



**FACILITIES AGREEMENT**

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD.  
(Company No. 271809 K)**

**AND**

**THE PARTY(IES) NAMED IN SECTION 3  
OF THE FIRST SCHEDULE**

## FACILITIES AGREEMENT

**THIS FACILITIES AGREEMENT** is made on the date as stated in **Section 1 of the First Schedule** to this Agreement.

### BETWEEN

**UNITED OVERSEAS BANK (MALAYSIA) BHD (Company No. 271809 K) (“Bank”)**, which has a business address as stated in **Section 2 of the First Schedule** to this Agreement.

### AND

**THE PARTY** whose name, particulars and details are as stated in **Section 3 of the First Schedule** to this Agreement (**“Borrower”**).

### RECITALS:-

- I. The Bank has, at the request and/or application of the Borrower, offered to the Borrower the Banking Facilities as described in the Letter of Offer (hereinafter defined) and the Borrower accepted the Banking Facilities upon the terms and subject to the conditions in the Letter of Offer, including inter alia, the execution of this Agreement.
- II. The Bank may, at the request and/or application of the Borrower, offer further or other banking facilities after this Agreement and it is intended that the terms and conditions in this Agreement will also govern such further or other banking facilities offered by the Bank and accepted by the Borrower.

### THE PARTIES HEREBY AGREE AS FOLLOWS:-

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement, the following expressions have the meanings given below, unless expressly provided otherwise:-

##### 1.1.1 **“Associated Party”** means any of the following:-

- (i) any director of the Borrower;
- (ii) any shareholder the Borrower;
- (iii) a company of which any of the Borrower’s directors is a director or a shareholder;
- (iv) a company of which any of the Borrower’s shareholders is a shareholder or a director;
- (v) the parent or holding company of the Borrower;
- (vi) any subsidiary company of the Borrower;

- (vii) a company of which the Borrower is directly or indirectly a share-holder;
  - (viii) a partnership of which the Borrower is a partner;
  - (ix) a sole-proprietorship of which the Borrower is a proprietor; and/or
  - (x) a company of which the Borrower is a director.
- 1.1.2 **“Authorised Persons”** means any person the Borrower authorises (either alone or collectively), and notified in writing to us, to operate the Borrower’s account, and to act on the Borrower’s behalf in giving instructions, to perform any acts under an agreement between the Bank and the Borrower, or to use any facility, product or service the Bank makes available to the Borrower.
- 1.1.3 **“Bank”** means and refers to **United Overseas Bank (Malaysia) Bhd** (Company No. 271809 K) and its successors in title.
- 1.1.4 **“Banking Facilities”** means all loans advances credit or the banking facility or facilities offered, granted or agree to be offered or granted by the Bank to the Borrower or for the benefit of the Borrower and/or any other party in the Letter of Offer and this Agreement or if any further or additional banking facilities is offered or granted to the Borrower or for the benefit of the Borrower and/or any other party or if any of the Banking Facilities is varied in any way by the Bank, **“Banking Facilities”** will also refer to and include all such further or other additional banking facilities accepted by the Borrower and/or to the Banking Facilities as varied and **“Banking Facility”** means any one of the Banking Facilities.
- 1.1.5 **“BLR”** means the rate of interest fixed by the Bank from time to time based on guidelines issued by Bank Negara Malaysia from time to time) which is reflective of the total cost to the Bank for maintaining the Banking Facilities, including but not limited to the Bank’s credit and liquidity risk premiums and operating costs plus a profit margin or such substituted rate by whatever name called as fixed by the Bank from time to time which the Bank is allowed to include by Bank Negara Malaysia or any other authority having jurisdiction over the Bank.
- 1.1.6 **“Borrower”** means and refers to the person or the company whose name, particulars and details are as stated in Section 3 of First Schedule to this Agreement.
- 1.1.7 **“Business Day”** means a day on which the Bank is open in the state where the place of business of the Bank as stated in Section 2 of Schedule 1 is located for transaction of business of the nature required or contemplated by this Agreement.
- 1.1.8 **“Constitution”** means:
- (a) constitution of a company as described in Section 34 of the Companies Act 2016; or
  - (b) for an entity which is not a company registered under the Companies Act 2016, such documents analogous to the constitution of a company stated in (a) above.

- 1.1.9 **“Event of Default”** means any of the events or matters specified in Clause 14.
- 1.1.10 **“FATCA”** means:
- (i) the Internal Revenue Code of 1986 issued by the US or any associated regulations or other official guidance;
  - (ii) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (i) above; or
  - (iii) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
- 1.1.11 **“Group”** means the Bank’s branches, agencies, representative offices, affiliated, associated or related corporations, and their respective officers, servants or agents, whether situated in or out of Malaysia, and includes the Bank.
- 1.1.12 **“Indebtedness”** means the aggregate of all monies whether principal, interest, capitalized interest, commission, fees, costs or charges outstanding or payable or agreed to be payable by the Borrower and/or any other Security Party to the Bank from time to time in respect of:-
- (i) the Banking Facilities or any account and includes all liabilities incurred by the Borrower to the Bank in respect of the following and any other sum referred to in this Agreement:-
    - (a) any loans, credit, advances or payments made to or for the use, benefit or accommodation or on behalf of the Borrower; or
    - (b) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Borrower; or
    - (c) any bond, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Borrower’s request; or
    - (d) foreign exchange transactions, and any contracts for the forward delivery of goods, bills, or specie; or
    - (e) any other banking facilities, trust receipts, or any other security,whether present or future, actual or contingent, alone or jointly with any other person and in whatever style or name, and whether as principal or surety; and
  - (ii) all commission, fees, charges, legal fees (including the legal fees and expenses of solicitors), and all other costs, charges and expenses which may be incurred by the Bank, including

any costs and expense incurred in enforcing this Agreement or any other Security Documents.

- 1.1.13 “**Land Code**” refers to the National Land Code 1965, or the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be.
- 1.1.14 “**Legal Process**” include, but is not limited to, any originating process including writ of summons and originating summons as well as any other forms of originating process, pleadings, interlocutory applications, affidavits, orders, judgments and any other documents which are required to be served under any written law and such notices under the Companies Act 2016 and the Insolvency Act 1967 and the Land Code.
- 1.1.15 “**Letter of Offer**” means the letter(s) of offer (including all schedules and documents annexed thereto) bearing the date stated in Section 4 of First Schedule issued by the Bank to the Borrower and if further or other banking facilities are offered by the Bank to the Borrower, shall include those letters of offer referred to in each Seventh Schedule issued after this Agreement or if any of the Banking Facilities is varied by a letter of variation issued by the Bank to the Borrower, “**Letter of Offer**” will also refer to and include such letters of offer or variation
- 1.1.16 “**month**” means a calendar month.
- 1.1.17 “**partnership**” shall include a limited liability partnership or a foreign limited liability partnership registered under the Limited Liability Partnerships Act 2012.
- 1.1.18 “**Personal Data**” include, but is not limited to, the Borrower’s name, address, occupation, contact details, information captured on security systems (including a recording of the Borrower’s image on Closed Circuit Television (CCTV)), the information contained in any of the Borrower’s account(s) the Borrower may have with the Bank either singly or jointly with any other person, the type of products and/or services that the Borrower has subscribed to with the Bank and such other necessary data regarding the Borrower and the Borrower’s transaction(s) with the Bank.
- 1.1.19 “**Prescribed Rate**” means such rate fixed by the Bank from time to time for each of the Banking Facility, having regard to, amongst others, the nature of each Banking Facility, including the rate as varied or changed from time to time
- 1.1.20 “**Process Service Agent**” means an agent appointed by the Borrower and who has accepted appointment by the Borrower, to accept service on behalf of the Borrower of all Legal Process arising out of or connected to the Banking Facilities and/or the Security Documents.
- 1.1.21 “**Sanctions**” means the sanctions, embargoes or restrictive measures administered, enacted or enforced by any government, governmental institutions or agencies, regulator or authority.
- 1.1.22 “**Schedule**” means the Schedules to this Agreement.
- 1.1.23 “**Security**” means the security or securities required to be created in favour of the Bank or given to the Bank in exchange for the Bank’s

granting to the Borrower of the Banking Facilities; the Security is more particularly described in the Letter of Offer.

- 1.1.24 **“Security Documents”** means any document relating to the Banking Facilities and the Security and includes the Letter of Offer, this Agreement and any other agreement entered into between the Bank with the Borrower and/or the Security Party.
- 1.1.25 **“Security Party”** means any person creating or giving the Security and can also mean the Borrower if the Borrower is the person creating or giving the Security.
- 1.1.26 **“Strata Titles Act”** means the Strata Titles Act 1985, the Strata Management Act 2013 or the Sabah Land Ordinance (Cap. 68) and Land (Subsidiary Title) Enactment, 1972 (Sabah) or the Strata Titles Ordinance, 1974, as the case may be.
- 1.1.27 **“US”** means United States of America.
- 1.1.28 **“US Person(s)”** means a US citizen or resident individual, a partnership or corporation organised in the US or under the laws of the US or any state of the US, a trust if (i) a court within the US would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of trust, and (ii) one or more US Person(s) have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the US. This definition shall be interpreted in accordance with the Code. Please note that persons who have lost their US citizenship and who live outside US may nonetheless in some circumstances be treated as a US Person(s).
- 1.1.29 **“US Tax Obligor”** means a/an:
- (i) Borrower which is resident for a tax purposes in the U.S; or
  - (ii) Obligor some or all of whose payments under the Security Documents are from sources within the US for US federal income tax purposes.
- 1.1.30 **“this Agreement”** means this Facilities Agreement and includes the Schedules.
- 1.1.31 **“year”** means a calendar year with a period of 365 days.

## 1.2 **Interpretations**

Unless when read with other words or phrase in this Agreement give it a more appropriate interpretation than the interpretations given below:-

- 1.2.1 words and phrases used in this Agreement which are applicable to natural persons (including the word “person”) also apply to non-natural persons such as companies, corporations, partnerships, firms and other bodies whether corporate or unincorporated;
- 1.2.2 references to Clauses are references to the clauses of this Agreement unless otherwise specified and a reference to Sections is a reference to Sections to the Schedules of this Agreement unless otherwise specified;

- 1.2.3 a reference to “this Agreement” or other similar reference refers to this Agreement as a whole, and not to any particular provision of this Agreement but shall include any supplemental agreements, amendments, variations and changes made to this Agreement;
- 1.2.4 a reference to a person includes his/its personal representatives, administrators, executors and/or executrix successors-in-title, assigns, and transferees;
- 1.2.5 clause headings and sub-headings of this Agreement have been used for convenience only and shall be ignored in interpreting the provisions of this Agreement;
- 1.2.6 words denoting the singular number only shall include the plural and vice versa and words importing the neuter gender shall, where appropriate, include the masculine and neuter genders and vice versa;
- 1.2.7 references to any laws, statutes, rules, regulations or guidelines include such laws, statutes, rules, regulations or guidelines as amended, re-enacted, substituted or replaced from time to time;
- 1.2.8 Where the Borrower is a company, any references relating to insolvency/bankruptcy will be read as references relating to the winding-up, liquidation, amalgamation or reconstruction of the Borrower;
- 1.2.9 words referring to the singular include the plural (and vice versa) and words referring to a gender include all genders;
- 1.2.10 Where there are two or more persons or parties included in the expression “the Borrower”, agreements and other matters expressed to be made by or on the part of the Borrower are deemed to be made by or binding up such persons jointly and severally; and
- 1.2.11 A reference to “principal” includes all sums and monies advanced or paid to or on behalf of the Borrower and/or the Security Party by the Bank or otherwise howsoever payable by the Borrower and/or the Security Party to the Bank under this Agreement and/or any other Security Document (whether or not it forms part of the Banking Facilities), and “interest” includes interest at the relevant Prescribed Rate or at such other rates fixed by the Bank from time to time on all such sums and monies. Accordingly “principal and interest” includes all such sums and monies and interest.
- 1.2.12 Where an act is required to be done within a specified number of days after or from a specified date, the period excludes the specified date. Similarly, a period from the occurrence of an event or the doing of an act excludes the day on which the event happens or the act is done or required to be done.
- 1.2.13 Where the Borrower and/or the Security Party is a company, any references relating to insolvency/bankruptcy will be read as references relating to the winding-up, liquidation, amalgamation or reconstruction of the Borrower and/or the Security Party.
- 1.2.14 Where the expression “the Borrower and/or the Security Party” is used, all agreements and other matters expressed to be made by or on the part of the Borrower and/or the Security Party are deemed to

be made by or binding upon the Borrower and/or the Security Party jointly and severally.

- 1.2.15 The expressions “including” or “for example” (or other similar words) when introducing an example does not limit the meaning of words to those examples.
- 1.2.16 A reference to “payment” includes repayment, as the case may be.
- 1.2.17 A reference to costs or fees “on a solicitor and client basis” means the expenses that a client has to pay his lawyer.
- 1.2.18 The expressions “the Borrower” and “the Security Party” in this Agreement includes persons for the time being deriving title under the Borrower and/or the Security Party respectively, and no change of any sort in relation to or affecting the Borrower and/or the Security Party will in any way affect the security, liabilities, and/or obligations created by this Agreement in relation to any transaction, whether past, present, or future.
- 1.2.19 Where the Borrower and/or the Security Party is not a natural person, then any of the provisions of this Agreement that are primarily and literally applicable to natural persons –
- (i) shall be construed and take effect as if the Borrower and/or the Security Party was an individual;
  - (ii) will bind all of the Borrower’s and/or the Security Party’s assigns and successors-in-title; and
  - (iii) if the Borrower and/or the Security Party is a firm, will bind the firm and every member of that firm carrying on business in the name of or in succession to the firm.
- 1.2.20 Where a reference to any act, proceeding, action, investigation or inquiry being taken or is pending against the Borrower and/or the Security Party or whether any offence has been committed by or any conviction or presence of any criminal record against the Borrower and/or the Security Party shall refer to the same having occurred or occurring within or outside Malaysia.
- 1.2.21 The Schedules to this Agreement are and shall be treated as essential part of this Agreement.

## 2. **REPRESENTATIONS AND WARRANTIES**

- 2.1 Upon the signing of this Agreement, the Borrower hereby represents and warrants to the Bank as follows:-
- 2.1.1 **Capacity.** The Borrower and each of the Security Party has the power, right and capacity to execute, deliver and perform the terms of this Agreement and the Security Documents and that all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and the Security Documents.
- 2.1.2 **Incorporation.** Where the Borrower or any Security Party is:-
- (i) a company or corporation, that the Borrower and/or the Security Party is duly incorporated and validly existing under



the laws of the country of its incorporation, and has full power and authority to own its assets and carry on its business; or

- (ii) a partnership, society, association or company, that the Borrower and/or the Security Party is/are duly registered or incorporated under the laws of Malaysia or, in the case of a foreign entity, incorporated under the laws of the country of registration or incorporation, as the case may be, and has the power, right and capacity to execute, deliver and perform the terms of this Agreement and the Security Documents and to carry on the business which the Borrower or the Security Party conducts and/or proposes to conduct under their own constituent documents;

2.1.3 **Contractual Obligations.** This Agreement and the Security Documents, when executed, will constitute legal, valid and binding obligations of the Borrower and the Security Party enforceable in accordance with their respective terms.

2.1.4 **No Breach or Conflict.** The execution, delivery and performance of this Agreement and the Security Documents:-

- (i) will not breach any law, rule, regulation, order or decree of any governmental authority, agency or court to which the Borrower and/or the Security Party is/are subject; and
- (ii) will not breach any provision of any contract, mortgage, undertaking or instrument to which the Borrower and/or the Security Party is/are a party or which is binding on them and will not result in the creation or imposition of any obligation to create or impose any mortgage, charge, lien, pledge or other security interest in the Security or in the Security Documents or on the assets or moneys of the Borrower and or any of the Security Party.

2.1.5 **Authorisation and Consents.** All consents, licenses, approvals, authorizations, orders and exemptions of any ministry, agency, department or authority in Malaysia and elsewhere which are required or advisable to be obtained in connection with the execution, delivery and performance, legality and enforceability of this Agreement and the Security Documents have been obtained and are in full force and effect and that no further or other consent, permission, license, approval, authorization, order or exemption is required.

2.1.6 **Compliance with Terms of Authorisation and Consents.** That the conditions contained in any consent, permission, license, approval, authorization, order or exemption which are required or advisable to be obtained or have been obtained have been duly complied with.

2.1.7 **Compliance with laws.** The financing by the Bank under this Agreement, and the Bank's agreement to make and continue to make available the Banking Facilities to the Borrower will not contravene or be in breach of any Act of Parliament, Ordinance, enactment, rule or law, regulation, order, or other statutory provision in force now or in future, any lending limit or restriction imposed on the Bank, guidelines, directives, regulations, including any exchange control regulations or policies introduced from time to time by Bank Negara Malaysia or such other authority having jurisdiction over the Bank;

- 2.1.8 **Proceedings.** There are no litigation (whether civil or criminal) arbitration or administrative proceedings, pending, on-going or threatened against the Borrower or any of the Security Party and where the Borrower and/or the Security Party is/are:-
- (i) an individual or an ordinary person, that the Borrower and/or the Security Party has/have not committed any act of insolvency/bankruptcy and that no insolvency/bankruptcy proceedings have been commenced or are being threatened against the Borrower and/or any of the Security Party; or
  - (ii) a company, that no steps have been taken or are being taken to appoint a receiver, receiver and/or manager or liquidator to take over the assets or undertakings of the Borrower and/or the Security Party or to wind-up the Borrower and/or any of the Security Party.
- 2.1.9 **Tax Returns.** The Borrower and each of the Security Party have filed all tax returns which the Borrower and each of the Security Party are required by law to file and have paid or made adequate provision for the payment of all taxes, assessments, fees and other governmental charges assessed against each of them or upon any of their respective properties, assets, businesses or incomes.
- 2.1.10 **Events of Default.** No Event of Default has occurred or is continuing or will occur as a result of the Bank making any advance or continuing to make available the whole or any part of the Banking Facilities to the Borrower.
- 2.1.11 **Changes in Circumstances.** There has been no change in the financial condition, operating environment or management of the Borrower and/or the Security Party which would materially affect in an adverse way the ability of the Borrower and/or the Security Party to perform the obligations of the Borrower and/or the Security Party under this Agreement and the Security Documents since the Borrower first applied for the Banking Facilities.
- 2.1.12 **Financial Statements.** The financial statements or accounts of the Borrower and/or the Security Party which have previously been submitted to the Bank by the Borrower and/or the Security Party:-
- (i) were prepared in accordance with accounting principles and practices generally accepted in Malaysia, and consistently applied, and have been prepared, examined, reported on, and approved in accordance with all procedures required by law and the Constitution of the Borrower and/or the Security Party;
  - (ii) are complete and correct and that they fairly and correctly represent and disclose the financial condition of the Borrower and/or the Security Party and the results of the operations of the Borrower and/or the Security Party for the period stated in accordance with generally accepted accounting principles applied on a consistent basis and together with the notes to the accounts:-
    - (a) give a true and fair view of the financial condition and operations of the Borrower and/or the Security Party as at the date of such accounts and for the period as covered by the accounts; and

- (b) disclose or reserve against the liabilities (contingent or otherwise) of the Borrower and/or the Security Party as at the date of the said accounts and all material unrealized or anticipated losses from any commitment entered into by it and which existed on such date.
- 2.1.13 **Ownership of Security.** The Security Party is the legal and beneficial owner of the Security free of all encumbrances unless the acquisition of the same is currently being financed by the Bank, in which case, the Security Party's title to the Security is regular, valid and indefeasible, and the Security Party's beneficial interests in the Security are free from all defects and encumbrances.
- 2.1.14 **Information.** All the information given to the Bank by the Borrower and the Security Party in connection with the Banking Facilities do not contain any untrue or misleading statement or omit to state any fact which may render any statement made to the Bank misleading or incorrect and that all expressions of expectation, intention, belief and opinion and all projections contained in such information were honestly made based on reasonable grounds after due and careful enquiry.
- 2.1.15 **Disclosure.** The Borrower is not aware of and has not intentionally withheld any information or fact which may result in or give rise to the offering or the grant of the Banking Facilities by the Bank breaching any law or regulation including, without limitation, the Financial Services Act 2013, or any lending limits or restrictions that may be imposed upon the Bank from time to time by Bank Negara Malaysia or such other authority having jurisdiction over the Bank.
- 2.1.16 **Conviction.** Where the Borrower and/or the Security Party is an individual, the Borrower and/or the Security Party have not been charged or convicted for any criminal offences or have any criminal records.
- 2.1.17 **Activities.** The Borrower and/or the Security Party are not involved in any illegal activities and all moneys and properties provided to the Bank are not derived in any way from illegal activities.
- 2.1.18 **Sanctions.** The Borrower and the Security Parties are not:-
- (i) nationals of any country which is subjected to Sanctions;
  - (ii) entities incorporated under the laws of or owned or controlled (directly or indirectly) by a person located in or organized under the laws of a country which is subject to Sanctions; or
  - (iii) persons listed on or owned or controlled (directly or indirectly) by any person listed on, any sanctioned persons list published by any government, governmental institutions or agencies, regulator or authority or prepared by the Group.
- 2.1.19 **Connected Parties.** Unless permitted by guidelines issued by any authority which has jurisdiction over the Bank:-
- (i) the Borrower and/or any of his close relatives are not a director (including alternate director) in the Bank or any of the financial institutions in the Group;

- (ii) the Borrower and/or his close relatives are not a controlling shareholder or influential shareholder in the Bank or any of the financial institutions in the Group;
- (iii) the Borrower is not an executive officer or designated officer of the Bank;
- (iv) the Borrower is not a firm, partnership, company or any other legal entity:-
  - (a) which is in control of or is controlled by any persons stated in Clause 2.1.19(i) to (iii); or
  - (b) in which any person (including their close relatives in the case of individual) listed in Clause 2.1.19(i) to (iii) other than a designated officer is interested as a director, partner, executive officer, agent or guarantor and their subsidiaries or entities controlled by them.

For the purpose of this Clause:-

**“close relatives”** in relation to an individual means his/her spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses

**“controlling shareholder”** of a company means a shareholder who fulfils any of the following criteria, whether individually or with parties acting in concert with such shareholder:-

- (aa) controls more than 50% of the voting rights of the company;
- (bb) holds more than 50% of the issued shares, whether directly or indirectly (excluding preference shares) of the company;
- (cc) controls the composition of the board of directors of the company;
- (dd) has the power to appoint and/or remove all or a majority of the board of directors of the company;
- (ee) control the controlling shareholder of the company; or
- (ff) is a person in accordance with whose direction or instruction, the director or a director of the company's holding company are accustomed to act.

**“director”** shall include a person who has ceased to be a director of the Bank or of the Group for less than twelve (12) months from the date of a credit transaction origination's request.

**“influential shareholder”** means a shareholder who fulfils any of the following criteria, whether individually or with parties acting in concert with him:-

- (aa) holds 20% or more of the shares of the company but is not a controlling shareholder;
- (bb) has the power to appoint at least one director to the board of directors of the company;

**“executive officer”** means a person who is a member of the Bank's management having authority and responsibility for planning, directing

and/or controlling the Bank's activities (other than in the capacity as a director) whether or not the officer has an official title, or is entitled to salary or other compensation and shall also include such person who has ceased to be in the employment of the Bank or of the Group for less than twelve (12) months from the date of a credit transaction origination's request .

**“designated officer”** means a person who is responsible for or has the authority to appraise and/or approve credit transactions or review the status of existing credit transactions of the Bank, either as a member of a committee or individually, and his close relatives. None of the Bank's directors, controlling shareholders, officers and their respective close relatives is a director, partner, executive officer, agent or guarantor of the Borrower and/or subsidiaries/entities controlled by the Borrower. For the purpose of this Clause 2.1.19, “close relatives” refers to spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses.

2.1.20 **ESG Law.** At all times:-

- (i) the Borrower have not been convicted for violation of any ESG Law and no ESG Claim has been commenced or is threatened against the Borrower; and
- (ii) the Borrower shall:-
  - (a) comply with the ESG Laws;
  - (b) obtain, maintain and ensure compliance with the terms and conditions of all required ESG Permits; and
  - (c) implement policies and procedures to ensure compliance with the ESG Laws; and
- (iii) all information provided by the Borrower for the purposes of ESG due diligence by the Bank, is true and accurate in all material respects as at the date it was provided and is not misleading in any respect; and
- (iv) the Borrower shall, promptly upon becoming aware, notify the Bank in writing of:-
  - (a) any non-compliance with any of the provisions under this clause;
  - (b) any ESG Claim against the Borrower; and
  - (c) any fact or circumstance which may result in any ESG Claim being commenced or threatened against the Borrower.

For the purpose of this clause:

**“ESG Laws”** means all applicable environment, social and governance laws and regulations, in the jurisdiction(s) in which the Borrower operate and conduct business, which relate to the protection and/or violation of environmental, social and governance issues.

**“ESG Permits”** means any applicable permit, licence, certification and/or other authorisation that is required under any ESG Law to carry on the Borrower's operation and business.

“**ESG Claims**” means any notice, claim, proceeding or investigation in connection with any ESG Law and/or ESG Permit by any person or entity.

2.1.21 **FATCA.** Each of the Borrower and the Security Parties is not a US Tax Obligor.

2.1.22 **Additional Representations and Warranties.** Such additional representations and warranties as set out in the **Second Schedule**, if any.

2.2 Prior to and on each of the dates of the utilization of the Banking Facilities, the above representations and warranties are true and accurate in all respects as if made on each such date, and as if repeated by reference to the then existing circumstances, except that each reference to accounts in Clause 2.1.12 above will be construed as a reference to the then latest available annual accounts of the Borrower and/or the Security Party.

2.3 The Borrower acknowledges that the Bank has entered into this Agreement on the basis of and in full reliance on the representations and warranties above and the Borrower agrees, covenants, undertakes and confirms that each of the representations and warranties given shall survive and continue to have full force and effect after the execution of this Agreement and the Security Documents and will be true and correct and fully observed on each and every date that any of the Banking Facilities is utilised and until the Indebtedness has been fully and completely discharged.

2.4 The Bank's rights and remedies in relation to any misrepresentation or breach of warranty shall not be affected in any way by any investigation made by or on behalf of the Bank into the affairs of the Borrower or the Security Party or by the execution or the performance by the Bank of this Agreement, or by any other act or thing which may be done by or on behalf of the Bank in connection with this Agreement or which might, apart from this Clause, affect such rights or remedies of the Bank.

### 3. **AGREEMENT FOR BANKING FACILITIES**

#### 3.1 **Agreement to borrow and lend**

At the request of the Borrower and in reliance on the representations and warranties stated in Clause 2.1, the Bank has agreed to make available and/or to continue to make available to the Borrower the Banking Facilities upon the terms and conditions in the Letter of Offer and this Agreement.

#### 3.2 **Bank's right to review**

Notwithstanding Clause 3.1 and other provisions in this Agreement which provide to the contrary, the Borrower understands and agrees that the Bank has the right to review the Banking Facilities (except for fixed or term loan) from time to time. Upon each of such review, the Bank may impose such terms and conditions as the Bank deems fit, including and not limited to decrease or otherwise vary the principal limit of all or each of the Banking Facilities or to cease to grant all or any of the Banking Facilities and require immediate payment and repayment of any Indebtedness.

### 3.3 **Non-Utilisation of Banking Facilities**

If the Letter of Offer prescribes a time period during which any of the Banking Facilities must be fully or partly utilised, such Banking Facility will only be available for utilization by the Borrower during the time period as prescribed and if the relevant Banking Facility is not fully or partly utilised during that time period, the Bank may in its sole discretion withdraw or cancel the Banking Facilities or the relevant Banking Facility or any unutilised portion of the relevant Banking Facility. If the Banking Facilities or the relevant Banking Facility or any unutilised portion of the relevant Banking Facility is withdrawn or cancelled:-

- 3.3.1 the Borrower remains liable to pay and shall pay to the Bank all the fees, costs and expenses which may have been incurred by the Bank whether arising as a result of withdrawal or cancellation thereof or otherwise; and/or
- 3.3.2 the Bank may vary the Banking Facilities and the terms and conditions for the Banking Facilities, including to impose new terms and conditions.

### 3.4 **No obligation to make further advances**

Nothing in this Agreement shall render or deemed to render the Bank to be obliged, whether at law or in equity, to grant or continue to grant to the Borrower the Banking Facilities or any part thereof, particularly, upon the occurrence of an Event of Default and the Bank shall be entitled, at any time at its absolute discretion, terminate or withdraw the grant or continue to grant the Banking Facilities or any part of the Banking Facilities.

## 4. **PURPOSE**

- 4.1 Each of the Banking Facilities shall be utilized by the Borrower for the purpose specified in the Letter of Offer or such other purpose as the Bank may permit or allow in its absolute discretion.
- 4.2 Notwithstanding the provisions herein, the Bank is not obliged to monitor or to ensure that any of the Banking Facility is utilized by the Borrower in accordance with the purpose so stipulated in the Letter of Offer or otherwise permitted by the Bank and the Bank shall have no liability whatsoever to the Borrower, the Security Party and any other party for any breach by the Borrower of this Clause.

## 5. **CONDITIONS PRECEDENT**

### 5.1 **Conditions Precedent**

Subject to the terms and conditions contained in this Agreement, the Banking Facilities will be available for utilisation by the Borrower only upon the satisfaction or fulfilment of the following conditions precedent:-

- 5.1.1 all conditions precedent as stipulated in the Letter of Offer and as set out in the **Third Schedule** of this Agreement, if any, pertaining to the relevant Banking Facility are satisfied or fulfilled;

- 5.1.2 if the Borrower and/or the Security Party is a company, the Bank must have received the search results conducted on the Borrower and/or the Security Party at the Companies Commission of Malaysia and/or the relevant registry in the country of incorporation of the Borrower and, where applicable, the Security Party and the Bank is satisfied that:-
- (a) there is no restriction on the Borrower to borrow the Banking Facilities;
  - (b) there is no restriction on the Borrower and/or the Security Party to create such of the Security; and
  - (c) that Security to be created in favour of the Bank is unencumbered (save for those that are to be redeemed using the relevant Banking Facilities);
- 5.1.3 the Bank must have received evidence acceptable to the Bank showing that the Borrower and/or the Security Party has a valid and legal title to the Security and that they are entitled to and are not restricted or prohibited from creating or giving such Security to or in favour of the Bank;
- 5.1.4 if notice of the charge created under any of the Security Documents is required by any law to be lodged or registered with the Companies Commission of Malaysia or, in the case of a foreign entity, the relevant foreign registry, the prescribed statement of particulars of charge under the Companies Act 2016 or other analogous forms, as the case may be, must have been so lodged or if required by the Bank, so registered;
- 5.1.5 there must not have occurred any misrepresentation or breach of any of the warranties contained in this Agreement;
- 5.1.6 there must not have occurred any change in the financial, economic or political conditions in Malaysia which, in the sole opinion of the Bank, would make it inadvisable or impractical for the Bank to make or to continue to make available the Banking Facilities or any utilization of the Banking Facilities; and
- 5.1.7 the Bank is satisfied that:-
- (i) no event has occurred so as to render any of the Indebtedness to be immediately repayable and no Event of Default has happened and continuing;
  - (ii) no extraordinary circumstances or change of law or other government action have occurred which may render the Borrower and/or the Security Party to be unable to observe and perform their respective covenants and obligations in this Agreement; and
  - (iii) no event has occurred and no circumstances exist which could or might, in the opinion of the Bank (which shall be final and conclusive) affect the financial condition of the Borrower and/or the Security Party so as to render any of them unable to perform their obligations under this Agreement.



## 5.2 Waiver of Conditions Precedent

The conditions precedent contained in Clause 5.1 are for the sole benefit of the Bank and may be waived wholly or partly by the Bank at the Bank's sole discretion without in any way affecting the rights of the Bank under this Agreement. Any waiver shall not prevent the Bank from insisting on compliance with any waived condition precedent at a later time.

## 5.3 Suspension

Until the conditions precedent contained in Clause 5.1 have been satisfied or fulfilled to the satisfaction of the Bank, the Bank may terminate, suspend or cancel the whole or any part of the Banking Facilities.

## 6. PROGRESSIVE RELEASE

6.1 The Borrower hereby irrevocably authorizes the Bank and the Bank can advance or pay (where applicable) all or part of the Banking Facilities to the builder, developer, contractor, architect or such other persons responsible for or concerned with the construction of any building ("**the property**") or the vendor of the property at such times, on such terms, in such manner, by such amounts, and upon such contingencies and conditions, as the Bank decides in its absolute discretion.

6.2 All advances and payments made by the Bank to the person in Clause 6.1 ("**Third Party**") shall be deemed paid to the Borrower and shall constitute and form part if the monies secured by and owing under this Agreement and the Security Document. The acknowledgement or receipt of such person(s) will be as good, sufficient and effective as if it has been made or given by the Borrower.

6.3 The Borrower hereby irrevocably authorizes the Bank and the Bank is entitled:-

6.3.1 to issue to the Third Party or the solicitors or firm of solicitors purporting to act for the Third Party its undertaking, guarantee or covenant (which shall be in such form as agreed between the Bank and the Third Party) to release or pay all or part of the Banking Facilities to the Third Party at such time and in such manner as the Bank may in its absolute discretion agree;

6.3.2 to release or pay to the Bank's solicitors all or part of the Banking Facilities to enable the Bank's solicitors to issue their undertaking, guarantee or covenant to the Third Party, undertaking, guaranteeing or covenanting to release or pay to the Third Party all or part of the Banking Facilities; and

6.3.3 where the release of the Banking Facilities is to be made against a schedule of payment in an agreement, to release or pay to the Third Party on or before the due date as stated in the progressive billing submitted by the Third Party to the Bank upon terms that:-

(i) if any sum billed is to be paid on the date the Borrower or the purchaser takes vacant possession of the property, the Bank shall be entitled to make such payment to the Third Party at any time, whether or not the Borrower or the purchaser have actually taken vacant possession of the property; and

- (ii) in making such payment, the Bank shall not be obliged to verify or ascertain whether such progressive billing is in order or otherwise or whether the sums billed is properly due or otherwise

and the Borrower irrevocably agrees and confirms that the Bank shall be entitled to release or pay the Banking Facilities to the Third Party notwithstanding any protest or objection from the Borrower, the Security Party and/or any other parties to restrain the Bank from making such release or payment. In the event any sum released by the Bank to the Third Party is subsequently found to be not due for payment when paid, the Borrower agree that the Borrower shall only claim against such Third Party in respect of such sum released and the Borrower shall have no claim and shall not make any claim whatsoever against the Bank arising from such release.

6.4 If the Bank or the Bank's solicitors have given or agreed to give their undertaking, guarantee, or covenant referred to in Clause 6.3 above to release or pay, all or part of the Banking Facilities in settlement of the balance purchase price payable by the Borrower under the agreement of sale of the property progressively in accordance with the terms in the said agreement, the Borrower agrees (in addition to the Security) that:-

- 6.4.1 the payment of all monies undertaken, guaranteed, or covenanted to be paid by the Bank to the Third Party, the Third Party's solicitors, or the Bank's solicitors (as the case may be) will be secured under this Agreement and the Security Document; and
- 6.4.2 the Borrower shall at all times indemnify and keep the Bank or the Bank's solicitors indemnified against all actions, proceedings, costs, expenses, claims, and demands which may be taken, incurred, or suffered by the Bank or the Bank's solicitors arising from the Bank's or the Bank's solicitors aforesaid undertaking given to the Third Party, the Third Party's solicitors, or the Bank's solicitors (as the case may be).

6.5 **Currency Unavailable**

If at any time, in the Bank's opinion, as a result of any change in the international financial and capital markets or any national or international, political or economic conditions or currency availability or exchange rates or controls, the currency offered under any Banking Facilities is not available to the Bank:-

- 6.5.1 the Borrower's request for such currency to be disbursed shall be deemed withdrawn; and
- 6.5.2 any existing amount disbursed in such currency for an interest period shall not be rolled over and shall be repaid on the last day of the interest period,

and in such event, the Borrower may request for an alternative currency to be disbursed on terms to be agreed between the Bank and the Borrower.

## 7. **INTEREST**

### 7.1 **Rate of interest and calculation**

Interest will be charged on all amounts outstanding under the Banking Facilities and will be calculated in accordance with the Bank's usual practice, which may be stated in the Letter of Offer, having regard to, amongst others, the nature of each Banking Facility, up to the date of full payment. Such rate of interest and the other rates of interest stipulated in this Agreement shall be applicable as well after as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated for any reason whatsoever until the date of full payment.

### 7.2 **Payment of interest in arrears**

7.2.1 Unless the Bank in its sole discretion expressly prescribes otherwise, the Borrower agrees that interest on the Banking Facilities at the rate stated in the Letter of Offer must be paid to the Bank monthly in arrears.

7.2.2 If a banking facility cannot be redrawn or reuse after the principal amount has been repaid e.g. a non-revolving facility, the Borrower agrees that before the Borrower commences any repayment to the Bank for such non-revolving facility, interest on the amounts of the non-revolving facility that the Bank releases from time to time is to be calculated on a daily basis and must be paid to the Bank monthly in arrears.

### 7.3 **Change of interest rate**

7.3.1 Regardless of the other provisions relating to the rate of interest and/or rests period in this Agreement, the Bank can, at its absolute discretion, change the rate of interest and/or rests period from time to time by notifying the Borrower in writing of such change.

7.3.2 The changed rate of interest and/or rests period will be effective from the date specified in the notice which will not be less than seven (7) days from the date of notice. Such notice will be binding on the Borrower and can be served in the manner provided in Clause 32.

7.3.3 The Borrower hereby agrees to irrevocably waive the requirement of service of the notice if the change of interest rate relates only to the change in the BLR and such change in BLR shall be deemed to have been notified to the Borrower upon the same being published in the Bank's website or any daily national newspaper as selected by the Bank.

7.3.4 If the rate of interest changes at any time, the amount of interest due will be recalculated such that:-

- (i) the interest at the former rate will be charged from the date on which the Banking Facility was advanced or paid, or the first day the former rate of interest takes effect, as case may be, up to the day preceding the date when the new rate of interest takes effect; and
- (ii) interest at the new rate will be calculated from the date the new rate of interest takes effect up to the day prior to a

subsequent change in the interest rate. Interest at the new rate will be deemed to be due as at the date when the variation takes effect.

- 7.3.5 No part of any payments to be made by the Borrower to the Bank will be deemed to be a repayment of principal until all interest due or deemed to be due to the Bank has been paid.
- 7.3.6 Where repayment is by instalment, if and whenever the rate of interest payable by the Borrower or the mode of computation of interest is changed, the Bank will make the necessary adjustment to the amount of any instalment payments and notify the Borrower of the changed instalments at least seven (7) days prior to the changed instalment comes into effect. The Borrower shall commencing from the effective date pays the changed instalment amount unless the Bank agrees to the Borrower's written request to retain and pay the amount of the existing instalment amount and the Borrower hereby represent and warrant to the Bank that at the time of their request, the Borrower is fully aware of the implications of their request to maintain the existing instalment amount.

#### 7.4 **Additional interest and default rate**

- 7.4.1 Regardless of the other terms and conditions in this Agreement, if the agreed limit on any Banking Facility fixed by the Bank is exceeded, the Bank can at any time levy or impose additional interest on any such excess amount in the respective Banking Facility calculated at such rates stated in the Letter of Offer or as may be determined by the Bank at any time at its sole and absolute discretion on a daily basis with monthly or other periodic rests in accordance with the type of Banking Facility applicable.
- 7.4.2 In addition to and without affecting the powers, rights, and remedies granted under this Agreement, if the Borrower defaults in the payment on the due date of any money payable by the Borrower to the Bank, the Borrower will pay the Bank interest at the default rate stated in the Letter of Offer or as may be determined by the Bank at its absolute discretion from time to time.
- 7.4.3 The additional and/or default interest payable will be calculated from the date of such additional interest was levied or imposed or such default until the date of full payment of the said amount with monthly or other periodic rests as stated in the Letter of Offer or as may be determined by the Bank in accordance with the type of Banking Facility.

#### 7.5 **Interest where Banking Facilities are withdrawn or revoked**

- 7.5.1 If the Banking Facilities are withdrawn or revoked and/or the said account(s) (current or otherwise) are closed either by demand or by the death of the Borrower (or where the Borrower consists of more than one person, by the death of any one of them) or liquidation of the Borrower, and a balance is owing to the Bank by the Borrower, the Borrower or the personal representative or successors-in-title of the Borrower will, so long as all or any part of the same remains owing, pay to the Bank interest on the sums owing at the rate specified in the Letter of Offer or such other rate prescribed by the Bank from time to time.

7.5.2 The statement of any officer of the Bank or a print out from the Bank's computer system as to the amount of such balance shall, save for obvious mistake, be final and conclusive against the Borrower for all purposes, including legal proceedings.

7.6 **Interest rates in other security**

When the payment of any monies secured or intended to be secured by this Agreement is further secured to the Bank by any bill of exchange, promissory note, draft, trust receipt, or other instrument reserving a higher rate of interest to be paid than that covenanted to be paid in this Agreement, the higher rate of interest will be payable in respect of such monies. Nothing contained in or may be implied from this Agreement will affect the Bank's right to enforce and recover payment of the higher rate of interest or the difference between the higher rate and the rate payable pursuant to this Agreement.

7.7 **Capitalization**

7.7.1 Subject always to Clause 7.7.3, the interest on any of the principal monies of the Banking Facilities for the time being remaining unpaid at the time when it shall be due and payable under this Agreement, including capitalized interest will, at the end of each calendar month or such other periods as fixed by the Bank, be capitalized and added to the principal sum then owing.

7.7.2 All capitalized interest will bear interest at the relevant Prescribed Rate and/or at any increased rate and be secured and payable accordingly. All the covenants and conditions contained in or implied by this Agreement, all powers and remedies conferred by law or by this Agreement, and all rules of law or equity in relation to the said principal sum and interest will equally apply to such capitalized arrears of interest and to interest on such arrears.

7.7.3 For purposes of ascertaining whether the limit of principal for each Banking Facilities has been exceeded or not, all accumulated and capitalized interest will be deemed as interest and not principal sum and together with any other costs, charges, expenses and other moneys incurred by the Bank shall be excluded and not be taken into account.

8. **FEES, CHARGES, COSTS AND EXPENSES**

8.1 **Fees**

The Borrower shall pay to the Bank all fees that are payable by the Borrower to the Bank as required under the Letter of Offer in respect of the Banking Facilities, which fees shall be non-refundable.

8.2 **Commitment fee**

8.2.1 The Bank has the right to charge a commitment fee on any unused portion of the Banking Facilities at the end of every month or at such other time interval as the Bank may stipulate at the rate stated in the Letter of Offer; the commitment fee is payable monthly in arrears. If not paid when due, the commitment fee will be debited to the Borrower's account at the end of each calendar month, or such other

periods decided by the Bank and be added on to the principal sum then owing and will from that time bear interest at the relevant Prescribed Rate, and be secured and payable accordingly.

8.2.2 All covenants and conditions contained in or implied by this Agreement, and all powers and remedies conferred by law or by the terms and conditions of this Agreement, and all rules of law or equity in relation to the said principal sum and interest will apply equally to the commitment fee, capitalized arrears of the commitment fee, and to interest on such arrears.

8.2.3 To ascertain whether the limit of the principal intended to be secured by this Agreement has been exceeded or not, all accumulated and capitalized commitment fee will be deemed to be interest and not the principal sum.

### 8.3 **Cancellation Fee**

Notwithstanding that any of the Security Documents may not have been completed, if at any time prior to the expiry of the period during which a Banking Facility is to be utilised (“**Availability Period**”), the Borrower cancels the particular Banking Facility or any part of the same or upon the expiry of the Availability Period, any of the particular Banking Facility is not utilised, the Borrower is liable to pay to the Bank a cancellation fee for such amount as is stated in the relevant Letter of Offer calculated on such part of the particular Banking Facility as is/are cancelled prior to the expiry of the Availability Period or such amount of the Particular Banking Facility as is not utilised upon the expiry of the Availability Period or any extended period.

### 8.4 **Costs and Expenses**

8.4.1 All costs, charges, and expenses incurred by the Bank and/or expended by the Bank on behalf of the Security Party and/or the Borrower under or pursuant to this Agreement, including but not limited to the following, shall be borne and paid by the Borrower to the Bank:—

- (i) any expenditure incurred in the preparation, execution and enforcement by the Bank (including solicitors’ costs and out-of-pocket expenses, including stamp duties on a full indemnity basis) of this Agreement and/or the Security Documents and the exercise, preservation, protection or enforcement or the attempted exercise, preservation, protection or enforcement of its rights, powers and remedies under or in relation to this Agreement and/or the Security Documents, or in the giving of any notice or in the making of any demand for any monies secured by this Agreement and/or the Security Documents (including legal fees on a solicitor and client basis);
- (ii) paying any expenses or outgoings in respect of insurance, repairs, maintenance, management, or disposal of the Security and/or any fixtures, crops, or plants in, on or within the Security;
- (iii) all other monies whatsoever paid by the Bank in respect of the said costs, charges, expenses, and expenditure, or otherwise howsoever;

- (iv) defending, prosecuting, or otherwise taking part in or attending (whether on a watching brief as observer or otherwise) any action, enquiry, hearing, suit, or other proceedings affecting the Security and/or any fixture, crops, or plants on the Security, and all other payments and sums stipulated on a full indemnity basis; and
- (v) all or any other sums and monies paid or expended by the Bank under or pursuant to the express or implied provisions of the Land Code and/or this Agreement, and other usual banker's charges.

8.4.2 If the Borrower defaults in the payment of any of the said sums in Clause 8.4.1, the Bank shall be entitled (but not obliged) to pay the same and debit all monies so paid together with interest thereon to the Borrower's account(s) with the Bank for the relevant Banking Facilities and will be deemed to be charged on and secured against the Security in addition to the principal sum hereby advanced and will form part of the payment due under this Agreement.

## 8.5 **Liability for costs, expenses and stamp duty**

- 8.5.1 The Borrower shall bear all costs and expenses for the preparation, execution, completion, stamping, filing, registration, perfection, giving notice, making demand, commence proceedings and enforcement by the Bank (including solicitors' costs and out-of-pocket expenses on a full indemnity basis) of the Security Documents and the exercise, preservation, protection or enforcement of the attempted exercise, preservation, protection or enforcement of its rights, powers and remedies under or in relation to the Security Documents. The Borrower shall fully indemnify the Bank from and against any expense, damage, loss, penalty or liability which the Bank may incur or suffer as a result of any delay or failure by the Borrower to pay any such duties.
- 8.5.2 Unless payment is made by the Borrower in full within the time stipulated by the Bank or in this Agreement (as applicable), the costs, charges, expenses and other sums and monies aforesaid shall bear interest calculated at the rate and in the manner provided in Clause 7.4 commencing from the date on which the same were incurred by the Bank
- 8.5.3 If the Borrower defaults in the payment of any of the costs, charges, expenses and other sums and moneys as aforesaid, the Bank is entitled (but not obliged) to pay the same and debit all monies so paid together with interest thereon to the Borrower's account(s) with the Bank for the relevant Banking Facilities in accordance with Clause 21.

## 8.6 **Taxes, Duties or Levies**

- 8.6.1 During the continuation of the Banking Facilities, so long as the Banking Facilities or any part of it remains outstanding and unpaid, the Borrower is liable to pay for any taxes or levies which on or after the date of the Letter of Offer is required by law to be paid to anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank.

- 8.6.2 Any taxes or levies incurred by the Bank in relation to the Banking Facilities and any other goods or services provided under the Banking Facilities shall be borne by and charged to the Borrower. In the event the Bank shall effect payment of such taxes or levies, the Borrower shall be liable to reimburse the Bank for such amounts paid.

9. **SECURITIES**

9.1 **Execution of Security Documents**

As security for the Indebtedness, the Borrower will simultaneously with the execution of this Agreement or at such other time directed by the Bank, execute and if necessary cause the Security Party to execute the Security Documents as required under the Letter of Offer.

9.2 **Covenant to perfect and provide further security**

9.2.1 The Borrower will, whenever required by the Bank, execute or cause the Security Party to execute in favour of the Bank (or as the Bank may direct) such legal or other mortgages, charges, assignments, transfers, or agreements as required by the Bank of and on the Borrower's and/or the Security Party's estate, assets, or business, which now or in future will belong to the Borrower and/or the Security Party (including any vendor's lien) and the benefit of all licenses held in connection with such estate, assets, or business to secure the Indebtedness.

9.2.2 Such mortgages, charges, assignments, transfers, or agreements will be prepared by or on behalf of the Bank by the Bank's solicitors at the Borrower's cost, and will contain all terms and conditions required by the Bank to protect its interest.

9.3 **Continuing Security**

9.3.1 The Security is and will be a continuing security for the Indebtedness and will continue to be held by the Bank notwithstanding that the Borrower may cease to be indebted to the Bank for any period(s), and regardless of:-

- (i) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
- (ii) the death, insanity or insolvency/bankruptcy of the Borrower and/or the Security Party;
- (iii) the voluntary or compulsory liquidation of the Borrower and/or the Security Party;
- (iv) any change by amalgamation, consolidation or otherwise which may be made in the constitution of the company by which the business of the Borrower and/or the Security Party is currently being carried on; or
- (v) any change in the constitution or composition of the firm by which the Borrower's business is currently being carried on, whether by death, retirement, admission of partners, or any other reason.



9.3.2 The Security will be released by the Bank only when:-

- (i) all amounts outstanding under the Banking Facilities, including contingent liabilities, have been fully settled by the Borrower; and
- (ii) the Bank has been fully released from all its obligations or contingent liabilities, if any under the Banking Facilities or under any other instrument issued by the Bank for the account of the Borrower.

#### 9.4 **Further Assurances**

The Borrower will, whenever required by the Bank, at the Borrower's own cost and expense make, sign, do and perform and cause to be made, signed, done and performed all such further acts, agreements, assignments, assurances, deeds, mortgages, charges and documents of any nature as reasonably required to perfect the security created or intended to be created under this Agreement and the Security Documents.

#### 9.5 **Security Margin**

If the aggregate market value of such Security (whose value is agreed by the Bank to be used in computing the Security Margin) falls below what the Bank has determined in its sole discretion to be adequate security for the Banking Facilities ("**Security Margin**") or such Security Margin as stated in the Letter of Offer, the Borrower must within such period as permitted by the Bank to maintain and keep the Security Margin satisfied and for this purpose, the Bank may, without affecting any other right which the Bank may have, take any one or more of the following actions:-

- 9.5.1 reduce the credit limit of all or any of the Banking Facilities;
- 9.5.2 withhold further release or utilization of all or any part of the Banking Facilities;
- 9.5.3 require the Borrower to make repayment of such amount of the Banking Facilities as the Bank may decide upon;
- 9.5.4 require the Borrower to make prepayment of the Banking Facilities, in which case the Bank will not charge the Borrower any prepayment fee;
- 9.5.5 require additional security acceptable to the Bank to be provided as additional security for the Banking Facilities; and/or
- 9.5.6 provide cash cover for the Banking Facilities.

#### 9.6 **Liens and Other Securities Not Affected**

Nothing in this Agreement will:-

- 9.6.1 affect any lien to which the Bank is entitled, or any other security which the Bank may from time to time hold for or on account of the Indebtedness.
- 9.6.2 operate to merge or otherwise affect any bill, note, guarantee, mortgage, or other security which the Bank may for the time being have for any Indebtedness, or any right or remedy of the Bank.

## 9.7 **Discharge of Security**

If the whole of the Indebtedness is fully settled by the Borrower, then the Bank shall, without affecting the Bank's rights of consolidation, upon the request by the Borrower or the relevant Security Party made at any time after the whole of the Indebtedness is fully settled, discharge at the cost and expense of the Borrower, the securities created and release to the Borrower or the relevant Security Party such security or other documents of title to such security provided:-

9.7.1 the Borrower's liabilities and obligations under this Agreement shall not be discharged until the Borrower have received from the Bank an absolute discharge or release duly signed by the Bank; and

9.7.2 any discharge or release of the securities created shall be deemed made subject to the condition that such discharge or release shall be void if any payment received by the Bank in respect of the Indebtedness is set aside under any applicable law or process to have been for any reason invalid.

## 10. **PAYMENT AND REPAYMENT**

### 10.1 **Banking Facility Recallable On Demand**

The Borrower agrees that other than fixed or term loans or housing loan (which may be recalled by the Bank upon the occurrence of an Event of Default), all the other Banking Facilities may, at the Bank's sole discretion, be cancelled or terminated and be recalled at any time by the Bank giving a written demand to the Borrower. Upon such cancellation, termination and recall, the Borrower is to make immediate payment and repayment to the Bank of the Indebtedness, regardless of whether the moneys and liabilities comprised in the Indebtedness have become due to be paid or repaid to the Bank.

### 10.2 **Payment on Demand**

The Indebtedness is repayable by the Borrower to the Bank upon written demand by the Bank. Until demanded by the Bank, the Borrower is to pay or repay to the Bank the Indebtedness at the times and in the manner set forth in the Letter of Offer.

### 10.3 **Payment of interest first**

Until the Borrower have paid all interest, additional Interest and default Interest calculated as provided in this Agreement and/or the Letter of Offer which are due or deemed to be due or accrued and all costs, charges, expenses and all other payments herein covenanted to be paid by the Borrower, no payment by the Borrower to the Bank shall be treated as a repayment of the principal under the Banking Facilities unless the Bank decide otherwise.

### 10.4 **Currency of Payment**

10.4.1 All payments to be made by the Borrower under this Agreement shall be made in Ringgit Malaysia in immediately available funds on the due date.

10.4.2 For Banking Facilities in foreign currencies, the Bank may at the Bank's sole discretion convert the Banking Facility to a Ringgit

Malaysia facility upon such terms as the Bank may in the Bank's sole discretion prescribe in which case, the Banking Facility is to be repaid in Ringgit Malaysia and if otherwise, payments may be made in the currencies in which the Banking Facilities were provided. If the Bank suffers a loss as a result of the said conversion, the Borrower agrees to indemnify the Bank against the loss and the conversion cost.

10.5 **Payment on Business Day**

If any moneys are due to be paid or repaid to the Bank on a day which is not a Business Day, the payment or repayment shall be made on a Business Day immediately following that day. If the Business Day immediately following that day falls in a different calendar month, the payment or repayment shall be made on a Business Day immediately before that day.

10.6 **No Deduction or Withholding**

All moneys to be paid or repaid to the Bank under this Agreement and the Security Documents must be paid:-

10.6.1 unconditionally and without any restriction or condition; and

10.6.2 without any deduction of any kind including, without limitation, deductions for any bank charges or commissions, any kind of withholding, set-off or counterclaim against the Bank for any matter or on account of any taxes or duties or charges.

10.7 **Grossing up**

If the Borrower or the Bank is required by law to make any deduction or withholding on account of any such tax or other amount from any sum paid or payable by the Borrower to the Bank or if the Bank (or any person on its behalf other than the Borrower) is required by law to make any deduction or withholding from, (except on account of tax on the overall net income of the Bank) any payment on or calculated by reference to the amount of any sum received or receivable by the Bank:-

10.7.1 the Borrower shall notify the Bank of any such requirement or any change in any such requirement as soon as it becomes aware of it;

10.7.2 the Borrower shall pay any such tax or other amount before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on the Borrower) for its own account or (if that liability is imposed on any other party to this Agreement) on behalf of and in the name of the Bank;

10.7.3 the sum payable or to be paid by the Borrower to the Bank or for the Bank's account in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Bank receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what the Bank would have received and/or retained had no such deduction, withholding or payment been required or made;

- 10.7.4 the Borrower shall ensure that the amount so deducted or withheld does not exceed the minimum legally required to be so deducted or withheld by the appropriate authorities; and
- 10.7.5 not later than 14 days after paying any sum from which it is required by law to make any deduction or withholding, and not later than 14 days after the due date of payment of any tax or other amount which it is required by Clause 10.7.2 to pay, the Borrower shall deliver to the Bank satisfactory evidence of such deduction, withholding or payment and of the remittance made to the relevant taxing or other authority and shall deliver to the Bank promptly after receipt from the relevant tax authorities an original or a certified true copy of the receipt issued by the tax authorities for any of the payments so made.

## 10.8 **Tax Indemnities**

- 10.8.1 Without prejudice to the other provisions of this Clause 10.8, if the Bank is required by law to make any payment, whether on account of tax (not being a payment of tax on its overall net income) or otherwise, on or calculated by reference to any sum received or receivable by the Bank under this Agreement or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Bank as a consequence of any credit, deduction or refund obtained by the Bank in respect of interest and/or commission paid under this Agreement being disallowed, the Borrower will on demand pay to the Bank free and clear of all withholdings and deductions, an amount sufficient to indemnify the Bank against such payment or liability, together with any interest, penalties/damages and expenses payable or incurred in connection with such payment or penalties. The Borrower agree that no demand is required to be made by the Bank under this Clause 10.8 until the Bank is required to make such payment or such liability is so asserted, imposed, levied or assessed.
- 10.8.2 If the Bank is unable to sustain any claim for a credit, deduction or refund from any taxation authorities because of the Borrower's failure to comply with its obligations under this Clause 10.8, the Borrower shall immediately upon demand reimburse to the Bank the amount which would otherwise have been recovered by the Bank by way of credit, deduction or refund had such failure not occurred.
- 10.8.3 Without in any way affecting any of the provisions in this Agreement, if any tax, charge or levy of a similar nature is required by any law to be paid in respect of any moneys payable or repayable to the Bank under this Agreement or the Security Documents, such tax, charge or levy shall be added and be included in the Indebtedness and shall be paid by the Borrower.

## 11. **PREPAYMENT**

- 11.1 Where permitted by the Letter of Offer, the Borrower may prepay the Banking Facilities, that is, to repay to the Bank the full amount (or any lesser amount agreed to by the Bank) owing to the Bank under the Banking Facilities and the Security Documents, at such times stated in the Letter of Offer or if no time is stated in the Letter of Offer, at any time before the full amount owing to the Bank is due to be repaid if:-

- 11.1.1 all interest due to the Bank is fully paid up as at the date of the prepayment;
- 11.1.2 the Borrower has given to the Bank prior written notice of its intention to prepay with such notice period stated in the Letter of Offer or if no notice period is stated in the Letter of Offer, a notice period of at least three (3) months' (or such shorter period as the Bank may agree to accept) or, if the Borrower does not give such prior written notice to the Bank, the Borrower shall have paid to the Bank at least an additional three (3) months of interest;
- 11.1.3 the Bank is in receipt from the Borrower of:-
  - (i) prior written notice of its intention to prepay referred to in Clause 11.1.2; or
  - (ii) such additional interest calculated at the Prescribed Rate on the amount to be prepaid for the notice period required to be so given to the Bank in lieu of the notice required to be given under Clause 11.1.3(i);
- 11.1.4 the Bank is in receipt from the Borrower a prepayment fee in such sum as determined by the Bank at its sole discretion and all other conditions for prepayment as required by the Letter of Offer or as determined by the Bank shall have been complied with; and
- 11.1.5 the Bank is in receipt from the Borrower such amount as determined by the Bank at its sole discretion to compensate the Bank for any loss which the Bank may suffer arising from the prepayment.
- 11.2 If the Banking Facilities is repayable to the Bank by instalments and the proposed prepayment is less than the full amount owing to the Bank:-
  - 11.2.1 the prepayment will entitle the Borrower to a reduction in the number of instalments but not a reduction in the amount payable under any instalment; and
  - 11.2.2 the amount prepaid by the Borrower will be applied in prepaying instalments in the inverse order of maturity, that is to say, the amount prepaid will be used to repay the instalments commencing from the last instalment.
- 11.3 Regardless of the other provisions in this Agreement, the Borrower is not entitled to and has no right to make any prepayment if the whole of the Banking Facilities has not yet been released or advanced by the Bank unless demanded by the Bank or the Banking Facilities has been cancelled by the Bank.
- 11.4 Upon making any prepayment, the Borrower must also pay to the Bank all other sums then due and owing by the Borrower to the Bank as at the date of prepayment, including accrued interest, commission and any other interest or commitment fee and all other sums (except for the principal sums under the Banking Facilities).
- 11.5 Upon receipt by the Bank of a prepayment notice from the Borrower, the prepayment notice becomes irrevocable and the Borrower is obliged to prepay in accordance with the prepayment notice unless the Bank otherwise agree. Unless permitted under the Letter of Offer, the amount prepaid may not be redrawn or re-borrowed by the Borrower.

**12. POSITIVE COVENANTS**

12.1 For so long as the Banking Facilities remain available for use by the Borrower and for so long as the Indebtedness remains outstanding, the Borrower undertakes and covenants with the Bank that:-

- 12.1.1 if the Borrower is a company, the Borrower will deliver or cause to be delivered to the Bank the audited financial statements, annual report and profit and loss account of the Borrower and of any Security Party which is a company every year within thirty (30) days from (as the case may be) the financial year end of the Borrower or the Security Party. Such financial statement and accounts must have been duly audited and certified by qualified independent auditors acceptable to the Bank;
- 12.1.2 the Borrower will deliver or cause to be delivered to the Bank any other financial information or such other information relating to the Borrower and any Security Party as may be requested by the Bank from time to time;
- 12.1.3 the Borrower will observe and perform the terms and conditions of this Agreement and the Security Documents or to cause to be observed and performed the terms and conditions of the Security Documents;
- 12.1.4 the Borrower will inform the Bank in writing of any change in the residential or correspondence address and place of business or registered office of the Borrower or of any Security Party;
- 12.1.5 at the request of the Bank, the Borrower will:-
  - (i) comply with any of the conditions precedent listed in this Agreement which were previously waived by the Bank; and/or
  - (ii) give or cause to be given to the Bank any other or additional Security as the Bank may in its sole discretion require;
- 12.1.6 the Borrower will allow or cause to be allowed the Bank or its agents and servants, at all times and upon the Bank having given prior notice, to enter upon, inspect or examine any Security, to require repairs or remedial works and to make inventories and records of the Security. If the Bank requires, the Borrower shall at his own cost and expense, and wherever applicable:-
  - (i) cause the Security to be valued by a valuer appointed by the Bank or a valuer acceptable to the Bank appointed by the Borrower; and
  - (ii) cause relevant reports to be prepared by such professional consultants as the Bank may in its sole discretion appoint, which confirm the structural adequacy of the Security and other works, if any carried out on the Security on the basis of determinants acceptable to the Bank;
- 12.1.7 the Borrower will comply with all conditions imposed by any authority in connection with the Borrower's business and the borrowing and the Bank's grant of the Banking Facilities and will maintain or cause to be maintained in full force and effect, all authorisations, licences, approvals and consents relating to the Borrower's business and the borrowing and the Bank's grant of the Banking Facilities;

- 12.1.8 the Borrower will adequately insure or cause to be adequately insured at all times the Security on a full reinstatement value basis up to its full insurable value against loss or damage by fire, lightning, tempest, flood, riot, civil commotion, malicious acts and strikes, landslides, earth movement, subsistence and such other risks as the Bank may from time to time require with an insurance company acceptable to the Bank in the name of the Borrower or, where applicable, the Security Party, with the Bank endorsed on the insurance policy as loss payee and deposit or cause to be deposited with the Bank a certified true copy of the insurance policy effected under this clause together with the evidence of payment of the current premium payable under such policy;
- 12.1.9 without affecting the provisions in Clause 12.1.8 (and whether or not the Borrower is in default), the Borrower agree that if the Bank in its absolute discretion considers necessary, the Bank is authorized by the Borrower to take out, maintain or renew the insurances referred to in Clause 12.1.8 and:-
- (i) all moneys incurred by the Bank with interest thereon calculated at the default rate stated in the Letter of Offer shall form part of the Indebtedness be repayable on demand by the Bank; and
  - (ii) any sum in whatsoever name called, including commission which may be paid to the Bank by the insurance company shall belong to the Bank.
- For the avoidance of doubt, the Bank shall not be held liable for anything whatsoever if the Bank took out or fails to take out, maintain, renew or increase any such insurance;
- 12.1.10 the Borrower will ensure all insurance proceeds received pursuant to the policy referred to in Clause 12.1.8 or 12.1.9 shall be applied for or towards making good any loss or damage in respect of which the money is received or towards discharge of the Indebtedness or any part thereof unless the Bank decides otherwise. If the insurance proceeds is paid to or received by the Borrower, such insurance proceeds shall be held by the Borrower in trust for the Bank;
- 12.1.11 the Borrower will notify the Bank immediately of the occurrence of:-
- (i) any Event of Default or of any event of default in relation to any other indebtedness of the Borrower or of the Security Party; or
  - (ii) any other changes in the condition or performance or nature of the Borrower's business or constitution (including, but not limited to, any legal proceedings threatened or commenced against the Borrower or the Security Party)
  - (iii) any changes in any matter affecting the Borrower or the Security Party which might affect the Borrower's or any Security Party's ability to fully comply with its obligations;
- 12.1.12 the Borrower will fully observe and comply at all times with all relevant laws, rules and regulations which are applicable to any licence issued to the Borrower, including all the conditions contained in or pertaining to such licence;

- 12.1.13 the Borrower will at all times observe and comply with or to cause to be observed and complied with all laws, rules and regulations and all conditions, covenants and restrictions:-
- (i) governing the Security, whether imposed by the Bank or by any governmental authority; and
  - (ii) governing the filing of all tax returns which the Borrower and each of the Security Party are required to file and pay, including making adequate provision to pay all such taxes, assessments, fees and other governmental charges assessed against each of them or upon any of their respective properties, assets, businesses or incomes; and
  - (iii) governing cross border tax fraud and/or tax evasion and /or whether the Borrower or any of the Security party is a tax resident of a foreign jurisdiction and for the purpose of the Bank's compliance with any automatic exchange of financial account information under any multilateral convention on mutual administrative assistance in tax matters, the Borrower shall and shall cause each of the Security Party to give written notice to the Bank of their confirmation as to their respective tax resident status and such financial account information as required by the Bank's policy based on common reporting standards adopted by the Bank as and when so required by the Bank or if the Borrower and/or any of the Security Party is or shall at any time become a tax resident of a foreign jurisdiction;
- 12.1.14 the Borrower will deliver or cause to be delivered to the Bank, any notice received by the Borrower from any governmental authority concerning the Security within seven (7) days of the Borrower's receipt of such notice and if any compensation moneys in respect of the Security is paid to the Borrower, the Borrower shall pay such money to the Bank and until the money is paid to the Bank, the Borrower shall hold such money in trust for the Bank;
- 12.1.15 if the Borrower is a company, the Borrower will:-
- (i) carry out and operate its business and affairs with due diligence and efficiency in compliance with sound financial and industrial standards and practices and in accordance with the law and its Constitution;
  - (ii) treat all advances from or moneys owing to the Borrower's shareholders, directors and related companies as having priority ranking after the Indebtedness and the Banking Facilities;
- 12.1.16 the Borrower will appoint from time to time such auditor or firm of auditors acceptable to the Bank, and authorize such auditor or firm of auditors to supply the Bank with a certified copy of any communication sent by such auditor to the Borrower whenever requested by the Bank, to communicate directly with the Bank at any time in respect of any matter connected with the accounts and operations of the Borrower; and
- 12.1.17 the Borrower will comply with all such additional positive covenants as stated in the **Fourth Schedule** of this Agreement, if any.



**13. NEGATIVE COVENANTS**

- 13.1 For so long as the Banking Facilities remain available for use by the Borrower and if any of the Indebtedness remains outstanding, the Borrower undertakes, and covenants with the Bank that the Borrower will not, without obtaining the prior written consent of the Bank (which consent may be given or refused by the Bank at its sole discretion or if given, be subject to such terms and conditions as the Bank deems fit):-
- 13.1.1 create or permit to be created any kind of interest whatsoever over the Security in favour or any other person or entity other than the Bank;
  - 13.1.2 if the Borrower is a company, effect or undertake or permit any form of merger, reconstruction, consolidation or amalgamation by way of a scheme of arrangement or in any other way, or approve or permit any transfer of any part of its issued capital;
  - 13.1.3 if the Borrower is a company, make any loans or advances to any of its shareholders or directors or any person or entity or guarantee any person or entity other than normal trade credit or trade guarantees or loans to staff (under a scheme of service), customers, contractors or suppliers in the ordinary course of business;
  - 13.1.4 incur, take on, guarantee or permit to exist any indebtedness except such loans, credit facilities or accommodation as have been disclosed in writing and consented to in writing by the Bank;
  - 13.1.5 in any way assign, transfer, deal in or part with the possession or permit any such dealing with the Security by the Security Party;
  - 13.1.6 except at the request of the Bank, effect or permit to be effected any insurance against any risk in respect of the Security when the Bank has effected or has in existence such insurance;
  - 13.1.7 if the Borrower is not an individual and:-
    - (i) has a Constitution, in any way add to, delete, vary or amend its Constitution in any manner which would be inconsistent with the provisions of this Agreement or the Security Documents, or change its financial year, or the nature of its business or permit any such acts by a Security Party if the Security Party is also not an individual; or
    - (ii) do not have a Constitution, to adopt a Constitution unless the Borrower shall have given prior written notice to the Bank of its intention to adopt a Constitution provided that such Constitution to be adopted shall not be inconsistent in any manner with the provisions of this Agreement or the Security Documents;
  - 13.1.8 sell, transfer, lease or otherwise dispose of all or a substantial part of its assets or permit any such acts by a Security Party (except in the ordinary course of business of the Borrower or the Security Party, as the case may be, on ordinary commercial terms and on the basis of arm's length arrangements);
  - 13.1.9 if the Borrower is a company, reduce or make any alteration to the issued share capital of the Borrower or permit any such act in relation to the Security Party if the Security Party is also a company, whether by varying the amount, structure or value of the issued share capital;

- 13.1.10 if the Borrower is a company, permit any change of its controlling shareholder, ownership structure and/or management or if the Borrower is a partnership, society or other unincorporated body, permit any change in its constitution or management;
- 13.1.11 enter into profit sharing or other similar arrangement whereby the Borrower's income or profits are shared with any other person or company unless such arrangement is entered into in the ordinary course of business on ordinary commercial terms and on an arm's length basis, or enter into any management agreement whereby its business is managed by a third party;
- 13.1.12 enter into any transaction with any person, firm company except in the ordinary course of business on ordinary commercial terms and on the basis of arm's length arrangements;
- 13.1.13 establish any exclusive purchasing or sales agency; and
- 13.1.14 do any of additional negative covenants stated in the **Fifth Schedule** of this Agreement, if any.

#### 14. **EVENTS OF DEFAULT**

- 14.1 The occurrence of any one or more of following will constitute an Event of Default:-
  - 14.1.1 if the Borrower fails to pay any money to the Bank on the date such money is due for payment by the Borrower to the Bank or if the Borrower fails to discharge any obligation or liability owing to the Bank;
  - 14.1.2 if the Borrower, or any Security Party, fails to observe or perform any of the terms and conditions contained in this Agreement or the Security Documents;
  - 14.1.3 if any representation, warranty or undertaking made to the Bank by the Borrower and/or any Security Party is or is found to be or will become incorrect or misleading in a material respect;
  - 14.1.4 if the Borrower, or any Security Party, dies or becomes insane;
  - 14.1.5 if the Borrower, or any Security Party, proposes any voluntary arrangement with its/his creditors or a nominee is appointed for the purpose of the voluntary arrangement or becomes bankrupt or insolvent or allows any judgment to remain unsatisfied for a period of twenty-one (21) days or more;
  - 14.1.6 if the Borrower, or any Security Party, commits any act of insolvency/bankruptcy or is unable to pay any of their respective debt or any of their debts is/are suspended or the Borrower and/or the Security Party enters into any composition or arrangement with or for the benefit of their creditors, as the case may be;
  - 14.1.7 if any resolution is passed, or if a petition is presented against the Borrower or any Security Party:-
    - (i) for insolvency/bankruptcy, liquidation, winding-up or dissolution; or

- (ii) for the appointment of a liquidator, receiver, trustee or judicial manager;
- 14.1.8 if a liquidator, receiver, trustee, judicial manager, nominee or a similar official is appointed for all or a substantial part of the Borrower's assets or the assets of any Security Party or for any voluntary arrangement;
- 14.1.9 if execution or any form of recovery or enforcement action is levied or taken against any of the Borrower's assets or the assets of any Security Party;
- 14.1.10 if the Borrower, or any Security Party, stops or threatens to stop carrying on the Borrower's or the Security Party's business, as the case may be;
- 14.1.11 if the Borrower, or any Security Party, changes or intends to change the nature or scope of the Borrower's or the Security Party's business as is presently being conducted, as the case may be;
- 14.1.12 if the Borrower, or any Security Party, transfers or disposes of or intends to transfer or dispose of a substantial part of the Borrower's or the Security Party's assets, as the case may be;
- 14.1.13 if, in the Bank's opinion, there is any change or threatened change in:-
- (i) circumstances which would materially and adversely affect the Borrower's or any Security Party's business or financial condition or the Borrower's or any Security Party's ability to perform the Borrower's or the Security Party's obligations under this Agreement or the Security Documents;
  - (ii) the Borrower's status or the status of any Security Party as a resident or resident controlled company, as the case may be;
  - (iii) the Borrower's shareholders, shareholding structure, directors or management, if the Borrower is a company; or
  - (iv) the shareholders, shareholding structure, directors or management of any Security Party, if it is a company;
- 14.1.14 if a notice or proposal for the compulsory acquisition of any of the Borrower's properties or the properties of any Security Party is issued or made under any law;
- 14.1.15 if the Borrower or any of the Security Party's cheques is dishonoured;
- 14.1.16 if the Borrower or any Security Party is blacklisted pursuant to the Dishonoured Cheques Information System (DCHEQS) guidelines or any guidelines issued by Bank Negara Malaysia or any other authority having jurisdiction over the Bank;
- 14.1.17 if any of the Borrower's accounts with the Bank is re-designated or closed by the Bank for any reason whatsoever;
- 14.1.18 if the Borrower, any Security Party or any Associated Party, fails to discharge any obligation or liability to the Bank or to any other person;
- 14.1.19 if the Borrower, any Security Party or any Associated Party, commits a default in any loan, facility or similar arrangement with any person

- (including the Bank) which gives the right to the creditor concerned (including the Bank) to demand repayment of the loan, facility or arrangement before its due date, to withdraw the loan, facility or arrangement, or to enforce the security for the loan, facility or arrangement;
- 14.1.20 if there is a default in the payment of any moneys under the account of any other person for whom the Borrower, any Security Party or any Associated Party, is providing security;
  - 14.1.21 if there is any litigation (whether civil or criminal) arbitration or administrative proceedings pending, on-going or threatened against the Borrower or any Security Party, whether in or outside Malaysia;;
  - 14.1.22 if the Borrower's credit rating as determined by the Bank has deteriorated;
  - 14.1.23 if the Bank suspects or has reasons to believe that the Banking Facilities or any part of it is used for any unlawful activity;
  - 14.1.24 if there is any investigation by the police, regulators or authorities, pending, on-going or threatened against the Borrower or any Security Party;
  - 14.1.25 if the Borrower or any Security Party have been charged or convicted for any criminal offences or have any criminal records;
  - 14.1.26 if there is any report lodged against the Borrower or any Security Party under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 or any of the regulations and/or orders made thereunder or any similar legislation outside Malaysia;
  - 14.1.27 if the Borrower uses the Banking Facilities or any part of the Banking Facilities for a purpose other than that stated in the Letter of Offer;
  - 14.1.28 if an event of default under any Security Document has occurred;
  - 14.1.29 if the Bank decides in its sole discretion that the continuation of the Banking Facilities could likely be detrimental to the Bank's own position or that the Bank's security position could be in jeopardy. The decision of the Bank is final and is not subject to query by the Borrower; or
  - 14.1.30 there occurs any events of default stipulated in the Letter of Offer or any of the events stated in the **Fifth Schedule** of this Agreement, if any.
- 14.2 If an Event of Default occurs:-
- 14.2.1 the Bank will not be under any further obligation and/or commitment to the Borrower in relation to the Banking Facilities;
  - 14.2.2 all moneys and interest then owing to the Bank under the Banking Facilities and any other moneys then owing to the Bank by the Borrower will immediately become payable on demand by the Bank;
  - 14.2.3 the Bank will immediately become entitled to recover all moneys and interest then owing to the Bank with interest thereon at the rate stated

in the Letter of Offer with monthly rests or at such other rate and/or other periodic rests as the Bank may prescribe from time to time;

- 14.2.4 the Borrower will upon demand pay to the Bank such amount in cash to cover all the Borrower's contingent liabilities to the Bank, and for all notes or bills accepted, endorsed, or discounted, and all bonds, guarantees, indemnities, documentary or other credits, or any instruments whatsoever entered into from time to time by the Bank for or at the Borrower's request; and
- 14.2.5 the Bank will be entitled, to exercise all or any of its rights or powers with reasonable notice to the Borrower:-
- (i) which the Bank have upon the occurrence of an Event of Default under this Agreement and/or the Security Documents; and
  - (ii) which is/are available to the Bank, both in law or equity.

## 15. **PROCEEDS OF RECOVERY**

### 15.1 **Application of Proceeds**

All monies received by the Bank from any proceedings instituted or steps taken under this Agreement and any of the Security Documents will be applied in the following order:-

- 15.1.1 Firstly, to pay the quit rent, rates, taxes, assessments and other outgoings due to the relevant authorities.
- 15.1.2 Secondly, to pay all costs (including solicitors' costs on a solicitor and client basis), charges, expenses, and liabilities incurred by the Bank and every receiver or other person appointed by the Bank in realising the Security or in performing any duties or exercising any powers.
- 15.1.3 Thirdly, to pay the Bank all interests, costs, charges, commission and other monies which are outstanding in connection with the Banking Facilities.
- 15.1.4 Fourthly, to pay all principal monies owing to the Bank in connection with the Banking Facilities.
- 15.1.5 Fifthly, to pay the Bank all other monies due and remaining unpaid under any of the Security Documents.
- 15.1.6 Sixthly, to pay the Bank any of the Borrower's and/or the Security Party's liabilities to the Bank (whether present, future, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any account, agreement, or contract with the Bank.
- 15.1.7 Seventhly, towards settlement of any monies owing by any other company in the Borrower's and/or the Security Party's group of companies (including holding, subsidiary, and associated companies) to the Bank (if any).
- 15.1.8 Eighthly, to the Borrower and/or the Security Party or any other persons entitled.

15.2 The Bank can at its sole and absolute discretion change the order of payment above and apply the moneys received towards payment of interest, fees, principal or any amount due to the Bank in such proportions and order, or keep such monies received in a non-interest bearing suspense account without any obligation to apply the moneys or any part of the moneys received in or towards settlement of the Borrower's liabilities under this Agreement. However, the change in the order of payment will not affect the Bank's right to receive the full amount to which the Bank would have been entitled to receive if the primary order of payment had been observed, or any lesser amount which the sum ultimately realized from the security may be sufficient to pay.

15.3 **Right of Bank to commence simultaneous proceedings**

The Borrower agrees that the obligations to pay and repay the Bank under this Agreement and the Security Documents are separate and independent obligations which give the Bank separate and independent rights and causes of action regardless of any waiver or indulgence which may have been granted by the Bank in respect of any one or more of those obligations and shall remain in full force and effect regardless of any judgment, order, claim or proof for a liquidated amount in respect of any other obligation and thus, can be relied upon and enforced by the Bank independently, or together with any other action under such obligations or under the Security Documents. Accordingly, the Bank shall have the right to exercise simultaneously and concurrently all or any of the remedies available to the Bank against the Borrower and/or the Security Parties and/or any other person as the Bank deems fit, whether by this Agreement or such other Security Documents or by statute or otherwise including without limitation by the sale or possession of any land pursuant to the Land Code and by civil suit, to recover the Indebtedness due and owing to the Bank by the Borrower and/or the Security Parties without having first resorted to any other remedy or having first sold or disposed of any Security.

15.4 **Insufficiency in Proceeds Recovered**

If the amount recovered or realized by the Bank after deduction and payment from the proceeds of such recovery or realization of all fees, dues, costs, rents, rates, taxes, and other outgoings, is less than the amount due to the Bank (and whether in the process of such recovery or realization the Bank is the purchaser or otherwise) the Borrower must pay the Bank the shortfall between the amount due and the amount so realised and until the shortfall is paid to the Bank, the Borrower will also pay interest on such shortfall at the rate and calculated in the manner herein provided fixed by the Bank from time to time with monthly or other periodic rests (as the case may be) in accordance with the type of Banking Facility applicable, both after as well as before any demand or judgment, and regardless of whether or not the banker-customer relationship between the Bank and the Borrower has ceased or been terminated.

16. **PAYMENT IN GROSS**

16.1 All moneys received from or on account of the Borrower and/or any Security Party, or from any other person, from the realisation of any Security for the purpose of being applied towards reducing the Indebtedness will be treated for all purposes as payments in gross and not as appropriated or attributable to any specific part or item of any moneys owing to the Bank, even if appropriated as such by the Bank.

- 16.2 All Securities held by the Bank now or at any time in the future will be treated as security for the general balance of the Indebtedness.
- 16.3 The Borrower, the Security Party, his estate or any other person deriving or claiming title under the Borrower or the Security Party will have no claim to such Securities, or any part of or interest in such Securities, unless the Bank has received the full amount owing to it by the Borrower and/or the Security Party.

17. **PROCEDURE ON NOTICE OF FURTHER CHARGE**

- 17.1 If the Borrower (or any one or more of them) executes or creates any further or subsequent charge, mortgage, or encumbrance over all or any part of its assets or properties assigned, mortgaged or charged to the Bank in favour of any other corporation or persons, and the Bank receives actual or constructive notice of this, the Bank can immediately open a new or separate account with the Borrower in its books.
- 17.2 If the Bank does not open such new or separate account, the Bank will nevertheless be deemed to have done so at the time when the Bank received or was deemed to have received such notice (“the time of notice”).
- 17.3 From the time of notice, all payments in account made by the Borrower and/or any party to the Bank will (regardless of any legal or equitable rule of presumption to the contrary) be placed or deemed to have been placed to the credit of the new or separate account so opened or deemed to have been opened. Such payments will not go towards reducing the amount due by the Borrower to the Bank at the time of notice.
- 17.4 Nothing in this Clause will affect the security which the Bank otherwise would have had under this Agreement for the payment of the Indebtedness, even though it may become due or owing or be incurred after the time of notice.

18. **INDEMNITIES**

18.1 **General Indemnity**

In addition and without affecting the powers, rights, and remedies granted under this Agreement, the Borrower will indemnify the Bank against any loss or expenses (including legal expenses on a solicitor and client basis) which the Bank sustains or incurs because of:-

- 18.1.1 any cancellation or failure of the Borrower to draw on the whole or any part of the Banking Facilities;
- 18.1.2 any prepayment of the Banking Facilities or any part of it unless otherwise provided under this Agreement or the Letter of Offer;
- 18.1.3 any default in payment by the Borrower of any sum due under this Agreement, including any interest or fees paid or payable on account of, or in respect of, any funds borrowed or deposits from third parties in order to maintain the amount in default, or in liquidating or re-employing such funds or deposits; or
- 18.1.4 the occurrence of any Event of Default.

## 18.2 Currency Indemnity

Unless otherwise specifically agreed in writing by the Bank in relation to the Banking Facilities:-

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

## 19. MODIFICATION AND INDULGENCE

- 19.1 The Bank may at any time and without in any way affecting the security created under this Agreement and the Security Documents:-
  - 19.1.1 terminate, vary or increase the amount of the Banking Facilities or any part of the Banking Facilities or any credit or other facility granted to the Borrower and/or any Security Party and may open and/or continue any account or accounts whatsoever with the Borrower and/or any Security Party at any office of the Bank;
  - 19.1.2 in addition to and without in any way affecting the Bank's right of review under this Agreement vary or not comply with the provisions of this Agreement and/or the Security Documents and the Borrower expressly consents to any such variation and/or non-compliance;
  - 19.1.3 grant to the Borrower, the Security Party or any other person any time or indulgence;
  - 19.1.4 renew any bills, notes or other negotiable securities;
  - 19.1.5 deal with, exchange, release or modify or abstain from perfecting or enforcing any Security Document or rights the Bank may now or at any time after this Agreement have against the Borrower, any Security Party or any other person;
  - 19.1.6 enter into any arrangement whatsoever with the Borrower, any Security Party or any other person;



- 19.1.7 at the request of the Borrower and/or any Security Party, accept payment or repayment of any amounts due or becoming due under this Agreement and/or any Security Document by such increased or reduced instalments as the Bank may agree to;
  - 19.1.8 at the request of the Borrower and/or any Security Party, agree to suspend payments to reduce any principal repayable to the Bank under this Agreement and/or any Security Document;
  - 19.1.9 grant further or other banking facilities to the Borrower and/or any Security Party;
  - 19.1.10 reinstate, change, interchange, substitute or convert any of the banking facilities granted by the Bank to the Borrower and/or any Security Party, including, for the avoidance of doubt, the Banking Facilities;
  - 19.1.11 reinstate, change, interchange, substitute or convert the principal limits or sub-principal limits of any of the banking facilities granted by the Bank to the Borrower and/or any Security Party, including, for the avoidance of doubt, the Banking Facilities; and/or
  - 19.1.12 for the purpose of recovering the Indebtedness, resort to all or any of the remedies or means set out in this Agreement and/or any Security Document at any time and in such order or sequence as the Bank may in its sole discretion think fit.
- 19.2 If the Bank at any time and from time to time in its sole discretion, grant additional or further banking facilities or vary or substitute the Banking Facilities (or any of them if more than one) with any other banking facility upon such terms and conditions as may be prescribed by the Bank, all the provisions of this Agreement and the Security Documents, except for those provisions which are inconsistent with the terms and conditions prescribed by the Bank for the additional or further banking facilities or varied or substituted Banking Facilities, shall continue to apply unless otherwise stated by the Bank.

## 20. **AVOIDANCE OF PAYMENTS**

- 20.1 Any release, discharge or settlement between the Borrower and the Bank in relation to this Agreement shall be conditional upon no right, security, disposition or payment to the Bank by the Borrower or any Security Party or any other person being void, set aside or ordered to be refunded pursuant to any applicable laws relating to any breach of duty by any person or insolvency, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason. If any such right, security, disposition or payment to the Bank is void or at any time set aside or ordered to be refunded, the Bank will be entitled subsequently to enforce this Agreement against the Borrower as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made
- 20.2 The Bank's rights to recover and receive from the Borrower and/or the Security Party the whole of the Indebtedness shall not be affected in any way whatsoever:-
  - 20.2.1 by any assurance, security or payment which may be avoided under any law relating to insolvency, bankruptcy, winding-up, liquidation,

administration, protection from creditors or insolvency or for any other reason; and

- 20.2.2 by any release, settlement or discharge given or made by the Bank on the basis of such assurance, security or payment,

any such release, settlement or discharge shall be taken to have been made on the condition that it will be void if any payment or Security which the Bank may previously have received or may receive in respect of the Indebtedness under this Agreement or any of the Security Documents is rendered void, set aside, held invalid for any reason whatsoever or ordered to be refunded pursuant to any applicable laws. If any of such events occurs, the Bank is entitled to enforce this Agreement and the Security Documents against the Borrower and the Security Party as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

## 21. **IRREVOCABLE RIGHT TO DEBIT ACCOUNT**

- 21.1 Without affecting any other rights of the Bank under this Agreement or the law, the Bank may at its sole discretion and without giving the Borrower any prior notice, debit at any time the Borrower's current account or any other account which the Borrower may have with the Bank, whether alone or with any other person, with any moneys whatsoever (including the balance on any overdraft account) which are payable by the Borrower to the Bank, including but not limited to interests, fees, commissions, costs, charges, expenses, disbursements, taxes, duties or levies.
- 21.2 If the Bank does debit the Borrower's account, such debiting shall not be treated as payment by the Borrower of the amount so debited and shall not to be taken as a waiver by the Bank of any breach by the Borrower or any Events of Default that may have occurred.
- 21.3 If any debiting of any of the Borrower's accounts causes that account to be overdrawn, interest at the default rate stated in the Letter of Offer shall be payable to the Bank accordingly.

## 22. **CONSOLIDATION AND RIGHT OF SET-OFF**

- 22.1 The Bank can at any time after the occurrence of an Event of Default or the making of a demand and notwithstanding any settlement of account or any other matter whatsoever, combine or consolidate all or any of the Borrower's then existing accounts (whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and whether in Ringgit or in any other currency) wheresoever situate, including accounts in the Borrower's sole name, or jointly with others.
- 22.2 In addition, the Bank can, after giving seven (7) days' notice to the Borrower, set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of the Indebtedness or any part thereof.
- 22.3 If any of the Borrower's liabilities are contingent, the Bank can set-off and transfer any sum standing to the credit of any of the Borrower's accounts towards the satisfaction of the Borrower's contingent liabilities and if the

Borrower's actual liabilities are less than the amount set-off by the Bank, the Bank will refund the surplus to the Borrower.

22.4 Where a combination, set-off or transfer requires the conversion between currencies, the conversion will be calculated at the Bank's then prevailing spot rate of exchange (as fixed by the Bank at its absolute discretion) for purchasing the currency for which the Borrower is liable.

22.5 Upon the issuance of the notice mentioned in Clause 22.2, the Bank can earmark or to place a hold on any monies standing to the credit of all or any of the Borrower's accounts with the Bank prior to effecting the setting-off in Clause 22.2, and the Borrower shall not be entitled to withdraw the monies without the Bank's prior written consent.

### 23. **SUSPENSE ACCOUNT AND PROOF OF DEBT**

23.1 The Bank may at any time place and keep any sum or sums of moneys received, recovered or realised by the Bank under or in connection with this Agreement or any other Security Documents in a non-interest bearing suspense account(s) for so long as the Bank thinks fit without being obliged to apply the same (or any part of it) in or towards discharging any liability due or incurred by the Borrower for such purpose as the Bank thinks fit, including but not limited to taking action against the Borrower or any Security Party, or to prove in the insolvency of the Borrower or any Security Party, for any moneys or liabilities at any time owing or payable to the Bank or to preserve the Bank's interest over the Security under the Security Documents or the liability of the Borrower or any Security Party to the Bank.

23.2 In the event any sum or sums referred to in Clause 23.1 is applied by the Bank in or towards discharge of any monies or liabilities due or incurred by the Borrower, the same may be applied by the Bank in such order and proportions as the Bank may in its absolute discretion deems fit.

23.3 Notwithstanding any payment by the Bank in Clause 23.2, in the event the Borrower or any Security Party becomes bankrupt, wound up, insolvent or subject to any insolvency proceedings, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money. Upon the Bank having received the ultimate balance of the Indebtedness in full, any claim on the part of the Borrower and/or a Security Party to any excess or any security remaining with the Bank will be a matter of adjustment between the Bank and the Borrower and/or the Security Party and/or any other person or persons laying claim to the same.

### 24. **CHANGE IN CONSTITUTION OF BANK OR BORROWER**

This Agreement, the Letter of Offer and all the provisions governing the Banking Facilities and the Security and the obligations and liabilities of the Borrower under the Letter of Offer and this Agreement shall continue to be valid, binding and enforceable against the Borrower and the Security Party for all purposes notwithstanding the following:-

24.1 for the Bank - any transfer or assignment of the Bank's business, operations, assets, or liabilities, or any change by amalgamation, consolidation, reconstruction, or otherwise in the

Bank's constitution, or of any company by which the Bank's business is carried on, and will be available by the company carrying on that business;

24.2 for the Borrower or Security Party:-

24.2.1 the adoption of or any change in the Constitution of the Borrower or the Security Party or their constitution, whether due to death, insanity, bankruptcy, insolvency, liquidation, winding-up, dissolution, incorporation, amalgamation, merger, reconstruction, re-organisation or any other change or changes in the name, style, constitution or composition of the Borrower or the Security Party;

24.2.2 any change in the constitution whether due to the admission of any partner or partners into the firm or the death, retirement, expulsion, accession, resignation, disqualification or dissolution of any partner or partners or any other change in the constitution of the firm if the Borrower or the Security Party is a firm (whether a sole proprietorship or partnership); and

24.2.3 that the Borrower and/or any Security Party is a committee, association, or other unincorporated body which has no legal existence or which is under no legal liability to discharge obligations undertaken or purported to be undertaken by it or on its behalf.

25. **CHANGES IN CIRCUMSTANCES**

25.1 **Market Disruption**

Notwithstanding the provisions stated in this Agreement or any Security Document, the Borrower agrees that if at any time and from time to time, the Bank is of the view that there is any change, national or international, in the monetary, financial, political or economic conditions, or currency exchange rates which in the Bank's sole opinion, would make it impractical or difficult if not impossible for the Bank to grant or continue to grant the Banking Facilities or to allow the indebtedness under the Banking Facilities to remain outstanding upon the terms as set out in this Agreement or the Security Document, the Bank shall have the right to give to the Borrower notice in writing without having to give any reason, to cancel or suspend the Banking Facilities.

25.2 **Increased Costs**

If the Bank decides in its sole discretion that, as a result of any new law, guideline, directive or regulation, or as a result of any change (including any change in the interpretation or application of) to any existing law, guideline, directive or regulation or the removal or modification of any exemption currently in force in favour of the Bank or compliance by the Bank with any directive (including, but without limitation, a directive which affects the manner in which the Bank allocates capital reserves to its obligations under this Agreement):-

25.2.1 the Bank would incur increased costs in its grant or continuing to grant to the Borrower the Banking Facilities and having to continue to

perform the Bank's obligations under the Banking Facilities or the Security Documents;

- 25.2.2 any sum received or to be received by the Bank under this Agreement or the effective return to the Bank under this Agreement is reduced (except on account of tax on the Bank's overall net income); or
- 25.2.3 the Bank has to forego any interest or other return on or calculated by reference to the amount of any sum received or receivable by the Bank in its grant of the Banking Facilities under the Letter of Offer and/or this Agreement,

the Borrower must indemnify the Bank against that increased cost and other sums stated above and must pay to the Bank when demanded by the Bank from time to time, the amount required as determined by the Bank as is sufficient to indemnify the Bank.

The terms law guideline, directive or regulation in this Clause shall include, without limitation, any law, regulation, official directive, ruling or request concerning capital adequacy, prudential limits, liquidity, reserve assets or tax.

### 25.3 **Illegality**

If any change in applicable law, regulation or regulatory requirement or in the interpretation or application thereof by any governmental or other authority charged with the administration, request or requirement (whether or not having the force of law) of any governmental or other authority in Malaysia make it or makes apparent that it is unlawful or impracticable for the Bank to grant or continue to grant the Banking Facilities or any part thereof or to charge or receive interest at the rate applicable upon the terms and conditions contained in the Letter of Offer and/or this Agreement, then:-

- 25.3.1 the Bank will comply with the applicable law, regulation or regulatory requirements or the interpretation or application thereof in such manner as the Bank deem fit;
- 25.3.2 the Bank will notify the Borrower, and following that notification the Banking Facilities and the Bank's obligations under the Banking Facilities will be suspended immediately; and
- 25.3.3 the Borrower must following such notice from the Bank, prepay the Banking Facilities together with accrued interest and all other amounts payable to the Bank on the date required by the Bank to enable the Bank to comply with the relevant law; and
- 25.3.4 the Bank will have no further obligations under the Banking Facilities, which will be deemed cancelled.

### 25.4 **Circumstance beyond the Bank's control**

The Borrower agrees that the Bank will not be liable in any way to the Borrower for any loss, injury or damage or inconvenience caused to the Borrower, which the Borrower may suffer, whether directly or indirectly as a result of any failure by the Bank to perform or is unable to perform any of the Bank's obligations under the Letter of Offer, this Agreement or any Security Document or to carry out any of the Bank's usual business operations or to provide any service due to any reason beyond the Bank's control including, but not limited to:-

- 25.4.1 any strike, lock-out, industrial dispute, boycott, blockade, sanction, war, hostilities (whether war is declared or not), terrorist activity, insurrection, riot or civil commotion or unrest;
- 25.4.2 any fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbance, industrial dispute, act of terrorism, embargo, war or Act of God
- 25.4.3 any failure, stoppage or disruption of:-
- (i) any telecommunication services, internet, electricity supply, water supply or fuel supply; or
  - (ii) services outsourced by the Bank to service providers, whether in or outside Malaysia for any reason whatsoever, including but not limited to hardware and/or software malfunction or system down due to virus attack, hacking etc.
- 25.4.4 any action or inaction of any governmental, local or other authority; or
- 25.4.5 any circumstance in the nature of a force majeure, that is, an unforeseeable event that prevents the Bank from performing any of the Bank's obligations under this Agreement or any Security Document.

## 26. **MISCELLANEOUS PROVISIONS**

### 26.1 **Certificate**

Any certificate or statement issued by the Bank showing the outstanding amount due and owing from the Borrower to the Bank in relation to the Banking Facilities, including the amount of any loss or expenses in Clause 19.1 will be conclusive proof as to the outstanding amount due and owing from the Borrower to the Bank in relation to the Banking Facilities and such loss or expenses; this certificate or statement will be binding on the Borrower for all purposes whatsoever including for the purposes of any legal proceedings unless there is any obvious mistake.

### 26.2 **Involuntary Loss**

In exercising or executing any of the Bank's powers given by this Agreement, any Security Document or any law, the Bank will not be liable to the Borrower and/or any Security Party for any loss or damage incurred, or claimed to be incurred, by the Borrower and/or the Security Party; the Bank will also not be obliged to obtain the true or best market value of any Security.

### 26.3 **Consolidation**

Unless the Bank agrees otherwise, this Agreement will not be discharged except on full payment by the Borrower and/or the Security Party of not only all monies secured under the Agreement, but also all monies which may become due or owing to the Bank under any other loans and/or banking facilities granted to the Borrower and/or the Security Party and/or any third parties from time to time (whether such liabilities be present, future, actual, contingent, primary, collateral, several, or joint) and whether secured by any other charge or security created now or in future or from time to time secured by the

Borrower and/or the Security Party (or by any person through whom the Borrower and/or the Security Party claims in favour of or vested in the Bank) or otherwise, and the Bank's right of consolidation will apply to this security.

#### 26.4 **Combination of Accounts**

The Borrower agrees that the Bank has the right, particularly if an Event of Default has occur, without any notice to the Borrower, to combine, consolidate or merge all or any number of the Borrower's accounts with the Bank anywhere whether in or outside Malaysia (whether savings, current, deposit, loan or any other account of any nature whatsoever, whether due or not, whether subject to notice or not, whether in Ringgit Malaysia or in any other currency and whether in the Borrower's name alone or in the joint names of the Borrower and another person(s) including accounts in the name of the Bank. The Bank also have the right after giving the Borrower seven (7) days' notice, to set-off or transfer any sum standing to the credit of any one or more of such accounts in or towards satisfaction of the Indebtedness or any part thereof whether present or future, actual or contingent, primary or collateral, or joint or several.

#### 26.5 **Borrowing and Charging Powers**

Where any moneys are owing and secured by any Security Document, they will be deemed to be so owing and secured regardless of:-

- 26.5.1 any legal limitation, incapacity or otherwise of the Borrower in respect of the borrowing of the Banking Facilities which might be a defence as between the Borrower and the Security Party;
- 26.5.2 the Security Party's power to enter into the Security Document; and/or
- 26.5.3 any legal limitation in the power of any director, attorney, partner, agent or other person purporting to act or acting on behalf of the Borrower and/or the Security Party or any other irregularity in the borrowing or incurring of the liabilities.

#### 26.6 **Bank's Right to Make Adjustments**

The Bank has the right to adjust the entries in its records or the account statement if there is any error or missing entries.

#### 26.7 **Additional Terms and Conditions**

If there are additional terms and conditions stated in the **Sixth Schedule**, such additional terms and conditions shall be considered as part of this Agreement and shall bind the Borrower accordingly.

#### 26.8 **Variation**

The Borrower acknowledges and the Borrower agrees that the provisions of this Agreement and the Security Documents, and the availability, limits, interest rates, commission, fees and charges of and relating to the Banking Facilities are subject to:-

- 26.8.1 guidelines issued from time to time by Bank Negara Malaysia or any other authority having jurisdiction over the Bank; and

26.8.2 the Bank's review and variation from time to time at the Bank's sole discretion.

If there is a change in any fees and charges, the Bank will give the Borrower twenty-one (21) days' prior notice before the change takes effect.

26.9 **Retention of Records**

The Borrower agrees that the Bank is not obligated to maintain any records of the Borrower's account, including but not limited to the Security Documents, transaction documents, statements of account, correspondences or documents provided to the Bank by the Borrower or any other third party, exceeding any retention period as set out under the Bank's internal policies, guidelines and procedures and/or as provided under any applicable laws or regulations of any country having jurisdiction over the Bank.

26.10 **Legal Advice**

The Borrower confirms that the Borrower has been advised to seek independent legal advice before accepting the Banking Facilities and before signing the Letter of Offer and the Security Documents prepared by the Bank or the Bank's solicitors.

26.11 **Time of the essence**

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

26.12 **Cessation of Relationship**

The cessation of the banker-customer relationship between the Bank and the Borrower will not in any circumstances or in any manner affect the Bank's right to capitalize any interest payable on any outstanding balance.

26.13 **Searches**

26.13.1 The Bank may but is not obliged to conduct insolvency/ bankruptcy/ winding up searches or credit related searches from any credit reference agencies, database or system on any person, including but not limited to the Borrower and the Security Party, before and at any time after the disbursement of any of the Banking Facilities.

26.13.2 The Borrower consents to and shall cause the Security Party to consent to the Bank carrying out all such searches stated in Clause 26.13.1 on the Borrower and the Security Party to the extent permitted by law and all charges incurred in connection with the searches will be borne and paid by the Borrower and/or the Security Party.

27. **ASSIGNMENT / TRANSFER OF SECURITY**

27.1 The Bank can, at any time at its sole discretion and without notifying the Borrower and/or any Security Party, assign or transfer all or any part of its rights, interests, benefits and obligations under this Agreement and/or any Security Document.

27.2 The costs and expenses of the Bank and the assignee or transferee are to be paid by the Borrower and/or the Security Party.



27.3 Following any such assignment or transfer, the assignee or transferee will assume and be entitled to the rights, interests, benefits and obligations of this Agreement and/or the Security Document as if the assignee or transferee had been a party to this Agreement and/or the Security Document in place of the Bank.

27.4 **REORGANISATION WITH BANK'S CONSENT**

The Borrower agrees that the Borrower will not without the Bank's prior written permission undertake or allow to be undertaken:-

27.4.1 any reorganisation, amalgamation, reconstruction, takeover or substantial change of the Borrower, the Borrower's shareholders, management or business;

27.4.2 any corporate schemes or arrangements which may affect the Borrower's present constitution or residential status;

27.4.3 any amendment or alteration to any of the provisions in the Borrower's Constitution or to adopt a Constitution relating to the Borrower's borrowing powers and principal business activities; and/or

27.4.4 any of the Borrower's partners (applicable to partnership).

28. **SANCTIONS AND ANTI-MONEY LAUNDERING**

28.1 The Borrower must provide and disclose to the Bank within such time prescribed by the Bank, any information which the Bank deemed necessary in order to:-

28.1.1 comply with the laws or sanctions of Malaysia or any other country (including but not limited those relating to anti-money laundering or anti-terrorism); and/or

28.1.2 manage money-laundering risk or terrorism-financing risk or economic and trade sanctions risk.

28.2 Pending the Bank's receipt of the information from the Borrower and until the Bank has verified the information to the Bank's satisfaction, the Bank is not obliged to proceed with any transactions or disbursements.

28.3 The Borrower declares and undertakes to the Bank that the processing of any transactions will not breach any laws or sanctions in Malaysia or any other country. The Bank will not be liable for any loss arising from any delay or failure to process any transactions due to inadequate information and documentation provided by the Borrower.

29. **DISCLOSURE OF INFORMATION**

29.1 **Persons to whom disclosure may be made**

The Borrower agrees that the Bank (including the Bank's officers, employees, agents or any other persons to whom the Bank may grant access to the Borrower's records, correspondence or any material relating to the Borrower or the Borrower's account) can disclose at any time at the Bank's sole discretion

without notifying the Borrower beforehand, any information relating to the Borrower, the Borrower's account and any of the Borrower's Authorised Persons to the following:-

- 29.1.1 any one or more members of the Group for any of the following purposes:-
- (i) providing the Borrower with banking services and/or improving and furthering the provision of other services by the Bank;
  - (ii) reporting or data matching;
  - (iii) fraud or crime prevention or investigating, preventing or otherwise in relation to money laundering or any other criminal activities;
  - (iv) debt collection or any legal process initiated by or served on the Bank;
  - (v) outsourcing the Bank's operations or any part of the Bank's operations;
  - (vi) performance of duties as an officer of the Bank or in connection with the conduct of audit or the performance of risk management;
  - (vii) facilitating the performance of the Bank's or any member of the Group's functions;
  - (viii) compliance with the Group's policies, guidelines, directives or requirements;
  - (ix) corporate exercise;
- 29.1.2 any person, whether in Malaysia or elsewhere, who provides electronic or other services to the Bank for the purpose of providing, updating, maintaining and upgrading the services including, but not limited to, investigating discrepancies, errors or claims;
- 29.1.3 any person, whether in Malaysia or elsewhere, engaged by the Bank in connection with the performance of services or operational functions which have been out-sourced;
- 29.1.4 the police or any public officer conducting an investigation in connection with any offence including suspected offences;
- 29.1.5 credit card companies and financial institutions in connection with credit card enquiries;
- 29.1.6 other banks, financial institutions, credit bureau or credit reference agents (only for credit information);
- 29.1.7 the Bank's auditors, solicitors, and professional advisors;
- 29.1.8 the Bank's stationery printers, vendors of the computer systems the Bank uses, and to such persons installing and maintaining them and other suppliers of goods or service providers the Bank may engage;
- 29.1.9 any receiver appointed by the Bank or by any other party;
- 29.1.10 any credit bureau of which the Bank is a member, and any other members and/or compliance committee of such credit bureau;

- 29.1.11 any rating agency, insurer or insurance broker or direct or indirect provider of credit protection;
- 29.1.12 any actual or potential participant or sub-participant in relation to any of the Bank's obligations under the banking agreement between the Bank and the Borrower, or assignee, novatee or transferee (or any officer, employee, agent or adviser) of any of them;
- 29.1.13 for transactions effected or processed with or without the Borrower's authority in or through the automated teller machines of other banks or financial or non-financial institutions or terminals or other card operated machines or devices the Bank approves, to the bank, financial institution or non-financial institution, trader or other party accepting the use of the automated teller machine card and their respective agents or contractors;
- 29.1.14 any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over the Bank or any member of the Group;
- 29.1.15 any person to whom the Bank, or any member of the Group, is permitted or required to disclose to under the laws of any country;
- 29.1.16 any other person to whom such disclosure is considered by the Bank to be in the Bank's interest, or the interest of any members of the Group (not applicable to strategic alliance for marketing and promotional purpose);
- 29.1.17 any person intending to settle any moneys outstanding under the Banking Facilities and any person connected to the enforcement or preservation of any of the Bank's rights under this Agreement and the Security Documents;
- 29.1.18 the Central Credit Bureau or any other authority or body established by Bank Negara Malaysia or any other authority having jurisdiction over the Bank;
- 29.1.19 any other country, its central bank or investigative authorities in respect of cross border offences, whether civil or criminal in nature, including but not limited to tax fraud or tax evasion for the purpose of compliance with any automatic exchange of financial account information under any multilateral convention on mutual administrative assistance in tax matters;
- 29.1.20 any Security Party; and
- 29.1.21 any of the Borrower's directors.

## 29.2 **Disclosure in compliance with court order**

The Borrower agrees that the Bank and the Group can act in any way the Bank sees fit, without consulting the Borrower beforehand, if the Bank is served with a court order issued by a court of any jurisdiction. The Borrower agrees that the Borrower will not hold the Bank liable for any loss or damage in connection with the Bank's actions.

29.3 **No liability for disclosure**

The Borrower agrees that no disclosure of information and/or provision of any documents made pursuant to Clause 29 shall render the Bank (including the Bank's officials, employees, agents or any other persons who the Bank grants access to their records, correspondence or any material relating to the Borrower and/or the Security Party or the Banking Facilities) to be liable in any manner under any law, including the provisions of the Financial Services Act, 2013 and the Companies Act, 2016.

30. **DATA PROTECTION**

30.1 The Borrower hereby confirms that the Borrower has received, read, understood and agreed to be bound by the Privacy Notice issued by the Bank (which is available at the Bank's branches as well as at the Bank's website at [www.uob.com.my](http://www.uob.com.my)) and the clauses in this Agreement as may relate to the processing of the Borrower's Personal Data. For the avoidance of doubt, the Borrower agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Agreement.

30.2 The Borrower agrees and consents that the Bank may transfer the Personal Data outside of Malaysia. All Personal Data held by the Bank and the Group will be accorded a reasonable level of protection against any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or deletion.

30.3 In the event the Borrower provides Personal Data relating to third parties, including data relating to their next-of-kin and dependents (where the Borrower is an individual) or data relating to their directors, shareholders, officers, individual guarantors and security providers (where the Borrower is a corporation), for the purpose of the Banking Facilities, the Borrower:-

30.3.1 confirms that the Borrower has obtained their consent or is otherwise entitled to provide this data to the Bank and for the Bank to use it in accordance with this Agreement and/or the Banking Facilities;

30.3.2 undertakes that the Borrower has informed the said third parties to read the Privacy Notice at the Bank's website [www.uob.com.my](http://www.uob.com.my);

30.3.3 has informed the said third parties:-

(i) that the Bank may collect or verify their personal and financial data with third party sources;

(ii) that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Notice;

30.3.4 agrees to ensure that the personal and financial data of the said third parties is accurate;

30.3.5 agrees to update the Bank in writing in the event of any material change to the said personal and financial data; and

30.3.6 agrees that the Bank has the right and is entitled to terminate the Banking Facilities should any of such consent be withdrawn by any of the said third parties.

- 30.4 Where the Borrower instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including data relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on the Borrower's behalf, the Borrower agrees to the above said disclosures on behalf of the Borrower and others involved in the said cross-border transaction.
- 30.5 Additionally, but always subject to any laws (including regulations, guidelines and/or obligations) applicable to the Bank or the Group (whether in or outside Malaysia), the Borrower agrees that the Bank and the Group, and the Bank's merchants and strategic partners may contact the Borrower about products, services and offers, which the Bank believes may be of interest to the Borrower or benefit the Borrower financially. Notwithstanding the foregoing, the Bank will only disclose the Borrower's Personal Data (excluding data relating to the Borrower's affairs or account) to the Bank's merchants and strategic partners where the Borrower's express prior consent has been obtained.
- 30.6 The Borrower may choose not to receive any direct marketing materials from the Bank or the Group by writing in to the Bank at 'Personal Financial Services, P.O. Box 13525, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur' (or such other address notified by the Bank) with the Borrower's request and the Bank will abide by the Borrower's latest written instructions to the Bank.
- 30.7 The Borrower acknowledges that certain communications such as statements of account and the Bank's websites contain standard information regarding the Bank's other products and services that cannot be removed without affecting the delivery/provision of the Bank's services and/or products, the operation of the Banking Facilities and/or without imposing additional costs to the Borrower.
- 30.8 The Borrower is entitled to request in writing:-
- 30.8.1 for any information in relation to the Borrower's Personal Data that the Bank holds or stores, upon payment of a prescribed fee;
  - 30.8.2 for any information held or stored by the Bank to be updated, amended and/or corrected;
  - 30.8.3 for the Bank to limit the processing of the Borrower's Personal Data held or stored by the Bank; and
  - 30.8.4 to make an enquiry or complaint in respect of the Bank's processing of the Borrower's Personal Data.

For requests under Clause 30.8.1 or 30.8.2, the Borrower may make a request to the Bank via the Bank's Data Access Request Form or Data Correction Request Form respectively. These forms are available at the Bank's branches as well as at the Bank's website at [www.uob.com.my](http://www.uob.com.my).

The Borrower may direct all the Borrower's requests to any of the Bank's branches or 'Customer Communications Management, UOB Call Centre, P.O. Box 11212, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur'.

The Bank may charge a fee for processing the Borrower's request for access or correction. The Bank may also refuse to comply with the Borrower's request in

respect of Clause 30.8.1 or 30.8.2 above if the information supplied by the Borrower is insufficient (as determined by the Bank) or where such request may breach or violate any law or regulation or any other reason which the Bank deems not to be in the Bank's interest to do so. If the Bank refuses to comply with such request, the Bank will inform the Borrower of the Bank's refusal and reason for the Bank's refusal.

- 30.9 The Borrower is responsible for ensuring that the information the Borrower provides the Bank is accurate, complete and not misleading and that such information is kept up to date.
- 30.10 The Borrower acknowledges that if the Borrower subsequently withdraws the Borrower's consent to process the Borrower's Personal Data as given earlier to the Bank, as the Bank will not be able to process and/or disclose the Borrower's Personal Data in relation to the purposes set out in the Privacy Notice, the Bank will have the right to not provide or discontinue the provision of any product, service, account and/or facilities that is linked to such Personal Data.
- 30.11 The Bank reserves the right to amend this clause from time to time at the Bank's sole discretion and shall provide prior notification to the Borrower in writing and place any such amendments on the Bank's websites or by placing notices at the banking halls or at prominent locations within the Bank's branches or by such other means of communication deemed suitable by the Bank.
- 30.12 This Clause 30 shall be without prejudice to any other clause in this Agreement which provides for the disclosure of data.

## 31. **COMPLIANCE WITH FATCA**

### 31.1 **Information.**

31.1.1 The Borrower shall provide all required documentation or information, including but not limited to date of birth, countries of citizenship, countries of permanent residence, countries of tax residency and associated taxpayer identification numbers, that may be required to enable the Bank or any member of the Group to comply with all requirements of FATCA or other agreement by or between governments.

The Borrower shall notify the Bank in writing within thirty (30) days of any change that affects the Borrower's tax status in relation to FATCA under any laws, regulations or other agreement by or between governments.

31.1.2 The Borrower represents and warrants that the Borrower has provided to the Bank all documentation or other information as may be required by the Bank for compliance with FATCA and in connection with change in tax status and shall provide all required documentation or other information within seven (7) days of a request from the Bank in writing or otherwise.

The Borrower further acknowledges that any failure on the Borrower's part to provide accurate and timely information pursuant to

requirements and requests by the Bank may result in the Bank having to deem the Borrower recalcitrant and/or reportable and take all necessary action against the Borrower in order for the Bank to be compliant with requirements under FATCA, local legislation in connection with FATCA and any other provision arising out of an agreement between governments pertaining to FATCA

31.1.3 For individual Borrowers, the Borrower consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Personal Data to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Borrower and to governmental authorities as required by law or other agreement by or between governments. The Borrower's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Borrower represents that the Borrower has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 31.1.3, and that the Borrower will secure such consents and waivers in advance of providing similar information to the Bank in the future.

31.1.4 For Borrower who is a sole proprietorship, partnership or other business entity, a corporation, or an association, club or society or trust, the Borrower consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Confidential Information to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Borrower and to governmental authorities as required by law or other agreement by or between governments. Confidential Information includes the Borrower's Personal Data, the Borrower's bank account details, transactional information, and any other information that a reasonable person would consider being of a confidential or proprietary nature. The Borrower's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Borrower represents that the Borrower has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 31, and that the Borrower will secure such consents and waivers in advance of providing similar information to the Bank in the future.

31.2 The Borrower agrees and acknowledges that the Bank is entitled to take all necessary action to be and remain compliant with FATCA as is required by law or other agreement by or between governments. If some of the Borrower's income is reportable and some is not, the Bank will report all income unless the Bank can reasonably determine the reportable amount. The Borrower hereby authorises the Bank or any member of the Group, where appropriate, to withhold or otherwise collect from any payment any required tax or other government assessment, including but not limited to any requirement to withhold or deduct an amount under FATCA.

31.3 The Bank or any member of the Group, may take whatever action the Bank consider appropriate to meet any obligations, either in Malaysia or elsewhere in the world, relating to the prevention of tax evasion. This may include, but is not limited to, investigating and intercepting payments into and out of the Borrower's account(s) (particularly in the case of international transfer of funds), investigating the source of or intended recipient of funds, sharing information

and documents with domestic and international tax authorities and withholding income from the Borrower's account(s) and transferring it to such tax authorities. If the Bank is not satisfied that a payment in or out of the Borrower's account(s) is lawful, the Bank may refuse to deal with it.

31.4 To the fullest extent as may be permitted by law, the Bank will not be liable to the Borrower for any losses, costs, expenses, damages, liabilities the Borrower may suffer as a result of the Bank complying with legislation, regulations, orders or agreements with tax authorities or by and between tax authorities or if the Bank make an incorrect determination as to whether or not the Borrower should be treated as being subject to tax or tax reporting obligations.

31.5 This Clause 31 will override any inconsistent term or consent provided by the Borrower under any agreement with the Bank to the extent that such agreement provides fewer or lesser rights for Bank, whether before or after the date of this Agreement. This Clause 31 shall be without prejudice to any other clause in this Agreement which provides for the Bank's right to request for information or disclosure of data.

## 32. **NOTICES, LEGAL PROCESS AND PROCESS SERVICE AGENT**

### 32.1 **Notices**

32.1.1 Any demand, request, notice (including a notice or statement generated by the Bank's computer which need not be signed) or communication (collectively the "Notices") by or on behalf of the Borrower or the Bank must be in writing in English or Bahasa Malaysia.

32.1.2 Any Notices that the Bank send to the Borrower may be:-

- (i) delivered by hand to the address of the Borrower as stated in this Agreement, the Letter of Offer or such other address last known to the Bank;
- (ii) sent by post (registered, AR registered, ordinary or otherwise) to the Borrower's address as stated in this Agreement, the Letter of Offer or such other address last known to the Bank;
- (iii) sent by facsimile transmission to the facsimile number last known to the Bank;
- (iv) sent by electronic mail to the electronic mail address last known to the Bank;
- (v) sent by short messaging system (SMS) to the mobile phone number last known to the Bank;
- (vi) made by posting on the Bank's website; or
- (vii) made by insertion in any statement of account which the Bank sends to the Borrower.

32.1.3 The Notices will be deemed to have been received by the Borrower:-

- (i) at the time of delivery at the address of the Borrower, if delivered by hand;



- (ii) on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted, even if it is undelivered or returned;
  - (iii) at the time the facsimile transmission is completed;
  - (iv) at the time the electronic mailing is completed;
  - (v) at the time the sending by short message system (SMS) is completed;
  - (vi) at the time of posting on the Bank's website; or
  - (vii) at the time the statement of account is deemed to have been received by the Borrower.
- 32.1.4 The Bank also reserves the right to serve on the Borrower any Notice by:-
- (i) advertisement in any one daily newspaper and such Notice will be deemed to have been served on the Borrower on the day the advertisement appears in the newspaper regardless of whether the Borrower have actually seen the advertisement; or
  - (ii) displaying at any of the Bank's place of business, any of its branches or premises and such Notice will be deemed to have been served on the Borrower on the day of such display regardless of whether the Borrower have actually seen the displayed notice.
- 32.1.5 The Borrower must notify the Bank in writing immediately on any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower.
- 32.1.6 If the Borrower do not inform the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower, the Borrower agrees that the Bank may at its absolute discretion rely on:-
- (i) any address as stated in this Agreement; or
  - (ii) any address, facsimile number, electronic mail address or mobile phone number the Bank obtain from any communication purportedly issued by the Borrower to the Bank or last known to the Bank.
- 32.1.7 The Bank's rights under this Agreement and the Security Documents are not to be affected by any failure on the part of the Borrower and/or the Security Party to notify the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Borrower and/or the Security Party.
- 32.1.8 Notices from the Borrower to the Bank may be sent by personal delivery or ordinary mail.
- 32.1.9 Notices by the Borrower to the Bank must be duly signed by the Borrower or, if permitted by the Bank, the Borrower's authorized signatories. The Notices must be served on the Bank at the address specified by the Bank from time to time. Notices are deemed received by the Bank upon actual receipt of the Notices and any additional documents or information which the Bank may require to verify the source of the Notices.

### 32.2 **Legal Process**

In addition to and not in substitution of any mode of service that may be permitted or prescribed by any written law in force for the time being, any service of Legal Process by or on behalf of the Bank can be effected on the Borrower:-

- 32.2.1 by leaving a copy at the address as stated in this Agreement or in any communication purportedly issued by the Borrower to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Borrower on the day it was left at the address; or
- 32.2.2 by sending a copy via prepaid registered or ordinary post to the address as stated in this Agreement or in any communication purportedly issued by the Borrower to the Bank or last known to the Bank and it shall be deemed to have been duly received by the Borrower on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted, even if it is undelivered or returned.

### 32.3 **Agent for Service of Legal Process**

- 32.3.1 If the Borrower resides outside Malaysia or does not have a permanent address in Malaysia (for individuals) or primarily conduct your business outside Malaysia or is a company incorporated outside Malaysia, the Borrower is required at all times to appoint and maintain a Process Service Agent in Malaysia to accept service of all Legal Process on behalf of the Borrower arising out of or connected to the Banking Facilities and the Security Documents. The Borrower shall not revoke, cancel or withdraw the authority of the Process Service Agent without having first appointed a new Process Service Agent and notified the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.
- 32.3.2 If for any reason whatsoever the Process Service Agent no longer serves as the Borrower's Process Service Agent, the Borrower shall be required to immediately appoint another Process Service Agent and notify the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.
- 32.3.3 Service on the Process Service Agent shall be effected in the same manner specified in Clause 32.1.

### 33. **SEVERABILITY**

If any of the provisions of this Agreement is or becomes invalid or unenforceable, the invalid or unenforceable provision is to be treated as having been deleted and not included in this Agreement. The remaining provisions of this Agreement are to continue to be valid, effective and enforceable and are not affected in any way by the deletion of the invalid or unenforceable provisions.

34. **NON-WAIVER**

34.1 **Failure/delay/acceptance of money**

If upon the occurrence of any default by the Borrower or Security Party the Bank fails or delays in exercising or taking any action or omitted to exercise any right, power, privilege or remedy accruing to the Bank under this Agreement or accepted any moneys from the Borrower or any Security Party, such failure, delay or omission by the Bank or acceptance of money:-

34.1.1 shall not be construed as a waiver or an acquiescence by the Bank of any of such default; and

34.1.2 shall not impair or affect the Bank's subsequent exercise of any of the Bank's right, power, privilege or remedy accrued and/or accruing to the Bank under this Agreement or the Security Documents.

34.2 **Action/acquiescence**

If the Bank took no action upon the default by the Borrower or Security Party or if the Bank acquiesce in any such default by the Borrower or Security Party, such inaction or acquiesces by the Bank shall not affect or impair any of the Bank's right, power, privilege or remedy in respect of any other or subsequent default by the Borrower or the Security Party.

35. **CUMULATIVE REMEDIES**

The rights, remedies, powers, and privileges provided under this Agreement are cumulative and are not exclusive of any rights, remedies, and privileges provided by law, in any other agreement between the parties or otherwise.

36. **PRESERVATION OF RIGHTS AND ENTITLEMENT**

The Borrower agrees that, regardless of what is stated anywhere else in this Agreement or the Security Documents, the Bank's rights as stated in this Agreement or the Security Documents will continue to remain in full force and effect and shall survive any cancellation, revocation or suspension of the Banking Facilities by the Bank.

37. **INCONSISTENCIES**

The provisions of this Agreement, including the Schedules are in addition to the terms and conditions contained in the Letter of Offer (which terms and conditions shall be deemed incorporated into this Agreement as if the same are set forth in this Agreement in full). In the event there is any inconsistency between any of the provisions of this Agreement with the Letter of Offer and/or the Schedules:-

(i) the terms and conditions in the Letter of Offer shall prevail over those terms and conditions in the Schedules; and

(ii) the terms and condition in the Schedules shall prevail over the terms and conditions in this Agreement.

38. **UPSTAMPING**

38.1 If the total moneys advanced to the Borrower or due and owing by the Borrower to the Bank shall at any time exceed the principal limit for which this Agreement or the Letter of Offer is for the time being stamped, the Bank shall have the right at any time without prior notice to the Borrower to up-stamp this Agreement from the date such principal limit is exceeded.

38.2 The cost and expenses of up-stamping this Agreement, including any penalty payable, shall form part of the moneys secured by this Agreement and the Security Documents.

39. **GOVERNING LAW**

This Agreement and the Security Documents are to be governed by and interpreted in accordance with the laws of Malaysia and the Borrower agrees that, upon the Borrower's acceptance of the Banking Facility, the Borrower is deemed to have unconditionally and irrevocably:-

39.1 agreed that any dispute involving this Agreement and the Security Documents may be submitted to the courts of law within and outside of Malaysia;

39.2 agreed not to raise any objection to any dispute being submitted in any particular court of law on the basis that it is not the correct or most convenient court for the dispute to be submitted to; and

39.3 consented to the service on the Borrower of any demand by the Bank and of any court documents by registered mail or by any other manner allowed by the relevant laws.

40. **SUCCESSOR-IN-TITLE**

This Agreement will be binding on the Borrower's heirs, personal and legal representatives and successors in title (as the case may be) and, if it is signed by more than one party, the liability of each of the parties signing this Agreement and of their respective heirs, personal or legal representatives and successors in title (as the case may be) to the Bank shall be joint and several and every agreement and undertaking contained in this Agreement will be read and applied accordingly.

41. **PRINCIPAL AND SECONDARY INSTRUMENT**

It is agreed and declared that the Letter of Offer, this Agreement and the Security Documents are instruments employed to secure the aggregate principal sums as evidenced by the *ad valorem* stamp duties paid on the original of this Agreement, including any *ad valorem* stamp duties paid pursuant to **Seventh Schedule**. For the purpose of Section 4(3) of the Stamp Act 1949, this Agreement is deemed to be the primary or principal instrument and the Letter of Offer and the other Security Documents are deemed to be the auxiliary or secondary instruments.

*(The remainder of this page is intentionally left blank)*

Signed by the parties on the day and year stated in Section 1 of the First Schedule.

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the aforesaid Bank by its Attorney )  
in the presence of: )

**Borrower**

\*Signed by )  
)  
\*for and on behalf of )  
\*The common seal of )  
)

the aforesaid Borrower  
\*was affixed to this document  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete wherever inappropriate*

**FIRST SCHEDULE**

**Section 1**                      **Date of this Agreement**

**Section 2**                      **Address of the Bank**

**Section 3**                      **Particulars of the Borrower**

**Section 4**                      **Date of Letter of Offer**

**SECOND SCHEDULE**

(Pursuant to Clause 2.1.22 of this Agreement)

**ADDITIONAL REPRESENTATIONS AND WARRANTIES**

**THIRD SCHEDULE**

(Pursuant to Clause 5.1.1 of this Agreement)

**ADDITIONAL CONDITIONS PRECEDENT**



**FOURTH SCHEDULE**

(Pursuant to Clause 12.1.17 of this Agreement)

**ADDITIONAL POSITIVE COVENANTS**

**FIFTH SCHEDULE**

(Pursuant to Clause 13.1.14 of this Agreement)

**ADDITIONAL NEGATIVE COVENANTS**

**SIXTH SCHEDULE**

(Pursuant to Clause 26.7 of this Agreement)

**ADDITIONAL TERMS AND CONDITIONS**

1. **Additional terms and conditions if any Security to be provided comprise of immovable property**

1.1 All moneys payable on the property which is charged or assigned to the Bank, such as quit rent, assessment rates and maintenance, sewerage and utilities charges, sinking funds, insurance premium must be paid up to date; the Borrower must submit proof of payment to the Bank every year.

1.2 The Borrower shall adequately insure or cause to be adequately insured at all times any landed property charged or assigned to the Bank on a full reinstatement value basis up to its full insurable value against loss or damage by fire, lightning, tempest, flood, riot, civil commotion, malicious acts and strikes, landslides, earth movement, subsistence and such other risks as the Bank may from time to time require with an insurance company acceptable to the Bank in the name of the Borrower or, where applicable, the Security Party, with the endorsements below on the insurance policy and deposit or cause to be deposited with the Bank a certified true copy of the insurance policy effected under this clause together with the evidence of payment of the current premium payable under such policy:-

- (a) that the Bank as the chargee, assignee and loss payee; and
- (b) that the interests of the Bank under the policy shall not be invalidated by any one or more of the following:-
  - (i) act or neglect of the Borrower or, where applicable, the Security Party as owner of the property;
  - (ii) any foreclosure or other proceedings or notice of sale relating to the property;
  - (iii) any change in the title or ownership of the property; or
  - (iv) the occupation of the property for the purposes more hazardous than what is permitted by the policy

provided that in case the Borrower or, where applicable, the Security Party as owner of the property neglect to pay any premium due under the policy, the Bank shall on demand pay the same. Additionally, if so required by the Bank, the Borrower or, where applicable, the Security Party shall also keep insured the whole or any parts of the property and effects included in the property charged or assigned to the Bank of an insurable nature against loss or damage by fire and all other such risks and contingencies.

Such policy shall also provide that the insurer must give reasonable written notice to the Bank if the insurer cancels the policy or refuses to renew it. If the insured has failed to pay the premium, the insurer must notify the Bank at least ten (10) days in advance before canceling the policy. If the insurer cancels the policy for any reason other than non-payment of the premium, it must provide thirty (30) days' advance notice to the Bank. Should the insurer decide not to renew the policy, it must provide the Bank ten (10) days' notice.

The Borrower or, where applicable, the Security Party shall deposit and cause to be deposited with the Bank a copy of the insurance policies and will from time to time pay all premium to ensure the effectiveness of the insurance policies and deliver the relevant receipts to the Bank.

- 1.3 If the property charged or assigned to the Bank is:-
- (a) landed residential property, a House owner's Policy shall be effected by the Borrower or, where applicable, the Security Party;
  - (b) landed commercial or industrial property, a Fire Policy shall be effected by the Borrower or, where applicable, the Security Party; and
  - (c) covered by the Strata Titles Act 1985, the Borrower or, where applicable, the Security Party shall give to the Bank proof that the building comprising and including the property securing the Banking Facilities is insured against fire and such other risks as prescribed in the Strata Titles Act 1985 for its full reinstatement value

and if the Bank is not in receipt from the Borrower or, where applicable, the Security Party of such proof, a House owner's Policy shall be effected by the Borrower or, where applicable, the Security Party. Notwithstanding the provision herein, in the event the Assignor does not effect, maintain or renew any such insurance stated above, the Bank can (but is not obliged to), at the Borrower's or, where applicable, the Security Party's cost and expense, effect, maintain, or renew any such insurance as the Bank may think fit.

- 1.4 Without affecting the provisions above (and whether or not the Borrower is in default), the Borrower agrees that if the Bank in its absolute discretion consider necessary, the Borrower authorizes the Bank to take out, maintain or renew the insurances referred to above and:-
- (a) all moneys and expenses incurred by the Bank with interest thereon calculated at the default rate stated in the Letter of Offer shall form part of the Banking Facilities and Indebtedness be repayable to the Bank on demand by the Bank; and
  - (b) any commission which may be paid to the Bank as a commission agent of the insurance company belongs to the Bank.

For the avoidance of doubt, the Borrower or, where applicable, the Security Party agrees that:-

- (a) unless requested or consented to by the Bank, the Borrower or, where applicable, the Security Party will not take out or keep on foot any insurance against any risk in respect of the property, fixture, structures, premises, and effects where the Bank or the Borrower or, where applicable, the Security Party has effected or kept on foot any such insurance; and
  - (b) the Bank shall not be held liable to the Borrower and/or the Security Party for anything whatsoever if the Bank took out or fails to take out, maintain, renew or increase any such insurance or otherwise.
- 1.5 The Bank can at its discretion require all monies received on any insurance of the property and effects, whether effected by the Bank or by the Borrower and/or the Security Party, to be applied:-

- (a) in or towards making good the loss or damage in respect of which the money is received if it is decided by the joint management body or management corporation that the property is to be reinstated; or
- (b) at the option of the Bank, in or towards the discharge of any Indebtedness if it is decided by the joint management body or management corporation that the property is not to be reinstated

The Borrower and/or the Security Party shall ensure that all insurance proceeds received pursuant to the policy referred to above are applied as above unless the Bank shall decide otherwise. If the insurance proceeds is paid to or received by the Borrower or the Security Party, such insurance proceeds shall be held by the Borrower and/or the Security Party in trust for the Bank.

- 1.6 The Borrower must not renovate or refurbish the property without first obtaining the Bank's written consent. The Bank has the right not to give its consent. If the Bank gives its consent, the Bank has the right to impose such terms and conditions as the Bank deems fit which may include the Borrower taking up of a Contractors' All Risk Policy for the renovation or refurbishment work before the start of the work with an insurance company appointed by the Bank and with the Bank named as chargee and loss payee. If the Borrower does not give the Bank proof acceptable to the Bank that the Borrower has taken up the Policy, the Bank may arrange for insurance coverage at the Borrower's expense by debiting the Borrower's account.

- 1.7 The Borrower and/or the Security Party shall, if at any time required by the Bank at its absolute discretion, take up and maintain a life assurance policy and/or any other policy guaranteeing the repayment of the Indebtedness, whether absolute and/or on the happening of a contingency, and to assign to the Bank such policy and all connected benefits and advantages as further security for the Indebtedness.

If the Borrower and/or the Security Party fails to take up and maintain the insurance policy above and assigning the same when required, the Bank can at its absolute discretion and at the costs and expense of the Borrower and/or the Security Party, take up and maintain a policy guaranteeing the repayment of the Indebtedness on such terms as the Bank thinks fit and such costs and expenses incurred by the Bank shall be payable by the Borrower and/or the Security Party with interest at the default rate as specified in this Agreement and until payment will form part of the Indebtedness.

The Borrower and/or the Security Party will allow all insurance policies and the receipts or other evidence of payment of premium to be kept by the Bank. The Borrower and/or the Security Party will when required deliver or produce to the Bank or to such persons designated by the Bank, any insurance policy effected by the Borrower and/or the Security Party and the receipt or other evidence of payment of the current premium for the policy.

- 1.8 If the property is charged or assigned to some other party, the Bank has the right to use the Banking Facilities or any part of it to pay the redemption sum to redeem the property. If the Bank exercises this right, the acknowledgement or receipt of that other party will be binding on the Borrower as if it was the Borrower who had received payment from the Bank.

- 1.9 The Bank also has the right to use the Banking Facilities or any part of it to pay the balance of the purchase price of the property to the vendor who sold the property to the Borrower or the Security Party. If the Bank exercises this right,

the acknowledgement or receipt of that other party will be binding on the Borrower as if it was the Borrower who had received payment from the Bank.

2. **Bank's right to withhold release**

The Bank shall cease to be under any obligation or commitment to grant the Banking Facilities if at any time:-

- (a) before the release of the Banking Facilities, the Bank decides, at its sole discretion, that the granting of the Banking Facilities would likely to be detrimental to its own position or otherwise undesirable; or
- (b) before the full release of the Banking Facilities, the Bank decides, at its sole discretion, that any condition precedent or additional term or condition for any release or further release of any part of the Banking Facilities has not been fulfilled to the Bank's satisfaction.

**SEVENTH SCHEDULE**

(Pursuant to Clause 41 of this Agreement)

**PRINCIPAL AMOUNT SECURED**

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the Facilities Agreement bearing the date below ("Facilities Agreement") made between the Bank and the Borrower.

This Seventh Schedule is and constitute part of the Facilities Agreement bearing the date stated below and the Borrower confirms that the Banking Facilities secured by the Facilities Agreement are the banking facilities granted by the Bank to the Borrower under the letter of offer bearing the date and for the amount stated below:-

Date of the Facilities Agreement :

Date of the Letter of Offer :

Amount secured by the Facilities Agreement :

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the aforesaid Bank by its Attorney )  
in the presence of:

**Borrower**

\*Signed by )  
)  
\*for and on behalf of )  
\*The common seal of )  
)  
)  
the aforesaid Borrower )  
\*was affixed to this document )  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete whichever is not applicable*

70B

**SEVENTH SCHEDULE**

(Pursuant to Clause 41)

**PRINCIPAL AMOUNT SECURED**

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the Facilities Agreement bearing the date below ("**Facilities Agreement**") made between the Bank and the Borrower.

This Seventh Schedule is made on the date stated below and is a supplemental agreement to the Facilities Agreement and the Borrower confirms that the Banking Facilities secured by the Facilities Agreement will include the banking facilities granted by the Bank to the Borrower under the letter of offer bearing the date and for the amount stated below:-

Date of the Facilities Agreement :  
Date of this Supplemental Agreement :  
Date of the Letter of Offer :  
Additional Amount secured by the :  
Facilities Agreement

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
The aforesaid Bank by its Attorney )  
in the presence of:

**Borrower**

\*Signed by )  
 )  
\*for and on behalf of )  
\*The common seal of )  
 )  
 )  
the aforesaid Borrower )  
\*was affixed to this document )  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete whichever is not applicable*



**SEVENTH SCHEDULE**

(Pursuant to Clause 41)

**PRINCIPAL AMOUNT SECURED**

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the Facilities Agreement bearing the date below ("**Facilities Agreement**") made between the Bank and the Borrower.

This Seventh Schedule is made on the date stated below and is a supplemental agreement to the Facilities Agreement and the Borrower confirms that the Banking Facilities secured by the Facilities Agreement will include the banking facilities granted by the Bank to the Borrower under the letter of offer bearing the date and for the amount stated below:-

Date of the Facilities Agreement :  
Date of this Supplemental Agreement :  
Date of the Letter of Offer :  
Additional Amount secured by the :  
Facilities Agreement

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the aforesaid Bank by its Attorney )  
in the presence of:

**Borrower**

\*Signed by )  
)  
\*for and on behalf of )  
\*The common seal of )  
)  
)  
the aforesaid Borrower )  
\*was affixed to this document )  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete whichever is not applicable*

70D

**SEVENTH SCHEDULE**

(Pursuant to Clause 41)

**PRINCIPAL AMOUNT SECURED**

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the Facilities Agreement bearing the date below ("**Facilities Agreement**") made between the Bank and the Borrower.

This Seventh Schedule is made on the date stated below and is a supplemental agreement to the Facilities Agreement and the Borrower confirms that the Banking Facilities secured by the Facilities Agreement will include the banking facilities granted by the Bank to the Borrower under the letter of offer bearing the date and for the amount stated below:-

Date of the Facilities Agreement :  
Date of this Supplemental Agreement :  
Date of the Letter of Offer :  
Additional Amount secured by the :  
Facilities Agreement

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the Bank by its Attorney )  
in the presence of:

**Borrower**

\*Signed by )  
 )  
\*for and on behalf of )  
\*The common seal of )  
 )  
 )  
the aforesaid Borrower )  
\*was affixed to this document )  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete whichever is not applicable*

**SEVENTH SCHEDULE**

(Pursuant to Clause 41)

**PRINCIPAL AMOUNT SECURED**

All expressions used in this Seventh Schedule have the same meaning assigned to such expressions in the Facilities Agreement bearing the date below ("**Facilities Agreement**") made between the Bank and the Borrower.

This Seventh Schedule is made on the date stated below and is a supplemental agreement to the Facilities Agreement and the Borrower confirms that the Banking Facilities secured by the Facilities Agreement will include the banking facilities granted by the Bank to the Borrower under the letter of offer bearing the date and for the amount stated below:-

Date of the Facilities Agreement :

Date of this Supplemental Agreement :

Date of the Letter of Offer :

Additional Amount secured by the  
Facilities Agreement

**Bank**

Signed by )  
for and on behalf of )  
**United Overseas Bank** )  
**(Malaysia) Bhd** )  
the aforesaid Bank by its Attorney )  
in the presence of:

**Borrower**

\*Signed by )  
)  
\*for and on behalf of )  
\*The common seal of )  
)  
)  
the aforesaid Borrower )  
\*was affixed to this document )  
in the presence of:

.....  
\*Authorised Signatory  
Name :  
NRIC :

.....  
\*Director  
Name :  
NRIC :

.....  
\*Director / Secretary  
Name :  
NRIC :

*\*Delete whichever is not applicable*