

## CHARGE (ANNEXURE)

I/We, the person(s) described as the Chargor in Section 1 of the Schedule ("**Chargor**") has/have this day charged the land described in the Jadual/Memorandum of Charge to **UNITED OVERSEAS BANK (MALAYSIA) BHD.** (Company No. 199301017069 (271809 K)) a company incorporated in Malaysia with a place of business as stated in Section 2 of the Schedule ("**Bank**") on the terms and conditions in this Charge.

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<u>Words</u>	<u>Meaning</u>
Associated Party	Any of the following:- <ul style="list-style-type: none"> <li>(a) The Borrower's director.</li> <li>(b) The Borrower's shareholder.</li> <li>(c) A company in which any of the Borrower's directors is a director or shareholder.</li> <li>(d) A company in which any of the Borrower's shareholders is a shareholder or director.</li> <li>(e) The Borrower's holding company.</li> <li>(f) The Borrower's subsidiary company.</li> <li>(g) A company in which the Borrower is directly or indirectly a shareholder.</li> <li>(h) A partnership in which the Borrower is a partner.</li> <li>(i) A sole-proprietorship in which the Borrower is a proprietor.</li> <li>(j) A company in which the Borrower is a director.</li> </ul>
Bank Negara Malaysia	The Central Bank of Malaysia established under the Central Bank of Malaysia Act 2009.
Banking Facilities	All the banking facility or facilities offered by the Bank to the Borrower in the Letter of Offer or if any of the Banking Facilities is varied in any way by a letter from the Bank to the Borrower, " <b>Banking Facilities</b> " will also refer to and include such further or other banking facilities accepted by the Borrower and to the Banking Facilities as varied, "Banking Facility" means any one of the Banking Facilities.
Borrower	The person named in Section 3 of the Schedule. Where the Borrower and the Chargor are the same person, "the Borrower" will be used interchangeably with "the Chargor".
Chargor	The person named in Section 1 of the Schedule. Where the Borrower and the Chargor are the same person, "the Borrower" will be used interchangeably with "the Chargor".

Commitment	The commitment of the Bank to the Borrower to make available the Banking Facilities upon the terms and conditions of this Charge, and the terms and conditions referred to in the Facilities Agreement.
Event of Default	Any of the events or matters specified in Clause 9.
Facilities Agreement	The agreement bearing the date stated in Section 4 of the Schedule made between the Bank and the Borrower relating to the Banking Facilities and includes any variations, and supplements thereto.
FATCA	Means: <ul style="list-style-type: none"> <li>(i) the Internal Revenue Code of 1986 issued by the US or any associated regulations or other official guidance;</li> <li>(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 (a) above;</li> <li>(iii) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.</li> </ul>
Group	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.
Indebtedness	<p>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:-</p> <ul style="list-style-type: none"> <li>(i) the Banking Facilities or any account and includes all liabilities incurred by the Borrower to the Bank in respect of:- <ul style="list-style-type: none"> <li>(a) any loans, credit, advances or payments made to or for the use, benefit or accommodation or on behalf of the Borrower;</li> <li>(b) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Borrower;</li> </ul> </li> </ul>

- (c) any bond, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Borrower's request;
- (d) foreign exchange transactions, and any contracts for the forward delivery of goods, bills, or specie;
- (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 the Bank's 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.

Land	The land described in the Memorandum of Charge attached, and/or any building and fixture now or hereafter or from time to time erected thereon or affixed thereto or any part or portion thereof and includes inventories thereon and where applicable shall include any accessory parcel and shall have the meaning assigned to "land" under the Land Code, or "parcel" under the Strata Titles Act, as the case may be.
Land Code	The National Land Code (Revised) 2020, including the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be and as revised or amended from time to time.
Letter of Offer	The letter from the Bank addressed to the Borrower and bearing the date stated in the First Schedule to the Facilities Agreement and shall include the letters of offer referred to in the <b>Seventh Schedule</b> to the Facilities Agreement and such other letter(s) of offer or facility letter(s) issued by the Bank after the date of the Facilities Agreement and accepted by the Borrower by which the Bank agreed to grant and the Borrower agreed to accept the Banking Facilities stated therein, whether by way of addition, revision, variation or substitution.
Personal Data	Include, but is not limited to, the Chargor's name, address, occupation, contact details, information captured on security systems (including a recording of the Chargor's image on Closed Circuit Television (CCTV)), the information contained in any of the Chargor's account(s) the Chargor may have with the Bank either singly or jointly with any other person, the

	type of products and/or services that the Chargor has subscribed to with the Bank and such other necessary data regarding the Chargor and the Chargor's transaction(s) with the Bank.
Prescribed Rate	Such rate fixed by the Bank from time to time for each of the Banking Facility which comprise the base lending rate and interest at such rate as stated in the Letter of Offer, including the rate as changed from time to time..
Security Documents	This Charge, the Facilities Agreement, Letter of Offer, and any other guarantee, charge, indemnity, debenture, and any other security documents that have been or will be executed by the Borrower and/or the Chargor and/or any Security Party to secure the payment or repayment of the Indebtedness.
Security Party	Any party, including the Borrower who executes or from time to time executes the Security Documents and/or provides any Security to secure the payment of all or part of the Indebtedness
Strata Titles Act	The Strata Titles Act, 1985 or the Sabah Land Ordinance (Cap. 68) and Land (Subsidiary Title) Enactment, 1972 (Sabah) or the Strata Titles Ordinance, 1995, as the case may be.
US	United States of America.
US Person(s)	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 FATCA. 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).

## 1.2 Definitions in the Facilities Agreement

Except as otherwise defined herein or where the context otherwise requires, all expression used in this Charge shall have the same meanings as those assigned to such expressions under the Facilities Agreement.

## 1.3 Interpretation

The provisions of Clause 1.2 of the Facilities Agreement shall with such modifications so as to include and apply to the Chargor, be applicable mutatis mutandis to this Charge.

## **2. CHARGE AS SECURITY FOR INDEBTEDNESS**

### **2.1 Charge as security**

- (a) In consideration of the Bank, at the request of the Borrower and/or the Chargor, agreeing to grant, or continuing to grant or make available to and for the benefit of the Borrower, Banking Facilities as the Bank thinks fit, and as security for the repayment of the sums referred to in Clause 2.2(c) below, the Chargor hereby charges the Land to the Bank by way of a fixed charge under the provisions of the Land Code.
- (b) This security is created upon the terms and conditions in this Charge.

### **2.2 Covenant to pay**

- (a) The Chargor covenants and undertakes that it will duly and punctually:-
  - (i) pay, and discharge all its obligations with respect to, the Indebtedness in accordance with the provisions of the Security Documents;
  - (ii) pay all costs, fees, charges and expenses whatsoever which the Bank may pay or incur in perfecting the present security or in enforcing or obtaining payment of all such moneys or in paying any expenses or outgoings whatsoever in respect of or in realising the securities (or any part thereof) and/or in defending prosecuting or otherwise howsoever taking part in or attending at (whether on a watching brief as observer or otherwise howsoever) any action, enquiry, hearing, suit or other proceedings whatsoever affecting the securities; and
  - (iii) pay the Indebtedness as and when the same falls due for payment or immediately on demand by the Bank, provided that neither this covenant nor the security created by or pursuant to this Charge shall extend to or include any obligation or sum which would, but for this proviso, cause such covenant or security to be unlawful or prohibited by any applicable law.
- (b) The Chargor acknowledges and agrees that the Bank can at its absolute discretion at any time suspend or cancel its Commitment, and demand for the immediate repayment of the Banking Facilities.
- (c) The Chargor's covenant and undertaking shall be for the entire Indebtedness with interest accruing thereon (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) to the date of full payment at the Prescribed Rate, together with commission, discount, other banking charges, and all costs, charges, and other expenses the Bank may charge in respect of the Banking Facilities or any of the matters under this Charge, or which the Bank may pay or incur under this Charge.

### 2.3 Continuing security

The security created by this Charge is and will be a continuing security for the Indebtedness, and will continue to be held by the Bank until all the Indebtedness has been fully settled by the Borrower and/or the Chargor and 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 notwithstanding that the Borrower and/or the Chargor may at any time cease to be indebted to the Bank for any period(s), and regardless of:-

- (a) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
- (b) the death, insanity or bankruptcy or insolvency of the Borrower and/or the Chargor;
- (c) the voluntary or compulsory liquidation of the Borrower and/or the Chargor;
- (d) 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 Chargor is currently being carried on;
- (e) 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.

### 2.4 Restriction against other charges

- (a) The Chargor declares that there is no mortgage, charge, pledge, lien, security assignment, right of set-off, caveats, or other security interests or any other similar agreement or arrangement having priority over, or ranked equal, to this Charge.
- (b) The Chargor agrees not to sell, charge, mortgage, assign, execute any form of debenture (whether fixed or floating), pledge or lien, lease, agree to lease, let, or part with possession of all or part of the Land, or raise money on the security of the Chargor's rights in the Land, or deal with the Land in any manner without the Bank's prior written consent. The Bank's consent can be given or withheld at the Bank's absolute discretion.
- (c) This Charge will not affect any collateral security now or in future given to the Bank, whether the same is to secure full payment of the Indebtedness, and whether the security is taken as additional or collateral security or otherwise.

### 2.5 Liens and other security not affected

- (a) Nothing in this Charge will 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.
- (b) Nothing in this Charge will 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.

## **2.6 Procedure on notice of further charge**

- (a) If the Chargor (or any one or more of them) executes or creates any further or subsequent charge, mortgage, or encumbrance over all or any part of the Land 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 Chargor in its books.
- (b) 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").
- (c) From the time of notice, all payments in account made by the Borrower and/or the Chargor 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 and/or the Chargor to the Bank at the time of notice.
- (d) Nothing in this Clause will affect the security which the Bank otherwise would have had under this Charge for the payment of the Indebtedness, even though it may become due or owing or be incurred after the time of notice.

## **2.7 Covenant to perfect and provide further security**

- (a) The Chargor will, whenever required by the Bank, execute in favour of the Bank (or as the Bank may direct) legal or other mortgages, charges, assignments, transfers, or agreements as required by the Bank of and on the Chargor's estate, assets, or business, which now or in future will belong to the Chargor (including any vendor's lien) and the benefit of all licences held in connection with such estate, assets, or business to secure the Indebtedness.
- (b) Such mortgages, charges, assignments, transfers, or agreements will be prepared by or on behalf of the Bank at the Borrower's and/or the Chargor's cost, and will contain all terms and conditions required by the Bank to protect its interest.

## **3. BANKING FACILITY**

### **3.1 Progressive release**

- (a) The Chargor agrees that each of the Banking Facility will only be available for utilization by the Borrower during the period as specified by the Bank in the relevant Letter of Offer unless extended by the Bank in writing. Notwithstanding the provision herein, any utilization permitted by the Bank for any reason whatsoever after the aforesaid period shall not constitute a waiver by the Bank and shall not prejudice the Bank's right to disallow, stop or cease any further utilization of the remaining Banking Facility after the aforesaid period. The Chargor acknowledges that the Borrower has irrevocably authorized and the Bank has the authority to 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 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.

- (b) All advances and payments made by the Bank to the person(s) mentioned in Clause 3.1(a) ("**Third Party**") shall be deemed to have been paid to the Borrower and shall constitute and form part of the monies secured by and owing under the Facilities Agreement and the Security Documents. The acknowledgement or receipt of such Third Party will be as good, sufficient and effective as if it has been made or given by the Borrower.
- (c) The Chargor acknowledges that the Borrower has irrevocably authorizes the Bank and the Bank is entitled:-
  - (i) to issue to the Third Party or solicitors or firm of solicitors purporting to act for the Third Party, an undertaking, guarantee or covenant to release or pay to such Third Party all or such part of the Banking Facilities at such time and in such manner as the Bank may in its absolute discretion agree;
  - (ii) to release or pay 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, to release or pay to the Third Party all or such part of the Banking Facilities; and
  - (iii) 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:-
    - (aa) 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
    - (bb) 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 Chargor irrevocably agrees and confirms that the Bank is entitled to release or pay the Banking Facilities to the Third Party notwithstanding any protest or objection from the Borrower, the Chargor, 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 Chargor agrees that the Borrower and the Chargor shall only claim against such Third Party in respect of such sum released and the Borrower and Chargor shall have no claim and shall not make any claim whatsoever against the Bank arising from such release.



- (d) If the Bank or its solicitors have given or agreed to give their undertaking, guarantee, or covenant referred to Clause 3.1(c) to release or pay, all or part of the Banking Facilities in settlement of such sums payable by the Borrower and/or the Security Party under the relevant agreement, whether progressively or otherwise in accordance with the terms in the said agreement, the Borrower agrees (in addition to the Security) that:-
- (i) 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 Charge; and
  - (ii) the Chargor will at all times indemnify and keep the Bank or its solicitors indemnified against all actions, proceedings, costs, expenses, claims, and demands which may be taken, incurred, or suffered by the Bank or its solicitors arising from the Bank's or its solicitors' aforesaid undertaking given to the Third Party, the Third Party's solicitors, or the Bank's solicitors, as the case may be.

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

- (a) The Banking Facilities granted or to be granted to the Borrower is subject to review by the Bank from time to time and at any time.
- (b) Nothing in this Charge will be deemed to impose an obligation on the Bank to make or continue to make any advances or to afford any other accommodation or facility to the Borrower.

### **3.3 Prepayment**

- (a) If the Banking Facility is subject to any restriction and/or bonding period, the Borrower and/or the Chargor can only make any prepayment of the Banking Facility subject to and in compliance with the terms and conditions for prepayment as stipulated in the Letter of Offer. If the Banking Facility is not subject to any restriction and/or bonding period or such restriction or bonding period has lapsed, the Borrower and/or Chargor can after:-
  - (i) payment of all accrued interest up to the date of prepayment of all or any part of the outstanding sum of the loan;
  - (ii) giving to the Bank notice in writing of not less than the period stated in the Letter of Offer (or such other notice period fixed by the Bank from time to time), or upon payment of interest in lieu of such notice;
  - (iii) payment of a premium, if any calculated at such rates fixed by the Bank from time to time;
  - (iv) paying to the Bank such compensation for any funding loss suffered by the as a result of the prepayment, the amount of which will be determined by the Bank at its absolute discretion; and
  - (v) fulfillment of such other terms and conditions as set out in the Letter of Offer,

prepay that is, to repay to the Bank the whole of the Banking Facility or such lesser amount as the Bank may in its absolute discretion accepts, which prepayment is subject to the terms in Clause 3.3 and such other terms as set out in the Letter of Offer.

- (b) However, the acceptance of such lesser amount by the Bank will in no way entitle the Borrower and/or the Chargor to a reduction in the amount of any instalments, but only to a reduction in the number of instalments.
- (c) The amount to be prepaid will be applied in prepaying the instalment in the inverse order of maturity.
- (d) Such right to prepay will not be exercisable by the Borrower and/or the Chargor until the whole of the loan has been lent to or advanced to the Borrower.
- (e) Where the Borrower is required under the Letter of Offer to give the Bank a prepayment notice, the Borrower and/or the Chargor is not allowed to make any prepayments under any prepayment notice which has lapsed or expired.

### **3.4 Further advances**

- (a) The Bank can at its discretion from time to time and if requested by the Borrower, advance to the Borrower without any reference to the Chargor further sums of money beyond the limit approved by the Bank.
- (b) The Borrower must pay interest at such rate(s) prescribed by the Bank over and above the Prescribed Rate on such sums advanced.
- (c) All interest and such sums advanced will form part of the monies secured by this Charge.

### **3.5 Terms of Banking Facility**

With regard to any Banking Facility which is subject to any specific agreement or arrangement now or hereafter subsisting, the Borrower covenants to discharge and satisfy such Banking Facility in accordance with the terms of such agreement or arrangement.

## **4. INTEREST**

### **4.1 Calculation of interest**

- (a) Interest will be calculated in accordance with the Bank's usual practice, having regard to, amongst others, the nature of each Banking Facility, up to the date of full payment.
- (b) Interest will be charged on all amounts outstanding under the Banking Facilities.

## 4.2 Capitalisation

- (a) Subject always to Clause 4.2(c), the interest on any principal monies for the time being secured by this Charge including capitalised interest will, at the end of each calendar month or such other periods as fixed by the Bank be capitalised and added to the principal sum then owing.
- (b) The interest will then 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 Charge, all powers and remedies conferred by law or by this Charge, and all rules of law or equity in relation to the said principal sum and interest will equally apply to such capitalised arrears of interest and to interest on such arrears.
- (c) To determine whether the limit of the principal intended to be secured by this Charge has been exceeded or not, all accumulated and capitalised interest will be deemed to be interest and not principal sum.

## 4.3 Change of interest rate

- (a) Regardless of the other provisions relating to the rate of interest in this Charge, the Bank can, from time to time at its absolute discretion, change the rate of interest by notifying the Borrower in writing of such intention.
- (b) The amended rate of interest will be effective from the date specified in the notice. Such notice will be binding on the Borrower and the Chargor, and can be served in the manner provided in Clause 13.
- (c) The Borrower and the Chargor hereby agree to irrevocably waive the requirement of the service of the notice if the change of interest rate relates only to the change in the Bank's base lending rate .
- (d) If at any time there is a change in the rate of interest, 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 date 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 date 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.
- (e) No part of any payments to be made by the Borrower and/or the Chargor 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.
- (f) 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 may at its absolute discretion make the necessary adjustment, consequent upon any change required by the Bank.

- (g) The Bank also may (without affecting the above):-
  - (i) change the amount of any instalment payments; and/or
  - (ii) change the number of any instalment payments.

#### **4.4 Interest rates in other security**

- (a) When the payment of any monies secured or intended to be secured by this Charge 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 Charge, the higher rate of interest will be payable in respect of such monies.
- (b) Nothing contained in or to be implied from this Charge 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 Charge.

#### **4.5 Commitment fee**

- (a) The Chargor agrees and undertakes to pay the Bank in addition to the interest payable, a commitment fee at the rate stipulated in the Letter of Offer (or such other rate fixed by the Bank from time to time) on any portion of any Banking Facilities unutilized by the Borrower and unless stated otherwise in the Letter of Offer, commences from the date the relevant Banking Facility is made available to the Borrower and during the period when the relevant Banking Facility is available for use by the Borrower.
- (b) 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 it will be capitalised and added to the principal sum then owing, and after that will bear interest at the relevant Prescribed Rate and be secured and payable accordingly.
- (c) All covenants and conditions contained in or implied by the Facilities Agreement and this Charge, and all powers and remedies conferred by law or by the terms and conditions of the Facilities Agreement and this Charge, and all rules of law or equity in relation to the said principal sum and interest will apply equally to the commitment fee, capitalised arrears of the commitment fee, and to interest on such arrears.
- (d) To ascertain whether the limit of the principal intended to be secured by this Charge has been exceeded or not, all accumulated and capitalised commitment fee will be deemed to be interest and not the principal sum.

#### **4.6 Additional interest and default rate**

- (a) Regardless of the other terms and conditions in this Charge, if the agreed limit on any Banking Facility fixed by the Bank is exceeded, the Bank can at any time levy or impose interest at such rates fixed by the Bank at its sole and absolute discretion at any time on any such excess amount in the respective Banking Facility calculated on a daily basis with monthly or other periodic rests in accordance with the type of Banking Facility applicable.

- (b) In addition to and without affecting the powers, rights, and remedies granted under this Charge, if the Borrower and/or the Chargor defaults in the payment on the due date of any money payable by the Borrower and/or the Chargor to the Bank, the Borrower and/or the Chargor will pay the Bank interest at the rate fixed by the Bank at its absolute discretion from time to time.
- (c) This interest will be calculated from the date of such default until the date of full payment of the said amount with monthly or other periodic rests, in accordance with the type of Banking Facility 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.

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

- (a) 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 and/or the Chargor (or where the Borrower and/or the Chargor consists of more than one person, by the death of any one of them) or liquidation of the Borrower and/or the Chargor, and a balance is owing to the Bank by the Borrower, the Borrower and/or the Chargor or the personal representative or successors-in-title of the Borrower and/or the Chargor 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, upon such rest period and in such manner as specified in the Letter of Offer or at such other rate, rest period and manner prescribed by the Bank from time to time.
- (b) The interest will be calculated 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, when such balance has been ascertained until full payment is received by the Bank.
- (c) The statement of the manager, acting manager, or any other officer of the Bank as to the amount of such balance will be final and conclusive against the Borrower and/or the Chargor, its estate executor, administrator, legal representative, or successor-in-title for all purposes, including legal proceedings, save for manifest error (for example, fraudulent entries).

### **5. THE LAND**

#### **5.1 Custody of documents**

The Bank will have custody or possession of the issue document of title in respect of the Land.

#### **5.2 Restriction on production of documents**

- (a) To the extent permitted by law, the production of any documents will be restricted to instances where the production of any document is required for any action or matter initiated or instituted by the government or any governmental authority, department, agency, or officer, and not where such document is required for any purpose or to effect any transaction conducted or initiated by the Chargor.

- (b) Nothing contained or expressed in the Land Code or any other applicable law or statute will be construed as or deemed to be consent by the Bank (whether express or implied) to any act or transaction requiring the consent of the Bank.

### **5.3 Payment of outgoings**

- (a) The Chargor will punctually pay all quit rents, assessment, rates, taxes, service charges, maintenance fees, and all other outgoings payable from time to time in connection with the Land.
- (b) The Chargor must produce to the Bank the receipts for all such payments. If the Chargor fails to pay any of the said monies, the Bank can (but is not obliged to) pay all or any part of the said monies.

### **5.4 Repairs**

- (a) The Chargor will:-
  - (i) keep the Land, including all fixture and additions, in good and substantial repair and condition to the satisfaction of the Bank;
  - (ii) permit the Bank or its agent with or without workmen and others at any time at convenient daytime hours to enter into or upon the Land and examine its state and condition; and
  - (iii) immediately repair and make good all defects and want of repair which are notified in writing by the Bank to the Chargor.
- (b) If the Chargor fails to do so:-
  - (i) the Chargor will permit the Bank to enter the Land and effect such repairs as the Bank considers necessary; and
  - (ii) the Chargor shall bear the cost and expense of such repairs.
- (c) Nothing in this Clause and no act of the Bank its servants or agents done pursuant to the provisions of this Clause will render the Bank liable as chargee in possession.

### **5.5 Maintenance**

- (a) The Chargor will not:-
  - (i) pull down or remove any building or fixture now or in future erected on or affixed to the Land or any part of the Land; or
  - (ii) make any alterations or erect any addition, or execute any improvement to the Land without the prior written consent of the Bank.
- (b) The Chargor will immediately replace and make good the same if such alteration, pulling down or removal, or any alteration or erection of any additional improvement occurs. If the Chargor fails to do so, the Bank can

(but is not obliged to) replace and make good the same, and the Chargor shall bear the cost and expense of such replacement or action.

- (c) Nothing in this Clause and no act of the Bank, its servants or agents done pursuant to the provisions of this Clause will render the Bank liable as chargee in possession.

## **5.6 Compliance with land title conditions**

- (a) The Chargor will observe and comply with any express or implied conditions, covenants, restrictions, and category of land use binding on the Land, and will not do, omit to do, or suffer to be done or omitted, any act, matter, or thing in or in respect of the Land, which will contravene the provisions of any law.
- (b) The Chargor will at all times indemnify and keep the Bank indemnified against all claims, demands, actions, proceedings, costs, and expenses in respect of any such act, matter, or thing done or omitted to be done which contravenes such provisions.

## **5.7 Information on matters affecting security**

- (a) The Chargor must inform the Bank of any application, demand, notice, order or any other document or transaction which in any way affects, concerns, or touches the Land or any part of the Land immediately upon the issuance, publication, service, or occurrence of the same, and produce the same to the Bank if requested.
- (b) The Chargor must do all acts and take all steps to safeguard and preserve all or any part of the Land, or the title or ownership of the Land.
- (c) The Chargor agrees that the Bank may at the Bank's absolute discretion, on behalf or in the name and at the expense of the Chargor, do any acts and employ any persons as the Bank deems fit for the purpose of safeguarding and preserving the Land and every part of the Land.

## **5.8 User of building and land**

- (a) The Chargor will not:-
  - (i) use, or allow to be used, any building on the Land for purposes other than those for which it was built;
  - (ii) store or bring any articles of a combustible, inflammable, or dangerous nature into the Land;
  - (iii) do or allow to be done anything which may cause any insurance policies to be void or voidable.
- (b) If required by the Bank via a written notice, the Chargor will discontinue any use of the Land or part of the Land, or any building on it, that in the Bank's opinion affects the Bank's security.

## **5.9 Dealings with security**

The Chargor will not, without the Bank's prior written consent (which consent may be withheld or granted upon such terms and conditions as the Bank may, in its absolute discretion, impose and the decision of the Bank will be final and conclusive):-

- (a) sell, transfer, charge or otherwise deal in any way with all or any part of the Land or any interest in the Land;
- (b) make the same subject to any burden, charge, encumbrance, liability, or lien;
- (c) make any application for the alteration of the category of land use or for the imposition of any fresh category of land use in respect of the Land, or for rescission removal or amendment of any condition or restriction affecting the Land;
- (d) the subdivision, amalgamation or surrender and re-alienation of the Land in any manner whatsoever.

## **5.10 Leasing and possession**

- (a) The Chargor will not lease, let out, or grant any licence or otherwise in any manner part with the possession or make or accept the surrender of any lease of or in respect of the Land or any part of the Land to any person, firms, or companies without the prior written consent of the Bank.
- (b) The Bank's consent may be given or refused at the Bank's absolute discretion, and the decision of the Bank will be final and conclusive.
- (c) The Chargor assigns and covenants to assign absolutely to the Bank all the present and future rent, licence fees, rights and benefits accruing to the Chargor under any lease, tenancy, grant or licence in respect of the Land.

## **5.11 Cultivation**

- (a) During the term of this security, the Chargor will continue to maintain the Land in a proper and workmanlike manner. Until this Charge is fully satisfied and discharged, the Bank can at all reasonable times enter the Land to view and inspect the state of the Land.
- (b) The Bank can from time to time employ at the Chargor's cost and expense visiting agents or any other persons to inspect the Land, and to produce such report as is/are required by the Bank.
- (c) During the term of this security, the Chargor will keep the Land clean, weeded, and free from lallang and other undergrowths and if the Chargor fails to do any of the same, the Bank can (but is not obliged to) employ, at the Chargor's cost and expense, labourers or workmen to keep the Land clean, weeded, and free from lallang and other undergrowths.
- (d) Nothing in this Clause and no act of the Bank, its servants or agents done pursuant to the provisions of this Clause will render the Bank liable as chargee in possession.



### **5.12 Right of inspection**

- (a) The Bank and its agents and workmen can, at all reasonable times of the day, enter the Land and access and inspect any fixture on the Land.
- (b) Such access and inspection shall not deem the Bank liable as chargee in possession.

### **5.13 Valuation**

- (a) The Chargor authorises the Bank to value the Land at such interval as the Bank decides by any valuer or qualified person chosen by the Bank, at the Chargor's sole cost and expense.
- (b) If the valuation reveals that the sale value of the Land is lower than that at the date of this Charge, the Bank can at its absolute discretion terminate the Banking Facilities or require the Borrower and/or the Chargor to provide further security within 14 days from the date of the Bank's written notice.

## **6 INSURANCE**

### **6.1 Insurance on the Land**

- (a) The Chargor shall at all times during the validity of this Charge keep any building, fixture, or structure now or in future erected on or affixed to the Land adequately insured 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 requires with an insurance company acceptable to the Bank in the name of the Chargor, 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:-
  - (i) that the Bank as the chargee and loss payee; and
  - (ii) that the interests of the Bank under the policy shall not be invalidated by any one or more of the following:-
    - (aa) act or neglect of the Chargor as owner of the Land;
    - (bb) any foreclosure or other proceedings or notice of sale relating to the Land;
    - (cc) any change in the title or ownership of the Land;
    - (dd) the occupation of the Land for the purposes more hazardous than what is permitted by the policy,

provided that in case the Chargor as owner of the Land neglects to pay any premium due under the policy, the Bank shall on demand pay the same. Additionally, if so required by the Charge, the Chargor shall also keep insured the whole or any parts of the

Land and effects included in the Land charged 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.

- (b) The Chargor shall deposit with the Bank as chargee, the insurance policies issued and will from time to time pay the premium to ensure the effectiveness of the insurance policies and deliver the relevant receipts to the Bank.
- (c) If the Land charged to the Bank is:-
  - (i) landed residential property, a house owner's policy shall be effected by the Chargor;
  - (ii) landed commercial or industrial property, a fire policy shall be effected by the Chargor; and
  - (iii) covered by the Strata Titles Act 1985, the Chargor shall give to the Bank proof that the building comprising and including the Land 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 Chargor of such proof, a house owner's policy shall be effected by the Chargor. Notwithstanding the provision herein, in the event the Chargor does not effect, maintain or renew any such insurance stated above, the Bank can (but is not obliged to), at the Borrower's or the Chargor's cost and expense, effect, maintain, or renew any such insurance as the Bank may think fit.

- (d) Without affecting the provisions above (and whether or not the Chargor is in default), the Chargor agrees that if the Bank in its absolute discretion consider necessary, the Chargor authorizes the Bank to take out, maintain or renew the insurances referred to above and:-
  - (i) 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
  - (ii) 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 Chargor agrees that:-

- (i) unless requested or consented to by the Bank, the Chargor will not take out or keep on foot any insurance against any risk in respect of the Land, fixture, structures, premises, and effects where the Bank has effected or kept on foot any such insurance; and
  - (ii) the Bank shall not be held liable to the Chargor for anything whatsoever if the Bank took out or fails to take out, maintain, renew or increase any such insurance or otherwise.
- (e) The Chargor will allow all insurance policies and receipts or other evidence of payment paid by the Chargor to remain in the custody of the Bank. When required, the Chargor will deliver or produce to the Bank or to such persons directed by the Bank, any policy of insurance effected by the Chargor and the receipt or other evidence of payment of the current premium.

## **6.2 Conflicting insurance**

Unless requested or consented to by the Bank, the Chargor will not effect or keep on foot any insurance against any risk in respect of the Land, fixture, structures, premises, and effects where the Bank or the Chargor has effected or kept on foot any such insurance.

## **6.3 Application of insurance money**

- (a) The Bank can at its discretion require all monies received on any insurance of the Land and effects, whether effected by the Bank or by the Chargor, to be applied:-
- (i) in or towards making good the loss or damage in respect of which the money is received if applicable and (as applicable) the joint management body or management corporation decided to reinstate the property; or
  - (ii) at the option of the Bank, in or towards the discharge of any Indebtedness if applicable and (as applicable) the joint management body or management corporation decided not to reinstate the property.
- (b) The Chargor will hold all monies so received on such insurance in trust for the Bank, and the Bank may receive and give a good discharge for all such monies.

## **6.4 Other policy**

- (a) The Bank can at any time at its absolute discretion require the Borrower and/or the Chargor to 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 the policy and all connected benefits and advantages to the Bank as further security for the Indebtedness.

- (b) If the Borrower and/or the Chargor fails to take up and maintain the said policy and assigning the same when required, the Bank can at its absolute discretion take up and maintain a policy guaranteeing the repayment of the Indebtedness on such terms the Bank thinks fit. In this case, all costs and expenses incurred by the Bank in taking out and maintaining the policies will be payable by the Borrower and/or the Chargor to the Bank with interest payable at the rate specified in Clause 4 or the Letter of Offer and until payment will form part of the Indebtedness.
- (c) The Chargor will allow all insurance policies and the receipts or other evidence of payment paid by the Borrower and/or the Chargor to be kept by the Bank. The Chargor 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 Chargor and the receipt or other evidence of payment of the current premium for the policy.

## **7. GOVERNMENT ACQUISITION**

- (a) The Chargor must immediately inform the Bank, and forward to the Bank copies of all notice, notification, or declaration as soon as it is delivered to or served on the Chargor in the event:-
  - (i) all or any part of the Land at any time becomes the subject matter of, or is included in any notice, notification, or declaration concerning or relating to an acquisition by the government or any governmental authority, or any enquiry or proceedings in respect of the same; or
  - (ii) any government or governmental authority condemns, nationalises, seizes, or otherwise expropriates all or any part of the Land or assumes custody or control of all or part of the Land.
- (b) The Bank can, at the Borrower's and/or the Chargor's expense, engage such advisors and agents (including solicitors and valuers) as it thinks fit to appear at, attend, or advise on any enquiry or proceedings relating to any acquisition, expropriation, or any of the matters in paragraph (a) above.
- (c) All monies received as or by way of compensation in respect of any of the matters in paragraph (a) above will be applied in or towards the discharge or payment of any monies or liability secured by this Charge, and the Chargor will and hereby declares that it will hold all such monies so received in trust for the Bank, and the Chargor agrees and confirms that the Bank may receive and give a good discharge for all such monies.
- (d) If all such monies are less than the amount due to the Bank under this Charge, including interest and all monies and other charges due and payable by the Borrower and/or the Chargor to the Bank under this Charge, the Chargor will immediately pay the Bank the difference between the amount due and the amount received, and until such payment will pay interest on such balance at the rate in Clause 4 with monthly or other periodic rests in accordance with the type of Banking Facility 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.

## 8. REPRESENTATIONS AND WARRANTIES

### (a) General Representations and Warranties

The Chargor represents and warrants to and undertakes with the Bank as follows:-

- (i) **Capacity.** The Chargor has the power or capacity to execute, deliver and perform the terms of this Charge, and that all necessary action has been taken to authorise the execution, delivery and performance of this Charge.
- (ii) **Contractual obligations.** This Charge constitutes, or when executed will constitute, the legal, valid and binding obligations of the Chargor in accordance with its terms and that the execution, delivery and performance of this Charge:-
  - (aa) will not breach any law, rule, regulation, order or decree of any governmental authority, agency or court to which the Chargor is subject; and
  - (bb) will not breach any provision of any contract, mortgage, undertaking or instrument to which the Chargor is a party or which is binding on it.
- (iii) **Authorisations and consents.** All consents, permissions, licences, approvals, authorisations, orders, and exemptions of any Ministry, agency, department, or authority in Malaysia (including if relevant, foreign exchange approval) and elsewhere which may be required or advisable for or in connection with the Banking Facilities, the execution, delivery, performance, legality, or enforceability of this Charge, have been obtained, and are in full force and effect as all the terms and conditions contained in all of such consent, permissions, licenses, approvals, authorizations, orders or exemptions obtained have been duly complied with.
- (iv) **Proceedings.** Neither the Borrower nor the Chargor is in default under any agreement to which it is a party, or by which it is bound, and no litigation, arbitration, or administration proceedings are presently current, pending, or threatened, which might materially affect its solvency or its ability to perform its obligations and where the Borrower and/or the Chargor is/are:-
  - (aa) an individual or an ordinary person, that the Borrower and/or the Chargor has/have not committed any act of insolvency/bankruptcy and that no insolvency/bankruptcy proceedings have been commenced or is/are pending or being threatened against the Borrower and/or the Chargor; or
  - (bb) a company or corporation, 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 Chargor or to wind-up the Borrower and/or the Chargor.

- (v) **Material adverse change.** There has been no material adverse change in the financial condition or operations of the Chargor since the Borrower first applied for the Banking Facilities.
- (vi) **Registered owner.** The Chargor is the registered owner of the Land, and the Chargor's interests in the Land are free from all defects and encumbrances.
- (vii) **Compliance with laws.** The financing by the Bank under this Charge, and the Bank's agreement to make and continue to make available the Banking Facilities to the Borrower will not contravene or breach of any Act of Parliament, Ordinance, enactment, rule or law, regulation, order, or other statutory provision in force now or in future, including the provisions of the Financial Services Act, 2013, the Companies Act, 2016, any lending limit or restriction imposed on the Bank, guidelines, directives, or policies introduced from time to time by Bank Negara Malaysia or such other authority having jurisdiction over the Bank.
- (viii) **No default.** No Event of Default has occurred, is continuing, or will occur as a result of the Bank making any advance or continuing to make the Banking Facilities available to the Borrower.
- (ix) **Information.** All information furnished by the Chargor in connection with the application for the Banking Facilities do not contain any untrue statement, or omit to state any fact (the omission of which makes any statement made in those circumstances misleading), and the Chargor is not aware of any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, adversely affect the Bank's decision to grant the Banking Facilities (or part of the same), or to take the security.
- (x) **Incorporation.** Where the Chargor is a corporation, that the Chargor 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.
- (xi) **No conflict or limitation.** Where the Chargor is a company or corporation, that neither (i) the execution and delivery of this Charge by the Chargor; (ii) the performance or observance by the Chargor of its obligations under this Charge; nor (iii) the performance or observance of any of the Chargor's obligations under any security document, will;-
  - (aa) conflict with, or result in a breach of its Memorandum and Articles of Association or constitution, any law, statute, regulation, judgment, order, mortgage, contract, agreement, trust deed, or other instrument, arrangement, obligation, or duty by which it is bound; or
  - (bb) cause any limitation on any of its powers, howsoever imposed, or on the right or ability of its directors to exercise such powers, to be exceeded.

- (xii) **Accounts.** Where the Chargor is a company or corporation that the Chargor's accounts provided to the Bank:-
- (aa) 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 Memorandum and Articles of Association or constitution of the Chargor;
  - (bb) together with the notes to the accounts, give a true and fair view of the financial condition and operations of the Chargor as at the date of such accounts and for the period as covered by the accounts;
  - (cc) together with those notes, disclose or reserve against the liabilities (contingent or otherwise) of the Chargor 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.
- (xiii) **Conviction.** Where the Chargor is an individual, the Chargor has not been charged or convicted for any criminal offences or have any criminal records.

Prior to and on each of the dates of 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 8(l) above will be construed as a reference to the then latest available annual accounts of the Chargor.

The Chargor acknowledges that the Bank has entered into this Charge on the basis of and in full reliance on the representations and warranties above and the Chargor 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 Charge and will be true and correct and fully observed on each and every date that any of the Banking Facilities is utilized and until the Indebtedness has been fully and completely discharged.

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 Chargor.

(b) **Financial Crime Representations and Warranties**

- (i) The Bank shall be entitled to take all actions the Bank considers appropriate in order for the Bank to meet any obligation or requirement, either in Malaysia or elsewhere, in connection with the detection, investigation and prevention of financial crime including fraud, money laundering, terrorism financing, bribery, corruption, or tax evasion or the enforcement of any economic or trade sanction ("**Financial Crime**").



- (ii) The Chargor understands and agrees that if any activities, conduct or circumstances the Chargor is involved in (directly or indirectly) may expose the Bank to legal or reputational risk, or actual or potential regulatory or enforcement actions, the Bank shall at any time, without giving any reason, have the right to immediately:-
  - (aa) exercise all the Bank's rights stated in Clause 10;
  - (bb) close all accounts and terminate all services the Chargor has with the Bank;
  - (cc) make reports and take such other actions as the Bank may deem appropriate.
- (iii) The Chargor undertakes that it will not initiate, engage in or effect a transaction (directly or indirectly) that may involve Financial Crime and agrees to hold the Bank harmless, indemnify the Bank and keep the Bank indemnified from and against any and all liabilities, claims, obligations, losses, damages, penalties, actions, judgments, suits, costs (including, but not limited to, legal costs on a full indemnity basis), expenses and disbursements of any kind whatsoever which the Bank may suffer or incur in connection with or arising from any breach by the Chargor of this undertaking.

## 9. DEFAULT

### 9.1 Events of default

The Events of Default are the following:-

- (a) **Non-payment or non-compliance.** The Borrower and/or the Chargor fails to pay on the due date any money or discharge any obligation or liability payable by the Borrower and/or the Chargor from time to time due to the Bank, or fails to comply with any term or condition of any Banking Facility from the Bank.
- (b) **Representation, warranty or undertaking.** If any representation, warranty or undertaking made to the Bank by the Borrower and/or the Chargor and/or any Security Party is or will become incorrect or misleading in a material respect.
- (c) **Non-observance or non-performance.** The Borrower and/or the Chargor and/or any Security Party fails to observe or perform any of the agreements, covenants, stipulations, terms and conditions on the part of the Borrower and/or the Chargor and/or any Security Party contained in this Charge, or under any other charge or Security Documents.
- (d) **Cessation of business.** The Borrower and/or the Chargor and/or any Security Party ceases or threatens to cease to carry on its business.
- (e) **Death or winding-up.** The Borrower and/or the Chargor and/or any Security Party dies, or a petition is presented, an order is made, or a



resolution is passed for the winding-up of the Borrower and/or the Chargor and/or any Security Party.

- (f) **Receiver and Manager appointed.** A Receiver and/or Manager is appointed to receive and/or manage all or part of the assets, undertaking or property of the Borrower and/or the Chargor and/or any Security Party pursuant to any charge, debenture, security document or otherwise.
- (g) **Bankruptcy.** The Borrower and/or the Chargor and/or any Security Party becomes bankrupt or allows any judgment against the Borrower and/or the Chargor and/or any Security Party to remain unsatisfied for 21 days.
- (h) **Inability to pay debts.** The Borrower and/or the Chargor and/or any Security Party commits an act of bankruptcy, is unable to pay its debts, or suspends the payment of its debts, or enters into any composition or arrangement with or for the benefit of the creditors of the Borrower and/or the Chargor and/or any Security Party.
- (i) **Compulsory acquisition.** A notice, proposal, or intention for compulsory acquisition of all or part of the Land is issued or made under or by virtue of an Act of Parliament, Ordinance, enactment, or rule of law, regulation, order, or other statutory provision in force now or in future.
- (j) **Bank's discretion.** The Bank decides in its sole and absolute discretion that the continuation of the Banking Facilities would be likely to be detrimental to its own position, or is otherwise undesirable, or that its security under this Charge or under any other Security Documents is in jeopardy. The Bank's opinion will be final and binding on the Borrower and/or the Chargor and/or the Security Party.
- (k) **Illegality.** Because of:-
  - (i) any change after the date of the Facilities Agreement in applicable law, regulation, or regulatory requirement; or
  - (ii) in the way any applicable law, regulation, or regulatory requirement is interpreted or applied by any relevant governmental or other authority,

it becomes unlawful or impractical for the Bank to comply with its obligations under the Facilities Agreement, or to continue to make available the Banking Facilities granted to the Borrower or to charge or receive interest at the rate applicable.
- (l) **Other indebtedness.** Any indebtedness of the Borrower and/or the Chargor and/or any Security Party becomes capable, in accordance with its terms, of being declared due prematurely because:-
  - (i) of a default by the Borrower and/or the Chargor and/or any Security Party in its respective obligations;
  - (ii) the Borrower and/or the Chargor and/or any Security Party fails to make any relevant payment on its due date, or if due on demand when demanded;
  - (iii) the security for any such indebtedness becomes enforceable.

- (m) **Security.** The security created under this Charge, or any guarantee, indemnity, or other security for all or part of the Banking Facilities:-
  - (i) fails or ceases to have full force and effect or to be continuing;
  - (ii) is terminated or disputed or jeopardised or invalidated;
  - (iii) is unenforceable.
- (n) **Other events.** Any other event or series of events whether related or not (including any adverse change in the financial condition of the Borrower and/or the Chargor and/or any Security Party) could or might affect the ability or willingness of the Borrower and/or the Chargor and/or any Security Party to comply with all or any of its obligations under this Charge, or under any other Security Documents.
- (o) **Cross default.** The Borrower and/or the Chargor and/or any Security Party and/or any Associated Party fails to discharge any obligation or liability with the Bank or any other party, or default in the payment of any monies to the Bank or any other financial institution or other party.
- (p) **Enforcement by creditor.** The Borrower and/or the Chargor and/or any Security Party and/or any Associated Party defaults under any loan, facility or accommodation granted to them (whether by the Bank or any other party) which gives the right to the creditor concerned or the holder of the obligation concerned the right to accelerate repayment of, withdraw; and/or enforce security for, such loan, facility or accommodation.
- (q) **Default in other accounts.** There is a default in the payment of any monies under the accounts of any other party for which the Borrower and/or the Chargor and/or any Security Party and/or any Associated Party are providing security or guarantee.
- (r) **Facilities Agreement.** An event of default has occurred under the Facilities Agreement.

## 9.2 Bank's Rights on Event of Default

If any of the events of default in Clause 9.1 occurs:-

- (a) then without affecting Clause 2.2(c), the Bank can (but is not obliged to) by written notice to the Borrower declare that the Banking Facilities are cancelled;
- (b) following the notice given above, the Bank's Commitment will cease, and the total aggregate principal amounts outstanding under the Banking Facilities together with interest and all other sums payable under this Charge will immediately become due and payable on demand;
- (c) the Borrower and/or the Chargor shall provide cash cover on demand for all contingent liabilities of the Borrower 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 from time to time entered into by the Bank for or at the request of the Borrower; and

- (d) the Bank can exercise all or any of its rights and remedies in Clause 10.

### **9.3 Discontinuance of progressive release**

Regardless of anything in this Charge, the Bank can, at its absolute discretion and without having to give any reason, and without discharging or affecting the security created by this Charge, refuse and/or discontinue the progressive release of all or any part of the Banking Facilities for the Borrower's and/or the Chargor's use or benefit if:-

- (a) the Borrower and/or the Chargor fails and/or refuses and/or neglects to promptly pay the interest due on any of the progressive releases in accordance with the terms and conditions in any other security document, or any other charges, expenses, or outgoings due by the Borrower and/or the Chargor under this Charge; or
- (b) the Borrower and/or the Chargor breaches any of the express or implied terms and conditions in this Charge.

## **10 REMEDIES**

### **10.1 Remedies of the Bank**

- (a) Upon demand or upon the occurrence of an Event of Default, the Bank can exercise all or any of the following rights and powers:-
  - (i) To enter and take possession of all or part of the Land, and to terminate summarily the Chargor's licence to occupy the Land.
  - (ii) To let or lease all or part of the Land for such term of years, at such rent, and generally on such terms the Bank decides at its absolute discretion.
  - (iii) To receive rents and profits of the Land.
  - (iv) To sell the Land by public auction or private treaty at such price, in such manner, and generally on such terms the Bank decides at its absolute discretion. The Bank can bid at any such sale.
  - (v) To sue and bring a civil action to recover the Indebtedness.
- (b) The Borrower and/or the Chargor must do all things and execute all documents required by the Bank in respect of the above.
- (c) No person dealing with the Bank will be required to check whether the power exercised by the Bank in enforcing this Charge has become exercisable.

### **10.2 Statutory notice**

- (a) If the Chargor breaches any of the agreements, covenants, terms, stipulation, and undertakings in this Charge which the Chargor is required to observe and perform which has continued for more than one month, the Bank can give a statutory notice pursuant to the provisions of the Land

Code requiring the Chargor to remedy the breach within 30 days from the service of the statutory notice [or 30 days where the Sabah Land Ordinance (Cap. 68) applies].

- (b) Service of such notice will be effected in the same manner as specified in Clause 13, or as prescribed by the Land Code.
- (c) If the Chargor does not remedy the breach mentioned in the statutory notice within the specified timeframe, the Bank can apply for an order for sale of the Land under the Land Code.

### **10.3 Demands**

- (a) Any demand for payment of the Indebtedness required or permitted to be given or made under this Charge to the Chargor may be made by a notice in writing requiring payment within 7 days from the date of demand.
- (b) The said demand by the Bank may be signed on behalf of the Bank by the manager, acting manager, or any other officer of the Bank or by any solicitor or firm of solicitors purporting to act for the Bank.
- (c) Such demand will be deemed to have been sufficiently served on the Chargor if it is served in accordance with Clause 13.

### **10.4 Proceeds of sale**

- (a) All monies received by the Bank from any proceedings instituted or steps taken under this Charge will be applied in the following order:-
  - (i) Firstly, to pay the quit rent, rates, taxes, assessments and other outgoings due to the relevant authorities.
  - (ii) Secondly, to pay all costs (including solicitors costs on a solicitor and client basis), charges, expenses, and liabilities incurred by the Bank in realising the Land, and to pay all other parties appointed in respect of such realization.
  - (iii) Thirdly, to pay the Bank all interests, costs, charges, commission and other monies which are outstanding in connection with the Banking Facilities.
  - (iv) Fourthly, to pay all principal monies owing to the Bank in connection with the Banking Facilities.
  - (v) Fifthly, to pay the Bank all other monies due and remaining unpaid under any of the Security Documents.
  - (vi) Sixthly, to pay the Bank any of the Borrower's and/or the Chargor'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.
  - (vii) Seventhly, towards settlement of any monies owing by any other company in the Borrower's and/or the Chargor's group of

companies (including holding, subsidiary, and associated companies) to the Bank (if any).

- (viii) Eighthly, to the Borrower and/or the Chargor or any other entitled persons.
- (b) The Bank can at its sole and absolute discretion change the order of payment above, or keep such amounts in a non-interest bearing suspense account. 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 realised from the security may be sufficient to pay.

#### **10.5 Insufficiency in proceeds of sale**

- (a) If after deducting and payment of all fees, dues, costs, rents, rates, taxes, and other outgoings on the Land from the amount realised by the Bank in a sale of the Land under this Charge and the remaining of such sale proceeds is less than the amount due to the Bank (and whether at such sale the Bank is the purchaser or otherwise) the Borrower and/or the Chargor must pay to the Bank the difference between the amount due and the net amount so realised.
- (b) Until the difference payable in the preceding paragraph is paid, the Borrower and/or the Chargor will also pay interest on such unpaid difference at the rate specified in Clause 4 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.

#### **10.6 Vacant possession**

When the powers of sale under the Land Code becomes exercisable by the Bank, the Chargor will deliver vacant possession of the Land to the Bank, or any person authorised by it, immediately on receiving the Bank's written demand.

#### **10.7 Indemnity**

In addition and without affecting the powers, rights, and remedies granted under this Charge, the Borrower and/or the Chargor 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 any default in payment by the Borrower and/or the Chargor of any sum due under this Charge, 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.

#### **10.8 Rights to concurrent remedies**

- (a) Regardless of Clause 10.5, and any contrary provision in this Charge, it is agreed that, upon the occurrence of an Event of Default or breach of any of the provisions in this Charge or other Security Documents by the Borrower and/or the Chargor and/or any Security Party, the Bank can

concurrently exercise all or any of the remedies available under this Charge or other Security Documents, or by statute or otherwise.

- (b) The remedies referred to in the previous paragraph include pursuing all remedies of sale or possession pursuant to this Charge or other Security Documents, and a civil suit to recover all Indebtedness.

#### **10.9 Involuntary loss**

- (a) In exercising or executing any of the Bank's powers under this Charge or by law, the Bank will not be liable to the Borrower and/or the Chargor for any loss or damage incurred, or alleged to be incurred, by the Borrower and/or the Chargor.
- (b) The Bank is not obliged to obtain the true or best market value of the Land.

#### **11. CONSOLIDATION**

Unless the Bank agrees otherwise, this Charge will not be discharged except on full payment by the Borrower and/or the Chargor of not only all monies secured under the Charge, 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 Chargor; 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 Chargor (or by any person through whom the Chargor claims in favour of or vested in the Bank) or otherwise, and the Bank's right of consolidation will apply to this security.

#### **12. MODIFICATION AND INDULGENCE**

The Chargor expressly consents and agrees that the Bank may at any time with prior notice to the Borrower and/or the Chargor and without in any way affecting the validity of the security, liabilities, and obligations created under this Charge:-

- (a) determine, change, or increase the Banking Facilities granted to the Borrower, and open and/or continue any account or accounts current or otherwise with the Borrower and/or the Chargor and/or any Security Party at any branch or branches of the Bank;
- (b) grant to the Borrower and/or the Chargor and/or any Security Party any time or indulgence;
- (c) renew any bills, notes, or other negotiable securities;
- (d) deal with, exchange, release, modify, or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or in future have from or against the Borrower and/or the Chargor and/or any Security Party or any other person;
- (e) compound with the Borrower and/or the Chargor and/or any Security Party and/or any other person;

- (f) at the request of the Borrower and/or the Chargor and/or any Security Party accept payment of any monies due or becoming due under this Charge by such increased or reduced instalments as may be agreed, or agree to suspend payments in reduction of principal or give such further time for payment or grant such indulgences as may be agreed;
- (g) grant further facilities to the Borrower, reinstate, change, interchange, substitute or convert the Banking Facilities or any of them, or any of the principal limits or sub-principal limits of the Banking Facilities;
- (h) review, amend, or vary the Banking Facilities granted to the Borrower or its terms and conditions; and
- (i) have recourse to all or any remedies or means for recovering the monies hereby secured which may be available for such purpose at such time and in such order and manner as the Bank may think fit.

### 13. **NOTICES**

- (a) **Language.** Any demand, request, notice or other communication ("Notices") by or on behalf of the Chargor, or the Bank must be in writing in English or Bahasa Malaysia.
- (b) **Notices to Chargor.** Notices can be given by the Bank to the Chargor by:-
  - (i) personal delivery to the usual last known place of residence, or at the last known registered office of the Chargor, or at the address of the Chargor stated in this Charge, or at the usual or last known place of business of the Chargor;
  - (ii) post (registered, AR registered, ordinary or otherwise) to any such addresses referred to in Clause 13(b)(i);
  - (iii) facsimile transmission to the Chargor's facsimile number in the Bank's records;
  - (iv) sending an email to the Chargor's email address in the Bank's records;
  - (v) sending a short message system (SMS) to the Chargor's mobile phone number in the Bank's records;
  - (vi) being displayed at the Bank's business premises;
  - (vii) being displayed on the Bank's website.
- (c) **Deemed delivery.** Notices are deemed delivered to the Chargor as follows:-
  - (i) If sent by personal delivery, at the time of delivery.
  - (ii) If sent by post, the service will be deemed to be made on the third (3rd) day (including the day of posting) from the date it is posted. In proving service, it will be sufficient to prove that the notice was

properly addressed and posted, or if it is served in such other manner as may be prescribed by the Land Code.

- (iii) If sent by facsimile, SMS, email, the service will be deemed to be made at the time when the facsimile, SMS or email transmission is completed.
- (iv) If by display at the Bank's business premises or website, the service will be deemed to be made upon the notice being displayed.

(d) **Notice from the Chargor**

- (i) Notices from the Chargor to the Bank may be sent by personal delivery or post.
- (ii) Notices by the Chargor to the Bank must be duly signed by the Chargor or, if permitted by the Bank, the Chargor's authorised signatory. The Notice 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 Notice and any additional documents or information which the Bank may require to verify the source of the Notice.

## 14. **DISCLOSURE**

The Chargor agrees that 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 Chargor or the Banking Facilities) can disclose at any time at the Bank's absolute discretion without notifying the Chargor beforehand, any information relating to the Chargor, the Chargor's accounts with the Bank, the Banking Facilities, and this Charge to the following persons:-

- (a) Any members of the Group, for any of the following purposes:-
  - (i) Providing the Borrower and/or the Chargor with banking services.
  - (ii) Reporting.
  - (iii) Data matching.
  - (iv) Improving and furthering the provision of other services by the Bank.
  - (v) Fraud or crime prevention.
  - (vi) Investigating, preventing or otherwise in relation to money laundering and criminal activities.
  - (vii) Debt collection.
  - (viii) Outsourcing the Bank's operations.



- (ix) Performance of duties as an officer of the bank or in connection with the conduct of audit or the performance of risk management.
- (x) Facilitating the performance of the Bank's or any members of the Bank's Group's function.
- (xi) Compliance with the Bank's Group's policies, guidelines, directives or requirements.
- (xii) Corporate exercise.
- (xiii) Any legal process initiated by or served on the Bank.
- (b) 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 said services, including but not limited to investigating discrepancies, errors or claims.
- (c) Any person, whether in Malaysia or elsewhere, which the Bank engages for the purpose of performing or in connection with the performance of services or operational functions which have been out-sourced.
- (d) The police or any public officer conducting an investigation in connection with any offence including suspected offences.
- (e) Other banks, financial institutions, credit bureau or credit reference agents (only for credit information).
- (f) The Bank's auditors, solicitors, and professional advisors.
- (g) 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 engages.
- (h) Any receiver the Bank appoints or appointed by any other party.
- (i) Any credit bureau of which the Bank is a member, and any other members and/or compliance committee of such credit bureau.
- (j) Any rating agency, insurer or insurance broker or direct or indirect provider of credit protection.
- (k) Any actual or potential participant or sub-participant in relation to any of the Bank's obligations under the banking agreement between the Borrower and/or the Chargor and the Bank, or assignee, novatee or transferee (or any officer, employee, agent or adviser) of any of them.
- (l) For transactions effected or processed with or without the Borrower's and/or the Chargor's authority in or through the ATMs 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 ATM card and their respective agents or contractors.
- (m) Any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over the Bank or any members of the Group.

- (n) The Central Credit Bureau or such other authority or body established by Bank Negara Malaysia, or any other authority with jurisdiction over the Bank.
- (o) Any person to whom the Bank or any members of the Group is permitted or required to disclose for the purposes of complying with the disclosure requirements of any law, regulation, guidelines or guidance given or issued by any legal, regulatory, governmental, tax, law enforcement or other authorities of any country.
- (p) Any person in connection with enforcing or protecting any right under this Charge or any Security Documents.
- (q) Any person intending to settle any monies outstanding under the Banking Facilities.

## 15. **DATA PROTECTION**

- (a) The Chargor hereby confirms that the Chargor 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 Charge as may relate to the processing of the Chargor's Personal Data. For the avoidance of doubt, the Chargor agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Charge.
- (b) The Chargor 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.
- (c) In the event the Chargor provides Personal Data relating to third parties, including data relating to their next-of-kin and dependents (where the Chargor is an individual) or data relating to their directors, shareholders, officers, individual guarantors and security providers (where the Chargor is a corporation), for the purpose of the Banking Facilities, the Chargor:-
  - (i) confirms that the Chargor 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 Charge and/or the Banking Facilities;
  - (ii) undertakes that the Chargor 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);
  - (iii) has informed the said third parties:-
    - (aa) that the Bank may collect or verify their personal and financial data with third party sources;
    - (bb) that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Notice;

- (iv) agrees to ensure that the personal and financial data of the said third parties is accurate;
  - (v) agrees to update the Bank in writing in the event of any material change to the said personal and financial data; and
  - (vi) agrees to the Bank's right to terminate the Banking Facilities should such consent be withdrawn by the said third parties.
- (d) Where the Chargor 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 Chargor's behalf, the Chargor agrees to the above said disclosures on behalf of the Chargor and others involved in the said cross-border transaction.
- (e) 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 Chargor agrees that the Bank and the Group, and the Bank's merchants and strategic partners may contact the Chargor about products, services and offers, which the Bank believes may be of interest to the Chargor or benefit the Chargor financially. Notwithstanding the foregoing, the Bank will only disclose the Chargor's Personal Data (excluding data relating to the Chargor's affairs or account) to the Bank's merchants and strategic partners where the Chargor's express prior consent has been obtained.
- (f) The Chargor may choose not to receive any direct marketing materials from the Bank or the Group by Bank making a request to the Bank at the nearest UOB Branch or by sending a written request via email to [uobcustomerservice@uob.com.my](mailto:uobcustomerservice@uob.com.my) (or such other address notified by the Bank) and the Bank will abide by the Chargor's latest written instructions to the Bank.
- (g) The Chargor 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 and/or Chargor.
- (h) The Chargor is entitled to request in writing:-
  - (i) for any information in relation to the Chargor's Personal Data that the Bank holds or stores, upon payment of a prescribed fee;
  - (ii) for any information held or stored by the Bank to be updated, amended and/or corrected;
  - (iii) for the Bank to limit the processing of the Chargor's Personal Data held or stored by the Bank; and

- (iv) to make an enquiry or complaint in respect of the Bank's processing of the Chargor's Personal Data.

For requests under (i) or (ii), the Chargor 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 Chargor may direct all the Chargor's requests to any of the Bank's branches or by sending a written request via email to [uobcustomerservice@uob.com.my](mailto:uobcustomerservice@uob.com.my) (or such other address notified by the Bank).

The Bank may charge a fee for processing the Chargor's request for access or correction. The Bank may also refuse to comply with the Chargor's request in respect of (i) or (ii) above if the information supplied by the Chargor 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 Chargor of the Bank's refusal and reason for the Bank's refusal.

- (i) The Chargor is responsible for ensuring that the information the Chargor provides the Bank is accurate, complete and not misleading and that such information is kept up to date.
- (j) The Chargor acknowledges that if the Chargor subsequently withdraws the Chargor's consent to process the Chargor's Personal Data as given earlier to the Bank, as the Bank will not be able to process and/or disclose the Chargor'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.
- (k) 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 Chargor 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.
- (l) This clause shall be without prejudice to any other clause in this Charge which provides for the disclosure of data.

## **16. COMPLIANCE WITH FATCA**

### **16.1 The Chargor shall:-**

- (i) 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; and

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

- 16.2 The Chargor represents and warrants that the Chargor 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 Chargor further acknowledges that any failure on the Chargor'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 Chargor recalcitrant and/or reportable and take all necessary action against the Chargor 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.

- 16.3 For Chargors who are individuals or a sole proprietorship, partnership or other business entity, a corporation, or an association, club or society or trust, the Chargor 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 Chargor and to governmental authorities as required by law or other agreement by or between governments. "Confidential Information" includes the Chargor's Personal Data, the Chargor's bank account details, transactional information, and any other information that a reasonable person would consider being of a confidential or proprietary nature. The Chargor's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Chargor represents that the Chargor 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 16, and that the Chargor will secure such consents and waivers in advance of providing similar information to the Bank in the future.
- 16.4 The Chargor 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 Chargor's income is reportable and some is not, the Bank will report all income unless the Bank can reasonably determine the reportable amount. The Chargor 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.
- 16.5 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 Chargor 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 Chargor's account(s) and transferring it to such tax authorities. If the Bank is not satisfied that a payment in or out of the Chargor's account(s) is lawful, the Bank may refuse to deal with it.

- 16.6 To the fullest extent as may be permitted by law, the Bank will not be liable to the Chargor for any losses, costs, expenses, damages, liabilities the Chargor 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 Chargor should be treated as being subject to tax or tax reporting obligations.
- 16.7 This Clause 16 will override any inconsistent term or consent provided by the Chargor 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 Charge. This Clause 16 shall be without prejudice to any other clause in this Charge which provides for the request for information or disclosure of data.

## **17. MISCELLANEOUS**

### **17.1 Searches**

- (a) The Bank may but is not obliged to conduct bankruptcy/winding up searches or credit related searches from any credit reference agencies, database or system on any person before and at any time after the disbursement of any of the Banking Facilities.
- (b) The Chargor consent to the Bank carrying out such searches on the Chargor to the extent permitted by law.
- (c) All charges incurred in connection with the above searches will be borne by the Chargor.

### **17.2 Payments by Bank**

- (a) All costs, charges, and expenses incurred by the Bank under this Charge, including:-
  - (i) any expenditure incurred in the creation, registration, enforcement, and/or preparation of this Charge, or in the giving of any notice, or in the making of any demand for any monies secured by this Charge (including legal fees on a solicitor and client basis);
  - (ii) paying any expenses or outgoings in respect of insuring, repairing, maintaining, managing, or realising the Land and/or any fixtures, crops, or plants on the Land;
  - (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 Land and/or any fixture, crops, or plants on the Land, 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 Charge, and other usual banker's charges,

will be payable by the Borrower and/or the Chargor to the Bank.

- (b) Until full payment the said sums will bear interest at the rate specified in Clause 4 with monthly or such other periodic rests in accordance with the type of banking facilities 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, from the date of the sums having been paid or extended, to the date of full payment.
- (c) The said sums together with interest will be debited to the Borrower's account, and will be deemed to be charged on the Land in addition to the principal sum hereby advanced and will form part of the first payment due under this Charge.

### **17.3 Taxes, Duties or Levies**

- (a) The Borrower and/or the Chargor are liable to pay for any taxes or levies which as at the date of the Letter of Offer or at any date subsequent to the date of the Letter of Offer, is required by law to be paid to any body or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank, during the continuation of the Banking Facilities so long as the Banking Facilities or any part of it remains outstanding and unpaid.
- (b) 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 and/or the Chargor and in the event that the Bank shall effect payment on the Borrower and/or the Chargor's behalf, the Borrower and/or the Chargor shall be liable to reimburse the Bank for such amounts paid.

### **17.4 Waiver**

- (a) Time will be the essence of this Charge.
- (b) No failure or delay by the Bank in exercising, or any omission to exercise, any right, power, privilege or remedy accruing to the Bank upon any default by the Borrower and/or the Chargor will:-
  - (i) affect or impair any such right, power, privilege, or remedy;
  - (ii) be construed to be a waiver of such right, power, privilege, or remedy;
  - (iii) an agreement to such default.
- (c) No waiver or action of the Bank in respect of any default or any agreement to any such default will affect or impair any of the Bank's rights, powers, privileges, or remedies in respect of any other or subsequent default.



**17.5 Suspense account and proof of debt**

- (a) The Bank can place and keep any money received under this Charge in a non-interest bearing suspense account for as long as the Bank thinks fit, without being obliged to use any part of it towards discharging any liability due or incurred by the Borrower.
- (b) Regardless of such payment in the event of any proceedings in or analogous to bankruptcy or insolvency of the Borrower and/or the Chargor, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money.
- (c) After the Bank has received such ultimate balance in full, any claim on the part of the Borrower and/or the Chargor 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 Chargor and/or any other person or persons laying claim to the same.

**17.6 Payment in gross**

- (a) All monies received from or on account of the Borrower and/or the Chargor, from any other persons or estate, from the realisation of this Charge or any security, or otherwise for the purpose of being applied in the reduction of the Borrower's account or of the monies covenanted to be paid under this Charge, will be treated for all purposes as payments in gross, and not as appropriated or attributable to any specific part or item of the said monies covenanted to be paid, even if appropriated as such by the Bank.
- (b) All securities held by the Bank now or in future will be treated as security for the said general balance.
- (c) The Chargor, his estate or any other persons deriving or claiming title under the Chargor will have no claim to such security, and any part or interest in such security, unless the Bank has received the full amount owing to the Bank by the Borrower and/or the Chargor.

**17.7 Right of set-off**

- (a) The Bank can at any time after an Event of Default or in making a demand, regardless of any settlement of account or any other matter, combine or consolidate all or any of the Borrower's and/or the Chargor's then existing accounts, including accounts in the Bank's name, or of the Borrower and/or the Chargor jointly with others.
- (b) 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 any Indebtedness.
- (c) The Bank's right above is applicable to all accounts, whether current, deposit, loan, or of any other nature, whether subject to notice or not, in any currency, and wherever situated.
- (d) 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 and/or the



Chargor's accounts towards the satisfaction of the Borrower's contingent liabilities.

- (e) 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 and/or the Chargor.
- (f) 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 and/or the Chargor is liable.
- (g) Upon the issuance of the notice mentioned in Clause 17.7(b), the Chargor agrees that the Bank has the right to earmark or to place a hold on any monies standing to the credit of all or any of the Chargor's accounts with the Bank prior to the setting-off, and the Chargor shall not be entitled to withdraw the monies without the Bank's prior written consent.

#### **17.8 Change in Bank**

The security, liabilities, and/or obligations created by this Charge will continue to be valid and binding for all purposes, regardless of 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.

#### **17.9 Change in Borrower and/or Chargor**

- (a) The security, liabilities, and/or obligations created by this Charge will continue to be valid and binding for all purposes, regardless of any change (whether by bankruptcy or insolvency, death, incorporation, amalgamation, liquidation, reconstruction, or otherwise) in the Borrower and/or the Chargor's name, style, constitution, or composition.
- (b) The expressions "the Borrower" and "the Chargor" in this Charge includes persons for the time being deriving title under the Borrower and/or the Chargor respectively, and no change of any sort in relation to or affecting the Borrower and/or the Chargor will in any way affect the security, liabilities, and/or obligations created by this Charge in relation to any transaction, whether past, present, or future.

#### **17.10 Assignment or transfer of Charge**

- (a) The Bank can at any time at its absolute discretion and without notifying the Borrower and/or the Chargor, assign all or any part of its rights, interests, and obligations in this Charge, and/or transfer the benefit of this Charge to any person or corporation.
- (b) The costs and expenses of the Bank and the assignee or transferee will be paid by the Borrower and/or the Chargor.
- (c) Following such assignment or transfer, the assignee or transferee will assume and be entitled to the rights, interests, and obligations of the Bank in this Charge as if the assignee or transferee had been a party to this Charge in place of the Bank.

- (d) Any recital or statement in this Charge of the amount due to the Bank under or by virtue of this Charge will be conclusive and binding for all purposes against the Borrower and/or the Chargor, including legal proceedings, save for manifest error (for example, fraudulent entries).

#### **17.11 Successors bound**

- (a) This Charge will be binding on the Chargor's heirs, liquidators, receivers, personal representatives, and successors-in-title, and on the Bank's successors-in-title and assigns of the Bank.
- (b) The Chargor cannot assign its rights or obligations under this Charge.

#### **17.12 Severability**

If any of the provisions in this Charge is or becomes invalid or unenforceable, the invalid or unenforceable provision is to be treated as not having been included in this Charge, and will not affect the remainder of this Charge, which will continue to be effective and in force.

#### **17.13 Other terms and conditions**

- (a) The terms and conditions in this Charge will be in addition to and not in derogation of any specific agreement or arrangement with regard to each Banking Facility now or from time to time existing between the Bank and the Borrower, or any terms and conditions that may be specified in any letters (including letters of offer) given by the Bank to the Borrower from time to time.
- (b) If there is any inconsistency between the provisions of this Charge and the Letter of Offer, the Letter of Offer will prevail to the extent of the inconsistency.
- (c) If there is any inconsistency between the provisions of this Charge and the Facilities Agreement, the Charge will prevail to the extent of the inconsistency, for the purpose of interpretation and enforcement of this Charge.

#### **17.14 Irrevocable right to debit account**

- (a) The Bank can (but is not obliged to) at any time without prior notice and without affecting the Bank's other rights and remedies debit the Borrower's and/or the Chargor's current or other accounts with the Bank and/or to debit the balance of any overdraft facility with all other monies, including but not limited to the following due under and arising from the Banking Facilities:-
  - (i) all accrued interest;
  - (ii) unpaid loan instalment of principal and interest;
  - (iii) overdue trust receipts;
  - (iv) term bills;

- (v) banker's acceptances;
  - (vi) outstandings in respect of performance guarantees;
  - (vii) indemnities;
  - (viii) bonds;
  - (ix) valuation fees;
  - (x) insurance premiums;
  - (xi) fees;
  - (xii) commissions;
  - (xiii) charges;
  - (xiv) the costs and expenses referred to in Clause 17 of this Charge;
  - (xv) taxes, duties or levies; and
  - (xvi) all other monies due on the Banking Facilities.
- (b) No such debiting will be deemed to be payment of the amount due (except to the extent of any amount in credit in the Borrower's and/or the Chargor's current or other accounts), or a waiver of any Event of Default under this Charge, or any other agreement relating to the Banking Facilities.
- (c) If such debiting causes the Borrower's and/or the Chargor's accounts to be overdrawn, the rate as specified in Clause 4 will be payable.

#### **17.15 Statement by Bank**

A certificate signed by the Manager, Acting Manager, or any other officer by the Bank as to the monies or liabilities due, or owing to, or incurred by the Bank on account of the Borrower and/or the Chargor will be conclusive evidence that the stated balance or amount is due or owing by the Borrower and/or the Chargor for all purposes, including any legal proceedings, save for manifest error (for example, fraudulent entries).

#### **17.16 Costs**

- (a) The Chargor will be liable to pay all fees and expense in connection with or incidental to this Charge, including solicitors fees in connection with the preparation and execution of this Charge and all related documents.
- (b) If any monies payable by the Chargor under this Charge are required to be recovered by any legal process, or if any such monies are placed with solicitors for collection, the Chargor will pay (in addition to the monies then due and payable under this Charge) solicitors fees (on a full indemnity basis) and any other fees and expenses incurred in respect of such collection.

**17.17 Release**

- (a) Subject to Clause 11 and the Bank's rights under this Charge, upon repayment to the Bank of the Indebtedness, the Chargor can obtain the discharge and release of the Land from the Bank, at the Chargor's sole cost and expense (including the cost of the solicitors acting for the Bank on a solicitor and client basis).
- (b) The memorandum of discharge of charge must be prepared by a firm of solicitors, and must be in the form as the Bank considers appropriate.

**17.18 Currency indemnity**

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

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

**17.19 Independent payment obligations**

The Borrower and/or the Chargor expressly agrees that each of its obligations to pay or repay under this Charge or the Security Documents:-

- (a) constitute separate and independent obligations;
- (b) give rise to separate and independent causes of action;
- (c) apply regardless of any waiver or indulgence given by the Bank for any other obligation;
- (d) 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
- (e) can be relied upon and enforced by the Bank independently, or together with any other action under such obligations or under the Security

Documents, and the Bank does not need to first use any other remedy available to the Bank.

#### **17.20 No proof in competition with the Bank**

- (a) Until all the Indebtedness is paid or discharged in full, the Chargor will not:-
  - (i) claim any set-off or counterclaim against the Borrower in respect of any liability from the Borrower to the Chargor;
  - (ii) claim or prove in competition with the Bank in respect of any payment by the Borrower;
  - (iii) be entitled to claim or have the benefit of any set-off, counterclaim, payment, distribution, or security from or on account of the Borrower.
- (b) This applies whether or not the Chargor pays off any sum recoverable under this Charge, or on any other ground.

#### **17.21 Chargor as principal debtor**

- (a) Although between the Borrower and the Chargor, the Chargor is a surety for the Borrower, between the Chargor and the Bank, the Chargor is a principal debtor.
- (b) The Chargor and the Land will not be released at any time by any indulgence given to the Borrower, or by any act, omission or thing which may release or discharge the Land or the Chargor's position as a surety for the Borrower.

#### **17.22 Construction where Borrower and/or Chargor is not an individual person**

If the Borrower's and/or the Chargor's name is that either of a firm, a limited company, or other corporation, committee, association or other unincorporated body, any of the provisions of this Charge that are primarily and literally applicable to natural persons:-

- (a) will be construed and take effect as if the Borrower and/or the Chargor was an individual;
- (b) will bind all of the Borrower's and/or the Chargor's assigns and successors-in-title; and
- (c) if the Borrower and/or the Chargor 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.

#### **17.23 Unincorporated body**

In addition to, and without affecting the other provisions of this Charge, it is agreed that even though the Borrower and/or the Chargor 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, this security will be valid and have effect as though the Chargor were the principal debtor.

#### **17.24 Borrowing and charging powers**

Where any monies are owing and secured by this Charge, they will be deemed to be so owing and secured regardless of:-

- (a) 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 Bank;
- (b) the Chargor's power to enter into this Charge;
- (c) 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 Chargor or any other irregularity in such borrowing or incurring of such liabilities.

#### **17.25 Circumstances beyond the Bank's control**

If the Bank is unable to perform any of its obligations under this Charge, or carry out any operations or provide any service due to any reason beyond the Bank's control, including:-

- (a) fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbances, industrial disputes, acts of terrorism, embargo, war, act of God;
- (b) any failure or disruption to telecommunications, internet, electricity, water, fuel supply;
- (c) any circumstance in the nature of a force majeure (an unforeseeable event that prevents the Bank from performing its obligations under this Charge or any Security Document),

the Bank will not be in any way liable for any failure of performance or for any inconvenience, loss, injury, and damages suffered or incurred by the Borrower and/or the Chargor directly or indirectly as a result.

#### **17.26 Market disruption**

Regardless of what is stated in this Charge or any Security Document, the Bank can:-

- (a) at any time at the Bank's absolute discretion; and
- (b) without having to give the Borrower any reason,

cancel or suspend the Banking Facilities by written notice, if in the Bank's opinion there is any change in the national or international monetary, financial, political or economic conditions, or currency exchange rates, which would cause the continuation of the Banking Facilities to be temporarily or permanently impractical or not commercially possible.

#### **17.27 Retention of Records**

The Chargor 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, the Chargor 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.

#### **17.28 Laws applicable**

This Charge will be governed by and interpreted in accordance with the laws of Malaysia, and the Chargor hereby irrevocably:-

- (a) submits to the non-exclusive jurisdiction of the Courts in Malaysia;
- (b) waives any objections on the ground of venue or unsuitability of forum or any similar grounds; and
- (c) consents to service of process by registered mail or in any other manner permitted by the relevant law.

#### **17.29 Compliance with court orders**

The Bank and the Group can act in any way they see fit, without consulting the Borrower and/or the Chargor beforehand, if they are served with a court order issued by a court of any jurisdiction. The Chargor agrees not to hold the Bank or the Group liable for any loss or damage in connection with their actions.

#### **17.30 Stamp duty endorsement**

This Charge will secure the repayment by the Borrower and/or the Chargor to the Bank of the Banking Facilities in such sum for principal as the ad valorem stamp duty paid and endorsed from time to time on the original of the principal instruments described in Section 5 of the Schedule together with interest and all other monies payable by the Borrower and/or the Chargor under this Charge.

- End of Page -

## NOTICE TO THIRD PARTY CHARGORS

1. By signing this document, you may be liable instead of or as well as the Borrower for all monies due and owing by the Borrower to the Bank from time to time.
2. You are advised to seek independent legal advice before signing this document.

Signed by the parties on this \_\_\_\_\_ day of \_\_\_\_\_

## Chargor

\*Signed by the Chargor )  
in the presence of: )  
)  
)  
)

\*The Chargor's common seal  
was affixed to this document  
in the presence of:

Director

Director / Secretary

## Bank

Signed for and on behalf of )  
the Bank by its Attorney )  
in the presence of: )  
 )  
 )

\* Delete wherever inappropriate



I/We confirm and agree to be jointly and severally bound by the contents of this Charge.

**Borrower**

\*Signed by the Borrower )  
in the presence of: )  
 )  
 )  
 )

\*The Borrower's common seal )  
was affixed to this document )  
in the presence of: )  
 )  
 )

.....  
Director

.....  
Director / Secretary

*\* Delete wherever inappropriate*

**SCHEDULE**

**Section 1                      Particulars of Chargor**

**Section 2                      Place of business of the Bank**

**Section 3                      Particulars of Borrower**

**Section 4                      Date of Facilities Agreement**

**Section 5                      Stamp duty endorsement**

For the purpose of Section 4(3) of the Stamp Act, 1949, this Charge will be deemed to be the \*principal / subsidiary / collateral / and substitute instrument.

For the purpose of Section 4(3) of the Stamp Act, 1949, the following will be deemed to be the principal instruments:

*\* Delete wherever inappropriate*