unless the Borrower is compelled by law to do so, in which event the Borrower shall forthwith pay to the Bank such additional amount so that the net amount receivable by the Bank will equal the full amount which would have been received by the Bank had no such deduction or withholding been made.

### 9.3 Payment in Gross

All monies received by the Bank from any person or estate capable of being applied in reduction of the Indebtedness shall be regarded for all purposes as payment in gross, and if a receiving order shall be made against any person liable to the Bank or any order be made or any effective resolution be passed for the winding up of any company liable to the Bank, the Bank may prove for the whole of the monies then owing, and no money received under such proof shall be considered as having been received and the full amount owing shall remain payable, until the Bank has received from all sources One Hundred Sen in the Ringgit Malaysia (or in the case of foreign currency facilities taken by the Borrower, the relevant foreign currency equivalent).

### 9.4 Prepayment

Despite anything stated herein, it is expressly agreed and understood that any prepayment of any Facilities shall be at the discretion of the Bank and may be subject to this Agreement, Letter of Offer and/or such other conditions as the Bank may impose from time to time, by notice to the Borrower.

### 9.5 Lien and Set-Off

In addition to all liens upon and right of set-off against the monies, securities or other property of the Borrower given to the Bank by law, the Bank shall have a lien upon and/or upon giving the Borrower not less than seven (7) calendar days' prior written notice, the Bank shall have a right of set-off against all monies, securities and other property of the Borrower in any currency now or hereafter in the possession of or on deposit with the Bank, or any affiliates, at any branch or office of the Bank, whether held in a general or special account of deposit, or for safe-keeping or otherwise; and every such lien and/or right of set-off shall continue in full force and effect until such lien and/or right of set-off is specifically waived or released by an instrument in writing executed by the Bank.

### 9.6 Date of Payment

If any payment would otherwise be due on a day which is not a Business Day, it shall be due on the next succeeding Business Day or, if that Business Day falls in the following month, on the preceding Business Day.

## 9.7 Default Interest

- (a) If the Borrower defaults in the payment of any amount in accordance with this Agreement or the Security Documents on the relevant due date or on demand (if expressed to be so payable), the Borrower shall pay default interest on that amount from the date of default up to the date of actual payment (as well after as before judgment) at the Default Rate, or such other rate as shall be imposed by the Bank from time to time, by notice to the Borrower.
- (b) Default interest under this Clause shall accrue from day to day (both before and after any demand for repayment of the Indebtedness or any judgment in respect thereof) and such interest remaining unpaid shall be debited to the account of the Borrower at the end of every month or such other period as selected by the Bank, and shall bear interest at the rates provided in sub-clause (a) above or such other rates as determined by the Bank from time to time, by notice to the Borrower.
- (c) Default interest as set out herein shall continue to be payable in spite of the fact that the relationship of banker and customer between the Bank and the Borrower may cease for any reason whatsoever.

**10. DEFAULT**

## 10.1 Events of Default

If any of the following events shall occur:

(a) Non-payment

the Borrower fails to pay any amount due under this Agreement on the due date or upon demand from the Bank;

(b) Breach of obligations

the Borrower or any of the Security Parties or the Guarantor breaches any of the terms and/or conditions in this Agreement and/or in the Security Documents, and/or fails to observe or perform any of their respective obligations under this Agreement or the Security Documents or under any other undertaking or arrangement entered into in connection herewith or therewith; or

(c) Misrepresentation

any representation, warranty, declaration or statement which is made (or acknowledged to have been made) by the Borrower or any of its shareholders in this Agreement or the Security Documents to which it is a party or which is contained in any certificate, statement, legal opinion or notice provided under or in connection herewith or therewith, proves to be incorrect in any material respect, or if repeated at any time with reference to the facts and circumstances subsisting at such time, would not be accurate in all material respects; or

(d) Invalidity

any provision of this Agreement or the Security Documents, is or becomes, for any reason, illegal, invalid or unenforceable in any way, and/or if any Security Documents are not perfected, becomes imperfect in any way, and/or if the Bank cannot recover from any Security Documents, and/or if the Bank is of the opinion that any of the security created pursuant to the Security Documents is in jeopardy; or

(e) Disposal of Assets

the Borrower transfers or disposes of, or threatens to transfer or dispose of, a substantial part of its business or assets and the result of any of the foregoing may, in the opinion of the Bank, adversely affect the Borrower's financial condition or its ability to observe or perform its obligations under this Agreement or the Security Documents to which it is a party; or

(f) Cessation of Business

the Borrower or any of the Security Parties, change or threaten to change the nature or scope of their business, cease or threaten to cease to carry on their business, or any governmental authority expropriates or threatens to expropriate all or part of their assets, and the result of any of foregoing may, in the opinion of the Bank, adversely affect their financial condition or their ability to observe or perform their obligations under this Agreement or the Security Documents to which they are a party; or

(g) Cross-Default

any Indebtedness of the Borrower and/or indebtedness of the Borrower's related and/or associated companies and/or any of the Security Parties and/or any of the Guarantor (collectively, "**the Obligors**") to the Bank or any third party from time to time or at any time becomes due or if any of the Obligors may be or become liable to the Bank or any third party anywhere on any banking, loan, any other credit facilities or any other account current or otherwise ("**the account(s)**") or in any other manner whatsoever including but not limited to liability of any of the Obligors as sureties or guarantors or if default is made in relation to any provisions of the account(s); or

(h) Appointment of Receiver, Legal Process

an encumbrancer takes possession of, or any nominee trustee, supervisor, judicial manager, manager, administrator, receiver, receiver and manager, liquidator, or other similar officer is appointed in respect of, all or any part of the business or assets of the Borrower or any of the Security Parties or Guarantor, or distress or any form of execution is levied or enforced upon or sued out against any such business or assets and is not discharged within seven (7) days after being levied, enforced or sued out, or any Security Interest which may for the time being affect any of such business or assets becomes enforceable; or



(i) Insolvency

the Borrower is deemed unable to pay its debts within the meaning of Section 466 of the Companies Act 2016, or becomes unable to pay its debts as they fall due; or

(j) Suspension of Payments

the Borrower or any of the Security Parties suspends or threatens to suspend making payments (whether of principal or interest) with respect to all or any class of their debts and the result of any of the foregoing may, in the opinion of the Bank adversely affect their financial condition or their ability to observe or perform their respective obligations under this Agreement or the Security Documents; or

(k) Composition, Winding-Up, Bankruptcy

the Borrower and/or any Security Party convenes a meeting of its creditors, or proposes or makes any corporate, voluntary arrangement, judicial management, scheme of compromise, arrangement, reorganisation, reconstruction, amalgamation, assignment or composition, for the benefit of its creditors, and/or if a meeting is convened for the purpose of considering a resolution, or a petition is presented or any other steps are taken, for making an administration order against or for insolvency, winding up or liquidation of the Borrower and/or any of its corporate shareholders and/or any Security Party, and/or if there is any petition presented or any order made, for the bankruptcy of the Borrower and/or any of the Borrower's directors and/or any Security Party; or

(l) Analogous Proceedings

anything analogous to any of the events specified in paragraphs (h), (i), (j) and(k) occurs under the laws of any applicable jurisdiction; or

(m) Legal Proceedings

any legal proceedings, suit or action shall be instituted against the Borrower or any of the Security Parties or the Guarantor, and the Bank is of the opinion that this will adversely affect the Borrower's or such Security Party's or the Guarantor's ability to observe or perform their respective obligations under this Agreement or the Security Documents; or

(n) Judgement Outstanding

the Borrower or any of the Security Parties or the Guarantor shall fail to satisfy any judgement passed against the Borrower or such Security Party or the Guarantor by any court of competent jurisdiction and no appeal against such judgement has been made to any appropriate appellate Court within the time prescribed by law or such appeal has been dismissed and in the case of any judgement obtained in default of appearance no application has been made to set such judgement aside within one (1) month of the Borrower or such Security Party or the Guarantor (as the case may be) becoming aware of the judgement; or

(o) Change in Law

any law is brought into effect which purports to render ineffective or invalid any provision of this Agreement or any of the Security Documents or which would prevent the Borrower or any of the Security Parties or the Guarantor from performing any of their respective obligations hereunder or thereunder; or

(p) Damage to Land

any part of the Land or any structures thereon is damaged or destroyed and the result, whether by reason of the insurance over the Land or structure proving to be invalid or unenforceable or for any other reason is, in the determination of the Bank adversely to affect the financial condition of the Borrower or the Borrower's ability to observe or perform its obligations under this Agreement or any of the Security Documents; or

(q) Abandonment of Construction Project

where there is any housing development construction project, and/or any construction of any property and/or building, and/or any other form of construction project, and the Facilities are financing such construction project, there is any suspension or abandonment of such construction project; or

(r) Satisfactory Conduct of Business and Accounts

if in the opinion of the Bank, the business and/or affairs of the Borrower are not carried out or conducted satisfactorily in accordance with sound financial and/or business standards and/or practices, and/or if any of the Borrower's accounts with the Bank are not operated satisfactorily; or

(s) License

any license, authorisation, approval, consent, order, exemption, registration, filing or notarisation referred to herein is revoked or withheld or modified is or is otherwise not granted or fails to remain in full force and effect; or

(t) Nationalisation

all or a material part of the property or assets of the Borrower shall be condemned, seized or otherwise appropriated or nationalised, or custody or control of such property or assets shall be assumed and retained by any person acting or purporting to act under the authority of the Government, or the Borrower shall have been prevented from exercising normal managerial

control over all or any substantial part of its or their property or assets; or

(u) Moratorium

the Borrower or the Security Party enters into or proposes to enter into or there is declared by any competent court or authority, a moratorium on the payment of indebtedness or other suspension of payments generally; or

(v) Adverse Events

any event or events has or have occurred or a situation exists which could or might, in the opinion of the Bank, prejudice the ability of the Borrower or any of the Security Parties or the Guarantor to perform any of their respective obligations under this Agreement or the Security Documents and/or under any other undertaking or arrangement entered into in connection herewith or therewith in accordance with the terms and/or conditions hereof or thereof; or

(w) Breach of Applicable Laws

in the event of a breach or contravention of any Applicable Laws by the Borrower; or

(x) Repudiation

the Borrower or the Security Party repudiates this Agreement and/or the Security Documents or does or causes to be done or omits to do any act or thing evidencing an intention to repudiate this Agreement and/or the Security Documents; or

(y) Take over of Financial Management

any creditor of the Borrower or its subsidiaries or the Security Party exercises a contractual right to take over any of its financial management; or

(aa) Breach under other Contracts

there has been a breach by the Borrower or any of its subsidiaries or the Security Party of any obligation under any of its contractual obligations; or

(bb) Intended Purpose

the Facilities or any part thereof are not utilised for its intended purpose; or

(cc) Security

the Bank determines that any security provided by the Borrower or the Security Party is different from that which was agreed to be provided; or

(dd) Criminal Investigations

the Borrower or the Security Party or its respective shareholders or directors are subject to any investigations, actions or proceedings (whether civil, criminal, administrative or otherwise) by any regulatory, statutory or enforcement authorities, bodies or agencies; or

(ee) Sanctions

the Borrower or the Security Party permits or authorises any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Facilities to fund any trade, business or other activities: (a) involving or for the benefit of any Restricted Party, or (b) in any other manner that would reasonably be expected to result in the Borrower or the Security Party being in breach of any Sanctions (if to the extent applicable to either of them) or becoming a Restricted Party. For this purpose:

(ff) Suspension of Trading of Pledged Securities

any securities listed and publicly quoted on the Bursa Malaysia Securities Berhad or any other stock exchange which are the subject of a Security Document or secure the Facilities, have been suspended from trading by the respective stock exchange whether or not at the request of the company and the period of such suspension has exceeded 14 consecutive days; or

(gg) Death/Unsound Mind

the Borrower or a Security Party dies or suffers any form of incapacity or is of unsound mind which would or could, in the opinion of the Bank affect the Borrower's or the Security Party's (where applicable) ability to perform his obligations under this Agreement and/or the Security Documents; or

(hh) Discontinuance of Obligations

any Security Party withdraws from any security under the Security Documents or gives notice to the Bank of discontinuance of its obligations and liabilities under the security as to future transaction; or

(jj) Market adverse conditions

there shall have occurred, happened or come into effect, any circumstance which, in the opinion of the Bank would be likely to have a material adverse effect on the condition (financial or otherwise), prospects, results of operations, properties or assets of the Borrower, or be commercially impracticable for the Bank to provide or continue providing the Facility on the terms and in the manner stated in this Agreement;

then, the Bank immediately upon notice to the Borrower:

- (a) may declare the Facilities and any other amounts owing under this Agreement to be immediately due and payable together with accrued interest thereon;
- (b) shall have the right not to allow any further Drawings and/or any form of drawdown of the Facilities, and/or to treat the Facilities as cancelled; and/or
- (c) may but is not obligated to enforce the security created in favour of the Bank, and to exercise all its rights under this Agreement and the Security Documents.

## **11. BANK'S RIGHTS**

### **11.1 Bank's Right to Exercise Remedies Concurrently**

Despite any provision hereof, it is hereby expressly agreed that upon default or breach by the Borrower of any term, condition, stipulation and/or undertaking herein provided and on the part of the Borrower to be observed and performed, the Bank shall thereafter have the right to exercise the powers and remedies conferred by this Agreement, the Security Documents and/or by law, statute or otherwise, and may exercise such powers and remedies concurrently, including pursuing all remedies of sale or realisation of security pursuant to this Agreement and/or the Security Documents, and civil suit to recover the amount due and owing to the Bank.

### **11.2 Application of Proceeds**

All moneys received from the sale of any assets shall, subject to the claims of all secured or unsecured creditors (if any) ranking in priority to the Security Documents, be applied as follows:

- First, in or towards the payment of all costs expended or incurred by the Bank in the enforcement of this Agreement and/or the Security Documents or any part thereof (including court costs and solicitors' fees);
- Second, in or towards the payment of all amounts payable under this Agreement and/or the Security Documents other than principal and interest;
- Third, in or towards the payment in full of the aggregate accrued but unpaid interest pursuant to this Agreement;
- Fourth, in or towards the payment of the principal amount outstanding to the Bank;
- Fifth, the balance to the Borrower or to such other persons as may be lawfully entitled thereto.

PROVIDED ALWAYS THAT if the Bank shall be of the opinion that the security may prove deficient, payments may be made to the Bank on account of principal before interest but such alteration in the order of payment shall not prejudice the right of the Bank to receive the full amount to which it would have been entitled if the primary order had been observed, or any lesser amount which the sum ultimately received from the security may be sufficient to pay.

### **11.3 Payment of Short Fall**

If the amount realised by the Bank in any sale of the properties and assets secured under the Security Documents, after the deduction and payment from the proceeds of such sale of all fees, dues, costs, rates taxes and other sale is less than the Indebtedness, whether at such sale the Bank is the purchaser or otherwise, the Borrower shall pay to the Bank the difference between the amount due and the amount so realised and until payment will also pay interest on such balances at the Prevailing Rate and Default Rate or at such other rates specified from time to time by the Bank (as well after as before judgement).

### **11.4 Legal Proceedings**

It is hereby declared and agreed that if the Bank takes legal action to recover any money due to it from the Borrower or to enforce any term or condition of this Agreement or the Security Documents, then the Bank shall have the right:

- (a) to claim for the amount outstanding and the interest and other moneys due from the Borrower in the same or separate proceedings; and
- (b) to proceed simultaneously in the same or separate proceedings against the Borrower and any of the Guarantors and all other parties liable to satisfy the Indebtedness to the Bank and to claim and execute judgement for moneys due to the Bank.

### **11.5 Opinion of the Bank**

Despite anything herein contained, any right, entitlement, discretion, or power which may be exercised by the Bank under this Agreement or the Security Documents or any opinion of the Bank as to the determination of any of the matters set out in this Agreement or the Security Documents may be exercised or made by the Bank for the purpose of facilitating its business, operations, services and/or such other things as the Bank may reasonably determine. A written statement of the Bank as to the amount due and owing to the Bank at any time and all other matters referred to in this Agreement, shall in the absence of manifest error be conclusive and binding on the Borrower.

Any determination or notification by the Bank concerning any Indebtedness, in the absence of manifest error, shall be conclusive evidence as to the matter and shall be binding on the Borrower.

#### 11.6 Bank May Open New Account

It is hereby agreed that if the Borrower shall execute or create any further or subsequently charge, mortgage or encumbrance over any of its assets or properties which are subject to the Security Documents or any part thereof in favour of any other corporation or person, or in the event the Bank restructures and/or varies the Facilities, the Bank may but shall not be obliged to open a new or separate account with the Borrower, and the Bank may but is not obliged to place to the credit of the new or separate account so opened, any payments made by the Borrower to the Bank. PROVIDED ALWAYS that nothing in this Clause shall prejudice the security which the Bank otherwise would have had hereunder or under the Security Documents for the payment of the monies costs charges and expenses therein this Agreement referred to in spite of the fact that the same may become due or owing or be incurred after the time of notice.

#### 11.7 Suspense Account

Any money received hereunder or pursuant to the Security Documents may be placed or kept to the credit of a suspense account or such period as if the Bank shall deem fit - pending the determination by the Bank as to how the monies are to be applied towards the discharge of any money or liabilities due hereunder or pursuant to the Security Documents. Despite any such payment, in the event of any proceedings in or analogous to liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liabilities in the same manner as if the securities under the Security Documents have not been created.

#### 11.8 Modification and Indulgence

The Bank may by giving not less than twenty-one (21) calendar days' prior written notice to the Borrower and without in any way affecting the obligations of the Borrower herein and under the Security Documents:

- (a) review the Facilities or Facility hereby granted and determine, vary, reduce and/or increase the amount of the Facilities or Facility and/or any other credit or loan facility granted to the Borrower and may open and/or continue any accounts current or otherwise with the Borrower at any branch or branches of the Bank at such times as the Bank shall in its discretion determine;
- (b) vary the terms and/or conditions herein contained and/or in the Security Documents, and/or the terms and/or conditions of any other credit or loan facility granted to the Borrower, in such manner and at such times as the Bank shall in its discretion determine; and/or
- (c) modify or restructure or alter the nature of the Facilities herein granted in such manner and at such times as the Bank shall in its discretion determine.

#### 11.9 Involuntary Loss

Subject to Clause 15.13, the Bank shall not be liable for any involuntary loss to the Borrower suffered as a result of or incidental to, the exercise or execution by the Bank of any power conferred on the Bank by this Agreement and the Security Documents or by statute.

#### 11.10 Availability of Facilities

Subject to the terms of this Agreement, nothing contained herein shall be deemed to render it obligatory upon the Bank to make or continue to make available the Facilities or any of them to the Borrower or to afford any other accommodation or Facilities.

#### 11.11 All Payments Received to be Payments in Gross

All moneys received from or on account of the Borrower or from any other person (including but not limited to any surety) or from the realisation of the Security Documents or any security or otherwise for the purpose of being applied in the reduction of the account of the Borrower or of the moneys agreed to be paid under this Agreement, shall be treated for all purposes as payments in gross and not as appropriated or attributable to any specific part or item of the said moneys agreed to be paid to the Bank. All securities now or at any time held by the Bank shall be treated as security for the said general balance. The Borrower or any other person or persons claiming under the Borrower shall have no claim to such securities or to any part thereof or any interest therein unless and until the Bank has received the full amount owing to the Bank by the Borrower.

#### 11.12 Rights Cumulative, Waivers

The Bank may exercise its rights under this Agreement as often as the Bank considers appropriate, and are in addition to the Bank's rights under any Applicable Laws. The rights of the Bank in relation to the Facilities arising under this Agreement or under any applicable laws shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing from the Bank; and in particular, any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on the Bank's part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or variation of any such right.

## 12. INDEMNITY

### 12.1 General Indemnity

The Borrower shall fully indemnify the Bank from and against any expense, loss, damage or liability (as to the amount of which the certificate of the Bank shall, in the absence of manifest error, be conclusive) which the Bank may incur as a consequence of the occurrence of any Event of Default, or any failure to borrow in accordance with a Drawing Notice or otherwise in connection with this Agreement. Without prejudice to its generality, the foregoing indemnity shall extend to any interest, fees or other sums whatsoever paid or payable by the Bank in consequence or on account of any funds borrowed and/or utilised by the Bank, and to any loss (including loss of profit), premium, penalty or expense which may be incurred in liquidating or employing deposits from third parties acquired to provide, maintain or fund the Facilities (or any part thereof) or any other amount due or to become due under this Agreement.

### 12.2 Currency Indemnity

Unless otherwise specifically agreed in writing by the Bank in relation to the Facility:

- (a) the obligation of the Borrower shall be to pay the obligations or liabilities in the same currency in which the said obligations or liabilities are incurred ("**Currency of Account**"); and
- (b) any amount received or recovered by the Bank in respect of any sums expressed to be due to it from the Borrower under this Agreement and/or the Security Documents in a currency ("**Relevant Currency**") other than the Currency of Account (whether as a result of, or arising from the enforcement of, a judgement or order of court of any jurisdiction or the death or bankruptcy of the Borrower or otherwise) shall only constitute a discharge to the Borrower to the extent of the amount in the Currency of Account which the Bank is able, in accordance with its usual practice, to purchase with the Relevant Currency so received or recovered on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount in the Currency of Account purchased with the Relevant Currency is less than the amount of the Currency of Account expressed to be due to the Bank under this Agreement and/or the Security Documents, the Borrower shall indemnify the Bank against any loss sustained by it as a result thereof. In any event, the Borrower shall indemnify the Bank against the cost of making such purchase.

## 13. FEES, COSTS AND EXPENSES

### 13.1 Expenses

The Borrower shall on receipt of not less than seven (7) calendar days' prior written notice from the Bank pay to the Bank, in each case on the basis of full indemnity:

- (a) all costs and expenses (including legal, printing and out-of-pocket expenses) incurred in connection with the negotiation, preparation, completion or perfection of this Agreement, the Security Documents and any related documents or the discharge of any security created in the Bank's favour under this Agreement, the Security Documents or any related documents; and
- (b) all costs and expenses (including legal and out-of-pocket expenses) incurred in connection with any variation, consent or approval relating to this Agreement, the Security Documents or any related documents, or in connection with defending claims made by any person against either the Bank or any asset provided as security to the Bank or the preservation or enforcement or the attempted preservation or enforcement of any of the Bank's rights under this Agreement, the Security Documents or any related documents.

### 13.2 Stamp Duty

The Borrower shall pay all stamp, documentary and other duties and taxes to which this Agreement and the Security Documents may be subject or give rise, and shall fully indemnify the Bank from and against any losses or liabilities which the Bank may incur as a result of any delay or omission by the Borrower to pay any such duties or taxes.

### 13.3 Sales & Services Tax

Without prejudice to any other provision herein, the Borrower shall pay and be responsible for any sales and services tax payable in connection with or arising out of this Agreement or the Facilities or any services in connection therewith. The Borrower shall indemnify and keep the Bank indemnified in respect of the payment of such sales and services tax. If any sales and services tax has not been paid by the Borrower as aforesaid, the Bank may at its discretion deduct such amounts as are required to pay the relevant sales and services tax from any of the Borrower's account(s) held with the Bank upon giving the Borrower not less than seven (7) calendar days' prior written notice.

## 14. ACCOUNT

### 14.1 Loan Account

The Bank may designate a loan account for each respective facility and the said loan account shall evidence the amount due to the Bank from time to time.

### 14.2 Lien, Right to Debit and/or to Set Off from Account

Without prejudice to the rights of the Bank under this Agreement or the Security Documents, the Borrower hereby acknowledges that the Bank shall have a lien and/or right of set off over any assets movable or immovable of the Borrower now or

hereafter in the possession or control of the Bank, its affiliates, branches or offices, and the Bank upon giving the Borrower not less than seven (7) calendar days' prior written notice, shall have the right, to debit and/or to set off from, any account or accounts which the Borrower maintains with the Bank, in order to effect repayment of any Indebtedness, including but not limited to any quit rent, assessment, premium, fee, commission, legal costs (both party and party costs and solicitor and client costs) and all other charges due and payable hereunder or under the Security Documents.

#### 14.3 Evidence of Indebtedness

In any proceeding relating to this Agreement or Security Documents, a statement as to the amount due to the Bank which is certified as being correct by an officer of the Bank, shall (in the absence of manifest error), be conclusive evidence that such amount is in fact due and payable.

### 15. OTHER MATTERS

#### 15.1 Notice

Any notice required to be issued hereunder shall be in writing and shall be deemed to have been sufficiently served on the Borrower if it is left at the usual or last known address of the Borrower in accordance with the records kept by the Bank, or at the address abovestated of the Borrower, or sent by ordinary mail to any of such addresses. Proof of posting or despatch of any notice or communication to the Borrower shall be deemed to be proof of receipt by the Borrower:

- (a) if it is personally delivered, at the time of delivery;
- (b) in the case of ordinary post, on the second Business Day after posting (save where such notice or communication is returned undelivered to the Bank);
- (c) in the case of a telex or cable, on the Business Day immediately following the date of despatch; and/or

in the case of facsimile, on the Business Day immediately after transmission, provided that the sender has received an answer back confirmation. No change in the address for service of the Borrower howsoever brought about shall be effective or binding on the Bank unless actual notice in writing of such change has been received by the Bank.

#### 15.2 Consolidation

The Borrower agrees that this Agreement shall not be discharged except on the payment by the Borrower of not only all monies secured hereby but also monies which are now or shall from time to time or at any time hereafter be due and owing by the Borrower solely or jointly with any other persons, firms or companies, and whether as principal or surety or which the Borrower may be or become liable to the Bank anywhere or in any manner or under any account whatsoever whether or not given upon or under any security or collateral whatsoever or otherwise. The Bank upon giving not less than seven (7) calendar days' prior written notice to the Borrower shall have the right to withhold, combine, consolidate and/or merge any or all accounts of the Borrower and the Obligors, with any of the Borrower's and/or Obligors' liabilities to the Bank, with such right to be exercised at the Bank's discretion and it is hereby expressly agreed and declared that unless the Bank otherwise agrees the obligations of the Borrower under this Agreement shall not be satisfied except on payment by the Borrower of not only the Facilities outstanding amounts but also all monies secured hereby and/or all monies secured by any other security created by the Borrower and/or the Security Party in favour of or vested in the Bank.

#### 15.3 Reconstruction

The security, liabilities and obligations created by this Agreement shall continue to be valid and binding for all purposes whatsoever in spite of any change by amalgamation, reconstruction, consolidation, merger or otherwise, which may be made under the constitution or Section 370 of the Companies Act 2016 or any corresponding provisions of the laws which the Bank or the Borrower or the Security Party is/are subject to. It is expressly declared that no change whatsoever in relation to or affecting the Bank or the Borrower or the Security Party, shall in any way affect the security, liabilities and obligations created hereunder in relation to any transaction whatsoever whether past present or future.

#### 15.4 Disclosure of Information

The Borrower hereby agrees that the Bank may disclose any form of information relating to this Agreement, the Security Documents, and/or the Borrower's affairs or accounts ("**Disclosure**"), to:

- (a) the Central Credit Bureau ("**CCB**") of BNM or Labuan FSA, all information on the Facilities where disclosure is required under the law;
- (b) the Guarantor and/or any of the Security Parties and/or any party to any agreements and/or transactions which may constitute or form the basis of any Security Interest to be provided by the Borrower and/or the Security Parties to the Bank under this Agreement;

companies which are or which in future may be a subsidiary, related and/or associated company of the Bank for the purpose of the grant and continued maintenance of the Facilities;  
the Bank's professional advisors, including but not limited to the Bank's solicitors, auditors and/or consultants for facilitating or protecting the business, operations and services provided by the Bank in respect of the Facilities;

- (c) the Bank's Insurers, insurance consultants and/or pursuant to any Insurance Policy; and/or
- (d) pursuant to any subpoena or other legal process or in connection with any legal action, suit or proceedings relating to this Agreement and/or the Security Documents;

#### 15.5 Bank's Documents

Despite anything stated herein, the Borrower agrees that any document and/or instrument which the Bank may issue pursuant to the Facilities and/or under this Agreement, including but not limited to any documentary credit, letter of credit, bank guarantee, promissory note, undertaking, bill of exchange and/or any other banker's document, shall be in a form and content which is acceptable to the Bank.

#### 15.6 Letter of Offer

The Letter of Offer issued by the Bank to the Borrower shall be deemed to be incorporated into and form part of this Agreement and the provisions of this Agreement are additional and supplemental to the terms and conditions contained in the Letter of Offer. In the event of any conflict between the Letter of Offer and this Agreement, the Letter of Offer shall prevail.

#### 15.7 Other Conditions

If relevant, the Borrower shall also be subject to the additional terms and conditions as stated in the Letter of Offer.

#### 15.8 Review

Despite anything stated in this Agreement, all Facilities granted by the Bank to the Borrower herein are subject to periodic review in accordance with the terms of this Agreement and/or the Letter of Offer and where applicable, repayable on demand.

#### 15.9 Cancellation and Demands

Despite any other provision of this Agreement relating to the availability of the Facilities or any part of them, the Bank may at its discretion:

- (a) cancel any Facility; and/or
- (b) demand repayment of any Indebtedness;

in each case by the Bank giving the Borrower written notice of the cancellation or demand, whereupon the Facility shall be cancelled and the Indebtedness shall be repayable on the date specified in the notice.

#### 15.10 English Language

All notices or communications under or in connection with this Agreement shall be in the English language or if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

#### 15.11 Variation of Terms

Subject to the agreement of the Bank and for the purpose of facilitating its business, operations, services or such other things as the Bank may reasonably determine, the terms and/or conditions in this Agreement may from time to time be varied or amended by notice of not less than twenty-one (21) calendar days' to the Borrower and such variations or amendments shall be effected by means of letter or supplementary agreement or such other means as the Bank may stipulate, and thereupon such amendments and variations shall be deemed to have been amended or varied accordingly and if applicable, shall be read and construed as if such amendments and variations have been incorporated into and had formed part of this Agreement at the time of execution thereof.

#### 15.12 Appropriation

All and any monies received by the Bank towards payment or repayment or prepayment shall be applied by the Bank in accordance with the terms of this Agreement, the Letter of Offer and/or the Security Documents.

#### 15.13 No Liability

The Bank shall only be liable for direct losses or damages if such losses or damages are caused directly by the Bank's fraud, gross negligence or willful breach of its obligations under this Agreement and/or the Security Documents.

Notwithstanding anything to the contrary, the Bank and/or any of its officers and employees shall not be liable for any indirect, incidental, consequential and/or secondary loss or damage, including any loss of profits or income, savings, opportunity loss, expectation loss, reliance loss or pure economic loss and any exemplary or punitive damages which may be suffered or incurred by the Borrower or any third party directly or indirectly, even if the Bank has been notified of the possible damages or any claim against the Borrower or the third party.

#### 15.14 Transfer Benefit

The Bank may, for the purpose of facilitating its business, operations, services or such other things as the Bank may reasonably determine, transfer and/or assign the rights, benefits, interest and/or obligations under this Agreement and/or the Security Documents to any person by notice to the Borrower and/or the Security Party, and:

- (a) for this purpose the Bank may disclose to a potential assignee or transferee or any other person who derives any rights, benefits, interest or obligations under this Agreement and/or the Security Documents, such information about the Borrower as shall have been made available to the Bank generally;
- (b) the Borrower shall execute such documents as are necessary to release the Bank to the extent of the transfer or assignment and join the transferee or assignee as a party to this Agreement and/or the Security Documents;

- (c) in the event of such assignment and/or transfer to any person by the Bank, the Borrower shall thereafter deal solely with the assignee or transferee with respect to any matters under this Agreement and/or the Security Documents; and
- (d) all costs and/or expenses relating to this transfer and/or assignment shall be paid by the Borrower, and any statement by the Bank as to the costs and/or expenses of the transfer and/or assignment which are to be paid by the Borrower, shall save for manifest errors, be conclusive and binding on the Borrower.

However it is expressly agreed that the rights, benefit, obligations and/or interest of this Agreement and/or the Security Documents shall not be assigned or transferred in any way by the Borrower unless with the written consent of the Bank.

#### 15.15 Law and Jurisdiction

The parties hereto agree that this Agreement and the Security Documents shall be governed by the laws of Malaysia and agree to submit to the jurisdiction of the Courts of Malaysia.

#### 15.16 Regulatory Compliance

The Bank is subject to the supervision of, and/or governed by, and/or subject to any rules, regulations, guidelines and/or any other form of directives from, BNM, Exim Bank, Association of Banks in Malaysia (“**ABM**”), Labuan FSA and/or any other regulatory bodies having authority over the Bank. The Bank shall have the right to vary this Agreement to give effect to any such rules, regulations, guidelines and/or any other form of directives from BNM, Exim Bank, ABM, Labuan FSA and/or any other regulatory bodies having authority over the Bank. Subject to the terms of this Agreement, this right of variation on the part of the Bank shall be in addition and is without prejudice to any other right of variation on the part of the Bank under this Agreement.

#### 15.17 Severability of Provisions

If at any time any provision herein becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent necessary without affecting or impairing the validity, legality and/or enforceability of the remaining provisions herein or such provision in any other jurisdiction. Subject to the terms of this Agreement, any provision of this Agreement which is so determined by the Bank to be invalid, illegal or unenforceable shall be replaced, with a valid provision which has as far as possible the same effect.

#### 15.18 Successors Bound

This Agreement and the Security Documents shall be binding upon the heirs, personal representatives, assigns and successors-in-title of the Borrower, the Security Party, and the successors-in-title and assigns of the Bank.

#### 15.19 Time

Time wherever stated in this Agreement, shall be of the essence of this Agreement.

#### 15.20 Credit Reporting Agencies Act 2010

Pursuant to the Credit Reporting Agencies Act 2010 (“**CRA Act**”), the Borrower, hereby gives its consent to the Bank and any registered reporting agency under the CRA Act appointed by the Bank, to process its company and personal data. By this consent, the Borrower understands and agrees that:

- (a) the Bank may conduct credit checks on the Borrower, a Security Party and where applicable, its director(s) and shareholder(s) (collectively the “**Parties**”), at any time for as long as the Borrower has a banking relationship with the Bank or where any Facilities or Indebtedness remain outstanding with the Bank, for any one or more of the following purposes:
  - (i) opening of an account;
  - (ii) credit/account monitoring, review or evaluation;
  - (iii) debt recovery; and
  - (iv) documentation consequent to any facility granted by the Bank;
- (b) the Bank may disclose any information on the Parties’ conduct of their accounts with the Bank, to any person for bona fide credit review at any time. The Borrower is aware and understands and shall procure that the Parties are also made aware and understand that such information will be provided to a credit reporting agency, who may in turn share such information to subscribers of their service;
- (c) where the Bank require any processing of the Borrower’s application to be processed by any processing centre located outside Malaysia, the Borrower consents and shall procure the Parties to also consent to the Bank and the credit reporting agency to disclose their credit reports to such locations outside Malaysia; and
- (d) apart from the above, the Borrower consents and shall procure the Parties to also consent to the Bank and the credit reporting agency to process their personal data as per the Personal Data Protection Act 2010.

#### 15.21 Force Majeure

The Bank shall not be responsible to the Borrower for any failure in the performance of any of its obligations or in respect of or arising from the Facilities or any claim in respect of any loss, damages or injury to earnings or profit or goodwill or business caused directly or indirectly or any other fault if such failure, loss, damage or other fault is caused by circumstances



beyond the reasonable control of the Bank, including but not limited to, any fire, earthquake, flood, epidemic, accident, explosion, casualty, lock-out, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war, act of God and/or any mechanical, electronic or communications failure.

#### **16. PRINCIPAL AND SUBSIDIARY INSTRUMENTS**

IT IS HEREBY AGREED AND DECLARED that this Agreement and the Security Documents are instruments in one transaction to secure the sum stated in the Letter of Offer for principal only and all interest, commission, fees and other charges thereon, and for the purposes of Section 4(3) of the Stamp Act, 1949, this Agreement shall be deemed to be the principal instrument.

#### **17. UPSTAMPING**

Where the Bank has agreed to provide any additional advance or credit under any of the Facilities to the Borrower such that the principal secured by this Agreement and the Security Documents shall exceed the principal sum stated in Clause 16 above, this Agreement and the Security Documents shall for the purpose of stamp duty be deemed to be a new and separate instrument bearing date on the day on which such advance or credit is made to the extent that such additional advance or credit is in excess of the principal sum stated in Clause 16 above and the Borrower shall bear the cost of any additional stamp duty as a result.

