



**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD  
(Company No. 199301017069) (271809-K)  
(Bank)**

**AND**

**THE CUSTOMER NAMED HEREIN  
(Customer)**

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**FACILITY AGREEMENT  
(HOME FINANCING-i/TERM FINANCING-i)**

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**FACILITY AGREEMENT**  
**(HOME FINANCING-i/ TERM FINANCING-i)**

**THIS FACILITY AGREEMENT** is made on the date as stated in **Section 1 of the First Schedule of Part A**.

**BETWEEN**

**UNITED OVERSEAS BANK (MALAYSIA) BHD (Company No. 199301017069) (271809-K)** a company incorporated in Malaysia and having its business address as stated in **Section 2 of the First Schedule of Part A ("Bank")** .

**AND**

**THE PARTY** (referred to in this Agreement as "**Customer**") whose name, particulars and details are as stated in **Section 3 of the First Schedule of Part A**.

**This Agreement consists of:**

<b>Part A</b>	<b>General Terms</b>
<b>Part B</b>	<b>Tawarruq Arrangement</b>
<b>Part C</b>	<b>Other Terms</b>
<b>Part D</b>	<b>Letter of Offer</b>

**PART A      GENERAL TERMS**

**ARTICLE I**

**SECTION 1.01      THE HOME FINANCING FACILITY**

At the Customer's request, the Bank has agreed to provide to the Customer the Home Financing Facility (or by any other name as described in the Letter of Offer) ("**Facility**") to purchase a Property upon the terms and conditions contained in the Letter of Offer and in this Agreement. It is a key term of this Agreement that the Customer will offer the Property (or by any other name as described in the Letter of Offer) as security to secure the payment of the Facility and payment by the Customer of all amounts from time to time outstanding under the Letter of Offer and this Agreement.

**SECTION 1.02      PURPOSE(S) OF THE FACILITY**

The Customer must use the proceeds of the Facility for the purpose of part finance / financing the acquisition of the Property and/or towards renovation costs incurred in relation to the Property and/or for such other purpose as may be stated in the Letter of Offer.

**SECTION 1.03      AGREEMENT**

Subject to the terms and conditions of the Letter of Offer and this Agreement, the Bank has agreed to make available the Facility to the Customer on the basis of and in full reliance upon the warranties, representations and undertakings contained in the Security Documents.

**ARTICLE II****SECTION 2.01 DEFINITIONS**

In this Agreement (Part A, Part B, Part C and Part D inclusive of the Schedules the following words have the meaning given to them below:

<b>“Bank”</b>	<b>United Overseas Bank (Malaysia) Bhd</b> , having its business address as stated in Section 2 of the First Schedule of Part A includes its successors in title and assigns.
<b>“Customer”</b>	The person named in this Agreement, the details of which are as stated in Section 3 of the First Schedule of Part A.
<b>“Business Day”</b>	A day when banks are open for general banking business in the state where the Bank is located.
<b>“Variation and Revision of Profit Rate”</b>	The variation and revision of profit rate as stated in the Letter of Offer.
<b>“Early Settlement Charges”</b>	The charges for early settlement of the Facility that reflect a reasonable estimate of the Bank’s initial costs or any other cost that the Bank could not have recovered as a direct result of settlement of the Facility prior to its maturity.
<b>“Event of Default” or “Events of Default”</b>	Any of the events, situations or circumstances set out in Section 7.01 of Part A and/or Part C of this Agreement.
<b>“Home Financing Facility” or “Facility”</b>	(a) The facility amount in the sum as stated in Section 4 of the First Schedule of Part A that the Bank has agreed to provide to the Customer under this Agreement; and  (b) Where applicable, this shall include other subsisting facilities provided or hereafter agreed to be provided by the Bank pursuant to Section 10.02 of Part A.
<b>“Indebtedness”</b>	The aggregate facility amount of the Facility (remaining due and payable at any time), together with accrued profit thereon at the Effective Profit Rate and all other sums of money howsoever due to the Bank under the Security Documents in connection with the Facility.
<b>“Letter of Offer”</b>	The Letter of Offer attached in Part D and other letters of offer including any amendments or supplemental thereto issued by the Bank (if any);
<b>“Effective Profit Rate”</b>	The rate of profit that is applicable to the Facility or such other rate of profit that the Bank may prescribe at any time.
<b>“Property(ies)”</b>	All that property(ies) identified or described in Section 6 of the First Schedule of Part A and other properties as described in the Letter of Offer.
<b>“Ringgit Malaysia” “RM”</b>	The lawful currency of Malaysia.

<b>“Deferred Sale Price”</b>	The amount as agreed by the Bank and the Customer as referred to in the Letter of Offer and payable by the Customer to the Bank in the manner as specified in the Letter of Offer and / or the Commodity Sale Contract.
<b>“Security Documents”</b>	The documents more particularly set out in Section 7 of the First Schedule of Part A.
<b>“Security Party”</b>	The party whose particulars are more particularly set out in Section 9 of the First Schedule of Part A.

## ARTICLE III

### SECTION 3.01 CONDITIONS PRECEDENT TO DISBURSEMENT

The Bank may not release any part of the Facility unless the conditions precedent as set out in the Security Documents being fulfilled. The Bank may waive compliance with any of the conditions in this Section without affecting its rights under this Agreement. Such waiver does not prevent the Bank from later demanding the Customer to comply with any or all of the waived conditions within any period notified by the Bank to the Customer. No waiver of any conditions precedent constitutes a waiver of any other conditions precedent except to the extent expressly provided in such waiver.

### SECTION 3.02 CANCELLATION OF THE FACILITY

If the Customer does not comply with any condition within the time stated by the Bank, the Bank is entitled to cancel the Facility.

### SECTION 3.03 SECURITY

The Customer and/or the Security Party(ies) is required to sign the Security Documents as security for the obligation to pay the Indebtedness to the Bank. The security created under the Security Documents is expressly intended to be and shall be a continuing security for the payment of the Indebtedness. If required by the Bank, the Customer shall provide further charge or assignment or deposit the documents of title of the Customer's property with the Bank to secure any amount of money due and payable to the Bank.

### SECTION 3.04 REPRESENTATIONS AND WARRANTIES

The Customer warrants that all representations and warranties are correct and will be complied with so long as any sum remains payable by the Customer under the Security Documents remains in force.

## ARTICLE IV

### SECTION 4.01 INDEMNITY

The Customer shall at all times hereafter keep the Bank save, harmless and indemnified against all actions, claims, direct losses, damages and expenses (including legal costs and expenses incurred on a solicitor and client basis) which may be brought or made against or incurred by the Bank in any nature whatsoever by reason or on account of the Facility except where such actions, claims, direct losses, damages and expenses were directly attributable to the Bank's gross negligence, willful default or fraud.

**SECTION 4.02 LATE PAYMENT COMPENSATION (TA'WIDH)**

- (a) In the event of delay or failure to pay any of the monthly payment(s) or any other payment(s) on the due date from the date of the first disbursement of the Facility until the final payment date of the Deferred Sale Price, the Customer shall pay to the Bank the late payment compensation at the prevailing rate as prescribed in the Letter of Offer.
- (b) For the purpose of Section 4.02 (a), a certificate which is duly certified by an authorised officer or agent of the Bank or computer-generated notices issued by the Bank which do not require signatures as to the amount of such late payment compensation due to the Bank. The said certificate shall be binding and conclusive evidence against the Customer for whatever purpose including as being conclusive evidence of any secured amount in a court of law.
- (c) The maximum late payment compensation chargeable to the Customer on the overdue monthly payment(s) in arrears shall not exceed one hundred per centum (100%) of the outstanding principal of the Facility.
- (d) The certificate of the Bank pursuant to section 4.02 (b) shall not, in the absence of manifest error, be disputed on any account whatsoever.
- (e) The payment of the compensation amount for late payment compensation by the Customer under this Clause shall be in addition and without prejudice to other powers, rights and remedies of the Bank under this Agreement upon default.

**SECTION 4.03 EARLY SETTLEMENT OR REDEMPTION OF THE FACILITY**

In the event that the Customer chooses to make early settlement or early redemption of the Facility, the Customer shall be bound by the terms and conditions in the Letter of Offer on the same.

**SECTION 4.04 FACILITY STATEMENT**

The Bank will provide a Facility statement to the Customer at least once a year indicating the outstanding balance at the beginning and end of the period covered by the statement, the amount credited and charged, including profit and other non-profit charges, and the dates when those amounts are updated in the Facility account.

**ARTICLE V****SECTION 5.01 PAYMENT**

- (a) Without prejudice to Section 8.01 of Part A, the Deferred Sale Price so far as not otherwise paid or discharged under the provisions of this Agreement shall be paid by the Customer on demand by the Bank in writing upon the occurrence of an Event of Default. Until such demand is made, the Customer shall pay the Deferred Sale Price on its due dates by way of monthly instalments in the amount and number stated in the Letter of Offer until the full amount of the Deferred Sale Price and all profit thereon shall have been fully paid and satisfied.
- (b) Payments made by the Customer should first be allocated to clearing any monthly payment(s) in arrears before any fees and charges.

**ARTICLE VI****SECTION 6.01 STAMP DUTIES, REGISTRATION FEES AND OTHER COSTS**

The Customer shall bear:

- (a) all costs and expenses (including legal fees, stamp duties, disbursement, taxes, quit rent, assessments, takaful contribution, fee, commission and any related penalties and/or charges) the Bank incurs in connection with the preparation, execution, registration or perfection of the Security Documents;
- (b) all costs and expenses (including legal fees on a solicitor-client basis, stamp duties, disbursements, any related penalties, charges, and expenses incurred in legal proceedings, foreclosure proceedings, valuation fees, real estate agents fees and auctioneers fees) the Bank incurs in connection with:
  - (i) the enforcement or the preservation of any rights under the Security Documents: or
  - (ii) the Bank's involvement with any legal proceedings to protect, or connected to, the Property or any account(s) of the Customer.

**ARTICLE VII****SECTION 7.01 EVENTS OF DEFAULT**

The Customer has committed a default under the Security Documents, if the Customer/Security Party commits or threatens to commit a breach of any of the covenants, undertakings, stipulations, terms, conditions, or provisions stated under the Security Documents, or the Customer/the Security Party is in default upon the happening of any one or more of the following events:

- (a) Non-payment

The Customer fails or defaults in the payment of any sum of money:

- (i) on its due date, whether formally demanded or not: or
- (ii) (if due on demand) when demanded by virtue of the provisions of the Security Documents: or

- (b) Breach of Other Terms and Conditions

The Customer and/or Security Party:

- (i) breaches any term of the Security Documents or in any document delivered under the Facility or the Security Documents; or
- (ii) fails to comply with any notice given under any of the Security Documents requiring him to remedy any breach of the terms of such Security Documents; or

- (c) Breach of Representation and Warranties

Any representation or warranty made or implied under:

- (i) the Letter of Offer or any other provision of Security Documents or Part C herein, as the case may be, or
- (ii) any notice, certificate, letter or other documents delivered under the Security Documents,

is incorrect or misleading (as determined by the Bank) in a material detail as of the date on which it was made or deemed to have been made; or

(d) Ability of the Customer and/or Security Party to Perform Terms in Security Documents

Any event(s) has/have occurred, or a situation exists (including changes in the financial condition of the Customer and/or Security Party), which might, in the opinion of the Bank, affect the ability of the Customer and/or Security Party to perform his obligations under the Security Documents; or

(e) Validity of the Security Documents

The validity of any of the Security Documents is challenged by any person; or

(f) Security in Jeopardy

The Bank is of the opinion that any of the security created pursuant to the Security Documents is in jeopardy or the value of the security created pursuant to the Security Documents is insufficient for the Bank's purpose upon valuation or re-valuation; or

(g) Illegality

It is or will become unlawful for the Customer and/or Security Party to perform or comply with any one or more of the obligations of the Customer and/or Security Party under the Security Documents; or

(h) Authorisation and Consents

Any action, condition, consent or thing at any time required to be taken, fulfilled or done for any of the purposes stated in the Letter of Offer (relating to representations on authorisations and consents).

