

**CM Property Financing-i**

Dated [•]

Between



**CIMB ISLAMIC BANK BERHAD** [200401032872 (671380-H)]

and

[Name Of Party]

**MURABAHAH FACILITY AGREEMENT**  
In relation to the CM Property Financing-i

**THIS AGREEMENT** is made the day \_\_\_\_\_ of \_\_\_\_\_ 20 \_\_\_\_ between:

- (1) CIMB ISLAMIC BANK BERHAD 200401032872 (671380-H)] , a company incorporated in Malaysia with its registered office at Level 13, Menara CIMB, Jalan Sentral 2, Kuala Lumpur Sentral, 50470 Kuala Lumpur and its place of business at the address set out in the Letter Of Offer (the “**Bank**”);

AND

- (2) the parties set out in the Letter Of Offer (each, a “**Customer**”).

### **Recitals**

At the Customer’s request, the Bank has agreed to make available the Facility (as defined in Clause 1.1 (*Definitions*) below) to the Customer subject to the terms and conditions of this Agreement.

### **It is agreed as follows:**

## **1 DEFINITIONS, CONSTRUCTIONS, INTERPRETATIONS**

### **1.1 Definitions**

Unless the context otherwise requires, the following terms and expressions in this Agreement have the following meanings:

**Account** means the Customer’s account maintained with the Bank for the purposes of paying the Monthly Instalments;

**AMLA** means the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (including any related, ancillary or subsidiary legislation);

**Applicable Acts** means the National Land Code (Act 56 of 1965), the Sarawak Land Code (Cap. 81), the Sabah Land Ordinance (Cap. 68), the Land (Subsidiary Title) Enactment 1972, the Strata Titles Act 1985, the Strata Titles Ordinance 1995 and the Strata Management Act 2013 (including any statutory amendment or re-enactment and any related, ancillary or subsidiary legislation made pursuant to such legislation);

<b>Availability Period</b>	means the period during which the Facility will be made available for disbursement as set out in the Letter Of Offer;
<b>Bank's Sale Price</b>	means the price at which the Bank will sell the Commodity to the Customer (as stated in the Letter Of Offer or Murabahah sale confirmation sent by the Bank to the Customer in the form set out in Schedule 2 upon completion of the Trade Transactions (“ <b>Murabahah Sale Confirmation</b> ”)) which is payable by the Customer to the Bank in monthly instalments (“ <b>Monthly Instalments</b> ”). Such price will comprise an amount equal to the sum of: <ul style="list-style-type: none"> <li>(a) the Bank's Purchase Price; and</li> <li>(b) the Profit Portion;</li> </ul>
<b>Bank's Purchase Price</b>	means the purchase price payable by the Bank when the Bank first purchases the Commodity from the Commodity Supplier, purchase price will not exceed the Facility limit approved by the Bank under the Letter Of Offer;
<b>Base Rate</b>	means the Bank's base rate published by the Bank from time to time as more particularly described in the Letter Of Offer;
<b>BNM</b>	means Bank Negara Malaysia, a body corporate governed under the Bank Negara Malaysia Act, 2009;
<b>Charge</b>	means the legal charge over the Property in form and substance acceptable to the Bank created by the Customer or Security Party in favour of the Bank to secure the Facility;
<b>Commodity</b>	means any Shariah-compliant commodities (which by definition excludes <i>ribawi</i> items in the category of medium of exchange such as currencies, gold, silver and debt instruments) which are endorsed by the Shariah Committee of the Bank and acceptable to the Bank;
<b>Commodity Supplier</b>	in relation to any sale or purchase of the Commodity, means the commodity supplier as advised by the Bank;

<b>Conditions Precedent</b>	means the conditions precedent as set out in Schedule 1;
<b>Contracted Profit Rate</b>	means the contracted profit rate applicable to the Facility as set out in the Letter Of Offer;
<b>Customer's Sale Price</b>	means the price at which the Commodity is sold to the Commodity Supplier by the Bank as agent of the Customer, which will be an amount equivalent to the Bank's Purchase Price;
<b>Deed of Assignment</b>	means the deed of assignment assigning the rights, title and interest of the Customer in and to the Property under the Principal Sale and Purchase Agreement, in form and substance acceptable to the Bank, executed or to be executed by the Customer or Security Party in favour of the Bank in relation to the Facility;
<b>Developer/Vendor</b>	means the counterparty(ies) who has or have entered into a Principal Sale and Purchase Agreement with the Customer, and includes his/her/their/its successors in title, permitted assigns, heirs and personal representatives (as applicable);
<b>Differential Sum</b>	means the difference between the Sale and Purchase Price for the Property and the Customer's Sale Price (being the equivalent of the amount financed by the Bank;
<b>Effective Profit Rate or EPR</b>	means the effective profit rate applicable to the Facility as set out in the Letter Of Offer;
<b>Event of Default</b>	means any of the events listed in Schedule 6;
<b>Existing Chargee/Assignee</b>	means the existing charge or assignee of the Property;

<b>Facility</b>	means the facility made available by the Bank to the Customer pursuant to the Letter Of Offer;
<b>Guarantee</b>	means if applicable, a guarantee in form and substance acceptable to the Bank issued by the Guarantor in favour of the Bank in relation to the Facility;
<b>Guarantor</b>	means any person / persons required to issue a Guarantee in favour of the Bank as set out in the Letter Of Offer and includes his/her/their/its successors in title, permitted assigns, heirs and personal representative (as applicable);
<b>House Owner Takaful</b>	means the house owner takaful plan taken up or to be taken up by the Customer in respect of the Property on behalf of the Bank from a Takaful Operator acceptable by the Bank;
<b>Letter Of Offer</b>	means the letter of offer for the Facility issued by the Bank and duly accepted by the Customer;
<b>Lock-in Period</b>	means (if applicable) the period during which the Customer must maintain the Facility with the Bank as stipulated in the Letter of Offer. If the Customer fails to maintain the Facility within such period, the Customer may be subject to early settlement charges as calculated according to the formula set out in the Letter Of Offer;
<b>OFAC</b>	The Office of Foreign Assets Control of the Department of the Treasury of the United States of America;
<b>Principal Sale and Purchase Agreement</b>	(in the case where the individual title to the Property has not been issued) means the sale and purchase agreement made between the Customer and the Developer/Vendor for the sale and purchase of the Property;
<b>Profit Portion</b>	means the Bank's profit margin based on the Contracted Profit Rate set out in the Letter Of Offer;

<b>Property</b>	means the property described under Clause 7 ( <i>Purpose of the Facility and Description of the Property</i> ) in the Letter of Offer, which is to be provided as security for the Indebtedness;
<b>Proprietor</b>	means (where applicable) the party(ies) who have entered into an agreement with the Developer/Vendor for the sale and purchase of theProperty;
<b>Purchase Request</b>	means a request, as set out in the Letter of Offer, issued by the Customer to the Bank to utilise the Facility;
<b>Purchase Transaction</b>	means the purchase of the Commodity by the Bank from the Commodity Supplier at the Bank's Purchase Price after the Bank has accepted the Purchase Request;
<b>Revised EPR</b>	means the variation of the Effective Profit Rate which may be carried out by the Bank if the Customer fails to pay any Monthly Instalments. The calculation of the Revised EPR is set out in the Letter Of Offer;
<b>Restricted Party</b>	A person that is (i) listed on, owned or controlled by a person listed on or acting on behalf of a person listed on, any Sanctions List, (ii) 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 organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions or (iii) otherwise a target of Sanctions (i.e. a person with whom a US person (as defined by OFAC) or other national of a Sanctions Authority is prohibited or restricted by law from engaging in trade, business or other activities);
<b>Ringgit Malaysia or RM</b>	means the lawful currency of Malaysia;
<b>Sale and Purchase Agreement</b>	means the sale and purchase agreement and/or the construction agreement or any other form of acquisition agreement including a proclamation of sale relating to the purchase and acquisition of all rights, title, benefits and interest in and to the Property;;

<b>Sale and Purchase Price</b>	means the total purchase price for the Property under the Sale and Purchase Agreement or the Principal Sale and Purchase Agreement (as applicable);
<b>Sale Transaction</b>	means the sale of the Commodity by the Bank to the Customer at the Bank's Sale Price, following the completion of the Purchase Transaction;
<b>Sanctions Authorities</b>	means (i) the Government of the United States of America, (ii) the United Nations, (iii) the European Union, (iv) the United Kingdom or (v) the respective governmental institutions and agencies of any of such countries including but not limited to OFAC, the United States Department of State, and Her Majesty's Treasury;
<b>Sanctions</b>	means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authorities;
<b>Sanctions List</b>	means (i) the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, (ii) the "Consolidated List of Financial Sanctions Targets" and the "Investment Ban List", each maintained by Her Majesty's Treasury, (iii) any list similar to items (i) and (ii) maintained by any of the Sanctions Authorities or (iv) public announcement of Sanctions designation made by, any of the Sanctions Authorities;
<b>Security Documents</b>	means the security documents created in favour of the Bank as set out in the Letter Of Offer. Such security documents include but are not limited to the following: <ul style="list-style-type: none"> <li>(i) the Letter Of Offer;</li> <li>(ii) this Agreement;</li> <li>(iii) the Charge;</li> <li>(iv) the Deed of Assignment;</li> <li>(v) the power of attorney; and</li> </ul>

