

Dated:

Between

HSBC BANK MALAYSIA BERHAD
(Company No. 127776-V)
(the "Bank")

And

(the "Company")

FACILITIES AGREEMENT

Prepared by:-

Contents

Recitals	1
1 Definitions and Interpretations	2
1.1 Definitions.....	2
1.2 Interpretation.....	4
2 Facilities	5
2.1 The Facilities	5
2.2 Facilities and its Purpose	5
2.3 Commencement of the Facilities.....	5
2.4 Release of the Facilities.....	5
3 Representations and Warranties	5
3.1 Representations and Warranties.....	5
3.2 Continuation of Representations and Warranties.....	5
4 Covenants and Undertakings	5
4.1 Positive Covenants	5
4.2 Negative Covenants	6
4.3 To Pay On Demand	6
5 Insurance	7
5.1 Procurement of Insurance.....	7
5.2 Cost of Procurement of Insurance	7
6 Security	7
6.1 Security Documents.....	7
6.2 Continuing Security.....	8
6.3 Covenant to Provide Further Security	8
6.4 Irregularity in the Facilities (if any).....	8
7 Default	8
7.1 Events of Default.....	8
7.2 Rights of Bank on Default.....	10
7.3 Bank’s Right to commence other Legal Proceedings Concurrently	11
8 Application of Proceeds	11
9 Miscellaneous	12
9.1 Disclosure to Bank Negara Malaysia	12
9.2 Indemnity.....	12
9.3 Effective Date.....	13
9.4 Certificate of Indebtedness	13
9.5 Discharge of Amount Due and Payable	13
9.6 Cross-Default.....	13
9.7 Suspense Account.....	13
9.8 All Payments Received to be Payment in Gross.....	14
9.9 Consolidation and Combination of Account	14
9.10 Waiver	15
9.11 Reconstruction of the Bank or the Company	15
9.12 Modification and Indulgence	15
9.13 Expenditure Incurred by the Bank for and on behalf of the Company	16
9.14 Severability	16

9.15	Time	16
9.16	Stamp Duties	16
9.17	Costs.....	16
9.18	Disclosure.....	16
9.19	Incorporation of Letter of Offer	17
9.20	Successors Bound.....	17
9.21	Schedules.....	18
9.22	Governing Law.....	18
9.23	Assignment and Transfer.....	18
9.24	Service of Notices/Legal Process	18
9.25	Financial Services Act, 2013 and other laws and guidelines	18
9.26	Arrangement Fees, Commission, Commitment Fees and All Other Banking Charges.....	19
9.27	Other Terms and Conditions.....	20
9.28	Amendments and Additional Terms	20
9.29	No Inference of Condonation or Acquiescence	20
9.30	Limitation of Power	21
9.31	Conversion / Currency Indemnity	21
9.32	Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001	22
9.33	Evidence of payments due.....	22
9.34	Appropriation.....	23
9.35	Independent payment obligations	23
9.36	Condition of discharge or release of the Company.....	23
9.37	Defects in Powers.....	23
9.38	Recitals and Annexures.....	23
9.39	The Financial Services Act, 2013	Error! Bookmark not defined.
9.40	Principal and Secondary Instruments.....	24
First Schedule		25
Second Schedule		26
Third Schedule		29
Fourth Schedule		32
Fifth Schedule.....		35
Execution		36

AN AGREEMENT made the day and year stated in Item 1 of the First Schedule hereto between:

- (1) **HSBC BANK MALAYSIA BERHAD (Company No. 127776-V)**, a company incorporated in Malaysia and licensed under the Financial Services Act, 2013, as a licensed bank and having its registered office at the address as set out in Item 2(a) of the First Schedule hereto and a place of business/branch at the address as set out in Item 2(b) of the First Schedule hereto and includes its successors in title and assigns (hereinafter referred to as the "**Bank**") of the one part;

and

- (2) The party whose name and other particulars are stated in Item 3 of the First Schedule hereto and includes its successors in title and permitted assigns (hereinafter referred to as the "**Company**") of the other part.

Recitals

Whereas:

- (A) The Company has applied to the Bank and the Bank has agreed to grant or make available and/or continue to grant or to make available to the Company term, credit or banking facilities being Banking Facilities of the type(s) and aggregate sum(s) more particularly described in the Bank's Letter of Offer (hereinafter referred to as "the Facilities" which expression shall where the context so permits include any part or balance thereof to be paid or advanced by the Bank) for the purpose(s) specified in the Letter of Offer.
- (B) As security for the Facilities, the Company shall in addition to the execution of the Letter of Offer and the Facilities Agreement, execute or procure the execution of such other security documents now or hereafter or from time to time required by the Bank to be executed and delivered to the Bank by the Security Party (as defined herein) and whose obligations shall continue to subsist notwithstanding any other supplemental or additional facilities granted by the Bank to the Company and secured by any other security party to be included from time to time) to secure the payment of the Facilities and all sums due and payable hereunder including but not limited to the Security Documents (as defined herein).
- (C) It is a condition for the granting of the Facilities that the Security Party shall execute the Security Documents (as defined herein) and shall deliver to the Bank all such related documents concerning or affecting the securities as provided in the Security Documents.
- (D) The Bank requires and the Company has agreed to enter into this Facilities Agreement with the Bank on the terms and subject to the conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

1 Definitions and Interpretations

1.1 Definitions

In this Agreement unless the context otherwise requires or unless it is otherwise expressly provided the following expressions shall have the meaning respectively assigned to them hereunder:

Address for Service	means: (a) the Bank: The address as stated in Item 6(a) of the First Schedule hereto. (b) the Company: The address as stated in Item 6(b) of the First Schedule hereto.
Business Day	means a day on which the Bank is open for business in Kuala Lumpur;
Events of Default	means any of the events referred to or stipulated in Clause 7.1 hereof;
Facilities	means the banking facility(ies) and/or other credit and accommodation heretobefore now or as hereafter may be agreed at any time and from time to time and for the time being granted or made available or agreed to be granted or agreed to be made available or to be continued to be granted or to be continued to be made available by the Bank to the Company, the maximum aggregate principal amount of which is or shall be evidenced by the ad valorem stamp duty paid and endorsed from time to time and for the time being collectively on the Security Documents and/or Letter of Offer that has been executed or may hereafter be executed from time to time (and if ad valorem stamp duty is or has been or shall be paid and endorsed on any one or more of the other Security Documents, as also evidenced by the ad valorem stamp duty paid and endorsed on the original of that/ those Security Documents) and includes in the event of any addition, increase, substitution, interchanging, termination, reduction, restructuring, advance, reinstatement or other variation howsoever and whatsoever of such banking facility(ies) and/or other credit and accommodation (or any of them or any part thereof) available to the Company as evidenced by the relevant contract documents (if applicable) to be executed from time to time pursuant to or following such addition, increase, substitution, interchanging termination, reduction, restructuring, advance, reinstatement or other variation, and the term "Facility/Facilities" shall be construed accordingly;
Facilities Amount	means the amount as stated in Item 4 of the First Schedule

	hereto;
Legal Process	means pleadings, all forms of originating processes, interlocutory applications of whatever nature, affidavits, orders and such documents other than the aforesaid which are required to be served under the Rules of Court;
Letter of Offer	means the letter of offer as set out in Item 7 of the First Schedule hereto issued by the Bank in favour of the Company and includes any amendment(s) or variation(s) thereof and addition(s) thereto from time to time executed supplemental thereto or in substitution thereof which shall include any other existing and new letter(s) of offer, supplemental(s) or amendment(s) thereto or other instruments or other correspondences evidencing the Facilities made hereto before, now or hereafter or from time to time made between the Bank and the Company;
Ringgit Malaysia and the sign RM	means the lawful currency of Malaysia;
Rules of Court	means rules or other subsidiary regulation regulating the practice and procedure of a court or courts in Malaysia;
Security Documents	means this Agreement and the existing and new documents executed heretobefore, hereunder now and hereafter or from time to time by the Company and/or any Security Party to secure the payment of all monies payable by the Company and any Security Party under the Facilities and without limiting the generality of the foregoing, includes the documents set out in Item 5 of the First Schedule hereto and shall include the same as may be amended, supplemented, varied or substituted from time to time which expression shall where the context so permits or requires mean any one of them and any other new security documents that may be executed from time to time;
Security Party	means any party providing or which shall hereafter from time to time provide any guarantee or security to secure the payment of all monies payable by the Company under the Facilities or any part thereof together with interest and all other money secured and covenanted to be paid herein which expression shall where the context so permits or requires mean any one of them;
this Agreement	means this Facilities agreement entered into and executed between the Bank and the Company in relation to the Facilities which sets out the terms and conditions of the Facilities and includes any amendments, variations and/or supplemental(s) made or entered into from time to time;

1.2 Interpretation

- (a) Unless the context otherwise requires any reference in this Agreement relating to:
 - (i) “encumbrances” shall include any lease, mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention or other encumbrances of any kind or any right conferring priority of payment in respect of any obligation of any person but does not include liens arising in the ordinary course of business by operation of law and not by way of contract; and
 - (ii) “law” includes common law or custom and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed).
- (b) Words importing the masculine gender only shall include the feminine and neuter genders and vice versa.
- (c) Words and expressions denoting the singular number only shall include the plural and vice versa.
- (d) References to Clauses, Articles and Schedules shall unless otherwise expressly provided be references to the clauses, articles and schedules to this Agreement.
- (e) Headings and the table of contents are for ease of reference only.
- (f) Where an act is required to be done within a specified number of days after or from a specified date, the period is inclusive of and begins to run from the date so specified.
- (g) Any reference to statutes and the rules made thereunder includes all amendments which may be enacted from time to time.
- (h) Words denoting natural persons include any body or persons corporate or incorporate and vice versa. Where the Company is an individual, the provisions contained herein shall be construed to include and bind all estate and successors-in-title.
- (i) Where the Company is a company, the provisions contained herein which are primarily and literally applicable to the case of natural persons shall be construed and take effect as if the Company were a natural person, and shall bind all of its permitted assigns and successors-in-title and vice versa. Accordingly, any references herein relating to death or bankruptcy shall thereafter be references relating to the winding-up, liquidation, amalgamation or reconstruction, as the case may be, of the Company and vice versa.

- (j) Where there is more than one party as Company, the reference to Company shall be to all and the liability of each Company is hereby agreed as joint and several.

2 Facilities

2.1 The Facilities

At the request of the Company and subject to the terms and conditions herein contained, the Bank hereby agrees to make available the Facilities to the Company. The Facilities hereby granted shall be made available during the tenure and may at the Bank's discretion be renewed in the manner as they may think fit.

2.2 Facilities and its Purpose

The Facilities herein granted shall be utilised by the Company exclusively for the purpose as stated in the Letter of Offer but nothing herein shall require the Bank to inquire into and/ or ensure that the Facilities is so used.

2.3 Commencement of the Facilities

The Facilities shall commence on the date when the Bank first drawdown the Facilities.

2.4 Release of the Facilities

The Facilities shall be utilised in accordance with the terms and conditions contain in the Letter of Offer.

3 Representations and Warranties

3.1 Representations and Warranties

The Company hereby expressly represents and warrants to the Bank the representations and warranties as set out in the Letter of Offer and the Third Schedule hereto.

3.2 Continuation of Representations and Warranties

The Company represents and warrants to the Bank that each of the above representations and warranties will be correct and complied with in all material respects as long as any sum remains payable by the Company in connection with the Facilities under this Agreement and/or the Security Documents or the Bank remains a capital contributor for the Facilities.

4 Covenants and Undertakings

4.1 Positive Covenants

The Company hereby expressly covenants with the Bank those covenants as set out in the Fourth Schedule hereto and agrees such covenants to be in force for as long as the Bank remains a capital contributor for the Facilities or there are any monies howsoever due and payable to the Bank by the Company under this Agreement and/or the Security Documents.

4.2 Negative Covenants

The Company hereby covenants with the Bank those covenants as set out in the Fifth Schedule hereto and agrees such covenants to be in force for as long as the Bank remains a capital contributor for the Facilities or there are any monies howsoever due and payable to the Bank by the Company under this Agreement and/or the Security Documents.

4.3 To Pay On Demand

- (a) In consideration of the Bank agreeing to grant or continuing to grant to the Company the Facilities, the Company hereby covenants with the Bank to pay to the Bank:-
- (i) all sums of money (whether principal, interests or otherwise) which are now or shall from time to time be due and owing by the Company to the Bank (at any of the Bank's branches) anywhere on any current loan or other account or accounts or in any manner whatsoever whether as principal or surety and whether alone or jointly with any other persons firms or companies including the balance for the time being owing for or in respect of cheques bills notes and any other negotiable instruments accepted paid or discounted for and on behalf of the Company either alone or jointly with another or others or for any other payments loans credits or advances made to or for the use or accommodation or on behalf of the Company whether alone or jointly with another or others pursuant to or in respect of or under any guarantees or letter of credit given or established or opened by the Bank for the Company or at the Company's request to third parties including any of the Bank's branches or members of the HSBC Group for the Company's benefit or for the benefit of other third parties or any contracts for the forward delivery of goods bills or specie or in respect of any other banking facilities whatsoever whether or not given upon or under any trust receipts or other security whatsoever or otherwise howsoever and interest thereon as calculated in the manner hereinbelow provided;
 - (ii) arrangement fees, commitment fees, commission, discount and all other banking charges;
 - (iii) all costs charges and other expenses which the Bank incurs in registering or in perfecting or in enforcing this Agreement, the Letter of Offer and the Security Documents hereto or obtaining payment of such sums of money. For avoidance of doubt, this would include fees, charges and expenses expended on legal proceedings and foreclosure proceedings (including but not limited to legal fees, valuation fees, real estate agents fees, auctioneer fees); and
 - (iv) all sums of money which the Bank incurs on behalf of the Company and the Security Party under or pursuant to this Agreement or the other Security Documents;

with interest thereon as hereinbelow provided (hereinafter referred to as "**the Aggregate Indebtedness**" which expression shall where the context so permits includes the balance or part thereof).

5 Insurance

5.1 Procurement of Insurance

- (a) The Company hereby agrees to procure immediately after the signing of this Agreement and at all times so long as the Facilities or any amount to be paid hereunder remain outstanding, insurance protection in respect of any properties (movable and/ or immovable) finance by the Bank with any licensed and reputable insurance providers/ insurers for its full replacement value or its full/ coverable/ insurance values as stated in other facility documentation under an all risk or comprehensive insurance/ insurance cover against loss or damage by fire, lightning, riot and strike, malicious damage, explosion and other relevant risks up to the replacement cost in the name of the Company with the interest in the insurance certificate and all future certificates vested in the name of the Bank as owner/ hirer and/ or loss payee (as the case may be).
- (b) The Company hereby agrees to punctually pay all contributions payable under the insurance certificates taken out pursuant to the terms hereof, produce the receipts for such payments to the Bank on demand, do anything necessary to maintain the said certificates in full effect and not do or permit or suffer to be done anything whereby the said certificates be prejudiced or vitiated.
- (c) If the Company does not insure the property as required in Clause 5.1(a) above, the Company expressly agrees for the Bank, but it is not obliged to, to insure and keep the property insured in accordance with Section 5.1(a) above. In the event the Bank proceeds to do so, the Company shall be required to pay the insurance premium on demand by the Bank. If the Company fails to pay the insurance premium, the Bank shall proceed to make the payment on behalf of the Company and such payment shall be added to the Aggregate Indebtedness or the Facility.

5.2 Cost of Procurement of Insurance

The cost of procuring insurance protection on any properties of the Company (movable and/ or immovable) shall be borne by the Company.

6 Security

6.1 Security Documents

For better securing the obligations and performance of the duties of the Company under the Facilities and all monies that may be payable by the Company to the Bank, the Company shall execute and perfect all Security Documents in the form and substance as prescribed by the Bank and shall procure any Security Party to execute and perfect all Security Documents which they are a party to in the form and substance as prescribed by the Bank.

6.2 Continuing Security

The security herein created shall be a continuing security* for all monies owing to the Bank by the Company, whether alone or jointly and severally with another or others and whether as principal or surety, notwithstanding that the Company may at any time cease to be indebted to the Bank for any period or periods of time.

* *“continuing security” means the Security remains for as long as there is outstanding Indebtedness*

6.3 Covenant to Provide Further Security

The Company shall at the request of the Bank charge to or deposit with the Bank such documents of title to any or all immovable properties vested in the Company for any tenure. Such charge or deposit may be by way of security for the purpose of securing any moneys owing to the Bank and not secured hereby.

6.4 Irregularity in the Facilities (if any)

The security created shall continue to be valid and binding for all purposes notwithstanding that the participation of the Company in the Facilities may be invalid or in excess of the powers of the Company or of any director attorney partner agent or other person purporting to act on behalf of the Company and notwithstanding any other irregularity in such participation of the Company in the Facilities.