(i) is not taken, fulfilled or done; or

(ii) ceases to be in full force and effect without modification; or

(i) Cross Default

(i) Any other indebtedness of the Customer and/or Security Party becomes payable or due prematurely, or becomes capable of being declared payable or due prematurely, by reason of a default by the Customer and/or Security Party in its obligations with respect to that indebtedness; or

(ii) The Customer and/or any security party fails to make any payment in respect of that indebtedness on the due date for such payment, or if due on demand when demanded; or

(iii) Upon the security for any such indebtedness becoming enforceable; or

(j) Legal Proceedings

Any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Customer and/or Security Party; or

(k) Enforcement Proceedings

A distress or execution or other process of a court of competent jurisdiction is levied upon or issued against all or any part of the property of the Customer and/or Security

Party and such distress, execution or other process is not discharged by the Customer and/or Security Party within five (5) days from the date of such levy or issue; or

(l) Bankruptcy

- (i) Any step or action is taken for the bankruptcy of the Customer and/or any Security Party; or
- (ii) A petition for bankruptcy is presented against the Customer or any Security Party; or
- (iii) If such proceeding or action has been taken by or against the Customer or any Security Party, that step or petition is not discharged or stayed within twenty-one (21) days from the date of the taking of the step or petition; or
- (iv) If before the Property is fully constructed/renovated and a petition is presented for the winding up or bankruptcy of the vendor/proprietor/contractor of the Property (where applicable);

(m) Compulsory acquisition

A notice or proposal for compulsory acquisition of all or any of the assets of the Customer and/or Security Party is issued or made under or by virtue of an Act of Parliament or other statutory provision; or

(n) Death and Insanity

The Customer or Security Party dies or becomes insane; or

(o) Material Adverse Change

Any event or series of events (whether within or outside of Malaysia and whether of a national or international nature) including any act of violence, terrorism, hostility or war or endemic or epidemic or other calamity occurs which in the Bank's opinion:-

- (i) could or might affect the Customer's and/or Security Party's ability or willingness to fully comply with all or any of his obligations under any of the Security Documents or make it improbable that the Customer or any Security Party would be able to do so;
- (ii) would render it inadvisable or impractical for the Bank to make or continue to make the Facility available or allow any use of the Facility; or
- (iii) could or might jeopardize the Facility or any of its security or the Bank's security position; or

(p) Use of the Facility not for purposes stated

The Facility is not used for the purposes stated or the Facility is used for illegal or speculative purposes; or

(q) Customer's Account re-designated or closed

If the Customer's account is re-designated or closed by the Bank as a result of:

- (i) any guideline or directive from relevant authority(ies); or



- (ii) the account having been conducted unsatisfactorily; or
- (iii) the account having been suspended due to a court order or at law; or
- (iv) an investigation by the Bank giving rise to negative findings including dishonesty, fraud or suspicious activities; or
- (r) Security Documents not perfected

If any of the Security Documents cannot be perfected for any reason whatsoever of if any Security Documents which requires to be registered, cannot be registered or is invalid for any reason whatsoever.

- (s) Any other Events of Default as stipulated in Part C and/or the Letter of Offer.

## **ARTICLE VIII**

### **SECTION 8.01 RIGHTS OF BANK ON DEFAULT**

- (a) If any of the events described in Section 7.01 of Part A occurs,
  - (i) the Bank is entitled with notice to the Customer to suspend further utilisation of any or all of the Facility, or to reduce the limit or amount made available under the Facility, without having to make a prior demand;
  - (ii) the Bank has the right to cease to be under any further obligation and/or commitment to the Customer in relation to the Facility; and
  - (iii) the Indebtedness will become and be deemed to be immediately due and payable, regardless of any provision of this Agreement to the contrary.
- (b) If any of the events set out in Section 7.01 of Part A occurs, the Bank is also entitled with notice to the Customer to take such action (whether on its own accord or through its agent(s)) as may be appropriate against the Customer, including:
  - (i) action to terminate the Facility or to sue for the recovery of the Indebtedness either before, after or concurrently with the action to enforce any of the Security Documents;
  - (ii) to apply any credit balance in whatever currency standing to any account of the Customer with any office or branch of the Bank or any member of the Bank's group of companies, towards satisfaction of the Indebtedness, by providing at least seven (7) calendar days' notice to the Customer; and
  - (iii) to exercise all or any of the Bank's rights or powers which the Bank may possess in the Security Documents against the Customer and/or the Security Party, regardless of whether the Facility has been recalled or not;
- (c) Any part of the Facility not disbursed or utilised before the default may be cancelled by the Bank. Upon such cancellation, any part of the Facility already disbursed or utilised will become due and immediately payable on demand.

### **SECTION 8.02 PROCEEDS OF RECOVERY**

Subject to statutory priorities (if any), all amounts received by the Bank from any proceedings instituted or step taken under any of the Security Documents are to be applied by the Bank:

- FIRSTLY in payment of any rents, taxes, assessments, fees, lawful outgoings and other fees due and payable to the relevant authorities by the Customer in respect of the Property charged or assigned to the Bank as security for the Facility;
- SECONDLY in the enforcement of any of the Security Documents or in the performance of any duties or the exercise of any powers vested in the Bank, in payment of any costs, charges, expenses and liabilities incurred by the Bank and every person appointed by the Bank under the Security Documents;
- THIRDLY in or towards payment to the Bank of all profit then accrued and remaining unpaid in respect of the Facility;
- FOURTHLY in or towards payment to the Bank of the facility sum due and remaining unpaid under the Facility;
- FIFTHLY in or towards payment to the Bank of all other moneys due and remaining unpaid under any or all of the Security Documents;
- SIXTHLY in or towards payment to the Bank of all other moneys due and remaining unpaid;
- SEVENTHLY any surplus will be paid to persons entitled to such surplus.

PROVIDED ALWAYS THAT the Bank may alter the above order of payment or keep such amounts in a non-profit bearing suspense account. Such alteration in the order of payment, or payment into a suspense account, will not affect the right of the Bank to receive the full amount to which it would have been entitled if the primary order had been observed, or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

### **SECTION 8.03 DEFICIENCY IN PROCEEDS OF SALE**

The parties agree that, regardless of any other provisions contained in this Agreement to the contrary:

- (a) the Customer shall pay all costs and expenses (including legal fees on a solicitor-client basis, execution or valuation fees, any other professional fees, stamp duties, disbursements and any related penalties) on a full indemnity basis that the Bank incurs in connection with:
- (i) the enforcement or the preservation of any rights under the Security Documents. For clarity, this would include fees, charges and expenses expended on legal proceedings and foreclosure proceedings (including legal fees, execution fees, valuation fees, real estate agent fees, auctioneer fees and any other professional fees); or
  - (ii) any legal proceedings relating to or in connection with the Property or to protect the Bank's interest in the Property or any account(s) of the Customer; or
  - (iii) maintenance (including maintenance fee) or realisation of the Property; or
  - (iv) the recovery of the Indebtedness.
- (b) if the actual amount ultimately received by the Bank towards the Indebtedness under the terms of the Security Documents and /or on a sale or disposal of the assets or properties charged and/or assigned to the Bank under the Security Documents, after deduction of all fees, costs, rates, taxes and other outgoings as abovementioned, is less than the amount due to the Bank under the Letter of Offer and this Agreement, the Customer will be liable for the amount of such shortfall regardless of whether or not the banker-customer relationship between the Bank and the Customer has ceased or been terminated;

- (c) paragraph (a) applies whether or not the Bank is the purchaser of all assets or properties charged and/or assigned to the Bank under the Security Documents at such sale or disposal;
- (d) until payment is made for the amount of the shortfall, the Customer will (regardless of any foreclosure proceedings taken or sale made by the Bank) also pay the Late Payment Compensation on the amount of the shortfall at the prevailing Islamic Interbank Money Market (IIMM) Rate until full settlement of such shortfall and all other moneys due and payable to the Bank.

## **ARTICLE IX**

### **SECTION 9.01 SUCCESSORS AND ASSIGNS**

This Agreement shall be valid and binding upon the Customer and the Bank and their respective successors-in-title, and assigns and in the case of the Bank, its successors-in-title and assignee.

## **ARTICLE X**

### **SECTION 10.01 PRINCIPAL AND SECONDARY INSTRUMENT**

The Letter of Offer, this Agreement consisting of Part A, Part B, Part C and Part D inclusive of the Schedules and the Security Documents are instruments employed in one transaction to secure the Indebtedness. Ad valorem stamp duty shall be borne and paid by the Customer from time to time on the original of this Agreement and/or any supplements thereto and/or the Letter of Offer and/or the Security Documents within the meaning of Section 4(3) of the Stamp Act, 1949. For the purpose of the said Section 4(3) of the Stamp Act, this Agreement shall be deemed the primary or principal instrument and the Letter of Offer and/or Security Documents are deemed the auxiliary or secondary instruments.

### **SECTION 10.02 UPSTAMPING**

Where the Bank has agreed to provide any additional financing under the Facility to the Customer such that the indebtedness secured by the Security Documents shall exceed the indebtedness stated in Section 10.01 above, the Security Documents shall for the purpose of stamp duty be deemed to be a new and separate instrument bearing date on the day on which such credit is made to the extent that such additional credit is in excess of the indebtedness stated in Section 10.01 above and the Customer shall bear the cost of any additional stamp duty as a result.

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		<p>described in Item 6 of the First Schedule of Part A; and</p> <p>Note: (In the case of Sarawak, the PA clause need not be incorporated in the Assignment but a blank Memorandum of Charge i.e., Charge-in-Escrow shall be executed).</p> <p>Subsequently, upon <u>issuance of the individual/strata title, 1<sup>st</sup> Legal Charge (*1<sup>st</sup>/3<sup>rd</sup> Party)</u> over the Property(ies) as described in Item 6 of the First Schedule of Part A.</p> <p>(e) and such other documents or security documents as the Bank or the Bank's solicitors may advise.</p>
8	<b>Developer/ Vendor</b>	
9	<b>Security Party</b>	

\*To delete/strikethrough whichever not applicable.

**END OF PART A**

## PART B TAWARRUQ ARRANGEMENT

### SECTION 1 DEFINITIONS

In this Agreement and Part B for *Tawarruq* (“**this Part B**”), the following words and expressions shall have the following meanings:

“Agent”		The agent to purchase and/or sell the Commodity
“Commodity”		The commodity or other asset as specified in the Letter of Offer or other commodities or assets approved by <i>Shariah</i> as the underlying asset for the <i>Tawarruq</i> arrangement.
“Brokerage Fee”		A brokerage fee of RM15-00 per one million transacted.
“Developer/Vendor”		The party(ies) whose name(s) and particulars are set out in Section 7 of the First Schedule of the Part A of this Agreement and includes his/her/their/ its, personal representatives, successors in title and permitted assigns as the case may be, to construct/renovate the building (if applicable).
“Ibra”		Rebate or waiver of partial or total claim against certain right in relation to payment of debt.
“Murabahah”		A sale and purchase of a commodity where the acquisition cost and the mark-up are disclosed to the purchaser.
“Commodity Agreement ”	<b>Sale</b>	The commodity sale agreement entered into between the Bank and the Customer in the form as set out in the Letter of Offer whereby pursuant to the Purchase Requisition as attached in Part D of this Agreement, executed by the Customer, the Bank sells the Commodity to the Customer at the Deferred Sale Price based on the Commodity Sale Agreement, as agreed by the Bank and the Customer, which shall be payable on deferred payment basis and subject to the terms and conditions herein and therein contained.
“ <i>Tawarruq (Commodity Murabahah)</i> ”		An arrangement which consists of two separate sale and purchase contracts. The first involves the sale of an asset by the Bank to the Customer on a deferred payment basis. Subsequently, the Customer being the purchaser of the first sale will sell the same Commodity to a third party on a cash and spot basis.

### SECTION 2 MODE OF FINANCING

The Facility is made available to you by the Bank based on the *Shariah* concept of the Commodity Murabahah. Under the arrangement of Commodity Murabahah and the Bank’s financing procedure, the arrangement is concluded in the following manner:-

- (a) Purchase of the Commodity by the Bank.
  - (i) Upon submission of disbursement request to the Bank, the Bank shall proceed to purchase the Commodity for an amount equal to the Bank’s Purchase Price.
  - (ii) The Commodity shall be *Shariah* compliant goods as provided in the Bank’s website.

- (b) Purchase of the Commodity by the Customer from the Bank

Following the conclusion of the commodity transaction under Section 2(a) above, you shall purchase commodity ("**Commodity**") from the Bank at the Deferred Sale Price in accordance to the terms and conditions contained in the Letter of Offer and in this Agreement.

- (c) Execution of Commodity Sale Agreement Contract

Following to Item (b) above, you shall execute the Commodity Sale Agreement at the Deferred Sale Price ("**Purchase Transaction**") based on the Contracted Profit Rate on deferred payment terms subject to the terms and conditions of the Letter of Offer.