#### **18. PRIVACY CLAUSE (For Corporate Borrower) Where the Borrower is a corporation (including but not limited to the entities falling within the definition of "Corporation" defined in the Companies Act 2016) this clause shall apply.**

The Borrower hereby irrevocably consents and authorises, and confirms that it has duly obtained the consent and authority of its directors, shareholders, officers, guarantors, security providers, business partners, subsidiaries, associated companies and/or any other person, individual and/or entity related to or associated with the Borrower as determined by the Bank (hereinafter referred to either singly or collectively as "Relevant Person"), for the Bank:

- i) to be provided with information as may be required by the Bank for processing pursuant to the Personal Data Protection Act 2010 including for use in accordance with relevant terms and conditions and for the purpose of the facility / account;
- ii) to carry out the necessary reference checks including but not limited to credit reference/reporting checks with credit reference/reporting agencies, including but not limited to CCRIS, FIS and/or any other agencies and/or from any financial institution and to provide to such aforesaid party(s) with the required information requested to enable the Bank to ascertain the status of the Borrower and its Relevant Person as may be required by the Bank for the purposes of the grant and/or continued maintenance of the facility/account; recovery of debts owing under the facility/ account; any purpose related to or in connection with facility/ account under this agreement; and/or for any other purposes that is required or permitted by law, regulations, guidelines and/or relevant regulatory authorities;
- iii) to disclose the said Relevant Person's personal information to the classes of parties described in the CIMB Group Privacy Notice (which is available at [www.cimbbank.com.my](http://www.cimbbank.com.my) and [www.cimbislamic.com](http://www.cimbislamic.com)); and
- iv) to provide the said Relevant Person with information on the Bank's products, banking facilities, services and/or offers (inclusive of the products, services and offers of entities within the CIMB Group) which may be of interest and/or financial benefit to them

at the Bank's sole discretion, without further reference to the Borrower and/or its Relevant Person. The Borrower agrees to undertake the responsibility to update the Bank in writing should there be any change to the personal and financial, credit information relating to the said Relevant Person. Should the said consent and/or authority be subsequently revoked by any of the said Relevant Person, the Borrower agrees that the Bank shall have the right to terminate the Facilities/ close the account.

This clause shall be without prejudice to any other clause in these Terms and Conditions which provides for the disclosure of information.

#### **19. PRIVACY CLAUSE (FOR NATURAL PERSONS) Where the Borrower are individuals (including but not limited to sole proprietor, partnerships, registered businesses and associations)**

The Borrower hereby confirm that the Borrower has read, understood and agreed to be bound by the CIMB Group Privacy Notice (which is available at [www.cimbbank.com.my](http://www.cimbbank.com.my) and [www.cimbislamic.com](http://www.cimbislamic.com)) and the clauses herein, as may relate to the processing of the Borrower's personal information. For the avoidance of doubt, the Borrower agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Agreement.

In the event the Borrower provides personal and financial information relating to third parties, including information relating to the Borrower's next-of-kin and dependents (where the Borrower is an individual) or information relating to its directors, shareholders, officers, individual guarantors and security providers (where the Borrower is a corporation), for the purpose of opening or operating the Borrower's account(s)/facility(ies) with the Bank or otherwise subscribing to the Bank products and services, the Borrower (a) confirm that the Borrower have obtained their consent or are otherwise entitled to provide this information to the Bank and for the Bank to use it in accordance with this Agreement; (b) agree to ensure that the personal and financial information of the said third parties is accurate; (c) agree to update the Bank in writing in the event of any material change to the said personal and financial information; and (d) agree to the Bank's right to terminate this Agreement should such consent be withdrawn by any of the said third parties.

Where the Borrower instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including information relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on behalf of the Borrower, the Borrower agrees to the above said disclosures on behalf of the Borrower and others involved in the said cross-border transaction.

The Bank may carry out the necessary reference checks including credit reporting/reference checks with credit reporting/reference agencies, including but not limited to CCRIS, FIS and/or any other agencies and/or from any financial institution to enable the Bank to ascertain the Borrower's status as may be required to help make decisions, for example when the Bank need to (a) check details on applications for credit and credit-related or other facilities; (b) manage credit and credit-related accounts or facilities, including conducting reviews of the Borrower's portfolio(s); recover debts; and/or any purpose related to or in connection with the account/facility under this Agreement. The Borrower will be linked by credit reporting/reference agencies to any other names the Borrower use or have used, and any joint and several applicants. We may also share information about the Borrower and how the Borrower manage the Borrower's account(s)/facility(ies) with relevant credit reporting/reference agencies.

Even after the Borrower has provided the Bank with any information, the Borrower will have the option to withdraw the consent given earlier. In such instances, the Bank will have the right to not provide or discontinue the provision of any product, service, account(s) and/or facility(ies) that is/are linked with such information.

The Bank reserves the right to amend this clause from time to time at the Bank's sole discretion and shall provide prior notification to the Borrower in writing and place any such amendments on the Bank's websites and/or by placing notices at the banking halls or at prominent locations within the Bank's branches.

For the purposes of the Privacy Clause (For Corporate Borrower) and Privacy Clause (For Natural Persons), the CIMB Group consists of CIMB Group Holdings Berhad and all its related companies as defined in Section 7 of the Companies Act 2016 and jointly controlled companies that provide financial and other regulated services, excluding companies, branches, offices and other forms of presence operating outside Malaysia, and the use of the words "the Bank", and "the Bank's" are to be read as references to the CIMB Group.

This clause shall be without prejudice to any other clause in this Agreement which provides for the disclosure of information.

## **20. ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT**

The Borrower acknowledges that the Bank has entered into this Agreement and the Security Documents and have agreed to make available the Facilities in full reliance on the representations and warranties by the Borrower on the following terms; and the Borrower now represents and warrants to the Bank that:

- (a) unless and until the Borrower notifies the Bank to the contrary in writing:
  - (i) the Borrower is the principal in relation to the Facilities;
  - (ii) no person other than the Borrower has or will have any interest in the Facilities; and
  - (iii) all monies which will be paid to the Bank shall come from a lawful source of activity and not unlawful activities, as defined under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLA").
- (b) on notification that the Borrower is an intermediary for other persons:
  - (i) the Bank may require, and the Borrower agrees and undertakes to provide, verification of the identity of the beneficiary and such other information as the Bank may require, including but not limited to certified true copies of any authorisation to act or documents that may be required for the purposes of verifying the information provided by the Borrower, which copies may thereafter be retained by the Bank;
  - (ii) the Borrower will confirm that the monies, funds or collateral are from a lawful source of activity and not unlawful activity as defined under AMLA; and
  - (iii) it is further hereby agreed and understood that the provision of details of the Borrower's beneficiary shall not make the Borrower's beneficiary a client of the Bank and the Bank shall be entitled to hold the Borrower as the principal.
- (c) in addition to paragraphs (a) and (b) above, the Borrower hereby agrees and undertakes irrevocably and unconditionally that:
  - (i) the Borrower shall disclose and furnish to the Bank any information required or deemed necessary (acting reasonably) and to the satisfaction of the Bank in a timely manner within the period specified by the Bank, for purposes of complying with laws and regulations of BNM;
  - (ii) pending receipt of information by the Bank from the Borrower and until received and verified thereof to the satisfaction of the Bank and or the relevant authorities, the Bank shall neither be obliged to proceed with any transaction or disbursement nor accept any monies, funds or collateral ("Assets"). In relation to Assets already in the possession of the Bank, the Bank shall be entitled (and authorised) if so required by the relevant authorities to retain the Assets for the time being; any Assets requested to be returned to the

Borrower shall be returned to the Borrower after the Bank receives satisfactory clearance from the relevant authorities;

- (iii) the Borrower shall not use the Facility(ies) (or any part thereof) for money laundering or violate any laws relating to money laundering as defined under AMLA;
- (iv) in no event shall the Bank be liable for any direct, indirect, consequential or any losses whatsoever or howsoever arising or by reason of the Bank's exercise of its duties under AMLA;
- (v) the Borrower shall not engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- (vi) the Borrower shall not acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into Malaysia proceeds of any unlawful activity; and/or
- (vii) the Borrower shall not conceal, disguise or impede the establishment of the true nature, origin, location, movement, disposition, title, rights with respect to, or ownership of, proceeds of any unlawful activity.

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IN WITNESS WHEREOF the parties hereto have set their hands hereunto.

The Common Seal of )  
 )  
 )  
 was hereunto affixed )  
 )  
 in the presence of : )

\_\_\_\_\_  
*DIRECTOR*  
Name :  
NRIC No. :

\_\_\_\_\_  
*DIRECTOR/SECRETARY*  
Name :  
NRIC No. :

*\* for companies without common seal*

SIGNED by [director] )  
 and )  
 for and on behalf of )  
 )  
 in the presence of: )

OR

SIGNED by [director] )  
 for and on behalf of )  
 )  
 in the presence of: )

Signed by )  
 )  
 as Attorney of the Bank )  
 )  
 in the presence of :- )  
 )

**CIMB BANK BERHAD**  
by its Attorney

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**SCHEDULE 1**

1.	Date of Agreement	
2.	Name of Borrower Company/ Business Registration of Borrower Registered Address of Borrower	
3.	Date of Letter of Offer	

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SCHEDULE ACONDITIONS PRECEDENT

(referred to in Clause 2.1)

1. Where the Borrower and/or the Security Party is a corporation, the Bank shall have received certified true copies of the Constitution / written confirmation duly signed by a director confirming that the corporation does not have a Constitution, Return of Allotment of Shares Form (previously known as Form 24), Notification for Change in the Registered Address (previously known as Form 44) and Notification of Change in the Register of Directors, Managers and Secretaries Form (previously known as Form 49) of the Borrower and/or the Security Party, as the case may be
2. Where the Borrower and/or the Security Party is a corporation, the Bank shall have received the Borrower's Board of Directors' Resolution authorising the entry into this Agreement, and the Security Party's Board of Directors' Resolution authorising the granting of the Security Document and/or Security Interest to the Bank, and any power of attorney and/or deed of empowerment all of which are in form and content acceptable to the Bank.
3. The letter of offer bearing the date stated in **Item 3 of Schedule 1**, addressed by the Bank to the Borrower, shall have been duly accepted by the Borrower, and the accepted letter of offer received by the Bank.
4. This Agreement and the Security Documents shall have been duly executed by or on behalf of all the parties concerned, stamped and registered with such registries as the Bank may deem necessary or expedient, and duly received by the Bank.
5. The Charge, duly executed by both the Chargor and the Bank and stamped together with:
  - (a) the issue document of title to the Land;
  - (b) any receipts for payment of quit rent, assessment, rates, dues, and other outgoings for the current year in respect of the Land as the Bank may require; and
  - (c) all other documents necessary to ensure the registration of the Charge,have been received by the Bank.
6. The Bank shall have received a duly stamped copy/original of the Sale and Purchase Agreement of the Land and/or any other documents pertaining to the Land as the Bank may require.
7. The Bank shall have received confirmation in form and substance acceptable to the Bank that a search having been made at the relevant land registry, that the Land is free from all encumbrances and no acquisition notices have been lodged and/or registered and/or issued against the Land.
8. Where required by the Bank, the lodgement by the Bank of a private caveat and/or lien-holder's caveat on the master title of the Land.
9. Where required by the Bank, copies of valuation reports by a valuer acceptable to the Bank, in respect of any Land and/or properties to be provided to the Bank as security for the Facilities, all in form and substance acceptable to the Bank, shall have been received by the Bank.
10. All details, financial statements, statement of accounts of the Borrower (including but not limited to cashflow projections), and/or any other information on the Borrower as the Bank may require, all in form and substance acceptable to the Bank, shall have been received by the Bank.
11. The Insurance Policy in form and content acceptable to the Bank, from Insurers acceptable to the Bank, shall have been received by the Bank.
12. The Bank shall have received any undertakings, confirmations, indemnities, opinions, authorisations, approvals, consents, assurances, and/or any other documents which the Bank may in its discretion determine, all of which shall be in form and substance acceptable to the Bank.
13. The Bank shall have received confirmation in form and substance acceptable to the Bank, that the power of attorney granted by the Borrower and/or Security Party to the Bank under the terms and/or conditions of the Debenture, Assignment, Deed of Assignment of Benefit of Contract and/or any Security Document and/or Security Interest, has been presented for registration with the relevant court and/or registry.

14. Where any company has issued share certificates, any share certificates in respect of any shares to be pledged and/or charged and/or placed on lien to the Bank, and/or any registrable transfers and/or transfer forms in respect thereof in favour of whomsoever the Bank shall direct, all of which shall be in form and substance acceptable to the Bank, shall have been deposited with and/or received by the Bank and stamped. Where the company whose shares are to be pledged has not issued share certificates, the Borrower and/or Security Party shall forthwith, whenever requested by the Bank, procure and ensure that the said company issues share certificates in respect of the shares to be pledged, whereupon the Borrower and/or Security Party shall forthwith comply with the provisions of this provision with respect to the issued share certificates.
15. The Bank shall have received confirmation in form and substance acceptable to the Bank, that any Security Documents and/or Security Interest, which by law are required to be registered at Companies Commission of Malaysia, have been lodged with the Companies Commission of Malaysia for registration pursuant to Section 352 of the Companies Act, 2016, and that searches have been made by the Bank's solicitors at the time of such lodgement confirming that no charge or other encumbrance has been registered in the Companies Commission of Malaysia prior to such lodgement which could or might adversely affect the security of the Bank.
16. The Bank shall have received confirmation in form and substance acceptable to the Bank, that a search having been made at the Director General of Insolvency's Office, Companies Commission of Malaysia, and/or any other relevant offices and/or registries which the Bank may require, that there are no bankruptcy and/or winding up proceedings against the Borrower and/or any Security Party, and that no petition for winding up or for bankruptcy of the Borrower and/or the Security Party has been presented against the Borrower and/or the Security Party, and/or the Bank shall have received a statutory declaration by the Borrower and/or the Security Party in form and substance acceptable to the Bank, declaring the same.
17. The Bank shall have received confirmation in form and substance acceptable to the Bank, that all approvals and/or consents from the relevant authorities for the loans by the Borrower, including but not limited to, where relevant, any approvals from BNM or Labuan FSA pursuant to the Financial Services Act 2013 and/or Labuan Financial Services and Securities Act 2010, have been duly obtained, and certified true copies of such approvals and/or consents, shall have been received by the Bank.
18. The Bank shall have received from the Borrower, not more than such number of Business Days and not less than such number of Business Days, all as stated in the Letter of Offer, before the proposed date of such Drawing, the Drawing Notice in form and content acceptable to the Bank.
19. Receipt by the Bank of the Bank's solicitor's written confirmation that the documentation is in order, that all conditions precedent have been fulfilled, and that it is in order for the Bank to disburse the loan.
20. Such additional conditions precedent as stated in stated in the Letter of Offer.

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## SCHEDULE B

### (A) TERM LOAN (TL) FACILITY

#### (a) Purpose

The TL Facility shall be for the purpose stated in the Letter of Offer.

#### (b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the TL Facility to the Borrower in the amount stated in the Letter of Offer.

#### (c) Duration and Availability

The duration of the TL shall be for such months from such date and shall expire on such date, all as stated in the Letter of Offer.

The Facility shall also be subject to periodic review at the discretion of the Bank and repayable on demand.

#### (d) Drawdown

Save as otherwise provided herein, a Drawing may be made by the Borrower if:-

- (i) within the period specified in the Letter of Offer, before the proposed date of such Drawing, the Bank has received from the Borrower the Drawing Notice in form and content acceptable to the Bank, receipt of which shall oblige the Borrower to borrow the amount therein requested on the date therein stated upon the terms and subject to the conditions contained herein;
- (ii) the proposed date for the making of such Drawing is a Business Day which precedes the Repayment Date;
- (iii) the proposed date for the making of such Drawing is not less than the number of Business Days specified in the Letter of Offer from the date which the previous drawing (if any) was made hereunder

the proposed amount of such Drawing shall be as stated in the Letter of Offer; and

- (iv) no Event of Default or potential Event of Default has occurred and the representations set out in Clause 6 are true on and as of the proposed date for the making of such Drawing.

#### (e) Prevailing Rate

The Borrower shall pay interest on the Drawing at the Prevailing Rate of the percentage per annum stated in the Letter of Offer above BLR. Unless any other interest payment period is specified by the Bank, the Borrower shall pay the interest chargeable monthly.

#### (f) Default Rate

Default interest at the following rates shall be chargeable:-

- (i) such percentage per annum stated in the Letter of Offer on the amount or instalment in arrears;
- (ii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on any sum due and payable not paid on the date when it becomes due and payable, which sum due and payable shall include any sums payable under item (i) above; and/or
- (iii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on the balance outstanding after the TL Facility has expired or been terminated, cancelled or recalled by demand otherwise;

from the date it was chargeable to the date of actual payment subject to a minimum payment of such amount stated in the Letter of Offer.

Despite the terms of this Agreement, the Bank shall have the right to charge default interest at any other rate as the as determined by the Bank by notice to the Borrower.

#### (g) Prepayment

- (i) The Borrower may, if with the Bank's consent, and subject to any terms and/or conditions the Bank may impose in such event, prepay any part of the balance outstanding, if it has given the Bank not less than such number of days' prior written notice to that effect as stated in the Letter of Offer, or prepay the whole amount outstanding, if it has given the Bank not less than such number of days' prior written notice to that effect as stated in the Letter of Offer.
- (ii) Any such notice of prepayment shall be irrevocable, shall specify the date upon which such prepayment is to be made and the amount of such prepayment and shall oblige the Borrower to make such prepayment on such date.



(iii) The Borrower shall not prepay all or any part of the TL except at the times and in the manner expressly provided for in this Agreement and shall not be entitled to reborrow any amount prepaid.

(h) Repayment

The Borrower shall repay the TL Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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## **(B) OVERDRAFT (OD) FACILITY**

### **(a) Purpose**

The OD Facility shall be for the purpose stated in the Letter of Offer.

### **(b) Limit**

Subject to the terms and conditions of this Agreement, the Bank shall provide the OD Facility to the Borrower in the amount stated in the Letter of Offer.

The limit of the OD Facility shall be subject to reduction in the manner stated in the Letter of Offer.

### **(c) Duration and Availability**

The Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand. Despite the duration of the OD Facility and for the avoidance of doubt, it is hereby agreed that the OD Facility shall always remain as repayable on demand and nothing herein shall be interpreted or construed as the Bank granting a term loan to the Borrower.

### **(d) Commitment Fee**

The Borrower shall pay a commitment fee at the rate stated in the Letter of Offer or subject to the terms of this Agreement, such other rate as may be prescribed by the Bank on the daily amount of the unutilised portion of the OD and debited to the Borrower's account on the last day of each calendar month. The commitment fee payable hereunder shall be calculated on the basis of actual days elapsed in a 365 days' year.

### **(e) Prevailing Rate**

Interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer above BLR shall be levied on the daily debit balance of the account and posted to the account on the last day of each calendar month. The interest shall be paid monthly.

Unless paid, the interest shall be treated as a Drawing under the OD.

### **(f) Default Rate**

Default interest at the following rates shall be chargeable:-

- (i) such percentage per annum stated in the Letter of Offer above BLR on the amount in excess of the limit;
- (ii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on any sum due and payable not paid on the date when it becomes due and payable; and/or
- (iii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on the balance outstanding after the OD Facility has expired or been terminated, cancelled or recalled by demand otherwise;

from the date it was chargeable to the date of actual payment subject to a minimum payment of such amount stated in the Letter of Offer.

Despite the terms of this Agreement, the Bank shall have the right to charge default interest at any other rate as determined by the Bank by notice to the Borrower.

### **(g) Cancellation/Suspension**

The Bank may cancel or suspend further drawing of the OD Facility upon the occurrence of an event of default.

### **(h) Repayment**

The Borrower shall pay the amount outstanding under the OD Facility upon the expiry of the duration of the OD Facility, or upon demand by the Bank, whichever is earlier.

### **(i) Payment stops**

The Bank may in its discretion upon notice to the Borrower stop payment on any cheque or other payment orders drawn on the Designated Account and subject to clause 15.13, the Bank, shall not as a consequence of dishonouring such cheques or payment orders be liable to the Borrower in libel or in any loss damages costs and expense incurred or suffered by the Borrower.

### **(j) No excess or temporary overdraft**

The Bank will not permit any excess or temporary overdraw in excess of the Bank's approved limit of the OD Facility. In the event there is a need to increase the OD Facility to meet future needs, a fresh application must be submitted for the Bank's consideration. The Bank may at the request of the Borrower increase the limit of the OD Facility on such terms and conditions as the Bank shall in its discretion determine, and subject to the terms of this Agreement, the Bank shall have the right to impose an additional rate of interest which rate shall be added over and above the prescribed rates already charged on the OD Facility.

## **(C) BANK GUARANTEE (BG) FACILITY**

### **(a) Purpose**

The BG Facility shall be for the purpose stated in the Letter of Offer.

### **(b) Limit**

Subject to the terms and conditions of this Agreement, the Bank shall provide the BG Facility to the Borrower in the amount stated in the Letter of Offer.

### **(c) Duration and Availability**

The BG Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

### **(d) Issue of the Guarantee**

The issuance of any Bank Guarantee by the Bank shall be at the discretion of the Bank and subject to any prevailing standard operating procedures of the Bank, including but not limited to, if so required by the Bank, any indemnity to cover losses incurred by the Bank as a consequence of any default, or any failure of the Borrower to comply with the terms of the BG Facility or the Bank Guarantee or otherwise in connection with this Agreement in form and content acceptable to the Bank to be executed by the Borrower and received by the Bank, prior to the issuance of any Bank Guarantee.

Subject to the terms and conditions of this Agreement, the Bank shall issue a Bank Guarantee on the Borrower's behalf if:-

- (i) the Bank has received from the Borrower in writing the issue request in form and content acceptable to the Bank;
- (ii) the Bank Guarantee is in a form and content acceptable to the Bank and addressed to a beneficiary in whose favour the Bank can issue the Bank Guarantee, in compliance with all applicable laws binding on or affecting either the Borrower or the Bank;
- (iii) the amount shall, when issued and when added to the Bank's maximum actual and contingent liability under all Bank Guarantees then issued under the Facility, not exceed the limit as set out above; and
- (iv) no event has occurred which is or may become with the passage of time an Event of Default.

### **(e) Bank's Entitlement**

The Bank may pay immediately an amount for which a claim or demand has been made at any time under the Bank Guarantee without any reference to or further authority from the Borrower. The Bank shall not be under any duty to investigate or enquire whether any claim or demand on the Bank under the Bank Guarantee has been properly made in spite of the fact that the Borrower may dispute the validity of such claim or demand or allege that the Bank was or might have been justified in refusing payment of any amount claimed or demanded under the Bank Guarantee. The Borrower shall not take any steps to prevent the Bank from making payment under a Bank Guarantee for which a claim or demand has been made.

### **(f) Commission**

The Borrower shall pay commission to the Bank for the full liability period of each Bank Guarantee to be issued or renewed. The commission shall be charged at the rate of the percentage stated in the Letter of Offer per month or part thereof on the face amount of each Bank Guarantee subject to the minimum amount stated in the Letter of Offer for each Bank Guarantee. Such commission, which is non-refundable, shall be paid before each Guarantee can be issued.

### **(g) Payments under the Bank Guarantee to Constitute Loan**

Any payment by the Bank under the Bank Guarantee shall constitute a loan from the Bank to the Borrower. Such loan shall:-

- (i) be an amount equal to the amount of such payment;
- (ii) be treated as made at the time of payment to the beneficiaries;
- (iii) be due and payable at the time it is made; and
- (iv) incur interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer above BLR or such other rate as the Bank may from time to time stipulate, to the date of the Bank's actual receipt of the amount aforesaid, by notice to the Borrower.

### **(h) Indemnity**

The Borrower shall indemnify the Bank from any loss, costs, damages, claims and/or demands incurred or suffered by the Bank as a consequence of any default or any failure of the Borrower to comply with the terms of the BG Facility or the Bank Guarantee or otherwise in connection with this Agreement.

The Bank shall have the right, at its discretion, to debit and/or set off from any of the Borrower's accounts with the Bank, in order to settle any of the Borrower's liabilities under this indemnity, and/or to recover any of the moneys which the Borrower owes to the Bank by reason of this indemnity by notice to the Borrower.

### **(i) Repayment on Demand**

Despite the above provisions, the Borrower shall forthwith upon receipt of a written notice or demand by the Bank pay to the Bank the Bank Guarantee amount or such amount claimed by the beneficiary of the Bank Guarantee, in spite of the fact that:

- (i) the said monies may not have been properly due under the Bank Guarantee whether because the corresponding sum was not properly due to the beneficiary or for any other reason; or
- (ii) the Bank Guarantee or any provision thereof is void, voidable or invalid or is not enforceable against the Bank for any reason whatsoever;

failing which the Bank may exercise all its rights and remedies provided by law, this Agreement and the Security Documents including cancellation of the BG Facility granted herein.

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## **(D) SHIPPING GUARANTEE (SG) FACILITY**

### **(a) Purpose**

The SG Facility shall be for the purpose stated in the Letter of Offer.

### **(b) Limit**

Subject to the terms and conditions of this Agreement, the Bank shall provide the SG Facility to the Borrower in the amount stated in the Letter of Offer.

### **(c) Duration and Availability**

The SG Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

### **(d) Issue of the Shipping Guarantee**

The issuance of any Shipping Guarantee by the Bank shall be at the discretion of the Bank and subject to any prevailing standard operating procedures of the Bank, including but not limited to, if so required by the Bank, any indemnity in form and content acceptable to the Bank to be executed by the Borrower and received by the Bank, prior to the issuance of any Shipping Guarantee.

Subject to the terms and conditions of this Agreement, the Bank shall issue a Shipping Guarantee on the Borrower's behalf if:-

- (i) the Bank has received from the Borrower in writing the issue request in form and content acceptable to the Bank;
- (ii) the Shipping Guarantee is in a form and content acceptable to the Bank and addressed to a beneficiary in whose favour the Bank can issue the Shipping Guarantee, in compliance with all applicable laws binding on or affecting either the Borrower or the Bank;
- (iii) the amount shall, when issued and when added to the Bank's maximum actual and contingent liability under all Shipping Guarantees then issued under the Facility, not exceed the limit as set out above; and
- (iv) no event has occurred which is or may become with the passage of time an Event of Default.

### **(e) Bank's Entitlement**

The Bank may pay immediately an amount for which a claim or demand has been made at any time under the Shipping Guarantee without any reference to or further authority from the Borrower. The Bank shall not be under any duty to investigate or enquire whether any claim or demand on the Bank under the Shipping Guarantee has been properly made in spite of the fact that the Borrower may dispute the validity of such claim or demand or or allege that the Bank was or might have been justified in refusing payment of any amount claimed or demanded under the Shipping Guarantee. Accordingly it shall not be a defence to any demand made by the Bank against the Borrower under this Agreement nor shall any of the Borrower's obligations hereunder be affected or impaired by the fact that the Bank was or might have been justified in refusing payment, in whole or in part, of the amounts so claimed or demanded under the Shipping Guarantee. The Borrower shall not take any steps to prevent the Bank from making payment under any Shipping Guarantee for which a claim or demand has been made.

### **(f) Commission**

The Borrower shall pay commission to the Bank for the full liability period of each Shipping Guarantee to be issued or renewed. The commission shall be charged at the rate of the percentage stated in the Letter of Offer flat for three (3) months based on the invoice amount, subject to the minimum amount stated in the Letter of Offer for each Shipping Guarantee. Such commission, which is non-refundable, shall be paid before each Shipping Guarantee can be issued. Thereafter, additional commission shall be charged at the rate of the percentage stated in the Letter of Offer per annum until the original Shipping Guarantee is returned to the Bank for cancellation.

### **(g) Payments under the Shipping Guarantee to Constitute Loan**

Any payment by the Bank under the Shipping Guarantee shall constitute a loan from the Bank to the Borrower. Such loan shall:-

- (i) be an amount equal to the amount of such payment;
- (ii) be treated as made at the time of payment to be beneficiaries;
- (iii) be due and payable at the time it is made; and
- (iv) incur interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer above BLR or such other rate as the Bank may from time to time stipulate, to the date of the Bank's actual receipt of the amount aforesaid, by notice to the Borrower.

(h) Indemnity

The Borrower shall indemnify the Bank from any loss, costs, damages, claims and/or demands of any kind whatsoever, which the Bank may suffer in consequence of the Bank's issuance of the Shipping Guarantee.

The Bank shall have the right at its discretion, to debit and/or set off from any of the Borrower's accounts with the Bank, in order to settle any of the Borrower's liabilities under this indemnity, and/or to recover any of the moneys which the Borrower owes to the Bank by reason of this indemnity, by notice to the Borrower.

(i) Repayment on Demand

Despite the above provisions, the Borrower shall forthwith upon receipt of a notice or demand by the Bank pay to the Bank the Shipping Guarantee amount or such amount claimed by the beneficiary of the Shipping Guarantee, in spite of the fact that:

- (i) the said monies may not have been properly due under the Shipping Guarantee whether because the corresponding sum was not properly due to the beneficiary or for any other reason; or
- (ii) the Shipping Guarantee or any provision thereof is void, voidable or invalid or is not enforceable against the Bank for any reason whatsoever,

failing which the Bank may exercise all its rights and remedies provided by law, this Agreement and/or the Security Documents including cancellation of the SG Facility granted herein.

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**(E) DOCUMENTARY CREDIT (DC) FACILITY**

(a) Purpose

The DC Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the DC Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The DC Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Issuance of the Documentary Credit

The issuance of any DC by the Bank shall be at the discretion of the Bank and subject to any prevailing standard operating procedures of the Bank, including but not limited to, if so required by the Bank, any indemnity in form and content acceptable to the Bank to be executed by the Borrower and received by the Bank, prior to the issuance of the DC.

Subject to the terms and conditions of this Agreement, the Bank will issue a DC under the DC Facility at the request of the Borrower if:

- (i) the Bank has received from the Borrower a duly completed application form in form and content acceptable to the Bank;
- (ii) the DC is in a form and content acceptable to the Bank and addressed to a beneficiary in whose favour the Bank can issue the DC, in compliance with all applicable laws binding on or affecting either the Borrower or the Bank;
- (iii) the amount of the DC, when issued and when added to the amounts of the Bank's maximum actual and contingent liability under all DC issued under the Facility, shall not exceed the limit of the DC Facility set out above; and
- (iv) no event has occurred which is or may become with the passage of time an Event of Default.

(e) Payment under the DC to Constitute Loan

Any payment by the Bank under any DC shall constitute a loan from the Bank to the Borrower. Such loan shall:

- (i) be an amount equal to the amount of such payment;
- (ii) be treated as made at the time of payment;
- (iii) be due and payable at the time it is made; and
- (iv) incur interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer above BLR or such other rate as the Bank may from time to time stipulate, to the date of the Bank's actual receipt of the amount aforesaid, by notice to the Borrower.

(f) Bank's Entitlement

The Bank may pay immediately an amount for which a claim or demand has been made at any time under the DC without any reference to or further authority from the Borrower. The Bank shall not be under any duty to investigate or enquire whether any claim or demand on the Bank under the DC has been properly made in spite of the fact that the Borrower may dispute the validity of such claim or demand or allege that the Bank was or might have been justified in refusing payment of any amount claimed or demanded under the DC. Accordingly it shall not be a defence to any demand made by the Bank against the Borrower under this Agreement nor shall any of the Borrower's obligations hereunder be affected or impaired by the fact that the Bank was or might have been justified in refusing payment, in whole or in part, of the amounts so claimed or demanded under the DC. The Borrower shall not take any steps to prevent the Bank from making payment under any DC for which a claim or demand has been made.

(g) Commission

Documentary Credit (Sight) / (Usance)

The Borrower shall pay commission at the rate of the percentage stated in the Letter of Offer per month or part thereof for the amount of each DC subject to the minimum amount stated in the Letter of Offer.

(h) Prevailing Rate

Foreign DC (Sight)

- (i) Interest at the prevailing overdraft rate levied by the Bank's depository agent shall be levied on each DC drawing from the date the Bank's Nostro account is debited to the date of payment by the Bank.

- (ii) From the date of payment by the Bank to the date of payment by the Borrower or conversion into financing, interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer shall be levied on the amount so paid by the Bank.

Foreign DC (Usance) Local DC (Usance)

- (iii) From the date of maturity to the date of payment by the Borrower or date of conversion into financing, interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer shall be levied on the amount paid by the Bank.

Local DC (Sight)

- (iv) From the date of payment by the Bank to the date of payment by the Borrower or conversion into financing, interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer shall be levied on each DC.

(i) Default Rate

Default interest at the following rates shall be chargeable:-

(i) Foreign DC (Sight)/Local DC (Sight)

Such percentage per annum stated in the Letter of Offer above the Prevailing Rate if documents drawn under Sight DC are not settled or could not be converted into financing.

(ii) Foreign DC (Usance) Local DC (Usance)

Such percentage per annum stated in the Letter of Offer above the Prevailing Rate if documents drawn under Foreign DC (Usance) and/or Local DC (Usance) are not settled or could not be converted into financing on maturity.

- (iii) Such percentage per annum stated in the Letter of Offer above the Prevailing Rate on any other amounts outstanding and/or if the Facility is recalled and/or after the Duration/Availability Period has expired.

Despite to the terms of this Agreement, the Bank shall have the right to charge default interest at any other rate as determined by notice to the Borrower.

(j) Repayment

Sight DC

Upon expiry of the duration and/or upon demand by the Bank, whichever is earlier.

Usance DC

The Borrower shall repay in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(F) TRUST RECEIPT (TR) FACILITY**

(a) Purpose

The TR Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the TR Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The TR Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each TR shall be as stated in the Letter of Offer.

(e) Prevailing Rate

Interest at the Prevailing Rate of the percentage per annum stated in the Letter of Offer above BLR shall be levied.

(f) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue TR Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the TR Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Repayment

The Borrower shall repay the TR Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(G) BANKERS ACCEPTANCE (BA) FACILITY**

(a) Purpose

The BA Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the BA Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The BA Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each BA shall be as stated in the Letter of Offer.

(e) Prevailing Rate

At the Bank's Prevailing Rate for such BA Facility, which would include the discount for BA for the relevant maturity and the acceptance commission from the date each BA is created to the date of maturity and is to be paid at the time of creation.

(f) Commission

The Borrower shall pay the Bank commission at the rate of the percentage stated in the Letter of Offer per annum for each BA subject to the minimum amount stated in the Letter of Offer for each BA (if any). Payment of commission shall be paid at the time of acceptance.

(g) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate for the Bank's OD or TR, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue BA Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the BA Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(h) Repayment

The Borrower shall repay the BA Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

(i) Other Conditions

The Borrower agrees or undertakes with the Bank that :-

- (i) the Borrower shall discount only with the Bank all BA accepted by the Bank;
- (ii) the procedure of accepting and discounting BA shall be subject to all the conditions and guidelines laid down by BNM and/or such other regulatory authorities;
- (iii) the Bank may not to accept, or to reject, any BA presented by the Borrower;
- (iv) the Borrower shall ensure that inter-company transactions are not financed under the BA Facility; and
- (v) the Bank shall have the right not to accept any new BA if there are any overdue outstandings.

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**(H) DOMESTIC BILLS DISCOUNTING (DBD) FACILITY**

(a) Purpose

The DBD Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the DBD Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The DBD Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each DBD shall be as stated in the Letter of Offer.

(e) Commission

The Borrower shall pay the Bank a commission at the rate of the percentage stated in the Letter of Offer flat calculated on the value of each bill subject to the minimum amount stated in the Letter of Offer for each bill.

(f) Discount Rate

The Borrower shall be charged upfront a discount rate of BLR plus the percentage per annum stated in the Letter of Offer for the period from the date of discounting to the maturity date of the bill, or at such rates as the Bank may determine from time to time, by notice to the Borrower.

(g) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the discount rate, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue DBD Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the DBD Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(h) Repayment

The Borrower shall repay the DBD Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(I) DOMESTIC BILLS PURCHASED (DBP) FACILITY**

(a) Purpose

The DBP Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the DBP Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The DBP Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

Sight basis.

(e) Commission

The Borrower shall pay the Bank a commission of at the rate of the percentage stated in the Letter of Offer flat calculated on the value of each bill subject to the minimum amount stated in the Letter of Offer for each bill.

(f) Prevailing Rate

The Borrower shall pay to the Bank interest at the rate of BLR plus such percentage per annum stated in the Letter of Offer and such rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(g) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue DBP Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the DBP Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(h) Repayment

The Borrower shall repay the DBP Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(J) EXPORT CREDIT REFINANCING PRE-SHIPMENT AND POST-SHIPMENT (ECR) FACILITY**

(a) Purpose

The ECR Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the ECR Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

(i) The maximum tenor for each ECR Pre-Shipment shall be as stated in the Letter of Offer.

(ii) The maximum tenor for each ECR Post-Shipment shall be as stated in the Letter of Offer.

(e) Prevailing Rate

The Borrower shall pay to the Bank interest at the Prevailing Rate of the percentage per annum stated in the Letter of Offer above the rate quoted by Exim Bank, or such other rate as may be determined by the Bank from time to time, by notice to the Borrower.

(f) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate for the Bank's OD or TR, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue ECR Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the ECR Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Repayment

The Borrower shall repay the ECR Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

(h) Other Conditions

The ECR Facility shall be available subject to any rules, guidelines and/or regulations as laid down by Exim Bank and/or such other regulatory bodies from time to time.

The Borrower shall inform the Bank of any new approval and/or amendment by Exim Bank and/or such other regulatory bodies, of the Borrower's Export Credit Refinancing.

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**(K) FOREIGN BILLS DISCOUNTING (FBD) FACILITY**

(a) Purpose

The FBD Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the FBD Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The FBD Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each FBD shall be as stated in the Letter of Offer.

(e) Discount Rate

The Borrower shall pay to the Bank a discount rate of BLR plus the percentage per annum stated in the Letter of Offer for bills denominated in RM, and for bills denominated in other currencies the Borrower shall be charged the rate prevailing for the respective currency (as advised by the Bank).

The discount rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(f) Default Rate

Interest at the Default Rate of percentage per annum stated in the Letter of Offer over and above the Prevailing Rate for the Bank's OD or TR, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue FBD Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the FBD Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Repayment

The Borrower shall repay the FBD Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(L) FOREIGN BILLS PURCHASED (FBP) FACILITY**

(a) Purpose

The FBP Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the FBP Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The FBP Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

Sight basis.

(e) Prevailing Rate

The Borrower shall pay to the Bank interest at the rate of BLR plus such percentage per annum stated in the Letter of Offer for bills denominated in RM, and for bills denominated in other currencies the Borrower shall be charged the rate prevailing for the respective currency (as advised by the Bank).

The prevailing rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(f) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate for the Bank's OD or TR, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue FBP Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the FBP Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Repayment

The Borrower shall repay the FBP Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(M) FOREIGN CURRENCY LOAN (FCL) FACILITY**

(a) Purpose

The FCL Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the FCL Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The FCL Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each FCL shall be as stated in the Letter of Offer.

(e) Prevailing Rate

The Borrower shall pay to the Bank interest at Cost of Funds plus the percentage per annum stated in the Letter of Offer and such rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(f) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue FCL Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the FCL Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Repayment

The Borrower shall repay the FCL Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(N) MULTI CURRENCY TRADE LOAN (MCTL) FACILITY**

(a) Purpose

The MCTL Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the MCTL Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The MCTL Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Tenor

The maximum tenor for each MCTL shall be as stated in the Letter of Offer.

(e) Prevailing Rate

The Borrower shall pay to the Bank interest at the rate of the foreign currency funding rate plus the percentage per annum stated in the Letter of Offer, and such rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(f) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate for the Bank's OD or TR, or at such other rate as the Bank may determine from time to time, shall be chargeable on any overdue MCTL Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the MCTL Facility has expired or been terminated, cancelled or recalled by the Bank, by notice to the Borrower.

(g) Roll Over

For MCTL (Export), only MCTL against sight bill may be rolled over at the end of each tenor of the MCTL subject to such terms and/or conditions as may be imposed by the Bank as at such time of intended roll over, and subject always to interest being serviced by the Borrower as at such date, and that only the principal amount of the MCTL may be rolled over.

For other MCTL (Import), MCTL may be rolled over at the end of each tenor of the MCTL subject to such terms and/or conditions as may be imposed by the Bank as at such time of intended roll over, and subject always to interest being serviced by the Borrower as at such date, and that only the principal amount of the MCTL may be rolled over.

(h) Repayment

The Borrower shall repay the FTCL Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

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**(O) FOREIGN EXCHANGE CONTRACT LIMIT (FECL) FACILITY**

(a) Purpose

The FECL Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the FECL Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The FECL Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(e) Tenor

The maximum tenor for each FECL shall be as stated in the Letter of Offer.

(e) Repayment

The Borrower shall repay the FECL Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

(f) Other Conditions

Despite anything else contained herein, the availability of the FECL Facility shall be subject to the Borrower signing and delivering to the Bank any documents in form and content acceptable to the Bank, and doing all such things as the Bank may from time to time require.

The FECL Facility shall be subject to, and in accordance with, the guidelines laid down by the ABM and/or BNM or such guidelines as may be varied from time to time.

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## **(P)REVOLVING CREDIT (RC) FACILITY**

### (a) Purpose

The RC Facility shall be for the purpose stated in the Letter of Offer.

### (b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the RC Facility to the Borrower in the amount stated in the Letter of Offer.

### (c) Duration and Availability

The RC Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

### (d) Tenor

Each drawdown or roll-over period shall be for such number of months as stated in the Letter of Offer.

### (e) Commitment Fee

The Borrower shall pay a commitment fee at the rate stated in the Letter of Offer or such other rate as may be prescribed by the Bank on the daily amount of the unutilised portion of the RC Facility and debited to the Borrower's Account on the last day of each calendar month. The commitment fee payable hereunder shall be calculated on the basis of actual days elapsed in a 365 days year, by notice to the Borrower.

### (f) Prevailing Rate

The Borrower shall pay to the Bank interest on the RC Facility at the rate of the benchmark rate stated in the Letter of Offer plus the percentage per annum stated in the Letter of Offer, and such rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower. Such interest shall be payable by the Borrower in accordance with the corresponding drawdown or roll-over period in arrears.

### (g) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate, or at such other rate as the Bank may determine from time to time, by notice to the Borrower, shall be chargeable on any overdue RC Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the RC Facility has expired or been terminated, cancelled or recalled by the Bank.

### (h) Amount of Drawdown or Roll-Over

Each drawdown or roll-over of the RC Facility shall be in integral multiples of the amount stated in the Letter of Offer, subject to the minimum the amount stated in the Letter of Offer each time.

### (i) Drawdown

Subject to the terms and conditions of this Agreement, the Borrower may make a drawdown on the RC Facility subject to the Bank having received from the Borrower a Drawing Notice which shall be in form and content acceptable to the Bank, at least such number of Business Days stated in the Letter of Offer before the date on which a Drawdown is intended to be made.

### (j) Roll-Over

The RC may be rolled over at the end of each Tenor of the RC subject to:-

- (i) interest to be paid by the Borrower as at such date;
- (ii) only the principal amount of the RC may be rolled over;
- (iii) the Bank shall have received from the Borrower a Roll-Over Notice in form and content acceptable to the Bank, at least such number of Business Days stated in the Letter of Offer before the date on which a roll-over is intended to be made; and
- (iv) no roll-over shall be allowed after the Availability Period.

### (k) Repayment

The Borrower shall repay the RC Facility in the amounts and on the Repayment Dates stated in the Letter of Offer.

### (l) Prepayment

The Borrower cannot prepay the RC unless prior written approval is obtained from the Bank.

**(Q) SHORT TERM ADVANCE (STA) FACILITY**

(a) Purpose

The STA Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the STA Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The STA Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Prevailing Rate

The Borrower shall pay to the Bank interest at the rate of BLR plus the percentage per annum stated in the Letter of Offer and such rate shall be subject to revision at the discretion of the Bank from time to time, by notice to the Borrower.

(e) Default Rate

Interest at the Default Rate of the percentage per annum stated in the Letter of Offer over and above the Prevailing Rate, or-at such other rate as the Bank may determine from time to time, by notice to the Borrower, shall be chargeable on any overdue STA Facility, and/or on any sum due and payable not so paid when it becomes due and payable, or after the STA Facility has expired or been terminated, cancelled or recalled by the Bank.

(f) Repayment

The Borrower shall repay the STA Facility in the amounts and in such manner as stated in the Letter of Offer.

(g) Prepayment

The Borrower cannot prepay the STA unless prior written approval is obtained from the Bank.

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## **(R) CONTRACT FINANCING (CF) FACILITY**

### **(a) Purpose**

The CF Facility shall be for the purpose stated in the Letter of Offer.

### **(b) Limit**

Subject to the terms and conditions of this Agreement, the Bank shall provide the CF Facility to the Borrower in the amount stated in the Letter of Offer.

The limit of the CF Facility shall be subject to reduction in the manner stated in the Letter of Offer.

### **(c) Duration and Availability**

The Facility shall be subject to periodic review at the discretion of the Bank and repayable on demand.

### **(d) Commitment Fee**

The Borrower shall pay a commitment fee at the rate stated in the Letter of Offer or such other rate as may be prescribed by the Bank, by notice to the Borrower on the daily amount of the unutilised portion of the CF and debited to the Borrower's Account on the last day of each calendar month. The commitment fee payable hereunder shall be calculated on the basis of actual days elapsed in a 365 days year.

### **(e) Prevailing Rate**

Interest at the Prevailing Rate of such percentage per annum stated in the Letter of Offer above BLR shall be levied on the daily debit balance of the account and posted to the account on the last day of each calendar month. The interest shall be paid monthly.

Unless paid, the interest shall be treated as a Drawing under the CF.

### **(f) Default Rate**

Default interest at the following rates shall be chargeable:-

- (i) such percentage per annum stated in the Letter of Offer above BLR on the amount in excess of the limit;
- (ii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on any sum due and payable not paid on the date when it becomes due and payable; and/or
- (iii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on the balance outstanding after the CF Facility has expired or been terminated, cancelled or recalled by demand otherwise

from the date it was chargeable to the date of actual payment subject to a minimum payment of such amount stated in the Letter of Offer.

Despite the terms of this Agreement, the Bank shall have the right to charge default interest at any other rate as the Bank may determine from time to time.

### **(g) Cancellation/Suspension**

The Bank may cancel or suspend further drawing of the CF Facility upon the occurrence of an event of default.

### **(h) Repayment**

The Borrower shall pay the amount outstanding under the CF Facility upon the expiry of the duration of the CF Facility, or upon demand by the Bank, whichever is earlier.

### **(i) Payment stops**

The Bank may in its discretion upon notice to the Borrower stop payment on any cheque or other payment orders drawn on the Designated Account and subject to Clause 15.13, the Bank shall not as a consequences of dishonouring such cheques or payment orders be liable to the Borrower in libel or in any loss damages costs and expense incurred or suffered by the Borrower.

### **(j) No excess or temporary overdraft**

The Bank will not permit any excess or temporary overdrawing in excess of the Bank's approved limit of the CF Facility. In the event there is a need to increase the CF Facility to meet future needs, a fresh application must be submitted for the Bank's consideration. The Bank may at the request of the Borrower increase the limit of the CF Facility on such terms and conditions as the Bank shall in its discretion determine, and without prejudice to the generality of the foregoing, the Bank shall subject to the terms of this Agreement, have the right, by notice to the Borrower to impose an additional rate of interest which rate shall be added at the discretion of the Bank over and above the prescribed rates already charged on the CF Facility.

(k) Additional Security/ Security Documents

The Borrower upon receipt of prior written notice from the Bank, procure the creation and delivery of any other security or such other forms of facilities in favour of the Bank as the Bank may from time to time require at its discretion. All securities and facilities shall be in such form and substances as may be specified by or acceptable to the Bank at its discretion.

(l) Supporting documents

The Borrower shall deliver to the Bank the following supporting documents:

- (i) copies of duly accepted letter of award and/or contract agreement for the contracts to be financed under the CF Facility;
- (ii) a resolution of the Borrower's Board of Directors authorising the Borrower to open and maintain a Designated Escrow Account ("DEA") with the Bank which is to be operated exclusively by the Bank;
- (iii) written confirmation from the Bank's solicitors that the facility documentation has provision allowing the facilities to be on a revolving basis subject to the Bank's approval with any subsequent variations to be documented via a supplemental agreement or letter of offer;
- (iv) where the Borrower has a written constitution, written confirmation from the Borrower's company secretary confirming that the Borrower's Constitution does not prohibit the company from assigning its rights to the contract proceeds to the Bank as security;
- (v) a letter of undertaking from the Borrower's directors/ shareholders to bear all cost overrun pertaining to all contracts financed by the Bank; and
- (vi) such other supporting documents as the Bank may from time to time reasonably require for the purpose of the Facilities, this Agreement or the Security Documents.

(m) Special Terms for the CF Facility

- (i) The contract proceeds shall be utilised in the manners mutually agreed by the Bank and the Borrower.
- (ii) The Bank may at its discretion allow for utilisation of the CF Facility for future contract by the Borrower for which the contracts to be financed must be based locally in the country and the Borrower is to be the main contractor for the contracts awarded by Government, Semi-Government and Government Linked Companies.
- (iii) Pre delivery financing is allowed up to the percentage of purchase order as stated in the Letter of Offer, purchase invoice or pro forma invoice value.
- (iv) A separate DEA is to be maintained with, and charged in favour of the Bank for each contract(s) financed by the Bank. The Borrower further undertakes to channel all contract proceeds which are payable to the Borrower or for the Borrower's account under contracts financed by the Bank to the DEA maintained with the Bank.
- (v) The Borrower shall complete the contracts in the manner prescribed in the contract agreement or letter of award.
- (vi) Submission of a monthly progress report detailing works completed against the original works schedule, amount billed and amount received. Each report must be compared to the original cash flow and any adverse variance highlighted and explained.
- (vii) The Borrower hereby irrevocably authorises the Bank to utilise the contract proceeds towards the building up of a sinking fund for the repayment of the facilities inclusive of principal, interest, commission and any other charges.

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**(S) BRIDGING LOAN (BL) FACILITY**

(a) Purpose

The BL Facility shall be for the purpose stated in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the BL Facility to the Borrower in the amount stated in the Letter of Offer.

(c) Duration and Availability

The duration of the BL shall be for such months from such date and shall expire on such date, all as stated in the Letter of Offer. The Facility shall also be subject to periodic review at the discretion of the Bank and repayable on demand.

(d) Drawdown

Save as otherwise provided herein, a Drawing may be made by the Borrower if:-

- (i) the Bank has received from the Borrower the Drawing Notice in form and content acceptable to the Bank, receipt of which shall oblige the Borrower to borrow the amount therein requested on the date therein stated upon the terms and subject to the conditions contained herein;
- (ii) the proposed date for the making of such Drawing is a Business Day which precedes the Repayment Date;
- (iii) the proposed amount of such Drawing shall be as stated in the Letter of Offer; and
- (iv) no Event of Default or potential Event of Default has occurred and the representations set out in Clause 6 are true on and as of the proposed date for the making of such Drawing.

(e) Prevailing Rate

The Borrower shall pay interest on the Drawing at the Prevailing Rate of the percentage per annum stated in the Letter of Offer above BLR.

Unless any other interest payment period is specified by the Bank, the Borrower shall pay the interest chargeable monthly.

(f) Default Rate

Default interest at the following rates shall be chargeable:-

- (i) such percentage per annum stated in the Letter of Offer on the amount or instalment in arrears;
- (ii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on any sum due and payable not paid on the date when it becomes due and payable, which sum due and payable shall include any sums payable under item (i) above; and/or
- (iii) such percentage per annum stated in the Letter of Offer over and above the Prevailing Rate on the balance outstanding after the BL Facility has expired or been terminated, cancelled or recalled by demand otherwise;

from the date it was chargeable to the date of actual payment subject to a minimum payment of such amount stated in the Letter of Offer.

Despite the terms of this Agreement, the Bank shall have the right to charge default interest at any other rate as the Bank may determine from time to time.

(g) Prepayment

- (i) The Borrower may, if with the Bank's consent, and subject to any terms and/or conditions the Bank may impose in such event, prepay any part of the balance outstanding, if it has given the Bank not less than such number of days' prior written notice to that effect as stated in the Letter of Offer, or prepay the whole amount outstanding, if it has given the Bank not less than such number of days' prior written notice to that effect as stated in the Letter of Offer.
- (ii) Any such notice of prepayment shall be irrevocable, shall specify the date upon which such prepayment is to be made and the amount of such prepayment and shall oblige the Borrower to make such prepayment on such date.
- (iii) The Borrower shall not prepay all or any part of the BL except at the times and in the manner expressly provided for in this Agreement and shall not be entitled to reborrow any amount prepaid.

(h) Repayment

The Borrower shall repay the BL Facility in the amounts and in such manner as stated in the Letter of Offer.

(i) Additional Security/ Security Documents

The Borrower shall upon receipt of prior written notice from the Bank, procure the creation and delivery of any other security

or such other forms of facilities in favour of the Bank as the Bank may from time to time require at its discretion. All securities and facilities shall be in such form and substances as may be specified by or acceptable to the Bank at its discretion.

(j) Supporting Documents

The Borrower shall deliver to the Bank the following supporting documents:

- (i) copies of the Borrower's developer's licence and all relevant permits, layout plan and building plan approvals including the approval for conversion of land use category with evidence of premium paid (where applicable) have been submitted;
- (ii) a letter of undertaking from the Borrower's solicitors acting in relation the sale and purchase agreements confirming on a monthly basis, the number of sale and purchase agreements signed and stamped with a deposit of at least 10% of the sale price paid to the Borrower as of the date of such letter;
- (iii) written confirmation from a quantity surveyor acceptable to the Bank at the Bank's discretion that the construction cost quoted is deemed reasonable;
- (iv) copies of insurance policies including but not limited to Contractor All Risk Insurance taken up with an insurance company acceptable to the Bank at the Bank's discretion;
- (v) a letter of undertaking from the Borrower's directors/ shareholders to bear any cost overrun and/or deficit in connection with the development to be financed by the Bank;
- (vi) a deed of subordination executed by all shareholders and directors of the Borrower for all existing and future loan advances made to the Borrower until the BL is fully settled and the terms of such deed are acceptable to the Bank at the Bank's discretion (if applicable); and
- (vii) such other supporting documents as the Bank may reasonably require from time to time for the purpose of the Facilities, this Agreement or the Security Documents.

(k) Special Terms for the BL Facility

- (i) The BL Facility is to be released progressively through the Housing Development Account ("HDA")/ project account (whichever is applicable), direct to the suppliers/ sub-contractor/ consultants and other relevant parties pertaining to the project against the value of a certificate of work done from an architect who is acceptable to the Bank at the Bank's discretion subject to the following:
  - (a) upon compliance of all conditions precedent and completion of all legal documentation and if applicable the Housing Development (Control and Licensing) Act 1966 & Regulations ("HDA Act");
  - (b) evidence of the Borrower's equity portion of the financing being already paid;
  - (c) such architect's certificate must be no more than three (3) months old and exclude all substantial accumulation of building material on site; and
  - (d) the BL Facility is to be released in tranches mutually agreed by the Bank and the Borrower.
- (ii) The Borrower is required to open a current account and the HDA with the Bank and all releases from the BL Facility as well as all sales proceeds from purchasers and releases from end financiers must be routed into the HDA for the relevant project.
- (iii) The Borrower shall conduct the development in compliance with the HDA Act, if applicable, and all applicable laws;
- (iv) Submission of a monthly progress report detailing sales achieved, works completed against the original works schedule. Each report must be compared to the original cash flow and any adverse variance highlighted and explained.
- (v) Submission of a "minimum price" list for units developed with the understanding that changes in any price therein will cause a re-calculation of the redemption sums as determined by the Bank at its discretion.
- (vi) The Borrower shall subordinate any advances by its directors, shareholders, landowners and/or joint venture partner upon terms acceptable to the Bank at the Bank's discretion.
- (vii) The Bank may appoint a receiver/ manager or receiver and manager or another developer or contractor to revive the project upon the occurrence of an Event of Default. The Borrower authorises the Bank to utilise the HDA/ project account for the purpose of the project.
- (viii) The Bank may appoint an independent quantity surveyor firm to facilitate monitoring of all aspects of the development where necessary as determined by the Bank at the Bank's discretion.
- (ix) Reimbursements from the HDA/ project account are allowed if they have been duly verified by way of satisfactory documentary evidence or duly confirmed by a reputable accounting firm at the Bank's discretion (if applicable).
- (x) The Borrower shall appoint the Bank and include the Bank's name as an end financier in all its advertisements.
- (xi) The Borrower undertakes to inform the Bank, on a monthly basis, on all sales that qualify as inflows to the cash flow.



- (xii) The Borrower undertakes that for any development that is to be financed by the Bank, it shall not offer any interest capitalisation scheme or any other permutation thereof, including (without limitation) any developer interest bearing scheme to end purchasers of the said development.

**(T) FLEXI FACILITY**

(a) Purpose

The Flexi Facility shall be for the purpose specified in the Letter of Offer.

(b) Limit

Subject to the terms and conditions of this Agreement, the Bank shall provide the Flexi Facility in the amount specified in the Letter of Offer.

(c) Duration and Availability

The duration of the Flexi Facility is as specified in the Letter of Offer. The Flexi Facility shall be subject periodic review at the discretion of the Bank and repayable on demand.

(d) Drawdown

Save as otherwise provided herein, a Drawing may be made by the Borrower if:-

- (i) the Bank has received from the Borrower the Drawing Notice in form and content acceptable to the Bank, receipt of which shall oblige the Borrower to borrow the amount therein requested on the date therein stated upon the terms and subject to the conditions contained herein;
- (ii) the proposed date for the making of such Drawing is a Business Day which precedes the Repayment Date; and
- (iii) No Event of Default or potential Event of Default has occurred and the representations set out in Section 6 are true on and as of the proposed date for the making of such Drawing.

(e) Prevailing Rate

The Borrower shall pay interest on the Drawing at the Prevailing Rate specified in the Letter of Offer. Unless any other interest payment period is specified by the Bank, the Borrower shall pay the interest chargeable monthly.

(f) Default Rate

Default Rate chargeable in respect of the following shall be at the rates as specified in the Letter of Offer:

- (i) interest payable on the amount or instalment in arrears;
- (ii) interest payable on any sum due and payable but not paid on the date when it becomes due and payable, which sum due and payable shall include any sums payable under item(i) above; and/or
- (iii) interest payable on the balance outstanding after the Flexi Facility has expired or been terminated, cancelled or recalled by demand otherwise;

The above shall be computed from the date it was chargeable up to the date of actual payment subject to payment of a minimum amount specified in the Letter of Offer.

Despite the terms of this Agreement, the Bank shall have the right to charge Default Rate of interest at any other rate as the Bank may determine from time to time.

(g) Prepayment

Any prepayment made shall be subject to the following:-

- (i) Prepayments are lump sum payments which are intended to reduce the principal Flexi Facility outstanding which in turn may reduce interest charged based on the amounts prepaid provided that there is no change in the Prevailing Rate/revised interest rate. The Borrower must notify the receiving branch of the Bank as to whether the payment made is intended to be a prepayment. Such prepayment shall in no way allow the Borrower a reduction in the monthly instalment amount but only to a reduction in the number of instalments unless agreed upon by the Bank in writing.
- (ii) Prepayment is allowed at anytime after first disbursement of the Flexi Facility without prior notice. Prepayment of any part of the outstanding sums owing under the Flexi Facility made shall comprise of the minimum sum of RM1,000 or multiples of RM1,000. Any amount tendered for prepayment which is less than RM1,000 shall be received by the Bank not as prepayment but as advance payment.
- (iii) Prepayment will not be subject to any penalty charges provided the loan account for the Flexi Facility is not closed. The amount prepaid is not available for redrawing. Any amounts prepaid shall be applied in the inverse order of maturity.
- (iv) No payments made shall be deemed to be a payment or prepayment of principal until all interest then accrued and all other moneys then outstanding and payable by the Borrower or any other security party to the Bank have been paid.
- (v) The Borrower shall maintain the Flexi Facility with the Bank for the period specified in the Letter of Offer as a lock-in period. A prepayment penalty charge as specified in the Letter of Offer shall be imposed following the closure of the Flexi Facility loan account and full settlement of the Flexi Facility during the aforesaid

lock-in period.

- (vi) When the Borrower makes a payment and does not inform the Bank whether such payment is intended to be treated as an Advance Payment (as defined in sub-paragraph (i)) below or a prepayment, the Bank shall treat such payment as an Advance Payment.

(h) Repayment

The Borrower shall repay the Flexi Facility in the amounts and on the Repayment Dates specified in the Letter of Offer.

(i) Advance Payment

- (i) An Advance Payment is defined as any excess payments made toward the Flexi Facility which are intended to set off any future instalments as and when they fall due. Any Advance Payment made may also reduce the principal Flexi Facility outstanding which in turn may reduce interest charged based on the Advance Payments made.
- (ii) Upon receipt of such payments, the Bank shall have the discretion to apply the amount paid for settlement of any arrears, instalment(s) payable and other outstanding charges payable in any order of priority as the Bank shall determine unless otherwise instructed by the Borrower. The surplus, if any, shall be treated by the Bank as payment towards future instalments in direct order of maturity as and when they fall due.
- (iii) Advance Payment of any part of the outstanding sums owing under the Flexi Facility is permitted at any time after the first drawdown of the Flexi Facility.
- (iv) Advance Payments made may be available for redrawing. The limit of the Flexi Facility available for redrawing at any time shall be the principal amount of the Flexi Facility less the principal sums which ought to have been repaid by virtue of the instalments in sub-paragraph (h) above at the time of redrawing. The Bank's determination of the limit of the Flexi Facility available for redrawing shall be conclusive save for manifest error.

(j) Conversion of Flexi Facility to TLFacility

In the event that the account for the operation of the Flexi Facility has been classified under DCHEQS, the outstanding amount of the Flexi Facility shall be converted to a term loan (TL Facility) based on the remaining tenor of the Flexi Facility and no further redrawings or re-borrowing shall be permitted. Interest rate applicable for the converted TL Facility shall be at such rate specified in the Letter of Offer or such other rate that shall be determined from time to time by the Bank at its discretion, by notice to the Borrower. The monthly installment amount due on conversion may be changed by the Bank and notified to the Borrower.

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