



**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD  
[Registration No.: 199301017069 (271809-K)]  
(Bank)**

**AND**

**THE CHARGOR NAMED HEREIN  
(Chargor)**

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**CHARGE (ALL MONIES)**

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**CHARGE (ALL MONIES)**  
**(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.** [Registration 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 the Facility Agreement**

In this Charge, unless the context otherwise requires and save as specifically defined in the Facility Agreement, words, expressions, and phrases used in the Facility Agreement shall be construed and shall have the same meanings when used herein.

**1.2 Further Definitions**

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

<b>Words</b>	<b>Meaning</b>
Associated Party	Any of the following:- (a) The Customer’s director. (b) The Customer’s shareholder. (c) A company in which any of the Customer’s directors is a director or shareholder. (d) A company in which any of the Customer’s shareholders is a shareholder or director. (e) The Customer’s holding company. (f) The Customer’s subsidiary company. (g) A company in which the Customer is directly or indirectly a shareholder. (h) A partnership in which the Customer is a partner. (i) A sole-proprietorship in which the Customer is a proprietor. (j) A company in which the Customer is a director.
Bank Negara Malaysia	The Central Bank of Malaysia, established under the Central Bank of Malaysia Act, 2009.
Chargor	The person named in Section 1 of the Schedule. Where the Customer and the Chargor are the same person, “ <b>the Customer</b> ” will be used interchangeably with “ <b>the Chargor</b> ”.
Customer	The person named in Section 3 of the Schedule. Where the Customer and the Chargor are the same person, “ <b>the Customer</b> ” will be used interchangeably with “ <b>the Chargor</b> ”.

Event of Default	Any of the events or matters as specified in Clause 7.1 herein.
Facilities	The Islamic financing facilities granted or made available by the Bank to the Customer in the Letter of Offer and includes all other facilities or accommodation if more than one (1) Islamic financing facilities is granted or made available or agreed to be granted or made available or to be continued or to be made available by the Bank to the Customer; if further or other Islamic financing facilities is granted or made available by the Bank after this Charge or if any of the Facilities is varied in any way by a letter from the Bank to the Customer, "Facilities" will also refer to such further or other Islamic financing facilities accepted by the Customer and to the Facilities as varied, now or hereafter in accordance with the Letter of Offer and/or the Facility Agreement and where relevant "Facilities" will include any part of such Islamic financing facilities and the outstanding balance from time to time and reference to "Facility" means any one of the Facilities.
Facility Agreement	The Facility Agreement made between the Bank and the Customer on the date stated in Section 5 of the Schedule in relation to the Facilities or any additional or further facilities or any variation, restructuring, conversion, interchange or substitution of the Facilities and includes any amendments and supplements thereto.
"FATCA"	Means: <ul style="list-style-type: none"><li>(a) the Internal Revenue Code of 1986 issued by the US or any associated regulations or other official guidance;</li><li>(b) any treaty, law or regulation or 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; or</li><li>(c) 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 the Deferred Sale Price as stated in the Letter of Offer, compensation (<i>Ta'widh</i>), commission, fees, costs or charges outstanding or payable or agreed to be payable by the Customer, Chargor and/or any other Security Party to the Bank from time to time in respect of the Facilities or any account and includes all liabilities incurred by the Customer to the Bank in respect of:-</p> <ul style="list-style-type: none"><li>(a) cheques, bills, notes, drafts or other negotiable or non-negotiable instruments accepted, paid or discounted for and on behalf of the Customer;</li><li>(b) any financings, credit, advances or payments made to or for the use, benefit or accommodation or on behalf of the Customer;</li><li>(c) any sukuk, guarantee, indemnity, or letter of credit given, established or opened by the Bank for or at the Customer's request;</li><li>(d) foreign exchange transactions, and any contracts for the forward delivery of goods, bills, or specie; or</li><li>(e) any other financing facilities, trust receipts, or any other security,</li></ul> <p>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.</p>
Land	<p>The land described in the Memorandum of Charge attached, and including 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.</p>
Land Code	<p>The National Land Code (Revised) 2020, including the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be.</p>
Letter of Offer	<p>The letter(s) of offer issued by the Bank and accepted by the Customer and dated the date as stated in Section 4 of the Schedule by which the Bank agreed to grant and the Customer agreed to accept the Facilities, including any amendments, additions, supplements, or substitutions.</p>
Personal Data	<p>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) may have with the Bank either</p>

	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.
Security	The security or securities or guarantee, required to be created in the Bank's favour or given to the Bank in consideration for the Bank's granting to the Customer the Facilities; the Security is more particularly described in the Letter of Offer.
Security Documents	This Charge, the Facilities Agreement, Letter of Offer, any other guarantee, charge, indemnity, debenture, and any other security documents that have been or will be executed by the Customer and/or the Chargor and/or any Security Party to secure the payment of the Indebtedness as described in the Letter of Offer.
Security Party	Any person creating or giving the Security and can also mean the Customer if the Customer is the person creating or giving the Security.
Strata Titles Act	The Strata Titles Act 1985, the Strata Management Act 2013, the Land (Subsidiary Title) Enactment 1972 (Sabah) or the Strata Titles Ordinance (Sarawak) 1995 (Cap. 18), as the case may be.
US	United States of America.
Vendor	The seller of the Land and shall mean the vendor and developer, as the case maybe including their heirs, liquidators, receivers, personal representatives and successors-in-title.

### 1.3 Interpretation

- (a) In this Charge, unless the context requires otherwise –
- (i) words referring to the singular include the plural (and vice versa);
  - (ii) words referring to a gender include all genders;
  - (iii) a reference to a person includes its personal representatives, successors-in-title, assigns, and transferees;
  - (iv) words applicable to natural persons include anybody or persons, company, corporation, firm, or incorporated or unincorporated partnership;
  - (v) a reference to “this Charge” or other similar reference refers to this Charge as a whole, and not to any particular provision of this Charge; and
  - (vi) a reference to Clauses is a reference to Clauses of this Charge unless otherwise specified.

- (b) The headings and sub-headings of this Charge are inserted for convenience only, and are to be ignored when interpreting the provisions of this Charge.
- (c) The expressions “**month**” and “**year**” mean a calendar month and a period of 365 days respectively.
- (d) Where an act is required to be done within a specified number of days after or from a specified date, the period excludes the specified date. Similarly, a period from the occurrence of an event or the doing of an act excludes the day on which the event happens or the act is done or required to be done.
- (e) References to any statute, rules or regulations made under the statute are references to the statute, rules or regulations as amended or re-enacted from time to time.
- (f) Where the Customer and/or the Chargor is a company, any references relating to insolvency will be read as references relating to the winding-up, liquidation, amalgamation or reconstruction of the Customer and/or the Chargor.
- (g) Where there are two or more persons or parties included in the expressions “**the Customer**” and/or “**the Chargor**”, agreements and other matters expressed to be made by or on the part of the Customer and/or the Chargor are deemed to be made by or binding upon such persons jointly and severally.
- (h) Where the expression “**the Customer and/or the Chargor**” is used, agreements and other matters expressed to be made by or on the part of the Customer and/or the Chargor are deemed to be made by or binding upon such persons jointly and severally.
- (i) The expressions “**including**” or “**for example**” (or other similar words) when introducing an example does not limit the meaning of words to those examples.
- (j) A reference to costs or fees “**on a solicitor and client basis**” means the expenses that a client has to pay his lawyer.
- (k) A reference to “**amount due and payable**” includes all sums and monies advanced or paid to or on behalf of the Customer and/or the Chargor by the Bank or otherwise howsoever payable by the Customer and/or the Chargor to the Bank under this Charge (whether or not it forms part of the Facilities), and subject to compensation (*Ta'widh*) on all such sums and monies (if any).

## 2. CHARGE AS SECURITY FOR THE INDEBTEDNESS

### 2.1 Charge as security

- (a) In consideration of the Bank, at the request of the Customer and/or the Chargor, agreeing to grant, or continuing to grant or make available to and for the benefit of the Customer, the Facilities as the Bank thinks fit, and as security for the payment of the Indebtedness, the Chargor, as the registered owner of the Land 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) Unless the Facilities are term financing the Customer and/or the Chargor agrees, covenants and undertakes that it will on demand pay the Bank the Indebtedness and all other amounts payable by the Customer and/or the Chargor to the Bank under the Security Documents until the full amount of the Indebtedness shall have been paid in full and satisfied by the Customer and/or the Chargor.
- (b) The Customer and/or the Chargor's covenant and undertaking above is up to the aggregate amount as covenanted to be paid under the Letter of Offer and/or the Facility Agreement, together with profit, compensation (*Ta'widh*) (after as well as before any demand or judgment, and regardless of whether or not the banker customer relationship between the Bank and the Customer has ceased or been terminated), commission, discount, other banking charges, and all costs, charges, fees and other expenses the Bank may charge in respect of the 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:

- (a) all amounts outstanding under the Facilities, including contingent liabilities, have been fully settled by the Customer and/or the Chargor; and
- (b) the Customer and/or the Chargor has been fully released from all its obligations or contingent liabilities under the Facilities or under any other instrument issued by the Customer and/or the Chargor for the account of the Customer,

even if the Customer and/or the Chargor ceases to be indebted to the Bank for any period(s), and regardless of:

- (i) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
- (ii) the death, insanity or bankruptcy or insolvency of the Customer and/or the Chargor;
- (iii) the voluntary or compulsory liquidation of the Customer and/or the Chargor;
- (iv) any change by amalgamation, consolidation or otherwise which may be made in the constitution of the company by which the business of the Customer and/or the Chargor is currently being carried on;
- (v) any change in the constitution or composition of the firm by which the Customer'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.
- (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 Customer 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 and payable by the Customer 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 and payable or be incurred after the time of notice.

## 2.7 Covenant to perfect and provide further security

- (a) The Customer and/or 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 Customer's and/or the Chargor's estate, assets, or business, which now or in future will belong to the Customer and/or 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 Customer's and/or the Chargor's cost, and will contain all terms and conditions required by the Bank to protect its interest.

### 3. THE FACILITIES

#### 3.1 **Progressive release**

- (a) The Chargor agrees that each of the Facility will only be available for utilisation by the Customer during the period as specified by the Bank in the relevant Letter of Offer unless extended by the Bank in writing. Notwithstanding this, any utilisation permitted by the Bank after the said period shall not constitute a waiver by the Bank and shall not prejudice the Bank's right to disallow, stop or cease any further utilisation of the remaining Facility after the said period.
- (b) Where the Facilities is to finance the purchase or construction of any building on the Land, the Chargor acknowledges that the Customer has irrevocably authorised the Bank and the Bank has the authority to advance or pay all or part of the Facilities to the financial institutions, Vendor, contractor, or such other persons responsible for the sale and/or construction of any building on the Land on such terms and in such manner as the Bank decides in its absolute discretion.
- (c) All advances and payments made by the Bank to the person(s) in Clause 3.1(b) ("**Third Party**") shall be deemed paid to the Chargor and shall constitute and form part of the monies secured by and payable under this Charge. The acknowledgement of receipt of such person(s) will be as good and sufficient and effective as if it had been made or given by the Chargor.
- (d) The Chargor acknowledges that the Customer has irrevocably authorises the Bank and the Bank is entitled:
  - (i) to issue to the Third Party or firm of solicitors purporting to act for the Third Party its undertaking, guarantee or covenant (which shall be in such form as agreed between the Bank and the Third party at such time and in such manner as the Bank may in its absolute discretion agree; or
  - (ii) to release or pay to the financial institutions, firm of solicitors or Vendor all or part of the Facilities; and
  - (iii) where the release of the 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 Chargor takes vacant possession of the Land, the Bank shall be entitled to make such payment to the Third Party at any time, whether

or not the Chargor have actually taken vacant possession of the Land; 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 shall be entitled to release or pay the Facilities to the Third Party notwithstanding any protest or objection from 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 agree that the Chargor shall only claim against such Third Party in respect of such sum released and the Chargor shall have no claim and shall not make any claim whatsoever against the Bank arising from such release unless it is due to the Bank's negligence or default.

- (iv) If the Bank or its solicitors have given or agreed to give their undertaking, guarantee, or covenant referred to in Clause 3.1(d) such sums payable by the Customer and/or the Security Party under the relevant agreement, whether progressively or otherwise in accordance with the terms in the said agreement, the Chargor agrees (in addition the Security) that:
  - (1) the payment of all monies undertaken, guaranteed, or covenanted to be paid by the Bank to the Third Party, the Third Party's solicitors, or the Bank's solicitors (as the case may be) will be secured under this Charge; and
  - (2) the Chargor shall at all times indemnify and keep the Bank or the Bank's solicitors indemnified against all actions, proceedings, costs, expenses, claims, and demands which may be taken, incurred, or suffered by the Bank or the Bank's solicitors arising from the Bank's or the Bank's solicitors aforesaid undertaking given to the Third Party's solicitors, or the Bank's solicitors (as the case may be).

### 3.2 No obligation to make further advances

- (a) The Facilities granted or to be granted to the Customer will be reviewed 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 Customer.

### 3.3 Prepayment

Notwithstanding any agreement for payment of any term financing (hereinafter referred to as "**the financing**") by Instalments, the Customer shall have the right to prepay the Facilities subject to the provision in the Letter of Offer and/or this Charge.

### 3.4 Compensation (*Ta'widh*)

The Bank shall be entitled to demand a compensation (*Ta'widh*) from the Customer and/or the Chargor for the failure of the Customer to make payment of any instalment due and/or sum covenanted to be paid by the Customer to the Bank herein at the rate

and in the manner as stated in the Letter of Offer and/or the Facility Agreement or such other rate and manner as may be prescribed by the Shariah Advisory Council of Bank Negara Malaysia.

### **3.5 Where the Facilities are withdrawn or revoked**

- (a) If the 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 Customer and/or the Chargor (or where the Customer and/or the Chargor consists of more than one person, by the death of any one of them) or liquidation of the Customer and/or the Chargor, and a balance is due and payable to the Bank by the Customer, the Customer and/or the Chargor or the personal representative or successors-in-title of the Customer and/or the Chargor will, so long as all or any part of the same remains due and payable, pay to the Bank the Indebtedness due and payable hereunder as covenanted to be paid under the terms of this Charge and the Facility Agreement and/or the Letter of Offer at the rate prescribed therein.
- (b) 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 Customer 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).

### **3.6 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 Facilities for the Customer's and/or the Chargor's use or benefit if:

- (a) the Customer and/or the Chargor fails and/or refuses and/or neglects to promptly pay any amount (including profit) 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 Customer and/or the Chargor under this Charge; or
- (b) the Customer and/or the Chargor breaches any of the express or implied terms and conditions in this Charge.

## **4. THE LAND**

### **4.1 Custody of documents**

During the continuance of this Charge, and as long as any amount is payable by the Customer and/or the Chargor and/or any Security Party to the Bank, the Bank will have custody or possession of the original issue document of title in respect of the Land.

### **4.2 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.

#### **4.3 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.

#### **4.4 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.

#### **4.5 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 Bank in possession.

#### **4.6 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.

#### **4.7 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.

#### **4.8 Use 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; or
  - (iii) do or allow to be done anything which may cause any takaful certificate/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.

#### **4.9 Dealings with security**

The Chargor will not, without the Bank's prior written consent:

- (a) sell, transfer, charge or otherwise deal in any way with all or any part of the

Land or any interest in the Land; or

- (b) make the same subject to any burden, charge, encumbrance, liability, or lien; or
- (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.

#### **4.10 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 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.

#### **4.11 Cultivation**

- (a) During the term of this Charge, 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 employ visiting agents or any other persons from time to time to inspect the Land, and to produce a report at the Chargor's cost and expense.
- (c) During the term of this Charge, the Chargor will keep the Land clean, weeded, and free from lalang and other undergrowth.
- (d) If the Chargor fails to do the above, 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 lalang and other undergrowth.
- (e) 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 Bank in possession.

#### **4.12 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 will not deem the Bank liable as Bank in possession.

#### **4.13 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 Facilities or require the Customer and/or the Chargor to provide further security within fourteen (14) days from the date of the Bank's written notice.

## 5. TAKAFUL/INSURANCE

### 5.1 Takaful/Insurance on the Land

- (a) The Chargor shall adequately cover or insure or caused to be adequately covered or insured at all times any landed property charged to the Chargor on a full reinstatement value basis up to its full cover/insurable value and will cover loss and damage by fire, lightning, tempest, flood, explosions, riot, malicious acts and strikes, landslides, earth movement, subsistence and other perils as the Chargor consider necessary by reputable takaful operator/insurance company acceptable to the Chargor in name of the Chargor or, where applicable, the Security Party, with the Bank endorsed on the takaful certificate/insurance policy as Bank, assignee or loss payee and deposit or cause to be deposited with the Bank a certified true copy of the takaful certificate/ insurance policy effected under this clause together with the evidence of payment of the current contribution/premium payable under such certificate/policy.
- (b) If the property charged to the Bank is:
- (i) landed residential property, a House owner's Certificate/Policy shall be effected by the Chargor;
  - (ii) landed commercial or industrial property, a Fire Certificate/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 property is covered/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 of such proof, a House owner's Certificate/Policy shall be effected by the Chargor.
- (c) Without affecting the provisions in Clause 5.1(a) 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 takaful/insurances referred to in Clause 5.1(a) or (b) above. If the Chargor fails to do so within the time stipulated, the Chargor further agree that in such situation the Chargor has consented and are deemed to have appointed the Bank as its agent to effect it on behalf of the Chargor and:-
- (i) all moneys and expenses incurred by the Bank shall be payable to the Bank on demand; and
  - (ii) any commission which may be paid to the Bank as an agent of the takaful operator/insurance company belongs to the Bank.

For the avoidance of doubt, in default whereof it shall be lawful but not obligatory for the Bank to pay the same or any part thereof on behalf of the Chargor and the Bank shall not be held liable to the Chargor and/or the

Security Party for anything whatsoever if the Bank took out or fails to take out, maintain, renew or increase any such takaful/insurance.

- (d) The Chargor and/or the Security Party shall ensure that all takaful/insurance proceeds received pursuant to the certificate/policy referred to in Clauses 5.1(a), (b) or (c) above are applied for or towards making good any loss or damage in respect of which the money is received or towards discharge of the Facilities or any part thereof unless the Bank shall decide otherwise. If the takaful/insurance proceeds is paid to or received by the Chargor or the Security Party, such takaful/insurance proceeds shall be held by the Chargor and/or the Security Party in trust for the Bank.
- (e) The Chargor must not renovate or refurbish the property without first obtaining the Bank's written consent. The Bank has the right not to give its consent but if the Bank give its consent, the Bank has the right to impose such terms and conditions as the Bank deems fit which may include the Chargor taking up of a Contractors' All Risk Certificate/Policy for the renovation or refurbishment work before the start of the work with a reputable takaful operator/insurance company appointed by the Chargor and with the Bank named as Bank, assignee and loss payee. If the Chargor does not give the Bank proof acceptable to the Bank that the Chargor has taken up the certificate/policy, the Chargor is deemed to have consented and appointed the Bank as its agent where, it shall be lawful but not obligates for the Bank to arrange for takaful contribution/insurance coverage at the Chargor's expense by debiting the Chargor's account.

## **5.2 Conflicting takaful/insurance**

Unless requested or consented to by the Bank, the Chargor will not effect or keep on foot any takaful/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 takaful/insurance.

## **5.3 Application of takaful/insurance money**

- (a) The Bank can at its discretion require all monies received on any takaful/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; or
  - (ii) at the option of the Bank, in or towards the discharge of any Indebtedness.
- (b) The Chargor will hold all monies so received on such takaful/insurance in trust for the Bank, and the Bank may receive and give a good discharge for all such monies.

## **5.4 Other certificate/policy**

- (a) The Bank can at any time at its absolute discretion require the Customer and/or the Chargor to take up and maintain a family takaful certificate/life assurance policy/general takaful certificate and/or any other certificate/policy guaranteeing the payment of the Indebtedness, whether absolute and/or on the happening of a contingency, and to assign the certificate/policy and all connected benefits and advantages to the Bank as further security for the



Indebtedness, if this is required pursuant to the terms of the Letter of Offer.

- (b) If the Customer and/or the Chargor fails to take up and maintain the said certificate/policy and assigning the same in accordance with terms of the Letter of Offer, the Bank can at its absolute discretion take up and maintain a certificate/policy guaranteeing the payment of the Indebtedness on such terms the Bank thinks fit. In such case, all costs and expenses for taking out and maintaining the certificates/policies will be payable on demand by the Customer and/or the Chargor to the Bank and will form part of the Indebtedness.
- (c) The Customer and/or the Chargor will allow all takaful certificates/insurance policies and the receipts or other evidence of payment paid by the Customer and/or the Chargor to be kept by the Bank. The Customer and/or the Chargor will when required deliver or produce to the Bank or to such persons designated by the Bank, any takaful certificate/insurance policy effected by the Customer and/or the Chargor and the receipt or other evidence of payment of the current contribution/premium for the certificate/policy.

## 6. GOVERNMENT ACQUISITION

- (a) If:
  - (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,

the Chargor must immediately inform the Bank, and send the Bank copies of any such notice, notification, or declaration as soon as it is delivered to or served on the Chargor.

- (b) The Bank can, at the Customer'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 Clause 6 (a) above.
- (c) All monies received as or by way of compensation in respect of any of the matters in Clause 6(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 profit and all monies and other charges due and payable by the Customer 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 the compensation (*Ta'widh*) (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 Customer has ceased or been terminated.

## 7. **REPRESENTATIONS AND WARRANTIES**

### 7.1 **General Representations and Warranties**

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

- (a) **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.
- (b) **Contractual obligations.** This Charge constitutes, or when executed will constitute, legal, valid and binding obligations on the Chargor in accordance with its terms.
- (c) **Authorisations and consents.** All consents, licences, approvals, authorisations, orders, and exemptions of any Ministry, agency, department, or authority in Malaysia and elsewhere which may be required or advisable for or in connection with the Facilities, the execution, delivery, performance, legality, or enforceability of this Charge, have been obtained, and are in full force and effect.
- (d) **Proceedings.** Neither the Customer, the Chargor nor any Security Party 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 Customer and/or the Chargor is/are: -
  - (i) an individual or an ordinary person, that the Customer 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 Customer and/or the Chargor; or
  - (ii) 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 Customer and/or the Chargor or to wind-up the Customer and/or the Chargor.
- (e) **Material adverse change.** There has been no material adverse change in the financial condition or operations of the Customer and/or the Chargor and/or any Security Party since the Customer first applied for the Facilities.
- (f) **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.
- (g) **Compliance with laws.** The financing by the Bank under this Charge, and the Bank's agreement to make and continue to make available the Facilities to the Customer 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 Islamic Financial Services Act 2013, the Companies Act, 2016, any financing 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.

- (h) **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 Facilities available to the Customer.
- (i) **Information.** All information furnished by the Customer and/or the Chargor and/or any Security Party in connection with the application for the 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 Customer and/or the Chargor and/or any Security Party are 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 Facilities (or part of the same), or to take the security.
- (j) **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.
- (k) **No conflict or limitation.** Where the Chargor is a corporation, that neither:-
  - (i) the execution and delivery of this Charge by the Chargor; nor
  - (ii) the performance or observance of any of the Chargor's obligations under this Charge or any security document;Will:-
  - (aa) conflict with, or result in a breach of its 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.
- (l) **Accounts.** Where the Assignor is a corporation that the Chargor's accounts provided to the Bank:-
  - (i) were prepared in accordance with accounting principles and practices generally accepted in Malaysia, and consistently applied, and have been prepared, examined, reported on, and approved in accordance with all procedures required by law and the Constitution of the Chargor;
  - (ii) 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 then ended; and
  - (iii) 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 unrealised or anticipated losses from any commitment entered into by it and which existed on such date.

- (m) **Conviction.** Where the Chargor is an individual, the Chargor has not been charged or convicted for any criminal offences or have any criminal records.
- (n) **Repeated at utilisation.** Prior to and on each of the dates of the utilisation of the 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 paragraph (l) above will be construed as a reference to the then latest available annual accounts of the Chargor.

## 7.2 Financial Crime Representations and Warranties

- (a) 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**").
- (b) 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:-
  - (i) exercise all the Bank's rights stated in Clause 9.1;
  - (ii) close all accounts and terminate all services the Chargor has with the Bank;
  - (iii) make reports and take such other actions as the Bank may deem appropriate.
- (c) The Chargor undertakes that the Chargor 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.

## 8. DEFAULTS

### 8.1 Events of Default

- (a) When an Event of Default happens:-
  - (i) the Bank will not be under any further obligation and/or commitment to the Customer in relation to the Facilities;
  - (ii) all moneys and profit due and payable to the Bank under the Facilities and any other moneys then due and payable to the Bank by the

Customer or under this Charge will immediately become payable on demand by the Bank; and

- (iii) the Bank will be entitled to exercise any right or power:-
  - (aa) which the Bank may have upon an Event of Default by virtue of this Charge and the Security Documents; and
  - (bb) which may be available to the Bank in law.
- (b) The following are the Events of Default referred to above:-
  - (i) **Non-payment or non-compliance.** The Customer and/or the Chargor fails to pay on the due date any money or discharge any obligation or liability payable by the Customer and/or the Chargor from time to time due to the Bank, or fails to comply with any term or condition of any Facility from the Bank.
  - (ii) **Representation, warranty or undertaking.** If any representation, warranty or undertaking made to the Bank by the Customer and/or the Chargor and/or any Security Party is or will become incorrect or misleading in a material respect.
  - (iii) **Non-observance or non-performance.** The Customer 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 Customer and/or the Chargor and/or any Security Party contained in this Charge, or under any other Security Documents.
  - (iv) **Cessation of business.** The Customer and/or the Chargor and/or any Security Party ceases or threatens to cease to carry on its business.
  - (v) **Death or winding-up.** The Customer 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 Customer and/or the Chargor and/or any Security Party.
  - (vi) **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 Customer and/or the Chargor and/or any Security Party pursuant to any charge, debenture, security document or otherwise.
  - (vii) **Bankruptcy.** The Customer and/or the Chargor and/or any Security Party becomes bankrupt or allows any judgment against the Customer and/or the Chargor and/or any Security Party to remain unsatisfied for twenty-one (21) days.
  - (viii) **Inability to pay debts.** The Customer 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 Customer and/or the Chargor and/or any Security Party.

- (ix) **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.
- (x) **Bank's security interest.** The Bank decides that the continuation of the 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 Customer and/or the Chargor and/or the Security Party.
- (xi) **Other indebtedness.** Any indebtedness of the Customer and/or the Chargor and/or any Security Party becomes capable, in accordance with its terms, of being declared due and payable prematurely because:-
- (aa) of a default by the Customer and/or the Chargor and/or any Security Party in its respective obligations;
  - (bb) the Customer 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; or
  - (cc) the security for any such indebtedness becomes enforceable.
- (xii) **Security.** The security created under this Charge, or any guarantee, indemnity, or any other security for all or part of the Facilities:-
- (aa) fails or ceases to have full force and effect or to be continuing;
  - (bb) is terminated or disputed or jeopardised or invalidated; or
  - (cc) is unenforceable.
- (xiii) **Other events.** Any other event or series of events whether related or not (including any adverse change in the financial condition of the Customer and/or the Chargor and/or any Security Party) could or might affect the ability or willingness of the Customer 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.
- (xiv) **Cross default.** The Customer 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.
- (xv) **Enforcement by creditor.** The Customer and/or the Chargor and/or any Security Party and/or any Associated Party defaults under any financing, 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 payment of, withdraw; and/or enforce security for, such financing, facility or accommodation.

- (xvi) **Default in other accounts.** There is a default in the payment of any monies under the accounts of any other party for which the Customer and/or the Chargor and/or any Security Party and/or any Associated Party are providing security or guarantee.
- (xvii) **Facility Agreement.** An event of default has occurred under the Facility Agreement or any Security Document.

## 8.2 Bank's Rights on Event of Default

If any of the events of default in Clause 8.1 occurs: -

- (a) then without affecting Clause 2.2, the Bank can (but is not obliged to) by written notice to the Customer declare that the Facilities are cancelled;
- (b) following the notice given above, the Bank's Commitment will cease, and the total aggregate principal amounts outstanding under the Facilities together with profit and all other sums payable under this Charge will immediately become due and payable on demand;
- (c) the Customer and/or the Chargor shall provide cash cover on demand for all contingent liabilities of the Customer 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 Customer; and
- (d) the Bank can exercise all or any of its rights and remedies in Clause 9.

## 9. REMEDIES

### 9.1 Remedies of the Bank

- (a) Upon demand or upon the occurrence of an Event of Default, the Chargor hereby consents and authorise the Bank to exercise all or any of the following rights and powers:-
  - (i) enter and take possession of all or part of the Land, and to terminate summarily the Chargor's licence to occupy the Land.
  - (ii) 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) receive rents and profits of the Land.
  - (iv) 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) sue and bring a civil action to recover the Indebtedness.
- (b) The Customer 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.

## 9.2 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 (1) month, the Bank can give a statutory notice pursuant to the provisions of the Land Code requiring the Chargor to remedy the breach within seven (7) days from the service of the statutory notice or thirty (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 12, 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 Chargor hereby consents and authorises for the Bank to apply and proceed for an order for sale of the Land under the Land Code.

## 9.3 Demands

- (a) Any demand for payment of the Indebtedness required or permitted to be given or made under this Charge to the Customer and/or the Chargor may be made by a notice in writing requiring payment within seven (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 Customer and/or the Chargor if it is served in accordance with Clause 12.

## 9.4 Proceeds of sale

- (a) The Chargor agrees that 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 the 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 profits, costs, charges, commission, compensation (*Ta'widh*) and other monies which are outstanding in connection with the Facilities.
  - (iv) Fourthly, to pay all principal monies payable to the Bank in connection with the 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 Customer'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 due and payable by any other company in the Customer's and/or the Chargor's group of companies (including holding, subsidiary, and associated companies) to the Bank (if any).
  - (viii) Eighthly, to the Customer 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-income 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.

#### **9.5 Insufficiency in proceeds of sale**

- (a) If the amount realised by the Bank in a sale of the Land under the provisions of this Charge after deduction and payment from the proceeds of such sale of all fees, dues, costs, rents, rates, taxes, and other outgoings on the Land, is less than the amount due to the Bank (and whether at such sale the Bank is the purchaser or otherwise) the Customer and/or the Chargor must pay the Bank the difference between the amount due and the amount so realised.
- (b) Until the payment in the preceding paragraph is made, the Customer and/or the Chargor will also pay the compensation (*Ta'widh*) on such balance (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 Customer has ceased or been terminated.

#### **9.6 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.

#### **9.7 Indemnity**

In addition and without affecting the powers, rights, and remedies granted under this Charge, the Customer 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 Customer and/or the Chargor of any sum due under this Charge, including any profit or fees paid or payable on account of, or in respect of, any funds financed or deposits from third parties in order to maintain the amount in default, or in liquidating or re-employing

such funds or deposits.

#### **9.8 Rights to concurrent remedies**

- (a) Regardless of Clause 9.5, 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 Customer 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.

#### **9.9 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 Customer and/or the Chargor for any loss or damage incurred, or alleged to be incurred, by the Customer and/or the Chargor.
- (b) The Bank is not obliged to obtain the true or best market value of the Land.

### **10. CONSOLIDATION**

Unless the Bank agrees otherwise, this Charge will not be discharged except on full payment by the Customer and/or the Chargor of not only all monies secured under the Charge, but also all monies which may become due and payable to the Bank under any other financings and/or facilities granted to the Customer 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 Charge.

### **11. MODIFICATION AND INDULGENCE**

The Customer and/or the Chargor expressly consents and agrees that the Bank may at any time with prior notice to the Customer 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 Facilities granted to the Customer, and open and/or continue any account or accounts current or otherwise with the Customer and/or the Chargor and/or any Security Party at any branch or branches of the Bank;
- (b) grant to the Customer and/or the Chargor and/or any Security Party any time or indulgence;
- (c) renew any Islamic bills/bills, Islamic notes/ 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 Customer and/or the Chargor and/or any Security Party or any other person;
- (e) compound with the Customer and/or the Chargor and/or any Security Party and/or any other person;
- (f) at the request of the Customer 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 Customer, reinstate, change, interchange, substitute or convert the Facilities or any of them, or any of the principal limits or sub-principal limits of the Facilities;
- (h) review, amend, or vary the Facilities granted to the Customer 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.

## 12. **NOTICES AND SERVICE OF LEGAL PROCESS**

### 12.1 **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 Assignor, or at the address of the Chargor stated in this Charge, or at the usual or last known place of business of the Bank;
  - (ii) ordinary mail to any such addresses referred to in Clause 10(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 or website; or
  - (vii) insertion in any statement of account sent by the Bank to the Customer.

- (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 ordinary mail, the service will be deemed to be made forty eight (48) hours after posting. In proving service, it will be sufficient to prove that the notice was properly addressed and posted.
  - (iii) If sent by facsimile, SMS, email, the service will be deemed to be made upon the facsimile, SMS or email being sent.
  - (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 ordinary mail.
  - (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

### 13. **DISCLOSURE**

The Chargor agree 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 Customer and/or the Chargor or the Facilities) can disclose at any time at the Bank's absolute discretion without notifying the Customer and/or the Chargor beforehand, any information relating to the Customer and/or the Chargor, the Security Party, the Customer's and/or the Chargor's accounts with the Bank, the Facilities, and this Charge to the following persons:

- (a) Any members of the Group, for any of the following purposes:-
- (i) Providing the Customer 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 or any members of the Group's function.
  - (xi) Compliance with the 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 including Shariah Committee.
- (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, takaful operator/insurer or takaful/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 financing agreement between the Customer 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 Customer'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 Facilities.

#### **14. COMPLIANCE WITH FATCA**

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

The Bank shall notify the Chargor 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.

- 14.2 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 Assignor 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.

- 14.3 For individual Chargors, the Chargor consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Personal Data to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Chargor and to governmental authorities as required by law or other agreement by or between governments. The Chargor's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Chargor represents that the Chargor have 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 14.3, and that the Chargor will secure such consents and waivers in advance of providing similar information to the Bank in the future.

- 14.4 For Chargors who are a sole proprietorship, partnerships or other business entity, a corporation, or an association, club or society or trust, the Chargor consent 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 have 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 14, and that the Chargor will secure such consents and waivers in advance of providing similar

information to the Bank in the future.

- 14.5 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.
- 14.6 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's account(s) (particularly in the case of international transfer of funds), investigating the source of or intended recipient of funds, sharing information and documents with domestic and international tax authorities and withholding income from the 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.
- 14.7 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.
- 14.8 This Clause 14 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 14 shall be without prejudice to any other clause in this Charge which provides for the request for information or disclosure of data.

## 15. **DATA PROTECTION**

- 15.1 The Chargor hereby confirm 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 sections in this Charge as may relate to the processing of the Chargor's Personal Data. For the avoidance of doubt, the Chargor agree that the said Privacy Notice shall be deemed to be incorporated by reference into this Charge.
- 15.2 The Chargor agree and consent 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.
- 15.3 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 Facilities, the Chargor:
- (a) confirm that the Chargor have obtained their consent or are otherwise

entitled to provide this data to the Bank and for the Bank to use it in accordance with this Charge and/or the Facilities;

- (b) undertakes that the Chargor have informed the said third parties to read the Privacy Notice at the Bank's website [www.uob.com.my](http://www.uob.com.my);
- (c) have informed the said third parties:-
  - (i) that the Bank may collect or verify their personal and financial data with third party sources;
  - (ii) that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Notice;
  - (iv) agree to ensure that the personal and financial data of the said third parties is accurate;
  - (v) agree to update the Bank in writing in the event of any material change to the said personal and financial data; and
  - (vi) agree to the Bank's right to terminate the Facilities should such consent be withdrawn by the said third parties.

- 15.4 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 agree to the above said disclosures on behalf of the Chargor and others involved in the said cross-border transaction.
- 15.5 Additionally, but always subject to any laws (including regulations, guidelines and/or obligations) applicable to the Bank or the Group (whether in or outside Malaysia), the Chargor agree 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.
- 15.6 The Chargor may choose not to receive any direct marketing materials from the Bank or the Group by making a request at any of the Bank's branches or by sending a written request via email to [uobcustomerservice@uob.com](mailto:uobcustomerservice@uob.com) (or such other address notified by the Bank) and the Bank will abide by the Chargor's latest written instructions to the Bank.
- 15.7 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 Facilities and/or without imposing additional costs to the Customer and/or the Chargor.



- 15.8 The Chargor are entitled to request in writing:
- (a) for any information in relation to the Chargor's Personal Data that the Bank holds or stores, upon payment of a prescribed fee;
  - (b) for any information held or stored by the Bank to be updated, amended and/or corrected;
  - (c) for the Bank to limit the processing of their respective Personal Data held or stored by the Bank; and
  - (d) 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 or by sending a written request via email to [uobcustomerservice@uob.com.my](mailto:uobcustomerservice@uob.com.my) (or such address notified by the Bank).

The Bank may charge a fee for processing the Chargor's request for access. 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.

- 15.9 The Chargor are responsible for ensuring that the information the Chargor provides to the Bank is accurate, complete and not misleading and that such information is kept up to date.
- 15.10 The Chargor acknowledge 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.
- 15.11 The Bank reserves the right to amend this Clause from time to time at the Bank's sole discretion and shall provide prior notification to the 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.
- 15.12 This Clause shall be without prejudice to any other clause in this Charge which provides for the disclosure of data.

## 16. **MISCELLANEOUS**

### 16.1 **Terms of the Facility**

With regard to any Facility which is subject to any specific agreement or arrangement

now or hereafter subsisting, the Customer covenants to discharge and satisfy such Facility in accordance with the terms of such agreement or arrangement.

## 16.2 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 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 bankruptcy / winding up / insolvency searches will be borne by the Chargor.

## 16.3 Payments by the Bank

- (a) The Customer and/or the Chargor agrees that 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 covering/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 Customer and/or the Chargor to the Bank.

- (b) The said sums together with *Ta'widh* (compensation) will be debited to the Customer's account, and will be deemed to be charged on the Land in addition to the principal amount advanced and will form part of the first payment due under this Charge.

## 16.4 Taxes, Duties or Levies

- (a) The Customer and/or the Chargor is liable to pay for any other 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 anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank or services provided in connection with the

Facilities, during the continuation of the Facilities and/or for so long as the Facilities or any part of it remains outstanding and unpaid.

- (b) Any taxes or levies incurred by the Bank in relation to the Facilities and any other goods or services provided under the Facilities shall be borne and charged to the Customer and/or the Chargor and in the event that the Bank shall effect payment on the Customer and/or the Chargor's behalf, the Customer and/or the Chargor shall be liable to reimburse the Bank for such amounts paid.

#### **16.5 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 Customer 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; or
  - (iii) be construed as 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.

#### **16.6 Suspense account and proof of debt**

- (a) The Bank can place and keep any money received under this Charge in a non-income 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 Customer.
- (b) Regardless of such payment in the event of any proceedings in or analogous to bankruptcy or insolvency of the Customer 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 Customer 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 Customer and/or the Chargor and/or any other person or persons laying claim to the same.

#### **16.7 Payment in gross**

- (a) All monies received from or on account of the Customer 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 Customer'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.

- (e) All securities held by the Bank now or in future will be treated as security for the said general balance.
- (f) 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 due and payable to the Bank by the Customer and/or the Chargor.

#### **16.8 Right of Set-Off**

The Customer and/or the Chargor agrees that:-

- (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 Customer's and/or the Chargor's then existing accounts, including accounts in the Bank's name, or of the Customer and/or the Chargor jointly with others.
- (b) In addition, the Bank can, after giving seven (7) days' notice to the Customer, 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, financing, or of any other nature, whether subject to notice or not, in any currency, and wherever situated.
- (g) If any of the Customer's liabilities are contingent, the Bank can set-off and transfer any sum standing to the credit of any of the Customer's and/or the Chargor's accounts towards the satisfaction of the Customer's contingent liabilities.
- (h) If the Customer's actual liabilities are less than the amount set-off by the Bank, the Bank will refund the surplus to the Customer and/or the Chargor.
- (i) 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 Customer and/or the Chargor is liable.
- (j) Upon the issuance of the notice mentioned in Clause 16.8(b), 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 Customer and/or the Chargor's accounts with the Bank prior to the setting-off, and the Customer and/or the Chargor shall not be entitled to withdraw the monies without the Bank's prior written consent.

#### **16.9 Change in the 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.

#### **16.10 Change in the Customer and/or the 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 Customer and/or the Chargor's name, style, constitution, or composition.

- (b) The expressions “**the Customer**” and “**the Chargor**” in this Charge includes persons for the time being deriving title under the Customer and/or the Chargor respectively, and no change of any sort in relation to or affecting the Customer 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.

#### **16.11 Assignment or transfer of this Charge**

- (a) The Bank can at any time at its absolute discretion and without notifying the Customer 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 Customer 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 Customer and/or the Chargor.

#### **16.12 Successors bound**

- (a) This Charge will be binding on the Customer's and/or 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 Customer and/or the Chargor cannot assign its rights or obligations under this Charge.

#### **16.13 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.

#### **16.14 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 Facility now or from time to time existing between the Bank and the Customer, or any terms and conditions that may be specified in any letters (including letters of offer) given by the Bank to the Customer 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 Facility Agreement, this Charge will prevail to the extent of the inconsistency, for the purpose of interpretation and enforcement of this Charge.

#### **16.15 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 Customer's and/or the Chargor's current or other accounts with the Bank with:-
- (i) all accrued profit;
  - (ii) unpaid instalment of principal and profit;
  - (iii) overdue Islamic trust receipts;
  - (iv) Islamic accepted bills;
  - (v) outstanding in respect of performance guarantees;
  - (vi) indemnities;
  - (vii) sukuk/bonds;
  - (viii) valuation fees;
  - (ix) takaful contribution/insurance premium;
  - (x) fees;
  - (xi) commissions;
  - (xii) charges;
  - (xiii) taxes, duties, levies;
  - (xiv) the, costs and expenses referred to in Clause 16.17 below; and
  - (xv) all other monies due on the 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 Customer's and/or the Chargor's current other accounts) or a waiver of any Event of Default under this Charge or any other agreement relating to the Facilities.
- (c) If such debiting causes the Customer's and/or the Chargor's accounts to be overdrawn and the Customer and/or the Chargor fails to regularize the accounts within the period as determined by the Bank, such amount shall be payable by the Customer and/or the Chargor upon demand.

#### **16.16 Statement by the Bank**

A certificate signed by the Manager, Acting Manager, or any other officer by the Bank as to the monies or liabilities due, or payable to, or incurred by the Bank on account of the Customer and/or the Chargor will be conclusive evidence that the stated balance or amount is due and payable by the Customer and/or the Chargor for all purposes, including any legal proceedings.

#### **16.17 Costs**

- (a) The Chargor will be liable to pay all fees and expense in connection with or incidental to this Charge, including the 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) the solicitors fees (on a full indemnity basis) and any other fees and expenses incurred in respect of such collection.

#### 16.18 Release

- (a) Subject to Clause 10 and the Bank's rights under this Charge, upon payment 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.

#### 16.19 Currency Indemnity

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

- (a) The obligation of the Customer 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 Customer 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 of the Customer and/or the Chargor or otherwise) shall only constitute a discharge to the Customer 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 Customer and/or the Chargor shall indemnify the Bank against any loss sustained by it as a result thereof. In any event, the Customer and/or the Chargor shall indemnify the Bank against the cost of making any such purchase.

#### 16.20 Independent payment obligations

The Customer and/or the Chargor expressly agree that each of its obligations to pay 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.

#### **16.21 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 Customer in respect of any liability from the Customer to the Chargor;
  - (ii) claim or prove in competition with the Bank in respect of any payment by the Customer; or
  - (iii) be entitled to claim or have the benefit of any set-off, counterclaim, payment, distribution, or security from or on account of the Customer.
- (b) This applies whether or not the Chargor pays off any sum recoverable under this Charge, or on any other ground.

#### **16.22 The Chargor as principal debtor**

- (a) Although as between the Customer and the Chargor, the Chargor is a surety for the Customer, between the Chargor and the Bank, whenever the Customer does not pay the Indebtedness, the Chargor shall immediately on demand pay that amount as if 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 Customer, or by any act, omission or thing which may release or discharge the Land or the Chargor's position as a surety for the Customer.

#### **16.23 Construction where the Customer and/or the Chargor is not an individual person**

If the Customer'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 Customer and/or the Chargor was an individual;
- (b) will bind all of the Customer's and/or the Chargor's assigns and successors-in-title; and
- (c) if the Customer 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.

#### **16.24 Unincorporated body**

In addition to, and without affecting the other provisions of this Charge, it is agreed that even though the Customer 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.

#### **16.25 Power to Obtain Financing and to Charge**

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

- (a) any legal limitation, incapacity or otherwise of the Customer in respect of the financing of the Facilities which might be a defence as between the Customer and the Bank; or
- (b) the Chargor's power to enter into this Charge; or
- (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 Customer and/or the Chargor or any other irregularity in such financing or incurring of such liabilities.

#### **16.26 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; or
- (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 Customer and/or the Chargor directly or indirectly as a result.

#### **16.27 Market disruption**

Regardless of what is stated in this Charge or any Security Document, 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 Facilities to be temporarily or permanently impractical or not commercially possible, the Bank can:-

- (a) at any time; and
- (b) upon notification in writing to the Customer and/or the Chargor,

if the notification is given prior to any disbursement, no drawdown will be made and if such notification is given after a partial disbursement, the Bank may explore with the Customer an alternative arrangement, failing which:-

- (i) the Facilities shall be cancelled;
- (ii) the Indebtedness under the Facilities and all other sums payable under this Charge will immediately become due and payable on demand;
- (iii) the Bank's obligations under this Charge or any Security Document shall terminate.

#### **16.28 Illegality**

If the Bank deems that because of:

- (a) any change after the date of this Charge in applicable law, regulation, or regulatory requirement; or
- (b) 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 this Charge, or to continue to make available the Facilities granted to the Customer or to charge or receive profit at the rate applicable:

- (i) the Bank will notify the Customer, and following that notification the Facilities and the Bank's obligations under the Facilities will be suspended immediately;
- (ii) following such notification, the Customer must pay the Facilities to the Bank, and any other moneys then due and payable to the Bank by the Customer or under this Charge will immediately become payable on demand by the Bank, together with all other amounts payable to the Bank on the date deemed necessary by the Bank to comply with the relevant law; and
- (iii) the Bank will have no further obligations under the Facilities, which will be deemed cancelled.

#### **16.29 Retention of Records**

The Chargor agree that the Bank is not obligated to maintain any records of the Chargor's account, including but not limited to the Security Documents, transaction documents, statements of account, correspondences or documents provided to the Bank by the Customer, 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.

#### **16.30 Laws applicable**

This Charge will be governed by and interpreted in accordance with the laws of Malaysia, and the Customer and/or 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 jurisdiction or any similar grounds;
- (c) consents to service of process by registered mail or in any manner permitted by the relevant law; and

- (d) be bound by any decision or conclusion related to Shariah matters pronounced by Shariah Advisory Council of Bank Negara Malaysia or made by the Bank's Shariah Committee in respect of the Facilities.

#### **16.31 Compliance with court orders**

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

#### **16.32 Principal and Secondary Instruments**

This Charge and the Security Documents are instruments employed in one transaction to secure the payment of the Indebtedness within the meaning of Section 4(3) of the Stamp Act 1949, and for the purpose of the said section, the Facility Agreement is the principal instrument and this Charge is deemed to be a secondary or collateral instrument.

- End of Page –

**NOTICE TO THIRD PARTY CHARGORS**

1. By signing this document, you may be liable instead of or as well as the Customer for all monies due and owing by the Customer 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 \_\_\_\_\_

**The 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

**The Bank**

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

**Note:** Even if the Chargor and the Customer are the same, the Chargor must still sign as the Customer on the next page.

\* Delete wherever inappropriate

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

**The Customer**

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

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

.....  
Director

.....  
Director/Secretary

*\* Delete wherever inappropriate*

**SCHEDULE**

**Section 1      Particulars of the Chargor**

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

**Section 3      Particulars of the Customer**

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

**Section 5      Date of the Facility Agreement**

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: