**LETTER OF EARMARK**

**To: OCBC Bank (Malaysia) Berhad (295400-W) (“the Bank”)**

1. I/We, whose name is specified in Section 1 of the Schedule **(“the Customer”)** agrees that earmarking of my/our credit facility(ies) **(“Credit Facility”)** specified in Section 2 of the Schedule and/or my/our Account (as defined below) may be effected by the Bank at my/our request under the applicable provisions of Clauses 1(a), (b) and/or (c) below, subject to the terms and conditions hereinafter set out:

(a) **Credit Facility earmarked for other credit facilities / liabilities of the Customer**

At the request of the Customer, the Bank has agreed that the Credit Facility(ies) will be varied or interchanged to make available to the Customer the other credit facility(ies) described in Section 3(a) of the Schedule or to earmark for other liabilities of the Customer specified in Section 3(b) of the Schedule **(“Earmarked Liability”).**The Customer hereby irrevocably authorises the Bank to debit the Credit Facility to the extent of the Earmarked Liability and apply the said amount towards settlement of the Earmarked Liability without any notice or reference to the Customer as and when the Earmarked Liability falls due or is required to be settled by the Bank.

(b) **Credit Facility of Customer earmarked for use by Third Party(ies)**

In consideration of the Bank agreeing at the request of the Customer to allow the party (s)/company(ies) described in Section 4(a) of the Schedule (“the Third Party(ies”) to utilise the Credit Facility of the Customer in the manner described in Section 4(b) of the Schedule, the Customer agrees that the Credit Facility available for its own and/or Third Party(ies)’utilisation will be reduced by the amount utilised by the Customer and/or Third Party(ies) or earmarked for utilisation by the Third Party(ies). The Customer shall procure the execution of **Annexure 2** by the Third Party(ies).

(c) **Credit Balance in Customer’s Account earmarked for own/Third Party(ies) liability**

In consideration of the Bank granting or continuing to grant the Credit Facility to the Customer or credit facility(ies) to the Third Party(ies), the Customer agrees that the credit balance up to the amount specified in Section 5(a) of the Schedule (“Earmarked Amount” which in the case of a deposit account, shall include interest thereon) under the account referred in Section 5(b) of the Schedule (“Account”) will be earmarked for its own and/or Third Party(ies)’ liability specified in Section 5(c) of the Schedule (“Earmarked Liability”). The particulars of the Third Party(ies) are described in Section 5(d) of the Schedule. The Customer hereby irrevocably authorises the Bank to debit the Account to the extent of the Earmarked Amount and apply the said amount towards settlement of the Earmarked Liability without any notice or reference to the Customer as and when the Earmarked Liability falls due or is required to be settled by the Bank.

2. The Customer further agrees that:

1. The amounts earmarked under the Credit Facility under Clause 1(a) and (b) above (“Earmarked Amount”) together with interest thereon (including default and compound interest), commissions, fees and other bank charges if applicable, shall form part of the amount outstanding under the Credit Facility and shall be payable by the Customer subject to the terms and conditions in the letter(s) of offer, facilities agreement (including supplements thereto) and other security documents (collectively referred as the “Security Agreements”) in respect of the Credit Facility. Without limiting the foregoing, the Bank may at anytime or from time to time debit the Customer’s accounts (whether current account or other account) towards payment of all amounts (together with interest thereon, commissions, fees and other bank charges) utilised by the Third Party(ies) under the Credit Facility;
2. If the Credit Facility is an overdraft facility, the Customer agrees that the Bank is entitled to return any cheque drawn upon the said account which would cause the approved limit as reduced by the Earmarked Amount to be exceeded; and
3. It shall procure the execution of **Annexure 1** by the guarantor(s)/security party(ies).

3. Notwithstanding any of the terms and conditions mentioned herein, the terms and conditions in the Security Agreements shall continue to be in full force and effect and nothing herein contained shall in any way impair, prejudice, diminish or otherwise adversely affect the Bank’s right powers and remedies under the Security Agreements and the Customer expressly covenants that the Security Agreements shall subsist and be enforceable to secure the Credit Facility utilised or drawn in the manner set out above and the payment and repayment by the Customer of the amount outstanding under the Credit Facility.

4. Notwithstanding any other provisions herein, the Bank shall have the absolute and unfettered discretion at any time or from time to time, to review the terms of payment of the Credit Facility or the terms and conditions set out herein including requiring immediate repayment of the Earmarked Amount, the Earmarked Liability or the Credit Facility.

5. The Customer shall indemnify the Bank and hold the Bank harmless from any losses, damages and expenses whatsoever, legal or otherwise (including but not limited to all legal costs incurred by the Bank on a solicitor and own client basis) which the Bank may sustain, suffer or incur as a consequence of any default in the payment of any sums under the Credit Facility, the Earmarked Amount or the Earmarked Liability or any portion thereof or on account of the non-observance or non-satisfaction of all or any of the obligations or liabilities of the Customer to the Bank. The Bank’s certification of the amount of its losses, damages and expenses hereunder shall be conclusive and binding on the Customer save for any manifest error.

