**FACILITIES AGREEMENT**

**(Consumer Banking)**

**THIS AGREEMENT** is made the       day of       between:-

(1) **THE PARTY** whose name and particulars are set out in the **Execution Page** of this Agreement as “the Borrower” **(**hereinafter called **"the Borrower");** and

(2) **OCBC Bank (Malaysia) Berhad (199401009721 / 295400-W)** (hereinafter called **"the Bank"**).

**NOW THIS AGREEMENT** **WITNESSETH** as follows:-

**PART A**

**SECTION 1**

**Section 1.1 The Housing Loan or the Facilities**

At the Borrower’s request, the Bank has agreed to lend the Borrower money to purchase the Property upon the terms and conditions contained in the Letter of Offer and in this Agreement. It is a key term of this Agreement that the Borrower will offer the Property as security to secure the repayment and payment by the Borrower of all amounts from time to time outstanding under the Housing Loan. If required by the Bank, the Property shall also secure the Facilities.

**Section 1.2 Purposes**

The Borrower must use the proceeds of the Housing Loan or the Facilities for the purposes as stated in the Letter of Offer. However the Bank is not bound to ensure that the Borrower uses the Housing Loan or the Facilities for the purposes stated in the Letter of Offer above.

**Section 1.3 Agreement to Borrow and Lend**

Subject to the terms and conditions of this Agreement and in the Letter of Offer, the Bank has agreed to make available the Housing Loan or the Facilities to the Borrower on the basis of and in full reliance upon the warranties, representations and undertakings contained in Section 12.2.

**SECTION 2**

**Section 2.1 Definitions**

In this Agreement, the following words have the meaning given to them below.

|  |  |
| --- | --- |
| "Bank" | **OCBC BANK (MALAYSIA) BERHAD**, a company deemed registered in Malaysia under the Companies Act 2016 with limited liability and having a place of business at the address set out in **Section 1 of Schedule 1** and, where the context so permits, include its successors-in-title, assigns and such other entity in which it is merged or amalgamated or to which its business or undertaking is transferred. |
| "Banking Day" | A day when banks are open for general banking business in the state where the Bank is located.  |
| "Base Rate" | 1. The rate of interest stated by the Bank from time to time as its base rate; or
2. If the term Base Rate is not used, then the rate of interest stated by the Bank to be applied for the purposes of this Agreement.
 |
| "Borrower" | The person whose name and particulars are set out in the **Execution Page** of this Agreement and named in this Agreement as borrower of the Housing Loan. |
| "Default Rate" | The default rate of interest applicable to the Housing Loan as stated in the Letter of Offer. |
| "Event of Default" | Any of the events, situations or circumstances set out in Section 8.1 of this Agreement. |
| "Housing Loan" or “Facilities”  | 1. The principal or aggregate principal amount of the term loan(s) for the purchase of Property specified in the Letter of Offer that the Bank has agreed to lend to the Borrower; and
2. Where applicable, this shall include other term loans and facilities specified in the Letter of Offer and other facilities previously lent or hereafter agreed to be lent by the Bank. In such cases, the term “Housing Loan” or “Facility(ies)” wherever used in this Agreement, shall refer to and include all such other facilities.
 |
| "Indebtedness" | All money outstanding or payable by the Borrower under the Security Documents in connection with the Housing Loan and the Facilities:(i) whether such money is payable: * immediately or in the future;
* upon the happening of any contingency as a result of a breach of any obligation under the Security Documents;
* as principal or as surety; or
* solely or jointly with any other person;

(ii) including principal, interest, additional interest, charges, commission and other costs; and1. including monies referred in Sections 7.2 and 10.2(b).
 |
| "Letter of Offer" | (i) The letter(s) of offer including any amendments or supplements thereto issued by the Bank and accepted by the Borrower containing the main terms and conditions upon which the Bank has agreed to provide the Housing Loan and/or the Facilities to the Borrower;1. In the event of conflict or discrepancy between the terms and conditions of the Letter of Offer and this Agreement, the terms and conditions of the Letter of Offer shall prevail; and
2. Where applicable, the term “Letter of Offer” shall refer to the letter of offer set out in **Section 2 of Schedule 1** hereto and any one of the letter(s) of offer for additional or further facility(ies); and/or
3. Any letter(s) for the variation, restructuring, conversion, interchange or substitution of the Housing Loan or Facilities or additional or further facilities.
 |
| "Lock-in Period" | Where applicable, the period stated in the Letter of Offer during which the Bank may impose an early termination fee on the Borrower for repaying any part of, or the entire Indebtedness. |
| "Margin" | The percentage stated in the Letter of Offer above or below the Base Rate.  |
| "Prescribed Rate" | The rate of interest applicable to the Housing Loan as stated in the relevant Letter of Offer. |
| "Property" | The piece of land or lease or parcel in a subdivided building more particularly identified in the relevant Letter of Offer and wherever the context permits shall include the Car Park(s) and also the Accessory Parcel appurtenant to the Property together with all buildings and fixtures affixed to the land.  |
| "Ringgit Malaysia"; "RM" | The lawful currency of Malaysia. |
| "Security Documents" | This Agreement, the Letter of Offer and such other security documents that have been or will be executed by the Borrower or a Security Party to secure the repayment of the Housing Loan or the Facilities by the Borrower as well as the payment of all amounts outstanding in connection with the Housing Loan or the Facilities. |
| “Security Party” | Any party providing any guarantee or security to secure the payment or repayment of the Indebtedness or any part of it. |
| “vendor” | The developer or seller of the Property and includes the landowner. |

**SECTION 3**

**Section 3.1 Conditions Precedent to Drawing**

The Bank may not release the Housing Loan or any part thereof unless it has satisfactory evidence that the conditions set out in the Letter of Offer and in **Schedule 2** to this Agreement have been fulfilled.

**Section 3.2 Cancellation of the Housing Loan**

If the Borrower does not comply with any condition within the time stated by the Bank, the Bank is entitled to cancel the Housing Loan after serving advance notice to the Borrower.

**Section 3.3 Waiver of Conditions**

The conditions set out in this Section are inserted for the sole benefit of the Bank. The Bank may waive compliance with any of the conditions in this Section without affecting its rights under this Agreement. Such waiver does not prevent the Bank from later demanding the Borrower to comply with any or all of the waived conditions within any reasonable period notified by the Bank to the Borrower. No waiver of any conditions precedent constitutes a waiver of any other conditions precedent except to the extent expressly provided in such waiver.

**SECTION 4**

**Section 4.1 Payment of Interest**

The Borrower must pay to the Bank interest at the relevant Prescribed Rate and where applicable, the Default Rate, up to the date when the Housing Loan is fully repaid or paid to the Bank.

**Section 4.2 Calculation of Interest**

Interest is calculated on a daily or monthly rest basis as indicated in the Letter of Offer based on a 365 day year.

Where interest is calculated on daily rests – Interest at the Prescribed Rate for Housing Loan shall be calculated on the daily outstanding balance and debited into the Housing Loan account at the end of each calendar month and must be serviced monthly. Upon commencement of instalment payments, the Borrower shall service the monthly instalments inclusive of interest, on the first day of each calendar month until the Housing Loan and all other sums payable is fully settled.

Where interest is calculated on monthly rests – Interest at the Prescribed Rate for Housing Loan shall be calculated on the outstanding balance as at the last day of the preceding calendar month and debited into the Housing Loan account at the end of each calendar month and must be serviced monthly. Upon commencement of instalment payments, the Borrower shall service the monthly instalments inclusive of interest, on the first day of each calendar month until the Housing Loan and all other sums payable is fully settled.

**Section 4.3 Default Rate**

If the Borrower fails to pay any amount payable under the Housing Loan on the due date (including amounts payable following a termination of the Housing Loan), the Borrower must pay the Bank interest at the Default Rate on the entire overdue amount. Interest at the Default Rate is calculated from the due date until the date of actual payment (both before and after court judgment).

**Section 4.4 Variation of Interest Rate**

(a) Regardless of any other provisions in this Agreement or the Letter of Offer, the Bank is entitled to vary at any time:

(i) the interest rate and the manner of calculation of the interest rate; and
(ii) any commission, discount or other banking charges.

(b) Such variation may be made in respect of the following:

1. Base Rate; or
2. subject to Section 4.4(c), the Margin;

or a combination of any one or more of the methods of calculation of interest, including changing the basis on which the interest rate , the Prescribed Rate or the Default Rate is arrived at.

(c) The amendment to the Margin will only be made to reflect changes in the credit risk profile or creditworthiness of the Borrower during the tenure of the Housing Loan/Facilities.

(d) The amended or new Prescribed Rate or commission, discount or banking charges is payable from the date such amended or new Prescribed Rate takes effect.

(e) The Bank will give at least 21 calendar days’ (or such other time frame as may be required to comply with any requirements under the applicable laws, regulations or guidelines) prior notice of change of the Prescribed Rate, or the new commission, discount or banking charges to the Borrower. Notice by the Bank may be given:

(i) in accordance with the "Notice" provisions set out in Section 11 of this Agreement; or

(ii) by general advertisement in any form(s) of mass communication; or

(iii) by notice in the Bank’s website and/or placed at the banking hall of the Bank’s branches.

(f) If the rate of interest payable on the Housing Loan is varied and the Housing Loan is repayable in instalments, the Bank may:

 (i) vary the amount of such Instalments; or

(ii) vary the number of Instalments; or

(iii) vary both.

**Section 4.5 Capitalisation of Interest**

Interest (other than interest at the Default Rate) on any amounts secured under the Security Documents (including capitalised interest), is to be capitalised and added to the principal sum then owing on such date as stated in the Letter of Offer or as determined by the Bank. The total sum will then bear interest at the relevant Prescribed Rate. This total sum shall be secured and payable accordingly, whether before or after court judgment or demand for payment has been made on the Borrower.

**Section 4.6 Capitalised Interest excluded from Limit or Principal**

For the purpose of ascertaining whether the limit of the principal amount has been exceeded or not, all accumulated and capitalised interest are deemed to be interest and not principal sum.

**Section 4.7 Loan Statement**

The Bank will provide a loan statement to the Borrower at least once a year indicating the outstanding balance at the beginning and end of the period covered by the statement, the amount credited and charged, including interest and other non-interest charges, and the dates when those amounts were posted to the account. It is the Borrower’s obligation to check that the loan statement furnished by the Bank is correct. If the Bank does not receive a written objection from the Borrower to the contents of the loan statement together with supporting documents (if any) to support his objection within 21 days, or such shorter period as may be necessary to be imposed by the Bank as a result of the coming into force of any relevant law regulation or guideline, of the loan statement date, in the absence of any obvious error on the face of the loan statement or fraud by the Bank, the Borrower shall be deemed conclusively to have accepted the contents of such loan statement as true and accurate and such loan statement shall be final and conclusive and binding on the Borrower for all purposes whatsoever including for the purposes of any legal proceedings.

**SECTION 5**

**Section 5.1 Repayment**

(a) Regardless of any provision of this Agreement, the Housing Loan is immediately repayable upon demand by the Bank in writing upon the occurrence of an Event of Default.

(b) Until such a demand is made by the Bank, the Housing Loan is repayable at the dates and in such manner as stated in the Letter of Offer.

(c) The Bank will apply all monies received from the Borrower or from any other person or from the realisation of any security in such manner and for such purpose and in such order as set out in the respective Security Documents.

**Section 5.2 Redrawing or Re-borrowing**

The Bank may at its absolute discretion subject to the terms and conditions set out in the Letter of Offer, allow the Borrower to redraw or reborrow any of the amounts repaid or prepaid at any time and from time to time under the same account or under any other account, facility or facilities. Such amounts redrawn or reborrowed together with interest thereon shall form part of the Indebtedness secured by the Security Documents.

**SECTION 6**

**Section 6.1 Prepayment and Early Settlement**

The provisions in the relevant Letter of Offer will apply to prepayment and early settlement of the Housing Loan.

**Section 6.2 Partial Repayment**

Partial repayments of the Housing Loan do not relieve the Borrower of any of the Borrower’s obligations under this Agreement, except to the extent of the total amounts repaid.

**SECTION 7**

**Section 7.1 Stamp Duties, Registration Fees and Other Costs**

(a) The Borrower must on demand pay the Bank:

(i) all costs and expenses (including legal fees, stamp duties, disbursements and any related penalties) the Bank incurs in connection with the preparation, execution, registration or perfection of the Security Documents;

(ii) all costs and expenses (including legal fees on a solicitor-client basis, stamp duties, disbursements and any related penalties) the Bank incurs in connection with:

(ai) the enforcement or the preservation of any rights under the Security Documents; or

(aii) the Bank’s involvement with any legal proceedings to protect, or connected to, the Property or any account(s) of the Borrower.

All such amounts are payable by the Borrower on a full indemnity basis. Such payment must be made together with interest from the date the costs and expenses are incurred to the date of full payment at the Prescribed Rate and if applicable at the Default Rate (both before and after judgment).

(b) Legal costs and expenses on a full indemnity basis are payable by the Borrower regardless of whether the Housing Loan is cancelled or aborted at any time before completion of legal documentation.

**Section 7.2**  **Upstamping**

In the event that the total monies advanced to or due and owing by the Borrower to the Bank shall at any time exceed the principal limit for which ad valorem stamp duty had been paid, then this Agreement or the Letter of Offer shall be upstamped with ad valorem duty to cover the excess. The stamp duty including any penalty incurred shall form part of the monies owing and payable by the Borrower and secured by this Agreement and the Security Documents.

**Section 7.3** **Principal and Secondary Instrument**

The relevant Letter(s) of Offer, this Agreement and the Security Documents are instruments employed in one transaction to secure such principal sum or the aggregate principal sums, as the case may be, for which ad valorem stamp duty had been paid from time to time on the original of this Agreement and/or any supplements thereto, and/or the relevant Letter(s) of Offer and/or Security Documents, together with all interest thereon, monies and liabilities covenanted and agreed to be paid by the Borrower and the Security Party under the Facilities granted by the Bank within the meaning of Section 4(3) of the Stamp Act, 1949 and for the purpose of the said Section, this Agreement is deemed to be the primary or principal instrument and the Security Documents are deemed to be the auxiliary or secondary instruments.

**Section 7.4 Complaints and Redress**

The Borrower may raise any queries or grievance with respect the Bank's services or regarding the Housing Loan/Facility directly with the account holding branch or to the Customer Complaint Department or Contact Centre of the Bank. The Borrower can also refer any unresolved dispute(s) with the Bank to the Ombudsman for Financial Services.

**SECTION 8**

**Section 8.1 Events of Default**

The Borrower has committed a default under the Security Documents, if the Borrower/the Security Party commits or may or might commit a breach of any of the covenants, undertakings, stipulations, terms, conditions, or provisions stated under the Security Documents or upon the happening of any one or more of the following events:

**(a) Non-payment**

The Borrower fails or defaults in the payment of any sum of money:

(i) on its due date, whether formally demanded or not, or

(ii) (if due on demand) when demanded by virtue of the provisions of the Security Documents; or

**(b) Breach of Other Terms and Conditions**

The Borrower:

(i) breaches any term of the Security Documents or in any document delivered under the Housing Loan or the Security Documents, or

(ii) fails to comply with any notice given under any of the Security Documents requiring him to remedy any breach of the terms of such Security Document; or

**(c) Breach of Representation and Warranties**

Any representation or warranty made or implied under:

(i) Section 12.2 or any other provision of this Agreement or in the Letter of Offer, or

(ii) any notice, certificate, letter or other document delivered under this Agreement,

is incorrect or misleading (as determined by the Bank) in a material detail as of the date on which it was made or deemed to have been made; or

**(d) Ability of the Borrower to Perform Terms in Security Documents**

Any event(s) has/have occurred, or a situation exists (including changes in the financial condition of the Borrower), which might, in the opinion of the Bank, affect the ability of the Borrower to perform his obligations under the Security Documents; or

**(e) Validity of the Security Documents**

The validity of any of the Security Documents is challenged by any person; or

**(f) Security in Jeopardy**

The Bank is of the opinion that any of the security created pursuant to the Security Documents is in jeopardy or the value of the security created pursuant to the Security Documents is insufficient for the Bank’s purpose upon valuation or re-valuation; or

**(g) Illegality**

It is or will become unlawful for the Borrower to perform or comply with any one or more of the obligations of the Borrower under the Security Documents; or

**(h) Authorisation and Consents**

Any authorization, approval, action, condition, consent, order, licence or thing at any time required to be taken, fulfilled or done for any of the purposes stated in Sections 12.2 and 12.4:

(i) is not taken, fulfilled or done, or

(ii) ceases to be in full force and effect without modification; or

**(i) Breach of Other Loans**

(i) The Borrower,

(ii) Any company deemed by the Bank to be associated to the Borrower by way of effective equity interest and/or management control, or

(iii) Any company in which the Borrower is deemed by the Bank to hold a controlling interest (whether by way of shareholding, or whether it is by reason that such company is accustomed or is under an obligations to act in accordance with the Borrower’s directions, interest or wishes),

commits a default of any provision of any agreement, or security documents, or both (as the case may be) relating to other accounts or loan facilities granted by other parties; or

**(j) Cross Default**

(i) Any other indebtedness of the Borrower becomes payable or due prematurely, or becomes capable of being declared payable or due prematurely, by reason of a default by the Borrower in its obligations with respect to that indebtedness; or

(ii) The Borrower fails to make any payment in respect of that indebtedness on the due date for such payment, or if due on demand when demanded, or

(iii) The security for any such indebtedness becoming enforceable; or

**(k) Legal Proceedings**

Any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Borrower; or

**(l) Enforcement Proceedings**

A distress or execution or other process of a court of competent jurisdiction is levied upon or issued against all or any part of the property of the Borrower and such distress, execution or other process is not discharged by the Borrower within five (5) days from the date of such levy or issue; or

**(m) Insolvency**

The Borrower:

(i) becomes insolvent or is adjudged a bankrupt,

(ii) is unable to pay its debts as they fall due,

(iii) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or

(iv) begins negotiations or takes any proceeding or other step with a view to readjustment, rescheduling or deferral of all or any part of its indebtedness; or

**(n) Bankruptcy**

(i) Any step or action is taken for the bankruptcy of the Borrower,

(ii) A petition for bankruptcy is presented against the Borrower, or

(iii) If such proceeding or action has been taken by or against the Borrower, that step or petition is not discharged or stayed within twenty-one (21) days from the date of the taking of the step or petition; or

**(o) Assignment**

The Borrower:

(i) makes an assignment for the benefit of its creditors, or

(ii) enters into an arrangement or composition for the benefit of its creditors, or

(iii) allows any judgment against him to remain unsatisfied for a period of fourteen (14) days or more, unless an appeal against the judgment is pending and a stay of execution has been granted; or

**(p) Moratorium on payments**

The Borrower:

(i) enters into or proposes to enter into, or

(ii) there is declared by any competent court or authority,

a moratorium on the payment of indebtedness or other suspensions of payments generally; or

**(q) Compulsory acquisition**

A notice or proposal for compulsory acquisition of all or any of the assets of the Borrower is issued or made under or by virtue of an Act of Parliament or other statutory provision; or

**(r) Death and Insanity**

The Borrower dies or becomes insane; or

**(s) Material Adverse Change**

Any event or series of events (whether within or outside of Malaysia and whether of a national or international nature) including any act of violence, terrorism, hostility or war or other calamity occurs which in the Bank’s opinion

1. could or might affect the Borrower’s ability or willingness to fully comply with all or any of his obligations under any of the Security Documents or make it improbable that the Borrower would be able to do so; or
2. would render it inadvisable or impractical for the Bank to make or continue to make the Housing Loan available or allow any use of the Housing Loan; or
3. could or might jeopardize the Housing Loan or any of its security or the Bank’s security position; or

**(t) Use of Housing Loan not for purposes stated**

The Housing Loan is not used for the purposes stated or the Housing Loan is used for illegal or speculative purposes; or

1. **Borrower’s Account re-designated or closed**

If the Borrower or the Borrower’s account is flagged as a result of:

1. any guideline or directive issued by any authority(ies); or
2. the account having been conducted unsatisfactorily; or
3. the account having been suspended due to a court order or by law; or
4. an investigation by the Bank or by any authority(ies) over suspicious transactions/activities or giving rise to negative findings including dishonesty, fraud or suspicious transactions/activities; or;
5. any freeze order or forfeiture order over the Property or other assets or account(s) of the Borrower or any Security Party; or

**(v) Security Document not perfected**

If any of the Security Documents cannot be perfected for any reason whatsoever or if any Security Document which requires to be registered, cannot be registered or is invalid for any reason whatsoever.

**SECTION 9**

**Section 9.1 Rights of Bank on Default**

(a) If any of the events described in Section 8.1 occurs, the Bank is entitled to immediately suspend further utilisation of any or all of the Housing Loan, or to reduce the limit or amount made available under the Housing Loan, without having to make a prior demand and the Indebtedness and all other sums payable under this Agreement and the Letter of Offer, will become and be deemed to be immediately due and payable, regardless of any provision of this Agreement to the contrary.

(b) If any of the events set out in Section 8.1 occurs, the Bank is entitled to take such action (whether on its own accord or through its agent(s)) as may be appropriate against the Borrower, including:

(i) recall the loan or to sue for the recovery of the Indebtedness either before, after or concurrently with the action to enforce any of the Security Documents, and

(ii) to apply any credit balance in whatever currency standing to any account of the Borrower with any office or branch of the Bank or any member of the Bank’s group of companies, towards satisfaction of the Indebtedness.

(c) Any part of the Housing Loan not disbursed or utilised before the default may be cancelled by the Bank. Upon such cancellation, any part of the Housing Loan already disbursed or utilised will become due and immediately repayable on demand, regardless of any provision of this Agreement to the contrary.

After the Bank has exercised the abovesaid, the Bank shall notify the Borrower accordingly.

**Section 9.2 Proceeds of Recovery**

Subject to statutory priorities (if any), all amounts received by the Bank from any proceeding instituted or step taken under any of the Security Documents are be applied by the Bank:

FIRSTLY: in payment or any rents, taxes, assessments, fees, lawful outgoings and other fees due and payable to the relevant authorities by the Borrower in respect of the Property charged or assigned to the Bank as security for the Housing Loan;

SECONDLY: in the enforcement of any of the Security Documents or in the performance of any duties or the exercise of any powers vested in the Bank, in payment of any costs, charges, expenses and liabilities incurred by the Bank and every person appointed by the Bank under the Security Documents in the enforcement of any of the Security Documents or in the performance of any duties or the exercise of any powers vested in it or him (including the fees and charges mentioned in this Agreement);

THIRDLY: in or towards payment to the Bank of all interest then accrued and remaining unpaid in respect of the Housing Loan;

FOURTHLY: in or towards payment to the Bank of the principal sum due and remaining unpaid under the Housing Loan;

FIFTHLY: in or towards payment to the Bank of all other moneys due and remaining unpaid under the Security Documents;

SIXTHLY: in payment of any net surplus to the Borrower or the persons entitled to such surplus within sixty (60) days from the date the Bank receives the net surplus. For any net surplus that remains unpaid after a period of sixty (60) days, the Bank shall pay a minimum compound interest at the average fixed deposit rate applicable for the period of twelve months for licensed banks as published by Bank Negara Malaysia plus one per cent on the amount in the net surplus upon expiry of the sixty (60) days until the date of payment. This provision shall not apply:- (a) where the Bank has exhausted all reasonable means to contact the Borrower or the persons entitled to such surplus, and the Borrower or the persons entitled to such surplus do/does not have a deposit account with the Bank and where the Unclaimed Moneys Act 1965 applies; or (b) in the event that the surplus or the net surplus or any part thereof becomes or has become or is likely to become the subject matter or part thereof in any legal proceeding.

PROVIDED ALWAYS THAT the Bank may alter the above order of payment or keep such amounts in a non-interest bearing suspense account. Such alteration in the order of payment, or payment into a suspense account, will not affect the right of the Bank to receive the full amount to which it would have been entitled if the primary order had been observed, or any lesser amount which the sum ultimately realised from the security may be sufficient to pay.

**Section 9.3 Deficiency in Proceeds of Sale**

The parties agree that, regardless of any other provision contained in this Agreement to the contrary:

(a) if the actual amount ultimately received by the Bank under the terms of this Agreement and/or the Security Documents, after deduction of the costs and expenses set out in Sections 7.1 and 9.2, is less than the amount due to the Bank under this Agreement and the Housing Loan, the Borrower will be liable for the amount of such shortfall;

(b) sub-section (a) applies whether or not the Bank is the purchaser of all the assets or properties charged and/or assigned to the Bank under the Security Documents at such sale;

(c) until payment is made for the amount of the shortfall, the Borrower will (regardless of any foreclosure proceedings taken or sale made by the Bank) also pay interest (both before demand as well as after judgment and irrespective of whether or not the banker-customer relationship between the Bank and the Borrower exists or has been terminated) on the shortfall at the Prescribed Rate and if applicable, the Default Rate, up to the date such shortfall together with all accrued interests is actually received in full by the Bank;

(d) any interest payable under this Section 9.3 is to be calculated and charged in accordance with Section 4.

**SECTION 10**

**Section 10.1 Agreement to maintain Mortgage Insurance Policy**

If the Borrower is required to take up, or in the event that the Bank takes up on the Borrower’s behalf, and maintains a mortgage reducing term policy, or any other policy, guaranteeing the repayment of the Indebtedness, the Borrower expressly agrees with the Bank to:

(a) cause the interest of the Bank as loss payee to be endorsed on the insurance policy so taken up;

(b) pay the premium on such policies; and

(c) deliver the receipts for such payments to the Bank.

**Section 10.2 Agreement to maintain insurance or takaful on the Property**

(a) The Borrower expressly agrees with the Bank that whenever required by the Bank, the Borrower will:

(i) ensure that the Property is adequately insured up to their full insurable value, against loss or damage by fire and such other risks as the Bank may reasonably require, with a licensed insurance company or where applicable, takaful operator approved by the Bank;

(ii) ensure that the interest of the Bank as chargee or assignee and loss payee is endorsed on the insurance policy or policies or where applicable, takaful contract or contracts so taken up; and

(iii) deposit with the Bank a certified true copy of the policy or policies or where applicable, takaful contract or contracts so taken up together with evidence of payment of the current insurance premium or where applicable, the current takaful contribution payable under such insurance policy or policies or takaful contract or contracts.

(b) The Borrower also expressly agrees that the Bank may but is not obliged to insure and keep the Property insured in accordance with Section 10.2(a)(i). In the event the Bank proceeds to do so, the Borrower shall be required to pay the insurance premium or where applicable, the takaful contribution on demand by the Bank. If the Borrower fails to pay the insurance premium or where applicable, the takaful contribution, the Bank shall proceed to make the payment on behalf of the Borrower and such payment shall be added to the Indebtedness for the Housing Loan.

**Section 10.3 Agreement to inform Bank change of address**

The Borrower must inform the Bank of any change in his/her contact information and/or correspondence address, telephone or mobile phone number, facsimile number and/or e-mail address. The Borrower may do so in writing by completing the Bank’s prescribed form and submitting the form to the Bank in the manner set out in the form or by notifying the Bank via such channels provided by the Bank or by such mode of communication as may be notified by the Bank to its customers from time to time.

**SECTION 11**

**Section 11.1 Notice by Bank**

Notices may be given or made by post, facsimile, personal delivery or such other mode as may be practicable and allowed by the Bank. Notices issued by or on behalf of the Bank (including computer generated notices/statements that do not require any signature) will be directed to the Borrower at the Borrower’s address, facsimile number or electronic mail address as stated in the Letter of Offer or the last known address, facsimile number or electronic mail address notified by the Borrower.

**Section 11.2** **Delivery**

The notices or other communications are given to the Borrower:

1. in the case of post, five (5) days after the date of posting;
2. in the case of facsimile, on the day of transmission;
3. in the case of electronic mail, on the day of transmission provided that the Bank has not received a failed or undeliverable message from the host provider of the recipient within the day of transmission;
4. in the case of personal delivery, at the time of delivery; or
5. in the case of courier, at the time of delivery.

**PART B**

**SECTION 12**

**Section 12.1 The Facilities**

1. The Bank may now or from time to time hereafter at the request of the Borrower grant Facilities including without limitation, facilities for construction, renovation, insurance payments, legal or valuation fees, additional or top-up loans including overdraft to the Borrower or vary, interchange or substitute the loans or any of them with any other facilities subject to such terms and conditions set out in the relevant Letter of Offer.
2. Where the Bank grants Facilities to the Borrower, all the provisions of this Agreement and the Security Documents, save and except such provisions which are inconsistent with the Letter of Offer or not applicable to the Facilities or interchanged or substituted facilities shall secure such Facilities and the interchanged or substituted facilities, unless otherwise stipulated by the Bank.

**Section 12.2 Representations and Warranties**

The Borrower hereby represents and warrants to the Bank as follows:-

(a) Status: each Security Party, which is a firm, society, association or corporation, are duly registered or incorporated under the laws of incorporation or registration applicable to Security Party;

(b)Contractual Obligations: this Agreement and the Security Documents, when executed, are legally enforceable against the Borrower and the Security Party and will not contravene any law, regulation, contractual restriction or the Constitution or other constituent documents of the Security Party;

 (c)Proceedings: there are no proceedings (whether civil or criminal) pending or threatened against the Borrower or any Security Party, which if adversely determined would materially and adversely affect their financial condition or ability to discharge the Indebtedness;

(d) Bankruptcy: no bankruptcy or winding-up proceedings have started or threatened against the Borrower, any Security Party or the vendor. No receiver or liquidator or manager or judicial manager had been appointed to take over the assets of the Borrower, any Security Party or the vendor;

(e) Event of Default: that no Event of Default has occurred and is continuing with respect to the Borrower or any Security Party;

(f) Material Adverse Change: there is no material adverse change in the financial condition of the Borrower or the Security Party or other conditions which will materially and adversely affect the ability of the Borrower or the Security Party to perform their respective obligations under this Agreement and the Security Documents;

1. Ownership of Assets: the Borrower and each Security Party are the legal and beneficial owners of any assets or property under the Security Documents;
2. Disclosure: the Borrower has not withheld any information which may result in the financing by the Bank contravening any lending limits or restrictions imposed upon the Bank by Bank Negara Malaysia or other authority having jurisdiction over the Bank;
3. Anti-Money Laundering: the Said Property and other assets given as security for the Facilities (including profits generated from the Said Property and other assets) and all monies now or hereafter paid to the Bank come from lawful sources and are not proceeds of unlawful activities in breach of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 or similar legislation applying in the jurisdiction where the monies are derived or any tax laws which the Borrower is subject to;
4. Information: all information and documents (such as statements, accounts, income statements etc) furnished by the Borrower or Security Party in connection with the Facilities or the Borrower/Security Party’s business assets or financial condition are complete, true and accurate, have not been falsified, are correct or can be verified with the source;

(k) Consents and approvals

 All approvals, licences, waivers and disclaimers from governmental or regulatory authorities or creditors or lessors or encumbrancers of the Property or any asset securing the Facilities have been obtained and shall be maintained in full force and effect; and

(l) Sanctions

Sanctions, prohibitions or restrictions in various forms may from time to time be imposed by the United States of America and other governments and/or regulatory authorities against certain countries, entities and individuals. Under these measures, the Bank may not be able to commence or continue with the financing of the Facilities, may not process or engage in any transactions that may involve a breach of such sanctions, and authorities may require disclosure of information including any actual or apparent breach of such sanctions, prohibitions or restrictions. The Bank shall not incur any liability whatsoever in taking the aforesaid actions.

**Section 12.3 Continuing Nature of Representations and Warranties**

The Borrower acknowledges that the Bank had relied on the above representations in granting the Facilities. The Borrower undertakes that each of the representations will continue to be true and correct on the date of each drawdown and throughout the tenure of the Facilities until fully settled. The Bank’s remedy for any breach shall not be affected by any investigation by or on behalf of the Bank into the affairs of the Borrower or any Security Party.

**Section 12.4 Positive Covenants**

The Borrower hereby undertakes and agrees with the Bank as follows:-

1. Financial and other information: to furnish or cause to furnish to the Bank, financial information relating to the Borrower and any Security Party or any asset to be provided to the Bank as security and Bank is permitted to verify the information with the source;
2. Observance of Security Documents: to observe and perform or to cause to be observed and performed, the terms and conditions of this Agreement and the Security Documents;
3. Right of inspection: to permit the Bank or its agents and servants upon prior notice to enter and inspect the Property, the sites and the works and construction (if any) thereon and any relevant records and documents and to require repairs or remedial works, make inventories and records;
4. Valuation: to submit to the Bank, as a drawdown condition, a valuation report addressed to the Bank over the Property conducted by a valuer on the Bank’s panel of valuers and other assets securing the Facilities;
5. Insurance: If insurance is not taken up by the Borrower, the Bank may but is not obliged to take up the insurance and the Bank shall not be held liable for any negligence whatsoever as a result of any action taken or omission to effect, take out, maintain, renew or increase any such insurance or otherwise. The Bank may require any insurance money received to be applied in or towards making good any loss or damage insured or towards discharge of the Indebtedness. The Borrower shall hold any insurance money if paid to and received by the Borrower in trust for the Bank;
6. Notification of default and change in condition: to notify the Bank of any Event of Default or of any other material change in the Borrower's business or constitution;
7. Compliance:to fully observe and comply with all relevant laws and regulations;
8. Termination of Sale and Purchase Agreement: to obtain the prior written consent of the Bank:
9. before commencing or maintaining any action, suit or proceedings in any court or tribunal against the vendor and/or any other person relating to the sale & purchase agreement or the Property or any asset securing the Facilities; and
10. before agreeing with the vendor to change the terms of the sale and purchase agreement or the termination, rescission, cancellation or revocation of the sale and purchase agreement or any matter affecting the Property.

 The Borrower must pay all sums received on termination or rescission of the sale and purchase agreement to the Bank and pending such payment shall hold such sums in trust for the Bank; and

(i) Sanction: to notify the Bank in the event the Borrower is aware or becomes aware of any sanction risks including those which may expose or involve the Bank in any breach or apparent breach of any sanctions, prohibitions or restrictions now or hereafter imposed by the United States of America or other governments and/or regulatory authorities in availing the Facilities and/or any transactions undertaken thereunder.

**Section 12.5 Negative Covenants**

The Borrower will not without the prior written consent of the Bank:-

(a) Negative Pledge:create or allow any Security Interest over the Property, assets, business or undertaking (both present or future) which secures the Facilities;

(b) Disposal of Assets: sell, transfer, lease or otherwise dispose of the Property or any asset which secures the Facilities or permit any such acts by a Security Party. Any lease or tenancy of the Property must be made subject to the prior rights and interests of the Bank and no endorsements of such leases or tenancies is permitted on the title to the Property.

**Section 12.6 Review of Facilities**

The Facilities may be reviewed from time to time and at any time by the Bank whether or not an Event of Default has occurred. Upon such review, the Bank may impose such terms and conditions as it deems fit including without limitation, reducing the principal limits of the Facilities or require settlement of the Indebtedness. The Bank is under no obligation either at law or in equity to make or to continue to make available the Facilities to the Borrower.

**Section 12.7 Advance to Third Parties**

The Bank is authorised by the Borrower to advance or pay the whole or part of the Facilities to any financial institution, firm of solicitors or as instructed by the Borrower. Where the Facilities is to finance the purchase/construction of the Property, the Bank is authorized (i) to pay the whole or part of the Facilities to the vendor or the contractor or such other person(s) responsible for the sale and/or construction of the Property. The disbursement will be made in accordance with the applicable schedule of payment or such variation in the order of payment as the Bank may deem fit; (ii) to withhold the disbursement or utilisation of the Facilities or part thereof in the event the vendor or the contractor is in breach of their obligations under the sale and purchase agreement or the construction agreement, as the case may be. If the Bank decides to withhold any disbursement the Borrower shall indemnify and keep indemnified the Bank against all losses, actions, proceedings, costs, expenses, claims and demands in respect of the same. All payments to the party(ies) aforesaid shall form part of the Indebtedness. The acknowledgment of receipt by the aforesaid party(ies) shall be sufficient and effective as if the same had been made or given by the Borrower personally.

If the Bank receives monies paid towards redemption of the Property, the Bank may accept such monies subject to conditions including without limitation its undertaking to refund such monies and in the event of refund, the Borrower’s account shall be debited for the refund amount and the amount debited will be included and form part of the Indebtedness.

**Section 12.8 Utilisation of Facilities**

If the Facilities is not fully utilised for whatever reasons after three (3) months from the date of the relevant Letter of Offer or after such extended period allowed by the Bank, the Bank may withdraw the Facilities or may vary or impose new terms and conditions. The Borrower shall reimburse all costs, fees and expenses including legal fees incurred by the Bank.

**SECTION 13**

**Section 13.1 Concurrent Exercise of Remedies**

The Bank is not obligated (whether at law or in equity) to first sell the Property or other security assets before claiming against the Borrower or any Security Party. The Bank may commence separate proceedings against the Borrower or any Security Party simultaneously with any proceedings against the Property and/or any other assets charged to the Bank.

The Bank’s remedies in this Agreement and the Security Documents can be exercised at the same or different times. The Bank may also exercise any other remedies provided by law.

**Section 13.2 Indemnity**

The Borrower shall indemnify the Bank and hold the Bank harmless from and against any losses, damages and expenses, whatsoever, legal or otherwise, (including but not limited to all legal costs incurred by the Bank on a solicitor and own client basis including any service tax payable) which the Bank may sustain, suffer or incur as a consequence of (i) any breach of the terms hereunder or under the Security Documents or (ii) any default in the payment of the Indebtedness or (iii) recovery of the Facilities or preservation of security(ies) (including on repairs and upkeep of the security(ies)), or (iv) any claims, demands, actions, legal proceedings made, issued or commenced against the Bank (a) which the Borrower / Security Party(ies) is not fully successful, or (b) by a third party who is in dispute (whether related to the Facilities) with the Borrower and / or any Security Party(ies). This indemnity shall not be discharged or cancelled under any circumstances whatsoever and shall continue as an independent covenant without merger into any judgement that the Bank may obtain against the Borrower / Security Party(ies).  The certificate or confirmation issued by the Bank as to any losses, expenses, claims or damages payable to it pursuant to this Section shall, save for any obvious error, be final and conclusive and binding upon the Borrower.

**Section 13.3 Consolidation and Right of Set-Off**

The Bank is not required to release any securities until all monies secured by the securities are fully settled. The Bank shall be entitled at any time and with 7 days prior notice to the Borrower or any security party to combine and/or consolidate any or all of the Borrower’s and/or the security party(ies)’ account(s) with the Bank and set off or transfer any sum standing in the credit of any one or more of such accounts in or towards satisfaction of the indebtedness and liabilities owed or incurred or due and payable to the Bank.

Such liabilities after consolidation shall form part of the Indebtedness secured by this Agreement and the Security Documents. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**Section 13.4 Statement of Account**

A certificate or confirmation issued by the Bank as to the amount due from the Borrower hereunder shall, in the absence of obvious error, be final and conclusive and binding upon the Borrower for all purposes.

**Section 13.5**  **Waiver**

The Bank may delay or decide not to take any action if the Borrower or Security Party breaks any terms of this Agreement or the Security Document or may have accepted moneys from the Borrower or Security Party. The Bank shall not by such action or omission be regarded as having condoned such breach and the Bank’s rights to take action if the same or other terms are breached will not be affected. The Bank shall not be answerable for any loss arising from exercising or not exercising such right.

 **Section 13.6 Modification & Indulgence**

The Bank may take any of the following actions without affecting its rights under this Agreement and the Security Documents:-­

* 1. determine, vary or increase the amount of the Facilities or any other facility granted to the Borrower;
	2. grant any time or indulgence or compound with the Borrower or any Security Party;
	3. renew any bills, notes or other negotiable securities;
	4. deal with, exchange, release or modify or abstain from perfecting or enforcing any Security Documents or rights it may now or hereafter have; or
	5. vary from time to time the terms and conditions of the Facilities to comply with all relevant rules, decisions and rulings of Bank Negara Malaysia whether the same be made before or after the date of this Agreement.

**Section 13.7 Force Majeure**

In the event the Bank is unable to perform any obligations or any operations or to provide any services due to any reason beyond the Bank’s control, including but not limited to fire, earthquake, flood, landslide, epidemic, natural catastrophe, accident, riots, civil disturbances, industrial dispute, act of public enemy, embargo, war, act of God or any failure or disruption to the Bank’s computer system or delivery channels, telecommunication, electricity, water, fuel supply, lockdown or any factor beyond its control, the Bank shall not be liable for any such failure or any inconvenience, loss, injury, damages suffered or incurred by the Borrower or any Security Party arising from the same.

**Section 13.8 Severability**

Any term in this Agreement which is illegal, prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining provisions.

**Section 13.9 Legal incapacity of Borrower**

Any legal limitation or incapacity of the Borrower or the power of any attorney, partner, agent or other person purporting to act on behalf of the Borrower or irregularity in such borrowing or the incurring of such liabilities shall not affect the Borrower’s liabilities under this Agreement.

**Section 13.10 Continuing Security**

The securities created under this Agreement, the Security Documents and any other instruments to secure the Facilities shall be continuing security for the repayment and payment of the Indebtedness notwith­standing that the account shall cease to be current or any settlement of account or accounts or otherwise.

**Section 13.11 Further Assurance**

The Borrower shall at his own expense, immediately on written demand by the Bank sign such agreements and instruments as the Bank shall reasonably require to perfect the security.

**Section 13.12 Covenant to Provide Further Security**

The Borrower will if required by the Bank at his own cost, execute such further legal or other mortgages, charges, debentures, assignments, transfers, agreements or other assurances as the Bank shall require to secure the Indebtedness.

**Section 13.13 Avoidance of Payments**

Any release of security, settlement or discharge given or made by the Bank on reliance of any assurance, security or payment which is subsequently avoided under any law relating to winding up or insolvency, shall be deemed to be made subject to the condition that it will be void if any such payment or security is set aside or invalid. The Bank can fully recover from the Borrower and/or the Security Party all monies under this Agreement.

**Section 13.14 Disclosure**

1. Subject to the Borrower’s express instruction (if any) restricting disclosure, the Borrower’s personal data, account details, relationship with the Bank and the terms of the Borrower’s Housing Loan or Facilities (“Information”) will be disclosed to persons or bodies to whom the Bank is legally required or permitted by law to disclose or is approved in writing by Bank Negara Malaysia to disclose or is now or hereafter permitted in writing by the Borrower to disclose.
2. Without limiting sub-section 13.14(a) above, the Borrower expressly consents to the disclosure of the Information to the parties and for the purposes set out in the table below:

|  |  |  |
| --- | --- | --- |
|  | **Parties to Whom Information****can be Disclosed** | **Purposes/Circumstances for Disclosure of Information** |
| 1. | The Bank’s data processors and service providers, both within and outside Malaysia; | For the performance of services for the Bank |
| 2. | Regulatory bodies, government agencies, tax authorities, the police, law enforcement bodies and courts, both within and outside Malaysia; | For compliance with law and regulations |
| 3. | Cagamas Berhad, Credit Guarantee Corporation (Malaysia) Berhad and other governmental agencies set up to acquire loans or stand as guarantor for loans, mortgage insurers and reinsurers; | For sale or proposed sale of loans or to obtain guarantee or mortgage insurance or insurance for the Property |
| 4. | Guarantor(s), security party(ies) and third parties (such as purchaser(s) of the Property); | Parties who have liability for the Housing Loan or Facilities or have entered into agreement to purchase the Property or intend to settle the Housing Loan or Facilities |
| 5. | Vendors, developers, proprietors, contractors and education institutions (if the Borrower is taking study loan) and custodians; | Parties who have entered or intend to enter into commercial transaction with the Borrower or the security party(ies) which are financed or part financed by the Bank |
| 6. | Third party(ies) who intend to settle the Borrower’s Indebtedness; | For settlement of the Borrower’s Indebtedness |
| 7. | Lawyers, accountants, insurers, insurance brokers, specialists in fraud, information technology and other professionals/ consultants/specialists to render specialist or professional services to the Bank in relation to any matter of law, accountancy, insurance or any other matters requiring specialist or professional knowledge or advice; | For professional advice and consultation from professionals engaged by Bank |
| 8. | The Borrower’s authorised agents, executor, administrator or legal representative; and | For purpose of managing the Borrower’s affairs |
| 9. | The Bank’s assignees or acquirers, potential assignees or acquirers and successors-in-title. | For reorganization including disposal of the whole or any part of the Bank’s business. |

* + 1. The Borrower irrevocably consents to and authorizes the Bank to conduct credit checks and verify information given by the Borrower or any Security Party to the Bank, with any party (including without limitation with any credit bureau, organization or corporation set up for the purposes of collecting and providing credit or other information) and consent to the relevant credit reporting agencies with whom the Bank conducts credit checks to disclose the Borrower’s credit report/information to the Bank for the purpose of applying for the Facilities and for the Bank’s risk management and review.
		2. The Borrower acknowledges having read the Bank’s Privacy Policy posted at the Bank’s website which notified him that (i) the Bank may collect his personal data directly from him or from third party sources (ii) purpose for which his personal data is collected; (iii) his right to access his personal data and correct it; (iv) the class of third parties to whom the Bank may disclose his personal data; (v) the choices and means for limiting the processing of his personal data; (vi) whether the personal data requested is obligatory or voluntary, and if obligatory, the consequences for not providing such data; (vii) that he must update his personal data as soon as there are changes; and (viii) the Bank’s contact details if he wish to make inquiries or give feedback.
		3. The Borrower warrants and represents to the Bank that (i) it had obtained consent from its Security Party(ies) and the directors, relevant managers, officers and shareholders of the Security Party(ies) which are companies (collectively together with the Borrower, “Consenting Parties”), to disclose their personal data to the Bank in connection with the application and grant of the Facilities and the securities for the Facilities; (ii) informed them that the Bank may collect or verify their personal data with third party sources such as credit reporting agencies, Companies Commission or Insolvency Department; (iii) that the Bank may disclose their personal data to classes of third parties described in the Bank’s Privacy Policy; (iv) he had informed them to read the Bank’s Privacy Policy posted in the Bank’s website.
		4. The Borrower irrevocably grant consent to and have obtained irrevocable consent from the Consenting Parties for Bank Negara Malaysia to disclose the credit information of the Consenting Parties in connection with the application and grant of the Facilities and the securities for the Facilities to other financial institutions, credit reporting agency(ies) and other persons as stipulated under Section 47(2) of the Central Bank of Malaysia Act 2009 (“CBA”) and for other financial institutions, credit reporting agency(ies) and such other persons as Bank Negara Malaysia thinks fit or deems necessary to access and use the credit information for purposes stipulated in Section 47(2) of CBA and for other purposes as Bank Negara Malaysia thinks fit, which may include but is not limited to, assessing the creditworthiness of existing and potential customers, providing credit reporting or credit assessment services, providing electronic Know-Your-Customer (e-KYC) solutions and providing financial advisory services.

**SECTION 14**

**Section 14.1 Change in Law**

(a)If it becomes unlawful for the Bank, through no fault of the Borrower, to extend the Facilities, the Bank shall be discharged from all its obligations to grant or to continue to grant the Facilities. The Borrower shall within thirty (30) days of the receipt of notice repay to the Bank the Indebtedness. However if this resulted from or is attributed to any breach by the Borrower or any Security Party of any terms of this Agreement or the Security Documents, the Borrower shall pay the Bank such additional amount representing the net cost to the Bank in funding the Facilities and losses from such prepayment.

(b) If any change in law or regulation or compliance by the Bank with any request from Bank Negara Malaysia or other authority (whether or not having the force of law) or if any order judgment or direction or any other change in circumstances requires the Bank to pay any tax or make any deductions from payments of principal, interest or other fees in respect of the Facilities (other than taxation on gains, profits or income of the Bank) or change the basis of taxation to the Bank and thereby increase the cost to the Bank of maintaining or funding the Facilities or to reduce the amount of any payment received or receivable by the Bank by any amount which the Bank deems material:

(i) the Bank shall notify the Borrower in writing of the happening of such event; and

(ii) the Borrower shall pay to the Bank on demand such amount as will compensate the Bank for such additional cost or reduction.

The certificate or confirmation issued by the Bank as to any additional amounts payable to it pursuant to this Section shall, save for any obvious error, be final and conclusive and binding upon the Borrower.

**Section 14.3 Taxes and Withholdings**

1. The Borrower shall not make any deduction or withholding on account of any tax or of any bank charges, commission or any other amount, whether by way of set-off or counterclaim or otherwise from his repayments.

(b) If the Borrower or the Bank is required to make any Tax Deduction from any amount payable by the Borrower, the amount payable by the Borrower shall be increased to the extent necessary to ensure that the Bank receives a net sum equal to what the Bank would have received had no such Tax Deduction been made. “**Tax Deduction**” means a deduction or withholding for or on account of any tax, duty or other charge (including any penalty or interest in connection with any failure or delay to pay) from a payment under this Agreement or the Security Documents. If the Borrower elects to prepay the Indebtedness, the Borrower shall also pay such additional amount representing the net cost to the Bank in funding the Facilities and losses as a result of such prepayment.

1. In the event that any goods, sales and services tax, consumption tax, value added tax or any tax of similar nature is now or hereafter required by law to be paid on or in respect of any sums payable to the Bank, the same shall (except to the extent prohibited by law) be borne by the Borrower and shall pay to the Bank on demand a sum equivalent to the amount of such goods, sales and services tax or other taxes, levies or charges.
2. Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in sub-sections (a), (b) and (c) above shall survive the payment in full of principal and interest, commission, bank charges and other charges hereunder and under any instrument delivered hereunder.
3. Without prejudice to the generality of the foregoing, the Borrower’s obligations under this Section 14 shall apply to any deduction or withholding imposed or collected pursuant to sections 1471 through 1474 of the US Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to those sections of the Code, any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such sections of the Code (“Applicable Laws and Regulations”). The Code and Applicable Laws and Regulations are commonly known as the US Foreign Account Tax Compliance Act (FATCA). The Malaysia-US Intergovernmental Agreement pursuant to FATCA requires disclosure to the US Inland Revenue Service through Inland Revenue Board of Malaysia, details of accounts of persons that are subjected to US taxation, to enhance tax compliance by these persons. For more information and latest developments on FATCA, please visit www.hasil.gov.my.

**Section 14.4 Currency Indemnity**

(a) Unless otherwise specified in the relevant Letter of Offer, Ringgit Malaysia is the sole currency of the account and for payment of the Indebtedness.

(b) Where Ringgit Malaysia is the currency of the account, any amount received or recovered in a currency other than Ringgit Malaysia will be converted into Ringgit Malaysia at the spot rate of exchange on the date of conversion. The Bank has the absolute discretion to determine the rate of exchange and the date of conversion.

(c) If that Ringgit Malaysia amount is less than the Ringgit Malaysia amount expressed to be due to the Bank under this Agreement, the Borrower shall indemnify the Bank against any loss sustained by the Bank. In any event, the Borrower shall indemnify the Bank against the cost of converting the amount received into Ringgit Malaysia.

(d) Where the currency of the account is a currency other than Ringgit Malaysia (“foreign currency”), the provisions of sub-sections (a), (b) and (c) above shall apply to the foreign currency as though references in sub-sections (a), (b) and (c) to Ringgit Malaysia were references to the foreign currency.

**Section 14.5 Market Disruption**

In the event of market disruption or if the reference rate for the computation of interest cannot be determined due to or is unavailable due to any reasons, including suspension or cessation of such rate due to market disruption, the Bank may select such alternative interbank offer rate for the relevant funds or use such other alternative basis for determining the applicable rate as the Bank shall deem appropriate. Market disruption shall include an event in which the costs to the Bank of obtaining matching deposits in the relevant interbank market are in excess of the quoted rate for the relevant interest period.

**Section 14.6** **Separate Indemnity**

These indemnities shall remain in full force and effect despite any judgment or order in respect of any sum due under this Agreement and, where appropriate, the Security Documents.

**Section 14.7 Costs included in Indebtedness**

In addition to the stamp duties, registration fees and other costs in Section 7, the Borrower shall also pay all professional costs and all other costs, insurance premiums, expenses, fees and disbursements incurred by the Bank in order to insure, safeguard, preserve (including on repairs and upkeep of the Property or any assets charged to the Bank under the Security Documents) and/or enforce any of the rights of the Bank under this Agreement and the Security Documents. All such costs shall be debited to the Borrower’s account and shall form part of the Indebtedness secured by the Security Documents.

**SECTION 15**

**Section 15.1 Notices from Bank**

In addition to Section 11:

(i) notices to the Borrower may also be served by incorporating the notice into bank statements forwarded to the Borrower periodically or by any other means as the Bank may deem fit;

(ii) in the case of notice issued by way of advertisement the Borrower shall be deemed to have received such notice on the date of the advertisement. Failure by the Bank to give notice shall not prejudice or have the effect of invalidating such variations or shall be a defence between the Bank and the Borrower;

(iii) the Bank may decide (without any further notice to the Borrower) that the variation in interest rate shall not apply to the Borrower and the Security Parties to whom a demand had been made or against whom legal proceedings had been commenced.

**Section 15.2 Instructions from Borrower**

1. Any notice or communication from the Borrower to be given to the Bank, including of any change in his/her contact information and/or correspondence address may be sent in writing by completing the Bank’s prescribed form and submitting the form to the Bank in the manner set out in the form or by notifying the Bank via such channels provided by the Bank or by such mode of communication as may be notified by the Bank to its customers from time to time or by personal despatch, courier or by registered or ordinary mail to the address of the Bank set out in this Agreement or such other address as the Bank may inform the Borrower .

(b) The Bank may rely upon and act on the notices or instructions of the Borrower, whether oral or written and whether given by telephone, post, facsimile transmissions or other electronic means, including based on signatures which appear to the Bank, by reference to the names and signatures of such persons filed with the Bank to be the signatures of the Borrower or any of the persons authorised by the Borrower to issue such communication. The Bank may do so without enquiry as to the identity of the person giving or purporting to give such communication or as to its authenticity. The Borrower is aware of such risks and agrees to bear the risks of such communication including the risk of its being given by unauthorised persons. The Borrower shall indemnify the Bank against all losses, claims, demands, costs, damages, expenses and all other liabilities of whatever nature which it may incur or suffer in consequence of its accepting and acting on such communication.

**Section 15.3 Service of Originating Process**

(a) In the event legal proceedings are instituted by the Bank against the Borrower and/or any Security Party, the originating process shall be deemed to have been duly served on the Borrower and/or such Security Party:-

 (i) if the originating process is sent by hand, at the time a copy of the originating process is left at the address of the Borrower and/or such Security Party stated in this Agreement or at such other address as the Borrower and/or such Security Party may notify the Bank from time to time;

 (ii) if the originating process is sent by prepaid registered post, on the seventh (7th) day (including the day of posting) from the date the originating process is posted to the address of the Borrower and/or such Security Party stated in this Agreement or such other address as the Borrower and/or such Security Party may notify the Bank from time to time.

(b) Where judgment or order had been obtained against the Borrower or any Security Party, service of the judgment or order shall be effected in the same manner set out in (a)(i) and (ii) above and shall be deemed to have been duly served on the Borrower and/or such Security Party. The Bank shall only be deemed to have been notified of the Borrower's or any of the Security Party's change of address if the Bank has actually received the notice of such change sent by the Borrower or such Security Party. The provisions in this Section shall apply to the service of any other legal processes whatsoever by or on behalf of the Bank on any of the Security Party.

**Section 15.4 Agent for Service of Process**

If the Borrower resides outside Malaysia, it irrevocably appoints the party specified in **Section 3 of Schedule 1** to accept service of all legal process arising out of or connected to this Agreement and if for any reason such agent no longer serves as his agent, another agent shall be appointed promptly by the Borrower and notified to the Bank in writing. Until the appointment of such new agent, the original agent shall continue to be agent for the Borrower. Service on such agent shall be effected in the same manner specified in Section 15.3 (a) and (b) above.

**Section 15.5 Successors and Assigns**

(a) This Agreement and the Security Documents shall be binding upon the Borrower, his heirs, estate, personal representatives and successors-in-title and on the Bank, its successors-in-title and assigns.

(b) This Agreement shall continue to bind the Borrower notwithstanding:-

(i) any amalgamation or merger of the Bank with any other company and notwithstanding any reconstruction of the Bank involving the transfer of the whole or any part of its undertaking and assets to another company. All rights conferred upon the Bank by this Agreement may be assigned to and enforced by any such company; or

(ii) any change whether by reason of amalgamation, bankruptcy, death, insanity, incorporation, liquidation, reconstruction, winding-up or in the name, style, constitution or composition of the Borrower and/or the Security Party(ies)

(c) If the Borrower and/or Security Party being a firm is dissolved by reason of the introduction of a new partner or the death, bankruptcy, insanity or retirement of any existing partners or amalgamation with another firm or a corporation taking over all the assets of the firm, the new firm or corporation shall be responsible for the debts and liabilities of the old firm and also for all all monies and liabilities due or incurred to the Bank by the new firm or corporation as though there had been no change in the firm as previously constituted.

**Section 15.6** **Assignment**

The Bank may assign all or any part of its rights, benefits or obligations under this Agreement and the Security Documents. The Bank may disclose to a potential assignee or other person proposing to enter into any contractual arrangements with the Bank such information about the Borrower, of any Security Party and/or relating to the terms of the Facilities, this Agreement or the Security Documents.

The Borrower may not assign or transfer its rights or obligations under this Agreement and the Security Documents.

**Section 15.7 Governing Law**

This Agreement shall be governed by the laws of Malaysia. The Bank shall be at liberty to initiate and take actions or proceedings against the Borrower in Malaysia and/or elsewhere as the Bank may deem fit. Where any actions or proceedings are initiated and taken in Malaysia, the Borrower shall submit to the non-exclusive jurisdiction of the Courts of Malaysia.

**Section 15.8**  **Independent Legal Advice**

The Borrower represents and warrants to the Bank that the Borrower has obtained and relied upon its own independent legal advice in executing this Agreement and acknowledges that the Bank has accepted and entered into this Agreement in full reliance upon his warranty. The Borrower confirms having read and understood this Agreement.

**Section 15.9 Variation of Terms by Mutual Agreement**

Any amendments to this Agreement shall be effected by mutual exchange of letters or such other means without the necessity of having to enter into any formal or supplemental agreement. Where any of the provisions of this Agreement or the law do permit the Bank to amend this Agreement without consent from the Borrower, the Bank may do so by giving notice to the Borrower.

**Section 15.10 Entire Agreement**

This Agreement, the relevant Letter of Offer, the Schedules and any document or instrument attached hereto integrate all the terms and conditions of the Facilities and supercede all oral negotiations and prior correspondence. In the event of any inconsistencies between the terms and conditions of the Letter(s) of Offer and this Agreement, the Letter of Offer shall prevail.

**Section 15.11**  **Effective Date**

The parties hereto agree that this Agreement shall come into force on the date of this Agreement irrespective of the diverse dates upon which the parties may have each executed this Agreement.

**Section 15.12 Joint and Several Liability**

Where there are two (2) or more persons comprised in the expression "the Borrower", (i) all agreements, covenants, terms, stipulations and undertakings expressed to be made by and on the part of the Borrower shall be deemed to be made by or binding upon such persons jointly and severally; and (ii) any notice given by the Bank to any one of such persons shall be sufficient notice to all the Borrowers; (iii) any instructions or notices issued by any one of such persons to the Bank shall be deemed to have been issued on behalf of all the Borrowers and the Bank shall be entitled to act upon and rely on such notices or instructions without any enquiry.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK] **EXECUTION PAGE**

**AS WITNESS WHEREOF** the parties hereto have duly executed this Agreement.

**The Bank**

|  |  |
| --- | --- |
| **OCBC BANK (MALAYSIA) BERHAD**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| *Signature of Authorised Signatory*Name:       | *Signature of Witness*Name:      \* NRIC/Passport No.:      Address:       |

**The borrower**

***[Where Borrower is/are individual(s)]***

|  |  |
| --- | --- |
| 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| *Signature of Borrower* Full Name:      \* NRIC/Passport No.:      Country of Issue:       | *Signature of Witness*Name:       \* NRIC/Passport No.:      Country of Issue:       |
| Address:       | Address:       |
| Date:       |  |

|  |  |
| --- | --- |
| 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| *Signature of Borrower* Full Name:      \* NRIC/Passport No.:      Country of Issue:       | *Signature of Witness*Name:       \* NRIC/Passport No.:      Country of Issue:       |
| Address:       | Address:       |
| Date:       |  |

*\*Delete whichever not applicable*

|  |
| --- |
| **SCHEDULE 1**(To be read and construed as an essential part of this Agreement) |
| **Section** | **Item** | **Particulars** |
| 1. | **The Bank**Place of business:  |       |
| 2. | **Letter of Offer** (Section 2.1) Date:  |       |
| 3.  | \***Agent for Service of Process**(Section 15.4) Name:  |       |
|  | \*NRIC No./ Company No.: |       |
|  | Address:  |       |

*\*Delete whichever not applicable*

|  |
| --- |
| **SCHEDULE 2****Conditions Precedent to Drawing** (To be read and construed as an essential part of this Agreement) |
| The following conditions and such other conditions precedent as set out in the relevant Letter of Offer, must be met before the Bank allows the Borrower to use the Housing Loan or the Facilities: (1) Execution  This Agreement and the Security Documents (if any) have been signed, stamped and registered with the relevant registries, the Bank may at its absolute discretion disburse the Facilities or any part thereof upon presentation of the Security Documents at the relevant registries. (2) Borrower(s)’ and/or Security Parties’ documents  The Bank shall have received the following documents duly certified as true and correct by the authorised officer of the Borrower or the Security Party, as the case may be: Where the Borrower/Security Party is a body corporate 1. the Constitution and notice of registration or certificate of incorporation and latest Return of Allotment of Shares and Return Giving Particulars and Changes of Directors, Managers and Secretaries (corresponding to Forms 24 and 49 respectively under the repealed Companies Act, 1965);

(b) a resolution by the directors and shareholders, if required, authorizing the acceptance of the Facilities and execution of this Agreement and the Security Documents; Where the Borrower is a society, a partnership, limited liability partnership or other unincorporated body (a) a resolution or authorization in form and substance acceptable to the Bank under the Borrower’s constituent documents, its certificate of registration, constituent documents or partnership agreement, as the case may be and such other documents as may be required by the Bank;(3) Consents and approvals All approvals, licences, waivers and disclaimers from governmental or regulatory authorities or creditors or lessors or encumbrancers of the Property or any asset securing the Facilities have been obtained and shall be maintained in full force and effect. (4) Winding-up/Bankruptcy search on Borrower, the Security Party and Vendor Searches made on the Borrower, the Security Parties and on the vendor of the Property or other asset offered as security for the Facilities confirming that they have not been wound up or adjudged bankrupt and there are no bankruptcy or winding-up proceedings against any of them. (5) Evidence of ownership The Bank shall have received the documents evidencing the Borrower’s or the Security Party's ownership of the Property or other asset securing the Facilities. (6) Lodging Statement of Particulars of Charge pursuant to section 352 Companies Act 2016 Where any of the Security Documents require registration with the Companies Commission of Malaysia or in the case of a foreign entity, the relevant registry, such registration had been effected. (7) No misrepresentation  There is no misrepresentation or breach of any warranty contained in Section 2 above. (8) Payment of fees and expenses All fees, costs and expenses which are due and payable to the Bank shall have been fully paid and settled. (9) No Event of Default No Event of Default shall have occurred and is continuing. (10) Receipt of additional opinions and certificates  The Bank shall have received such other documents, undertakings, confirmations, opinions, valuation report of the Property, certificates, authorisations or assurances as the Bank may reasonably request.  (11) No change in financial economic or political situation There is no change of law or other governmental action or in the financial, economic or political conditions in Malaysia which in the opinion of the Bank (which opinion of the Bank shall be final and binding) would render it inadvisable or impractical for the Bank to continue to make available the Facilities. (12) Compliance with operational requirements  All operational requirements relating to the operation of the Facilities as may be stipulated by the Bank from time to time have been complied with. (13) Searches  Searches having been made at the relevant land registry, Companies Commission or other registries confirming that the Property and/or other security(ies) provided are free from all encumbrances and Security Interests and no acquisition notices have been lodged or issued against the Property and/or other security(ies).(14) Difference between purchase price and loan Receipt of confirmation that the difference between the purchase price payable for the Property and the Facilities has been fully paid and where the Bank is part-financing the premium for the mortgage reducing term assurance or other policy of insurance, the difference between the premium and the financing amount has been settled. (15) Progressive releases If the Facilities is to be released in stages, the Bank has received the relevant architect’s certificates or invoices.(16) Quit rent and other outgoings The Borrower and/or the Security Party shall have delivered to the Bank the current receipts of quit rent, assessment, rates and other outgoings as the Bank may require.(17) Construction Agreement Where the Bank is part-financing the construction/renovation of the Property:-(a) receipt of all relevant approvals for the construction of renovation of the Property; (b) receipt of the duly executed stamped original construction agreement confirming the appointment of the contractor and the construction price; and(c) the difference between the construction price and the Facilities (or the portion of the Facilities granted to part-finance the construction/renovation of the Property) has been fully settled by the Borrower(s). |

 **PART C**

**BANK’S LETTER OF OFFER**

 ***[Please attach the Bank’s Letter of Offer here]***