7 Default

7.1 Events of Default

The Company is deemed to have committed a default if the Company commits or threatens to commit a breach of any of the covenants, undertakings, stipulations, terms, conditions or provisions herein stipulated and/ or upon the occurrence of any event of default as provided in the Letter of Offer or upon the happening of any one or more of the following events, whereupon all monies outstanding under the Facilities and any other monies to be paid or intended to be secured here under shall, after notice is given become due and immediately payable:

- (a) if the Company fails to pay any sum payable by the Company hereunder and/ or under any of the Security Documents after the same shall have become due; or
- (b) If the Company and/or the Security Party fails to observe or perform any of the agreements covenants stipulations terms undertakings and conditions on the part of the Company herein and/or any of the Security Documents; or
- (c) if any of the Company's other indebtedness to the Bank, HSBC Amanah Malaysia Berhad or any third party or parties become, or become capable in accordance with the relevant terms thereof of being accelerated in payment or declared due prematurely by reason of a default by the Company in his obligations with respect to the same, or the Company fails to make any payment in respect thereof on the due date for payment or upon the security for any such indebtedness becoming enforceable; or

- (d) if a judicial manager, trustee, receiver or other similar officer is appointed on the whole or any part of the assets or the undertaking of the Company (if applicable), or if any step or action is taken or a resolution is passed for the winding up, dissolution, liquidation or bankruptcy of the Company or a petition for winding-up or bankruptcy, as the case may be, is presented against the Company or, if such proceeding or action has been taken by the Company such steps or petition is not discharged or stayed within twenty one (21) days from the date of the taking of such step or petition; or
- (e) if a distress or execution or other process of a court of competent jurisdiction is levied upon or issued against any property of the Company and such distress execution or other process, as the case may be, is not satisfied by the Company within fourteen (14) days from the date thereof; or
- (f) if the Company commits or threatens to commit any act or omit to do any act that will result in the Company being in breach of any term, stipulation, covenant or undertaking contained in this Agreement and/or any of the Security Documents; or
- (g) if the Company commits a default of any provision in any agreement, or security documents, or both (as the case may be) relating to other accounts or facilities granted by the Bank to the Company or to other party in which the Company is a guarantor, or chargor or assignor; or
- (h) if the Security Documents or any of them shall be challenged with regard to its validity by any person; or
- (i) if an event has, or events have occurred, or situation exists, which could or might, in the opinion of the Bank prejudice the ability of the Company to perform its obligations hereunder and/ or under any of the Security Documents in accordance with their respective terms; or
- (j) if the Bank shall be of the opinion that its security created pursuant to the this Agreement and/ or any of the Security Documents is in jeopardy; or
- (k) if the Company commits or threatens to commit a default of any term or condition hereunder and/ or any of the Security Documents; or
- (l) if in the absolute opinion of the Bank, the Company's account with the Bank (including any other accounts the Company may have with the Bank) is or has not been operated satisfactorily; or
- (m) if any representation or warranty made or implied pursuant to any provisions of this Agreement or any of the other Security Documents or pursuant to any notice, certificate, letter or other document delivered pursuant to the terms of this Agreement or any of the other Security Documents is incorrect or misleading in a material particular as of the date at which it was made or deemed to have been made; or
- (n) if the Company shall make an assignment for the benefit of the creditors of the Company or enter into an arrangement for composition for the benefit of the creditors of the Company or allows any judgment against the Company to remain unsatisfied for a period of fourteen (14) days or more; or
- (o) if legal proceedings suit or action of any kind whatsoever (whether criminal or civil) be instituted against the Company; or

- (p) if the Company is in breach of any terms of this agreement or obligation under or any Security Documents or the Letter of Offer or fails to comply with any notice given hereunder and under the other Security Documents requiring him to remedy any breach of the terms of this Agreement and/ or any of the other Security Documents within the time stipulated therein; or
- (q) if the Company serves any custodial sentence; or
- (r) any other event or events occur or circumstances arise which in the opinion of the Bank give reasonable grounds for believing that (i) it is improbable that the Company will be able to perform any of its obligations under this Agreement and/ or any of the Security Documents or the Company may not (or may be unable to) duly and punctually perform or comply with its obligations under this Agreement and/ or any of the Security Documents; or (ii) the Facilities is being threatened or placed in jeopardy for any reasons whatsoever; or
- (s) for any reason any guarantee or security given to the Bank for the payment of any moneys payable and secured hereunder shall be terminated or shall lapse for any reason whatsoever or if the guarantor and/or security provider shall be in default under the terms of such guarantee and/or security document or dies or become of unsound mind or is wound up or commits any act of bankruptcy or becomes bankrupt or enters into any composition or arrangement with or for the benefit of such guarantor and/or security provider or allows any judgment of the creditors against such guarantor and/or security provider to be made; or
- (t) where the Company is conducting business, if the Company ceases or threatens to cease carrying on its business or transfer or dispose or intend to so transfer or dispose of a substantial part of the Company's assets or change or intend to change the nature or scope of the Company's business as now conducted; or
- (u) by reason of any change after the date of this Agreement in circumstances, applicable law, regulation or regulatory requirements or, in the interpretation or application thereof of any governmental or other authority charged with the administration thereof it shall become unlawful for the Bank to comply with its obligations herein; or
- (v) any payment of any moneys payable and secured hereunder is made through the Company's current account (which include all accounts for which cheques may be drawn against, howsoever described) and the account is closed by any bank following the applicable guidelines as issued by Bank Negara Malaysia and/or the policies of the relevant bank in effect from time to time governing continued operations of current accounts (regardless of whether any overdraft/cash line has been granted or otherwise) notwithstanding the Company's current account(s) with the Bank whether held solely or jointly with others has/have been conducted satisfactorily; or
- (w) such events of default as stated in the other Security Documents.

7.2 Rights of Bank on Default

- (a) At any time after any money shall have become due and payable under the Facilities Agreement and/or any of the Security Documents, the Bank may

with notice to the Company and/or any Security Party cumulatively, concurrently, successively in any manner and/ or an order as the Bank may deem fit :

- (i) institute such proceedings and take steps (including any proceedings for the realisation of its security under any of the Security Documents) as it may think fit to enforce payment of all moneys owing to the Bank;
 - (ii) close and/or freeze the Company's account with the Bank and if upon such closure or freezing there is a balance standing to the credit of the Company the Bank may transfer keep and maintain such balance to and in a non-interest bearing suspense account for so long as the Bank may deem fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of all moneys owing to the Bank; and/or
 - (iii) sell any assets of the Company held by the Bank on deposit or otherwise, by public or private sale without any judicial proceedings whatsoever, and retain from the proceeds derived there from the total amount remaining unpaid and all costs, charges and expenses incidental to such sale.
 - (iv) enforce its right and remedies under this Agreement and/ or the Security Documents and/ or any of them;
- (b) Notwithstanding any provision herein to the contrary, it is hereby expressly agreed that upon the occurrence of an event of default as set out in Clause 7.1 hereof, the Bank shall thereafter have the right to exercise all or any of the remedies available to the Bank whether pursuant to the Facilities Agreement and/or any of the Security Documents or by statute or otherwise and shall be entitled to exercise such remedies in any order or concurrently.

7.3 Bank's Right to commence other Legal Proceedings Concurrently

It is hereby expressly agreed that upon default or breach by the Company of any term, covenant, stipulation and/or undertaking to be observed and performed by the Company, the Bank shall thereafter have the right to exercise all or any of the remedies available under this Agreement or the other Security Documents or by statute or otherwise and is entitled to exercise such remedies concurrently, successively or not at all as the Bank may deem fit, including pursuing all remedies of sale or possession and civil suit to recover all monies due and owing to the Bank.

8 Application of Proceeds

Subject to statutory priorities (if any), all moneys recovered or received by the Bank from any proceedings instituted or steps taken shall be held by the Bank to apply the same:-

Firstly, in payment of all statutorily preferred debts and any other debts having priority to the indebtedness and liabilities of the Security Party to the Bank under the Security Documents.

Secondly, in payment of or making provision for all costs, charges, expenses and

liabilities incurred by the Bank in or about the realising of any security and the remuneration of any receiver and/or manager appointed and all moneys payable by the Security Party to the Bank by way of indemnity or compensation under the Security Documents (this include the fees and charges mentioned under Cl. 4.3) .

Thirdly, in or towards payment to the Bank of all monies, cost commission fees, compensation commission, fees, bank charges and other charges owing to the Bank under or arising from or in connection with the Facilities Agreement and/or the Security Documents.

Fourthly, in or towards payment of all principal amounts and other moneys owing to the Bank under or arising from or in connection with the Facilities Agreement and/or the Security Documents.

Fifthly, in payment of the surplus (if any) to the Company and/or any other person or persons entitled thereto.

PROVIDED ALWAYS THAT notwithstanding any other provision in the agreement or any other document to the contrary, if the Bank shall be of the opinion that the moneys recovered or received by the Bank from any proceedings instituted or steps taken may prove deficient, payments received by the Bank may be applied or appropriated by the Bank in such manner and for such purpose as the Bank may deem fit but such alteration in the order of payment shall not prejudice the right of the Bank to receive the full amount to which it would have been entitled if the primary order of payment had been observed or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

9 Miscellaneous

9.1 Disclosure to Bank Negara Malaysia

The Bank may or is required, whether pursuant to law or otherwise, to provide information to Bank Negara Malaysia regarding the financing facilities which it grants to its customers or the customers' accounts. The Company hereby consents to the Bank disclosing such information to Bank Negara Malaysia for the purpose of collecting information from banks regarding their customers to enable participating banks and other financial institutions to assess the credit worthiness of existing or potential customers. The Bank shall not be liable to the Company or any other persons for such disclosure.

9.2 Indemnity

The Company shall at all times hereafter indemnify, save and hold the Bank harmless against all losses, damages, claims, proceedings, demands, action, penalties and expenses (including legal costs on a solicitors and client basis) that may be made or brought at any time by the Vendor or any other party or parties against the Bank or by the Bank for any act or default under or for any breach of any provision of the Sale & Purchase Agreement or in relation to or in connection with this Agreement that may be incurred, suffered or sustained by the Bank as result thereof or otherwise howsoever and the Company shall promptly upon a demand being made by the Bank pay to the Bank all amounts so paid incurred, suffered or sustained by the Bank.

9.3 Effective Date

The parties agree that this Agreement shall come into force on the date as stated in the preamble hereto irrespective of the diverse dates upon which they have each executed this Agreement respectively.

9.4 Certificate of Indebtedness

It is hereby agreed that any admission or acknowledgement in writing by the Company or by any person authorised on behalf of the Company or pursuant to a judgment (by default or otherwise obtained against it) or a certificate in writing showing the monies hereby owing by the Company which is duly certified by an authorised officer of the Bank shall be binding and conclusive evidence against the Company and/or the Security Party for whatever purpose including as being conclusive evidence of the Company's and/or the Security Party's indebtedness in a court of law.

9.5 Discharge of Amount Due and Payable

Subject always to the Bank's right of consolidation, it is hereby agreed that on the satisfaction by payment of the Facilities under this Agreement and other moneys due under this Agreement and under the Security Documents, all the provisions herein contained shall cease to be of any effect but without prejudice to the Bank's rights and remedies against the Company in respect of any antecedent claim or breach of covenant.

9.6 Cross-Default

Notwithstanding any other provisions herein:

- (a) if there shall be a default of any sums payable by the Company and/or by a security provider for any other facilities granted to either the Company or such security provider by the Bank or by HSBC Amanah Malaysia Berhad; or
- (b) if there shall be a default by the Company and/or such security provider for any banking or financing facilities granted to either the Company or the security provider by any other financial institution or other party;

whether such sums are due jointly or individually by the Company or such security provider, then in such event, the Bank shall be entitled to exercise its rights under Clause 7.2 herein.

9.7 Suspense Account

- (a) When necessary, any monies received hereunder and under the Security Documents may be placed and kept in a non-interest bearing suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards the discharge of any money or liability due or incurred by the Company to the Bank. Regardless of such payment, in the event of bankruptcy, liquidation, or scheme of arrangement, the Bank may file a proof of debt and agree to accept any dividend or composition (arrangement made between a liquidator and the Company's creditors) in respect of the whole or any part of such money and liability in the same manner as if this security had not been created.

- (b) In addition to the foregoing provision and notwithstanding the other express provisions of this Agreement, the Company hereby irrevocably agrees that the appropriation of payment as provided by law is waived and the Bank can appropriate such payments towards the Facilities or any of the general banking facilities given by the Bank.

9.8 All Payments Received to be Payment in Gross

All moneys received by the Bank from the Company hereunder and under the Security Documents shall be regarded for all purposes as payments in gross. If a receiving order is made against any person liable to the Bank or any order be made or any effective resolution be passed for the winding up of any company liable to the Bank, the Bank may prove for the whole of the moneys then owing and no money received under such proof shall be considered as having been received and the full amount owing shall be payable until the Bank has received from all sources one hundred sen in the Ringgit Malaysia and if the amount ultimately received by the Bank exceeds the amount of the ultimate balance owing to the Bank the excess only over such ultimate balance shall be repaid to the person or party on whose account the same shall have been received by the Bank.

9.9 Consolidation and Combination of Account

It is expressly agreed and declared that unless the Bank otherwise agrees, the Company shall not be entitled to redeem or require the release or discharge of any security given by the Company to the Bank and whether given now or hereafter except on payment by the Company of not only all moneys referred to herein but also all moneys whatsoever and howsoever owing or payable or due from the Company to the Bank under any other account whether as a Company, guarantor, assignor, of howsoever or otherwise with the Bank, and without prejudice to the generality of the foregoing it is hereby expressly agreed and declared that unless the Bank otherwise agrees in writing the security created herein shall not be terminated except on payment:

- (a) of all the amount due and payable by the Company to the Bank hereunder and under the Security Documents; and
- (b) of all other moneys due and owing to the Bank by the Company under any account with the Bank whether or not and howsoever secured; and
- (c) of all moneys secured by any other security created by the Company or by any person through whom the Company claim in favour of or vested in the Bank.

The Bank further reserves the right at any time, to combine or consolidate all of the Company's accounts including jointly with others (of any nature whatsoever and wheresoever situated, whether in Ringgit Malaysia or in any currency), to place a hold on the credit balances in such accounts up to the amount due and payable by the Company to the Bank hereunder and under the Security Documents, and after seven (7) days' prior notice to the Company, to set-off and transfer such credit balance (even if it involves uplifting and withdrawing any deposit/investment before maturity date) in or towards satisfaction of the amount due and payable to the Bank.

9.10 Waiver

No failure or delay on the part of the Bank in exercising nor any omission to exercise any right, power, privilege or remedy accruing to the Bank under this Agreement or the other Security Documents shall impair any such right, power, privilege, or remedy or be construed as a waiver thereof or any acquiescence in such default, nor shall any action by the Bank in respect of any default or any acquiescence in any such default, affect or impair any right, power, privilege, or remedy of the Bank in respect of any other or subsequent default.

9.11 Reconstruction of the Bank or the Company

The security, liabilities and obligations created by this Agreement and by the Security Documents shall continue to be valid and binding for all purposes regardless of any change by amalgamation reconstruction or otherwise which may be made in the constitution of the Bank or the Company, or both, and it is expressly declared that no change whatsoever in relation to or affecting the Bank or the Company, or both, shall in any way affect the security, liabilities and obligations created hereunder in relation to any transaction whatsoever whether past present or future.

9.12 Modification and Indulgence

The Bank may at all time without discharging or in any way affecting the security created and with notice (where applicable) to the Company at any time:

- (a) determine, vary or increase the Facilities or any other Facilities granted to the Company and may open and/or continue any accounts with the Company at any branch or branches of the Bank at such time as the Bank shall think fit and the Company and/or the Security Party hereby expressly consents to any such review, determination, variation, reduction and/or increase as may be effected or determined by the Bank pursuant to the provisions of this clause;
- (b) vary the terms and conditions herein contained (including but not limited to the imposition of new terms and conditions and/or the terms and conditions of any other credit or banking Facilities granted to or moneys expended for the Company and/or the Security Party) in such manner and at such time(s) as the Bank shall think fit and the Company and/or the Security Party hereby expressly consents to any such modification or restructuring or alterations as may be effected or determined by the Bank pursuant to the provisions of this clause;
- (c) modify or restructure or convert or substitute or alter the nature of the Facilities granted in such manner and at such time(s) as the Bank shall think fit and the Company and/or the Security Party hereby expressly consents to any such modification or restructuring or conversion or substitution or alteration as may be effected or determined by the Bank pursuant to the provisions of this clause;
- (d) grant to the Company any time or indulgence;

- (e) deal with exchange, release or abstain from perfecting or enforcing any securities or rights the Bank may now or hereafter have from or against the Company or any other person; or
- (f) enter into any deed of composition with the Company.

9.13 Expenditure Incurred by the Bank for and on behalf of the Company

All moneys expended by the Bank hereunder from time to time for and on behalf of the Company (relating to insurance, quit rent, assessment, rates, taxes, repairs, valuation, legal costs, stamp duties, registration fees and all other outgoings) shall be recoverable and be repaid by the Company on demand by the Bank (to the extent not restricted by any laws or regulations). In default of such payment, such moneys shall be deemed to form part of the amount due and payable by the Company to the Bank and to be secured accordingly hereunder and the account of the Company shall be debited accordingly.

9.14 Severability

Any term, condition, stipulation, provision, covenant or undertaking contained herein and/or in the Security Documents which is or becomes illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality prohibition or unenforceability 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.

9.15 Time

Time wherever mentioned herein shall be of the essence of this Agreement.

9.16 Stamp Duties

Save and except provided otherwise, the Company shall pay all stamp duties, fees or other charges payable on or incidental to the execution and registration of this Agreement and the other Security Documents and shall reimburse the Bank for any duties, fees and other charges paid by the Bank.

9.17 Costs

Save and except provided otherwise, the Company shall be liable to pay all fees and expenses in connection with or incidental to this Agreement and the other Security Documents including the Bank's solicitors' fees (on a solicitor and client basis) in connection with the preparation and execution of this Agreement, the Security Documents and the other documents related thereto.

9.18 Disclosure

- (a) The Company hereby irrevocably agrees that information on its accounts, facilities, conduct thereof and related information thereto, and information on any prospective accounts, facilities and services which the Company may open with or obtain from the Bank from time to time ("**Information**"), may be:
 - (i) disclosed to any person the Bank considers necessary for purposes related to the provision of the account or facilities, or the operating

procedures of the Bank (which shall include any accounting, client relationship or risk management functions), including to any member of the HSBC Group, any service provider or other third party;

- (ii) where relevant, disclosed or shared with any bureaus or agencies established or to be established by Bank Negara Malaysia (including the Central Credit Reference Information System – “CCRIS”) or any of its subsidiaries, or by any other regulatory authorities with any registered credit reporting agency, and with any authority, central depository or depository agent in relation to the securities industry;
- (iii) disclosed to any potential assignee, guarantors and/or security providers (prospective or otherwise) and any person the Bank believes in good faith to be tendering payment for monies on the Company’s behalf.

Such Information may, where relevant, be used, stored, transferred, compiled, matched, obtained and/or exchanged by or with the aforementioned parties (“Users”). Information shall be kept strictly confidential by the Users, save where disclosure is required under any laws or regulations to which a User is subject.

All information given by the Bank to any of the abovementioned persons is provided in good faith and for information purposes only and whilst every care is taken in compiling, collating or producing the information, the Bank and its officers shall not in any event be liable for any claim, loss, damage or liability howsoever arising (including direct or indirect, special, incidental, consequential or punitive damages or loss of profits or savings) to the Company or to any other persons whatsoever for the accuracy, completeness or authenticity of its contents or for the consequences of any reliance which may be placed on the information whether caused by any technical, hardware or software failure of any kind, interruption, error, omission, delay, viruses, act of God, act of war, strikes, industrial action or otherwise.

9.19 Incorporation of Letter of Offer

- (a) It is hereby agreed between the Bank and the Company that all the terms and conditions in the Letter of Offer including all subsequent variations shall be deemed to be incorporated into and form part of this Agreement and in the event of any conflict or discrepancy between the terms and conditions in the Letter of Offer and the provisions of this Agreement, the terms of the Letter of Offer shall prevail and be applicable.
- (b) The Letter of Offer shall form part of the Security Documents as provided herein.

9.20 Successors Bound

This Agreement shall be binding upon the heirs, personal representatives, permitted assigns and the successors-in-title of the Company and on the successors-in-title and assigns of the Bank.

9.21 Schedules

The Schedules hereto shall be taken read and construed as an integral part of this Agreement.

9.22 Governing Law

(a) The Security Documents and the rights and duties of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of Malaysia. In relation to any legal action or proceedings arising out of or in connection with the Security Documents (“**Proceedings**”), the Company irrevocably submits to the jurisdiction of the courts of Malaysia, and waives any objections to Proceedings in any court on the grounds that the Proceedings have been brought in an inconvenient forum.

9.23 Assignment and Transfer

The Company may not assign or transfer any of its rights, benefits and/or obligations hereunder or under any of the Security Documents to any person without the Bank’s prior written consent. The Bank may (with notice to the Borrower, to the extent it is required by law) assign any of its rights, benefits and/or obligations under this Agreement and under the Security Documents.

9.24 Service of Notices/Legal Process

- (a) The service of any notice to be given or issued hereunder; or any Legal Process by the Bank to the Company may be given by prepaid registered post (not being AR registered post) sent to the Company’s Address for Service hereto or to the Company’s address last known to the Bank, and such notice or Legal Process shall be deemed to have been duly served three (3) days after posting and if delivered by hand, on the day it was delivered.
- (b) No change in the Address for Service howsoever brought about shall be effective or binding on the Bank unless the Company has given to the Bank actual notice of the change of Address for Service and nothing done in reliance above shall be affected or prejudiced by any subsequent change in the Address for Service over which the Bank has no actual knowledge of at the time the act or thing was done or carried out.
- (c) The affidavit or oral evidence of the Bank or his servant or agent, as to the delivery, posting or service of any notice or document required or authorised to be served, given or sent by this Agreement is admissible as prima facie proof of the service, giving or sending of the notice or document.

9.25 Financial Services Act, 2013 and other laws and guidelines

- (a) The Company shall procure any approval as may be required from time to time by Bank Negara Malaysia / the Central Bank of Malaysia Bank or relevant authority or body under the Financial Services Act, 2013 or any notices, directions or rules issued pursuant thereto or any amendment thereof, in relation to the Facilities.

- (b) The Company hereby represents and warrants to the Bank that the grant, availment or utilisation of the Facilities hereunder does not contravene or result in any contravention of (i) Section 47 of the Financial Services Act, 2013 read together with Bank Negara Malaysia Guidelines on Credit Transaction and Exposure with Connected Parties¹ and Part 83 of the Banking (Exposure Limits) Rules (Cap. 155S) of Hong Kong Special Administrative Region², the law of the place in which the holding company of the Bank is located and (ii) Section 224 and 225 of the Companies Act 2016³ (collectively “**Prohibitions**”) and/or any amendments thereto.
- (c) The Company further agrees that it shall be an Event of Default hereunder in the event that the grant, availment or utilisation of the Facilities should at any time, whether at the time of granting or thereafter, be in contravention of the Prohibitions and/or any amendments thereto.

9.26 Arrangement Fees, Commission, Commitment Fees and All Other Banking Charges

All fees, costs and expenses incurred hereunder by the Bank including any expenditure incurred in the creation, enforcement and or preparation of this Agreement and the Security Documents or in the giving of any notice or in the making of any demand or the taking out of any legal proceedings under pursuant to or in respect of this Agreement and the Security Documents (including the Bank's solicitors' fees on a solicitor and client basis) and the stamp duty and fees to which this Agreement and the Security Documents is subject to and all other monies whatsoever paid by the Bank shall on demand be payable by the Company to the Bank and if remaining unpaid shall be debited to the Company's current/savings/loan account or to a disbursement/suspense or any other account to be opened by the Bank for the purpose and secured under this Agreement and the Security Documents and all covenants and provisions contained in this Agreement and all powers and remedies conferred by law or by this Agreement and the Security Documents in relation to the principal sum and interest thereon shall apply. For avoidance of doubt, this would include fees, charges and expenses expended on legal proceedings and foreclosure proceedings (including but not limited to legal fees, valuation fees, real estate agents fees or auctioneer fees).

¹ Bank Negara Malaysia (“BNM”) imposes on the Bank certain limitations, restrictions and requirements on credit transactions with persons (including firms, partnerships or any legal entities) connected to the Bank or any of its directors, controlling or influential shareholders, executive directors, officers who have authority to appraise, approve or review credit transactions. Please get the latest guidelines on this topic from the website of BNM at <http://www.bnm.gov.my/>

² Part 8 of the Banking (Exposure Limits) Rules (Cap. 155S) [which has replaced Section 83 of the Hong Kong Banking Ordinance as at 1 July 2019 (with 6 months implementation grace period)] imposes on the Bank certain limitation and restrictions on advances to persons (including firms, partnership and non-listed companies) related to the Bank or any of its directors, employees with lending authority or controllers. The said Banking (Exposure Limits) Rules may be accessed or downloaded from the website of Hong Kong Monetary Authority at <https://www.hkma.gov.hk> or the website of Hong Kong Legal Information Institute at <http://www.hklii.org/eng/hk/legis/reg/155S/>

³ The relevant sections expressly prohibits certain payments or subject to several exemptions, the making of loan to directors. The Companies Act 2016 can be accessed at <http://www.ssm.com.my/Pages/Home.aspx>.

In addition thereto, the Company hereby agrees to pay to the Bank commitment fees discount commission and all other banking charges as stated in the Letter of Offer.

9.27 Other Terms and Conditions

- (a) The terms and conditions herein stated shall be in addition to and not in derogation of any specific agreement or arrangement with regard to the Facilities now or hereafter from time to time subsisting between the Bank and the Company or any terms and conditions that may be specified in the Letter of Offer given by the Bank to the Company from time to time.
- (b) To the extent of any terms conditions or other matters in respect of or in relation to the Facilities not expressly set out herein, the terms conditions and other matters normally or usually adopted or applied by the Bank in accordance with its practices and policies in relation to a Facilities similar to the Facilities or for customers comparable to the Company shall be adopted or applied and the Company hereby expressly agrees thereto and to be bound thereby. A certificate signed by any attorney(s) and/or officer(s) of the Bank as to such terms conditions and other matters and/or such practices and policies of the Bank shall be final and conclusive and binding on the parties for all purposes whatsoever including legal proceedings.

9.28 Amendments and Additional Terms

- (a) Save for Clauses 9.28(b) hereto, upon agreement by both parties, the terms of this Agreement herein may be varied, amended, supplemented or additional terms may be added by an exchange of letters and shall be effective without the necessity of having to enter into any formal instrument or supplemental document and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall read and be construed as if such amendments or variations has been incorporated in and had formed part of this Agreement at the time of execution hereof. In the event of any inconsistency between the provisions of this Agreement and the terms as varied or amended by the aforesaid exchange of letters or formal or supplemental documents, the latter shall prevail.
- (b) If any change in the applicable law, rules, regulation or official requirement or in the interpretation or application thereof by any government authority or court or tribunal or other authority charged with the administration thereof or compliance by the Bank with any request from Bank Negara Malaysia or other fiscal, monetary or other authority (whether or not having the force of law) will cause or result in additional cost burden liability or obligation on the Bank to make or maintain the Facilities, the Bank reserves the right to vary any terms and conditions in respect of the Facilities and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall read and construed as if such amendments or variations has been incorporated in and had formed part of this Agreement at the time of execution hereof.

9.29 No Inference of Condonation or Acquiescence

Notwithstanding the fact that the Bank may not have exercised any remedy available to it immediately on default by the Company or that the Bank may have

accepted monies from the Company after such default, the Bank shall not be held to have condoned or acquiesced in such default and may at any time thereafter exercise all or any of the remedies available to the Bank and any delay on the part of the Bank in taking steps to enforce the remedies conferred on or available to it by the Security Documents or statute shall not be held to prejudice the Bank's right of action in respect thereof.

9.30 Limitation of Power

Any liberty or power which may be exercised or any determination which may be made hereunder by the Bank may be exercised or made reasonably and according to the Bank's internal policy".

9.31 Conversion / Currency Indemnity

- (a) Where any amount is recovered or received (whether as a result of, or of the enforcement of, a judgment or order, or otherwise) by the Bank in a currency (hereinafter for the purpose of this be referred to as "**the Recovered Currency**") other than the currency in which such amount should have been paid under the provisions of this Agreement and/ or the Letter of Offer (hereinafter referred to as "**the Payment Currency**"), the Bank shall wherever necessary convert the Recovered Currency sum into the Payment Currency at the rate at which the Bank is able, in accordance with its usual practice, to purchase the Payment Currency with the amount (in the Recovered Currency) so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). The Bank may recalculate such amount from time to time as it may think appropriate in the light of exchange rates prevailing at the time of recalculation. Such amount so recovered or received by the Bank shall only constitute a discharge to the Company to the extent of the Payment Currency amount so converted by the Bank.
- (b) If any amount recovered or received by the Bank in the Recovered Currency is less than the Payment Currency amount expressed to be due to the Bank under this Agreement, the Company shall indemnify it against any loss sustained by the Bank as a result (including but not limited to the cost of purchase of the Payment Currency with the amount so received or recovered in that Recovered Currency). This indemnity constitute a separate and independent obligation from the other obligations in this Agreement, shall give rise to a separate and independent cause of action and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Agreement or any judgment or order. No proof or evidence of any actual loss may be required.
- (c) In the event of a judgment or order being rendered by a court or tribunal of any particular jurisdiction for the payment of any amounts owing to the Bank under this Agreement or under a judgment or order of a court or tribunal of any other jurisdiction in respect thereof or for the payment of damages in respect of either thereof, and such judgment or order being expressed in a currency (hereinafter called "**the Judgment Currency**") other than the currency in which such amounts should have been paid

(hereinafter called "**the Payment Currency**") the Company shall indemnify and hold the Bank harmless against any loss or deficiency arising or resulting from any variation in rates of exchange as between the Judgment Currency and Payment Currency occurring between:-

- (i) the date as of which amount expressed in Payment Currency is converted for the purposes of any such judgment or order into an equivalent amount in the Judgment Currency; and
 - (ii) the date or dates of discharge of such amount (or any part thereof) or of discharge of such first mentioned judgment or order (or part thereof), as appropriate.
- (d) The above indemnity shall constitute a separate and independent obligation of the Company from its other obligations under this Agreement, shall give rise to a separate and independent cause of action against the Company, shall apply irrespective of any indulgence granted by the Bank from time to time, shall continue in full force and effect, notwithstanding any judgment or order or the filing of proofs or proofs in the winding-up or dissolution of the Company for a liquidated sum or sums in respect of amounts due hereunder or under any such judgment or order.

9.32 Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

- (a) At all times during the tenure, the Company shall ensure that the Company has never and would not:
 - (i) engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - (ii) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into Malaysia proceeds of any unlawful activity; or
 - (iii) 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.
- (b) In any event, the Company shall ensure that the Facilities shall not be used for any purpose that may contravene any illegal activities as stipulated under the Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001⁴.

9.33 Evidence of payments due

It is hereby agreed that any admission or acknowledgement in writing by the Company, or by any person authorised on their behalf or a judgment (by default or otherwise obtained against any of them) or a statement of account in writing showing the payments due and payable by the Company, which is duly certified by an authorised officer of the Bank or by any solicitor or firm of solicitors purporting

⁴ For more information, please visit the website of BNM on this topic (<http://amlcft.bnm.gov.my>). The latest act may also be downloaded from the said website.

to act for the Bank shall, save for manifest error, be binding and conclusive evidence against the Company for whatever purpose including as being conclusive evidence of the Settlement Amount and all other amounts which are payable under the terms of the Security Documents in a court of law. Notwithstanding the above provisions, the Company hereby agrees that a demand for payment of the Settlement Amount (or any part thereof) may be made by the Bank in the form of a computer generated demand or notice which requires no signature or which contains a printed or facsimile signature. Any such demand or notice shall (save for manifest error), be binding and conclusive on the Company.

9.34 Appropriation

The Bank shall be entitled to utilise any monies received towards payment to be appropriated in any manner howsoever it shall deem fit.

9.35 Independent payment obligations

It is hereby expressly agreed and declared by the Company that each of its obligations to pay under any of the provisions of the Security Documents constitute separate and independent obligations, shall give rise to separate and independent sources of action, shall apply irrespective of any waiver or indulgence granted by the Bank in respect of any other obligation, shall remain in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of some other obligation and may be relied upon and enforced by the Bank independently of or simultaneously with or without having to commence any other action under such obligations or under any of the Security Documents or having first exhausted any remedy or having first sold or disposed of any assets, properties or undertaking which may be provided as security to the Bank from time to time.

9.36 Condition of discharge or release of the Company

Any settlement between the Bank and the Company shall be conditional upon no security or payment to the Bank by the Company or any other person being invalidated for any reason whatsoever or being avoided or refused or set aside by virtue of any provision or enactment or laws relating to bankruptcy, insolvency or liquidation for the time being or from time to time in force or by virtue of any obligation to give effect to any preference or priority and the Bank shall be entitled to recover the value or amount of any such security or payment from the Company subsequently as if such settlement or discharge had not occurred.

9.37 Defects in Powers

Where any moneys are owing and secured by any Security Documents, they shall be deemed to be so owing and so secured notwithstanding any defect, informality or insufficiency in the powers of the Company or in the exercise thereof which might have a defence as between the Company and the Bank.

9.38 Recitals and Annexures

The Recitals and Annexures hereto shall be taken read and construed as an integral part of this Agreement.

9.39 Principal and Secondary Instruments

IT IS HEREBY AGREED AND DECLARED THAT this Agreement and other Security Documents are all instruments employed in one transaction to secure the due performance of the Company of its obligations hereunder and the Security Documents within the meaning of Section 4(3) of the Stamp Act, 1949 (Consolidated and Revised 1989) of Malaysia, and for the purpose of the said Section, this Agreement is deemed to be the principal instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

FIRST SCHEDULE

(which shall be taken and construed as an integral part of this Agreement)

Item	Matter	Particulars
1.	Date of Facilities Agreement	
2.	(a) Registered address of the Bank (b) Business/branch address of the Bank	HSBC Bank Malaysia Berhad No. 2, Leboh Ampang 50100 Kuala Lumpur
3.	Name and description of the Company	<u>Registered Office:-</u> <u>Business Address:-</u>
4.	Particulars of the Facilities	
5.	Description of Security Documents and parties	
6.	(a) Address for Service of the Bank: (b) Address for Service of the Company:	HSBC Bank Malaysia Berhad No. 2, Leboh Ampang 50100 Kuala Lumpur
7.	Date of Letter of Offer	

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

SECOND SCHEDULE

(which shall be taken and construed as an integral part of this Agreement)

CONDITIONS PRECEDENT

The Facilities shall not be available to the Company and the Bank hereby reserves the right not to make available or continue to make available or allow utilisation of the Facilities Agreement (or any of them or any part thereof), unless and until the conditions precedent are fulfilled or satisfied.

- (1) Fulfilment of the Conditions Precedent set out in the Letter of Offer.
- (2) The Company has duly executed the Facilities Agreement and Security Party has duly executed the Security Documents and the same has been duly stamped and presented/lodged/filed for registration or registered with all relevant registries, authorities and agencies have been duly executed, stamped and presented/lodged/filed for registration with all relevant registries, authorities and agencies (or if so required by the Bank, registered with all relevant registries, authorities and agencies) and duly stamped copies of those Facilities Agreement and the Security Documents have been delivered to the Bank.
- (3) All searches on the Company and the Security Party have been carried out at the appropriate registry of companies and the results of such searches are satisfactory to the Bank.
- (4) All bankruptcy/winding-up searches on the Company and the Security Party have been made with the relevant offices of the Official Assignee/Official Receiver, and the Bank is satisfied that the Company and none of the Security Party is a bankrupt or has a winding-up order made against it.
- (5) The Bank shall have received, in form and substance satisfactory to the Bank and its solicitors, copies (in as many numbers as may be requested by the Bank) of the following documents, certified as true and correct by a director or the secretary of the Company:-
 - (a) all necessary authorisations, approvals including without limitation, a resolution by the board of directors of the Company authorising including:-
 - (i) the Company's acceptance of the Facilities;
 - (ii) the execution of the Facilities Agreement and where applicable, the Security Documents;
 - (iii) either, the use of the Company's common seal upon the Facilities Agreement and where applicable, to the Security Documents or, where appropriate, the person(s) to sign the Facilities Agreement and, where applicable, the Security Documents under hand for and on behalf of the Company;
 - (iv) the person(s) to sign such documents and otherwise to act and to give instructions on the Company's behalf in respect of the transactions hereunder;
 - (b) the certificate of incorporation of the Company;

- (c) the Memorandum of Articles of Association of the Company;
 - (d) specimen signatures, authenticated in such manner as the Bank may require of the persons authorised to sign and otherwise to act on the Company's behalf in respect of the transactions hereunder;
 - (e) the Company's latest Forms 24, 44 and 49 (or its equivalent under the Companies Act 2016) of the Companies Regulations lodged with the registry of companies under the Companies Act 1965 (now the Companies Act 2016) and/or the latest Return of Allotment of Shares, Notice of Approval for Allotment of Shares, Notification of Alteration of Share Capital, Notification for Change in the Registered Address and Notification of Change in the Register of Directors, Managers and Secretaries under the Companies Act 1965 (now the Companies Act 2016) lodged with the registry of companies;
- (6) The Bank shall have received, in form and substance satisfactory to the Bank and its solicitors, copies (in as many numbers as may be requested by the Bank) of the following documents, certified as true and correct by a director or the secretary of the Security Party:-
- (a) all necessary authorisations, approvals including without limitation, a resolution by the board of directors of the Security Party authorising:-
 - (i) the execution of the relevant Security Documents;
 - (ii) either, the use of the Security Party's common seal upon the relevant Security Documents or, where appropriate the person(s) to sign the relevant Security Documents under hand for and on behalf of the Security Party;
 - (b) the certificate of incorporation of the Security Party;
 - (c) the Memorandum and Articles of Association of the Security Party;
 - (d) the Security Party's latest Forms 24, 44 and 49 (or its equivalent under the Companies Act 2016) of the Companies Regulations lodged with the registry of companies under the Companies Act 1965 (now the Companies Act 2016) and/or the latest Return of Allotment of Shares, Notice of Approval for Allotment of Shares, Notification of Alteration of Share Capital, Notification for Change in the Registered Address and Notification of Change in the Register of Directors, Managers and Secretaries under the Companies Act 1965 (now the Companies Act 2016) lodged with the registry of companies;
- (7) The Bank is satisfied that (if the Company is a company):-
- (a) the Company's Memorandum and Articles of Association give power for the Company to execute and deliver the Facilities Agreement and where applicable, the Security Documents and to perform and observe all the Company's obligations hereunder and thereunder; and
 - (b) the execution, delivery and performance by the Company of the Facilities

Agreement and the relevant Security Documents have been duly authorised and approved by the directors of the Company and, if so required by the Bank, by the Company's shareholders as well;

- (8) In respect of each Security Party which is a company, the Bank is satisfied that:-
- (a) the Security Party's Memorandum and Articles of Association give power for that Security Party to execute and deliver the relevant Security Documents, and to perform and observe all that Security Party's obligations hereunder and thereunder; and
 - (b) the execution, delivery and performance by the Company of the Facilities Agreement and the relevant Security Documents have been duly authorised and approved by the directors of that Security Party and if so required by the Bank, by that Security Party's shareholders as well.
- (9) Where any of the Security Documents would require registration with the registry of companies, the Bank's solicitors shall have lodged with the registrar of companies the relevant Statement of Particulars to be Lodged with Charge under the Companies Regulations in accordance with Section 352 of the Companies Act 2016.
- (10) The Company shall have paid all fees, charges, costs, expenses and other payments whatsoever which are due and payable for or in connection with the Facilities or the Security Documents or which have accrued under the Facilities or the Security Documents or which are necessary or advisable or which the Bank may require for or in connection with the execution, delivery, completion, perfection, registration, observance, performance, legality, validity or enforceability of the Security Documents.
- (11) The Bank is satisfied that the Company has complied with or satisfied all the Bank's requirements in respect of the operation of the Facilities.

2. ADDITIONAL CONDITIONS PRECEDENT FOR EACH UTILISATION OF THE FACILITIES

- (1) The representations and warranties referred to the Third Schedule being true, accurate, correct and complied with in all respects;
- (2) The Bank shall have received such other certificates, documents of or evidencing title, instruments, confirmations, opinions, authorisations, assurances, statements, undertakings, receipts and other documents as the Bank may require.
- (3) The Company shall have complied with and satisfied such other additional terms and conditions as the Bank may from time to time stipulate or prescribe.
- (4) No event of default shall have occurred on the date of any proposed utilisation of the Facilities or on the date of request for or notification of any utilisation of the Facilities.

THIRD SCHEDULE

(which shall be taken and construed as an integral part of this Agreement)

REPRESENTATIONS AND WARRANTIES

(Clause 3.1)

The Company acknowledges that the Bank has entered into the Security Documents in full reliance on representations by the Company in the following terms, and the Company now represents and warrants to the Bank that:

(a) **Security Documents legal, valid and binding**

Each of this Agreement and the Security Documents constitutes the legal, valid and binding obligations of the Company and where applicable, any security party, in accordance with their respective terms.

(b) **Consents**

All the necessary consents (including without limitation, shareholders or creditors of the Company) and payment of duty (including stamp duty) or tax and all the necessary consents approvals, licences, authorisation of, filing with, or other act by or in respect of any governmental authority required in connection with the execution, delivery, performance, validity or enforceability of the Security Documents have been obtained.

(c) **Information**

All information furnished by the Company in connection with the Security Documents do not contain any untrue statement or omit to state any fact the omission of which makes any statements made therein in the light of the circumstances under which they are made, misleading and all expressions of expectation, intention, belief and opinion and all projections contained therein were honestly made on reasonable grounds after due and careful inquiry by the Company and where applicable, any security party.

(d) **Change in the Company**

The Bank is satisfied that as from the date when the Company first applied for the Facilities, there have been no material adverse changes in the financial affairs of the Company and where applicable, any security party, which could or might adversely affect the decision of the Bank to proceed with the Facilities.

(e) **No Security**

At the date of this Agreement and other Security Documents related thereto, no charge, mortgage, debenture, pledge or lien exists on the security created under the Facilities (other than as disclosed to the Bank).

(f) **Disclosure**

The Company has fully and accurately disclosed in writing to the Bank all facts relating to the Company which the Company knows or should reasonably know and which are material for disclosure to the Bank in the context of the Facilities to

which the Company is a party and the information (be it in writing or otherwise) furnished by the Company in connection with the Security Documents to which the Company is a party does not contain any untrue statement or omit to state any material fact the omission of which makes the statements therein, in the light of the circumstances under which they were made, misleading in a material adverse respect, and all expressions, intention, belief and opinion contained therein were honestly and carefully made on reasonable grounds.

(g) **Representative and Warranties**

The representative and warranties in the Letter of Offer shall apply.

(h) **Status**

The Company is a Malaysian citizen/resident in Malaysia and is of full age and of sound mind or is a duly established and subsisting under the laws of Malaysia and has the power and authority to own properties and assets and carry on business as is now being conducted.

(i) **Powers and Authorisations**

The Company is not an undischarged bankrupt/insolvent and has not committed any act of bankruptcy and no bankruptcy/winding-up petition has been presented against the Company and the Company has the power to execute, deliver and perform the transactions contemplated in this Agreement and the Security Documents to which the Company is a party; and this Agreement and the Security Documents constitute valid, binding and unconditional obligations of the Company enforceable in accordance with their respective terms.

(j) **Non-violation**

Neither the execution and delivery of this Agreement and the Security Documents nor the performance of any of the transactions contemplated therein does or will contravene or constitute a default under, or cause to be exceeded any limitation on the Company, or the powers of the Company imposed by or contained in, (a) any law by which the Company or any of his assets are bound or affected, or (b) any agreement to which the Company is a party or by which his assets are bound.

(k) **No default**

No event has occurred which constitutes, or which with the giving of notice and/or the lapse of time and/or a relevant determination would constitute a contravention of, or default under, any agreement or instrument by which the Company or any of the Company's assets is bound or affected being a contravention or default which might either have a material adverse changes on the assets or financial condition of the Company or materially and adversely affect the Company's ability to observe or perform the Company's respective obligations under this Agreement and the Security Documents when executed.

(l) **Litigation**

No litigation, arbitration or administrative proceeding or claim which might by itself or together with any other such proceedings or claims either have a material effect on the Company's assets or condition or materially affect the Company's

ability to observe or perform the Company's respective obligations under this Agreement and the Security Documents, is presently in progress or pending or, to the best of the knowledge, information and belief of the Company, threatened against the Company or any of his assets, save for what has been previously disclosed by the Company.

(m) **Tax Liabilities**

All necessary returns have been delivered by or on behalf of the Company to the relevant taxation authorities and the Company is not in default in the payment of any taxes of a material amount.

(n) **Lawsuits**

No lawsuits by a governmental agency, body or other regulatory authority are pending or to be instituted against the Company which will adversely affect the ability of the Company to discharge the Company's respective obligations under this Agreement and the Security Documents.

(o) **No Immunity**

The Company is subject to civil and commercial law with regard to the Company's obligations under this Agreement and under the Security Documents and the execution, delivery and performance of this Agreement and the Security Documents constitute private and commercial acts rather than governmental or public acts and the Company or any of the Company's assets do not enjoy any immunity on the grounds of sovereignty or otherwise in respect of the Company's obligations under this Agreement and under the Security Documents.

(p) **Bankruptcy/ winding up**

There is no winding-up proceedings pending against the Company and the Company has not commenced any action for voluntary winding-up of itself;

(q) **Event of Default**

No Event of Default has occurred and/or is continuing.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

FOURTH SCHEDULE

(which shall be taken and construed as an integral part of this Agreement)

POSITIVE COVENANTS

(Clause 4.1)

The Company shall:

(a) **Direct and Unconditional Obligations**

ensure that at all times its obligations under this Agreement and the other Security Documents constitute direct and unconditional obligations of the Company;

(b) **Indebtedness**

pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its indebtedness and other obligations of whatever nature;

(c) **Tax, Assessments and Governmental Charges**

pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or any of its property prior to the date on which penalties attach thereto, except that the Company shall not be required hereby to pay any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings;

(d) **Ranking**

cause its respective payment obligations as and when due hereunder to rank prior to all its other unsecured permitted indebtedness except for such indebtedness as would, by virtue of the laws of Malaysia, be preferred in the event of its dissolution;

(e) **Other Incidental Acts**

from time to time on request from the Bank do or procure the doing of all such acts, deeds and will execute or procure the execution of all such documents as the Bank may consider necessary or desirable for giving full effect to this Agreement and the Security Documents or securing to the Bank the full benefits of all rights, powers and remedies conferred upon the Bank under this Agreement or the Security Documents;

(f) **Information**

furnish to the Bank on demand such information in respect of its properties and assets, as the Bank may from time to time reasonably require;

(g) **Third Party**

procure any third party to any Security Documents, if any, observe and perform all the terms and conditions contained in the Security Documents;

(h) **Legal Proceedings**

inform the Bank of any legal proceedings or claims (of a material nature) against or involving the Company immediately upon becoming aware of the same;

(i) **Consents**

shall obtain and promptly renew or cause and procure the attainment and renewal, from time to time, and will promptly 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 Company or the rights of the Bank under the Security Documents and the Company shall comply and/or procure compliance with the terms of the same;

(j) **Notice**

notify the Bank in writing immediately of the occurrence of any of the following:

- (i) any material adverse change in the condition (financial or otherwise) of the Company;
- (ii) any breach of any undertakings, provision or covenant contained in the Security Documents;
- (iii) any circumstances that have occurred or any other matters that may, materially prejudice the Company, any security interest created by any of the Security Documents or the interests of the Bank or the ability of the Company to perform any of its respective obligations under any of the Security Documents;
- (iv) any litigation, investigation or proceeding which may exist at any time between the Company and any governmental authority which in either case, if adversely determined, could have an adverse effect on the operations, assets, business or financial or other condition of the Company; and
- (v) any litigation, investigation or other proceedings of any nature whatsoever being threatened or initiated against the Company before any court, tribunal or administrative agency which in either case, if adversely determined, could have an adverse effect on the financial condition of the Company.

Each notice pursuant to this sub-clause shall be accompanied by a statement from the Company setting forth details of the occurrence referred to therein and stating what action the Company proposes to take with respect thereto (together with the amount of any contingent liability if such amount is ascertainable).

(k) **Authorisations**

- (i) maintain in full force and effect all relevant authorisations (governmental and otherwise) and will promptly obtain any further authorisations which may become necessary to enable it to own its assets, carry on its business and perform its obligations under, and any of the transactions contemplated by the Security Documents and pay all taxes levied on the Company by the due date thereof; and

- (ii) timeously carry out any registration, filing or notarisation of the Security Documents, pay any duty or tax and take any action whatsoever which may be necessary or desirable to ensure the legality, validity or enforceability in Malaysia of the liabilities and obligations of the Company or the rights of the Bank under the Security Documents in accordance with their terms;

(l) **Default**

if the Company becomes aware of the occurrence of an Events of Default, he shall forthwith notify the Bank and provide the Bank with full details of any steps which he is taking, or is considering taking, in order to remedy or mitigate the effect of the Events of Default or otherwise in connection with it.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

FIFTH SCHEDULE

(which shall be taken and construed as an integral part of this Agreement)

NEGATIVE COVENANTS

(Clause 4.2)

The Company shall not, unless the Bank otherwise consents in writing:

(a) **Create Security**

create, incur, assume or suffer or permit to exist any mortgage, cause to pledge, create any lien, deed or caveat and other encumbrance upon any of its property or revenues, whether now owned or hereafter acquired except:

- (i) any encumbrances to be created by the Security Documents;
- (ii) any encumbrances upon any of its property or revenues which has been disclosed in writing to the Bank prior to the execution of the Security Documents;

(b) **Create Further Security**

further encumber any assets of the Company (with the exception of hire purchase or leasing facilities);

(c) **Effect Additional Insurance**

save and except at the request of the Bank, effect or keep on foot or permit to effect or keep on foot such Insurance against any risk in respect of any property charged or secured to the Bank when the Bank has effected or has kept on foot such Insurance;

(d) **Indebtedness**

incur, assume, guarantee or permit to exist any indebtedness except:

- (i) the financing, credit or accommodation as have been disclosed in writing to and consented to in writing by the Bank; and
- (ii) any unsecured indebtedness payable on demand or maturing by its terms within twelve (12) months after the date on which it was originally incurred;

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXECUTION

Executed as an Agreement on the day and year first set out in Item 1 of the First Schedule herein

THE BANK

Signed by

as Attorney for and on behalf of
HSBC BANK MALAYSIA BERHAD
(Company No. 127776-V) in the
presence of:

HSBC BANK MALAYSIA BERHAD
(Company No. 127776-V)
by its Attorney

.....
Signatory

Name:

NRIC No:

The Common Seal of
was hereunto affixed in
the presence of:

.....
Director
Name:
NRIC No.:

.....
Director
Name:
NRIC No.:

was hereunto affixed in
the presence of:

Name:
NRIC No.: