

# MEMORANDUM OF CHARGE AND DEPOSIT

To:

**CIMB BANK BERHAD** (Company No 13491 - P )

1. In consideration of CIMB BANK BERHAD (hereinafter called "the Bank" which expression shall include and extend to their successors or assigns) having made, making or continuing to make advances or otherwise giving credit or affording banking facilities for as long as the Bank may think fit to .....  
(hereinafter called "the Borrower") upon the terms and/or conditions as set out in the Letter of Offer/Facility Agreement dated .....which shall include such Letter of Offer and/or Facility Agreement as varied, amended or modified, I/We .....  
..... of .....  
(hereinafter referred to as the "Depositor") shall from time to time deposit, execute, transfer and/or register by whatsoever means the Bank may stipulate, the Underlying Certificates, Underlying Documents, instruments of transfer, and/or other documents, certificates and/or evidences of title to the stocks and shares, warrants, transferable subscriptions rights, loan stocks, option bonds, Investment Products, Negotiable Instruments of Deposit and/or any other securities acceptable to the Bank, and/or any instruments of transfer pertaining thereto, with and/or in the name of the Bank, the Bank's nominees and/or agents and/or any persons or bodies as the Bank may stipulate, including but without limitation the Malaysian Central Depository Sdn Bhd, sub-delegate, share registrar or other institution authorised by the relevant stock exchange, and/or in substitution for, or in the addition to the foregoing, the stocks, shares, warrants, transferable subscriptions, rights, loan stocks, option bonds, Investment Products, Negotiable Instruments of Deposit and/or any other securities for the time being or at any time pledged under this Memorandum of Charge and Deposit (hereinafter called "the Mortgaged Securities"), and/or all certificates, evidence of title and/or any necessary instruments of transfer in respect of the Mortgaged Securities, and/or such other documents as the Bank may from time to time require, as security for the payment and discharge on demand of all moneys and liabilities whether certain or contingent which are now or shall from time to time or at any time hereafter become owing or remaining unpaid or incurred by the Borrower to the Bank upon any banking facilities and/or account or in any manner whatsoever and anywhere, whether alone or jointly with others and whether as principal or surety including (but without prejudice to the generality of the foregoing) the amount of notes, drafts or bills (whether negotiable or non-negotiable) discounted or paid and/or other loans, credit or advances made to the Borrower, whether alone or jointly with others, together with all interest, commission, discount and other bankers' charges (including such charges and commission as may be prescribed by the rules and regulations of the Association of Banks in Malaysia from time to time), stamp duty, legal fees and/or other charges and/or any taxes arising out of or incidental to the taking or realisation of this or other security taken by the Bank for the same indebtedness.

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For the purposes of this Memorandum of Charge and Deposit, the following words and expressions shall have the following meanings respectively:-

Investment Products

all structured products issued by the Bank or CIMB Investment Bank Berhad or CIMB Islamic Bank Berhad ("CIMB") to the Depositor pursuant to the Securities Commission's Guidelines on the Offering of Structured Products, and/or as amended from time to time:-

- (i) in respect of which no early termination event (howsoever defined in the Underlying Documents) has occurred;

- (ii) which is of a value acceptable to the Bank, such value being determined by the calculation agent, if any, pursuant to the Underlying Documents; and
- (iii) which are free from any kind of security interests in favour of any other party other than the Bank.

For the avoidance of doubt, the term "Investment Products" shall include any and all other investment products which shall be determined by the Bank to constitute and form part of the Mortgaged Securities as defined in this Memorandum of Charge and Deposit.

Underlying Documents

the originals of the investment agreement and/or the trade confirmation executed between the Bank (or CIMB, as the case may be) and the Depositor pertaining to the Investment Product and the originals of any other certificates and/or documents, if any, issued by the Bank (or CIMB, as the case may be) to the Depositor evidencing the Bank's (or CIMB's, as the case may be) obligations in respect of the Investment Product.

Negotiable Instruments of Deposit

all negotiable instruments of deposit issued by the Bank or CIMB pursuant to Bank Negara Malaysia's Guidelines on Negotiable Instruments of Deposit 2006 and/or as amended from time to time ("the Guidelines"):-

- (i) in respect of which no early redemption event (howsoever defined in the Underlying Certificate) has occurred;
- (ii) which is of a value acceptable to the Bank, such value being determined by the Bank itself, if any, pursuant to the Underlying Certificate; and
- (iii) which are free from any kind of security interests in favour of any other party other than the Bank.