(vi) the Guarantee (if any);

<b>Security Interests</b>	means any mortgage, charge, pledge, lien, right of set off or any other security interest no matter how created or arising;
<b>Security Party</b>	any party providing security (including but not limited to any guarantee or indemnity) for payment of the Indebtedness to the Security Documents;
<b>Settlement Amounts</b>	means the total payments due and payable by the Customer to the Bank pursuant to this Agreement in accordance with the calculation method as set out in the Letter Of Offer;
<b>Shariah</b>	means any Shariah rulings and decisions issued by the Shariah Advisory Council of BNM and Shariah Committee of the Bank. Accordingly, for the purpose of this Agreement, “subject to Shariah” and “Shariah compliant” mean subject to and compliant with such rulings and decisions;
<b>Takaful Operators</b>	means any takaful company or takaful provider duly approved by the Bank;
<b>Tenure</b>	means the tenure of the Facility as set out in the Letter Of Offer;
<b>Indebtedness</b>	means all present and future moneys, debts and liabilities due, owing or incurred by the Customer or any Security Party to the Bank under any Letter of Offer, this Agreement or any Security Documents (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise);
<b>Total Loss Incident</b>	means any incident or occurrence that (i) results in (a) the total loss or destruction of, or (b) damage to, the whole of the Property; or (ii) makes the Property permanently unfit for any economic use, and it would be uneconomical to repair or reinstate the Property;
<b>Trade Transaction</b>	means collectively, the Purchase Transaction and the Sale Transaction;



**Transaction Documents**

means collectively, the following documents:

- (a) the documents evidencing the Trade Transactions, including but not limited to the Purchase Request;
- (b) the Security Documents; and
- (c) any other documents designated as Transaction Documents by the Bank;

**Transaction Fees**

means, where applicable, the setup fee and monthly service charge payable by the Customer to the Bank under Clause 4.2 below in the amount and manner provided in the Letter Of Offer.

**1.2 Interpretations**

- (a) Words referring to the singular include the plural and vice versa.
- (b) Words referring to the masculine gender include the feminine and neuter genders and vice versa.
- (c) Headings and sub-headings in this Agreement are inserted for convenience only and should be ignored when construing the provisions of this Agreement.
- (d) References to “this Agreement” include any:
  - (i) amendments and/or variations made to this Agreement; and/or
  - (ii) instruments supplemental to this Agreement, made or entered into, from time to time.
- (e) References to Clauses and Schedules are to be construed as references to Clauses and Schedules of this Agreement, unless stated otherwise.
- (f) References to the provisions of any legislation include a reference to any statutory modification or re-enactment of such legislation.
- (g) References to "law" include by-laws, common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case,

whether or not having the force of law but, if not having the force of law, the compliance should be in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed).

- (h) Words applicable to natural persons include any body, person, company, corporation, firm or partnership, corporate or otherwise and vice versa.
- (i) The words “monies” and “moneys” will be construed as references to Malaysian currency.
- (j) All Schedules in this Agreement form an integral part of this Agreement and must be taken, read and construed as an essential part of this Agreement.
- (k) Where there are two (2) or more persons or parties included or comprised in the expression “the Customer”, such expression will mean all such persons, or each or any of them. All covenants, terms, stipulations, undertakings, certificate, statement, notice, demand or other communications expressed to be made by or on the part of such persons will be considered to be made by and binding upon such persons jointly and severally.

### **1.3 Language**

All correspondence, notices or other documents required or permitted under this Agreement may be in English. Unless otherwise agreed by the parties in writing, drawings and diagrams will be annotated in English.

## **2 THE FACILITY**

### **2.1 Availability of the Facility**

- (a) At the Customer’s request, the Bank agrees to make available to the Customer the Facility, pursuant to which the parties will enter into the Trade Transactions. The Facility will be made available subject to the Availability Period and in accordance with the terms of this Agreement.
- (b) Unless the Bank otherwise agrees, no disbursement will be made after the end of the Availability Period.
- (c) If the Bank does not agree to extend the Availability Period, the Bank may treat the Facility as cancelled if the Trade Transactions have not been entered into. If however, the Trade Transactions have been entered into, any undisbursed portion of the Customer’s Sale Price after the Availability Period will be treated as prepayment of the Bank’s Sale Price (principal portion) and the Profit Portion for the undisbursed portion will be waived as Ibra’ as stated in Clause 6.2 (*Undertaking to give Ibra’ (Rebate)*).

## **2.2 Purpose**

- (a) The Facility must only be used for the Shariah compliant purposes set out in the Letter Of Offer.
- (b) The Bank is not bound to monitor or verify the application of any amounts utilised under the Facility.
- (c) If the purpose of the Facility is to refinance and convert the Customer's existing conventional facility to a Shariah compliant facility, the details of (i) the bank providing the existing conventional facility are as provided in Section 1 of the Schedule 7, and (ii) the balance of the principal amount of the existing facility are as stated in Section 2 of the Schedule 7.

## **2.3 Disbursement of the Customer's Sale Price and Disbursement Mode**

- (a) The Bank will disburse the Customer's Sale Price in the manner specified in Appendix 2 of the Letter Of Offer, subject to the fulfillment of all Conditions Precedent.
- (b) In addition, the Customer authorises the Bank to pay any amount in such manner and on such terms and conditions as the Bank reasonably deems fit, to any financial institution, firm of solicitors, developer, vendor, court, builder, contractor, architect or other person responsible for or concerned with the sale or construction of the Property. An acknowledgement of receipt of such payment given by the recipient will be deemed to have been given by the Customer personally.
- (c) The Customer acknowledges and agrees that the Bank is unable to defer or stop disbursement of any amounts under the Facility if the Bank has already given an undertaking to a third party to disburse the Facility and has received the relevant invoice(s) or redemption statement(s) in accordance with the Sale and Purchase Agreement or construction or development contract or proclamation of sale (as applicable).
- (d) The Customer authorises the Bank to withhold the disbursement of the Facility if the relevant developer or vendor, builder or contractor fails to honour its obligations under any relevant contract and/or undertaking or if in the Bank's opinion the developer, or vendor, or builder or contractor or the Security Party is in breach of the relevant contract relating to the Property.
- (e) If an Event of Default or potential Event of Default has occurred or is about to occur and has not been remedied after written notice of seven (7) days has been given, the Bank is not obliged either in law or in equity to make or continue to make any disbursement of the Facility.
- (f) In consideration of the Bank agreeing to provide customary undertaking(s) to third parties in such form as the Bank may decide (including but not limited to any financial institution, developer or vendor or their respective solicitors), the Customer undertakes to indemnify the Bank against all costs, expenses, claims and demands suffered by or made on the Bank in connection with or arising from the issuance or performance of such undertakings.

- (g) The Customer undertakes that the Customer will not, and the Customer will ensure that the Security Party will not, permit any other person to directly or indirectly utilise any part of the Facility to fund any trade, business or activities which: (a) involve or is or are for the benefit of any Restricted Party, or (b) would reasonably be expected to result in the Customer or the Security Party being in breach of any Sanctions (if to the extent applicable to either of them) or becoming a Restricted Party.
- (h) The disbursement of the Customer's Sale Price or any part of it by the Bank as set out in Appendix 2 of the Letter of Offer will be deemed to be effective payment to the Customer or for the benefit of the Customer PROVIDED that the Bank will not be bound to make payment unless and until:
  - (i) the Differential Sum has been duly paid by the Customer to the respective solicitors or firm of solicitors, Developer/Vendor, Proprietor, the Existing Chargee/Assignee or courts (as applicable) (and in such regard, the Customer must immediately provide the Bank with documentary evidence satisfactory to the Bank confirming that the Differential Sum has been so paid); and
  - (ii) the conditions precedent set out in Schedule 1 have been fulfilled.
- (i) Excess in the Customer's Sale Price

If there is excess after payment of the Differential Sum in 2.3(e) above, such excess amount will be disbursed by the Bank directly to the Customer.

### **3 MANNER OF TRADE TRANSACTIONS**

#### **3.1 Terms and conditions of Trade Transactions**

- (a) The Trade Transactions will be governed by the terms and conditions of this Agreement and the applicable provisions of the Letter Of Offer and the Purchase Request.
- (b) Upon completion of the Trade Transactions, the Bank will send a Murabahah Sale Confirmation in the form set out in Schedule 2 to the Customer.
- (c) The Customer will obtain the same title to the Commodity as the Bank receives from the Commodity Supplier but free from encumbrances. The Bank will not be deemed to give any warranty or representation (whether express or implied) in relation to the Commodity, whether arising by law or otherwise. Any such warranty or representation by the Bank is expressly excluded to the fullest extent permitted by any applicable law.

#### **3.2 Risks**

All risks in the Commodity will pass to the Customer immediately at the time when the Customer completes the Sale Transaction with the Bank.

### **3.3 No Warranties**

- (a) The Commodity is sold on an “as is, where is” basis but free from encumbrances.
- (b) The Customer acknowledges that it will be considered to have accepted the Commodity on the basis of and in the state described in Clause 3.3(a) above and will not have any claim against the Bank in respect of the Commodity’s quality, condition, quantity, description, title or otherwise.

### **3.4 Indemnity**

The Customer must at all times fully indemnify the Bank against any liability, damage, losses or expenses (including legal expenses on a solicitor and client basis) which the Bank may sustain or incur as a consequence of any of the Bank’s actions in acting as the Customer’s agent in respect of any of the matters specified in Clause 4.1(a), except to the extent directly caused by the Bank’s wilful default and/or gross negligence.

## **4 UNDISCLOSED AGENCY**

### **4.1 Appointment**

- (a) By delivering the Purchase Request to the Bank, the Customer irrevocably appoints the Bank or any third party acceptable to the Bank to act as the Customer’s agent to conclude the purchase of the Commodity by the Customer from the Bank and to sell the Commodity to any third party at the Customer’s Sale Price.
- (b) In performing its duty as agent to sell the Commodity to any third party, the Bank will (I) at all times act as the Customer’s undisclosed agent; (II) not disclose that it is acting as the Customer’s agent; and (III) (amongst other things):
  - (i) be authorised to sign and execute all documents, do all acts, and observe and perform all obligations required to be done in connection with this Agreement, or imposed under any agreement of sale of the Commodity to a third party;
  - (ii) be authorised to perform all administrative duties relating to the holding and selling of the Commodity;
  - (iii) not be under any duty to disclose and/or provide any documents to the Customer in relation to the performance of the Bank’s duties under this Agreement; and

- (iv) be at liberty to sell the Commodity to any third party.
- (c) The appointment of the Bank as the Customer's agent will not create or be deemed to create a partnership or a joint venture between the parties, nor will it establish a relationship of principal or agent in any other relationship between the parties.
- (d) The appointment of the Bank as the Customer's agent for the purpose of this Agreement will end:-
  - (i) upon the Customer's demise, dissolution or loss of legal capacity;
  - (ii) upon dissolution or loss of legal capacity of the Bank (if the agency task is to be personally performed by the Bank);
  - (iii) upon the Customer losing the Customer's right to the Commodity;
  - (iv) if the Customer and the Bank agree to terminate the agency;
  - (v) if the Facility granted to the Customer is terminated prior to the Bank carrying out any of the acts contemplated in Clause 4.1 (a) and (b) above, by reason of the Customer's breach of the terms and conditions in the Transaction Documents;
  - (vi) if the Customer exercises his/her/its option to terminate the agency due to misconduct, negligence or breach of specified terms of the agency by the Bank; or
- (e) In the event of dissolution of agency pursuant to Clause 4.1(d) above, the parties' liability to the other party for the dissolution of the agency will be limited to RM1.00.
- (f) The agency created by virtue of this Agreement will complete upon completion of the sale of the Commodity by the Bank to any third party referred to in Clause 4.1(a) above. Upon completion, the Customer and the Bank will be free from all contractual obligations created pursuant to the agency created by virtue of this clause.

#### **4.2 Transaction Fees**

The Customer must pay the Transaction Fees to the Bank prior to the Sale Transaction.

#### **4.3 Proceeds of Sale of the Commodity**

- (a) The Bank will sell the Commodity and obtain immediate payment of the Customer's Sale Price in immediately available and freely transferable funds for good value, free from any set-off, deduction, withholding or counterclaim,.

- (b) The Bank will apply any proceeds of sale of the Commodity which are payable to the Customer in accordance with Clause 2.3 above.

## **5 AVAILABILITY**

### **5.1 Conditions Precedent**

The Bank's obligation to make available the Facility and to accept any Purchase Request is subject to the Bank being satisfied that the Conditions Precedent as set out in Schedule 1 have been complied with and fulfilled by the Customer.

### **5.2 Waiver of Conditions Precedent**

The Conditions Precedent are for the sole benefit of the Bank and may be waived by the Bank in whole or in part with or without terms or conditions and without prejudicing the right of the Bank to assert the applicability of the Conditions Precedent in respect of any future availability of the Facility.

## **6 UNDERTAKING TO PAY**

The Customer undertakes to pay the Bank's Sale Price through Monthly Instalments in the manner, at the times as notified by the Bank, in accordance with the terms of this Agreement. The Customer further undertakes to pay the Indebtedness to the Bank under any of the Transaction Documents as and when it falls due.

### **6.1 Prepayment Amount /Early Settlement**

- (a) The Customer is allowed to prepay any amount ("Prepayment Amount") in the manner set out in Appendix 1 of the Letter Of Offer.
- (b) The Customer must make full settlement of the Settlement Amounts ("Early Settlement") before expiry of the Tenure upon the occurrence of any of the following events:
  - (i) the Customer requests for Early Settlement;
  - (ii) a financing restructuring exercise of the Facility;
  - (iii) the occurrence of any Event of Default; and/or
  - (iv) the termination of this Agreement before expiry of the Tenure for any reason.
- (c) If the Customer requests Early Settlement of the Facility, Early Settlement will be made on the dates as determined by the Bank and agreed by the Customer.

- (d) Any notice for Early Settlement will be irrevocable and the Customer must make such settlement in accordance with such notice.

## **6.2 Undertaking to give Ibra' (Rebate)**

- (a) The Bank undertakes to provide to the Customer an Ibra' (rebate) on the Bank's Sale Price and/or other monies remaining unpaid by the Customer, in particular, but not limited to, in the circumstances stated in the Letter Of Offer.
- (b) The Bank's calculation of such Ibra' (rebate) will be treated as final and binding.

## **6.3 Changes of the Monthly Instalments**

If the Effective Profit Rate is based on the Base Rate, and there are any changes to the Base Rate at any time during the Tenure which results in changes to the Effective Profit Rate, the Bank will have the right to revise the Monthly Instalments accordingly by giving the Customer at least twenty-one (21) days' prior written notice of such revisions in the Monthly Instalments. Any revision in the Effective Profit Rate will not cause the Effective Profit Rate to exceed the Contracted Profit Rate.

# **7 SECURITY**

## **7.1 Security**

Where applicable, the Customer will execute or procure the execution of the Security Documents in favour of the Bank, as security for payment of the Indebtedness.

## **7.2 Continuing Security**

The security created for purposes of this Facility is expressly intended to be and will be a continuing security for the Indebtedness.

## **7.3 Covenant to Provide Further Security**

- (a) If the value of the Property diminishes, if the Property is in jeopardy in any way or the value of the Property becomes insufficient to secure the Indebtedness or if there is a change in the Customer's credit worthiness and the Bank requests that additional security be provided, the Customer and any Security Party(as applicable) must create further security in favour of the Bank, in such form and of such value as may be agreed by all parties.
- (b) The Customer must not and must ensure that the Security Party does not create or permit any form of encumbrance, including but not limited to caveats or prohibitory orders, to be created or exist over the Property (other than in favour of the Bank).



## **8 REPRESENTATIONS AND WARRANTIES**

### **8.1 Representations and Warranties**

The Customer makes the representations and warranties contained in Schedule 4 to the Bank.

### **8.2 Truth and Correctness of Representations and Warranties**

- (a) The Customer acknowledges that the Bank has accepted this Agreement on the basis that the representations and warranties in this Agreement are and will continue to be correct and complied with in all material respects so long as this Agreement remains in force and effect.
- (b) The truth and correctness of the representations and warranties in Schedule 4 form the basis of the Bank's commitment to make available or continue to make available the Facility to the Customer.

## **9 COVENANTS**

### **9.1 Affirmative Covenants**

The Customer undertakes with the Bank that until all of his or its liabilities and obligations under the Transaction Documents have been discharged in full, the Customer will comply with all positive covenants that are set out in Schedule 5.

### **9.2 Negative Covenants**

The Customer undertakes with the Bank that until all of his or its liabilities and obligations under the Transaction Documents have been discharged in full, the Customer will comply with the negative covenants set out in Schedule 5.

## **10 CHANGES IN CIRCUMSTANCES**

### **10.1 Force Majeure and/or Delay**

The Bank will not be liable for:

- (i) any failure to perform any of its obligations under this Agreement; or
- (ii) any claim in respect of any direct or indirect loss, damage or injury to earnings, profit, goodwill or business; or
- (iii) other fault,

attributable to circumstances beyond the reasonable control of the Bank including but not limited to any fire, earthquake, flood, epidemic, accident, explosion, casualty, lockout, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of God.

## **11 EVENT OF DEFAULT**

### **11.1 Event of Default**

The Bank may, at any time after the occurrence of an Event of Default, by notice to the Customer, declare that an Event of Default has occurred and simultaneously or at any time after such notice and whether or not any Event of Default is continuing, the Bank may by written notice of at least 7 days to the Customer:

- (a) declare this Agreement to be terminated;
- (b) declare the Settlement Amounts to be immediately due and payable; and
- (c) declare the security created by the Security Documents to become immediately enforceable.

### **11.2 Enforcement of Security**

At any time after the occurrence of an Event of Default, the Bank will be entitled (but not obliged) to enforce its remedies under the Security Documents.

### **11.3 Concurrent Remedy**

The Bank has the right to exercise its remedies concurrently, including pursuing civil proceedings to recover the Indebtedness and enforcing the Security Interests granted to it.

If the Bank takes legal action to recover any money due from the Customer or to enforce any term or condition of the Security Documents, then the Bank may:

- (i) claim for the amounts outstanding (including profit and other moneys) due from the Customer and/or the Security Party and/or under the Security Documents, in the same or separate proceedings; and
- (ii) proceed simultaneously in the same or separate proceedings to realise the security created in favour of the Bank by the Customer and/or the Security Party.

## **12 PROCEEDS**

### **12.1 Application of Proceeds**

All monies received by the Bank from any proceedings instituted or steps taken under any of the Security Documents will (subject to the payment of debts which by law have priority, if any), be applied by the Bank:

- (a) firstly, to pay quit rent, rates, taxes, assessments and other outgoings due to the Government;
- (b) secondly, to pay (i) all costs, charges and expenses incurred and payments made by the Bank under the provisions of any of the Security Documents and (ii) any other taxes payable under any written law for the time being in force on the disposal of the Property;
- (c) thirdly, to pay the Settlement Amounts or any part of the Settlement Amounts remaining unpaid under the Facility including any late payment compensation charges;
- (d) fourthly, to pay all other monies due and remaining unpaid under the Security Documents or any related documents; and
- (e) fifthly, to pay the Customer's liabilities to the Bank (whether such liabilities are present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, or several or joint) under any accounts or agreement with the Bank, and all such monies so available will be held on trust for the Bank for the satisfaction of such liabilities;
- (f) sixthly, any surplus will be paid to the persons entitled to such surplus.

## **12.2 Deficiency in Proceeds**

If the amount realised by the Bank on enforcement of its Security Interests (including the sale of any properties or assets forming part of the Bank's Security Interests (regardless of whether the Bank is the purchaser of such properties or assets) after deduction and payment of all fees, costs, charges and other outgoings arising out of such realisation is less than the amount due to the Bank, the Customer must on demand, pay to the Bank the difference between the amount due to the Bank and the amount realised. The Customer must pay late payment compensation charges on such differential sum until the date the differential sum is actually paid to the Bank.

## **13 LATE PAYMENT CHARGES**

### **Ta'widh (compensation)**

The Customer expressly agrees, covenants and undertakes to pay late payment charges including ta'widh (compensation) to the Bank in accordance with the provisions of the Letter Of Offer.

## **14 PAYMENTS**

**14.1** The Customer must make all payments under this Agreement on or before the due dates for such payments.

**14.2** All payments made will, unless the Letter of Offer otherwise provides, be credited directly into the Customer's Facility account towards:

- (i) firstly, settlement of any arrears, Monthly Instalments due and other outstanding charges; and
- (ii) secondly, successive Monthly Instalments as they become due and payable.

**14.3** All payments must be made in Malaysian Ringgit and in immediately available funds.

**14.4** All payments must be made without set-off, counter claim, deduction or withholding. If there is any deduction or withholding, the Customer must immediately pay to the Bank an additional amount so that the net amount received by the Bank will be equal to the full amount the Bank should have received without such deduction or withholding.

**14.5** Any monies received pursuant to any realization of any Security Interests created in favour of the Bank or recovery action by the Bank may be placed and retained in a suspense account to facilitate a discharge of any obligation due by the Customer in relation to the Indebtedness. If there is a shortfall from proceeds of the foreclosure / recovery action and there are proceedings in or comparable to bankruptcy, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of such shortfall.

## **15 INDEMNITY**

### **15.1 Indemnity**

- (a) The Customer must at all times fully indemnify and keep the Bank including its agents, employees and representatives indemnified against any action, proceeding, claim, expense, loss, damage or liability which the Bank or such agents, employees or representatives may incur as a consequence of any Event of Default or otherwise in connection with this Agreement or the other Transaction Documents, unless such expense, loss, damage or liability is attributable to the wilful default, gross negligence or fraud of the Bank.
- (b) Any certificate issued by the Bank in connection with the above (such as in relation to the amounts relating to any action, proceeding, claim, expense, loss, damage or liability) will, in the absence of manifest error, be conclusive evidence of the matters to which it relates and be binding upon the Customer.
- (c) The above indemnities will extend to any expenses, fees (including legal fees on a solicitor and client basis) or other sums paid or payable in connection with the enforcement of any of the Bank's rights under this Agreement and the other Security Documents.

## **15.2 Indemnities Separate**

The above indemnities (i) will constitute separate and independent obligations from the Customer's other obligations under this Agreement, and (ii) will give rise to separate and independent causes of action against the Customer.

## **16 EXPENSES**

### **16.1 Expenses**

The Customer will on demand, pay to the Bank all costs, fees and charges, expenses, taxes and other monies in any way connected with or arising out of the Facility from time to time as stipulated in Appendix 2 of the Letter Of Offer.

### **16.2 Upstamping**

If the Bank grants any additional facility to the Customer or the total monies advanced to or due and owing by the Customer to the Bank at any time exceed the principal limit for which ad valorem stamp duty has been paid, this Agreement, the Security Documents or the Letter of Offer will be upstamped with ad valorem duty to cover the excess. The Bank may charge the ad valorem duty to the Customer's Facility Account and the stamp duty including any penalty incurred will form part of the Indebtedness.

## **17 ASSIGNMENT AND TRANSFER**

- (a) The Customer may not assign or transfer any of the Customer's rights, benefits and/or obligations under this Agreement to any person without the Bank's prior written consent.
- (b) The Bank may, with prior written notice to the Customers, assign its rights, benefits and/or obligations under this Agreement without the Customer's consent provided such assignment or transfer does not materially and adversely affect the Customer's (i) rights under this Agreement or (ii) the Facility.

## **18 GOVERNMENT ACQUISITION**

- (i) The Customer must immediately inform the Bank if the Property or any part of the Property becomes the subject matter of or is included in:
  - (a) any notice, notification or declaration relating to an acquisition by the government or any government authority; or
  - (b) any enquiry or proceedings in relation to such acquisitions.

The Customer must forward to the Bank a copy or copies of any such notice, notification or declaration as soon as the same is delivered to or served on the Customer.

- (ii) The Bank will be entitled at the Customer's expense, to engage such advisers and agents (including solicitors and valuers) as it reasonably thinks fit for the purposes of appearing, attending at or advising on any enquiry or proceeding relating to any such acquisition of the Property.
- (iii) All monies received either by way of compensation for any such acquisition of the Property or any part of the Property will be applied in or towards the settlement of the Settlement Amount. The Customer declares that he/she/it will hold all monies received by he/she/it in trust for the Bank and agrees and confirms that the Bank may receive and give a good discharge for all such monies. If all such monies are less than the Settlement Amounts due to the Bank, the Customer will immediately pay to the Bank the difference between the amount due and the amount so received.

## **19 FURTHER PROVISIONS**

### **19.1 Evidence of Indebtedness**

Any certificate or statement of account as to the amount due to the Bank which is signed by an officer of the Bank or contained in a document produced by a computer in the ordinary course of its use, will (in the absence of fraud or manifest error), be conclusive evidence that such amount is in fact due and payable.

### **19.2 Reconstruction**

The security, liabilities and obligations created by the Security Documents will continue to be valid, binding and enforceable for all purposes even if there is a change by amalgamation, reconstruction or otherwise to the constitution of the Bank, the Customer and/or any Security Party. Any change affecting the Bank, the Customer and/or any Security Party will not affect the security, liabilities or obligations created under the Security Documents.

### **19.3 Waiver and Acquiescence**

- (i) The rights of the Bank under this Agreement are (a) cumulative, (b) may be exercised as often as the Bank considers reasonably appropriate and (c) are in addition to the Bank's other rights under any applicable law.

The rights of the Bank in relation to the Facility (whether arising under this Agreement or under any applicable law) will not be waived or varied except by an express waiver or variation in writing.

- (ii) The Bank's rights, powers, privileges or remedies in relation to any breach or subsequent breach of the terms and conditions of this Agreement by the Customer will not be affected or impaired by:

- (a) any failure, delay or omission by the Bank in exercising any right, power, privilege or remedy accruing to the Bank under this Agreement or any security in favour of the Bank upon any breach by the Customer or any Security Party or
- (b) any action by the Bank; or
- (c) any acquiescence by the Bank in any breach by the Customer or any Security Party.