6. This Agreement shall be binding upon the Customer including its successors in title, estate and personal or legal representatives.

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| **The Customer**  ***[If the Customer is a company or limited liability partnership - execution under hand]***   |  |  |  | | --- | --- | --- | | \*Signed by  for and on behalf of the Customer on the        day of  in the presence of:- | ] ] ]  ] |  | | ………………………………………..  *Witness* | |  | | Name:  NRIC No.: | |  | | Address : | |  |   ***[If the Customer is a company - execution under Common Seal]***   |  |  |  | | --- | --- | --- | | \*The Common Seal of the Customer  was hereunto duly affixed on        day of  in the presence of:- | ]  ]  ]  ] |  | | …………………………………………. ..  *Director* | | …………………………………………....  *\* Director / Secretary* | | Name: | | Name: | | \* NRIC / Passport No.: | | \* NRIC / Passport No.: | | Country of Issue : | | Country of Issue : |   ***[If the Customer is/are individuals]***   |  |  | | --- | --- | | .……………………………………….........  *Signature of Customer* | ………………………………………………  *Signature of Witness* | | Name: | Name: | | \* NRIC / Passport No.: | \* NRIC / Passport No.: | | Country of Issue : | Country of Issue : | | Address : | Address : | | Date: |  |  |  |  | | --- | --- | | .……………………………………….........  *Signature of Customer* | ………………………………………………  *Signature of Witness* | | Name: | Name: | | \* NRIC / Passport No.: | \* NRIC / Passport No.: | | Country of Issue : | Country of Issue : | | Address :  Date: | Address : |   \* *Delete whichever not applicable.* |  |

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| --- | --- | --- |
| SCHEDULE | | |
| Section | Items | Particulars |
| 1 | **The Customer**  Name: |  |
|  | Address: |  |
| 2 | **The Credit Facility**  Type of Facility and Amount: |  |
| \*3 (a) | **\*Credit Facility Earmarked for other credit facilities/ liabilities of Customer**  Type and Amount of other credit facilities granted to Customer earmarked against Customer’s Credit Facility:  **OR** |  |
| \*3(b) | Type and Amount of Customer’s liability earmarked against Customer’s Credit Facility: |  |
| \*4 (a) | **\*Credit Facility Earmarked for use by Third Party(ies)**  **The Third Party(ies)**  Name: |  |
|  | Company Number /Notice of Registration Number/NRIC No: |  |
|  | Address: |  |
| \*4(b) | Type and Amount of Customer’s Credit Facility earmarked for use by Third Party(ies): |  |

|  |  |  |
| --- | --- | --- |
| SCHEDULE | | |
| Section | Items | Particulars |
| \*5(a) | **\*Credit Balance in Customer’s Account earmarked for own/third party use**  Earmarked Amount: |  |
| \*5(b) | Account to be earmarked: |  |
| \*5(c)  \*5(d) | Earmarked Liability:  **The Third Party(ies)**  Name:  Company Number /Notice of Registration Number/NRIC No:  Address: |  |
| \*6(a) | **\*Security Party/Guarantor**  Name: |  |
|  | Company Number/Notice of Registration Number/NRIC No.: |  |
|  | Address: |  |
| \*6(b) | **Type and Date of Security/ Guarantee**  (eg: Guarantee, Land Charge, Deed of Assignment etc, and date) |  |

***\* If the Section is not applicable, please indicate “N/A”***

**ANNEXURE 1**

**\*Where there is 3rd party security party /guarantor(s) for the Credit Facility:**

To: OCBC Bank (Malaysia) Berhad (295400-W) (“the Bank”)

I/We, the party specified in Section 6(a) of the Schedule (“the Security Party/Guarantor”), hereby consent to the arrangement specified in this Letter of Earmark and confirm that my/our security/guarantee as specified under Section 6(b) of the Schedule for the Credit Facility shall continue in full force and effect to secure the Credit Facility utilised or drawn by the Customer and/or the Third Party(ies), as the case may be, in the manner set out in the Schedule to this Agreement and the payment and repayment of all amounts whatsoever outstanding under the Credit Facility.

