

## **General Terms and Conditions governing the Facility (SME)**

### **1. GENERAL**

- a) These General Terms and Conditions are for credit facility(ies) (“the Facility”) granted by Industrial and Commercial Bank of China (Malaysia) Berhad (Company Number (839839-M)) (“the Bank”) forming part of the Bank’s Letter of Offer.
- b) In the event of any discrepancy between (i) the terms of other appendices of the Letter of Offer and these General Terms and Conditions; or (ii) the terms of the Letter of Offer and terms of other security documents including but not limited to the facility agreement and such other agreements or documents executed now and hereafter or from time to time pursuant to the Facility to secure the payment of all monies due and owing by the Borrower to the Bank (“the Security Documents”), such terms shall be read together and construed in the widest sense possible and unless otherwise stated, you agree that the Bank shall be entitled to decide as to which terms and conditions shall prevail and be applicable..

### **2. PURPOSE**

- a) You (also referred to as the “Borrower” in these General Terms and Conditions) shall utilize the Facility solely for the purposes as stated in the Letter of Offer. The Bank shall have the right to recall the Facility if it is not used for the purposes stated.
- b) In the event you require to use the Facility or any part thereof for any other purpose, you shall have to first obtain the Bank’s prior written consent which may or may not be granted at the Bank’s discretion and if granted may be subject to such conditions as the Bank may further impose.
- c) Notwithstanding the aforesaid, the Bank shall not be responsible for monitoring or ensuring the use or application of the Facility or any part thereof for the purpose(s) specified in the Letter of Offer and failure by the Borrower to comply with its obligations under Clause 2 hereto shall not in any way prejudice any right available to the Bank.

### **3. LENDING TO CONNECTED PARTIES**

The Bank shall have the right to recall the Facility in the event of any non compliance with the prevailing laws and regulations on lending to connected parties.

### **4. AVAILABILITY**

The Facility shall be available upon acceptance of the Letter of Offer and upon satisfactory completion of the conditions precedent and all legal documentation and upon availability of funds. Notwithstanding any other provision herein, the Bank shall have the rights whether or not to agree to the making of any utilization requested by you (regardless whether any or all of the conditions precedent have been fulfilled). The Bank will as soon as reasonably practicable following the receipt of a drawdown notice, notify you whether or not the Bank agree to the making of the utilization request.

### **5. REVIEW**

Notwithstanding anything herein to the contrary, express or implied, the Facility or any part thereof shall be subject to review by the Bank at any time and from time to time and the Bank shall be entitled to terminate and cancel the Facility at any time with prior notice to you, whereupon you shall immediately upon demand by the Bank in writing pay to the Bank in full all and any amounts due, owing or payable by you under or in respect of the Facility and/or under the terms and conditions hereof. Nothing in this letter shall be deemed to impose on the Bank any obligation either at law or in equity to allow any utilization of the Facility herein mentioned.

### **6. PAYMENT**

- a) Payment shall be effected in such manner and on such day as prescribed in the Letter of Offer. Unless otherwise prescribed in the Letter of Offer, if any date for payment of any sum due under the Facility is not a Business Day then that payment must be made on the next Business Day in the same calendar month or the preceding Business Day if there is no further Business Day in the relevant calendar month. The Bank reserves its right to vary the payment manner

as it deems fit and appropriate. In the event of dispute over the payment due date, the Bank's decision/determination shall be conclusive.

- b) All costs and expenses including but not limited to the legal fees on a full indemnity basis for the preparation, negotiation and execution of any documents in relation to the Facility; any stamp duty, registration and other fees and taxes to which the Letter of Offer and the Security Documents shall be strictly for your account irrespective of whether the Facility (or any part thereof) are fully utilized. All costs and expenses including but not limited to the legal fees on a full indemnity basis for or in connection with the performance, admissibility in evidence of or protection or enforcement of any right shall also be strictly for your account. All such costs and expenses due and unpaid by you may be met by the Bank at its discretion and interest may be charged on such amounts due and unpaid or paid at the delayed interest rate or such other rate as may be determined by the Bank.
- c) In the case of partial payment by you, the Bank may appropriate such payment towards any obligations of you under the Facility.
- d) The Bank is hereby authorised upon receiving instruction from you and/or third party account holder to debit any of your and/or third party's account with the Bank for payment of the principal sum, interest, commission, charges, fees and all other monies due and payable. No such debiting shall be deemed to be a waiver of any event of default under any agreement relating to the Facility.
- e) All payments to be made by the Borrower under the Facility shall be made in full without any counterclaim whatsoever and free and clear of any taxes, duties, deductions, withholdings or other deductions whatsoever imposed by the government or any political subdivision thereof or tax authority thereof in immediately available, freely transferable, cleared funds on the due date to the account of the Bank.

#### **7. AMENDMENT AND/OR ADDITIONAL TERMS AND CONDITIONS**

- a) The Bank may at any time hereafter at your request or at the Bank's discretion grant additional banking facility to you and/or convert and/or vary and/or substitute all or any of the Facility hereby granted into another banking facility(ies) and, in any such event, the security liability and/or obligations created pursuant to the Letter of Offer shall continue to be valid and binding for all purpose whatsoever up to the limit of the total banking facility advanced to you notwithstanding such addition or change before-mentioned but subject to such variations as shall be made known by the Bank to you and or implied by law or trade usage governing or applicable to the addition and/or changes as aforesaid.
- b) Notwithstanding any provisions to the contrary, the terms of the Letter of Offer may, at any time and from time to time, be varied or amended by the Bank at its discretion with prior notice to you and thereupon such amendments and variations shall be deemed to become effective and the relevant provisions of this Letter of Offer shall be deemed to have been amended or varied accordingly and shall be read and construed as if such amendments and variations had been incorporated in and had formed part of this instrument at the time of execution hereof.

#### **8. INTEREST RATE/COMMISSION**

- a) You shall pay interest on all monies due and payable by you and all monies outstanding and owing to the Bank in relation to the Facility and commission and other charges payable in relation to the Facility, in such manner, at such time, by such mode of calculation and at such rate(s) specified in the Letter of offer or such other rate(s) as may be stipulated or prescribed by the Bank at any time and from time to time.
- b) Interest on the Facility will be calculated on a daily, monthly, or other periodic rest basis, as indicated in the Letter of Offer and the same shall be calculated on the basis of a year of three hundred and sixty five (365) days for the actual number of days elapsed or such on such other basis deemed fit and appropriate by the Bank.
- c) The interest rate, commission, commitment fees, bank charges, fees and such other charges may be varied from time to time at the Bank's discretion with notice to you.
- d) If any interest, commissions, commitment fees, bank charges, fees and such other charges owing under the Facility remains unpaid at the end of the period on which the same ought to

have been paid, then in every such case the interest, commissions, commitment fees, bank charges, fees and such other charges in arrears shall at the expiration of such period be capitalised and added for all purposes to the principal sum of the Facility then owing and shall thenceforth bear interest (either before or after judgment and irrespective of whether the banker customer relationship subsists) at such interest rate and/or default rate stipulated in the Letter of Offer and all covenants and provisions contained in or implied by these General Terms and Conditions and all powers and remedies conferred by law or by the Letter of Offer and all rules of law or equity in relation to the principal sums, interest, commissions or charges shall equally apply to such capitalised arrears and to interest on such arrears. For the purpose of ascertaining whether the limit of the principal sum has been exceeded or not, all accumulated and capitalized interest shall be deemed to be interest and not principal.

- e) Where any of your payment shall be further secured to the Bank by any bill of exchange, promissory note, trust receipt or other instrument reserving a higher rate or amount of interest, commission or other charges to be paid in respect thereof than that hereinbefore covenanted to be paid, such higher rate of interest, commission or other charges shall be payable in respect of such monies and nothing contained herein shall affect the right of the Bank to such higher interest, commission or other charges or as the case may be the difference between such higher rate or amount and the rate or amount payable hereunder.

#### **9. INTEREST ON DEFAULT**

In addition and without prejudice to the rights and remedies of the Bank, if you shall default in the payment of any sums on their respective due dates you shall pay interest on such overdue sums at such rate(s) as indicated in the Letter of Offer calculated from the due date until the date of full settlement or at such other rate(s) as the Bank may determine, at any time and from time to time imposed with notice to you and such rates of interest (“the Default Rate”) shall be payable by you, as well after as before judgment or demand, from the due date up to the date of actual repayment. Such default interest (if unpaid) will be compounded with the overdue amount on any basis that the Bank thinks fit.

#### **10. REPAYMENT**

- a) Notwithstanding any provisions to the contrary, the Facility shall be payable on demand. In addition you shall upon the expiry of the tenor (if applicable) of the Facility or part thereof, repay the entire outstanding sum under each of the Facility which tenor has expired. Until the expiry of the tenor of each of the Facility or until a demand for repayment is made, you shall repay the Facility.
- b) No part of any payment made shall be treated as a repayment of principal until all interest due or deemed to be due or accrued and all other expenses and charges have been first paid.
- c) The date(s) and manner provided for the repayment of the Facility and all interest or commission accrued thereon may at any time and from time to time be varied by the Bank.

#### **11. SECURITY**

- a) Any security taken by the Bank or any money deposited with the Bank shall continue to be held by the Bank until all the amounts outstanding from you and each Security Party to the Bank under the Facility, including contingent liabilities, have been fully settled by you.
- b) If at any time the Bank shall consider that the Security is insufficient, you shall immediately but in any event not later than seven (7) Business Days (or such other time frame stipulated by the Bank) from the date of a notice from the Bank provide such further security as the Bank shall require whether in cash or otherwise of such value and for such tenure as the Bank shall decide. For this purpose, you agree, at your own cost and expense of, execute and/or cause to be executed all such documents and/or cause to be done such acts and things as the Bank may reasonably require for perfecting such further security intended to be created or agreed to be created in favour of the Bank.
- c) You shall not and/or shall procure the relevant party providing security of any form favouring the Facility to covenant not to during the subsistence of the Facility, cause or permit to arise or subsist interest of any kind over such Security or any part thereon without the prior written consent of the Bank.

- d) Nothing herein contained shall prejudice or affect any lien to which the Bank is entitled or any other security which the Bank may at any time or from time to time hold.

## **12. COMMUNICATIONS**

### **(A) Notices**

All demands requests notices or other communication (collectively referred to as "Notices") required to be served under or in connection with the Facility and/or the Letter of Offer shall be in writing and shall be sufficiently served on the Bank, if left at or sent by prepaid ordinary or registered post telex facsimile telegram or cable to its place of business as stated in the Letter of Offer or at such other address as may be notified by the Bank and on you, if it is left at your address stated in the Letter of Offer or your usual or last known place of business are sent by prepaid ordinary or registered post telex facsimile telegram or cable and shall be deemed to be duly served:-

- a) if it is delivered, at the time of delivery and duly acknowledged;
- b) if it is sent by prepaid ordinary or registered post, three (3) days after posting thereon;
- c) if it is sent by telegram or cable, on the Bank's Business Day next after the date of despatch;  
or
- d) if it is sent by telex or facsimile, immediately after transmission thereof and confirmed by the answer back, if the date of transmission is a Business Day, and if such a date is not a Business Day, then the notice by telex or facsimile shall be deemed to be served on the immediately following Business Day.

### **(B) Signatories**

- a) Your notice to the Bank shall be duly signed by your duly authorized signatory.
- b) Any Notice given by the Bank including any notice of demand for monies loaned or advanced by the Bank to the Borrower may be signed on behalf of the Bank by its representative, Manager, Assistant Manager, Accountant or any other officer of the Bank or by solicitor or firm of solicitors purporting to act on behalf of the Bank.

### **(C) Language**

All Notices and documents shall be in the English language or in the Malay language.

### **(D) Proof of service**

In proving the giving of a notice or any other document under or in respect of the Letter of Offer it shall be sufficient to show:-

- (i) in the case of registered post or other fast postal service, that the notice or other document has been duly addressed and posted; or
- (ii) in the case of facsimile transmission or telex was duly transmitted from the despatching terminal as evidenced by a transmission report generated by the despatching terminal.

### **(E) Service of legal process**

Without prejudice to any other forms or service allowed in law, the service of any writ, summons, statement of claim or any legal process in respect of or arising out of or in connection with or under the Facility and/or the Letter of Offer may be effected on you by forwarding a copy of the writ, summons, statement of claim or other legal process by prepaid registered post to your address stated in the Letter of Offer or to your last known address and in a case of corporation, at the registered address.

If you reside outside Malaysia, and if required by the Bank, you shall appoint a process agent to accept service of all legal process arising out of or in connection with or under the Facility and/or the Letter of Offer and for any reason such agent no longer serves as your agent, another agent shall be appointed promptly by you and notified to the Bank in writing. Until the appointment of such new agent, the original agent shall continue to be your agent. Service on such agent shall be effected in the same manner specified in this Letter of Offer.

### **(F) Change of address**

For the purpose of service of legal process, no change in the address of the parties howsoever brought about shall be effective or binding on either party unless that party has given to the other actual notices in writing of such change of address and nothing done in reliance of this clause shall be affected or prejudiced by any subsequent change in the address of one party which the other party has no knowledge of at the time the act or thing was done or carried out.

### **13. DISCLOSURE OF INFORMATION**

13.1 To enable the Bank to consider whether to provide you with any financial, banking account, related product or service, you are required to supply to the Bank from time to time your personal details and information pertaining to the Facility, any of your account held with the Bank and any of your transactions and dealings with or through the Bank (“Personal Data”) and failure to do so may result in the Bank’s inability to provide such service. The Personal Data will be used for considering your request and subject to the Bank agreeing to provide such service, the Personal Data will be used in connection with the purposes set out in Clauses 13.2 and 13.3 below.

13.2 Subject to Clause 13.3, you agree that the Bank may use, store, disclose, transfer, compile, match, obtain and/or exchange (all whether within or outside Malaysia) such Personal Data to, from or with any person as the Bank may consider necessary including without limitation:

- a) other financial institutions granting or intending to grant any credit Facility to you, the Central Credit Unit or any other central credit bureau established by Bank Negara Malaysia including the Central Credit Reference Information System (CCRIS) and/or Credit Bureau Malaysia Sdn Bhd (previously known as SME Credit Bureau Sdn Bhd) any other database or system established by Bank Negara Malaysia or such authorities/agencies established by the Association of Banks in Malaysia;
- b) any court or tribunal or regulatory, supervisory, governmental or quasi governmental authority with jurisdiction over the Bank;
- c) the related or associate corporations of the Bank including but not limited to the Bank’s subsidiaries, affiliates, representative and branch offices in any jurisdiction (the “Bank Group”) or any member of the Bank Group which (i) provides group management oversight of the Bank Group and/or global and regional support, or (ii) carries on business within the financial services industry, or (iii) is a provider of services to other members of the Bank Group;
- d) the Security Party/guarantors or any party intending to provide security in respect of the Facility;
- e) any rating agency or any insurer or insurance broker of, or direct or indirect provider of credit protection over the Bank;
- f) the Bank’s auditors, solicitors and/or other agents in connection with the recovery of monies due and payable hereunder; and/or
- g) any actual or potential participant or sub participant in relation to any of the Bank’s rights and/or obligations under any agreement between the Bank and you, or assignee, or transferee (any agent or adviser of any of the foregoing).
- h) any information gathering or processing organization conducting survey(s) or analyses or developing system applications on the Bank’s behalf;
- i) any person or organisation involved in the sending or delivering of any communication to your last known address on the Bank’s records; and/or
- j) any other party as the Bank may deem fit and necessary

for any and all purposes including without limitation:

- i. in connection with such service and/or in connection with matching for whatever purpose (whether or not with a view to taking any adverse action against you and/or the security party) any such Personal Data with the Personal Data concerning you in the Bank’s possession; and/or
- ii. in connection with operation of your account (including credit check); and/or

- iii. for purposes of improving and furthering the provision of other services by the Bank, any member of the Bank Group to you generally; and/or
  - iv. for purposes of fraud or crime prevention, audit and debt collection and in order that services may be processed for the Bank; and/or
  - v. for purposes of investigating, reporting, preventing or otherwise in relation to money laundering, terrorist financing and criminal activities generally; and/or
  - vi. for purposes of any legal process initiated by or served on, the Bank (whether or not the Bank is a party); and/or
  - vii. any other purposes and to such persons as may be in accordance with the Bank's general policy on disclosure of Personal Data as set out in statements, circulars, notices or other terms and conditions made available by the Bank to you from time to time.
- 13.3 You acknowledge and understand that you are given an option whether to allow disclosure of your information for purposes of cross-selling, marketing and promoting services and products (in respect of which the Bank may or may not be remunerated) as may be provided and/or marketed by the Bank and/or any member of the Bank Group and/or selected third parties. If you agree to opt-in and consent for disclosure of your information for such purposes in the loan application form, this will constitute your consent for the Bank, any members of the Bank Group and/or selected third parties to use, analyse and assess information held about you (excluding information relating to the affairs or account of you) and to give you information about products and services (in respect of which the Bank may or may not be remunerated) from the Bank, any members of the Bank Group and/or selected third parties via telephone, mobile phone, electronic media, post or other means until the Bank receives your written objection to such disclosure for purposes of cross-selling.
- 13.4 Where the Borrower is a body corporate, it acknowledges and consents that the Bank may gather information relating to individuals such as the Borrower's directors, shareholders, employees, representatives and agents and those of the Borrower's affiliates and subsidiaries (if applicable) ("the Related Individuals"). Such information may include (without limitation) for example, names, age, gender, addresses, contact details and job descriptions. The Borrower consents herein that the Bank may process (as defined in Personal Data Protection Act 2010) such information and the Borrower also agrees to procure the Related Individuals on the Bank's request the free and valid consent signed in writing by the Relevant Individuals to the processing of the information. Besides, the Borrower shall as soon as reasonable practicable notify each of the Related Individuals of the privacy notice in such form as appearing in the Bank's website or such other forms to be advised by the Bank from time to time.

#### **14. DRAWDOWN**

- a) If the Facility are not drawn down within such period and in such manner as the Bank may determine from completion of documentation, the Bank may withdraw the Facility without further reference to you and you shall, upon demand by the Bank, pay to the Bank its costs attributable to all or any part of the Facility.
- b) Undrawn sum is subject to such commitment fee as stipulated in the Letter of Offer.
- c) Overdrawn sum is subject to such overdrawn interest at such rate as stipulated in the Letter of Offer.
- d) The obligation of the Bank to allow drawdown is subject to the following additional conditions being fulfilled (a) receipt of the drawdown notice (if applicable) (in such format and substance acceptable to the Bank) not later than three (3) Business Days before the proposed drawdown date; (b) the proposed drawdown date must be a Business Day (c) the Bank is satisfied that all representations and warranties have been complied with and would be correct as if repeated on the proposed drawdown date by reference to the circumstances then existing; (d) no Event of Default or potential Event of Default has occurred on or before the date of the drawdown notice, or will occur as a result of making such drawdown; and (e) details of the manner in which the Borrower wishes the proceeds of such drawdown to be made available.

- e) The drawdown notice (if applicable) once given shall, unless it is deemed void and not given as aforesaid, be irrevocable and it shall be obligatory for the Borrower to accept the monies so drawn in accordance with such drawdown notice.

**15. PREPAYMENT**

- a) Where permitted under the Letter of Offer, you may prepay the Facility following such prepayment manner as stipulated in the Letter of Offer.
- b) All prepayments received by the Bank shall be applied by the Bank in or towards repayment and satisfaction of the Facility.
- c) Unless otherwise indicated, no amount prepaid may be redrawn or re-borrowed.
- d) No partial prepayment (if so permitted under the Letter of Offer) shall relieve you of your obligations under the Facility.

**16. WITHHOLDING OR DEDUCTION**

- a) All payments by you under the Facility are to be made in immediately available funds free and clear of and without any withholding or deduction for any and all present or future taxes, duties or other such levies.
- b) If you are compelled by law to make any such withholding or deductions you will pay to the Bank such additional amounts required to enable us to receive the amount which would be payable if no such withholding or deduction had been required.
- c) You shall provide us promptly with evidence that such taxes, duties or other levies have been paid by forwarding us a copy of such official receipts.

**17. REPRESENTATIONS AND WARRANTIES**

17.1 You represent and warrant to the Bank that:-

- a) you have full legal right, authority and power to borrow the Facility and to enter into and perform your obligations under the Letter of Offer;
- b) the Borrower and such person providing any form of security favouring the Facility (“the Security Party”) has full power to own assets and are the legal and beneficial owners of the asset(s) or property which are offered as security to the Bank in respect of the Facility;
- c) the Letter of Offer constitutes legal, valid and binding obligations of the Borrower in accordance with its terms and that the obligation of the Borrower in respect of the payment of principal, interest, fees and other expenses and charges does not contravene any exchange control or other legislation or regulation binding on the Borrower;
- d) the execution and performance of the Letter of Offer and/or the Security Documents and the utilisation of the Facility do not and will not:-
  - (i) exceed the power granted to the Borrower and/or the Security Party by or violate the provisions of any law or regulation or any order or decree of any governmental authority, agency or court to which the Security Party is subject;
  - (ii) result in any actual or potential default under any existing mortgage debenture contract or agreement binding on the Borrower and/or Security Party or to which it is subject;
  - (iii) contravene any of the provisions of the Borrower’s and/or the Security Party’s Memorandum and Articles of Association or Constitution (or its equivalent); and
  - (iv) result in any limitation upon the Borrower and the Security Party’s powers to borrow or create any imposition of or oblige it to create any encumbrance over any of its undertaking or any of its assets, rights or revenues other than pursuant to the provisions of the security documents.
- e) no lawsuit or investigation by any government agency or other regulatory authority is pending or to be instituted or threatened against the Borrower and/or the Security Party;
- f) no violation of any provisions of legislation court orders judgment and others has been committed by the Borrower and/or Security Party;
- g) incorporation of the Borrower and/or the Security Party:-
  - (i) The Borrower and/or the Security Party is duly incorporated and is validly existing under the laws of Malaysia or the laws to which the Borrower and/or such Security Party is subject, as the case may be.
  - (ii) The Borrower and the Security Party are conducting their respective businesses and

- operations in compliance with applicable laws and regulations and all directives of governmental authorities having the force of law;
- (iii) There are no winding up proceedings against the Borrower and/or the Security Party, and no steps have been taken or are being taken to appoint a receiver, receiver and manager or liquidator to take over any of the assets and undertakings of any of the Security Party and the shareholders of the Borrower and/or Security Party respectively, have not commenced any action for voluntary winding up;
  - (iv) No step has been taken by the Borrower and/or the Security Party or any of their creditors or shareholders or any other person on their behalf nor have any legal proceedings or applications been started or threatened to undertake scheme of arrangement, judicial management or voluntary arrangement under relevant provisions of the Companies Act, 2016 or any corresponding provisions of the laws to which the Borrower and/or such Security Party is subject; and
  - (v) The Borrower's and/or the Security Party's accounts and/or financial statements as delivered 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 the procedures required by its Memorandum and Articles of Association, Constitution and/or the laws of Malaysia (b) together with the notes thereto give the true and fair view of its financial condition or operations as at that date and for the period then ended; and (c) together with those notes disclose or reserve against the liabilities (contingent or otherwise) of the Borrower and/or the Security Party as at that date and all material unrealised or anticipated losses from any commitment entered into by it and which existed on that date.
  - (vi) The execution, delivery and performance of the Letter of Offer do not and will not violate or contravene the provisions of the Memorandum and Articles of Association or Constitution of the Borrower and/or the Security Party.
- h) in the case where the Security Party is an individual, there are no bankruptcy proceedings pending or threatened against Borrower and/or the Security Party;
  - i) all consents licences approvals or authorisations of any governmental authority in which are required for or in connection with the execution performance validity enforceability of the Letter of Offer have been obtained and are in full force and effect;
  - j) the Borrower and/or the Security Party have not defaulted in payment and/or performance of any of their or each of their obligations from their existing loan agreement or security documents and no litigation, arbitration or administrative proceedings are presently current or pending or threatened;
  - k) there has been no material adverse change in the financial condition or operations or management of the Borrower and/or the Security Party and/or other conditions which will materially affect the ability of the Borrower and/or the Security Party to perform the obligations of the Borrower and/or the Security Party under the Letter of Offer;
  - l) the Borrower and/or the Security Party has fully disclosed to the Bank all the facts relating to the Borrower and/or the Security Party which the Borrower knows or should reasonably know and which are material for disclosure to the Bank and such information furnished and/or disclosed by the Borrower do not contain any untrue statement or omit to state any fact or omission and all expressions of expectation, intention, belief and opinion and all projections contained therein were honestly made on reasonable grounds after due and careful inquiry;
  - m) the Borrower is not aware and has not intentionally withheld any information or fact which may result in or give rise to the financing by the Bank hereunder contravening or being in breach of any laws legislation subsidiary legislation, regulation or Bank Negara Malaysia's guidelines and circulars including without limitation the Financial Services Act 2013 and the prevailing laws and regulations concerning the lending to connected parties ("the Law"). If at any time during the currency of the Letter of Offer, the Bank discovers that there had been an infringement of the Law or that the continued performance of the Letter of Offer will be in violation of the Law, the Bank is entitled forthwith to demand repayment of the Facility and exercise all its rights under the Letter of Offer;
  - n) the Borrower has at the request of the Bank (if applicable) obtained and maintained all such insurance policies (life assurance policy and/or mortgage reducing term assurance policy or



any other policy guaranteeing the repayment of all relevant times and has complied in all material respect with the terms and conditions of such policies;

- o) Such other additional warranties and representations as the Bank may specify.

17.2 The truth and correctness of all matters stated in the representations and warranties hereto shall form the basis of the Bank's commitment to make available or continue to make available the Facility to the Borrower. If any such representation or warranty made shall at any time be found to have been incorrect or misleading in any respect then in such event and notwithstanding anything to the contrary hereunder the Bank shall have the right to review, suspend, recall or terminate the Facility or any part(s) thereof.

17.3 You acknowledge that the Facility is granted on the basis of and in full reliance of your representations and warranties and you agree covenant undertake confirm that each of the above representations and warranties shall survive and continue in full force and effect.

## **18. EVENTS OF DEFAULT**

18.1 The Borrower is deemed to have committed a default and/or the Borrower commits or threaten to commit a breach of any of the covenants, undertakings, stipulations, terms, conditions or provisions herein stipulated under the Letter of Offer or the Borrower is in default upon the happening of any one or more of the following events:-

a) Non payment

If the Borrower and/or the Security Party shall default in the payment to the Bank of the interest, commission, commitment fee or any other monies herein covenanted to be paid after the same shall have become due whether formally demanded or not; or

b) Breach of terms and conditions

If the Borrower and/or the Security Party commit or threaten to commit a breach of any agreements, stipulations, terms, covenants, conditions or undertakings contained in the Letter of Offer and/or the security documents (other than those referred to in Clause 18.1 (a) above) and if capable of being remedied, in the opinion of the Bank failed to remedy it within seven (7) Business Days upon receipt of a notice from the Bank; or

c) Cessation of Business

If the Borrower and/or the Security Party and/or the Related Corporation (means a company related to the Borrower within the meaning prescribed in Section 7 of the Companies Act 2016) ceases or threatens to cease to carry on its business or (without the prior written consent on the Bank) disposes the whole or a substantial part of their business, properties or assets (save and except done in the normal course of business) the same are acquired, seized or expropriated whether by the government or otherwise or the Borrower and/or the Security Party and/or the Related Corporation is prevented from exercising control over the same by reason of any action whether by the government or otherwise which has a similar effect to acquisition, seizure or expropriation and the result of any of the foregoing provisions of this paragraph is in the opinion of the Bank a material change in the financial condition of the Borrower and/or the Security Party and/or the Related Corporation to perform their obligations; or

d) Dissolution

If a petition shall be presented or an order be made or an effective resolution is passed for the winding up, dissolution, liquidation, bankruptcy of the Borrower and/or the Security Party and/or the Related Corporation and such petition order resolution is not discharged within twenty one (21) Business Days (or such other period of time as the Bank thinks appropriate) from the date of taking of such petition, order or resolution; or

e) Assignment

The Borrower and/or the Security Party and/or the Related Corporation:-

- (i) makes an assignment for the benefit of its creditors; or
- (ii) enters into an arrangement for composition for the benefit of its creditors; or
- (iii) allows any judgment against the Borrower and/or the Security Party and/or the Related Corporation to remain unsatisfied for a period of fourteen (14) days or more, unless an appeal against the judgment is pending and a stay of execution has been granted; or

f) Receivership

If a receiver and/or manager or judicial manager shall be appointed in respect of the undertaking or property of the Borrower and/or the Security Party and/or the Related Corporation; or

g) Enforcement Proceedings

If a distress or execution or other process of a court of competent jurisdiction be levied or issued against any of the properties of the Borrower and/or the Security Party and/or the Related Corporation and such distress execution or other process as the case be is not satisfied by the Borrower within fourteen (14) Business Days (or such other period of time deemed fit and appropriate by the Bank) from the date thereof; or

h) Sound business and affair

If in the opinion of the Bank, the Borrower and/or the Security Party and/or the Related Corporation is not carrying on its business and affairs in accordance with sound financial and industrial standard and practices; or

i) 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

j) Breach of representation or warranty

If any representation or warranty hereto made or made in the Letter of Offer and/or the Security Documents shall be found to have been incorrect or misleading in any material respect as of the date at which the same was made or deemed made and the same is not remedied upon the expiry of seven (7) Business Days (or such other period of time deemed fit and appropriate by the Bank) after the written notice thereof shall have been given to the Borrower by the Bank; or

k) Cross Default

If any other indebtedness of the Borrower and/or the Security Party becomes capable in accordance with the relevant terms thereof of being declared due prematurely by reason of a default by the Borrower and/or the Security Party in their obligations with respect to the same, or the Borrower and/or the Security Party fails to make any payment in respect thereof on the due date for such payment or if due on demand when demanded or upon the security for any such indebtedness becoming enforceable; or

l) Termination of the Facility

If the Facility granted by the Bank shall have been determined by the Bank or if the sum owing by the Borrower to the Bank shall become immediately due and repayable for any reason whatsoever; or

m) Arrangement and Reconstruction the Companies Act, 2016

If the Borrower and/or the Security Party and/or the Related Corporation is unable to pay its debts within the meaning of Section 466 of the Companies Act, 2016 or any statutory modification or reenactment thereof or suspend the payment thereof or there is declared by

any competent court or authority a moratorium on the payment of indebtedness or other suspensions of payments generally or the Borrower and/or the Security Party and/or the Related Corporation being a corporate entity applies to court under the Companies Act, 2016 for approval to a scheme of arrangements, judicial management or voluntary arrangement.

Section 466(1) of the Companies Act 2016 provides that:

(1) A company shall be deemed to be unable to pay its debts if— (a) the company is indebted in a sum exceeding the amount as may be prescribed by the Minister and a creditor by assignment or otherwise has served a notice of demand, by himself or his agent, requiring the company to pay the sum due by leaving the notice at the registered office of the company, and the company has for twenty-one days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor; (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company; or

n) Material adverse change

If there is any material change in the ownership shareholding management assets business financial position of the Borrower and/or the Security Party and/or the Related Corporation; or

Any event or series of events (whether within or outside of Malaysia and whether of a national or international nature) including but not limited to 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 Borrower's and/or the Security Party's ability or willingness to fully comply with all or any of the Borrower's obligations under any of the Security Documents or make it improbable that the Borrower and/or the Security Party would be able to do so; or
- (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 the Bank's security or the Bank's security position; or

o) Breach of other obligation

If the Borrower and/or the Security Party and/or the Related Corporation defaults under any other agreement or instrument with any other person or persons, bank or banks, or financial institutions involving the borrowing of monies by or the advance of credit to the Borrower and/or the Security Party and/or the Related Corporation which gives the holder of the obligation concerned the right of power to accelerate repayment or withdraw the advance of credit; or

p) Changes in law and regulation

If the Bank shall be of the opinion that to continue with the Facility would be detrimental to its interest or otherwise undesirable in view of any changes in applicable law or regulation which makes it unlawful for the Bank to continue with the Facility; or

q) Legal proceedings

Any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Borrower and/or the Security Party and/or the Related Corporation or event(s) has/have occurred and a situation exists and after review by the Bank, the Bank is of the opinion that this will materially affect the repayment of the Facility and accrued interest thereon or performance of obligations; or

- r) Approval  
Any action, condition, licence, authorisation, approval, consent, order or exemption or filing with any governmental authority is not taken, fulfilled, revoked, withheld, modified or ceases to be in full force and effect; or
- s) Compulsory Acquisition  
IA notice or proposal for compulsory acquisition of the Subject Property is issued or made under or by virtue of an Act of Parliament or other statutory provisions; or
- t) Unsatisfaction operation of account  
If in the opinion of the Bank, the Borrower's account with the Bank (including any other accounts the Borrower may have with the Bank) is or has not been operated satisfactorily; or
- u) Validity of the security documents  
The validity of any of the Security Documents become invalid or unenforceable or shall be challenged by any party as to its validity; or
- v) Death, insanity or bankruptcy  
(i) The Borrower and/or the Security Party dies or become insane; or  
(ii) Any step or action is taken for the winding up, dissolution or bankruptcy of the Borrower and/or the Security Party; or  
(iii) A petition for winding up or bankruptcy is presented against the Borrower and/or the Security Party; or  
(iv) Provided Always that if the above (ii) and (iii) proceeding or action has been taken by or against the Borrower and/or the 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
- w) Ability of the Borrower and/or the Security Party to Perform Terms in Security Documents  
Any event(s) has/have occurred, or a situation exists (including but not limited to the changes in the financial condition of the Borrower), which might, in the opinion of the Bank, affect the ability of the Borrower and/or the Security Party to perform the Borrower's obligations under the Letter of Offer and/or the Security Documents; or
- x) Illegality  
It is or it shall become unlawful for the Borrower and/or the Security Party to perform or comply with any one or more of the obligations of the Borrower under the Letter of Offer and/or the Security Documents; or
- y) Use of Facility not for purposes stated  
The Facility is not used for the purposes stated or the housing loan granted under the Facility is used for illegal or speculative purposes; or
- z) Borrower's Account re-designated or closed  
If the Borrower's account is re-designated or closed by the Bank as a result of  
(i) any changes in the applicable law or regulation making it unlawful or impossible for the Bank to continue granting the Facility or maintaining the account; 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
- aa) Security Document not perfected  
If any of the Security Documents cannot be perfected for any reason whatsoever or if any

Security Document which requires to be registered, cannot be registered or is invalid for any reason whatsoever; or

- ab) Additional events of default  
There occurs any event of default stipulated in the Letter of Offer and/or the Security Documents, if any.

18.2 You shall give the Bank written notice of any event of default as soon as you becoming aware of the occurrence thereof. Non compliance to this term shall in no event prejudice the Bank's exercise of its rights and/or remedies conferred on the Bank under the Facility.

## 19. UNDERTAKINGS

The Borrower undertakes and covenants with the Bank that it will at all times and so long as any monies payable remains unpaid:-

- a) punctually pay the outstanding monies when due and owing;
- b) perform, observe, abide by and comply with all such obligations covenants terms and conditions stipulation undertaking under the Letter of Offer;
- c) punctually pay or cause to pay all existing current and future quit rent, rates, taxes and all outgoings whatsoever which are now or any time hereafter be payable in connection with or arising out of the Borrower's business and promptly furnish or obtain any governmental approval, authorisation licence or permit of any nature whatsoever which may now or hereafter be required under any law, decree or regulation relating to the performance of its obligations under the Facility;
- d) promptly inform and keep informed the Bank of:-
  - (i) any actual and threatened legal proceedings or claim involving the Borrower;
  - (ii) the occurrence of any Event of Default or of any event of default in relation to any other indebtedness of the Borrower or of any other occurrence of which it becomes aware which in its reasonable opinion might adversely affect its ability to fully comply with its obligations hereunder or where applicable, the ability of the Borrower to fully comply with its obligations; and
  - (iii) all such information as the Bank requests concerning the use of the Facility or any part thereof and on any factors materially affecting its financial condition;
- e) maintain an active and satisfactory account with the Bank and observe the approved limit and sub limits of the Facility;
- f) perform such other acts or execute such other documents from time to time upon request by the Bank for the purpose of effectively carrying out the provisions and intent the Letter of Offer;
- g) comply with the Bank's internal guidelines as well as guidelines laid down from time to time by any statutory regulatory bodies as the case may be;
- h) its obligations and liabilities under the Facility will at all times rank at least pari passu with all its present and future indebtedness; and
- i) where the Borrower is a body corporate, it shall:-
  - (i) carry out and operate its business and affairs with due diligence and efficiency and in accordance with sound financial and industrial standards and practices and in accordance with its Memorandum and Articles of Association or Constitution as amended from time to time;
  - (ii) keep full and particular accounts of the its business and cause the same to be properly posted up to date and furnish to the Bank within one hundred and eighty (180) days or such other time frame as the Bank may stipulate at its discretion from the end of each of its financial year:-
    - (aa) a copy of its complete financial statements certified by its responsible officer in such form as the Bank may from time to time determine;
    - (bb) as soon as available but in any event within one hundred and eighty (180) days or such other time frame as the Bank may stipulated at its sole and absolute discretion after the end of its financial year, forward to the Bank a copy of its balance sheet, profit and loss account and report duly audited and certified by a

qualified independent auditor acceptable to the Bank stating accurately in accordance with generally accepted accounting standards and without any qualification or reservation deemed to be adverse by the Bank, its financial condition; and further

- (cc) to cause its holding company and / or corporate guarantor (as the case may be) to furnish to the Bank within one hundred and eighty (180) days or such other time frame as the Bank may stipulate at its discretion from the end of each financial year of the Borrower's holding company and/or corporate guarantor a copy of its complete financial statements certified by a responsible officer of the Borrower's holding company and/or corporate guarantor in such form as the Bank may from time to time determine, and further, as soon as available but in any event within one hundred and eighty (180) days or such other time frame as the Bank may stipulate at its discretion after the end of each financial year of the Borrower's holding company and/or corporate guarantor forward to the Bank a copy of its balance sheet, profit and loss account and report duly audited and certified by a qualified independent auditor acceptable to the Bank stating accurately in accordance with generally accepted accounting standards and without any qualification or reservation deemed to be adverse by the Bank, the financial condition of the Borrower's holding company and/ or corporate guarantor;
- (iii) where the Borrower or the Borrower's holding company and/or corporate guarantor are public listed companies, the Borrower shall furnish or cause to be furnished to the Bank within seven (7) days from the date of submission of the accounts of the Borrower or the Borrower's holding company and/or corporate guarantor to the Bursa Malaysia two (2) copies of its balance sheet, profit and loss account and report duly audited and certified by a qualified independent auditor acceptable to the Bank stating accurately in accordance with generally accepted accounting standards and without any qualification or reservation deemed to be adverse by the Bank, the financial condition of the Borrower or the Borrower's holding company and / or corporate guarantor;
- (iv) keep and maintain its paid up share capital;
- (v) notify the Bank forthwith in writing:-
  - (aa) any material change in the management, Board of Directors or shareholders or the ownership or control of any of the share capital of the Borrower and/or the Security Party and/or the controlling shareholders of the Borrower and/or the Security Party;
  - (bb) any change in the authorized signatories of the Borrower and/or the Security Party and to notify the Bank if any of the Borrower's and/or the Security Party's authorized signatories shall no longer be authorized to sign or otherwise to act on the Borrower's and/or the Security Party behalf; and
  - (cc) any change in the place of business or registered office or the residential address of the Borrower and/or of the Security Party;
- (vi) promptly notify the Bank in relation to appointment of auditor or firm of auditors and when so requested by the Bank, make available within such time frame as the Bank may stipulate, a certified copy of any communication sent by such auditor or firm of auditors to the Borrower or such other documents deemed fit and appropriate by the Bank.
- j) to keep itself up to date with all applicable foreign exchange control laws rules and notices and to comply with all applicable requirements thereunder.

## **20. CONCLUSIVE EVIDENCE**

A certificate signed by an officer or agent of the Bank and/or any computer generated statement issued by the Bank which do not require signatures showing the indebtedness of the Borrower and/or where applicable, the Security Party, shall be conclusive evidence save for manifest error. Any admission or acknowledgement by you or any person authorised on behalf of you or a judgment (be it in default or otherwise obtained against you) shall be conclusive evidence against you for whatever purpose including as conclusive evidence of the amounts from time to time owing by you to the Bank.

**21. SUSPENSE ACCOUNT**

Any money received by the Bank under the Security Documents may be placed and kept to the credit of a non-interest bearing suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of the Indebtedness/Secured Amounts or any part thereof. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy liquidation composition or arrangement the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liabilities in the same manner as if this security had not been created.

**22. REMEDIES**

22.1 The Bank shall have the right to exercise any rights or remedies available to it under the Letter of Offer, the Security Documents or otherwise (including pursuing any right of sale or possession) against you or the Security Party concurrently or successively as it may consider appropriate. The Bank shall be entitled to the following remedies (including but not limited to) without prior demand:-

- a) to forthwith suspend further utilization of any or all of the Facility or to reduce the limits or amounts made available under the Facility; or
- b) all sums payable under the Facility shall become and be deemed to be, notwithstanding anything contained herein to the contrary, forthwith due and payable and whereupon the Bank shall be entitled forthwith to take such action, whether on its own accord or through its agent(s), as may be appropriate against you; or
- c) any part of the Facility not therefore disbursed or utilised may be cancelled by the Bank and upon such cancellation any part of any of the Facility already disbursed or utilized shall become due and immediately payable on demand notwithstanding anything contained herein to the contrary.

Notwithstanding any other provision contained in the Letter of Offer and/or the Security Documents or in any other document, the Bank will at all times have the right to terminate, cancel suspend or reduce the limit of all or any part of the Facility and/or require immediate payment and/or cash collateralisation or such mortgages, charges, assignments, transfers, deposits or agreements as additional security over all or any part of the sums actually or contingently owing to it.

22.2 Notwithstanding any provision herein contained, the Bank shall have the right to exercise all or any of the rights or remedies available whether under the Letter of Offer or by statute or otherwise and shall be entitled to exercise such rights or remedies concurrently including pursuing all rights of set off to collect the proceeds of all assignments and to give good and valid discharge therefore and to institute legal proceedings by way of civil suit or foreclosure proceedings or otherwise to recover all monies due and owing to the Bank.

22.3 The Bank may whether or not an Event of Default has occurred at any time with prior notice notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any then existing account(s) opened by you alone or jointly with others and/or account(s) opened on your behalf wheresoever situated and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any moneys owing or your obligations or liabilities to the Bank whether such liabilities be present future actual contingent primary collateral several or joint. When such combination set off or transfers requires the conversion of one currency into another such conversion shall be calculated at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing the currency in which the monies obligations or liabilities were due owing and incurred with the existing currency so converted.

22.4 All monies received by the Bank from any proceeding instituted or step taken in exercising of any of the Bank's power or rights, subject always to such statutory priorities of appropriation

that may be imposed by law, shall be applied by the Bank in the order of priority as the Bank may determine.

- 22.5 If the Bank shall be of the opinion that the security may prove deficient, payments may be made to the Bank at the Bank's request on account of principal before interest but such alteration in the order of payment shall not prejudice the right of the Bank to receive the full amount to which it would have been entitled if the primary order of payment had been observed or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.
- 22.6 If the amount realised pursuant to the exercise of the powers or rights conferred on the Bank, after deduction and payment of all fees dues and costs, is less than the amount due to the Bank and whether at such realisation the Bank is the purchaser of the assets or otherwise you shall pay to the Bank the difference between the amount due and the amount so realised and also pay interest on the same (both before demand as well as after judgment and irrespective of whether the banker and customer relationship has been terminated) at such rate as the Bank may determine.
- 22.7 Without prejudice to the foregoing terms and provisions and in addition and without prejudice to any other powers, rights and remedies which the Bank may be entitled to, you shall indemnify the Bank and hold the Bank harmless from and against any losses, damages and expenses, whatsoever, legal or otherwise (including but not limited to all legal costs incurred by the Bank on a solicitors and client basis) which the Bank may sustain, suffer or incur as a consequence of any default in the payment of the Facility and interest thereon or any portion thereof, or any other amount payable, or on account of the your non observance of all or any of the terms stipulations agreements and provisions contained herein and such losses, damages and expenses shall include but not be limited to such amount as the Bank shall certify (such certification being accompanied by the basis and calculation of such amount and being conclusive and binding upon you save for any manifest error).
- 22.8 The rights remedies powers and privileges of the Bank provided in this Agreement are cumulative and are not exclusive of any rights remedies powers and privileges of the Bank provided by law.

### **23. SEVERABILITY**

If at any time any of the provisions of the Letter of Offer or may become under any written law, or is found by any court or administrative body or competent jurisdiction to be, illegal, void, invalid, prohibited or unenforceable then:-

- a) such provision shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability;
- b) the remaining provisions of the Letter of Offer shall remain in full force and effect; and
- c) the parties shall use their respective best endeavours to negotiate and agree a substitute provision which is valid and enforceable and achieves to the greatest extent possible the economic, legal and commercial objectives of such illegal, void, invalid, prohibited or unenforceable provision.

### **24. SUCCESSORS AND ASSIGNS**

- a) The Letter of Offer shall be binding upon and inure for the benefit of the assigns and successors in title of the Bank and your heirs, personal representatives and successors in title.
- b) The Borrower shall not assign or transfer all or any part of its rights under the Letter of Offer or delegate its performance without prior written approval of the Bank. Any assignment without the Bank's written approval shall constitute an event of default.
- c) The Bank may at any time without the consent or concurrence of the Borrower transfer assign sell participate in secondary debt markets all or any part of its benefits powers rights privileges obligations under the facility to any person or party. For the purpose of such transfer, assignment, sale and/or participation, the Bank may disclose to such potential transferee assignee purchaser and/or participant such information about the Borrower, the



Facility and any other related information.

**25. TIME**

Time shall be of the essence of the Letter of Offer. Notwithstanding the same, no failure or delay on the part of the Bank in exercising nor any omission to exercise any right power privilege or remedy accruing to the Bank shall impair any such right power privilege or remedy or be construed as a waiver thereof or an acquiescence in such default; nor shall any action by the Bank in respect of any default or any acquiescence in any such default, affect or impair any right power privilege or remedy of the Bank in respect of any other or subsequent default.

**26. CHANGES IN CIRCUMSTANCES**

26.1 In the event that by reason of the enactment of or the making of any change in any applicable law, regulation or regulatory requirement or in the interpretation or application thereof or the making of any request or direction from or requirement of Bank Negara Malaysia or other fiscal or monetary authority (whether or not having the force of law) the Bank shall be of the opinion that it has or will become unlawful or it is otherwise prohibited or prevented for it to maintain or give effect to or perform or comply with all or any of its obligations then the Bank's obligation to advance the Facility shall forthwith be terminated and/or as the case may be, you shall on demand forthwith repay the Facility in full together with accrued interest thereon and any other amount payable thereunder to the Bank.

26.2 If in the opinion of the Bank, there has been a change in national or international monetary, financial, economic or political conditions or currency exchange rates or exchange control which would render the Facility temporarily or permanently commercially impracticable or impossible, the Bank shall notify you thereof and:-

- a) whilst such circumstances exist, no utilisation of the Facility will be allowed;
- b) the Bank shall negotiate in good faith for an alternative basis acceptable to the Bank for continuing the Facility; and
- c) unless within thirty (30) Business Days after the giving of such notice such circumstances cease to exist or an alternative basis acceptable to the Bank is arrived at, the Facility shall be cancelled.

26.3 If the introduction of or change in any law, regulation, directive or request from any governmental or regulatory authority (whether or not having the force of law) imposes or modifies any capital adequacy or similar requirement (including, without limitation, a requirement which affects the Bank's allocation of capital resources to its obligations) and, as a result, the cost to the Bank of making or maintaining amounts available under the Facility is increased or the amount of any sum received or receivable by the Bank in respect of the Facility is reduced or the Bank is, in its opinion unable to obtain the rate of return on its capital that it would have been able to achieve but for its obligations hereunder and/or their performance, you shall then pay to the Bank on demand such additional amount which will, in the sole opinion of the Bank, compensate the Bank for such additional cost, reduction, payment or return. The Bank will endeavour to mitigate the effects of such event. A certificate of the Bank specifying the rate varied and/or amount of such compensation shall, in the absence of manifest error, be conclusive.

**27. GOVERNING LAW**

27.1 Except where expressly provided otherwise, the terms herein shall be governed by and interpreted in accordance with the laws of Malaysia and the parties agree that in enforcing the terms herein, the Bank shall be at liberty to initiate and take action or proceedings or otherwise against the Borrower in Malaysia and/or elsewhere as the Bank may deem fit.

27.2 When any actions or proceedings are initiated and taken in Malaysia the Borrower agrees to submit to the exclusive jurisdiction of the Courts of Malaysia. The Bank shall not be prevented from taking proceedings in other courts.

27.3 The Borrower agrees to waive any objection on the grounds of venue or forum of convenience or any similar ground.

**28. INSURANCE**

- 28.1 Where required by the Bank, you shall subscribe and/or shall cause the relevant Security Party to subscribe for such insurance and/or life insurance policies as set out in the Letter of Offer through the Bank's approved insurance company for such amount(s) on such terms as the Bank may require.
- 28.2 You shall comply with the terms and conditions of the above insurance policies including without limitation any stipulations or restrictions as to use or operation of any asset and not to do or (in so far as within its power to prevent the same) permit anything to be done which may make void or voidable any insurance effected or maintained.
- 28.3 Notwithstanding anything else to the contrary herein contained and irrespective of whether there is a default in effecting maintaining or renewing any insurance, it shall be lawful for but not obligatory upon the Bank to insure and keep insured the same and all monies so expended shall be repaid by you forthwith on demand and until payment shall be debited to the your account and shall be secured by assets charged to the Bank in addition to the monies hereby covenanted to be paid with the same priority and with interest at the relevant rate to be decided by the Bank provided always that the Bank shall not be in any way whatsoever be liable for failing to effect, maintain or keep on foot any such insurance as aforesaid or for any loss whatsoever arising out of any deficiency in the insurance taken on the assets which are charged to the Bank or for any loss whatsoever, whether directly or indirectly.
- 28.4 All monies which may be received by virtue of the insurance shall be applied in or towards the discharge or reduction of the monies owed to the Bank. You shall hold all monies so received on such insurance in trust for the Bank.
- 28.5 In the event of all monies received on any insurance as aforesaid being less than the amount due to the Bank hereunder including interest and all monies and all other charges due and payable to the Bank hereunder you shall forthwith pay to the Bank the difference between the amount due and the amount so received and until such payment will also pay interest on such at such rate as the Bank may determine.

**29. SET OFF, COMBINATION OR CONSOLIDATION OF ACCOUNTS**

The Bank shall be entitled (but not obliged) at any time with notice to you, to combine consolidate or merge all or any of your account(s) and liability(ies) with and to the Bank anywhere whether in or outside Malaysia whether singly or jointly with any other person and may transfer or set off any sums in credit in such accounts in or towards satisfaction of any of your liabilities whether actual or contingent, primary or collateral.

**30. CONDITION PRECEDENT**

The Facility can be drawdown or utilized only upon fulfillment of such conditions precedents as stated in the Letter of Offer or such other condition precedent as the Bank may require at any time and from time to time at its discretion.

**31. OTHER UNDERTAKINGS & COVENANTS**

- 31.1 The Borrower hereby covenants that during the continuance of the Facility, it will not without the consent of the Bank in writing first had and obtained, which consent shall not unreasonably withheld:-
- a) perform the following corporate exercises:-
    - (i) add to, delete, vary or amend its Memorandum and Articles of Association or Constitution (or the corresponding corporate document as stipulated by the laws to which it is subject, if any) in any manner which would be inconsistent with the provisions of the Letter of Offer and/or the Security Documents;
    - (ii) change its financial year or the nature of its present business;
    - (iii) sell, transfer, lease or otherwise dispose of all or a substantial part of its capital assets or undertake;
    - (iv) permit any merger, consolidation or reorganisation;
    - (v) alter its issued share capital whether by varying the amount structure or value thereof or the rights attached thereto or convert any of its share capital into stock or by consolidating dividing or sub dividing any or all of its shares;

- (vi) carry on any business other than its existing business on the date it first applied for the Facility or permit any changes in the nature of its business; or
- (vii) withdraw or distribute to its shareholders from the account of its business any money from the capital of the business or the retained profits but such consent of the Bank shall not be unreasonably withheld subject nevertheless to the Borrower having satisfied the Bank that it has sufficient capital to maintain in continuing operation of the Borrower's business;
- b) enter into any transaction with any person, firm or company except in the ordinary course of business on ordinary commercial terms and on the basis of arm's length arrangement or enter into any transaction whereby the Borrower might pay more than the ordinary commercial price for any purchase or might receive less than the commercial price (subject to normal trade discounts) for its products;
- c) enter into partnership, profit sharing or royalty agreement or other similar arrangement whereby its business or operation are managed by other person, firm or company;
- d) cause or permit to exist any security interest over any of its material assets (includes but not limited to any revenues and property moveable and immovable of any kind) properties undertakings businesses except:-
  - (i) liens arising by operation of law, and securing obligations not more than thirty (30) days overdue;
  - (ii) liens or rights of set off arising in the normal course of trading relating to liabilities the aggregate amount of which is in the opinion of the Bank is not material; and/or
  - (iii) security interest which may be consented by the Bank in writing from time to time;
- e) all expenditure for fixed assets and other non-current assets other than those required for carrying out its business or necessary for repairs or replacements essential to the operation of the business;
- f) assume guarantee or permit to exist any additional indebtedness except prior written consent of the Bank is obtained;
- g) make or permit to exist loans or lend or make advances to any person partnership or corporation or others or make investments in other companies or enterprises or provide guarantee favouring any person enterprise or person ;
- h) give any loans or advances to any of its directors, shareholders, associate or related corporations or subsidiaries;
- i) permit or suffer any material change in its ownership or control of any equity shares or its controlling shareholders or the management thereof;
- j) make any prepayment in respect of any debt or other credit facilities or prepayment of any loan advanced to it by the Related Corporations or its shareholders; and/or
- k) breach or permit or threaten to breach any other covenants stipulations undertakings terms and conditions as set out in the Letter offer and if applicable, the Security Documents.

For the purpose of this clause, "it" or "Borrower" shall include, where applicable, the Security Party and other member of the Borrower's group of companies, as may be determined by the Bank at its discretion.

### **32. UPSTAMPING**

In the event that the total monies advanced to or due and owing by you to the Bank shall at any time exceed the principal limit for which the Letter of Offer and/or the Security Documents is for the time being stamped, the Bank shall have the right at any time to upstamp from the date of the same having been paid or expended by the Bank and until payment, the stamp duty including any penalty incurred shall form part of the monies due and owing to the Bank.

### **33. COSTS AND EXPENSES**

#### **33.1 Stamp duties and registration fees**

You shall pay and bear all legal fees and all whatsoever costs, registration and other fees, stamp duties and other disbursements and/or expenses including any penalty thereto and any service tax or similar tax payable on them arising out of and/or in connection with:-

- a) the preparation, negotiation, execution, perfection, delivery and/or discharge and/or the

release of any or all of the legal documentation irrespective of whether or not the Facility is utilised or cancelled; and

- b) any actual or proposed amendment, waiver or consent under the Facility.

33.2 Legal costs and expenses

- a) Notwithstanding that the Facility may be cancelled or aborted for any reason whatsoever, you shall be liable to pay all costs, fees and expenses whatsoever (including other similar duties and any penalties thereon) on a full indemnity basis in connection with or incidental to the Facility including the Bank's solicitors' fee arising from the legal documentation.
- b) If the monies hereby secured or any part thereof shall be required to be recovered through any process of law or any recovery process as well as the contesting of and involvement in any legal proceedings of whatsoever nature by the Bank for the protection of or in connection with any of your account(s), or if the said monies or any part thereof shall be placed in the hands of solicitors for collection. Such amounts shall be payable by you on demand on a full indemnity basis, together with interest from the date the costs and expenses are incurred to the date of full payment at such rate as the Bank may prescribe (both before and after judgment).
- c) Legal costs and expenses are payable by you notwithstanding that the Facility may be cancelled and/or aborted at any time before completion of legal documentation.

33.3 Expenditure incurred by the Bank for and on behalf of the Borrower

All monies expended by the Bank hereunder from time to time for and on behalf of the Borrower and for its account shall bear interest thereon at the relevant rate from the date of such payments relating to insurance, quit rent, assessment, rates, taxes, repairs, legal costs and all other outgoings including any expenses incurred by the Bank to visit, inspect or report on your business by the Bank's agent and or consultants shall be recoverable from you and shall be repaid on demand.

**34. CROSS DEFAULT**

Notwithstanding the provisions relating to the repayment of monies advanced as hereinbefore provided you hereby expressly agrees that if any sums shall be due from you to the Bank from time to time or at any time or shall be due from you may be or become liable to the Bank anywhere on banking account(s) or any other account(s) current or otherwise in any manner whatsoever or if default is made in any provisions of such accounts or in any other banking facilities granted by the Bank to you or in any of the provisions herein then and in such event the Facility and all monies payable under such accounts or other banking facilities aforesaid shall immediately become due and payable and the security herein shall become immediately enforceable.

**35. REDEMPTION & RELEASE**

It is hereby expressly agreed and declared that unless the Bank otherwise agrees, you shall not be entitled to redeem or require the release or discharge of any security given by you or any other security party to the Bank and whether given now or hereafter.

**36. CESSATION OF RELATIONSHIP**

The cessation of the relationship of banker and customer between the Bank and you howsoever brought including the recall of the Facility and/or any part thereof by the Bank or the closure of account shall not in any manner affect the right of the Bank to capitalize interest which is payable on any outstanding balance.

**37. AMALGAMATION AND RECONSTRUCTION**

The security liabilities and or obligations created shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or otherwise which may be made in the constitution of the Bank or of any company by which the business of the Bank may for the time being be carried on and shall be available to the company carrying on that business for the time being.

**38. INDEPENDENT LEGAL ADVICE**

You represent and warrant to the Bank that in the execution and delivery of the Letter of Offer, you have sought, obtained and relied upon its own independent legal advice. You hereby confirm having read and understood the Letter of Offer.

**39. DEFINITION**

In the Letter of Offer:-

“**Business Day**” means a day (excluding Saturdays, Sundays and public holidays) which the Bank is open for business

“**Letter of Offer**” means the letter of offer (including these General Terms and Conditions and other appendices annexed to it) issued by the Bank to the Borrower whereby the Bank, at the request of the Borrower, agrees to make available and/or continue to make available to the Borrower the Facility and includes any other correspondence or documents which may be issued by the Bank thereafter to the Borrower in substitution thereof or in addition or amendment or variation thereto

“**Security**” means the collateral(s) given or provided by the Security Party from time to time for the purpose of securing the Borrower’s indebtedness or any part thereof under the Facility.

“**Security Documents**” means any of the Letter of Offer, Facility Agreement and such other security documents that have been or will be executed by the Borrower and/or the Security Party to secure the repayment of the Housing Loan or Facility by the Borrower as well as the payment of other indebtedness.