- (d) Sale of the Commodity by the Customer

Upon the conclusion of the Purchase Transaction, you may then sell the Commodity to a third party equivalent to the Purchase Price ("**Sale Transaction**"). **Purchase Transaction** and **Sale Transaction** are collectively referred to as "**Commodity Transaction**".

- (e) Nature and Scope of agency

Pursuant to your acceptance of the terms of the Letter of Offer, you appoint the Bank as your agent to conclude the Commodity Transaction as follows:

- (i) **Agency to Purchase:** To conclude the Purchase Transaction described in Section 2 (c) above of the Commodity on your behalf by executing the Commodity Sale Agreement. The terms and the template of the Commodity Sale Agreement shall be in the form as set out in Annexure 1 of the Letter of Offer.
- (ii) **Agency to Sell:** Upon conclusion of the Purchase Transaction, in a dual agency arrangement to effect on your behalf the Sale Transaction described in Section 2 (d) above as follows:
- (a) to sell the Commodity to a third party at the price equivalent to the Purchase Price;
  - (b) to receive proceeds from the sale of the Commodity on your behalf; and
  - (c) deliver possession of and title in the Commodity to the third party purchaser;
- (iii) The Bank shall at all times act as your agent and shall:
- (a) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with the appointment as agent, or imposed under the Commodity Transaction pursuant to Section 2 (e) (i) and (ii) from itself and/or to any third party;
  - (b) be authorised to delegate its rights and duties as an agent herein to any third party to do all acts necessary for the completion of the required transactions; and
  - (c) be required to do all the administration duties regarding the holding and the selling of the Commodity.
- (iv) You shall not revoke the appointment of the Bank as your agent throughout the Commodity Transaction. The agency shall cease upon payment of proceeds of sale of

the Commodity by the Bank pursuant to the terms of the Facility. In addition, the Bank also reserves the right to terminate the appointment if the Bank deems fit.

- (v) The proceeds of sale of the Commodity due to you shall be paid by the Bank once the Bank has received confirmation or receipt of payment from the third party and the proceeds shall be disbursed by the Bank in accordance with the terms of the Facility.
  - (vi) Save for the purpose of this appointment, the agency appointment shall not create or be deemed to create a partnership or a joint venture between the parties, nor shall it establish a relationship of principal or agent or any other relationship between the Bank and you.
  - (vii) You undertake to indemnify and keep the Bank indemnified from any losses, costs, expenses or damage that the Bank may suffer or incur as a result of fulfilling the Bank's agency function as set out above, save for the Bank's willful misconduct or gross negligence.
- (f) Delivery of the Commodity
- (i) Each party acknowledges that the Commodity shall be capable of physical delivery. Any request for the physical delivery of the Commodity shall be made by providing the Bank with seven days' prior written request during normal hour of Business day.
  - (ii) If you intend to take physical delivery of the Commodity with prior notice to the Bank, arrangements for the delivery are to be made directly with Commodity platform provider or Commodity trader subject to the fulfilment of their terms and conditions for such delivery including any arrangement for logistics, takaful/insurance and other applicable costs.
  - (iii) Commodity trader(s) shall be the commodity trader as provided in Bursa Suq Al-Sila' commodity exchange or any other commodity trader as arranged by the Bank.
- (g) Proceeds from the Sale of the Commodity
- (i) Following the conclusion of the Sale Transaction, proceeds from the sale of the Commodity shall be credited into your current account with the Bank and/or disbursed pursuant to the terms of the Facility where the same shall be emplaced with the Facility limit.
  - (ii) You agree that pending full disbursement of the Facility, the proceeds shall be charged to the Bank upon terms and condition herein. In the event of the cancellation of undrawn portion of the Facility, you further agree that any undisbursed portion of the proceeds shall be first set off against the Deferred Sale Price.
  - (iii) The above Purchase Transaction and Sale Transaction are evidenced by ownership certificates or internal records retained by the Bank and available for your viewing if required. The transactions will be executed in sequence, and in the absence of your prior request as described in Section 2 (f) (ii) above, under the dual Agency arrangement you are deemed to have authorised us to proceed with the Sale Transaction.

### **SECTION 3 THE BANK'S OBLIGATION**

The Bank's obligation to disburse the Facility shall be limited to and not exceed the aggregate amount of the proceeds of sale of the Commodity stated in Section 2(g) above. Any monies payable by the Customer to any party which exceed the Facility Amount shall be borne and paid by the Customer.



**SECTION 4 PAYMENT BY THE CUSTOMER**

- 4.1 The Customer shall pay to the Bank the Deferred Sale Price in the manner as specified in the Letter of Offer.
- 4.2 Where applicable, the Bank may, with prior written notice to the Customer, vary the terms of payment set out in the Letter of Offer so as to ensure that the Deferred Sale Price and other charges (if any) are paid in full upon the maturity date.
- 4.3 Upon request of the Customer, the Bank may extend the duration for the payment of the \*Sale Price to a further term on such terms and conditions as determined by the Bank provided that the Deferred Sale Price remain unchanged.
- 4.4 In the event of Early Settlement of the financing, the Bank shall grant to the Customer an *Ibra'* in accordance with the provisions of this Agreement, the Guidelines of BNM and *Shariah* principle.

**SECTION 5 IBRA' (REBATE)**

The Bank shall grant *Ibra'* (rebate) to the Customer in respect of any Indebtedness due under this Agreement and/or the Security Documents, but not limited to, the following events:

- (a) the Customer prepays or makes early settlement or early redemption and/or early termination or cancellation before expiry of the Tenure (as defined in the Letter of Offer), including those arising from prepayments and/or restructuring and/or occurrence of the Event of Default;
- (b) In the event of early commencement of instalment prior to the expiry of grace profit period (for properties under construction);
- (c) In the event the Effective Profit Rate is lower than the Contracted Profit Rate; and
- (d) In the event the actual disbursed amount is less than the Facility Amount.

*Ibra'* (rebate) = \*Remaining Unearned Profit – Early Settlement/Prepayment Charges and other amount due (if any).

*\*Remaining Unearned Profit is equal to unrealised profit at the time of full settlement.*

For avoidance of doubt, it is hereby acknowledged and agreed that the rebates referred to herein shall not be construed in any manner whatsoever as cash rebate payable to the Customer, but shall be reflected as a reduction in the profit element of the Deferred Sale Price. The rebate shall only be deemed granted upon receipt of the settlement/redemption sum as determined by the Bank. The calculation of rebate shall be made in accordance with any rules, regulations and/or directives (whether or not having the force of law) required of or imposed upon the Bank from time to time and at any time by Bank Negara Malaysia or any other authority having jurisdiction over the Bank.

**END OF PART B**

**PART C OTHER TERMS****ARTICLE 1****SECTION 1 FURTHER DEFINITIONS**

In this Part C, the following words and expressions shall have the following meanings:

- “Authorised Persons”** Any person the Customer authorises (either singly or jointly), and approved by the Bank, to operate the Customer’s account, and to act on the Customer’s behalf in giving instructions, to perform any acts under an agreement between the Bank and the Customer, or to use any facility, product or service the Bank makes available to the Customer.
- “FATCA”** Means:-  
(i) the Code or any associated regulations or other official guidance;  
(ii) any treaty, law or regulation of any other jurisdiction or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in (i) above; or  
(iii) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
- “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.
- “Land Code”** The National Land Code 1965, the Sabah Land Ordinance (Cap. 68) or Sarawak Land Code (Cap. 81), as the case may be.
- “Personal Data”** May include, but is not limited to, the Customer’s name, address, occupation, contact details, information captured on security systems (including a recording of the Customer’s image on Closed Circuit Television (CCTV)), the information contained in any of the Customer’s account(s) the Customer may have with the Bank either singly or jointly with any other person, the type of products and/or services that the Customer has subscribed to with the Bank and such other necessary data regarding the Customer and the Customer’s transaction(s) with the Bank.
- “Sanctions”** The sanctions, embargoes or restrictive measures administered, enacted or enforced by any government, governmental institutions or agencies, regulator or authority.
- “US”** United States of America.
- “US Tax Obligor”** Means:-  
(i) a Customer which is resident for a tax purposes in the US; or  
(ii) an obligor, some or all of whose payments under the Security Documents are from sources within the US for US federal income tax purposes.

**“Vendor”**

The seller of the Property and shall mean the vendor and developer, as the case maybe including their heirs, liquidators, receivers, personal representatives and successors-in-title.

**SECTION 2 REPRESENTATIONS AND WARRANTIES**

- 2.1 Upon the signing of this Agreement, the Customer represents and warrants to the Bank as follows:-
- 2.1.1 **Capacity.** The Customer and the Security Party have the power, right and capacity to execute, deliver and perform the terms of this Agreement, and that all necessary action has been taken to authorise the execution, delivery and performance of this Agreement and the Security Documents.
- 2.1.2 **Contractual obligations.** This Agreement and the Security Documents constitute, or when executed will constitute, the legal, valid and binding obligations of the Customer and the Security Party in accordance with their respective terms and that the execution, delivery and performance of this Agreement and the Security Documents:-
- (a) will not breach any law, rule, regulation, order or decree of any governmental authority, agency or court to which the Customer and/or the Security Party is/are subject; and
- (b) will not breach any provision of any contract, mortgage, undertaking or instrument to which the Customer and/or the Security Party is/are a party or which is binding on them and will not result in the creation or imposition of any obligation to create or impose any mortgage, charge, lien, pledge or other security interest in the Security or in the Security Document or on the assets or moneys of the Customer and or any of the Security Party.
- 2.1.3 **Authorisations and consents.** All consents, permissions, licences, approvals, authorisations, orders, and exemptions of any Ministry, agency, department, or authority in Malaysia (including if relevant, foreign exchange approval) and elsewhere which may be required or advisable for or in connection with the Facility, the execution, delivery, performance, legality, or enforceability of this Agreement and the Security Documents, have been obtained, and are in full force and effect as all the terms and conditions contained in all of such consent, permissions, licences, approvals, authorisations, orders or exemptions obtained have been duly complied with.
- 2.1.4 **Proceedings.** Neither the Customer 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 (whether civil or criminal), arbitration, or administration proceedings are presently current, pending, or threatened, which might affect their solvency or ability to perform their respective obligations and where the Customer and/or the Security Party is/are:-
- (a) an individual or an ordinary person, that the Customer and/or the Security Party 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 any of the Security Party; or
- (b) 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 Security Party or to wind-up the Customer and/or any of the Security Party.
- 2.1.5 **Material adverse change.** There has been no change in the financial condition, operating environment or management of the Customer and/or the Security Party which would materially affect in an adverse way the ability of the Customer and/or the Security Party to perform the obligations of the Customer and/or the Security Party under this Agreement and the Security Documents since the Customer first applied for the Facility.

- 2.1.6 **Increase in debt obligations.** There has been no increase in the Customer's debt obligations which would affect in an adverse way the ability of the Customer to perform the obligations under this Agreement and the Security Documents
- 2.1.7 **Security Party's title to the Security.** The Security Party is the legal and beneficial owner of the Security free of all encumbrances; and agrees and consents to the creation of the Security in favour of the Bank. The Security Party's title to the Security is regular, valid and indefeasible. In the event the acquisition of the Security is currently being financed by the Bank, when the Security Document in respect of the Security is perfected, the Security Party will be the legal and beneficial owner of the Security free of all encumbrances and the Security Party's title to the Security is regular, valid and indefeasible.
- 2.1.8 **Compliance with laws.** The financing by the Bank under this Agreement, and the Bank's agreement to make and continue to make available the Facility to the Customer will not contravene or be in breach of any Act of Parliament, Ordinance, enactment, rule or law, regulation, order, or other statutory provisions in force now or in future, any exposure 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.
- 2.1.9 **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 Facility or any part of the same available to the Customer.
- 2.1.10 **Information/Disclosure.** All information furnished to the Bank by the Customer and the Security Party in connection with the application for the Facility do not contain any untrue or misleading statement, or omit to state any fact (the omission of which makes any statement made in those circumstances misleading or incorrect), and the Customer and the Security Party are not aware of:-
- (a) any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, may adversely affect the Bank's decision to grant the Facility (or part of the same), or to take the security and that all expressions of expectation, intention, belief and opinion and all projections contained in such information were honestly made based on reasonable grounds after due and careful enquiry; and
  - (b) any information or fact being intentionally withheld which may result in or give rise to the Bank offering, granting, grant or agreeing to grant the Facility in breach of any law or regulation including, without limitation, the Financial Services Act 2013, the Islamic Financial Services Act, 2013, or any exposure limits or restrictions that govern, regulate or as may be imposed upon the Bank from time to time by Bank Negara Malaysia or such other authority or authorities having jurisdiction over the Bank.
- 2.1.11 **No conflict or limitation.** Where the Customer and/or any Security Party is a company or corporation, that neither (i) the execution and delivery of this Agreement and the Security Documents by the Customer and/or the Security Party; (ii) the performance or observance by the Customer and/or the Security Party of any of their respective obligations under the Facility and/or this Agreement; (iii) the execution and delivery of the Security Document by the Security Party; nor (vi) the performance or observance of any of the Customer's and/or the Security Party's obligations under any security document, will:-
- (a) conflict with, or result in a breach of its Constitution or any other constituent documents, any law, statute, regulation, judgment, order, mortgage, contract, agreement, trust deed, or other instrument, arrangement, obligation, or duty by

which it is bound; or

- (b) 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.

2.1.12 **Accounts/Financial Statements.** Where the Customer and any Security Party is a company or corporation, that the financial statements or accounts provided by the Customer and such Security Party to the Bank:-

- (a) 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 or other constituent documents of the Customer and such Security Party;
- (b) are complete and correct and that they fairly and correctly represent and disclose the financial condition of the Customer and/or the Security Party and the results of the operations of the Customer and/or the Security Party for the period stated in accordance with generally accepted accounting principles applied on a consistent basis and together with the notes to the financial statements:-
  - (i) give a true and fair view of the financial condition and operations of the Customer and/or the Security Party as at the date of such financial statements and for the period as covered by the financial statements; and
  - (ii) disclose or reserve against the liabilities (contingent or otherwise) of the Customer and/or the Security Party 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.

2.1.13 **Tax Returns.** The Customer and the Security Party have filed all their tax returns which the Customer and the Security Party are required by law to file and have paid or made adequate provision for the payment of all taxes, assessments, fees and other governmental charges assessed against each of them or upon any of their respective properties, assets, businesses or incomes.

2.1.14 **Conviction.** Where the Customer and any Security Party is an individual, the Customer and such the Security Party have not been charged or convicted for any criminal offences or have any criminal records.

2.1.15 **Illegality.** The Customer and the Security Party are not involved in any illegal activities and all moneys and properties provided to the Bank are not derived in any way from illegal activities.

2.1.16 **Sanctions.** The Customer and the Security Party are not:-

- (a) nationals of any country which is subjected to any Sanctions;
- (b) entities incorporated under the laws of or owned or controlled (directly or indirectly) by a person located in or organized under the laws of a country which is subject to any Sanctions; or
- (c) persons listed on or owned or controlled (directly or indirectly) by any person listed on, any sanctioned persons list published by any government, governmental institutions or agencies, regulator or authority or prepared by the Group.

2.1.17 **Connected Parties.** Unless permitted by guidelines issued by any authority which has jurisdiction over the Bank:-

- (a) the Customer and/or any of his close relatives are not a director (including alternate director) in the Bank or any of the financial institutions in the Group;
- (b) the Customer and/or his close relatives are not a controlling shareholder or influential shareholder in the Bank or any of the financial institutions in the Group;
- (c) the Customer is not an executive officer or designated officer of the Bank;
- (d) the Customer is not a firm, partnership, company or any other legal entity:-
  - (i) which is in control of or is controlled by any persons stated in Clause 2.1.16(a) to (c); or
  - (ii) in which any person (including their close relatives in the case of individual) listed in Clause 2.1.16(a) to (c) other than a designated officer is interested as a director, partner, executive officer, agent or guarantor and their subsidiaries or entities controlled by them.

For the purpose of this Clause:-

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

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

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

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

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

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

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

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

**"designated officer"** means a person who is responsible for or has the authority to appraise and/or approve credit transactions or review the status of existing credit transactions of the Bank, either as a member of a committee or individually, and his close relatives. None of the Bank's directors, controlling shareholders, officers and their respective close relatives is a director, partner, executive officer, agent or guarantor of the Customer and/or subsidiaries/entities controlled by the Customer.

- 2.1.18 **FATCA.** Each of the Customer and the Security Parties is not a US Tax Obligor.
- 2.1.19 **Shariah.** The Customer shall utilise the Facility in accordance with Shariah compliance purpose and operations.
- 2.1.20 **Additional Representations and Warranties.** Such additional representations and warranties as set out in the **Second Schedule** of this Agreement, if any.
- 2.2 Prior to and on each of the dates of utilisation of the Facility, 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 financial statements in Clause 2.1.12 above will be construed as a reference to the then latest available annual financial statements of the Customer and/or the Security Party.
- 2.3 The Customer acknowledges that the Bank has entered into this Agreement on the basis of and in full reliance on the representations and warranties above and the Customer agrees, covenants, undertakes and confirms that each of the representations and warranties given shall survive and continue to have full force and effect after the execution of this Agreement and the Security Documents and will be true and correct and fully observed on each and every date that any of the Facility is utilised and until the Indebtedness has been fully and completely discharged.
- 2.4 The Bank's rights and remedies in relation to any misrepresentation or breach of warranty shall not be affected in any way by any investigation made by or on behalf of the Bank into the affairs of the Customer or the Security Party or by the execution or the performance by the Bank of this Agreement, or by any other act or thing which may be done by or on behalf of the Bank in connection with this Agreement or which might, apart from this Clause, affect such rights or remedies of the Bank.

## SECTION 3 THE FACILITY

### 3.1 The Facility and Review

- 3.1.1 At the request of the Customer and/or the Security Party, the Bank has agreed to make available to the Customer the Facility upon the terms and subject to the terms and conditions contained in this Agreement and the Letter of Offer.
- 3.1.2 Notwithstanding Clause 3.1.1 and other provisions in this Agreement which provide to the contrary, the Customer understands and agrees that the Bank has the right to review the Facility at any time. Upon such review, the Bank may impose such terms and conditions as the Bank deems fit, including and not limited to decrease or otherwise vary the principal limit of all or each of the Facility or to cease to grant all or any of the Facility and require immediate payment of any Indebtedness.

### 3.2 Purpose of the Facility

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

### 3.3 Nature of the Facility

- 3.3.1 The parties hereby agree that the Facility has been structured based on the Shariah principles of *Murabahah* (cost plus sale), *Tawarruq/Commodity Murabahah* (monetisation) and *Wakalah* (agency), the nature and mechanism of which shall be as stipulated in the **Annexure 1 to the Letter of Offer**.
- 3.3.2 The proceeds from the sale of the Commodity shall be credited into the Customer's financing account or in such manner as may be determined by the Bank and shall be emplaced with the financing limit and with the express instruction from the Customer to the Bank, the Bank is authorised to pay to the vendor or the Customer or any other relevant party (as the case may be) as determined by the Bank. Disbursement of the Facility shall be deemed to be made by the Bank upon such release of payment to the vendor or Customer or other relevant party, as the case may be.

### 3.4 Terms and Conditions of the Sale of Commodity

- 3.4.1 The sale of the Commodity by the Bank shall be governed by the terms and conditions of the Letter of Offer, the Commodity Sale Agreement and this Agreement.
- 3.4.2 The Customer shall obtain such ownership title to the Commodity as the Bank receives from the purchase of the Commodity which shall be free from Security Interest. The Bank shall not be deemed to give any warranty or representation (express or implied) whatsoever, whether arising by law, by statute or otherwise and, without prejudice to any other clause in this Agreement, any such warranty or representation by the Bank with regard to the Commodity is hereby expressly excluded to the full extent permitted by any applicable law.
- 3.4.3 The parties hereby agree that upon the sale of the Commodity by the Bank to the Customer, the Customer shall bear full ownership, risks, responsibilities including costs and expenses incurred towards the Commodity including the option of taking physical delivery of the Commodity. The Customer also agrees that it would make the necessary arrangement timely including but not limited to transportation, charges thereof and required licenses in order to take physical delivery of the Commodity.
- 3.4.4 The Customer agrees that in purchasing the Commodity from the Bank, it shall have accepted the Commodity on an 'as is, where is' basis.
- 3.4.5 The Customer hereby waives any claims which it may have against the Bank in respect of any loss or damage which he may suffer by reason of, or arising out of or in connection with this Agreement, any other Security Documents or otherwise (howsoever arising) in connection with or arising from the purchase of the Commodity.
- 3.4.6 The Bank's obligation to enter into a commodity transaction is subject to:
- (a) the Bank being satisfied that no circumstances exist and no event has occurred so as to jeopardise the Bank's Security and/or to render the Facility



immediately payable and no Event of Default as set out in Clause 9.1 of this Agreement or under any agreement or arrangement referred to in the Security Documents shall have happened and be continuing;

- (b) the representations and warranties as set out in Clause 2 are true and correct in all respects as if made on the date on which the commodity transaction is concluded and repeated by reference to the then existing circumstances;
- (c) no extraordinary circumstance or change of law or other governmental action shall have occurred which materially and adversely affects the Customer's or the Security Party's ability to observe and perform the covenants and obligations on their part to be observed and performed under the provisions of the Security Documents;
- (d) availability of the Commodity and the Bank's available fund; and
- (e) the proper conduct of the Customer's account and satisfactory utilisation of the Facility.

### 3.5 Conditions precedent to utilisation

3.5.1 The Bank is not obliged to permit any utilisation or release such relevant Facility or any part thereof until:-

- (a) all conditions precedent as stipulated in the Letter of Offer and the **Third Schedule** of this Agreement, if any, pertaining to the relevant Facility are satisfied or fulfilled; and
- (b) the Bank is satisfied that:-
  - (i) no event has occurred so as to render any of the Indebtedness to be immediately payable and no Event of Default has happened and continuing;
  - (ii) no extraordinary circumstances or change of law or other government action have occurred which may render the Customer and/or the Security Party to be unable to observe and perform their respective covenants and obligations in this Agreement and/or the Security Documents; and
  - (iii) no event has occurred and no circumstances exist which could or might, in the opinion of the Bank (which shall be final and conclusive) affect the financial condition of the Customer and/or the Security Party so as to render any of them unable to perform their obligations under this Agreement and/or the Security Documents.

3.5.2 Notwithstanding Clause 3.5.1, the Customer agrees that during the course of disbursement or utilisation of the Facility, the Bank may by notice to the Customer impose such other conditions precedent as the Bank, considers necessary for further disbursement or utilisation of the remaining Facility and the Customer shall upon receipt of such notice, comply with such additional conditions precedent. Until such additional conditions precedent are complied with to the satisfaction of the Bank, the Bank is entitled to withhold any further disbursement or utilisation of the remaining Facility without being liable to the Customer and any other parties for any loss and/or damages that may arise from such withholding.

3.5.3 The Customer agrees that all conditions precedent are for the Bank's sole benefit and the Bank is entitled to waive or defer the fulfilment of any one or more of such conditions precedent. Any waiver shall not prevent the Bank from insisting on compliance with any waived condition precedent at a later time.

3.5.4 Until the conditions precedent contained in Clause 3.5.1 have been satisfied or fulfilled to the satisfaction of the Bank, the Bank may terminate, suspend or cancel the whole or any part of the Facility.

### 3.6 Progressive release

3.6.1 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.

3.6.2 Where the Facility is to finance the purchase or construction of any property, the Customer hereby irrevocably authorises the Bank to advance or pay all or part of the Facility to the financial institutions, Vendor, contractor or such other persons responsible for the sale and/or construction of the property on such terms and in such manner as the Bank decides.

3.6.3 All advances and payments made by the Bank to the person(s) mentioned in Clause 3.6.2 ("**Third Party**") shall be deemed to have been paid to the Customer and shall constitute and form part of the monies secured by and owing under this Agreement and the Security Documents. The acknowledgement or receipt of such Third Party will be as good, sufficient and effective as if it has been made or given by the Customer.

3.6.4 The Customer hereby irrevocably authorises the Bank and the Bank is entitled:-

- (a) to issue to the Third Party or firm of solicitors purporting to act for the Third Party, an undertaking, guarantee or covenant to release or pay to such Third Party all or such part of the Facility at such time and in such manner as the Bank may agree;
- (b) to release or pay the financial institution, firm of solicitors or Vendor all or part of the Facility; and
- (c) where the release of the Facility is to be made against a schedule of payment in an agreement, to release or pay to the Third Party on or before the due date as stated in the progressive billing submitted by the Third Party to the Bank upon terms that:-
  - (i) if any sum billed is to be paid on the date the Customer or the purchaser takes vacant possession of the property, the Bank shall be entitled to make such payment to the Third Party at any time, whether or not the Customer or the purchaser have actually taken vacant possession of the property; and
  - (ii) in making such payment, the Bank shall not be obliged to verify or ascertain whether such progressive billing is in order or otherwise or whether the sums billed is properly due or otherwise

and the Customer irrevocably agrees and confirms that the Bank shall be entitled to release or pay the Facility to the Third Party notwithstanding any protest or objection

from the Customer, 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 Customer agree that the Customer shall only claim against such Third Party in respect of such sum released and the Customer 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 gross negligence or willful default.

- 3.6.5 If the Bank or the Bank's solicitors have given or agreed to give their undertaking, guarantee, or covenant referred to in Clause 3.6.4 above to release or pay, all or part of the Facility in settlement of 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 Customer agrees (in addition to the Security) that:-
- (a) the payment of all monies undertaken, guaranteed, or covenanted to be paid by the Bank to the Third Party, the Third Party's solicitors, or the Bank's solicitors (as the case may be) will be secured under this Agreement and the Security Documents; and
  - (b) the Customer will and will also cause the Security Party to at all times indemnify and keep the Bank or the Bank's solicitors indemnified against all actions, proceedings, costs, expenses, claims, and demands which may be taken, incurred, or suffered by the Bank or the Bank's solicitors arising from the Bank's or the Bank's solicitors aforesaid undertaking given to the Third Party, the Third Party's solicitors, or the Bank's solicitors, as the case may be.

### 3.7 Further advances

- 3.7.1 The Bank can from time to time and if requested by the Customer, advance to the Customer further sums of money beyond the limit approved by the Bank subject to the terms and conditions which may be imposed by the Bank from time to time.
- 3.7.2 All profit and such sums advanced beyond the limit approved by the Bank together with all cost, charges, expenses and other monies incurred thereby will form part of the monies secured by this Agreement and will be deemed to be charged on and secured against the Security in addition to the principal sum hereby advanced and will form part of the payment due under this Agreement.

### 3.8 No obligation to make further advances

The Facility granted or to be granted to the Customer may be reviewed by the Bank from time to time and at any time. Nothing in this Agreement will be deemed to impose on the Bank an obligation to make or continue to make any advances or to afford any other accommodation or facility to the Customer.

## SECTION 4 PROFIT

### 4.1 Deferred Sale Price

In consideration of the Bank having agreed to grant to the Customer the Facility, the Customer hereby agrees, undertakes and covenants to pay the Deferred Sale Price within the Tenure in the manner set out in the Letter of Offer and this Agreement.

## SECTION 5 FEES, CHARGES, COSTS & EXPENSES

### 5.1 Fees

The Customer shall pay to the Bank all fees that are payable by the Customer to the Bank as required under the Letter of Offer in respect of the Facility (which shall include but not limited to all fees and expenses incurred in connection with the further stamping of this Agreement), which fees shall be non-refundable.

### 5.2 Costs & Expenses

5.2.1 All costs, charges, and expenses incurred by the Bank and/or expended by the Bank on behalf of the Security Party and/or the Customer under or pursuant to this Agreement, shall be borne and paid by the Customer to the Bank:-

5.2.2 If the Customer defaults in the payment of any of the said sums in Clause 5.2.1, the Bank shall be entitled (but not obliged) to pay and debit all monies so paid together with *Ta'widh* (Compensation) thereon to the Customer's account(s) with the Bank for the relevant Facility in accordance with the terms of this Agreement and the same will be deemed to be charged on and secured against the Security in addition to the Facility Amount hereby advanced and will form part of the payment due under this Agreement.

5.2.3 If any monies payable by the Customer and/or the Security Party under this Agreement are required to be recovered by any legal process, or if any such monies are placed with solicitors for collection, the Customer shall also pay (in addition to the monies then due and payable under this Agreement) solicitors fees and charges (on a full indemnity basis) and any other fees and expenses incurred in respect of such collection.

### 5.3 Indemnity for costs, expenses & stamp duty

The Customer shall fully indemnify the Bank from and against any expense, damage, loss, penalty or liability which the Bank may incur or suffer as a result of any delay or failure by the Customer and the Security Party to pay any of the said sums in Clause 5.2.1.

### 5.4 Taxes, Duties or Levies

5.4.1 The Customer is liable to pay any taxes or levies which as at the date of the Letter of Offer or at any date subsequent to the date of the Letter of Offer, is required by law or regulations, guidelines, decisions or directives issued under such laws (and shall include any amendments made to such laws, regulations, guidelines, decisions or directives) to be paid to anybody or authority having jurisdiction over the Bank, in respect of any moneys charged or incurred by the Bank during the continuation of the Facility so long as the Facility or any part of it remains outstanding and unpaid. Unless otherwise stated by the Bank at any time, any fees and charges notified to the Customer are inclusive of any applicable tax at the prevailing rate. Where the Bank has stated otherwise, the Customer shall be liable to pay the applicable tax in addition to the Bank's fees and charges.

5.4.2 Any taxes or levies incurred by the Bank in relation to the Facility and any other goods or services provided under the Facility shall be borne by and charged to the Customer and in the event that the Bank shall effect any payment, the Customer shall be liable to reimburse the Bank for such amounts paid.

## SECTION 6 SECURITY FOR INDEBTEDNESS

### 6.1 Execution of Security Documents

As security for the payment of the Indebtedness, the Customer will simultaneously with the execution of this Agreement or at such other time directed by the Bank:-

- 6.1.1 consent to the creation of the Security and execute all such Security Documents over such Security as stated in the Letter of Offer; and/or
- 6.1.2 procure consent from the Security Party to create such Security and cause the Security Party to execute all such Security Documents over such Security as stated in the Letter of Offer.

### 6.2 Assignment

If any of the Security Documents is an assignment ("**Assignment**") of any lease or the rights, title, benefits, entitlements and interests in, to and under any agreement ("**Sale Agreement**") and the lease or the property comprised in the Sale Agreement ("**Property**"), then notwithstanding the provisions of the Assignment, the Customer shall and shall also cause the Security Party:-

- 6.2.1 to continue to be solely responsible for observing all the terms and conditions and obligations of the Customer and/or the Security Party under the Sale Agreement; and
- 6.2.2 to immediately upon the execution of the Assignment:-
  - (a) to give written notice of the Assignment to the relevant party or parties to the Sale Agreement, including the developer and/or the landowner and/or such other parties as the Bank may specify; and
  - (b) deliver to the Bank the original acknowledgements of receipt from the parties mentioned in Clause 6.2.2(a); and
- 6.2.3 to deliver to the Bank and the Bank shall have custody or possession of the stamped original of the Sale Agreement and the stamped originals of all other documents pertaining to the Property so assigned to the Bank for so long as any amount under the Facility is owing by the Customer to the Bank.
- 6.2.4 to immediately sign at their own cost and expense, the necessary instrument of transfer and all other documents needed to take a transfer of the Property (collectively "**Transfer Documents**") and a charge under the Land Code over the Property to secure the Indebtedness, which charge shall be in such form and contain such terms and conditions required by the Bank ("**Charge**") when an individual issue document of title to the Property is issued and deliver and deposit with the Bank or its solicitors:-
  - (a) the relevant document of title to the Property;
  - (b) the Transfer Documents;
  - (c) the Charge; and
  - (d) all other documents and fees needed to register the transfer of the Property in favour of the Customer and/or the Security Party and the Charge in favour of the Bank free from encumbrances; and

- 6.2.5 to reimburse the Bank all money incurred or paid by the Bank to facilitate the delivery of the required documents and/or to register the transfer of the Property in the name of the Customer and/or the Security Party and to register the Charge in favour of the Bank.

Notwithstanding the completion and perfection of the Charge pursuant to Clause 6.2.4, any antecedent default by the Customer and/or the Security Party will not be deemed waived in any manner and all rights and remedies for such default shall remain fully enforceable by the Bank against the Customer and/or the Security Party.

### 6.3 Continuing security

The Security created by the Security Documents is and will be a continuing security for the Indebtedness, and will continue to be held by the Bank until:-

- 6.3.1 all the Indebtedness has been paid and fully settled by the Customer and/or the Security Party; and
- 6.3.2 the Bank has been fully released from all its obligations or contingent liabilities, if any under the Facility or under any other instrument issued by the Bank for the account of the Customer notwithstanding that the Customer may cease to be indebted to the Bank for any period(s), and regardless of:-
- (a) any account(s) ceasing to be current or any settlement or closure of account(s) or otherwise;
  - (b) the death, insanity or insolvency/bankruptcy of the Customer and/or the Security Party;
  - (c) the voluntary or compulsory liquidation of the Customer and/or the Security Party;
  - (d) 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 Security Party is currently being carried on; or
  - (e) 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.

### 6.4 Restriction against other charges

- 6.4.1 The Customer 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 the securities under the Security Documents.
- 6.4.2 The Customer agrees and will also cause the Security Party 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 Property, or raise money on the security of the Customer's and/or the Security Party's rights in the Property, or deal with the Property in any manner without the Bank's prior written consent. The Security Documents 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.

## 6.5 Liens and other security not affected

Nothing in this Agreement and/or the Security Documents will:-

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

## 6.6 Covenant to perfect and provide further security

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

## 6.7 Further Assurances

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

## SECTION 7 PAYMENT OF FACILITY

### 7.1 Covenant to Pay

The Customer covenants and undertakes that the Customer will pay to the Bank upon demand the Indebtedness and until so demanded by the Bank, the Customer shall pay to the Bank the Indebtedness at the times and in the manner stipulated in the Letter of Offer and this Agreement.

### 7.2 Prepayment

- 7.2.1 Subject to provision of *Ibra'* (Rebate), the Customer may prepay the Facility by giving the Bank a minimum written notice as stated in the Letter of Offer prior to making a partial or total prepayment which prepayment must be made on the profit payment date or any other date as determined by the Bank.
- 7.2.2 Any notice for prepayment shall be irrevocable and the customer shall be obligated to make such prepayment in accordance with the notice and any amount which is paid may not be reimbursed.

### 7.3 No Deduction or Withholding

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

- 7.3.1 unconditionally and without any restriction or condition; and
- 7.3.2 without any deduction of any kind including, without limitation, deductions for any bank charges or commissions, any kind of withholding, set-off or counterclaim against the Bank for any matter or on account of any taxes or duties or charges.

#### 7.4 **Currency of Payment**

- 7.4.1 All payments to be made by the Customer under this Agreement shall be made in Ringgit Malaysia in immediately available funds on the due date.
- 7.4.2 For Facility in foreign currencies, the Bank may convert the Facility to a Ringgit Malaysia facility upon such terms as the Bank may prescribe. If that happens, the Facility is to be prepaid in Ringgit Malaysia or in such currencies in which the Facility were provided. If the Bank suffers a loss as a result of the said conversion, the Customer agrees to indemnify the Bank against the loss and the conversion cost.

#### 7.5 **Payment on Business Day**

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

### **SECTION 8 CUSTOMER'S COVENANTS**

- 8.1 The Customer agrees and undertakes with the Bank that, as long as the Facility remain available, or as long as the Indebtedness remains payable, the Customer will do the following:-
  - 8.1.1 **Default.** Immediately inform the Bank of the occurrence of any Events of Default or of any event of default in relation to any other indebtedness of the Customer, or of any other occurrence of which it becomes aware and which in its reasonable opinion might adversely affect its ability to perform any of its obligations under this Agreement.
  - 8.1.2 **Additional Covenants.** Comply with all such additional covenants as set out in **Second Schedule** of this Agreement, if any.

### **SECTION 9 OTHER DEFAULTS**

#### 9.1 **Other Events of Default**

Apart from the events of default as stipulated in Part A, the occurrence of any one or more of the following events shall constitute an Event of Default:-

##### 9.1.1 **Winding Up of Developer/Vendor**

If before the Property is fully and completely constructed and/or issued with the Certificate of Completion and Compliance (or its equivalent), a petition is presented for the winding up of the developer/vendor or the landowner (if applicable); or

##### 9.1.2 **Suspension of Construction**

If the developer/vendor or landowner suspends or gives notice to any person of its intention to suspend.



## 9.2 Application of Moneys

If any moneys paid to or recovered by the Bank in respect of the Customer's liabilities under this Agreement is less than the amount then owing to the Bank, the Bank may apply the moneys towards payment of profit, fees, principal or any amount due to the Bank in such proportions and order and generally in such manner as the Bank considers fit; the Bank may also choose to credit the moneys or any part of the moneys into a non-income bearing suspense account without any obligation to apply the moneys or any part of the moneys in or towards the settlement of the Customer's liabilities under this Agreement.

## 9.3 New or Separate Account

9.3.1 If the Customer and/or the Security Party execute or create any further or subsequent encumbrance over the Security in favour of any other person(s) and the Bank receives notice of such execution or creation (whether actual or constructive):-

- (a) the Bank may immediately open a new account with the Customer in its books and if the Bank does not open such new or separate account with the Customer in its books, the Bank shall nevertheless be deemed to have done so as at the time when the Bank received or was deemed to have received such notice; and
- (b) all payment in account made by the Customer and/or the Security Party or other person to the Bank shall, (notwithstanding any legal or equitable rule of presumption to the contrary), be placed to the credit of the new or separate account opened or deemed opened and shall not go towards reduction of the Indebtedness due by the Customer to the Bank at the time when the Bank received notice as aforesaid.

9.3.2 The provisions of this clause shall not affect the Security notwithstanding that the Indebtedness may become due or owing or be incurred after the time when the Bank received notice of the execution or creation by the Customer and/or the Security Party of any further or subsequent encumbrance over the Security.

## 9.4 Rights to Concurrent Remedies

9.4.1 The Customer agrees that the obligations to pay the Bank under this Agreement and the Security Documents are separate and independent obligations which give the Bank separate and independent rights and causes of action regardless of any waiver or indulgence which may have been granted by the Bank in respect of any one or more of those obligations.

9.4.2 Accordingly, the Bank shall have the right to exercise simultaneously and concurrently all or any of the remedies available to the Bank against the Customer and/or the Security Parties and/or any other person as the Bank deems fit, whether by this Agreement or such other Security Documents or by statute or otherwise including without limitation by the sale or possession of any land pursuant to the Land Code and by civil suit, to recover the Indebtedness due and owing to the Bank by the Customer and/or the Security Parties without having first resorted to any other remedy or having first sold or disposed of any Security.

## SECTION 10 INDEMNITY

### 10.1 General Indemnity

10.1.1 In addition and without affecting the powers, rights, and remedies granted under this Agreement, unless it is due to the Bank's gross negligence or willful misconduct, the Customer 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:-

- (a) any cancellation or failure of the Customer to utilise the whole or any part of the Facility;
- (b) any prepayment of the Facility or any part of it unless otherwise provided under this Agreement or the Letter of Offer;
- (c) any default in payment by the Customer of any sum due under this Agreement, including any profit or fees paid or payable on account of, or in respect of, any financing facilities or deposits from third parties in order to maintain the amount in default, or in liquidating or re-employing such funds or deposits;
- (d) the Bank agreeing to grant or continue to grant the Facility at the request of the Customer; or
- (e) the occurrence of any Event of Default.

10.1.2 The Bank's certification of the amount of the said loss or expenses will be conclusive and binding upon the Customer unless there is any obvious mistake.

## 10.2 Currency Indemnity

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

10.2.1 The Customer shall pay its obligations or liabilities in the same currency in which the said obligations or liabilities are incurred ("**Currency of Account**").

10.2.2 Any amount received or recovered by the Bank in respect of any sums expressed to be due to it from the Customer under this Agreement and/or the Security Documents in a currency ("**Relevant Currency**") other than the Currency of Account (whether as a result of, or arising from the enforcement of, a judgment or order of court of any jurisdiction or the death or insolvency/bankruptcy of the Customer or otherwise) shall only constitute a discharge to the Customer 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).

10.2.3 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 Agreement and/or the Security Documents, the Customer shall indemnify the Bank against any loss sustained by it as a result thereof. In any event, the Customer shall indemnify the Bank against the cost of making any such purchase.

## SECTION 11 MODIFICATION AND INDULGENCE

11.1 The Customer expressly consents and agrees that the Bank may at any time and without in any way affecting the validity of the security, liabilities, and obligations created under this Agreement and the Security Documents:-

11.1.1 determine, change, or increase the Facility granted to the Customer, and open and/or continue any account or accounts current or otherwise with the Customer at any branch or branches of the Bank;

11.1.2 grant to the Customer and/or the Security Party any time or indulgence;

- 11.1.3 renew any Islamic bills/bills, notes, or other Islamic negotiable securities/negotiable securities;
  - 11.1.4 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 Security Party or any other person;
  - 11.1.5 compound with the Customer and/or the Security Party and/or any other person;
  - 11.1.6 at the request of the Customer and/or the Security Party accept payment of any monies due or becoming due under this Agreement 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;
  - 11.1.7 grant further facilities to the Customer, reinstate, vary, interchange, substitute or convert the Facility or any of them, or any of the principal limits or sub-principal limits of the Facility;
  - 11.1.8 review, amend, or vary the Facility granted to the Customer or its terms and conditions; and/or
  - 11.1.9 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.
- 11.2 If the Bank at any time, grants additional or further facilities or vary or substitute the Facility (or any of them if more than one) with any other financing facility upon such terms and conditions as may be prescribed by the Bank, all the provisions of this Agreement and the Security Documents, except for those provisions which are inconsistent with the terms and conditions prescribed by the Bank for the additional or further facilities or varied or substituted Facility, shall continue to apply unless otherwise stated by the Bank.

## **SECTION 12 DISCHARGE OF SECURITY**

- 12.1 If the whole of the Indebtedness is fully settled by the Customer, then the Bank shall, without affecting the Bank's rights of consolidation, upon the request by the Customer or the relevant Security Party made at any time after the whole of the Indebtedness is fully settled, discharge or release (which discharge and release must be prepared by a firm of solicitors, and must be in the form and substance as the Bank considers appropriate) at the cost and expense of the Customer, the securities created and release to the Customer or the relevant Security Party such security or other documents of title to such security provided:-
- 12.1.1 the Customer's liabilities and obligations under this Agreement shall not be discharged until the Customer has received from the Bank an absolute discharge or release duly signed by the Bank, which absolute discharge or release and other security documents may, notwithstanding the Indebtedness has been fully settled, be withheld by the Bank until the cost and expense of the Customer for the discharge or release have been paid in full; and
  - 12.1.2 any discharge or release of the securities created shall be deemed made subject to the condition that such discharge or release shall be void if any payment received by the Bank in respect of the Indebtedness is set aside under any applicable law or process to have been for any reason invalid.

**SECTION 13                      IRREVOCABLE RIGHT TO DEBIT ACCOUNT**

- 13.1        The Bank can (but is not obliged to) at any time without affecting the Bank's other rights and remedies, the Customer's current or other accounts with the Bank with all other monies due under and arising from the Facility.
- 13.2        No debiting by the Bank of any of the above to the said accounts of the Customer shall be treated or deemed to be payment of the amount so debited (except to the extent of any amount in credit in the Customer's said accounts), or a waiver of any Event of Default under this Agreement, or any other agreement relating to the Facility.
- 13.3        If such debiting causes the Customer's said accounts to be overdrawn, and the Customer fails to regularise the accounts within the period as determined by the Bank, such amount shall be payable to the Bank upon demand.

**SECTION 14                      CONSOLIDATION AND RIGHT OF SET-OFF**

- 14.1        The Bank can at any time after the occurrence of an Event of Default or the making of a demand and notwithstanding any settlement of account or any other matter whatsoever, combine or consolidate all or any of the Customer's then existing accounts (whether current, deposit, financing, credit card(s) or of any other nature whatsoever, whether subject to notice or not and whether in Ringgit Malaysia or in any other currency) where ever situated, including accounts in the Customer's name, or of the Customer jointly with others.
- 14.2        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.
- 14.3        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 accounts towards the satisfaction of the Customer's contingent liabilities and 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.
- 14.4        Where a combination set-off or transfer requires the conversion between currencies, the conversion will be calculated at the Bank's then prevailing spot rate of exchange (as fixed by the Bank) for purchasing the currency for which the Customer is liable.
- 14.5        Upon the issuance of the notice mentioned in Clause 14.2, the Bank can earmark or to place a hold on any monies standing to the credit of all or any of the Customer's accounts with the Bank prior to effecting the setting-off in Clause 14.2, and the Customer shall not be entitled to withdraw the monies without the Bank's prior written consent.

**SECTION 15                      SUSPENSE ACCOUNT AND PROOF OF DEBT**

- 15.1        The Bank can place and keep any money received under this Agreement in a non-income bearing suspense account for as long as the Bank thinks fit, without any obligation in the meantime to use any part of it towards discharging any liability due or incurred by the Customer and/or the Security Party.
- 15.2        Regardless of such payment in Clause 15.1, in the event of any proceedings in or analogous to bankruptcy or insolvency of the Customer and/or the Security Party, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such payment in Clause 15.1 until the Bank is in receipt from all sources the ultimate balance outstanding by the Customer and/or the Security Party in full.

- 15.3 After the Bank has received the ultimate balance outstanding in full, any claim on the part of the Customer and/or the Security Party 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 Security Party and/or any other person or persons laying claim to the same.

## **SECTION 16 CHANGE IN BANK, THE CUSTOMER AND/OR THE SECURITY PARTY**

- 16.1 The security, liabilities, and/or obligations created by this Agreement and the Security Documents will continue to be valid and binding for all purposes, regardless of:-
- 16.1.1 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; and
- 16.1.2 any change (whether by insolvency/bankruptcy, death, incorporation, amalgamation, liquidation, reconstruction, or otherwise) in the Customer's and/or the Security Party's name, style, constitution, or composition.

## **SECTION 17 CHANGES IN CIRCUMSTANCES**

### **17.1 Market Disruption**

Unless the Facility is Home Financing-i, regardless of whatever is stated in this Agreement or any Security Document, if in the Bank's opinion there is any change in national or international monetary, financial, political or economic conditions, or currency exchange rates which would cause the continuation of the Facility to be temporarily or permanently not practical or not possible from the Bank's point of view, the Bank can:-

- 17.1.1 at any time; and
- 17.1.2 upon notification in writing to the Customer, 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:-
- (a) the Facility shall be cancelled;
  - (b) the total aggregate amounts outstanding under the Facility together with all other sums payable under this Agreement will immediately become due and payable on demand; and
  - (c) the Bank's obligations under this Agreement or any Security Document shall terminate.

### **17.2 Increased Costs**

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

- 17.2.1 the Bank would incur increased costs in granting or continuing to grant to the Customer the Facility and having to continue to perform the Bank's obligations under the Facility or the Security Documents;

17.2.2 any sum received or to be received by the Bank under this Agreement or the effective return to the Bank under this Agreement is reduced (except on account of tax on the Bank's overall net income); or

17.2.3 the Bank has to make any payment or forego any profit, fee, commission or *Ta'widh* (compensation), charges or other payment on the basis of any sum payable or to be paid to the Bank in its grant of the Facility under the Letter of Offer and/or this Agreement,

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

### 17.3 **Illegality**

If any change in applicable law, regulation or regulatory requirement or in the interpretation or application thereof by any governmental or other authority charged with the administration, request or requirement (whether or not having the force of law) of any governmental or other authority in Malaysia make it or makes apparent that it is unlawful or impracticable for the Bank to grant or continue to grant the Facility or any part thereof, then:-

17.3.1 the Bank will comply with the applicable law, regulation or regulatory requirements or the interpretation or application thereof in such manner as the Bank deem fit;

17.3.2 the Bank will notify the Customer, and following that notification the Facility and the Bank's obligations under the Facility will be suspended immediately; and

17.3.3 the Customer must follow such notice from the Bank, prepay the Facility together with compensation and all other amounts payable to the Bank on the date required by the Bank to enable the Bank to comply with the relevant law; and

17.3.4 the Bank will have no further obligations under the Facility, which will be deemed cancelled.

### 17.4 **Circumstance beyond the Bank's Control**

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

17.4.1 any strike, lock-out, industrial dispute, boycott, blockade, sanction, war, hostilities (whether war is declared or not), terrorist activity, insurrection, riot or civil commotion or unrest;

17.4.2 any fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbance, industrial dispute, act of terrorism, embargo, war or Act of God;

17.4.3 any failure, stoppage or disruption of any telecommunication services, internet, electricity supply, water supply or fuel supply;

17.4.4 any action or inaction of any governmental, local or other authority; or

17.4.5 any circumstance in the nature of a force majeure, that is, an unforeseeable event that prevents the Bank from performing any of the Bank's obligations under this Agreement or any Security Document.

## **SECTION 18 MISCELLANEOUS**

### **18.1 Searches**

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

18.1.2 The Customer consents to and shall cause the Security Party to consent to the Bank carrying out all such searches stated in Clause 18.1.1 on the Customer and the Security Party to the extent permitted by law and all charges incurred in connection with bankruptcy/winding up searches will be borne and paid by the Customer.