**THE SECURITY PARTY/GUARANTOR**:

***[If the Security Party/Guarantor is a company or limited liability partnership - execution under hand]***

|  |  |  |
| --- | --- | --- |
| \*Signed by  for and on behalf of  the Security Party/Guarantor on the        day of  in the presence of:- | ] ] ]  ]  ] |  |
| ………………………………………..  *Witness* | |  |
| Name:  NRIC No.: | |  |
| Address : | |  |

***[If the Security Party/Guarantor is a company - execution under Common Seal]***

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| --- | --- | --- |
| \*The Common Seal of the  Security Party/Guarantor  was hereunto duly affixed on        day of  in the presence of:- | ]  ]  ]  ]  ] |  |
| …………………………………………...  *Director* | | …………………………………………....  *\* Director / Secretary* |
| Name: | | Name: |
| \* NRIC / Passport No.: | | \* NRIC / Passport No.: |
| Country of Issue : | | Country of Issue : |

***[If the Security Party/Guarantor is/are individuals]***

|  |  |
| --- | --- |
| . ……………………………………….........  *Signature of Security Party/Guarantor* | ………………………………………………  *Signature of Witness* |
| Name: | Name: |
| \* NRIC / Passport No.: | \* NRIC / Passport No.: |
| Country of Issue : | Country of Issue : |
| Address : | Address : |
| Date: |  |

|  |  |
| --- | --- |
| . ……………………………………….........  *Signature of Security Party/Guarantor* | ………………………………………………  *Signature of Witness* |
| Name: | Name: |
| \* NRIC / Passport No.: | \* NRIC / Passport No.: |
| Country of Issue : | Country of Issue : |
| Address :  Date: | Address: |

\* *Delete whichever not applicable.*

**ANNEXURE 2**

**\*Where Credit Facility of Customer earmarked for use by Third Party(ies)**

To: **OCBC Bank (Malaysia) Berhad** (295400-W) (“the Bank”)

In consideration of the Bank agreeing at the Customer’s request to allow me/us to utilise the Credit Facility of the Customer in the manner and up to the amount described in Section 4(b) of the Schedule, I/each of us hereby irrevocably agree, undertake and covenant :-

1. to pay the Bank on demand the amounts together with interest thereon (including default and compound interest), commissions, fees and other bank charges utilized by me/each of us (“the Outstanding Amounts”) and the Bank may at anytime or from time to time debit my/our respective accounts towards payment of the Outstanding Amounts. If I/we are also guarantor(s) for the Credit Facility, I/we agree that the Bank is also entitled to debit my/our respective accounts towards payment of all amounts together with interest thereon (including default and compound interest), commissions, fees and other bank charges utilized by the Customer and/or the other Third Party(ies). If any amounts accepted or received by the Bank in a currency other than Ringgit Malaysia or the currency of the Credit Facility after conversion into Ringgit Malaysia or the currency of the Credit Facility (at the Bank’s then prevailing counter selling rate of exchange or such other rate or rates and on such date of conversion as may be determined by the Bank at its absolute discretion) is less than the Outstanding Amounts, I/we shall pay the shortfall to the Bank;
2. to indemnify the Bank and save the Bank harmless from any action, claim, damage, liability or loss or expense whatsoever (including legal expenses on a solicitor and own client basis) that may arise or which the Bank may incur or suffer as a result of allowing me/us to utilise the Credit Facility in the manner above;
3. to deposit immediately with the Bank, cash and/or any other forms of security or securities acceptable to the Bank at any time and from time to time which the Bank may require me/us to do so during the currency of this Indemnity;
4. the undertakings and indemnity in this agreement shall be binding upon my/our heirs, personal representatives, permitted assigns, liquidators and successors-in-title.

**THIRD PARTY**

***[If the Third Party is a company or limited liability partnership - execution under hand]***

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| --- | --- | --- |
| \*Signed by  for and on behalf of the Third Party on the        day of  in the presence of:- | ] ] ]  ] |  |
| ………………………………………..  *Witness* | |  |
| Name:  NRIC No.: | |  |
| Address : | |  |

***[If the Third Party is a company - execution under Common Seal]***

|  |  |  |
| --- | --- | --- |
| \*The Common Seal of the Third Party  was hereunto duly affixed on        day of  in the presence of:- | ]  ]  ]  ] |  |
| …………………………………………...  *Director* | | …………………………………………....  *\* Director / Secretary* |
| Name: | | Name: |
| \* NRIC / Passport No.: | | \* NRIC / Passport No.: |
| Country of Issue : | | Country of Issue : |

***[If the Third Party is/are individuals]***

|  |  |
| --- | --- |
| .……………………………………….........  *Signature of Third Party* | ………………………………………………  *Signature of Witness* |
| Name : | Name: |
| \* NRIC / Passport No.: | \* NRIC / Passport No.: |
| Country of Issue : | Country of Issue : |
| Address : | Address : |
| Date: |  |

|  |  |
| --- | --- |
| .……………………………………….........  *Signature of Third Party* | ………………………………………………  *Signature of Witness* |
| Name: | Name: |
| \* NRIC / Passport No.: | \* NRIC / Passport No.: |
| Country of Issue : | Country of Issue : |
| Address :  Date: | Address : |

\* *Delete whichever not applicable.*