

DATED THIS

DAY OF

20

BETWEEN

**MBSB BANK BERHAD**  
**(Company No. 716122-P)**  
(“the Bank”)

**AND**

**The Party as stated in Item 3 of Schedule 1 hereto**  
(“the Customer”)

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**COMMODITY MURABAHAH PROPERTY FINANCING-*i***  
**FACILITY AGREEMENT**  
**(1<sup>ST</sup> OR 3<sup>RD</sup> PARTY)**

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***Prepared by:***

## **FACILITY AGREEMENT**

**THIS FACILITY AGREEMENT** (hereinafter referred to as this "**Agreement**") is the day and year stated in Item 1 of Schedule 1 hereto.

### **BETWEEN**

- (1) **MBSB BANK BERHAD (Company No.: 716122-P)**, a company incorporated in Malaysia pursuant to the Companies Act, 2016 (hereinafter referred to as "**the Bank**") of the one part;

AND

- (2) **THE PARTY** whose name and description are stated in **Item 2 of the First Schedule of Part A** (hereinafter referred to as "**the Customer**" which expression shall, where the context so permits, includes its heirs, personal representatives, successors in title and assigns) of the other part.

(the Bank and the Customer are hereby collectively referred to as "Parties" and individually referred to as "Party", as the context may require).

### **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>MBSB Bank Berhad</b> , having its registered office at 11th Floor, Wisma MBSB, 48 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur and having its business address as stated in Item 1 of the First Schedule of Part A includes its successors in title and assigns.
<b>"Business Day"</b>	A day when banks are open for general banking business in the state where the Bank is located.
<b>"Customer"</b>	The person named in this Agreement, the details of which are as stated in Item 2 of the First Schedule of Part A.
<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 Item 3 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 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>"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 Item 5 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>"Selling Price"</b>	the amount as agreed by the Bank and the Customer as referred to in the Letter of Offer and Part B and payable by the Customer to the Bank as the selling price for the Commodities in the manner as specified in the Letter of Offer and/or Murabahah Sale Contract.
<b>"Security Documents"</b>	the documents more particularly set out in Item 6 of the First Schedule of Part A.
<b>"Security Party"</b>	the party whose particulars are more particularly set out in item 8 of the First Schedule of Part A.

### **ARTICLE III**

#### **SECTION 3.01 CONDITIONS PRECEDENT TO DISBURSEMENT**

The Bank may not disburse any part of the Facility unless the conditions precedent as set out in the Security Documents is 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, wilful 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 Selling Price, the Customer shall pay to the Bank the late payment compensation at the prevailing rate as prescribed in the Letter of Offer. The late payment compensation shall be computed on a monthly basis.
- (b) For the purpose of Section 4.02(a), a certificate which is duly certified by an authorized 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 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 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 Selling 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 Selling 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 Selling 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 following shall constitute event(s) of default:

- (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/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/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/Security Party), which might, in the opinion of the Bank, affect the ability of the Customer/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

(g) Illegality

It is or will become unlawful for the Customer/Security Party to perform or comply with any one or more of the obligations of the Customer/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/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/Security Party in its obligations with respect to that indebtedness; or

(ii) The Customer/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/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/Security Party and such distress, execution or other process is not discharged by the Customer/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 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/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/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; 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 or 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; and
  - (ii) the Selling Price 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 Selling Price either before, after or concurrently with the action to enforce any of the Security Documents; and
  - (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 Selling Price.
- (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, regardless of any provision of this Agreement to the contrary.

## **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) 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 (including but not limited to the Bank's solicitors fees on a solicitor and client basis), costs, rates, taxes and other outgoings on the assets or properties charged and/or assigned to the Bank under the Security Documents in accordance with Section 8.02 hereof, 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;
- (b) 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;
- (c) 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 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 paid 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 6.02 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 6.02 above and the Customer shall bear the cost of any additional stamp duty as a result.

## FIRST SCHEDULE

Item No.	Subject Matter	Particulars
1	<b>Address of Bank and Address For Service</b>	MBSB BANK BERHAD (Company No.: 716122-P), a company incorporated in Malaysia pursuant to the Companies Act, 2016 and having its registered office at 11th Floor, Wisma MBSB, 48 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur ("the Bank" and includes its successors in title and lawful assigns).
2	<b>Name and Address of Customer</b>	Name: NRIC No.: Residential Address :
3	<b>Facility Amount</b>	Ringgit Malaysia ***** (RM***** ) only
4	<b>Date of the Letter(s) of Offer</b>	Date:
5	<b>Property(ies)</b>	
6	<b>Security Documents</b>	<p>(a) Letter of Offer</p> <p>(b) this Agreement</p> <p>(c) <b><u>For Charge of Property (For property with Individual/Strata Title)</u></b></p> <p style="padding-left: 40px;">1<sup>st</sup> Legal Charge (1<sup>st</sup>/3<sup>rd</sup> Party) over the property held under _____ and known as _____; or</p> <p>(d) <b><u>For Assignment of Property (For property without Individual/Strata Title)</u></b></p> <p style="padding-left: 40px;"><u>Pending issuance of the individual/strata title, Deed of Assignment*(1<sup>st</sup>/3<sup>rd</sup> Party) of the Sale and Purchase Agreement with Power of Attorney to transfer or otherwise deal with</u></p>

		<p>the property held under _____ and known as _____; 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.</p> <p>(e) and such other documents or security documents as the Bank or the Bank's solicitors may advise.</p>
7	<b>Developer/ Vendor</b>	
8	<b>Security Party</b>	

**END OF PART A**