For the avoidance of doubt, the term "Negotiable Instruments of Deposit" shall include any and all other negotiable instruments of deposit which shall be determined by the Bank to constitute and form part of the Mortgaged Securities as defined in this Memorandum of Charge and Deposit.

Underlying Certificate

the originals of the certificates (as defined in the Guidelines) in respect of the Negotiable Instruments of Deposit, evidencing the Bank's or

## CIMB's obligations in respect of the Negotiable Instruments of Deposit.

2. The interest on the amount owing aforesaid or any part thereof shall be charged at such rate or rates as may be stipulated or laid down by the Bank from time to time and shall be calculated on daily balances with monthly rests.
3. The Bank shall be entitled at any time and from time to time vary at its sole discretion the rate of interest for the time being payable to such rate by serving a notice in writing on the Borrower of such of its intention and such amended rate of interest shall be payable as from the date specified in the said notice.
4. When the payment of any money hereby secured or intended to be shall be further secured to the Bank by any bill of exchange promissory note draft receipt or other negotiable instrument reserving a higher rate of interest to be paid in respect thereof than that stipulated by the Bank for the time being such higher rate of interest shall be payable in respect of such moneys and nothing contained in or to be implied from these presents shall affect the right of the Bank to enforce and recover the payment of such higher rate of interest or as the case may be the difference between such higher rate and the rate which shall have been paid hereunder.
5. Subject to the provisions next hereinafter appearing the interest on any principal moneys for the time being hereby secured including capitalised interest shall at or about the end of each calendar month be capitalised and added for all purposes to the principal sum then owing and shall thenceforth bear interest at the rate aforesaid and be secured and payable accordingly and all the undertaking terms and conditions contained in or implied by these presents and all powers and remedies conferred by law or by these presents and all rules of law or equity in relation to the said principal sum and interest shall equally apply to such capitalised arrears of interest and to the interest on such arrears.
6. Nothing in these presents contained shall be deemed to impose on the Bank any obligation either at law or in equity to make any advance or loan to the Borrower on the security created.
7. The Mortgaged Securities shall include the stocks and shares, warrants, transferable subscriptions rights, loan stock, option bonds, Investment Products, Negotiable Instruments of Deposit and other securities acceptable to the Bank which I/ We or either / any of us will deposit (which deposit shall constitute a pledge and a charge)/ may deposit / have deposited with the Bank, its nominees or agents or which may be in their possession or deposit / deposited with or transfer / transferred by electronic means or otherwise to the account of the Bank, its nominees or agent, depository including but without limitation the Malaysian Central Depository Sdn Bhd, sub-delegate , share registrar or other institution authorised by the relevant stock exchange, or which may hereafter be deposited in their depository account or which may hereafter be deposited by me / us or either/ any of us in substitution of or in addition to the Mortgaged Securities now deposited or for any other purpose whatsoever.
8. There shall be deemed to be included herein and made subject to the moneys hereby secured all dividends or interest paid or payable after the date hereof on the Mortgaged Securities and all

stocks shares (and the dividends or interest thereon) rights monies or property accruing or offered at any time by way of redemption bonus preference option or otherwise to or in respect of any of the Mortgaged Securities, provided that the Bank shall not incur any liability in respect of any calls instalments or other payments.

9. Any dividends interest or other payments which may be received or receivable by the Bank in respect of any Mortgaged Securities may be applied by the Bank as though they were proceeds of sale hereunder notwithstanding that the power of sale may not have arisen.
10. Without prejudice to the rights and obligations hereby created any dividends interest or other monies hereby charged which may be received by me/us hereafter shall be held in trust for the Bank and paid over to the Bank on demand.
11. The Bank may at any time without notice to the Depositor, register the Mortgaged Securities in the name of the Bank and/or the Bank's nominee or agent. The Depositor shall, if the Bank so stipulates, at the Depositor's own cost and expense, execute and/or do all things to give effect to, all such transfers, assurances and/or things for assuring and vesting the full legal title to the Mortgaged Securities or any of them, to and in the Bank or the Bank's nominees or agents or any purchaser or purchasers from them.
12. This Memorandum of Charge and Deposit shall not be considered as satisfied by any intermediate payments or satisfaction of the whole or any part of any sum or sums of money owing as aforesaid but shall be a continuing security and extend to cover all or any sum or sums of money which shall for the time being constitute the balance due from the Borrower to the Bank on any account or otherwise as hereinbefore mentioned.
13. It shall be lawful for the Bank and/or any agent and/or nominee appointed by the Bank, at any time or times hereafter during the continuance of this Memorandum of Charge and Deposit, without any notice to and/or any further consent and/or concurrence by the Depositor, to sell, dispose of, realise and/or deal with, the Mortgaged Securities (and in the case of the Investment Products issued by the Bank, such sale, disposal, realisation and/or dealing may be effected by way of set off) or any of them in such manner and upon such terms and conditions generally as they deem fit, and to apply the net proceeds of any such sale in or towards the discharge of the moneys hereby secured. In the case of the Investment Products issued by CIMB which are not capable of being transferred, the Bank shall be entitled to seek early redemption of the same in accordance with the terms thereof and such redemption proceeds may be applied by the Bank in or towards the discharge of the monies hereby secured. The Bank and/or any agent or nominee appointed by the Bank shall not be responsible for any loss arising from such sale, disposal, realisation, dealing and/or redemption of the Mortgaged Securities, or for any loss or depreciation in value of any of such Mortgaged Securities arising from the said sale, disposal, realisation, dealing and/or redemption, or for any loss or damage through any cause or reason whatsoever.
14. I/We and my/our successors in title will during the continuance of this Memorandum of Charge and Deposit duly and punctually pay all calls instalments and other payments that may be made or become due in respect of the Mortgaged Securities or any of them, and in default of my/our or their so doing the Bank may make such payments and all sums paid by them for that purpose

with interest thereon at the interest rate specified in the Letter of Offer/Facility Agreement shall be repaid by me/us or my/our successors in title on demand and until payment shall in the meantime be a charge upon the Mortgaged Securities.

15. At all times I/We undertake to keep up or maintain the value of such Mortgaged Securities and from time to time at the request of the Bank to pay to them in money or at their option to deliver to them in approved stocks shares and securities such further margins as the Bank may require.
16. I/We acknowledge that the Bank has entered into this Memorandum of Charge and Deposit in full reliance on representations by me/us in the following terms, and I/We now warrant to the Bank and for so long as Indebtedness remains outstanding and unpaid that:-
  - (a) I/We are a company duly registered and validly existing under the Laws of Malaysia and with the full power and authority to own its assets and to carry on business as it is now conducted;
  - (b) that I/We are the beneficial and registered owner of the Mortgaged Securities which are free from any charge, pledge, lien and encumbrance and undertake further that during the continuance of this Memorandum of Charge and Deposit, I/We shall not create, attempt to create or permit the subsistence of any other Charge, pledge, lien and encumbrance over the Mortgaged Securities or any part thereof;
  - (c) that I/We have obtained or have taken all the relevant steps to obtain all necessary licences, consents, approvals or authorisations. I/We hereby confirm that none of these are refused, withdrawn, modified, resolved or terminated.
  - (d) neither the signing and delivery of this Memorandum of Charge and Deposit nor the performance of any of the transactions contemplated herein will:-
    - (i) contravene or constitute a default under any provision contained in any agreement, instrument, law, judgement, order, licence, permit or consent affecting or binding us and/or any of the Mortgaged Securities; or
    - (ii) cause any limitation on us or the powers of our directors, whether imposed by or contained in any document or any law, order, judgement, agreement, instrument or otherwise, to be exceeded.
  - (e) no litigation or arbitration or administrative proceeding or claim which might by itself or with any other such proceedings or claims either have a material adverse effect on our business, assets or condition or materially and adversely affect our liability to observe or perform our obligations under this Memorandum of Charge and Deposit, is presently in progress or pending or, to the best of our knowledge, information and belief, threatened against us or any of our assets;
  - (f) all necessary returns have been delivered by or on our behalf to the relevant taxation authorities and we are not in default in the payment of any taxes; and no material

claim is being asserted with respect to Fes which is not disclosed in the financial statements;

17. This Memorandum of Charge and Deposit shall be in addition to and shall not be in any way prejudiced or affected by any collateral or other security now or hereafter held by the Bank for all or any part of the moneys hereby secured nor shall such collateral or other security or any lien to which the Bank may be otherwise entitled (including any security charge or lien prior to the date of these presents on the Mortgaged Securities) or the liability of any person or persons not parties hereto for all or any part of the moneys hereby secured be in any way prejudiced or affected by this security. The Bank shall have full power at their discretion to give time for payment to any such other person or persons without prejudice to my/our liability hereunder. All moneys received by the Bank from me/us or any person or persons liable to pay the same may be applied by the Bank to any account or item of account or any transaction to which the same may be applicable.
18. The Bank shall so long as any moneys remain owing hereunder have a lien therefore on all moneys now or hereafter standing to my/our credit with the Bank whether on any current or other account.
19. Any demand for payment of moneys or any other demand or notice hereunder may be made by any Officer for the time being of the Bank or by any person or firm for the time being acting as solicitor or solicitors for the Bank by letter addressed to the Borrower and sent by post or delivered to the address of the Borrower as set out hereinabove and a notice or demand so given or made shall be deemed to be given or made or received on the day it was so left or the day following that on which it is posted as the case may be.
20. Any moneys received hereunder may be placed and kept to the credit of a suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy, insolvency, liquidation, compositions or arrangement (voluntary or otherwise) or any application made by any person for an order for the Borrower to be placed under or judicial management and for the appointment of a judicial manager, the Bank may prove for and agree to accept any dividend or compositions in respect of the Borrower's Indebtedness or any part thereof in the same manner as if this Memorandum of Charge and Deposit has not been created.
21. If it shall so happen that the party making the deposit aforesaid and giving this Memorandum of Charge and Deposit shall be either a firm or a company or other corporation or any committee or association or other unincorporated body, any of the provisions hereinbefore contained which shall be primarily and literally applicable to the case of a single and individual depositor only shall be construed and take effect so as to give the Bank hereunder a security for the moneys owing from such firm and every member thereof or from such company or corporation or committee or association or other unincorporated body as identical or analogous as may be with or to that which would have been given for moneys owing from a single individual if the depositor had been a single individual and in the case of a firm this security shall be deemed to be a continuing security for all moneys owing on any such account as hereinbefore mentioned from the person or persons carrying on business in the name of or in succession to the firm or from any one or more of such persons although by death retirement or admission of partners or other causes the

constitution of the firm may have been partially or wholly varied. And in the case of a company or other corporation the principal moneys owing as aforesaid and hereby secured shall be deemed to include any moneys owing in respect of debentures or debenture stock of such company or other corporation held by or on behalf of the Bank.

22. The liability hereunder of each of us signing this Memorandum of Charge and Deposit shall be joint and several and every agreement and undertaking by us shall be construed accordingly. Neither this Memorandum of Charge and Deposit nor any party hereto being a joint or joint and several debtor shall be released or discharged by the death of such party or by the death, release or discharge of any other joint or joint and several debtor nor by the substitution of any other debtor or security or any change in the constitution of any partnership of which any party hereto may be a member.
23. The security, liabilities and or obligations created by this Memorandum of Charge and Deposit shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation, reconstruction or otherwise which may be made in the constitution of the Bank, and similarly the security liabilities and/or obligations created by this Memorandum of Charge and Deposit shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation, reconstruction or otherwise howsoever in the constitution of the Borrower, and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Borrower shall in any way affect the security, liabilities and/or obligations created hereunder in relation to any transaction whatsoever whether past present or future.
24. The Bank shall be at the liberty at any time with or without the concurrence of and with or without notice to me/us/Borrower to assign all its rights, interests and/or obligations or any part thereof to such person or corporation or transfer this Memorandum of Charge and Deposit as it deem fit and the cost and expenses incurred by the Bank and the assignee converted and incidental to such assignment shall be paid by the Bank and upon such assignment the assignee shall assume and be entitled to the rights interests and obligations of the Bank comprised in this Memorandum of Charge and Deposit as if a assignee had been the party to this Memorandum of Charge and Deposit in place of the Bank.
25. I/We shall and hereby undertake to fully indemnify the Bank or the Bank's agent and/or nominee, from and against any expense, loss, damage or liability which they may incur in consequence of any act done or purported to be done by them pursuant to the rights and/or powers conferred by this Memorandum of Charge and Deposit, and/or otherwise pursuant to the provisions set out in the Letter of Offer/Facility Agreement /this Memorandum of Charge and Deposit.
26. If at any time any provision hereof is or 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 enforceability of the remaining provisions hereof or such provision in any other jurisdiction. I/We agree, upon request by the Bank, to replace any provision of this Memorandum of Charge and Deposit