#### **19.4 Valuation of the Property**

The Bank may appoint a valuer or require the Customer to carry out a valuation or a revaluation of the Property at any time prior to the disbursement of the Customer's Sale Price, with the costs of valuation being borne by the Bank (except in the case of a valuation carried out for purposes of initial disbursement under the Facility or for purposes of enforcement of the security created under the Security Documents, in which case, the costs must be borne by the Customer). If the valuation report confirms that the open market value or any other value of the Property is less than the Sale and Purchase Price, the Bank will be entitled to revise the Facility prior to the execution of this Agreement and notify the Customer accordingly of such revision and impose any further conditions which the Bank will likewise ascertain (if required) prior to the disbursement of the Customer's Sale Price.

#### **19.5 Time**

Time is of the essence of this Agreement.

#### **19.6 Service of Notice**

- (a) Notices and other communications to the Customer via any of the following modes and deemed to have been received and served on the Customer and /or the Security Party:
  - (i) if sent by post, on the seventh (7th) day after posting;
  - (ii) if delivered personally, at the time of delivery or despatch;
  - (iii) if by courier, immediately on the Customer's or Security Party's acknowledgment on the courier consignment note;
  - (iv) if by any form of instantaneous communication (including but not limited to e-mail, short message service (sms) and voice recording), immediately; or
  - (v) if by publication on the Bank's website or at any of the Bank's branches, on the day of publication.

It will be the Customer's and/or the Security Party's responsibility to ensure that any notices sent via any of the modes stated above are not read or accessed by any third party. The Bank will not be responsible in any manner for any embarrassment caused or for any loss or damage however arising, by the third party reading or accessing such notices.

Notices, demands and other communications to the Bank will be sent to its address stated in this Agreement, or as notified by the Bank to the Customer. Any notice required to be given to the Bank (i) must be in writing; (ii) signed by you; and (iii) will be effective only on receipt by, and evidenced by an acknowledgment of the Bank; or where applicable, are given via channels permitted by the Bank.

- (b) Any notice that the Bank gives, including any notice of demand for Indebtedness to the Customer may be signed on the Bank's behalf by a director, general manager, manager, assistant manager, officer or by any solicitor of a firm of solicitors acting on the Bank's behalf. If the notice is computer-generated, it need not be signed.

#### **19.7 Service of legal process**

In addition to any mode of service permitted by law, service of any legal process on the Customer and/or the Security Party will be sent in writing to the Customer and/or the Security Party's last known address maintained in the Bank's records and deemed to have been received and served on the Customer and/or the Security Party:

- (i) if delivered personally, at the time of delivery or despatch;
- (ii) if sent by registered or ordinary post, on the seventh (7th) day after posting; and
- (iii) if sent by courier, immediately on your acknowledgement on the courier consignment notice.

#### **19.8 Change of Address**

The Customer and/or the Security Party must give actual notice to the Bank of any change in address via channels permitted by the Bank in order for such change of address to be effective and binding on the Bank.

#### **19.9 Severability**

Any provision of this Agreement that is or becomes invalid, void, illegal or unenforceable will only be ineffective to the extent necessary and will not affect or impair the validity, legality and/or enforceability of the remaining provisions of this Agreement. The Customer and/or the Security Party agree, upon request by the Bank, to a substitution of any such invalid, void, illegal or unenforceable provision with a valid provision which has as far as possible the same effect.

#### **19.10 Modification and indulgence**



The Bank may, without affecting the Security Interest granted by the Customer and/or the Security Party in relation to this Facility:

- (a) vary the terms and/or conditions of this Agreement with at least twenty-one (21) days' prior notice to the Customer for operational expediency, due to a change in any laws and regulations or any other reason; or
- (b) determine the Facility with at least fourteen (14) days' prior written notice to the Customer; or
- (c) grant to the Customer and/or any Security Party any indulgence.

#### **19.11 Bank Negara Malaysia**

The provision of the Facility will at all times be subject to such rules, regulations and directives (whether or not having the force of law) as may be imposed upon the Bank from time to time by BNM or any other authority having jurisdiction over the Bank.

#### **19.12 Suspense account**

Any monies received pursuant to any realization of security charged / created in favour of the Bank or recovery action by the Bank may be placed and retained in a suspense account to facilitate a discharge of any obligation due by the Customer in relation to the Indebtedness. If there is a shortfall from proceeds of the foreclosure / recovery action and there are proceedings in or comparable to bankruptcy, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of such shortfall.

#### **19.13 Terms of Letter Of Offer Incorporated**

The Letter Of Offer will form part of this Agreement. Unless otherwise stated, all references, terms, conditions and provisions as set out in the Letter Of Offer which are not specifically stated in this Agreement are incorporated in and will form part of this Agreement and will be binding upon any parties to this Agreement (including the Customer and the Bank). If there is any conflict or discrepancy between the provisions of the Letter Of Offer and this Agreement, the provisions of the Letter Of Offer will prevail for the purpose of interpretation and enforcement of this Agreement.

#### **19.14 Additional Terms and Conditions**

The Facility granted under this Agreement will be further subject to specific covenants and additional terms and conditions as set out in Schedule 3 (if any).

#### **19.15 Successors bound**

This Agreement will be binding upon the Customer's successors-in-title and permitted assigns and on the Bank's successors-in-title and assigns.

#### **19.16 Involuntary Loss**

The Bank will not be answerable for any involuntary loss that may be suffered by the Customer as a result of the Bank exercising any of its powers, rights, privileges or remedies conferred upon it by this Agreement and the other Security Documents or by law, except to the extent such loss is directly caused by the Bank's wilful default or gross negligence.

#### **19.17 Avoidance of Payments**

Any (i) assurance, security or payment which may be avoided under any law relating to bankruptcy and (ii) release, settlement or discharge given or made by the Bank on the faith of any such assurance, security or payment, will not prejudice or affect the Bank's rights to recover from the Customer the Indebtedness.

Any such release, settlement or discharge will be deemed to be made subject to the condition that it will be void if any payment or security which the Bank may previously have received or may in future receive from any person in respect of the Indebtedness is set aside under any applicable law or proves to have been invalid for any reason.

#### **19.18 Further Assurance**

The Customer must from time to time and at any time, whether before or after any of the Security Documents become enforceable, execute and do or cause to be executed and done all such transfers, assignments, assurances, charges, debentures, instruments, documents, acts and things as the Bank may reasonably require for (i) perfecting the security required under the Security Documents; (ii) facilitating the realisation of the Property charged or to be charged to the Bank and (iii) the exercise of the Bank's powers, authorities and discretion. For such purposes, a certificate in writing signed by or on behalf of the Bank to the effect that any particular transfer, assignment, assurance, charge, debenture, instrument, document, act or thing is reasonably required by it will be conclusive evidence of such fact.

#### **19.19 Central Credit Reference**

- (a) BNM has established a Central Credit Bureau (the "**Bureau**") to collect information from banks for inclusion into a Central Credit Reference Information System ("**CCRIS**") regarding the credit/financing facilities which they grant to their customers to enable participating banks (of which the Bank is one), who are approached for credit/financing facilities by a customer, to be informed by the Bureau of the aggregate credit facilities granted to that customer by other banks.
- (b) The information is kept strictly in confidence between the Bureau and all participating banks and it is a term of the Facility offered under this Agreement that information regarding the Facility will be

given to the Bureau for the use of the Bureau and the participating banks.

- (c) CCRIS is part of BNM's ongoing effort to improve the credit approval process. The information held will enable participating banks to obtain customer's credit information for credit evaluation purposes. The Bank as a participant in this programme will also be providing such credit information to CCRIS. Information disclosed may also extend to any guarantors' details which the Customer may have provided, to secure credit facilities granted by the Bank.
- (d) As a participating bank, the Bank has taken all the necessary steps to ensure that the information provided to CCRIS is both timely and accurate. Nonetheless, the Bank and its officers will not in any event be liable to the Customers, any other credit applicants or third parties (including the Security Parties) for any claim, loss or damage (direct or indirect howsoever arising) due to any reliance placed on the information provided to CCRIS and irrespective of the nature of any incorrect content, unless caused by the wilful default or gross negligence of the Bank.

#### **19.20 Acting as Principal and Money Laundering**

- (a) The Customer warrants and represents to the Bank that:
  - (i) unless and until the Customer notifies the Bank in writing to the contrary:
    - (1) the Customer is the principal in relation to the Facility;
    - (2) no person other than the Customer have or will have any interest in the Facility; and
    - (3) all monies which will be paid to the Bank, and Security given in favour of the Bank to secure the Facility will come from a lawful source of activity, as defined under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLA");
  - (ii) on notification that the Customer is an intermediary for other persons:
    - (1) the Bank may require, and the Customer agrees and undertakes to provide verification of the identity of the beneficiary and such other information required by the Bank for its records (including but not limited to certified true copies of any authorisation to act or documents required to verify the information provided);
    - (2) the Customer further declares and certifies that the Customer has conducted the necessary "know-your-client" checks, including but not limited to checks on the identity, existence, address and nature of the business of the beneficiary, and that the relevant monies, funds or collateral paid or given to the Bank are from a lawful source of activity and not any "unlawful activity" as defined under the AMLA; and

- (3) the provision of beneficiary details will not make that beneficiary a client of the Bank's and the Bank is entitled to treat the Customer as the principal at all times.
- (b) The Customer agrees and undertakes that:
- (i) the Customer will disclose and furnish to the Bank any information required to the satisfaction of the Bank within the time period specified by the Bank for purposes of complying with AMLA or other regulatory requirements;
  - (ii) the Bank is not obliged to proceed with any transaction or disbursement under the Facility or accept any monies, funds or collaterals (“Assets”) pending receipt or verification of the information by the Bank and/or the relevant authorities. For Assets in the Bank's possession, the Bank shall be entitled (and authorised) to retain the Assets for the time being; any Assets requested to be returned to the Customer or the Security Party will be returned to the Customer or the Security Party after the Bank receives satisfactory clearance from the relevant authorities;
  - (iii) the Customer must not use the Facility for money laundering purposes or violate any laws relating to money laundering as defined under the AMLA; and
  - (iv) the Bank will not be liable for any losses by reason of the Bank carrying out its duties under the laws currently in force, including but not limited to AMLA, etc.
- (c) If it is discovered that any monies used for payment of the Indebtedness or any part of it have been sourced from “unlawful activities” (as defined under the AMLA), then: -
- (i) any release and discharge of the Customer's obligations under the Security Documents will to such extent be automatically nullified and of no force and effect, and the Customer and the Security Party will continue to be liable to the Bank for such sums even if the Bank has issued any document(s) to discharge and release the Customer or the Security Party; and
  - (ii) the Customer will indemnify and keep the Bank fully indemnified and will cause the Security Party (if any) to indemnify the Bank and keep the Bank fully indemnified (on full indemnity basis) for any losses, damages, costs, fees and charges incurred by the Bank as a result of contravention by the Customer and/or the Security Party of the provisions of the AMLA.

#### **19.21 Effective Date**

The parties agree that this Agreement will come into force on the date stated in this Agreement even if the parties signed this Agreement on different dates.

## **19.22 Counterparts**

This Agreement may be executed in any number of counterparts (each of which will be original) and such counterparts will together constitute one and the same agreement.

## **19.23 Section 8(2A) of the Insolvency Act 1967**

If the Facility is granted to joint Customers and one of the Customers has been declared a bankrupt during the tenure of the Facility but the Bank has not realised its security within 12 months from the bankruptcy order, each other Customer who is not bankrupt must continue pay the profit calculated on EPR and/or the Revised EPR on the Facility.

## **20 GOVERNING LAW**

This Agreement shall be governed by the laws of Malaysia. The parties to this Agreement agree to submit to the exclusive jurisdiction of the Malaysian Courts.

## **21 STAMP DUTY DECLARATION**

IT IS HEREBY DECLARED THAT this Agreement and the other Transaction Documents are instruments employed in one transaction to secure the payment of the Facility and all other monies due and owing by the Customer to the Bank and for the purpose of Section 4(3) of the Stamp Act, 1949 (consolidated and revised in 1989), this Agreement will be the principal instrument.

## **22 PRIVACY**

- (a) The Customer confirms that the Customer 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) or [www.cimbislamic.com](http://www.cimbislamic.com)) and the clauses herein, as may relate to the processing of the Customer's personal information. For the avoidance of doubt, the Customer agrees that the said Privacy Notice will be deemed to be incorporated by reference into this Agreement.
- (b) In the event that the Customer provides personal and financial information relating to third parties, including information relating to the Customer's next-of-kin and dependents (where the Customer is an individual) for the purpose of opening or operating the Customer's accounts or facilities with the Bank or otherwise subscribing to the Bank's products and services, the Customer (a) confirms that the Customer has obtained their consent or is 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 such third parties are accurate; (c) agree to update the Bank in writing in the event of any material change to such personal and financial information; and (d) agree that the Bank may terminate this Facility Agreement should such consent be withdrawn by any of such third parties.

- (c) Where the Customer 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 (e.g. for the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on the Customer's behalf, the Customer agrees to such disclosures, both on the Customer's own behalf and on behalf of the others involved in such cross-border transaction
- (d) The Bank may, at any time and from time to time now and/or in the future, carry out the necessary reference checks including but not limited to credit reporting/reference checks with credit reporting / reference agencies (including but not limited to the Central Credit Reference Information System and Financial Information Service Sdn Bhd) and/or any other agencies and/or from any financial institutions to enable the Bank to ascertain the Customer's status as the Bank may require to make any decisions, for example when the Bank needs to (a) check details in applications for credit and credit-related services or other facilities; (b) manage credit and credit-related accounts or facilities, including conducting reviews of the Customer's portfolios; and/or (c) recover debts. The Customer will be linked by credit reporting/reference agencies to any other names the Customer uses or have used, and any joint and several applicants. The Customer agrees that the Bank may also share information about the Customer and how the Customer manages the Customer's accounts and facilities with relevant credit reporting/reference agencies and for any of these credit reporting/reference agencies to disclose your credit information to its subscribers for purposes of fraud detection and fraud prevention.
- (e) Even after the Customer has provided the Bank with any information, the Customer will have the option to withdraw the consent given earlier. In such instances, the Bank will have the right to refuse to provide or to discontinue the provision of any product, service, accounts and/or facilities that is / are linked with such information with at least 3 business days' prior written notice to you.
- (f) The Bank reserves the right to amend this clause from time to time at its sole discretion and will provide not less than twenty-one (21) days' prior written notice to the Customer 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.
- (g) For the purposes of this Clause 22, 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
- (h) The Customer agrees that the Bank will not in any event be liable for (A) any claims, losses, damage (financial or otherwise), injuries, embarrassments or liabilities whether arising in contract, tort, strict

liability or any other basis, or (B) any indirect, special, incidental, consequential or punitive damages, in connection with:

- (i) any inaccuracy in, or loss, deletion or modification of data or;
- (ii) the transmission of any information by the Bank to any credit reporting/reference agencies and/or other party, or the access or use of or reliance on, or the inability to access or use or rely on, such information by such credit reporting/reference agencies and/or other party,

save and except where proven to have been caused directly by the Bank's gross negligence, default or omission.

- (i) This clause is without prejudice to any other clause in this Agreement which provides for the disclosure of information.

**[End of Clauses]**

SCHEDULE 1: CONDITIONS PRECEDENT  
(Clause 5.1)

(which will be taken and construed as an integral part of this Agreement)

- (a) the Customer duly accepting the Letter Of Offer within fourteen (14) days from the date of the Letter Of Offer or any period extended by the Bank and returned to the Bank;
- (b) receipt by the Bank of certification from the Bank's solicitors that the Transaction Documents are in order and that the terms and conditions are valid and enforceable, accompanied by:
  - (i) a search conducted at the relevant land registry/land office confirming that the Property is (I) free from all encumbrances and (II) no acquisition notices or private caveats have been lodged and/or registered or issued against the Property;
  - (ii) a search result conducted on the Customer at Jabatan Insolvensi Malaysia. Pending receipt of this, a clearance of any Credit Tip Off Services (“**CTOP**”) finding and a duly stamped statutory declaration confirming that the Customer is not an adjudged bankrupt and there is no petition pending in court against the Customer. If such search result report contains positive disclosure on any legal proceedings, the Bank has the right not to disburse the Customer's Sale Price at its discretion;
  - (iii) consent to transfer/charge from the relevant land registry/land office;
  - (iv) certification from the Developer/Bank's solicitors/relevant parties that the Differential Sum has been duly settled by the Customer;
  - (v) letter of disclaimer/undertaking from the Existing Chargee/Assignee to exclude the Property in case of foreclosure on the master title charged to them, in form and content acceptable to the Bank (if applicable);
  - (vi) if the document of title in respect of the Property is available, (I) the execution and stamping of the instruments relevant for the creation of the charge over the Property under the National Land Code 1965 of Malaysia (the “**NLC Charge**”) and (II) receipt by the Bank of a copy of the presentation receipt evidencing the presentation of the NLC Charge with the relevant land registry / land office. If the document of title in respect of the Property is not available, in addition to the execution and stamping of the relevant Transaction Documents, receipt by the Bank of, the power of attorney registered with the relevant court;
  - (vii) the duly executed and stamped Transaction Documents (as applicable);



- (viii) in the case where the Property is purchased from a Developer, receipt by the Bank of a letter of undertaking from the Developer undertaking to:
1. apply for individual title and on receipt of the same, to forward it to the Bank free from encumbrances for creation of the Charge;
  2. forward the original individual title and memorandum of transfer (where applicable) to the Bank;
  3. refund all monies already disbursed by the Bank in the event that the transfer cannot be executed for any reason whatsoever; and
  4. in the case where the Property is purchased from a Developer/Vendor, and where a separate document of title has been not yet been issued in respect of the Property, all documents evidencing title executed prior to this Agreement, namely the Principal Sale and Purchase Agreement, receipt and reassignment and any other related loan/financing documents between the financier and the Developer/Vendor must be submitted to the Bank;
- (c) receipt by the Bank of:
- (i) the original or duplicate copy of the Sale and Purchase Agreement and where applicable, the original Principal Sale and Purchase Agreement and all other documents pertaining to the ownership of the Property as the Bank may require; and/or
  - (ii) the original proclamation of sale together with duly executed and stamped memorandum of contract and/or the original issue document of title to the Property where the Property is unencumbered (as the Bank may require), as applicable;
- (d) in the case of the refinancing of a facility from another bank or financial institution, receipt by the Bank of the redemption statement and undertaking from that bank or financial institution;
- (e) where required by the Bank:
- (i) receipt by the Bank of a full valuation report on the Property issued by the Bank's approved valuers;
  - (ii) the registration of any security to be provided to the Bank, with such registries as the Bank may deem necessary or expedient; and
  - (iii) receipt by the Bank of all takaful certificates required by the Bank including but not limited to a long-term House Owner Takaful to cover the Property against (I) Total Loss Incident, (II) the risks of fire and (III) other risks as the Bank deems fit. The takaful plans must be in form and content acceptable to the Bank, from Sun Life Malaysia Takaful Berhad (formerly known as CIMB Aviva

Takaful Berhad) or a Takaful Operator on the Bank's panel or any other Takaful Operator acceptable to the Bank;

- (f) (where the Customer opts) the Customer obtaining a Group Mortgage Reducing Term Takaful Plan with Sun Life Malaysia Takaful Berhad (formerly known as CIMB Aviva Takaful Berhad) or the Takaful Operator on the Bank's panel or such other Takaful Operator as may be acceptable to the Bank, naming the Bank as beneficiary;
- (g) the lodging of a private caveat on the Property in the Bank's favour (if applicable);
- (h) receipt by the Bank of a statutory declaration executed by the Customer confirming that the Property will be occupied by the owner of the Property (if applicable);
- (i) receipt by the Bank of current receipts evidencing due payment of quit rent, assessment, rates, dues, and other outgoings;
- (j) the Bank is satisfied that the execution, delivery and performance of the Transaction Documents have been duly authorised and approved by all necessary parties and that such execution, delivery and performance do not contravene any laws, rules or regulations or any contractual or other restrictions;
- (k) the receipt by the Bank of all relevant undertakings, disclaimers and confirmations required by the Bank, to the Bank's satisfaction;
- (l) receipt by the Bank of the Bank's solicitor's written confirmation that (I) the documentation is in order, and is legal, valid and enforceable against the Customer and all Security Parties, (II) all conditions precedent to disbursement have been fulfilled, and (III) that it is in order for the Bank to disburse the Facility;
- (m) fulfilment of all conditions precedent in the Letter Of Offer and any other conditions precedent as deemed fit and may be required by the Bank.

All the above and other supporting documents must be:

- (i) in form and substance stipulated by and acceptable to the Bank; and
- (ii) received by the Bank within 3 months from the date of the Letter Of Offer.

Additional Condition Precedent

[•]

[Non Free Moving Cost (NFMC) Scheme

The Customer will bear all legal fees, costs and incidental charges and expenses incurred in connection with the preparation, completion and enforcement of the Transaction Documents. If any of the fees and charges have not been settled or paid in full by the Customer, the Bank reserves the right, to pay the same on the Customer's behalf at any time. The Bank may charge any monies paid by the Bank on behalf of the Customer to any of the Customer's accounts maintained with the Bank.]

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**SCHEDULE 2: MURABAHAH SALE CONFIRMATION**  
(which shall be taken and construed as an integral part of this Agreement)

From: CIMB Islamic Bank Berhad

To: [insert name of Customer]

Date: [•]

**Re: The Murabahah Sale Confirmation**

We refer to **the Letter Of Offer** dated [•].

Unless otherwise defined in this Schedule, words and expressions used in this Schedule will have the same meanings as defined in the Letter Of Offer.

This is to confirm that:-

- i. the Bank, has at your specific request purchased the Commodity from the Commodity Supplier at the Bank's Purchase Price; and
- ii. pursuant to the Purchase Request, the Bank as your agent has concluded the purchase of the Commodity from the Bank at the Bank's Sale Price; and
- iii. pursuant to the Purchase Request, the Bank as your agent has sold the Commodity to a commodity supplier (who is a different party from the Commodity Supplier referred to in (i) above) at the Customer's Sale Price (which is equivalent to the Bank's Purchase Price).

The details of the transaction are as follows:-

- a. Bank's Purchase Price: As set out in the Letter Of Offer;
- b. Bank's Sale Price: As set out in the Letter Of Offer;
- c. Profit Rate: As set out in the Letter Of Offer; and
- d. payment of the Bank's Sale Price: As set out in the Letter Of Offer.

Yours faithfully,  
As Attorney for and on behalf of  
CIMB ISLAMIC BANK BERHAD  
(Company No. 200401032872  
(671380-H)) in

the presence of:

SCHEDULE 3: ADDITIONAL TERMS AND CONDITIONS  
(Clause 19.14)

The following terms and conditions will be taken and construed as an integral part of this Agreement:

Additional Terms and Conditions

1. The terms and conditions of the Group Mortgage Reducing Term Takaful Plan (“**GMTP**”) as described in the Letter Of Offer to be taken by the Customer.
2. The Bank’s right to periodic review of the Facility as stated in the Letter Of Offer.

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#### SCHEDULE 4: REPRESENTATIONS AND WARRANTIES

(Clause 8.1)

(which shall be taken and construed as an integral part of this Agreement)

The Customer represents and warrants to the Bank as follows:

- (a) Each of the Customer and each Security Party respectively has full power and capacity to execute, deliver and perform all his or its respective obligations under the Security Documents;
- (b) the Customer's acceptance of the Facility will not constitute an event of default or potential event of default under any of the Customer's agreements with a third party, or contravene any law, regulation or order binding on the Customer;
- (c) (i) there are no legal proceedings, and/or bankruptcy or insolvency proceedings threatened or pending against the Customer and/or any Security Party; (ii) neither the Customer nor any Security Party is an undischarged bankrupt, wound up or insolvent; (iii) neither the Customer nor any Security Party has violated any court order or judgment; (iv) no voluntary arrangement has been entered into or proposed to be entered into by (I) the Customer with the Customer's creditor or (II) any Security Party with its creditors; or (v) no receiver and/or manager has been appointed to take over the Customer's or any Security Party's assets and/or business; or (vi) no application has been made by any person or is pending for an order for (I) the Customer and/or any Security Party to be placed under judicial management and (II) the appointment of a judicial manager; or (vii) there is no form of arrangement or composition (voluntary or otherwise) entered or proposed to be entered into by the Customer with the Customer's creditors and/or any Security Party with its creditors;
- (d) all the particulars, declarations and statements furnished or made by the Customer and/or each Security Party to the Bank are true, accurate and complete;
- (e) the Customer and each Security Party have not breached any laws;
- (f) the Security Party is/will be the beneficial owner of the Property;
- (g) the Property is/will not be encumbered except in favour of the Bank;
- (h) neither the Customer nor any Security Party or any of the Customer's respective directors, officers, employees or any persons acting on the Customer's and/or any Security Party's behalf:
  - (I) is/are a Restricted Party; and
  - (II) has/have received notice of or is/are aware of any claim, action, suit, proceeding or investigation against it, or the Customer by any Sanctions Authorities in connection with any Sanctions; and

- (i) all the necessary consents, approvals, licenses, authorisations, have been obtained, registrations filed and payment of duty or tax (including stamp duty) made to or with the appropriate authorities to ensure the legality, validity, enforceability of the Security Documents and the same are in full force and effect;
- (j) the Customer understands that this Agreement has been endorsed by the Shariah Committee appointed by the Bank and accepts and acknowledges that the Shariah Committee's endorsement that this Agreement is in compliance with Shariah principles is final, conclusive and binding upon the Customer; and
- (k) the Facility shall be exclusively applied towards Shariah compliant purposes as stated in the Letter Of Offer.

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## SCHEDULE 5: COVENANTS

(Clause 9.1)

(which shall be taken and construed as an integral part of this Agreement)

### Affirmative Covenants

For the purpose of this Schedule, and in the context where it is applicable:

“**Management Corporation**” means the management corporation established under the Applicable Acts in relation to the building in which the Property is comprised (where the Property is part of a building);

“**Management Fund**” means the management agreement as defined in the Applicable Acts.

The Customer expressly covenants with the Bank that he/she/it will at all times during the subsistence of this Agreement:

- (a) immediately submit the current year's assessment and quit rent receipts in respect of the Property to the solicitors and submit photocopies of such receipts to the Bank for retention;
- (b) pay the subsequent year's quit rent by the due dates;
- (c) immediately notify the Bank of the occurrence of any Event of Default or any other event of default in relation to the Customer's other indebtedness which in the Customer's reasonable opinion might adversely affect his/her/its ability to comply with his/her/its obligations under this Agreement; or
- (d) furnish to the Bank on demand, such information in respect of the Customer's properties and assets or statement of his or their income, as the Bank may from time to time require;
- (e) punctually pay the Customer's Indebtedness to the Bank when due and owing;
- (f) comply with, perform, observe, discharge and abide by any duties, responsibilities, liabilities, obligations and covenants imposed on the Customer by the Applicable Acts, the by-laws established under the Applicable Acts or any regulations, resolutions or by-laws passed by the Developer or the Management Corporation in relation to the Customer's rights, use and enjoyment of, the Property and the common property. The Customer further covenants and undertakes not to do or cause to be done anything contrary to or inconsistent with the aforesaid duties, responsibilities, liabilities, obligations and covenants;
- (g) pay:
  - (i) the quit rents, assessment, rates, taxes and all other charges payable from time to time in respect of the Property as and when they become due and payable; and

- (ii) contributions, subscriptions, dues and levies to the Management Fund, in such manner and at such times as may be determined by the Developer/Vendor or the Management Corporation for the purposes of maintaining, controlling, managing and administering the common property, paying rents, rates, assessments, taxes and takaful contributions and discharging any other obligations on the part of the Developer/Vendor or the Management Corporation;
- (h) keep the Property in satisfactory repair and condition;
- (i) inform the Bank immediately of any threatened, impending or existing legal proceedings affecting the Customer or any Security Party; and
- (j) advise the Bank immediately of any change in the financial standing of the Customer or any Security Party.

(Clause 9.2)

Negative Covenants

The Customer expressly covenants with the Bank that it will not, at all times during the subsistence of this Agreement, without the Bank's prior written consent:

- (a) create or permit to arise or subsist or cause to arise or subsist any encumbrance over the Property (other than the Security Interests in favour of the Bank as provided for in this Agreement);
- (b) do, permit or cause to be done or permitted to occur any act, thing or event by which any takaful effected in respect of the Property, may be or become avoided, vitiated, discharged or unenforceable; and
- (c) assign, transfer, sell or otherwise deal with the Customer's rights, title and interest in the Property or any part of the Property or any interest in the Property.

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## SCHEDULE 6: EVENT OF DEFAULT

(Clause 11.1)

(which shall be taken and construed as an integral part of this Agreement)

If at any time and for any reason, whether within or beyond the Customer's control, any one (1) of the following events occurs, that is to say:

- (a) Non-payment: the Customer or any Security Party fails to make payment of any monies owing to the Bank under the Transaction Documents on the due date or on demand, if so payable;
- (b) Non-performance: the Customer or any Security Party fails to observe or perform any of the other terms or conditions of the Transaction Documents;
- (c) Jeopardy: the Bank determines that:
  - (i) if the Bank continues to grant the Facility, this is likely to be detrimental to the Bank's position or is otherwise undesirable; or
  - (ii) its security under the Transaction Documents is inadequate or in jeopardy or that any event has occurred or a situation exists which could or might prejudice the ability of the Customer or any other Security Party to perform his/her/its respective obligations under any of the Transaction Documents;
- (d) Bankruptcy: in the case where the Customer or any Security Party is an individual, (i) any step is taken for the Customer's or the Security Party's bankruptcy, or (ii) a petition for bankruptcy is presented against the Customer or the Security Party, or (iii) the Customer and/or the Security Party commits any act of bankruptcy;
- (e) Change in financial position: any change occurs in the financial position of the Customer or any Security Party which in the opinion of the Bank will materially and adversely affect the ability of the Customer or such Security Party to perform any of its obligations under the Transaction Documents to which he or it is a party;
- (f) Death or incapacity: in the case where the Customer or any Security Party is an individual, the Customer or the Security Party (i) dies, (ii) becomes incapacitated or of unsound mind, (iii) serves any custodial sentence, (iv) repudiates or threatens to repudiate his/her/its obligations under the Transaction Documents;
- (g) Prejudicial event or events: any event occurs or a situation exists which might, in the Bank's opinion, materially prejudice the ability of the Customer or any Security Party to perform any of his or its obligations under any of the Transaction Documents to which he or it is a party;
- (h) Non-registration: (i) the transfer of the Property in favour of the Customer or any of the Security Documents cannot be registered or perfected for any reason or (ii) the Charge cannot be registered or is invalid for any reason;

- (i) Unlawfulness: it is or will become unlawful under the laws of any applicable jurisdiction for (i) the Customer or any Security Party to perform or comply with any one or more of his or their respective obligations under the Transaction Documents or (ii) for the Bank to continue making the Facility available to the Customer or to receive the Settlement Amounts or any part of them;
- (j) Nationalisation: all or a material part of the Property or assets of the Customer or any Security Party are:
  - (i) condemned, seized or otherwise appropriated for more than sixty (60) days; or
  - (ii) placed in the custody of any person acting or purporting to act under the authority of the government, for more than sixty (60) days; or,the Customer or Security Party is prevented for a period of more than sixty (60) days from exercising normal managerial control over all or any substantial part of the Customer's or Security Party's property or assets by any such person acting or purporting to act under the authority of the government;
- (k) Appointment of receiver, legal process: (i) an encumbrancer takes possession of, or a trustee or administrative or other receiver or similar officer is appointed in respect of, all or any part of the Customer's or the Security Party's business or assets or (ii) any distress or form of execution is levied or enforced upon any such assets and is not discharged within seven (7) days after being levied or enforced, or (iii) any Security Interest which may for the time being affect any of the Customer's or Security Party's assets becomes enforceable;
- (l) Indebtedness due: (i) any debt, guarantee or other obligation constituting the Customer's or the Security Party's Indebtedness becomes due prior to its scheduled maturity (by demand, acceleration or otherwise) or (ii) such Indebtedness is not paid at its maturity date or within any grace period allowed for payment of such Indebtedness or (iii) if the Customer or the Security Party is otherwise in breach of or default under any agreement, deed or mortgage pursuant to which such Indebtedness was created, incurred or assumed;
- (m) Judgment outstanding: the Customer or the Security Party fails to satisfy any judgment passed or order given against him or it by any court of competent jurisdiction and no appeal against such judgment or order is pending in any appropriate appellate court;
- (n) Revocation of authorisations: (i) any authorisation, exemption or undertaking referred to in the Transaction Documents is revoked, terminated, restricted or modified in a manner unacceptable to the Bank;
- (o) Misrepresentation:
  - (i) any representation, warranty or statement made (or acknowledged in writing to have been made) by the Customer and/or any Security Party in connection with the delivery of the Transaction Documents; or
  - (ii) any request for utilisation of the Facility,

proves to be incorrect in any material respect and the Customer and/or Security Party fails/fail to remedy such inaccuracies within the time stipulated by the Bank in a written notice given by the Bank to the Customer and/or the Security Party requiring the remedy of such inaccuracies;

- (p) Restricted Party: if the Customer permits or authorises any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, any part of the Facility and/or any other facilities granted to the Customer to fund any trade, business or other activities: (i) involving or for the benefit of any Restricted Party, or (ii) in any other manner that would reasonably be expected to result in the Customer or the Security Party (I) being in breach of any Sanctions (to the extent applicable to either of them) or (II) becoming a Restricted Party;
- (q) False or misleading information: any of the credit information furnished by the Customer to the Bank is found to be untrue or misleading in any way, or if the information furnished by the Customer to the Bank has changed in any way;
- (r) Cross Default: any indebtedness of the Customer or any Security Party, whether to the Bank, or to any other creditor, is not paid when due, becomes due or capable of being declared due before its stated maturity, or the Customer or any Security Party goes into default under, or commits a breach of, any instrument or agreement relating to any such indebtedness or the security for any such indebtedness becomes enforceable;
- (s) Other Events of Default: all other events of default mentioned in the Letter Of Offer which are not repeated in this Schedule.

Each of paragraphs (a) to (s) above is to be read independently. No one Event of Default limits the generality of any other Event of Default.

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SCHEDULE 7: ADDITIONAL TERMS AND CONDITIONS  
(Clause 2.2(c))

(which will be taken and construed as an integral part of this Agreement)

1. Name of existing financier :

---

2. Amount of Principal Sum :

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**Execution**

SIGNED BY THE BANK AND THE CUSTOMER(S).

THE BANK

Signed by

As Attorney for and on behalf of  
CIMB ISLAMIC BANK BERHAD  
(Company No. 200401032872  
(671380-H]) in the presence of:



.....  
Witness

Name:

NRIC No:

.....  
Signatory

Name:

Designation:

NRIC No:

THE CUSTOMER/CUSTOMERS

Signed by

(NRIC No. •)  
in the presence of:



.....  
Witness

Name:

NRIC No: