

PART C OTHER TERMS

SECTION 1.01 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:

Authorised Signatory	means the person or persons authorised by resolution of the Board of Directors of the Customer from time to time to sign and certify any document referred to in this Agreement and references to "Authorised Signatories" shall be construed accordingly;
Availability Period	means the availability period for the Facility more particularly set out in Section 2.5 of this Agreement or such other period as the Bank may at its absolute discretion agree in writing from time to time;
BR	means the base rate of the Bank as published by the Bank from time to time;
BFR	means the base financing rate of the Bank as published by the Bank from time to time;
CPR	means the ceiling Profit Rate as set out in the Letter of Offer;
Commodity Brokerage/Trading Fees	means fees that are imposed by the appointed service provider when the Bank transacts the Tawarruq transaction prior to disbursement of the financing via purchase and sale of commodities;
Deed of Assignment	means the following:- (i) in relation to the Property where no individual/strata title has been issued; and (ii) the instrument pursuant to which the Security Party assigns (by way of security) all its rights and interest in the Property to the Bank upon the terms and conditions contained therein;
Directors and/or Shareholders	means the current directors and shareholders of the Customer and includes every person liable hereunder or any one or more of them and their respective heirs, personal representative, executors and administrators;

EPR	means the effective Profit Rate as stated in the Letter of Offer;
Facility Tenure	means the tenure of the Facility as set out in the Letter of Offer;
Grace Period	means the grace period of the Facility as set out in the Letter of Offer;
Legal Charge	means the instrument pursuant to which the Security Party charges all its rights and interest in the Property to the Bank upon the terms and conditions contained therein;
Material Adverse Effect	<p>means, in relation to any event or circumstance, the occurrence or effect of which would, in the opinion of the Bank:-</p> <ul style="list-style-type: none"> (a) result in an adverse change in the financial condition, operations, business or assets of the Customer; (b) result in an adverse change in the socio-political, financial and/or global economic conditions; or (c) affect the validity or enforceability of any terms and conditions set in the Security Documents against the Customer which would adversely effect the rights, remedies and benefits available to, or conferred upon the Bank;
Month	means a calendar month according to the Gregorian calendar;
Purchase Transaction	means the transaction between the Bank and the Commodity Trader wherein the Commodities are purchased by the Bank from the Commodity Trader at cost price which is equivalent to the Purchase Price;
Sale and Purchase Agreement	means the sale and purchase agreement entered into between the developer/vendor/proprietor and the Customer and where applicable the proprietor wherein the developer/vendor/proprietor agreed to sell and the Customer agreed to purchase the Property upon the terms and conditions contained in the sale and purchase agreement and such other agreements and/or documents (if any) pertaining to the Property evidencing the Customer's rights and/or

	ownership in the Property;
Sale Transaction	means the transaction between the Bank and the Customer wherein the Commodities are sold by the Bank to the Customer pursuant to the Murabahah Sale Contract;
Security Interest	means any mortgage, pledge, lien, charge, covenant, caveat, debenture, right of set-off, assignment, hypothecation, encumbrance (title retention preferential prohibitory order right or trust arrangement) and any other security interest or arrangement howsoever created or arising;

SECTION 2 SPECIFIC FACILITY TERMS

2.1 Purchase Price: For each Purchase Transaction, the Purchase Price will be a sum equal to the utilisation amount under the Purchase Requisition.

2.2 Effective Profit Rate ("EPR"):

- (a) The effective Murabahah Profit which is part of the Selling Price, will be an amount equivalent to the EPR and will be calculated on the outstanding Purchase Price applicable for the entire duration of the Facility Tenure, on the basis of a 365 day year (both start and end date inclusive);
- (b) The applicable BR/BFR for the purpose of calculating the Murabahah Profit shall be the respective BR/BFR at the relevant Purchase Transaction date;
- (c) In the event of change of BR/BFR, the EPR will be revised by the Bank accordingly. Any revision in the EPR will not exceed the CPR.

2.3 Ceiling Profit Rate ("CPR"):

The CPR is at eleven per centum (11.0%) per annum; however, the EPR will not be increased to exceed the CPR (except where ta'widh is charged) which is to be calculated on the Purchase Price under each utilization applicable for the entire duration of the Facility Tenure on the basis of a three hundred sixty five (365) day year (both start and end date inclusive).

The CPR will be applicable for the purpose of calculating "Murabahah Profit" at the respective relevant Purchase Transaction Date.

2.4 Selling Price: For each Sale Transaction, the Selling Price will be determined on the applicable Purchase Transaction date based on the CPR. The payment of the Selling Price will be based on the EPR as follows:-

(a) Grace Period Profit Payment

The payment of Grace Period profit will commence on the first (1st) day of the month following the first disbursement of the Purchase Price until the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier. The monthly Grace Period profit to be paid will be based on actual amount disbursed, as advised by the Bank; and

(b) Monthly Instalments Payment

The monthly instalment payment will be as set out in the Letter of Offer. The payment of monthly instalment will commence on the first (1st) day of the month following the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier.

(c) Default in Paying Monthly Instalment Payments

In the event the Customer defaults in paying the Grace Period profit payment or monthly instalment payment for three (3) consecutive months, the Profit Rate charged will be revised to a maximum of up to BR + 2.50% p.a. or such other rate as may be prescribed by the Bank but not exceeding the CPR notwithstanding the terms and conditions under Ibra' (Rebate) set out in Section 5 of Part A and the new instalment payment amount will be effective in the following month.

However, the Profit Rate will be revised to the original rate as per the Letter of Offer when the Customer's Financing account status is below three (3) Months-In-Arrears (3 MIA).

2.5 Availability Period:

- (a) Full disbursement will be made not later than six (6) months from the date of the Letter of Offer or such further period as the Bank may advise failing which the Bank may either withdraw or vary the terms of the Facility and the Customer will reimburse the Bank for all costs, fees and expenses incurred by the Bank directly or indirectly;
- (b) The Parties will execute this Agreement together with all the Security Documents within one (1) month from the date of the Letter of Offer failing which the Bank may give the Customer notice in writing cancelling the Facility;

2.6 Changes in BR/BFR:

- (a) Notice on the change of the BR/BFR will be notified by the Bank to the Customer in the following manner:
 - (i) By either placing in one issue of a daily national newspaper a general notice of change of the BR/BFR addressed to the public generally; or
 - (ii) By posting a notice of such changes in any of the Bank's branch premises or website.

- (b) Notwithstanding the issue of the general notice specified in Section 2.6(a)(i) and 2.6(a)(ii) above, the Bank may at its discretion decide that such variation will not apply to the Customer and the Security Party to whom a demand under this Agreement had been made or legal proceedings had been commenced against the Customer and/or any of the Security Party.
- (c) The decision of the Bank as to what at any time is the BR/BFR and the date(s) from which such amendment will take effect will be final and conclusive and will not be questioned on any account whatsoever.
- (d) If the BR/BFR payable by the Customer is varied, the Bank may, at its discretion, adjust the amount of rebate granted to the Customer during the Facility Tenure upon changes of the EPR due to the fluctuating BR/BFR, provided always that the total amount received by the Bank will not exceed the Bank's Selling Price.

2.7 Changes of Monthly Instalment/Payment Amount

- (a) If there are changes in the BR/BFR at any time during the Facility Tenure resulting in a change in the EPR, the Bank will revise the monthly instalment/payment amount accordingly and such revision in monthly instalment/payment amount will be notified to the Customer(s). Any revision in the EPR will not exceed the CPR.
- (b) In addition to Section 2.7(a) above, in the event of any delay or failure by the Customer(s) to pay any monthly instalment/payment amount during the Facility Tenure in accordance with this Agreement, the Bank will revise the monthly instalment payments by revising the EPR. Such revision in monthly instalment/payment amount as aforesaid shall be notified to the Customer(s) and the revised EPR will not exceed the CPR.

2.8 Prepayment:

- (a) The Customer shall give the Bank a minimum written notice of one (1) month prior to making a partial or total prepayment which prepayment must be made on the Murabahah Profit payment dates as set out in the Letter of Offer.
- (b) Any notice for prepayment will be irrevocable and the customer will be obligated to make such prepayment in accordance with the notice. Any amount which is paid may not be reimbursed.

2.9 Priority of Payments: Further to Section 5.01(b) of Part A, payments received from the Customer will be deducted from the Facility in the following order of priority:-

- (a) Profit;
- (b) Principal Amount; and
- (c) Other Charges.

SECTION 3 OTHER TERMS AND COVENANTS FOR UTILISATION OF THE FACILITY

3.1 Conditions Precedent: Subject to Section 3.01 of Part A, the Bank's obligation to make available the Facility is subject to the Bank being satisfied that the conditions precedent as referred to in the First Schedule of Part C, and all the terms and conditions stipulated in the the Letter of Offer and the following Transaction Documents:-

- (a) Purchase Requisition comprising of the Purchase Request and Undertaking to Purchase (Wa'd);
- (b) Agency Agreement; and
- (c) Murabahah Sale Contract;

have been complied with and fulfilled by the Customer and/or the Security Parties.

3.2 Other Terms and Covenants: Notwithstanding Section 3.1 above, the obligation of the Bank to make available the Facility to the Customer is further subject to the following conditions:-

- (a) no Events of Default have occurred and no event have occurred which, (i) with the giving of notice, lapse of time and/or upon the making of any necessary certification or determination, would constitute an Event of Default as a result of making any disbursement or to render the Facility to become immediately payable; and (ii) no event of default under any agreement or arrangement referred to in this Agreement has happened and is continuing;
- (b) no default has occurred in the performance by any party of any covenant or agreement contained in any of the agreements and arrangements referred to in this Agreement;
- (c) no extraordinary circumstances, governmental action or event has occurred which would result in a Material Adverse Effect that prejudices the ability of the Customer to observe and perform the covenants and obligations on its part to be performed under this Agreement;
- (d) as from the date when the Customer first applied for the Facility there have been no alterations or changes in the constitution, condition, financial position, operations, business or other affairs of the Customer which might affect the decision of the Bank to grant the Facility;
- (e) no breach of any covenant which will either constitute an act of default or lead to an act of default under the Facility, which permits the Bank to recall the Facility;
- (f) no unsatisfactory judgment or order made against the Customer and/or the Security Party;
- (g) the Bank will have the right to send any of its authorized representatives to visit and inspect the Property with full assistance from the Customer and/or the Security Party;

- (h) the Facility is subject to annual review and upon the Bank giving the Customer twenty (21) days' prior notice, the Bank may, at its discretion, modify, vary or cancel the utilized and/or unutilized portion of the Facility or part thereof;
 - (i) each of the representations and warranties set out in Section 9 herein remains true and accurate and not misleading; and
 - (j) subject to the Bank giving twenty one (21) days' prior notice, the Bank has the right to cancel the Facility if it is not used for the Purpose or if the Facility is used for a purpose prohibited by Shariah.
- 3.3** The Bank is satisfied that the financing by the Bank under this Agreement and the Bank's agreement to make available the Facility to the Customer will not contravene or be in breach of any financing limits or restrictions that may be imposed on the Bank from time to time by any authority having jurisdiction over the Bank or any of the guidelines directives or policies introduced by such authority from time to time.
- 3.4** The Bank may, at its discretion, not make any advance of monies, if such advance would at the time it was made, render the Bank in breach or default of any law, directive or regulation of any government and/or central bank authority or if funds are not available at the time of request by the Customer for a disbursement.
- 3.5** The Customer agrees that the terms and conditions herein are subject to there being no event occurring which could adversely affect the successful completion of the Facility. Should a change occur prior to financial close, which would have a Material Adverse Effect, the Bank may, by giving twenty one (21) days' prior notice, cancel and/or restructure the Facility.
- 3.6** The Customer hereby agrees that the Facility is subject to all relevant authorities' approvals, including but not limited to approval from the district office, land office, state authority, city and/or municipal councils (where applicable).

SECTION 4 DISBURSEMENT

- 4.1 Disbursement of the Facility:** The disbursement of the Facility, which will be made on a Business Day and subject to the Availability Period, is subject to the obligations on the part of the Customer as set out in this Agreement having been fulfilled and performed to the satisfaction of the Bank and to the compliance of the following conditions:-
- (a) the conditions precedent and/or disbursement conditions stipulated in this Agreement have been fulfilled by the Customer and/or the Security Party to the satisfaction of the Bank;
 - (b) the Facility or any part thereof will be disbursed to the Developer/Vendor/Contractor (as the case may be) or their respective solicitors through the Bank's solicitors as follows:-

- (i) Where the property is under construction, the Facility will be progressively disbursed against the original or copy of the Architect's Certificate(s) of work done/completed certified by the relevant architect with supporting documents and the redemption statement (if there is any existing charge on the said Property); or
 - (ii) The Bank shall not be liable to the Customer either directly or indirectly for late payments to the Developer/Vendor/Contractor or to any third parties;
- (c) no event has occurred in the opinion of the Bank which amounts or would amount to a Material Adverse Effect as at the date of the disbursement of the Facility;
- (d) such other reasonable conditions, confirmations consent, approvals, Court Orders (if required) and documents from the relevant parties and authorities deemed necessary by the Bank and/or the Solicitors to ensure that the Bank is fully protected and complies with its standard terms and conditions;
- (e) all fees and expenses payable under the Security Documents and this Agreement which have become due have been paid in full;
- (f) the terms and conditions of the Letter of Offer and/or any other letter issued or to be issued by the Bank has been complied with by the Customer; and
- (g) subject to the Bank giving twenty one (21) days' prior notice, the Bank may recall, cancel or withdraw the Facility at its discretion and in accordance with the relevant Shariah principles in the event the Facility is not used for the Purpose.

4.2 Specific Terms and Conditions: In addition to and not in derogation of other terms in this Agreement, the Facility will be utilized subject to such special terms and conditions set out in the Letter of Offer and in accordance with the Bank's standard terms and conditions applicable to the Facility.

4.3 Guidelines: Notwithstanding the above, the transaction arising from this Agreement will at all times be subject to all prevailing rules, directives, terms, procedures, regulations and guidelines (whether having the force of law or otherwise) which in the opinion of the Bank is pertinent to the Bank in order to ensure industry practices are met.

SECTION 5 GENERAL/FAMILY TAKAFUL

5.1 Fire Takaful:

- (a) The Bank may arrange on behalf of the Customer, for the said Property to be covered according to its reinstatement value against fire and other contingencies as may be required by the Bank at the time when the first progress payment of the Facility is made

with the Bank's panel of takaful operators or other takaful operators of the Customer's choice duly approved by the Bank (hereinafter referred to as the "Takaful Provider"). In the event the Customer fails to appoint the Takaful Provider, the Bank is entitled to act as the agent of the Takaful Provider and to retain any payment and commission receivable under the certificate.

- (b) Should the Customer opt to take up the Takaful plan from a Takaful Provider of the Customer's choice, the Customer has to ensure that the sum covered must be sufficient.
- (c) The Customer is also responsible for any annual payment of contribution of the Fire Takaful certificate. Where the protection period is expiring and the contribution is late, the Bank may advance the said contribution and the Customer will reimburse the payment within the time period stipulated by the Bank. The Customer is required to advise the Bank on the amount to be covered failing which the Bank will cover the said Property for the amount/value as the Bank deems fit at its discretion and the Customer will not hold the Bank liable in any event of inadequacy of Takaful coverage.

5.2 Mortgage Reducing Term Takaful ("MRTT") or Family Takaful:

The MRTT or Family Takaful is compulsory and to be taken by the Customer at a full coverable value of the Facility and for the Facility Tenure of the Facility in order to guarantee the payment of all the Indebtedness unless otherwise stated by the Bank subject to any Special Conditions stated in the LO.

- (a) the Bank may at its discretion finance the contribution payable for the MRTT certificate subject to the following conditions:-
 - (i) the MRTT certificate must be taken up from either the Bank's panel of Takaful Provider or other Takaful Providers of the Customer's choice duly approved by the Bank. If the Takaful Provider rejects the Customer's application, the Bank will not finance the contribution;
 - (ii) the Bank will only finance the MRTT contribution according to details of the person(s) covered and amount of coverage as specified in the Letter of Offer;
 - (iii) only the basic contribution for the MRTT certificate will be financed. If the Takaful Provider requires a loading or excess to be paid, the Customer may request the cost of such loading or excess amount to be included into the financing amount subject to approval by the Bank;
 - (iv) the Customer must assign absolutely all rights, title, interest and benefits of the covered proceeds payable under the MRTT certificate to the Bank and the Bank is to be named as the sole beneficiary;
 - (v) The Security Documents will be executed upon receipt of the Letter of Acceptance of the MRTT from the Takaful Provider; and

- (vi) The MRTT will take effect from the date of first disbursement of the Facility.
- (b) In the event the Customer decides to opt for the Family Takaful, the Customer will enter into the specific form as provided by the Takaful Provider on the assignment of the Family Takaful. The assignment form shall be lodged at the Bank for safekeeping throughout the Facility Tenure of the Facility. The Customer shall continue to settle the contribution payment for the said Family Takaful throughout the Facility Tenure of the Facility.
- (c) In the event the property is auctioned off and upon the Bank receiving full sale proceeds, all Takaful certificates relating to the Facility such as the MRTT or Family Takaful and Fire Takaful will be terminated by the Bank.
- (d) In case of a claim, all amounts payable under the MRTT or Family Takaful and Fire Takaful coverage taken up will be made to the Bank directly and will be first used to offset any outstanding facilities(due to the Bank. The remaining benefits (if any, after the set-off) will be payable to the Customer or the Customer's estate (as the case may be).
- (e) In the event, the Customer is allowed waiver for MRTT or Family Takaful Assignment for the Facility (subject to approval by the Bank), the Facility will not be protected in case of death and any outstanding on the Facility shall be settled by the Customer's beneficiary.

6. CONDITIONS UNDER THE FACILITY

In addition to the conditions precedent in Section 3.1 above, subject to the Bank giving twenty one (21) days' prior notice, the Bank will have the right and discretion, from time to time, to impose the following conditions and/or any other condition(s) as the Bank may deem fit for the utilisation of the Facility by the Customer:

6.1 Special Conditions:

- (a) The Customer will comply, perform and observe and will cause to be complied, performed and observed all the terms, covenants, conditions, provisions and obligations on the part of Customer as contained in the Security Documents and ensure that the Customer will immediately notify the Bank in the event that the Customer is unable to comply, perform or observe any of the provisions of the Security Documents.
- (b) The special conditions as set out in the Letter of Offer.
- (c) Such other conditions as advised by the Bank's solicitors.

6.2 Other Conditions:

- (a) The Bank may at its discretion, debit the Customer's account with the Bank

towards the payment of expenses relating to the Facility, including the MRTT contribution, quit rent, assessment, outgoings, fees and costs (including any professional charges) incurred in the recovery of the Facility and enforcement of the securities and the Bank's rights under the Facility (if applicable).

- (b) In the event there is any outstanding balance of the Facility after the expiry of the Grace Period, the balance of the Facility will be credited into a "Financing Payable Account" and thereafter, payment will be made in the same manner as stated in the Letter of Offer.
- (c) The Security Documents (where applicable) is for the sole purpose of financing or part-financing the purchase of the said Property or such other purpose set out in the Letter of Offer and the Customer is obliged to follow the rules and regulations thereof.
- (d) The Bank may revalue the said Property in situations where the Customer is in default or upon the occurrence of an event which in the Bank's reasonable opinion would reduce the value of the Property and affect the security given to the Bank as security for this Facility and the fees and costs incurred shall be borne by the Customer.
- (e) The Customer covenants with the Bank that it and/or the Security Party shall at all times during the continuance of the Facility obtain the prior written consent of the Bank:-
 - (i) before initiating, commencing, instituting or maintaining any action, suit or proceedings in any court or tribunal against a Developer/Vendor/Contractor in respect of any matter arising out of the Sale and Purchase Agreement; and/or
 - (ii) before agreeing with the Developer/Vendor/Contractor on any variation or amendment of the terms of the Sale and Purchase Agreement or the termination, rescission, cancellation or revocation of the Sale and Purchase Agreement.
- (f) The Bank may impose additional conditions governing the Facility from time to time at its discretion subject to the Bank giving twenty one (21) days' prior notice of its intention to do so.

SECTION 7 PAYMENTS

- 7.1** Further to Section 5.01(a) of Part A, the Selling Price will be payable as per the terms and conditions of the Security Documents.
- 7.2** The Indebtedness for the Facility, other than the Selling Price will be payable as per the terms of this Agreement.
- 7.3** All payments to be made by the Customer to the Bank, will be made in Ringgit Malaysia

in immediately available funds not later than 11.00 a.m. on the relevant day, to the Bank's account or such other bank and account as the Bank may have notified to the Customer.

- 7.4** All payments by the Customer under this Agreement, whether in respect of principal, profit, commission, fees or any other amount, will be made in full without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes, charges or otherwise whatsoever) unless the deduction or withholding is required by law, in which event the Customer will:-
- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - (b) immediately pay to the Bank such additional amount so that the net amount received by the Bank will equal the full amount which would have been received by it had no such deduction or withholding been made;
 - (c) pay to the relevant taxation or other authorities within the period for payment permitted by the applicable law, the full amount of the deduction or withholding (including, the full amount of any deduction or withholding from any additional amount paid pursuant to this section);
 - (d) furnish to the Bank, within the period for payment permitted by the applicable law, either:-
 - (i) an official receipt of the relevant taxation authorities in respect of all amounts deducted or withheld as aforesaid; and
 - (ii) if such receipt is not issued by the relevant taxation authorities, a certificate of deduction or equivalent evidence of the relevant deduction or withholding;
 - (e) if the Customer defaults in the payment of the Indebtedness, the Selling Price and/or other moneys owed on the respective due dates, as the case may be, or any other moneys covenanted to be paid from time to time, the Customer will pay to the Bank, ta'widh (late payment compensation) in accordance with Section 4.02 of Part A; and
 - (f) if any payment would otherwise be due on a day which is not a Business Day, it will be due on the next succeeding Business Day or, if that Business Day falls in the following month, the preceding Business Day.

All monies received from the Customer or any third party or from the realization of any security created by the Security Documents for the purpose of reducing the account of the Customer or of any monies covenanted to be paid under this Agreement, will be treated for all purposes as payments in gross towards settlement of the Facility. All securities now or at any time held by the Bank will be treated as security for the outstanding general balance of the Facility. Neither the Customer nor any third parties will have any rights or claims to any part of such securities or any profit margin and/or

commission therein unless and until the Bank has received the full amount owing to the Bank by the Customer.

SECTION 8 SECURITY

8.1 Security: In consideration of the Bank granting the Facility, the Customer will execute and/or cause the Security Party to execute the Security Documents stipulated under Item 6 of the First Schedule of Part A.

8.2 Covenant to Provide Further Security:

(a) The Customer will at any time when required by the Bank, execute in favour of the Bank or as the Bank directs such legal or other mortgages, charges, assignments, transfers, guarantees or agreements as the Bank requires and on all the Customer's estate, right title and interest in any property, assets or business now or subsequently acquired by the Customer (including any vendor's lien) and the benefit of all licences in connection therewith to secure the Indebtedness. All costs in the preparation of such mortgages, charges, assignments, transfers or agreements will be borne by the Customer and will contain all such terms and conditions for the benefit of the Bank as the Bank may reasonably require.

(b) The Customer will at any time when required by the Bank, deposit with the Bank the documents of title of any immovable properties vested in the Customer for any tenure and any debentures shares stocks or other investments or securities registered in the name of the Customer or otherwise belonging to the Customer. Such deposit may be by way of collateral security for the payment of the Indebtedness or for the purpose of securing any other moneys owing to the Bank by the Customer and not secured under this Agreement.

8.3 Continuing Security: The security created under the Security Documents is expressly intended to be and will be a continuing security for all moneys now or from time to time owing to the Bank by the Customer whether alone or jointly and severally with others and whether as principal or security regardless that the Customer may at any time cease to be indebted to the Bank for any period or periods and regardless that the account or accounts of the Customer with the Bank may from any cause whatsoever cease to be current account or accounts and notwithstanding any settlement of any account or accounts or otherwise.

8.4 Primary Security: The securities created under this Section 8 will be primary and not collateral securities and the Bank's rights against the Customer will not be discharged or impaired by:-

(a) the existence or validity of any other security taken by the Bank in relation to the monies due under the Security Documents or any exercise or enforcement of or failure to exercise or enforce any rights otherwise;

(b) non-fulfilment for any reason (whether known to the Bank or otherwise) of any of

the conditions, or the invalidity of any of the conditions, or the invalidity or unenforceability for any reason (known to the Bank or not) of any provision of any agreement with the Bank to which the Customer is a party, or any amendment or variation to such agreement or any security; or

- (c) any other act, event or omission which would or might but for this Section operate to impair or discharge the Customer's obligations to the Bank or the Bank's rights against the Customer.

8.5 Liens and Other Securities Not Affected: Nothing in this Agreement will prejudice or affect any lien to which the Bank is entitled or any other securities which the Bank may at any time hold for or on account of the monies secured under this Agreement, nor shall anything contained here operate so as to merge, prejudice or affect any bill, note, guarantee, mortgage or other security which the Bank may for the time being have for any money intended to be secured by the Security Documents or any right or remedy of the Bank under the Security Documents.

SECTION 9 REPRESENTATIONS AND WARRANTIES

9.1 **Representation and Warranties:** The Customer acknowledges that the Bank has entered into this Agreement and the Security Documents in full reliance of the representations and warranties by the Customer on the following terms and the Customer now represents and warrants to the Bank that:-

- (a) Status:** where the Customer is a body corporate, the Customer has full legal right, authority, power and capacity to accept the Facility and to perform the terms in the Letter of Offer and all the Security Documents. The Customer is duly incorporated and validly existing under the laws of Malaysia;
- (b) Powers and Authorisations:**
 - (i) the Customer has power and authority to own its assets, carry on its business and operations as they are now being conducted and execute and deliver, and perform its obligations under the Security Documents to which it is a party and which constitutes valid and binding obligations of the Customer enforceable in accordance with their respective terms;
 - (ii) this Agreement embodies in writing the entire terms of the agreement and it is hereby declared and confirmed that no warranties, promises, representations, collateral agreements have been made and if, which is denied, that any such warranties, promises, representations or collateral agreements were made they have now lapsed and are superseded by this Agreement and be of no effect whatsoever;

- (c) **Non-violation:** the execution of each of the Security Documents and delivery and performance by the Customer and the utilisation of the Facility do not and will not:-
- (i) exceed the power granted to it by or violate the provisions of, any law or regulation or any order or decree of any governmental authority, agency or court to which it is subject;
 - (ii) result in any actual or potential default under any existing mortgage debenture contract or agreement binding on it or to which it is subject;
 - (iii) where it is a corporation, contravene any of the provisions of its Memorandum and Articles of Association and/or Constitution; or
 - (iv) result in any limitation upon its powers to obtain financing 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;
- (d) **Consents:** no authorisation, approval, consent, licence, exemption, registration, recording, filing or notarisation and no payment of any duty or tax and no other action whatsoever which has not been duly and unconditionally obtained, made or taken is necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Customer and the rights of the Bank under the Security Documents;
- (e) **No Default:** no event has occurred which:
- (i) constitutes, or
 - (ii) with the giving of notice, lapse of time and/or a relevant determination would constitute,
- a contravention of or default under, any agreement or instrument to which the Customer is a party or by which any of its assets is bound or affected being a contravention or default which might either have a Material Adverse Effect on the business, assets or condition of the Customer or adversely affect its ability to observe or perform its obligations under the Security Documents to which it is a party;
- (f) **Litigation:** no litigation, arbitration or administrative proceeding or claim (by itself or together with any other such proceedings or claims) might either have a Material Adverse Effect on its business, assets or condition or materially and adversely affect its ability to observe or perform its obligations under the Security Documents to which it is a party, is presently in progress or pending or,

to the best of the knowledge, information and belief of the Customer, threatened against the Customer or any of its assets;

- (g) Tax Liabilities:** all necessary returns have been delivered by or on behalf of the Customer to the relevant taxation authorities and the Customer is not in default in the payment of any taxes, and where the Customer is a body corporate, no claim is being asserted with respect to taxes which are not disclosed in the financial statements referred to in Section 9.1(h);
- (h) Accounts:** where the Customer is a body corporate, all financial statements, information and other data ("Accounts") furnished by the Customer to the Bank are complete and correct. The Accounts have been prepared in accordance with generally accepted accounting principles and practices consistently applied and accurately and fairly represent the financial condition and results of operations of the Customer as at the date or dates to which they were made up. Since such date or dates there has been no change in the Customer's financial condition or results of operations sufficient to impair its ability to comply with its obligations under the Security Documents;
- (i) No Security Interest:** other than those Security Interest pursuant to the Security Documents, none of the assets of the Customer is affected by any Security Interest, and the Customer is not a party to, nor is it or any of its assets bound by, any order, agreement or instrument under which the Customer is (or in certain events may be,) required to create, assume or permit to exist any Security Interests;
- (j) Information:** the information (be it in writing or otherwise) furnished by the Customer in connection with the Facility and the Security Documents does not contain any untrue statement or omit to state any fact the omission of which makes the statements therein, in the light of the circumstances under which they were made, misleading/inaccurate, and all expressions of expectation, intention, belief and opinion contained in there were honestly made on reasonable grounds after due and careful enquiry by the Customer;
- (k) Change in Customer:** where the Customer is a body corporate, since the date the Customer applied for the Facility there has been no material alterations or changes in the constitution, condition, business, financial position or operations or other affairs of the Customer which could or might adversely affect the ability of the Customer to perform its obligations under the Security Documents to which it is a party;
- (l) Change in Law:** no extraordinary circumstances or change of law or other governmental action has occurred which shall make it improbable that the business of the Customer can be carried out or that the Customer will be able to

perform its covenants and obligations to be performed under the Security Documents to which it is a party;

- (m) **Assets:** the Customer is the beneficial owner and has title to all its assets;
- (n) **Legality of Agreement:** this Agreement and the other Security Documents are and will be the legal, valid and binding obligations of the Customer enforceable in accordance with the terms and the obligations contained in the said documents and will be direct, unconditional and general obligations of the Customer;
- (o) **Default:** the Customer is not in default under any agreement or in the payment or performance of any of its obligations including in respect of monies advanced by any third party and such default is not continuing;
- (p) **Disclosure of Liabilities:** where the Customer is a body corporate, as at the date of this Agreement, the Customer has no liabilities (contingent or otherwise) which are not disclosed in its financial statements (or by the notes thereto) furnished to the Bank or reserved against therein, nor were there at that date any unrealised or anticipated losses;
- (q) **Claim of Immunity:** the Customer is not entitled to claim immunity from any suit, execution, attachment or legal process in Malaysia;
- (r) **Winding-up/Bankruptcy Proceedings:** the Customer has not been subjected to, or threatened to be subjected to, any bankruptcy, liquidation or winding-up proceedings, whether voluntary or compulsory, and neither has the Customer been subjected to circumstances in which a receiver, administrator or administrative receiver sought to be appointed of the whole or any part of its undertaking, property or assets nor has any petition for the appointment of an administrator of the Customer been presented or a voluntary arrangement been approved in relation to the Customer;
- (s) **Legal Proceedings under Companies Act 2016:** where the Customer is a body corporate, no step has been taken by the Customer or its creditors or its shareholders or any other person on its behalf nor have any legal proceedings or applications been started or threatened under Section 366 of the Companies Act 2016;
- (t) **Restructure of Debts:** where the Customer is a body corporate, no step has been taken by the Customer, its creditors, its shareholders or any other person on its behalf to restructure the debts of the Customer;
- (u) **Environmental Matters:** the Customer has observed and complied with all laws and directives relating to environmental matters whether in Malaysia or

other jurisdictions which are applicable to the Customer and that where the Customer is a body corporate, the Customer's activities do not give rise to pollution liabilities or environmental damage;

- (v) Compliance with Government Authority:** the Customer is conducting its business and operations in compliance with all laws, regulations, order or decree and all directives of governmental authorities having the force of law to which the Customer is subject;
- (w) Dishonoured Cheque Information System (DCHEQS):** in accordance with the prevailing Dishonoured Cheque Information System (DCHEQS) maintained by BNM from time to time, the Customer hereby acknowledges that the Bank may with prior notice, close the current account of the Customer whether held solely or jointly with others to comply with the system;
- (x) Takaful:** the Customer has at the request of the Bank (if applicable) obtained and maintained all such takaful policies (life assurance policy and/or mortgage reducing term assurance policy or any other policy guaranteeing the payment of the Indebtedness) as would be maintained by a prudent Customer at all relevant times and has complied in all material respects with the terms and conditions of such policies; and
- (y) Related Persons:**

 - (i) except as otherwise disclosed by the Customer, none of the Customer's spouse(s) (and the spouse's dependents), parents, brothers, sisters, children, their spouses, directors, managers, controlling shareholders (whether directly or indirectly interested) or agents and guarantors of the Facility (where applicable) are employed by the Bank or its subsidiaries; and
 - (ii) except as otherwise disclosed by the Customer, none of the persons set out in paragraph (i) above are related to any director, officer or employee of the Bank or its subsidiaries currently.
- (z) No Material Adverse Changes:** There are no extraordinary circumstances, change of law or other governmental action or material adverse change in the Customer's financial position, operating environment, management or other conditions have occurred or are continuing which is in the reasonable opinion of the Bank (which opinion will be final and binding) would affect or prejudice the Customer's ability to fully perform and discharge the Customer's obligations under this Agreement; and
- (aa)** No investigations by any government agency, body or other regulatory authority are pending or are to be instituted against the Customer or the Security Party.

- 9.2 **Survival:** The representations and warranties set out in Section 9.1 shall survive the signing and delivery of this Agreement and any utilisation of the Facility and until the full and final settlement of the Indebtedness except that each reference to the financial accounts in Section 9.1 (h) above will be construed as a reference to the then latest available financial statements of the Customer.
- 9.3 **Repetition:** The Customer warrants that each of the above representations and warranties in this Section 9 is or shall be correct and complied with in all respects on each date on which a disbursement of the Facility is requested or made as if repeated by reference to the then existing circumstance, except that each reference to financial statements in Section 9.1 (h) above will be construed as a reference to the then latest available financial statements.

SECTION 10 COVENANTS

- 10.1 **Positive covenants:** The Customer undertakes with the Bank that, from the date of this Agreement until all the Indebtedness under this Agreement have been discharged:-
- (a) **Ranking:** It will ensure that its liabilities under the Security Documents to which it is a party rank, will rank (and would rank if the Security Documents to which it is a party were neither executed nor required) at least equally and rateably (pari passu) in point of priority and security with all its other liabilities (both actual and contingent) except:-
- (i) liabilities which are preferred solely by Malaysian law and not by reason of any Security Interest; and
- (ii) any Security Interest created which is disclosed in writing to the Bank prior to the date hereof;
- (b) **Preparation of Accounts:** where the Customer is a body corporate, it will prepare the financial statements referred to in Section 9.1(h) on a basis consistently applied in accordance with generally accepted accounting principles in Malaysia and those financial statements will (i) give a true and fair view of the results of the operations of the Customer for the period in question and the state of its affairs for the period to which the financial statements are made up and (ii) disclose all the liabilities (actual or contingent) of the Customer which the same is to be furnished to the Bank on half yearly and yearly basis not later than six (6) months after the end of the financial period;
- (c) **Information:** where the Customer is a body corporate, it will keep full and particular accounts of the carrying on of its business or businesses and cause the same to be properly posted up to date and furnished to the Bank not later than

ninety (90) days after the due dates the draft of unaudited quarterly financial statements of the Customer certified by the Authorised Signatory of the Customer in such form as the Bank may from time to time determine. As soon as available, but in any event within one hundred and twenty (120) days after end of its financial years, forward to the Bank copies of its audited annual financial statements (including balance sheet, profit and loss and cash flow) for those years and certified by a qualified independent auditor, stating accurately, in accordance with generally accepted accounting standards, the financial conditions of the Customer. The Customer will also promptly furnish to the Bank any other information as the Bank reasonably require from time to time and submit the quarterly accounts receivables report including ageing schedule no later than thirty (30) days from each quarter;

- (d) **Consents:** It will obtain and promptly renew and deliver to the Bank certified copies of, any authorisation, approval, consent, licence, exemption, registration, recording, filing or notarisation as may be necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Customer or the rights of the Bank under the Security Documents and the Customer will comply with the terms of the same;
- (e) **Licences and Conduct of Business:** where the Customer is a body corporate, it will (i) obtain all necessary licences and approvals, (ii) comply with all regulations relating to the carrying on of its business, (iii) carry on its business with due diligence and efficiency and in accordance with sound financial and business standards and practices, and (iv) furnish to the Bank all information which the Bank may reasonably request in connection with such business;
- (f) **Default:** If it becomes aware of the possibility of the occurrence of an Event of Default, it will notify the Bank and provide the Bank with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Event of Default or otherwise in connection with it;
- (g) **Access:** where the Customer is a body corporate, it will at all times permit the Bank to have access to its books of account and its records relating to its business as and when the Bank requires;
- (h) **Takaful:** it will maintain or cause to maintain such takaful in respect of the Property as required by the Bank and all such takaful will be in such amounts, on such terms and with such takaful operator as may be approved by the Bank and will not do or omit to do or suffer anything to be done which might render any such takaful policies to be void or voidable with the Bank's interest as "financier" to be endorsed therein;

- (i) **Auditors**: where the Customer is a body corporate, it will appoint from time to time such auditor or firm of auditors acceptable to the Bank and authorise such auditor or firm of auditors to supply the Bank with a certified copy of any communication sent by such auditor to the Customer and further to communicate directly with the Bank at any time in respect of any matter connected with the accounts and operations of the Customer;
- (j) **Notification of Adverse Changes**: It will promptly notify the Bank of: (i) any material event or adverse change in the condition (financial or otherwise) of the Customer, (ii) any litigation or other proceedings of any nature whatsoever being threatened or initiated against the Customer before any court tribunal or administrative agency which may materially affect the operations and/or financial condition of the Customer, (iii) any dispute between the Customer and any government or statutory (body in respect of any of the Customer's lands and other asset, and (iv) any labour controversy which might result in a strike against the Customer; all such notification to be given to the Bank not later than fourteen (14) days after the Customer has knowledge of the change or of the litigation or other proceedings or threat thereof or dispute and the amount of any contingent liability if such amount is ascertainable;
- (k) **Adverse Changes**: No events have occurred which in the opinion of the Bank would have a Material Adverse Effect on the condition (financial or otherwise) of the Customer and/or the Security Party
- (l) **Annual Return**: where the Customer is a body corporate, it will submit to the Bank annually at every financial year end a certified true copy of its annual return and return of allotment of shares as submitted to the Companies Commission of Malaysia;
- (m) **Change in Residential Status**: where the Customer is a body corporate, it will promptly notify the Bank in the event of any change in its residential status, e.g. resident-controlled companies, its directors or its shareholders, as the case may be;
- (n) **Operation and Utilisation of the Facility**: It shall ensure that the operation and utilization of the Facility with the Bank is active and satisfactory and the approved limit of the Facility is observed at all times and that the Facility is utilised for the purposes stated in the Security Documents and for Shariah-compliant business;
- (o) **Subordination of Financing by Directors, Shareholders or Related Corporations**: where the Customer is a body corporate, it will procure and ensure that all present and future financing and advances granted to it by any of

its directors, shareholders (including corporate shareholders) or related companies will be subordinated to the Indebtedness;

(p) **Costs, Expenses and Fees:**

- (i) It will bear all costs, expenses and fees (including but not limited to legal fees and Commodity Brokerage/Trading Fees) stamp duty, incidental fees or other charges incurred in the preparation of all documentation and perfection of the Security Documents;
- (ii) It will bear all costs and expenses of the Bank and any solicitors instructed by the Bank in the event that the Customer fails for any reason whatsoever, after having accepted the Letter of Offer, to proceed with the Facility;
- (iii) It will bear all fees and expenses, including the solicitor's fees (on a solicitor and client basis), in the event that any monies is required to be recovered by any process of law or by solicitors; and
- (iv) It will punctually pay all its indebtedness when due and owing, unless contested in good faith and justifiable grounds;

(q) **Due Diligence:** where the Customer is a body corporate, it will carry on and operate its business with due diligence and efficiency and in accordance with sound industrial and financial standards and practices and in accordance with its memorandum and articles of association/constitution and preserve, renew and keep in full force and effect its corporate existence. It will also take all reasonable actions to maintain all rights and privileges necessary or desirable in the normal conduct of its business and comply with all contractual obligations, requirements and orders of applicable governmental authorities;

(r) **Payment of Taxes and Outgoings:** It will pay all rents, rates, assessments, taxes, levies, duties, charges, fees and outgoings due in respect of its assets, premises or the conduct of its business operations;

(s) **Notification of Disputes:** It will promptly, by written notice, inform the Bank of:-

- (i) any legal proceeding, litigation or claim involving the Customer (where applicable, including its shareholders and any of its subsidiaries) and Security Party;
- (ii) any dispute between the Customer and any government or statutory body in respect of any of the Customer's lands and other assets;

- (iii) any matter which has adversely affected or may adversely affect the Customer's ability to fulfill its obligations under this Agreement, its financial position or its ability to pay the Facility;
- (iv) any material change in ownership and control, subject to assessment by the Bank of Material Adverse Effect;
- (t) **Notification:** It will promptly give written notice to the Bank of:-
 - (i) any change in the financial condition, operations, business or assets of the Customer; and/or
 - (ii) the inability of the Customer to pay amounts owed by it from time to time or to comply with the financial covenants under this Agreement and Security Documents; and/or
 - (iii) the inability or unenforceability of any terms and conditions set in this Agreement and Security Documents against the Customer; and/or
 - (iv) where the Customer is a body corporate, any change in the Customer's board of directors or its management or its major or controlling shareholders or partners; and/or
 - (v) the occurrence of an Event of Default or any event of default in relation to any of the Customer's other indebtedness; and/or
 - (vi) any indebtedness of the Customer that has become due or capable of being declared due before its stated maturity, any guarantee or similar obligation of the Customer is not discharged at maturity or when called or the Customer has gone into default under, or commits a breach of, any instrument or agreement relating to any such indebtedness, guarantee or other obligation,

which would have a Material Adverse Effect on the rights, remedies and benefits available to the Bank;

- (u) **Dividend:** where the Customer is a body corporate, it will promptly give written notice to the Bank of declaration or payment of any dividend or bonus issue or any distribution (be it income or capital in nature);
- (v) **Compliance with the Security Documents:** It will comply, perform and observe and will cause to be complied, performed and observed all the terms, covenants, conditions, provisions and obligations on its part as contained in the Security Documents and ensure that the Customer will immediately notify the Bank in the event that the Customer is unable to comply, perform or observe any of the provisions of the Security Documents;

(w) **Property:-**

- (i) in the case where the separate issue document of title or strata title has been issued, let or cause to let the Bank have the custody or possession of the issue document of title or strata title to the Property for so long as the charge remains enforceable. In the case where the separate issue document of title or strata title has not been issued, let or cause to let the Bank have the custody or possession of the original stamped copy of the Sale and Purchase Agreement and such other agreement(s) or document(s), if any, evidencing the Customer's or Security Party's title to the Property, for so long as the Selling Price and all other moneys payable by the Customer remain undischarged. Upon issuance of the separate document of title or strata title to the Property by the appropriate authority, deliver and caused to be delivered to the Bank the separate document of title or strata title to the Property for so long as the Charge shall remain enforceable. The parties hereby agree that insofar as the law will permit, the application of Section 244(2) of the National Land Code 1965 (which is in respect of a chargee having the custody of any issue document of title and is required to produce the same at the relevant land authority upon request by the proprietor) will be restricted to instances where the production of any document is required for purposes of any action or matter initiated or instituted by the Government or any governmental authority department or officer and not where such document is required for any purpose or to effect any transaction conducted or initiated by the Customer AND nothing contained or expressed in the said Section 244(2) shall be construed as or deemed to be consent by the Bank;
- (ii) pay the quit rent, assessment, rates, taxes, service charges and all other outgoings whatsoever payable from time to time in respect of the Property as soon as the same become due and payable and will produce to the Bank on demand all receipts for such payment. In default , it will be lawful for but not obligatory upon the Bank to pay the same or any part thereof and upon such payments by the Bank all sums paid will be for the account of the Customer under this Agreement;
- (iii) observe and perform all the terms and conditions contained in the Sale and Purchase Agreement and the Security Documents;
- (iv) comply with and observe all the conditions, restrictions and category of use, express or implied, imposed upon, relating to, or affecting the Property or any building erected thereon or to which the Property is subject as well as the provisions of any Act of Parliament, Ordinance or

Enactment for the time being in force and of any rule or order made thereunder affecting the same;

- (v) keep all structures and fixtures now or at any time erected on or affixed to the Property in tenable repair and condition. In default, it shall be lawful for but not obligatory upon the Bank to carry out such repairs and if the Bank carries out repairs, the costs and expenses reasonably incurred will be for the account of the Customer and will form part of the amount due under this Agreement;
- (vi) permit the Bank and its agents and workmen at all reasonable times of the day to enter upon the Property and have access to any fixture thereof and to view and inspect the condition or repair thereof;
- (vii) inform the Bank of any application, demand, notice, order whatsoever, or any other notice, document or transaction in anyway affecting or concerning the Property or any part thereof upon its issue, publication or service (time being of the essence in respect thereof) and will produce the same to the Bank whether demanded or not. The Customer or the Security Party will do all acts and take all steps necessary or expedient to safeguard and preserve any part of the Property or the title or ownership to the Property. The Bank may if it thinks fit and on behalf of or in the name and at the expense of the Customer do all such acts and employ all such persons as the Bank deems fit for the purpose of safeguarding and preserving the Property;
- (viii) give full particulars in writing within seven (7) days to the Bank upon receipt of any notice or order or proposal therefor given issued or made to the Customer or the Security Party in respect of the Property by or on behalf of any planning, local government, public health, sanitary, housing or other authority. If required by the Bank, without delay and within the period prescribed by such notice, the Customer will take all reasonable or necessary steps to comply with the provisions of such notice or order and also at the request of the Bank and at the cost of the Customer make or join with the Bank in making such objection or representations against or in respect of any such notice or order or proposal therefor as the Bank may deem expedient; and
- (ix) observe and perform all the terms and conditions contained in the Security Documents and on the part of the Customer or the Security Party to be observed and performed. In addition, it will observe any condition and covenant binding upon it to not do or omit to do any act matter or thing on or in respect of the Property which will contravene the provisions of the Security Documents or of any act, ordinance,

enactment, order, rule or regulation now or hereafter affecting the same and it will at all times indemnify and keep the Bank indemnified against all actions, proceedings, costs, expenses, claims and demands in respect of such act matter or thing done omitted or suffered to be done in contravention of the said provisions.

- (x) **Execution of Security Documents**: Execute or procure to be executed all documents and do or procure to be done all acts and things as may be necessary to give full effect to all provisions of the Security Documents;
- (y) **Indebtedness**: The Customer will punctually pay all its indebtedness when due and owing, unless contested in good faith and justifiable grounds;

10.2 **Negative Covenants**: The Customer further covenants and undertakes that from the date of this Agreement, it will not without the prior written consent of the Bank first had and obtained:-

- (a) **Amendments**: where the Customer is a body corporate, add to, delete, vary, amend its memorandum and articles of association/constitution in any manner which would be inconsistent with:-
 - (i) the provision of the Letter of Offer or the Security Documents; or
 - (ii) the nature of the Customer's business or sell, transfer, lease or otherwise dispose of all or a substantial part of its capital or undertake or permit any merger, consolidation or reorganization if the result will affect its ability to perform obligations under the Security Documents;
- (b) **Indebtedness**: incur, assume or permit to exist any indebtedness except where applicable, for any advances made by the directors or shareholders which are subordinated to the Facility;
- (c) **Advances/Financing**: where the Customer is a body corporate, make any advance or financing or guarantee or grant any credit (other than advances to its subsidiaries or its parent company) to any of its directors, shareholders or related companies or any company or person or firm or organisation or purchase or otherwise acquire the capital stock, assets or obligation of any of its directors, shareholders or related companies or associated company or any company or person firm or organisation save and except in the normal trade guarantees or financing to its staff or incur additional financing or create further encumbrances on the Security during the Facility Tenure;
- (d) **Encumbrances**: create or permit to exist any Security Interest on its assets during the Facility Tenure;

- (e) **Negative Pledge:** create or permit to exist over all or any part of its business or assets any security interest or charge, pledge or otherwise encumber any of its present or future assets and/or revenue during the Facility Tenure;
- (f) **Dissolution:** where the Customer is a body corporate, dissolve its affairs or enter into any amalgamation, consolidation, merger or reconstruction with any other entity which may materially affect its ability to perform its obligation or enter into any management contract of similar arrangement where the business is managed by third parties which may materially affect its ability to perform its obligation under the Facility;
- (g) **Disposal:** where the Customer is a body corporate, change the nature of its present business or sell, transfer or otherwise dispose of, or in any way cease to exercise control over, whether by single transaction or a number of transactions, related or not, the whole or part (being the aggregate a substantial part in relation to the Customer) of its undertaking, business or assets, or undertake or permit any merger consolidation or reorganization;
- (h) **Utilisation of Facility:** utilize the proceeds of the Facility for any other purpose other than as stated in the Letter Offer;
- (i) **Shareholding Structure and Board Composition:** where the Customer is a body corporate, change its existing shareholding structure or the existing composition of the board of directors of the Customer;
- (j) **Share Capital:** where the Customer is a body corporate, reduce or in any way whatsoever alter (other than by way of an increase), its authorised and/or issued shares in existence at the date of this Agreement whether by varying the amount, structure or value thereof or the rights attached thereto or connected to any of its share capital into stock or by consolidating, dividing or subdividing all or any of its shares;
- (k) **Variation of Sale and Purchase Agreement:** agree to change the material terms and conditions of the Sale and Purchase Agreement;
- (l) **Restriction on Transactions:** where the Customer is a body corporate, enter into any transaction or agreement with any of its shareholders, subsidiaries or related or associated companies or affiliates or person, firm or company except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's length arrangements and on terms not materially less favourable to the Customer than would have been the case if such transaction had been effected with any other unrelated persons or establish any exclusive purchasing or sales agency, or enter into any transaction whereby the Customer might pay more than the ordinary commercial price for any purchase or might receive less than

the full ex-works commercial price (subject to normal trade discounts) for its products;

- (m) **Indebtedness by Others:** where the Customer is a body corporate, enter into any transaction or arrangement whereby any related company or associated company of the Customer or any director or shareholder of the Customer incurs in its favour any indebtedness. For the purpose of this sub-section, the expression "director" or "shareholder" includes a spouse (and dependent of the spouse's), parent, child, brother or sister (and the child's, brother's and sister's spouses) of the director or shareholder;
- (n) **Invest, Acquire Shares or Debentures:** where the Customer is a body corporate, invest, acquire shares or debentures in or with or lend money to or make any financing whatsoever to any company or person or redeem or purchase its own shares or dividends;
- (o) **Change in Nature of Business:** where the Customer is a body corporate, change the Customer's financial year or the nature of its present business or sell, transfer or otherwise dispose of, or in any way cease to exercise control over, whether by single transaction or a number of transactions, related or not, the whole or part (being the aggregate a substantial part in relation to the Customer) of its undertaking, business or assets, or undertake or permit any merger consolidation or reorganisation;
- (p) **Capital Expenditure:** where the Customer is a body corporate, commit to, or incur any capital expenditure for an amount deemed material by the Bank;
- (q) **Expenditure for Fixed Assets:** where the Customer is a body corporate, incur expenditure for fixed and other non-current assets, other than those required for its business operations or necessary for repairs or replacements essential to the operation of such business;
- (r) **Withdrawal of Monies:** where the Customer is a body corporate, withdraw or distribute to its shareholders from the account of its business any money from the capital of the business or any profits including received or accrued profits;
- (s) **Consolidation and Merger:** where the Customer is a body corporate, dissolve its affairs or consolidate with or merge with any other party or allow any other party to consolidate or merge with the Customer;
- (t) **Surrender of Rights under Security Documents:** surrender, transfer, assign, relinquish or otherwise dispose any of its rights and interest under the Security Documents;

- (u) **Winding Up or Dissolution of the Customer:** where the Customer is a body corporate, allow steps to be taken by the Customer or its creditors or its shareholders or any other person on its behalf nor have any legal proceedings or applications started or threatened with a view to winding up or dissolving the Customer under Section 366 of the Companies Act 2016;
- (v) **Dividend:** where the Customer is a body corporate, declare or pay any dividend or make any distribution whether income or capital in nature to its shareholders or repay any advances from its shareholders or directors (either profit or principal);
- (w) **Property:**
 - (i) assign, transfer, sell, charge or otherwise howsoever deal with the Customer's or the Security Party's rights, title and interest under the Sale and Purchase Agreement or the Property or any interest therein or make the same subject to any charge, encumbrance, liability or lien whatsoever or rescind remove or vary any condition or restriction affecting the Property;
 - (ii) lease, let out, or grant any licence or otherwise howsoever part with the possession or make or accept the surrender of any lease whatsoever of or in respect of the Property or any fixture, structure or part thereof, to any person firm or company; and
 - (iii) alter, pull down, or remove any building or fixture now or at any time hereafter erected on or affixed to the Property or any part thereof and will forthwith replace or make good the same in the event of such alteration, pulling down or removal. Where it is intended that there is to be erected any building or buildings on the Property or that the Facility is to be utilised for the purposes thereof, the Customer shall complete the erection of such building or buildings in accordance with the approved plans thereof of such competent authority or authorities necessary for the obtaining of and shall obtain a Certificate of Fitness for Occupation/Certificate of Completion and Compliance not later than such date as the Bank may stipulate.
- (x) Other business: where the Customer is a body corporate, carry on any business or carry out any activity other than giving effect to the Facility and performing its obligations under the Security Documents;

SECTION 11 ANTI-MONEY LAUNDERING ACT, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT 2001 (ACT 613)

The Customer further covenants and undertakes that from the date of this Agreement, it will ensure that it has never and will not:-

- (a) engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
- (b) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into Malaysia proceeds of any unlawful activity; or
- (c) conceal, disguise or impede the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity; and

the Customer confirms to the Bank that it is not involved in any unlawful activity within the meaning of Section 3 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 i.e. (a) any activity which constitutes any serious offence or any foreign serious offence; or (b) any activity which is of such a nature, or occurs in such circumstances, that results in or leads to the commission of any serious offence or any foreign serious offence, regardless whether such activity, wholly or partly, takes place within or outside Malaysia.

SECTION 12 PERSONAL DATA PROTECTION ACT 2010 (ACT 709)

In the course of the Customer's dealing with the Bank, the Bank may request the Customer to provide personal data of the Customer prior to or during the course of performance of this Agreement for the purpose of the performance of contract, marketing, legitimate business activity, administration and ensuring the economy is balanced effectively. Where applicable, the personal data of the Customer which will be processed in accordance with the requirements set out in Personal Data Protection Act 2010, may be disclosed and shared with other related corporations and subsidiaries of the Bank within and outside Malaysia for the aforesaid purposes.

The Bank however, will obtain the Customer's express consent and authorisation to release the Customer's name, address, email address, telephone number(s) and any other information, to any third party for the marketing and promotion of the Bank's products and services. Such consent and authorisation may be withdrawn at any time by the Customer by giving adequate prior written notice to the Bank.

SECTION 13 DISCRETION TO EXERCISE REMEDIES

Notwithstanding any provisions to the contrary in this Agreement, it is expressly agreed that in the Event of Default or breach by the Customer of any term, covenant, stipulation and/or undertaking provided on the part of the Customer to be observed and performed which is not remedied by the Customer within thirty (30) days or such other period as agreed by the Bank at its discretion, the Bank, with notice to the Customer, shall have the exclusive rights to exercise all or any of the remedies available to the Bank, whether by this Agreement or the other Security Documents or by statute or otherwise and shall be entitled to exercise such or all of the remedies concurrently including pursuing all remedies of sale or possession and/or concurrently or otherwise institute civil proceedings against the Customer for the recovery of all monies due and owing to the Bank.

SECTION 14 CHANGES IN CIRCUMSTANCES/LAW

Notwithstanding any provision to the contrary in this Agreement, 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 any relevant authority or other fiscal or monetary authority (whether or not having the force of law) the Bank is of opinion that it has or will become unlawful or it is otherwise prohibited or prevented for it to maintain or given effect to any of its obligations as contemplated by this Agreement then, notwithstanding any other provisions herein, the Bank's commitment to make or maintain the Facility will end upon the Bank giving twenty one (21) days' prior notice to the Customer of the happening of such event after becoming aware thereof and the Customer will on demand pay the Indebtedness in full together with accrued profit thereon and any other amount payable under this Agreement to the Bank. Subject to the Bank giving twenty one (21) days' prior notice to the Customer, the Bank from time to time may vary any of the terms and conditions stated in this Agreement in accordance with Shariah principles.

SECTION 15 MISCELLANEOUS

- 15.1 **Waiver, Rights Cumulative**: No failure or delay on the part of the Bank in exercising nor any omission to exercise any rights, power, privilege or remedy of the Bank under this Agreement, or any security in favour of the Bank upon the Customer's default will prejudice or be construed as a waiver of any such right, power, privilege remedy . Neither would any acceptance of any default, affect or impair (whether in relation to or effecting the Customer) in any way affect the security liabilities and/or obligations created by this Agreement or the Security Documents in relation to any transaction whether past, present or future. The remedies provided herein are cumulative and are not exclusive of any remedies provided by law.

15.2 Disclosure of Information:

- (a) Without limiting the subsequent provisions of this Section, the Bank may at any time for so long as the Facility continue and/or for so long as the Indebtedness remains outstanding, disclose to any person who may in the Bank's discretion, require such information or access thereof any documents or records of, or information about the Security Documents or assets, business or affairs of the Customer whether or not confidential and whether or not the disclosure would be in breach of any law or of any duty owed to the Customer provided that in respect of documents, records or information which the Customer has specifically informed the Bank to be confidential, the person receiving such information from the Bank may be required to undertake to maintain the confidentiality of documents, records or information received.

- (b) The Customer agrees and permits that for so long as the Facility continue and/or for so long as the Indebtedness remains outstanding, the Bank is entitled to disclose all or any part of any information on the Customer's business including the Customer's accounts and/or future accounts), report or documents supplied in connection with the Security Documents:-
 - (i) to the Central Credit Bureau, Biro Maklumat Cek/Dishonoured Cheque Information System (BMC/DCHEQS), BNM, any governmental agency, Association of Islamic Banking Institutions Malaysia (AIBIM) or any other associations or such other authority having jurisdiction over the Bank; or
 - (ii) to the Bank's auditor, legal counsel and other professional advisors; or
 - (iii) to any current or future corporation which may be associated or related with the Bank (as defined in the Companies Act 2016), including representative and branch offices and their respective representatives; or
 - (iv) for or in connection with the enforcement of preservation of any rights of the Bank under this Agreement and the other Security Documents; or
 - (v) to the Security Party and/or surety and/or to any party pursuant to any arrangement, composition, restructuring or any proposed arrangement, composition or restructuring between the creditors of the Customer; or
 - (vi) pursuant to subpoena or other legal process or in connection with any action, suit or proceeding relating to the Security Documents; or
 - (vii) pursuant to any law; or

- (viii) to any person upon occurrence of an Event of Default; or
 - (ix) to the Bank's professional advisers, service providers, nominees, agents, contractors or third party service providers who are involved in the provision of products and services to or by the Bank and its related or associated companies; or
 - (x) to any person for the purpose of the Bank's recovery of the outstanding sums due to it under the Facility and the Security Documents.
- (c) the Bank may disclose to any person who derives or may derive rights or obligation under or by reference to the Security Documents (including but not limited to an assignee or transferee or prospective assignee or transferee) such information about the Customer in relation to the Facility or the Security Documents as have been made available to the Bank generally.
- (d) The Customer acknowledges and agrees that the permission given under this Section is deemed to be the permission given for the purposes of any prevailing laws and no further consent from the Customer is required.
- (e) The Customer irrevocably consents to such disclosure and confirms that the Bank, its officers and employees will not be liable for furnishing such information or for the consequences of any reliance which may be placed on the information so furnished in accordance with this Agreement.

15.3 Disclosure among Branches, Subsidiaries or Parent Company: The Customer agrees that as long as this Agreement continues and/or as long as the Indebtedness remains outstanding, the Bank will be entitled to disclose information on the Customer's business with the Bank's (including its account and/or future accounts) solicitors, auditors, branches, subsidiaries, parent company or companies which are or which in future may be a subsidiary of the Bank and the branches, subsidiaries or parent company of the Bank will also be entitled to make such disclosure to the Bank and the Bank will take all reasonable care to ensure that such information will remain confidential between the Bank's group of subsidiaries.

15.4. Currency of the Facility: All sums of monies offered and received by the Bank will be in Ringgit Malaysia.

15.5 Security Documents Deemed Incorporated: The Security Documents will be read and understood as part and parcel of this Agreement and will be applicable in full force and effect in all respect as if the same were spelt out and stated in this Agreement.

- 15.6 Costs:** The Customer will be liable to pay all fees and expenses related to the preparation of this Agreement and the Security Documents including the Solicitor's fees (on a solicitor and client basis) in connection with the preparation and execution of this Agreement, the Security Documents and other related documents. If the Indebtedness or any part thereof is required to be recovered through any legal process, the Customer will pay (in addition to the monies due and payable under this Agreement) the Solicitor's fees (on a solicitor and client basis) and any other fees and expenses incurred in respect of such action.
- 15.7 Legal Proceedings:** If the Bank takes legal action to recover any monies due to it from the Customer or to enforce any term or condition of this Agreement or the Security Documents then the Bank is at liberty to proceed simultaneously in the same or separate proceedings against the Customer and any of the Security Parties and all other parties liable to satisfy the Indebtedness to the Bank and to claim and execute judgment for monies due and the Bank will discontinue such proceedings immediately upon the recovery of the full amount due to it.
- 15.8 Letter of Offer:** It is expressly understood by the Parties hereto that the Letter of Offer to the Customer is deemed to be incorporated in this Agreement and is to be read and construed as one document and in the event of any conflict or discrepancy between the provisions of this Agreement and the Letter of Offer, the provisions of the Letter of Offer will prevail.
- 15.9 Lien and Set-Off:** In addition to all liens upon and rights of set-off against the monies, securities or other property of the Customer given to the Bank by law, the Bank will have a lien upon and a right of set-off against all monies, securities and other assets of the Customer in any currency now or hereafter in the possession of or on deposit with the Bank, or any of its affiliates, at any branch or office, whether held in a general or special account of deposit, or for safe-keeping or otherwise and such lien and right of set-off may be exercised with notice to the Customer. No lien or right of set-off will be deemed to have been waived by any act or conduct of the Bank, or by any neglect to exercise such right of set-off or to enforce such lien. The Bank's right of set-off and lien shall continue in full force and effect until such right of set-off or lien is specifically waived or released by an instrument in writing executed by the Bank.
- 15.10 Illegality:** If by reason of any change in any applicable law regulation or regulatory requirement or in the interpretation or application thereof (after the date of this Agreement) by BNM or any governmental or any authority whereby it will become unlawful for the Bank to comply with its obligations under this Agreement, the Bank will promptly inform the Customer of the relevant circumstances at which point:-
- (a) any outstanding obligations of the Bank will be terminated and cancelled; and

- (b) the Customer will upon demand refund to the Bank all monies agreed to be paid by the Customer in relation to this Agreement and the Security Documents.

15.11 Variation of Terms: Subject to Shariah principles and the Bank giving twenty one (21) days' notice, it is expressly agreed by the Parties that notwithstanding any contrary provisions in this Agreement, the provisions and terms of this Agreement and/or the Security Documents may at any time be varied or amended by means of letters or supplemental agreements or such other means as the Parties may agree from time to time. Subsequently such amendments and variations will be deemed to have been amended or varied accordingly and will be read and understood as if such amendments and variations have been incorporated in and had formed part of this Agreement at the time of execution.

15.12 Imposition of Terms by BNM: The transaction arising from this Agreement will at all times be subject to all procedures, terms, rules, directives regulations (whether or not having the force of law) as may be imposed by BNM or such other authority having jurisdiction over the Bank from time to time.

15.13 Evidence of Indebtedness: In any proceeding relating to this Agreement, a statement as to any amount due and payable to the Bank under this Agreement which is certified as being correct by an officer of the Bank will, unless otherwise provided in this Agreement, save for obvious error, be sufficient evidence that amount is in fact due and payable.

15.14 English Language: All notices or communications in connection with this Agreement will be in the English language or in Bahasa Malaysia. In the event of conflict between the English text and the text in any other language including Bahasa Malaysia, the English text will prevail.

15.15 Consolidation and Right of Set-Off: Without prejudice to any other remedies which the Bank may have, the Bank may at its discretion issue a seven (7) days' notice to the Customer and at any time combine, consolidate or merge all or any of the Customer's accounts of whatever nature at any branch of the Bank and set-off or transfer any sum standing to the credit of any such account or agreements in or towards the satisfaction of any of the Customer's liabilities to the Bank under any accounts or agreements with the Bank.

15.16 Time: Time in relation to all the provisions of this Agreement and in particular to the payment of the Indebtedness or any part thereof and the payment of all monies due by the Customer to the Bank under this Agreement and the Security Documents will be of the essence.

15.17 Liabilities and Obligations: Liabilities and obligations created by this Agreement will continue to be valid and binding for all purposes whatsoever notwithstanding:-

- (a) any time or leniency which the Bank may from time to time grant to the Customer for the payment of monies due to the Bank for the performance of any term stipulation covenant or undertaking on the part of the Customer under the terms of this Agreement; and
- (b) any arrangement entered into or any composition accepted by the Bank modifying its right and remedies under this Agreement or any alteration in the obligations terms stipulations covenants and undertakings contained in this Agreement or by any leniency whether as to pay time performance or otherwise.

15.18 Governing Law and Jurisdiction: This Agreement is to be governed by and understood in all respect in accordance with the laws of Malaysia on all matters connected with the obligations and liabilities of the Parties under this Agreement and the Parties agree to submit to the jurisdiction of the courts of Malaysia provided that such submission will not affect the right of the Bank to take proceedings in any other jurisdiction nor will the taking of proceedings in any jurisdiction prevent the Bank from taking proceedings in any other jurisdiction and the Bank will be at liberty to initiate and take actions or proceedings or otherwise against the Customer in Malaysia and/or elsewhere or concurrently in more than one jurisdiction as the Bank may deem fit. The Parties further agree that the service of any writ or summons or any legal process in respect of any action arising out of or connected with this Agreement may be effected by forwarding a copy of the writ of summons and statement of claim and other legal process by prepaid registered post to their respective addresses set out in Section 16 hereof.

15.19 Severability: Any term, condition, stipulation, provision, covenant or undertaking contained in this Agreement which is illegal prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such illegality, prohibition or unenforceable without invalidating the remaining provisions hereof and any such illegality, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any such term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.

15.20 Notification: Any notification by the Bank concerning any of the matters will, save for any obvious error, be conclusive and binding on the Customer.

15.21 Reconstruction of the Bank or the Customer: The security liabilities and obligations created by this Agreement will continue to be valid and binding for all purposes

notwithstanding any change by amalgamation reconstruction or otherwise which may be made in the constitution of the Bank or the Customer, or both, and it is expressly declared that no change in relation to or affecting the Bank or the Customer, or both, will in any way affect the security, liabilities and obligations created under this Agreement in relation to any transaction whether past present or future.

15.22 Cross Reference: The Customer covenants and agrees that all the provisions, covenants, stipulations, conditions, undertakings and agreements contained in the Transaction Documents will unless contradictory to any of the provision contained in this Agreement is to be read as part of this Agreement and will be applicable with full force and effect as if the same was set out hereunder.

15.23 Indulgences: The liabilities and obligations of the Customer will not be impaired or discharged by reason of any time, leniency or other indulgences being granted by or with the consent of the Bank to the Customer or to any person who or which may be in any way liable to pay any of the monies secured hereby or by any other security in favour of the Bank or by reason of any arrangement being entered into or composition accepted by the Bank modifying the operation of law or otherwise the rights and remedies of the Bank under the provisions of the Security Documents.

15.24 Force Majeure (Unforeseen Circumstances): Notwithstanding any provision of the Security Documents, the Bank will not be liable for any failure on the part of the Bank to perform any obligation under the Security Documents resulting directly or indirectly from the occurrence of any unforeseen events or circumstances beyond the reasonable control of the Bank including but not limited to the action or inaction of any governmental or local authority or any strike, boycott, blockade, Act of God or civil disturbance.

15.25 Taxation: All payments by the Customer will be made without withholding or deductions for or on account of any present or future tax, duty or charge of whatsoever nature imposed or levied by or on behalf of Malaysia or any other applicable jurisdictions, or any relevant authority having power to tax, unless such withholding or deductions is required by law. If the Customer is compelled by law to deduct or withhold any such taxes, levies, imposts, duties, charges or fees, the Customer will pay such additional amounts as may be necessary in order that the net amounts received by the Bank after such deductions or withholdings will equal the amount it would have received had no such deductions or withholdings been required to be made.

15.26 Clear Market: From the date of provision of a formal offer by the Bank until the date of the execution of the Security Documents, the Customer will ensure that no other borrowings, debt instruments or securities issued and/or guaranteed by the Customer or any of its affiliates are mandated, syndicated or privately placed which might, in the

opinion of the Bank have the effect of prejudicing the successful completion of this transaction.

15.27 Adverse Market: From the date of the Letter of Offer by the Bank until the date of execution of the documentation, the Bank may withdraw and/or terminate the offer if there occurs any event or circumstance which, in the opinion of the Bank will materially affect both the international and domestic money, capital or syndicated financing markets, the Customer and its affiliated companies' (if applicable) business activities, and/or the social, political, financial and economic situation in Malaysia.

15.28 Right of the Bank to Revoke: To clarify, in addition to the Bank's rights under this Agreement and notwithstanding any other provisions contained in this Agreement or elsewhere, by giving twenty one (21) days' notice in writing to the Customer, the Bank is entitled at its discretion to revoke, withdraw or terminate the Facility and demand at any time the payment by the Customer of all sums of monies then due and owing under this Agreement or to vary or amend the terms and condition under the Facility in such manner as the Bank may in its discretion determine if in the opinion of the Bank the granting of the Facility prejudicial to the Bank's interest. The Bank will be under no obligation to assign any reason when exercising its rights.

15.29 Counter-parts: This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any of the parties may execute this Agreement by signing any one of such counterparts.

15.30 Recall of Facility: the Bank is entitled to recall and/or discontinue making the Facility available and require payment of the Facility on demand, in any of the following events:-

- (a) The Customer or any Security Party breaches any of the terms and conditions of the Facility with the Bank or with any other financial institution which in the Bank's opinion is likely to prejudice the Customer's ability to pay the Facility; or
- (b) If a change in the applicable law or regulation makes it impossible or unlawful for the Bank to continue making the Facility available to the Customer; or
- (c) If any of the Security Documents are in jeopardy; or
- (d) if there is any change in the major shareholder or management of the Customer or any Security Party(ies) (if applicable); or
- (e) Any other events stated in the Security Documents.

15.31 Periodic Review:

- (a) Notwithstanding and without prejudice to anything stated in this Agreement, the Bank may review the Facility at any time and manner as the Bank at its discretion may decide irrespective of whether an event of default has occurred and nothing in this Agreement will be deemed to impose on the Bank any obligation in law or equity to make or continue to make available the Facility to the Customer.
- (b) Any decision of the Bank not to conduct a review during any review period or any failure, omission or delay on the part of the Bank to conduct such review will not be construed as a waiver of the Bank's right to review nor prejudice the Bank's right to recall or recover any amount due and payable by the Customer and/or the Security Party on demand under the Facility.

15.32 Strategic Trade Act 2010

The Customer agrees, covenants and undertakes that the Facility shall not be utilised for transactions involving goods, items and services identified and/or classified as strategic items for the purposes of the Strategic Trade Act 2010 including the importation, exportation, transshipment, brokering, marketing, distribution or all other transactions not specifically stated in this Agreement involving such strategic items and/or in any way act in contravention of the Strategic Trade Act 2010. The Customer further agrees and covenants that the Bank may at its discretion and without assigning any reasons decline to disburse the Facility, allow further utilisation, make payments or process the payment of the Facility or accept and negotiate any trade facilities granted to the Customer or requested to be negotiated by the Customer if such transaction relates to the said strategic items. The Bank may also declare an event of default and terminate or cancel the Facility granted as a result of such transactions. The Customer will absolve the Bank from any liability arising from such transactions and will further indemnify and keep the Bank indemnified on a full indemnity basis against any fines and/or penalties imposed on the Bank and against any penal sanctions imposed on the Bank or of the Bank as a result of any act or conduct or contravention by the Customer of the Strategic Trade Act 2010 and/or causing the Bank to in any way contravene the Strategic Trade Act 2010.

15.33 Shariah Compliance and Waiver of Interest

Each of the Parties recognizes and irrevocably agrees that it has accepted the Shariah compliant nature of the Facility and the Security Documents and further agrees that:

- (a) it will not take any steps or bring any proceedings in any forum to challenge the Shariah compliance of the Facility and the Security Documents;

- (b) the principle of payment of interest is unacceptable to Shariah and, accordingly, to the extent that any court would impose, whether by contract or by statute any obligation to pay interest, the parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other; and
- (c) none of its obligations under the Facility and the Security Documents shall in any way be diminished, revoked, reduced, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that the Facility and the Security Documents are not compliant with Shariah.

15.34 **Additional Interchange or Substitution of the Facility:** the Bank may at any time in its discretion and without affecting the Bank's security, at the request of the Customer grant additional or further facility(ies), vary, restructure, convert, interchange or substitute the Facility or any one of them with any other facilities in accordance with Shariah principles on such terms and conditions as may be stipulated in the relevant Letters of Offer and Security Documents. All the provisions of this Agreement and the other Security Documents save and except such provisions which are inconsistent with the said Letter of Offer and Security Documents or not applicable to the additional, interchanged, restructured, converted or substituted facilities will secure such facilities, unless otherwise stipulated by the Bank.

15.35 **Foreign Exchange Administration of Malaysia (FEA) Rules:** The Customer will obtain any approval as may be required from time to time pursuant to Foreign Exchange Controls for Malaysia which is determined by the Foreign Exchange Administration (FEA) Department of BNM.

SECTION 16

SERVICE OF NOTICE AND LEGAL PROCESS

- 16.1 Unless otherwise provided in this Agreement, any demand for payment of the monies to be paid by the Customer and any notice or request required to be given or made under this Agreement to the Bank will be in writing and in the case of the Bank will be under the hand of any duly authorised officer of the Bank or solicitor or firm of solicitors acting on behalf of the Bank to the addresses set out in Section 16.5 below or as may be subsequently notified by the Customer to the Bank.
- 16.2 Further to 16.1 above, all statements of accounts, communications demand, notice, writ of summons or any legal process or request shall be deemed to have been sufficiently given or made if sent by registered post, or delivered by hand or faxed to such address and will be deemed to have been duly given or made if:-

- (a) in the case of delivery by hand, at the time of receipt by the other party;
- (b) in the case of delivery by registered post, after the expiration of three (3) business days from the date it is posted inclusive of the day in which it was posted;
- (c) in the case of facsimile, against due transmission evidenced by a print-out record of such transmission, subject to the condition that if such transmission is made after 5.00 p.m. on the day of transmission, it shall be deemed to have been served on the following Business Day; and
- (d) in the case of electronic mail, twenty-four (24) hours after the date of despatch.

Any demand, notice or request by fax is to be followed by registered post or delivered by hand to the address notified by the Customer pursuant to this Section 16.2, as soon as practicable thereafter. A written statement by an officer of the Bank confirming the posting of any statement of accounts or any other notice or communication whatsoever from the Bank will be binding and conclusive evidence of the fact as against the Customer and/or the Customer's estate and/or successors in title notwithstanding any evidence to the contrary.

- 16.3 in case of the Customer's death and until the Bank receives notice in writing of the grant of probate or letters of administration of the Customer's estate, any notice or demand by the Bank sent by post as aforesaid addressed to the Customer or to the Customer's personal representative at the Customer's last known address will for all purposes be deemed a sufficient notice or demand by the Bank to the Customer and/or the Customer's personal representative and be effectual as if the Customer is still living.
- 16.4 No change in the address of the Customer howsoever brought about will be effective or binding on the Bank unless actual notice of the change of address has been given to the Bank. In the event of a change in address of the Customer, the Customer will as soon as practicable but within fourteen (14) Business Days prior to such change notify in writing to the Bank of the change.
- 16.5 Any notice or other communication to be given in respect of this Agreement is to be delivered, given or sent to the addressee at the address or facsimile number (or such other address or facsimile number as the addressee may give notice of to the other party in accordance with the provisions of this Section from time to time) set out below:

For the Bank

Place of business and fax no. as stated in Item 1, First Schedule Part A of Schedule 1 hereto.

For the Customer

Address and fax no. as stated in Item 2, First Schedule Part A hereto.

- 16.6 The Customer irrevocably consents to service of process out of any Court whether or not personal service is required or otherwise by the same being left at the Customer's last known address or sent by registered letter to any such addresses and in the last mentioned case the service shall be deemed to be made despite any evidence to the contrary within three (3) days from the date the letter was sent inclusive of the day in which it was sent.

SECTION 17 ASSIGNMENT AND TRANSFER

17.1 Assignment and Transfer by the Bank: the Bank may, upon giving notice to the Customer, assign its rights, benefits and obligations under the Transaction Documents pertaining to the Facility or any part thereof and/or transfer its obligations under the Transaction Documents or any part thereof to other financial institutions or parties approved by BNM, subject to the terms of the Transaction Documents and:-

- (a) for this purpose, the Bank may disclose to a potential assignee or transferee or any other person deriving any rights or obligations in relation to the Transaction Documents, such information about the Customer as will have been made available to the Bank;
- (b) where the Bank transfers its obligations or any part thereof, the Customer will execute such documents as are reasonably necessary to release the Bank to the extent of the transfer and join the transferee as a party hereto;
- (c) where the Bank transfers all its obligations and rights hereunder the Customer will thereafter deal solely with the transferee with respect to payments, notices and other matters relating to the administration of this Agreement;
- (d) for the avoidance of doubt, the Bank's right under this section is not limited to credit facility(ies) which is/are non-performing.

17.2 No Assignment and Transfer by Customer: The Customer may not assign or transfer any of its obligations or benefits under the Transaction Documents without prior written consent of the Bank.

IN WITNESS WHEREOF the Parties have hereunto set their respective hands and seal the day of the year first set out above.

THE BANK

SIGNED by
as Attorney for and on behalf
MBSB BANK BERHAD
in the presence of :-

)
)
)
)
)
)

THE BANK
by its Attorney

.....

The Customer (Please insert details)

*SIGNED by the **CUSTOMER**
in the presence of:

)
)

.....
Name:
NRIC No.:

*The Common Seal of the **CUSTOMER**
was hereunto affixed in accordance
with its Articles of Association
in the presence of:

)
)
)
)
)

.....
Director
Name:
NRIC No:

.....
Director
Name:
NRIC No:

**delete whichever is not applicable*

FIRST SCHEDULE

CONDITIONS PRECEDENT

(referred to in Section 3.01 Part A)

(Which is to be taken as read and construed as an essential part of this Agreement)

The utilization and disbursement of the Facility may be allowed only after fulfillment of the following terms and conditions:-

1. the Letter of Offer has been duly executed by the Customer and returned to the Bank;
2. the Availability Period for the disbursement has not expired;
3. where the Customer and/or the Security Party is/are companies, receipt by the Bank of certified true copies of the Memorandum and Articles of Association and Forms 24, 44 and 49 and the Board of Directors' resolution authorizing the execution of the Security Documents by the Customer and each of the Security Party;
4. the Security Documents and/or other documents which are required by the Bank to be executed by the Customer and/or the Security Party has/have been duly executed, stamped and registered with such registries as the Bank may deem necessary or expedient and copies thereof duly delivered to the Bank PROVIDED THAT the Bank may at its absolute discretion make payment(s) either wholly or partially of the Facility upon presentation of the Security Documents at the relevant registries;
5. the Bank shall have received from the Official Receivers and/or the Official Assignees, as the case may be that according to its record, Customer and/or the Security Party has/have not been adjudged bankrupt or wound up, and there is no prosecution, bankruptcy or winding up or analogous proceedings commenced or threatened against the Customer and/or the Security Party as the case may be;
6. a search having been made at the relevant land registry/land office confirming that the Property is free from all encumbrances and no acquisition notices have been lodged and/or registered or issued against the Property and no lodgment of a private caveat on the Property has been made;
7. the Bank is satisfied that the execution, delivery and performance of the Security Documents have been duly authorized and approved by all necessary party(ies) and that the same do not contravene any laws, rules or regulations or any contractual or other restrictions binding upon the Customer and/or the Security Party;
8. the receipt by the Bank of all relevant undertakings, disclaimers, confirmations required by the Bank to the Bank's satisfaction;
9. where payment of the Facility is by progressive disbursement, receipt by the Bank of the relevant architect certificates;

10. where the Facility or any part thereof is for the purchase of property under development or for the construction of residential/commercial property, as the case may be, all the approvals from the relevant government and local authorities for the development or construction of the property, including but not limited to development order, building plans and layout plans; and the Customer shall have delivered or cause to be delivered to the Bank the current receipts of quit rent, assessments, rates, dues and other outgoings in respect of the Property as the Bank may require;
11. where required by the Bank, a valuation of the Property in the form and substance satisfactory to the Bank confirming that the forced sale value/open market value of the Property, whichever is required, is not less than the amount stated in the Letter of Offer and verification of the address of the Property by a valuer appointed by the Bank shall have been done at the cost and expense of the Customer;
12. receipt by the Bank of the original copy of the Sale and Purchase Agreement and where applicable, the original Principal Sale and Purchase Agreement and all other documents pertaining to the ownership of the Property as the Bank may require;
13. receipt by the Bank of all takaful policies required by the Bank;
14. the differential sum has been fully settled by the Customer to the developer/vendor and receipt by the Bank of a documentary evidence confirming the same;
15. completion of all legal documentation to the satisfaction of the Bank and upon receipt of the Bank's solicitors' legal opinion to release the Facility;
16. if the official search with Companies Commission of Malaysia reveal that any of the assets of the Customer in particular the Property and/or the Security in particular the security provided herein, whether present or future, is encumbered and is subject to a charge or debenture, the receipt by the Bank of all relevant undertakings, disclaimer, confirmations and consents from the existing charge, debenture-holder and/or encumbrancer;
17. fulfillment of all conditions precedent stated herein and any other additional conditions precedent as may be required by the Bank;
18. no event of default or breach of terms by the person from whom performance is required under the principal Sale and Purchase Agreement between the Vendor and the first seller/the Sale and Purchase Agreement, this Agreement and/or the Security Documents shall have happened and be continuing;
19. the Customer and/or the Security Party is/are not in default in payment of any monies due to the Bank under any other account with the Bank or any other financial institution or under the Customer and/or the Security Party's associated accounts with the Bank or any other financial institution or the accounts of any other party which the Customer and/or the Security Party is/are guarantor(s) is/are not in default;
20. the Customer shall have complied with all operational requirements relating to the operation of the Facility as may be stipulated by the Bank from time to time;

21. the Customer having paid all legal fees, the processing fees and all incidental fees/charges payable or agreed to be paid to the Bank and its solicitors for or in connection with the Facility;
22. where required by the Bank, receipt by the Bank of the irrevocable standing instructions for the payment of instalments; and
23. where required by the Bank, the Customer shall have opened with the Bank a savings or current account.

APPENDIX

1.	<p>*(where the Customer is an individual)</p> <p>Name</p> <p>NRIC/Passport No.</p> <p>Address</p> <p>(where the Customer is a body corporate)</p> <p>Name</p> <p>Registration No.</p> <p>Registered Address</p> <p>Business Address</p>	<p>(Please insert)</p>
2.	Commodities	<p>means the Commodities as per the Commodity Trading Certificate No.: _____ being the Shariah compliant goods and/or commodities acceptable to the Bank, purchased under the platform of any commodity trader appointed by the Bank which will be transacted as the underlying asset to facilitate the Tawarruq transaction.</p>
3.	Selling Price	<p>The description of the Selling Price as per the Commodity Trading Certificate No.: _____.</p>

4.	Payment of Selling Price	<p>The payment of the Selling Price by the Customer to the Bank shall be by way of deferred payments in the manner as specified below:-</p> <p>The payment of the Selling Price shall be based on the Effective Profit Rate as follows:-</p> <p>(a) Grace Period Profit payment</p> <p>The payment of Grace Period Profit shall commence on the first (1st) day of the month following the first disbursement of the Purchase Price until the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier. The monthly Grace Period profit to be paid will be based on actual amount disbursed, as advised by the Bank; and</p> <p>(b) Monthly instalments payment</p> <p>The monthly instalment payment as set out in the Letter of Offer. The payment of monthly instalment shall commence on the first (1st) day of the month following the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier.</p>
----	--------------------------	---

**delete whichever is not applicable*

END OF PART C