### **18.2 Other Terms and Conditions**

18.2.1 The terms and conditions in this Agreement 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 the Letter of Offer) given by the Bank to the Customer from time to time.

18.2.2 The terms and conditions in the Letter of Offer are deemed incorporated into this Agreement as if set forth herein at length. If there is any inconsistency between the terms and conditions herein this Agreement and the terms and conditions:-

- (a) in the Letter of Offer, the terms and conditions in the Letter of Offer shall prevail over the terms and conditions in this Agreement; and
- (b) in the terms and condition in the Schedules, the terms and conditions in the Schedule shall prevail over the terms and conditions in this Agreement.

### **18.3 Statement by Bank**

Any certificate or statement issued by the Bank showing the outstanding amount due and owing from the Customer to the Bank in relation to the Facility will be conclusive evidence as to the amount outstanding due and owing from the Customer to the Bank in relation to the Facility. This certificate or statement will be binding on the Customer for all purposes whatsoever including for the purposes of any legal proceedings.

### **18.4 Independent Payment Obligations**

The Customer expressly agrees that each of its obligations to pay under this Agreement or the Security Documents:-

18.4.1 constitute separate and independent obligations and give rise to separate and independent causes of action;

18.4.2 shall apply regardless of any waiver or indulgence given by the Bank for any other obligation and 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

18.4.3 can be relied upon and enforced by the Bank independently or together with any other action under such other obligations or under the Security Documents, and the Bank is not obliged to first use any other remedy available to the Bank.

### **18.5 Powers of Customer and the security**

Where any monies are owing and secured by this Agreement and/or any Security Document which the Customer is a party, they will be deemed to be so owing and secured regardless of

any legal limitation, incapacity or otherwise of the Customer:-

18.5.1 the Customer's utilisation of the Facility which might be a defence as between the Customer and the Bank; or

18.5.2 the Customer's power to enter into this Agreement and/or any of the Security Documents.

## 18.6 Sanctions

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

- (a) comply with the laws or sanctions of Malaysia or any other country (including but not limited those relating to anti-money laundering or anti-terrorism); and/or
- (b) manage money-laundering risk or terrorism-financing risk or economic and trade sanctions risk.

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

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

## 18.7 Retention of Records

The Customer agrees that the Bank is not obligated to maintain any records of the Customer'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 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.

## 18.8 Compliance with Court Orders

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

## 18.9 Time of the Essence

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

## 18.10 Variation

The Customer acknowledges and agrees that the provisions of this Agreement and the Security Documents, and the availability, limits, profit rates, commission, fees and charges of and relating to the Facility are subject to the following and if there is a change in any fees and charges, the Bank will, unless otherwise provided in this Agreement or the Letter of Offer, give the Customer twenty-one (21) days' prior notice before the change takes effect:-

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



18.10.2 the Bank's review and variation from time to time.

#### 18.11 Cumulative Remedies

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

#### 18.12 Preservation of Rights and Entitlement

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

#### 18.13 Cessation of Relationship

The cessation of the banker-customer relationship between the Bank and the Customer will not in any circumstances or in any manner affect the Bank's right to recover all monies due and owing to the Bank under the Facility.

#### 18.14 Additional Terms and Conditions

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

### SECTION 19 ASSIGNMENT OR TRANSFER OF THIS AGREEMENT

19.1 The Bank can at any time assign all or any part of its rights, interests, and obligations in this Agreement, and/or transfer the benefit of this Agreement to any person or corporation. Following such assignment or transfer:-

19.1.1 the costs and expenses of the Bank and the assignee or transferee will be paid by the Customer;

19.1.2 the assignee or transferee will assume and be entitled to the rights, interests, and obligations of the Bank in this Agreement as if the assignee or transferee had been a party to this Agreement in place of the Bank; and

19.1.3 any recital or statement in this Agreement of the amount due to the Bank under or by virtue of this Agreement shall, in the absence of manifest error, be conclusive and binding for all purposes against the Customer.

19.2 The Customer cannot assign its rights or obligations under this Agreement.

### SECTION 20 DISCLOSURE

#### 20.1 Disclosure by the Bank

The Customer agrees and consents 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 Security Party or the Facility) can and has the authority to disclose, any information relating to the Customer and/or the Security Party, the Customer's and/or the Security Party's accounts with the Bank, the Facility, and this Agreement to the following persons:-

- 20.1.1 any members of the Group, for any of the following purposes:-
- (a) providing the Customer and/or the Security Party with banking services;
  - (b) reporting or data matching;
  - (c) improving and furthering the provision of other services by the Bank;
  - (i) fraud or crime prevention or investigating, preventing or otherwise in relation to money laundering and criminal activities;
  - (d) debt collection or outsourcing of the Bank's operations;
  - (e) performance of duties as an officer of the Bank or in connection with the conduct of audit or the performance of risk management;
  - (f) facilitating the performance of the Bank's or any members of the Group's function;
  - (g) compliance with the Group's policies, guidelines, directives or requirements or any corporate exercise;
  - (h) any legal process initiated by or served on the Bank;
- 20.1.2 any person, whether in Malaysia or elsewhere, who provides electronic or other services to the Bank for the purpose of providing, updating, maintaining and upgrading the said services, including but not limited to investigating discrepancies, errors or claims;
- 20.1.3 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;
- 20.1.4 the police or any public officer conducting an investigation in connection with any offence including suspected offences;
- 20.1.5 other banks, financial institutions, credit bureau or credit reference agents (only for credit information);
- 20.1.6 the Bank's auditors, solicitors, and professional advisors including Shariah Committee;
- 20.1.7 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;
- 20.1.8 any receiver and/or judicial manager the Bank appoints or appointed by any other party;
- 20.1.9 any credit bureau of which the Bank is a member, and any other members and/or compliance committee of such credit bureau;
- 20.1.10 any rating agency, business partner, takaful operator/insurer or takaful/insurance broker or direct or indirect provider of credit protection;
- 20.1.11 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 Security Party and the Bank, or assignee, novatee or transferee or any officer, employee, agent or adviser of any of them;
- 20.1.12 for transactions effected or processed with or without the Customer's and/or the Security Party'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;
- 20.1.13 any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over the Bank or any members of the Group;

20.1.14 the Central Credit Bureau or such other authority or body established by Bank Negara Malaysia, or any other authority with jurisdiction over the Bank;

20.1.15 any person to whom the Bank or any members of the Group is permitted or required to disclose to under the law of any country;

20.1.16 any person in connection with enforcing or protecting any right under this Agreement or any Security Documents;

20.1.17 any person intending to settle any monies outstanding under the Facility; and

20.1.18 any Security Party.

## 20.2 No liability for disclosure

The Customer agrees that no disclosure of information and/or provision of any documents made pursuant to Clause 20.1 shall render the Bank (including the Bank's officials, employees, agents or any other persons who the Bank grants access to their records, correspondence or any material relating to the Customer and/or the Security Party or the Facility) to be liable in any manner under any law, including the provisions of the Financial Services Act, 2013, Islamic Financial Services Act, 2013 and the Companies Act, 2016.

## SECTION 21 DATA PROTECTION

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

21.2 The Customer agrees and consents that the Bank and any member of the Group may collect, store and disclose to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Customer and to governmental authorities as required by law or other agreement by or between governments and also to transfer the Personal Data outside of Malaysia. The Customer's consent shall be effective notwithstanding any applicable nondisclosure agreement. 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.

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

21.3.1 confirm that the Customer have obtained their consents and waiver necessary or are otherwise entitled to provide their data to the Bank and for the Bank to use it in accordance with this Agreement and/or the Facility and that the Customer will secure such consents and waivers in advance of providing similar information to the Bank in the future;

21.3.2 undertake that the Customer have informed the said third parties to read the Privacy Notice at the Bank's website at [www.uob.com.my](http://www.uob.com.my);

21.3.3 have informed the said third parties:-

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

- (b) that the Bank may disclose their personal data to classes of third parties described in the Bank's Privacy Notice;
- 21.3.4 agree to ensure that the personal and financial data of the said third parties is accurate;
- 21.3.5 agree to update the Bank in writing in the event of any material change to the said personal and financial data; and
- 21.3.6 agree to the Bank's right to terminate the Facility should such consent be withdrawn by the said third parties.
- 21.4 Where the Customer instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including 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 Customer's behalf, the Customer agrees to the above said disclosures on behalf of the Customer and others involved in the said cross-border transaction.
- 21.5 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 Customer agrees that the Bank and the Group, and the Bank's merchants and strategic partners may contact the Customer about products, services and offers, which the Bank believes may be of interest to the Customer or benefit the Customer financially. Notwithstanding the foregoing, the Bank will only disclose the Customer's Personal Data (excluding data relating to the Customer's affairs or account) to the Bank's merchants and strategic partners where the Customer's express prior consent has been obtained.
- 21.6 The Customer may choose not to receive any direct marketing materials from the Bank or the Group by writing in to the Bank at 'Personal Financial Services, P.O. Box 13525, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur' (or such other address notified by the Bank) with the Customer's request and the Bank will abide by the Customer's latest written instructions to the Bank.
- 21.7 The Customer 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 Facility and/or without imposing additional costs to the Customer.
- 21.8 The Customer is entitled to request in writing:-
- 21.8.1 for any information in relation to their respective Personal Data that the Bank holds or stores, upon payment of a prescribed fee;
- 21.8.2 for any information held or stored by the Bank to be updated, amended and/or corrected;
- 21.8.3 for the Bank to limit the processing of their respective Personal Data held or stored by the Bank; and
- 21.8.4 to make an enquiry or complaint in respect of the Bank's processing of their respective Personal Data.

For requests under Clause 21.8.1 or 21.8.2, the Customer 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 Customer may direct all their requests to any of the Bank's branches or 'Customer Communications Management, UOB Call Centre, P.O. Box 11212, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur'.

The Bank may charge a fee for processing the Customer's request for access. The Bank may also refuse to comply with the Customer's request in respect of Clause 21.8.1 or 21.8.2 above if the information supplied by the Customer 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 Customer of the Bank's refusal and reason for the Bank's refusal.

- 21.9 The Customer is responsible for ensuring that the information they provide the Bank is accurate, complete and not misleading and that such information is kept up to date.
- 21.10 The Customer acknowledges that if the Customer subsequently withdraws the Customer's consent to process the Customer's Personal Data as given earlier to the Bank, as the Bank will not be able to process and/or disclose the Customer'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.
- 21.11 The Bank reserves the right to amend this clause and shall provide prior notification to the Customer 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.
- 21.12 This clause shall be without prejudice to any other clause in this Agreement which provides for the disclosure of data.

## **SECTION 22 COMPLIANCE WITH FATCA**

### **22.1 Information**

22.1.1 The Customer shall:-

- (a) provide all required documentation or information, including but not limited to date of birth, countries of citizenship, countries of permanent residence, countries of tax residency and associated taxpayer identification numbers, that may be required to enable the Bank or any member of the Group to comply with all requirements of FATCA or other agreement by or between governments; and
- (b) notify the Bank in writing within thirty (30) days of any change that affects the Customer's tax status in relation to FATCA under any laws, regulations or other agreement by or between governments.

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

- 22.1.3 For individual Customer, the Customer 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 Customer and to governmental authorities as required by law or other agreement by or between governments. The Customer's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Customer represents that the Customer has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 22.1.3, and that the Customer will secure such consents and waivers in advance of providing similar information to the Bank in the future.
- 22.1.4 For Customer who is a sole proprietorship, partnership or other business entity, a corporation, or an association, club or society or trust, the Customer consents to the collection, storage, and disclosure by the Bank or any member of the Group of any Confidential Information to persons from whom the Bank or any member of the Group receive or make payments on behalf of the Customer and to governmental authorities as required by law or other agreement by or between governments. "**Confidential Information**" includes the Customer's Personal Data, the Customer's bank account details, transactional information, and any other information that a reasonable person would consider being of a confidential or proprietary nature. The Customer's consent shall be effective notwithstanding any applicable nondisclosure agreement. The Customer represents that the Customer has secured from any third party whose information is provided to the Bank any consents and waivers necessary to permit the Bank or any member of the Group to carry out the actions described in this Clause 22, and that the Customer will secure such consents and waivers in advance of providing similar information to the Bank in the future.
- 22.2 The Customer 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 Customer's income is reportable and some is not, the Bank will report all income unless the Bank can reasonably determine the reportable amount. The Customer 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.
- 22.3 The Bank or any member of the Group, may take whatever action the Bank consider appropriate to meet any obligations, either in Malaysia or elsewhere in the world, relating to the prevention of tax evasion. This may include, but is not limited to, investigating and intercepting payments into and out of the Customer'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 Customer's account(s) and transferring it to such tax authorities. If the Bank is not satisfied that a payment in or out of the Customer's account(s) is lawful, the Bank may refuse to deal with it.
- 22.4 To the fullest extent as may be permitted by law, the Bank will not be liable to the Customer for any losses, costs, expenses, damages, liabilities the Customer 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 Customer should be treated as being subject to tax or tax reporting obligations.
- 22.5 This Clause 22 will override any inconsistent term or consent provided by the Customer under any agreement with the Bank to the extent that such agreement provides fewer or lesser rights for Bank, whether before or after the date of this Agreement. This Clause 22 shall be without prejudice to any other clause in this Agreement which provides for the Bank's right to request for information or disclosure of data.

**SECTION 23 NOTICES, LEGAL PROCESS AND PROCESS SERVICE AGENT****23.1 Notices**

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

23.1.2 Any Notices that the Bank send to the Customer may be:-

- (a) delivered by hand to the address of the Customer as stated in this Agreement or such other address last known to the Bank;
- (b) sent by post (registered, AR registered, ordinary or otherwise) to the Customer as stated in this Agreement or such other address last known to the Bank;
- (c) sent by facsimile transmission to the facsimile number last known to the Bank;
- (d) sent by electronic mail to the electronic mail address last known to the Bank;
- (e) sent by short messaging system (SMS) to the mobile phone number last known to the Bank;
- (f) by posting on the Bank's website; or
- (g) by insertion in any statement of account which the Bank send to the Customer.

23.1.3 The Notices will be deemed to have been received by the Customer:-

- (a) at the time of delivery at the address of the Customer, if delivered by hand;
- (b) on the third (3<sup>rd</sup>) day (including the day of posting) from the date it is posted;
- (c) at the time the facsimile transmission is completed;
- (d) at the time the electronic mailing is completed;
- (e) at the time the sending by short message system (SMS) is completed;
- (f) at the time of posting on the Bank's website; or
- (g) at the time the statement of account is deemed to have been received by the Customer.

23.1.4 The Bank also reserves the right to serve on the Customer any notice in connection with the Facility or the Security by:-

- (a) advertisement in any one daily newspaper and such notice will be deemed to have been served on the Customer on the day the advertisement appears in the newspaper; or
- (b) displaying at any of the Bank's place of business, any of its branches or premises and such notice will be deemed to have been served on the Customer on the day of such display.

23.1.5 The Customer must notify the Bank in writing immediately on any change in the address, facsimile number, electronic mail address or mobile phone number of the Customer.

- 23.1.6 If the Customer does not inform the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Customer, the Customer agrees that the Bank may rely on:-
- (a) any address as stated in this Agreement; or
  - (b) any address, facsimile number, electronic mail address or mobile phone number the Bank obtain from any communication purportedly issued by the Customer to the Bank or last known to the Bank.
- 23.1.7 The Bank's rights under this Agreement and the Security Documents are not to be affected by any failure on the part of the Customer and/or the Security Party to notify the Bank of any change in the address, facsimile number, electronic mail address or mobile phone number of the Customer and/or the Security Party.
- 23.1.8 Notices from the Customer to the Bank may be sent by personal delivery or ordinary mail.
- 23.1.9 Notices by the Customer to the Bank must be duly signed by the Customer or, if permitted by the Bank, the Customer's authorised signatories. The Notices must be served on the Bank at the address specified by the Bank from time to time. Notices are deemed received by the Bank upon actual receipt of the Notices and any additional documents or information which the Bank may require to verify the source of the Notices.

## 23.2 Legal Process

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

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

## 23.3 Agent for Service of Legal Process

- 23.3.1 If the Customer resides outside Malaysia or does not have permanent address in Malaysia, the Customer is required at all times to appoint and maintain a Process Service Agent in Malaysia to accept service of all Legal Process on behalf of the Customer arising out of or connected to the Facility and the Security Documents. The Customer shall not revoke, cancel or withdraw the authority of the Process Service Agent without having first appointed a new Process Service Agent and notified the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.
- 23.3.2 If for any reason whatsoever the Process Service Agent no longer serves as the Customer's Process Service Agent, the Customer shall be required to immediately appoint another Process Service Agent and notify the Bank in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.
- 23.3.3 Service on the Process Service Agent shall be effected in the same manner specified in Clause 23.2.



**SECTION 24 NO PAYMENT OF INTEREST**

For the avoidance of doubt and notwithstanding of any other provisions of this Agreement, it is hereby agreed and declared that nothing in the Letter of Offer, this Agreement and/or the Security Documents shall oblige any party thereto to pay or receive interest (by whatever means or name called) on any amount due or payable to another party or to do anything contrary to the Shariah principles.

**SECTION 25 LEGAL AND SHARIAH ADVICE**

- 25.1 The Customer is advised to seek independent legal advice before accepting the Facility and before signing this Agreement and the Security Documents prepared by the Bank or the solicitor.
- 25.2 The Customer is responsible to assess the terms of this Agreement and the Security Documents and shall seek an independent Shariah advice on them. The Customer agrees that the Facility granted or to be granted are in conformity with the Shariah principles as stated in this Agreement and the Security Documents and further confirms that the Customer will not raise any objection that the Facility are non-Shariah compliant.

**SECTION 26 SEVERABILITY**

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

**SECTION 27 PAYMENT IN GROSS**

- 27.1 All monies received from or on account of the Customer and/or the Security Party, from any other persons or estate, from the realisation of any security, or otherwise for the purpose of being applied in the reduction of the Indebtedness, will be treated for all purposes as payments in gross, and not as appropriated or attributable to any specific part or item of the said monies covenanted to be paid, even if appropriated as such by the Bank.
- 27.2 All securities held by the Bank now or in future will be treated as security for the Indebtedness. The Customer and/or the Security Party, his estate or any other persons deriving or claiming title under the Customer and/or the Security Party will have no claim to such security, and any part or interest in such security, unless the Bank has received the full amount owing to the Bank by the Customer and/or the Security Party.

**SECTION 28 BANK'S RIGHT TO MAKE ADJUSTMENTS**

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

**SECTION 29 NO PROOF IN COMPETITION WITH THE BANK**

- 29.1 Until all the Indebtedness is paid or discharged in full, the Customer shall not:-
- 29.1.1 claim any set-off or counterclaim against the Security Party in respect of any liability from the Security Party to the Customer;
  - 29.1.2 claim or prove in competition with the Bank in respect of any payment by the Security Party; or

29.1.3 be entitled to claim or have the benefit of any set-off, counterclaim, payment, distribution, or security from or on account of the Security Party.

29.2 The Customer's obligations in this Clause apply whether or not the Customer pays off any sum recoverable under this Agreement, or on any other ground.

### **SECTION 30 APPLICABLE LAWS**

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

- 30.1 agreed that any dispute involving this Agreement and the Security Documents may be submitted to the courts of law within and outside of Malaysia;
- 30.2 agreed not to raise any objection to any dispute being submitted in any particular court of law on the basis that it is not the correct or most convenient court for the dispute to be submitted to;
- 30.3 consented to the service on the Customer of any demand by the Bank and of any court documents by registered mail or by any other manner allowed by the relevant laws; and
- 30.4 be bound by any decision or conclusion related to Shariah matters pronounced or made by the Bank's Shariah Committee and/or be bound by the Shariah Advisory Council of Bank Negara Malaysia in respect of the Facility.

### **SECTION 31 INDEPENDENT ADVICE**

The Customer hereby confirms, represents and warrants to the Bank that in the execution and delivery of this Agreement, the Customer has sought, obtained and relied upon its own independent legal advice and has not relied upon any representation, statement or advice from the solicitors, agents or officers of the Bank.

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

**EXECUTION**

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

**Bank**

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

**Customer (Individuals)**

Signed by )  
)  
)  
)  
the aforesaid Customer(s) )  
in the presence of: )

**SECOND SCHEDULE**

(Pursuant to Clause 8.1.2 of this Agreement)

**ADDITIONAL COVENANTS**

**THIRD SCHEDULE**

(Pursuant to Clause 18.14 of this Agreement)

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

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

1.2 The Customer shall adequately cover/insure or cause to be adequately covered/insured at all times any landed property charged or assigned to the Bank on a full reinstatement value basis up to its full cover/insurable value against loss or damage by fire, lightning, tempest, flood, riot, civil commotion, malicious acts and strikes, landslides, earth movement, subsistence and such other risks as the Bank require with a takaful operator/insurance company acceptable to the Bank in the name of the Customer or, where applicable, the Security Party, with the endorsements below on the takaful certificate/insurance policy 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 takaful contribution/premium payable under such certificate/policy:-

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

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

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

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

- 1.3 If the property charged or assigned to the Bank is:-
- (a) landed residential property, a House owner's Policy/Certificate shall be effected by the Customer;
  - (b) landed commercial or industrial property, a Fire Policy/Certificate shall be effected by the Customer; and
  - (c) covered by the Strata Titles Act 1985, the Customer or, where applicable, the Security Party shall give to the Bank proof that the building comprising and including the property securing the Facility 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 has not received the same from the Customer or, where applicable, the Security Party of such proof, a House owner's Policy/Certificate shall be effected by the Customer or, where applicable, the Security Party. Notwithstanding the provision herein, in the event the Customer or, where applicable, the Security Party does not effect, maintain or renew any such takaful/insurance stated above, the Bank can (but is not obliged to), and in this respect the Customer or Security Party authorises and consents to the appointment of the Bank as its agent at the Customer's or, where applicable, the Security Party's cost and expense, effect, maintain, or renew any such takaful/insurance as the Bank may think fit.

- 1.4 Without affecting the provisions above (and whether or not the Customer is in default), the Customer agrees that if the Bank in its discretion consider necessary, the Customer authorises the Bank to take out, maintain or renew the takaful/insurances referred to above and:-
- (a) all moneys and expenses incurred by the Bank with compensation shall form part of the Facility and Indebtedness be payable to the Bank on demand by the Bank; and
  - (b) any commission which may be paid to the Bank as a commission agent of the takaful operator/insurance company belongs to the Bank.

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

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

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

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

- 1.6 The Customer must not renovate or refurbish the property without first obtaining the Bank's written consent. The Bank has the right not to give its consent. If the Bank gives its consent, the Bank has the right to impose such terms and conditions as the Bank deems fit which may include the Customer taking up of a Contractors' All Risk Certificate/Policy for the renovation or refurbishment work before the start of the work with a takaful operator/insurance company appointed by the Bank and with the Bank named as chargee and loss payee. If the Customer does not give the Bank proof acceptable to the Bank that the Customer has taken up the Certificate/Policy, the Bank may arrange for takaful/insurance coverage at the Customer's expense by debiting the Customer's account.
- 1.7 The Customer and/or the Security Party shall, if at any time required by the Bank at its discretion, take up and maintain a takaful over the life of the Customer and/or the Security Party or life assurance policy 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 to the Bank such certificate/policy and all connected benefits and advantages as further security for the Indebtedness.

If the Customer and/or the Security Party fails to take up and maintain the takaful certificate/insurance policy above and assigning the same when required, the Bank can at the costs and expense of the Customer and/or the Security Party, take up and maintain a certificate/policy guaranteeing the payment of the Indebtedness on such terms as the Bank thinks fit and such costs and expenses incurred by the Bank shall be payable by the Customer and/or the Security Party with late payment charges (*Ta'widh*) as specified in this Agreement and until payment will form part of the Indebtedness.

The Customer and/or the Security Party will allow all takaful certificates/insurance policies and the receipts or other evidence of payment of contribution/premium to be kept by the Bank. The Customer and/or the Security Party 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 Security Party and the receipt or other evidence of payment of the current contribution/premium for the certificate/policy.

- 1.8 If the property is charged or assigned to some other party, the Bank has the right to use the Facility or any part of it to pay the redemption sum to redeem the property. If the Bank exercises this right, the acknowledgement or receipt of that other party will be binding on the Customer as if it was the Customer who had received payment from the Bank.
- 1.9 The Bank also has the right to use the Facility or any part of it to pay the balance of the purchase price of the property to the vendor who sold the property to the Customer or the Security Party. If the Bank exercises this right, the acknowledgement or receipt of that other party will be binding on the Customer as

if it was the Customer who had received payment from the Bank.

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

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

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

**END OF PART C**



**PART D LETTER OF OFFER**