

**DATED THIS**

**DAY OF**

**201**

**BETWEEN**

**AND**

**FACILITY AGREEMENT**

**THIS FACILITY AGREEMENT** is made the date stated in Section 1 of Schedule 1 hereto

BETWEEN

- **AmBank (M) Berhad** (8515-D) a company incorporated in Malaysia with its registered office at 22<sup>nd</sup> Floor, Bangunan AmBank Group, No. 55, Jalan Raja Chulan, 50200 Kuala Lumpur (*'the Bank'*).

AND

- The entity/person whose name and particulars are stated in Section 2 of the First Schedule hereto (*'the Borrower'*).

**RECITAL:**

At the request of the Borrower, the Bank has agreed to make available and/or to continue to make available to the Borrower such banking facilities from time to time as stated in the Letter of Offer issued by the Bank upon the terms and conditions contained in the Letter of Offer and the Facility Agreement.

**NOW IT IS AGREED** as follows:

**1.0 Definitions**

1.1 In this Agreement, the following words and expressions shall have the meaning stated opposite thereto:-

'this Agreement'	this Facility Agreement and the Letter of Offer.
'AmBank Group'	all the related companies and associate companies of the Bank and its holding company.
'Assignment'	the Deed of Assignment to be executed by the Borrower and/or the Security Party as stated in Section III(a) in relation to the assignment of the Property and all rights, interest and/or benefits of the Vendor Agreement in the form as required by the Bank.
'BNM'	Bank Negara Malaysia, its subsidiaries, agencies and bureaus established by it.
'Base Rate'	the reference rate prescribed by the Bank from time time for the pricing of floating rate loans/financing facilities, and is computed in accordance with Bank Negara Malaysia requirements as may be imposed from time to time or any other authorities having jurisdiction over the Bank in Malaysia.
'Charge'	the charge over the Property under the National Land Code 1965 / Sarawak Land Code / Sabah Land Ordinance (whichever is applicable) in the form as required by the Bank, to be executed by the Borrower and/or Security Party as stated in Section III(a) in favour of the Bank as security for the Indebtedness.
'Event of Default'	the events specified in Clause 14.1 of this Agreement.
'Facility'	the facility which is specified in the Letter of Offer.
'Facility Agreement'	this Facility Agreement, excluding the Letter of Offer.
'GST'	means any tax payable on the supply of goods, services or other things in accordance with the provisions of the GST Law.
'GST Law'	means the Goods and Services Tax Act 2014, subsidiary legislations, statutory orders and regulations governing the application of GST, as amended from time to time.
'Indebtedness'	any amounts owed by the Borrower to the Bank (whether as principal / surety including principal, interest, capitalised interest, default interest, fees, costs, charges / other charges) under this Agreement and/or the other Security Documents.

‘Interest Rate’	the prescribed interest rate as specified in the Letter of Offer.
‘Letter of Offer’	the letter of offer, including its annexure, issued by the Bank to Borrower for the Facility, as attached in Second Schedule and includes any letter from the Bank to the Borrower which supplements / amends / substitutes / vary the said letter of offer;
‘Property’	the Property which details are as stated in the Letter of Offer.
‘Security Documents’	the security documents as set out in the Letter of Offer.
‘Security Party’	the party as specified in Section III of First Schedule who are providing security or guarantee to the Bank for the payment / repayment of the Indebtedness
‘Vendor’	wherein applicable, any one / more of the following parties: <ul style="list-style-type: none"> <li>(a) the developer who develops the Property;</li> <li>(b) the proprietor who owns the Property;</li> <li>(c) the seller who sells the Property to the Borrower / Security Party;</li> <li>(d) the contractor who constructs / renovates the Property;</li> <li>(e) the financier which had granted facilities to the Borrower / Security Party.</li> </ul>
‘Vendor Agreement’	wherein applicable, any one of the following agreement executed by the Borrower / Security Party for the Property, such as: <ul style="list-style-type: none"> <li>(a) the sale and purchase agreement with the developer and/or proprietor / seller for the purchase of the Property;</li> <li>(b) the construction / renovation agreement with the contractor for the construction / renovation of the Property;</li> <li>(c) the existing facility / loan agreement with a financier where the Property is placed as security for facilities granted to the Borrower / Security Party.</li> </ul>

## **2.0 Interpretation and Construction**

- 2.1 Reference to the masculine gender include the feminine and neuter genders and vice versa and references to the singular number include the plural and vice versa.
- 2.2 Where two or more persons or parties included / comprised in any expression and undertakings expressed to be made to such persons / parties the same shall be enforceable by or against them jointly and severally.
- 2.3 All words and expressions as defined in the relevant Letter of Offer shall the same meanings when used / referred to in this Agreement, except where it is otherwise defined in this Agreement.
- 2.4 Any term relating to banking and financial services not specifically defined herein shall be construed in accordance with the general business practice and trade of banking and financial industry in Malaysia.
- 2.5 Words applicable to natural persons include any body, persons, company, corporation, societies, co-operatives, firms / partnership / otherwise and vice versa.
- 2.6 Reference to ‘law’ shall include without limitation: legislations / statutes in Malaysia, state enactments, subsidiary legislations, by-laws, guidelines, rules and regulations issued thereunder and any re-enactment of such legislation / state enactments.
- 2.7 The Schedule shall form an integral part of this Agreement and shall be taken and construed as an essential part thereof.
- 2.8 Any references to ‘this Agreement’ shall include all amendments additions / supplementary agreements made from time to time between the Bank and the Borrower.

2.9 The headings to the Section of this Agreement are inserted for purpose of convenience only and shall not be taken into consideration in the interpretation / construction thereof of this Agreement.

### **3.0 The Letter of Offer**

3.1 The Letter of Offer shall form part of this Facility Agreement and shall be applicable with full force and effect.

3.2 The Facility Agreement and the Letter of Offer are intended to be complementary to each other. Where there are similar provisions in the Letter of Offer and this Facility Agreement, both provisions shall be read to complement each other.

3.3 In the event of any inconsistency between the provisions of the Letter of Offer and the Facility Agreement:

- (a) the provisions of the Letter Of Offer shall prevail only to the extent of the inconsistency;
- (b) the provisions of this Facility Agreement, to the extent that they do not conflict with the Letter of Offer shall be applicable.

### **4.0 Representation, Warranties, Undertakings and Covenants by the Borrower**

4.1 The Borrower acknowledges that the Bank has granted the Facility in full reliance of the following representation, warranties and undertakings made by the Borrower:

- (a) all information and documents provided to the Bank for the application of the Facility are true, accurate, untampered and not forged.
- (b) that the Facility will be used by the Borrower for the purpose as stated in the Letter of Offer and in accordance with all applicable laws;
- (c) there has been no material adverse change in the financial conditions / operation of the Borrower / Security Party since the date of the audited financial statement furnished to the Bank;
- (d) the Borrower has fully disclosed in writing to the Bank all facts relating to the Borrower, the Security Documents and each Security Party which the Borrower knows should reasonably known and which are material for disclosure to the Bank for the granting of the Facility;
- (e) the Borrower shall ensure and procure that all and any advances by its directors, its shareholders, its subsidiaries / its related companies / associated companies to it are to be subordinated to its liabilities to the Bank under the Facility (not applicable to Borrower who is a natural person);
- (f) there is no breach of any law which materially and adversely affects / would affect the value of the Property;
- (g) no third party has any interest, title, claim / benefit on the Property / any part thereof;
- (h) neither the Borrower nor any of the Security Party has entered into any agreement / arrangement (whether oral / written) whereby the Borrower / the Security Party has agreed to convey, transfer, assign, charge / create any security interest over the Property;
- (i) that all quit rent, assessment and other outgoings in respect of the Property have been paid and shall be fully paid;
- (j) where the Property is being developed, the Borrower had ascertained from the Vendor that all requisite approvals in respect of the development have been obtained and such approvals are still subsisting at the commencement and throughout the duration development of the Property;
- (k) where the individual document of title / strata title to the Property have yet to be issued, the Vendor Agreement for the purchase of the Property evidencing the Borrower / Security Party's interest to the Property are valid and subsisting.

- (l) the Borrower is not aware of any event which may cause the Vendor Agreement to be terminated;
- (m) the Borrower / Security Party is not in breach of any agreement, covenant / stipulation on its part to be performed in the Vendor Agreement;
- (n) the Property shall be insured against such risks with an insurance company approved by the Bank and the Bank shall be named as loss payee in such insurance policy. All premiums for the insurance policy shall be borne by the Borrower;
- (o) it is commercially beneficial to each Security Party to execute and perform the Security Documents to which it is a party and the execution, delivery and performance of the Security Documents by each Security Party do not contravene / violate any law applicable to the Security Party;
- (p) the Borrower will not use the Facility for any money laundering / terrorism financing / fraudulent / criminal activities / for criminal intent and purposes;
- (q) that all repayments for the Facility to be made by the Borrower shall originate from lawful sources and activities and not from any illegal / unlawful activities (including any criminal activities) / fraudulent transactions, provided further the Bank shall be entitled to require the Borrower to furnish any documentary evidence / information to validate the same.

4.2 Borrower hereby covenants and agrees that so long as Indebtedness remains owing to the Bank, the Borrower shall NOT, without the prior consent of the Bank:

- (a) create, incur, assume, guarantee / permit to exist any Indebtedness except for the Facility and unsecured debts incurred in the ordinary course of business of the Borrower;
- (b) make / lend / make advances / provide / extend any credit / accommodation / guarantee / provide any indemnity / assurance against lost to / for the benefit of any entity / act as surety / otherwise voluntarily assume any liability (other than normal trade credit / trade guarantees / temporary loans to staff, customers, contractors / suppliers in the ordinary course of business);
- (c) make any loans to its directors, shareholders, subsidiaries / officers other than in the ordinary course of business / operation (not applicable to Borrower who is a natural person);
- (d) declare / pay any dividend / bonus issue / make any other distribution in respect of any of its share capital (not applicable to Borrower who is a natural person);
- (e) register / permit any change in its existing shareholders / its board of directors / key personnel, from the date of the acceptance of the Letter of Offer (not applicable to Borrower who is a natural person);
- (f) enter into corporate voluntary arrangement, judicial management, scheme of compromise or arrangement, composition, bankruptcy, merger / consolidation / amalgamation / liquidate / voluntary winding up / dissolve itself (or suffer any liquidation / dissolution / revocation) / cease to exercise control over any part of the Borrower's undertaking / business / assets whether now owned or hereafter acquired (not applicable to Borrower who is a natural person);
- (g) make any prepayment of any other loans / debts, if there are any moneys outstanding under the Facility which is overdue and unpaid;
- (h) make any repayment of any loans / advances made to it by its directors / shareholders / related companies / associate companies, until all its liabilities and obligations under the Facility has been discharged (not applicable to Borrower who is a natural person).

4.3 The aforesaid representations, warranties, undertakings and covenants shall form the basis of the Bank's offer to make available the Facility to the Borrower. If any such representations, warranties, undertakings and covenants made shall at any time hereafter be found to be untrue / incorrect / breached, the Bank shall have the right at its absolute discretion to suspend the availability / disbursement of / review / recall / terminate the Facility.

4.4 In addition to the condition precedent to drawdown as stated in the Letter of Offer, all representations, warranties, undertakings and covenants stated in Section 4.0 hereof shall be complied with by the Borrower at the time the Facility is disbursed.

## **5.0 Drawdown of the Facility & Payment to Vendor**

5.1 The Borrower hereby irrevocably authorises the Bank to disburse the whole / part of the Facility to the Vendor:

- (a) in accordance with the terms / schedule of payment set out in the Vendor Agreement;
- (b) in accordance with the terms of any letter of undertaking issued by the Bank to the Vendor;
- (c) for any purpose for which the Facility is approved by the Bank for utilisation by the Borrower.

5.2 Such authorised payments by the Bank shall constitute utilisation by the Borrower of the Facility and the Borrower hereby acknowledges that it is indebted to the Bank to the extent of such authorised payment.

5.3 The Bank shall be entitled to put aside such part of the Facility to meet the payment pending the actual disbursement / release of such payment.

5.4 The Bank shall at all times be entitled to make any payment under the undertaking issued to the Vendor whether or not any Event of Default has occurred or whether the Bank has exercised any rights or remedies available to the Bank upon the occurrence of an Event of Default.

5.5 The Bank shall be entitled to make the payment to the Vendor without further investigation / enquiry and need not concern itself with any issues / claims by the Borrower / Security Party with the Vendor under the Vendor Agreement. Accordingly, the Borrower's obligations under this Agreement shall not be affected / impaired by the fact that the Bank was / might have been justified in refusing payment to the Vendor. The Borrower's liability under this Agreement shall subsist even though the Vendor's Agreement is terminated by the Borrower or the Vendor.

5.6 In the event of any default on the part of the Vendor in honouring its obligations under its agreement with its financiers / if the Borrower / the Security Party is in breach of the Vendor Agreement, the Bank shall be entitled to withhold the disbursement of the Facility / any part thereof.

5.7 In the event the Property is under construction and the Bank is required to release the Facility progressively to the Vendor, the Borrower shall pay to the Bank interest at Interest Rate on the amount disbursed progressively to the Vendor.

5.8 In the event that the Facility / any part thereof shall for whatever reason be unutilised after the expiry of the availability period for the Facility, the Bank may at its discretion withdraw the Facility. In such an event, the Borrower shall reimburse all costs, fees and expenses (including legal fees) incurred by the Bank.

## **6.0 Security**

6.1 Charge: Where a separate document of title to the Property is issued, the Borrower shall / shall cause the Security Party to execute in favour of and deliver to the Bank the Charge upon the terms and conditions contained therein. All costs and expenses related to the perfection of the Charge shall be borne by the Borrower.

6.2 Assignment

(a) Where a separate document of title to the Property has not been issued, the Borrower shall / shall cause the Security Party to absolutely assign to the Bank the Property and the full and entire benefit of the Vendor Agreement, together with all rights, title and interests therein, in the format required by the Bank.

(b) The Borrower and/or the Security Party shall also execute a Power of Attorney in the format required by the Bank, appointing the Bank / any persons authorised by the Bank for the time being as the attorney of the Borrower / the Security Party.

- (c) Upon issuance of an individual/strata title to the Property, the Borrower shall / shall cause the Security Party, at the its own cost and expense, immediately execute a memorandum of transfer and execute the Charge over the Property, failing which the Bank shall be entitled to take necessary action, including exercising the rights granted to it under the Power of Attorney executed by the Borrower, to protect the Bank's interest.
- (d) All costs and expenses related to the perfection of Charge shall be borne by the Borrower.
- (e) In the event the Charge is not executed / perfected for any reasons, the Assignment shall remain in force until the Charge is duly registered against the Property / the Indebtedness due to the Bank hereunder are paid in full whichever happens first.

6.3 Other Security: The Borrower shall / cause the Security Party to execute and deliver any other Security Documents as stated in the Letter of Offer to secure the repayment and payment to the Bank of the Indebtedness.

6.4 Further Security : If required by the Bank at any time, the Borrower shall provide further security for the Facility and execute such further security documents for the further security at the costs of the Borrower.

6.5 In the event the value of the Property or any other security provided diminishes in value, the Bank shall be entitled at its discretion to require the Borrower to provide additional security.

## **7.0 Payments by the Borrower**

7.1 All payments / repayments to be made by the Borrower to the Bank under this Agreement shall be in Ringgit Malaysia, free of any charges / set-off and shall be kept by the Bank in a non-interest bearing suspense account.

7.2 The time of receipt of any payment made by the Borrower to the Bank shall be the time when the Bank actually receives the payment. Any payments made by cheque / other payment instruments shall deemed to be received only after the cheque / payment instrument has been cleared.

7.3 When any payment is received from the Borrower, the Bank shall be entitled to appropriate the payment in the following order of priority:

- (a) first, for payment of any sums payable to the relevant authorities in respect of the Property;
- (b) second, for payment of any fees, charges, expenses and costs incurred by the Bank in enforcing its rights under the Security Documents, such as to its solicitors, agents, auctioneers, trustee, nominee, supervisor, judicial manager, administrator, manager, liquidator, receiver, receiver and manager and managers appointed by the Bank for the Borrower (if applicable);
- (c) third, towards all interest (including default interest) accrued on the Facility; and
- (d) finally, towards payment of the principal amount outstanding under the Facility.

7.4 If the Borrower makes payment through any payments channels of the Bank after the Bank has taken recovery action / enforcement proceedings against the Borrower for any sums due to the Bank, such payments are accepted only on without prejudice basis to the rights of the Bank to proceed further with the recovery action / enforcement proceedings against the Borrower.

## **8.0 Modification and Indulgence**

8.1 The Bank may, at any time without affecting the security provided to the Bank under this Agreement:

- (a) determine, vary, modify, restructure, reduce / increase the Facility;
- (b) grant to the Borrower and if the Borrower consists of more than one person, to either of the Borrower;
- (c) the Security Party / other surety any indulgences;

- (c) deal with, exchange, release, modify / abstain from perfecting / enforcing any securities / other guarantees / rights it may now or from time to time have from / against the Borrower / the Security Party.

## **9.0 Payment of Interest, Interest Rate and Default Interest**

9.1 The Interest Rate is calculated as follows:

- (a) If interest on the Facility is calculated on a daily rest, the Interest Rate is to be calculated on the daily balance of the Indebtedness;
- (b) If interest on the Facility is calculated on monthly rests, the Interest Rate is to be calculated on the amount of the Indebtedness at the end of each month and will be due and payable on the first day of the next succeeding month.

9.2 The Borrower shall pay interest on the Facility at the Interest Rate, without prior demand / notice from the Bank.

9.3 Interest is calculated on the basis of the actual number of days elapsed and based on a 365-day year (366-day year in the case of a leap year),

9.4 In the event the Borrower delays in punctual payment of any of the instalments for the Facility / the Indebtedness on the date the same is due, the Borrower shall also pay the default interest to the Bank at the rate of 1% per annum calculated on a daily basis ('Default Interest Rate') on the defaulted amount from the date of default up to the date of actual payment. The obligation of the Borrower to pay the default interest will continue even after:

- (a) any recovery legal proceedings has been taken by the Bank against the Borrower; and
- (b) any judgment had been entered against the Borrower in such recovery legal proceedings.

9.5 Interest on the Indebtedness shall be capitalised and added to the principal sum of the Facility. The total sum will then bear interest at the Interest Rate and where applicable, the Default Interest Rate. The total sum for the Indebtedness shall be payable to the Bank, whether before or after any court judgment obtained by the Bank against the Borrower.

## **10.0 Variation of Interest Rate and Base Rate**

10.1 The Bank shall be entitled at any time hereinafter to vary, the Base Rate, the Interest Rate and other banking charges applicable to the Facility by serving a notice on the Borrower of such its intention in the following manner:-

- (a) in the respect of the Base Rate, by an advertisement in such form and language addressed generally to the public / its customers in one issue of a daily newspaper of the Bank's choice or by posting a notice of such variation in any of the Bank's branch premises;
- (b) in respect of Interest Rate and other banking charges applicable to the Facility, by serving a notice in writing on the Borrower to that effect.

10.2 Service of such notice shall be deemed to have been sufficiently given and served on the Borrower, upon publication in the newspaper / if despatched by personal delivery on / sent by ordinary post to the Borrower's address in the Bank's record. The notice shall be deemed to have been served on the Borrower on the date of the publication in newspaper / 5<sup>th</sup> day after posting of the letter or if delivered by hand, on the day it was delivered.

10.3 The varied Base Lending Rate, Interest Rate and other banking charges shall be applicable for the Facility / such part of the Facility disbursed on the effective date stated in the notice.



## **11.0 Insurance**

- 11.1 The Borrower shall and/or cause that the Security Party, to keep the Property and all fixtures erected thereon properly insured in the names of the Borrower and/or Security Party, with an insurance company approved by the Bank, to the full insurable value against loss / damage by fire and such other risks and on terms as the Bank may require.
- 11.2 If necessary, the Bank shall effect and/or maintain the insurance policy at the cost and expense of the Borrower and/or the Security Party.
- 11.3 Unless otherwise agreed by the Bank, the Borrower shall also take up and maintain a mortgage decreasing term policy.
- 11.4 Borrower agrees that the original of the insurance policy and the receipts of payment of premium paid shall be kept by the Bank.
- 11.5 Any payment received by the Bank from the insurers of the Insurance Policy shall first be applied towards the discharge of Indebtedness / making good the loss / damage to the Property, as the Bank decide in its discretion. If, after applying the insurance monies towards the Indebtedness, there is any shortfall, then the same shall forthwith immediately become payable by the Borrower to the Bank.

## **12.0 Amendment to this Agreement**

- 12.1 For the purposes of compliance to any new legislation applicable to the Bank / changes in law / any new guidelines issued by BNM, the Bank shall be entitled to amend any of the terms and conditions of this Agreement through:
- (a) display of the amended terms and conditions in the Bank's branches;
  - (b) uploading the amended terms and conditions in the Bank's website.
- 12.2 Borrower agrees that the Bank may provide notice of the amendment of the terms and conditions of this Agreement through any one / more of the following means:
- (a) notice in the notice board / any conspicuous section of the Bank's branches;
  - (b) notice in the display screen of the Bank's electronic terminals;
  - (c) notice in the Bank's website;
  - (d) notice in the periodic statement of account sent to the Borrower;
  - (e) notice in writing in the Bank's preferred format to the Borrower's address as per the Bank's records;
  - (f) notice by any other means as the Bank deems fit in its sole and absolute discretion.
- 12.3 Subject to this Agreement, if the Borrower is not agreeable to the amended terms and conditions of this Agreement, the Borrower shall notify the Bank in writing of the same and redeem the Facility by paying the Indebtedness and all sums dues to the Bank in full
- 12.4 In the event the Borrower continues to maintain the Facility 21 days after the notice of any amendment to the terms and conditions of this Agreement by the Bank, the Borrower shall be deemed to have accepted the amendments to the terms and conditions of this Agreement.
- 12.5 Any specific features of a particular type of Facility may be amended / varied / revised by the Bank. Such amended / varied / revised features shall become effective on the date of implementation of the amended / varied / revised features as may be made available in promotional brochures for the said Facility / as notified by the Bank and the Bank shall be entitled to end such specific features at its discretion.

### **13.0 Disclosure of Information**

13.1 The Borrower provides consent to the Bank to disclose, at the Bank's discretion, all/any information and documents relating to this Agreement, Borrower's conduct and affairs in respect of the Facility to :-

- (a) the next of kin / administrator / executor / beneficiary of a deceased Borrower/solicitors acting for them in intending to apply for a court order / who had applied for a court order in respect of a deceased Borrower's estate;
- (b) BNM / other relevant authorities acting under powers granted under any applicable law;
- (c) insurers, brokers, loss adjusters pursuant to any claims to be made by the Bank under such insurance policy in respect of the Facility;
- (d) the purposes of any legal suit / proceedings filed against the Bank by any third party in relation to this Agreement / Facility;
- (e) the purpose of any legal suit / proceedings filed by the Bank against any third party for the recovery of its losses under this Agreement / Facility;
- (f) the police / other investigative authorities, for the purposes of their investigation into any crime (including any money laundering and terrorism financing activities) whether by the Borrower / otherwise;
- (g) the police / other investigative authorities for the purposes of lodging of relevant reports by the Bank and investigation thereof, if the Bank is of the view that a crime has been committed / to prevent / recover any losses incurred by the Bank /for prevention of crime;
- (h) any party who intend to acquire the Property through auction / sale / any party who intend to acquire the Bank's interests, assets and obligations under this Agreement;
- (i) any party which in the future may express intention to acquire any interest / shareholding in the Bank / pursuant to any proposed arrangement, composition, merger, acquisition / restructuring between the Bank and such parties;
- (j) external professional advisors of the Bank and AmBank Group.

13.2 In the event any legal proceedings is initiated by the Bank against the Borrower under this Agreement for the recovery of Indebtedness, the Borrower provides consent to the Bank to disclose the details, information related to the Borrower and the cause papers related to the said legal proceedings to any credit reporting agency in Malaysia.

### **14.0 Event of Default**

14.1 The Bank shall be entitled to recall the whole of the Facility (principal and interest) then remaining outstanding, together with all other monies covenanted to be paid by the Borrower, if:

- (a) the Borrower / any Security Party fails to pay any amount due on the due date / on demand, if so payable;
- (b) the Borrower / any Security Party fails to observe / perform any of the agreement, covenants, stipulations, undertakings, terms and conditions to be observed / performed under this Agreement, Vendor Agreement / the Security Documents;
- (c) the Borrower / Security Party changes / announces the change / nature / scope of its business;
- (d) the Borrower / Security Party commits an act of bankruptcy / becomes bankrupt / dies / becomes insane / imprisoned (applicable for Borrower which is a natural person);

- (e) the Borrower / any Security Party is wound-up / enters into any corporate voluntary arrangement, judicial management, scheme of compromise or arrangement, composition, bankruptcy, composition / arrangement with its creditors / allows any judgement remain unsatisfied / applies to Court for any restraining order / has a receiver, nominee, supervisor, judicial manager, administrator, manager, liquidator or receiver and manager appointed over its assets (applicable for Borrower which is a company);
  - (f) the Facility is used / utilised for any purpose other than that the purpose stated in the Letter of Offer;
  - (g) any of the representations and warranties in this Agreement / the Security Documents has been found to be untrue, incorrect / breached at the material time;
  - (h) any information and documents provided to the Bank by the Borrower / Security Party for the application of the Facility is later found to be false, incorrect, inaccurate, tampered / forged.
  - (i) any Indebtedness of the Borrower / Security Party, whether to the Bank / AmBank Group, becomes due before its stated maturity;
  - (j) any legal proceedings is commenced against the Property by any person / entity;
  - (k) any litigation / arbitration is commenced against the Borrower / Security Party which the Bank views as adversely affecting the ability of the Borrower / Security Party to perform its obligations under this Agreement / any Security Documents;
  - (l) any legal action, proceedings / suit are instituted by the Borrower / Security Party against the Bank, whether in respect of the Facility / the Property / otherwise;
  - (m) any legal action, proceedings / suit are instituted by any third party against the Bank in respect of the Facility / the Property .
- 14.2 Upon happening of the Event of Default, the Bank shall thereafter have the right to exercise all / any of the remedies available whether by this Agreement and/or the Security Documents / by law.
- 14.3 For the avoidance of doubt, the Bank shall be entitled to exercise all remedies available to it concurrently, including pursuing remedies by sale of the Property / foreclosure proceedings / possession pursuant to this Agreement and/or the Security Documents and civil proceedings to recover Indebtedness due and owing to the Bank.
- 15.0 Right of Set-Off and Consolidation**
- 15.1 In the event the Borrower defaults in the payment for two (2) months consecutively of any part of the Indebtedness, the Bank shall be entitled to freeze the available balance in the Borrower's deposit account with the Bank / AmBank Group that is equivalent to part of the Indebtedness that is due and the Bank shall provide a notice of seven (7) calendar days to the Borrower to make good the defaulted payment under this Agreement.
- 15.2 In the event the Borrower fails to make good the Indebtedness within the notice period, the Bank shall be entitled to set off absolutely such part of the available balance in the Borrower's deposit account with the total sum due to the Bank under this Agreement, subject to a further notice of seven (7) calendar days informing the Borrower its intention to set-off.
- 15.3 For the avoidance of doubt, the Bank's right of set-off herein can be exercised by the Bank:
- (a) even on a deposit account held jointly by the Borrower with another person;
  - (b) even in the event of Borrower's demise, bankruptcy / insolvency, composition with its creditors / any legal proceedings against the Borrower.
- 15.4 The Bank may also consolidate this Facility with other loan/facility accounts of the Borrower with the Bank, at

the Bank's discretion towards the satisfaction of all monies payable to the Bank under all such loan/facility accounts, with prior notice to the Borrower.

## **16.0 Notices**

- 16.1 The Borrower shall promptly notify the Bank in writing of any changes in the Borrower's address, failing which the Bank shall be discharged from all liabilities by sending any notices to the latest address and/or the number found in the Bank's records.
- 16.2 No change in the address of the Borrower howsoever brought about shall be effective / binding on the Bank unless actual notice of the change of address has been received and acknowledged by the Bank.
- 16.3 All notices by the Borrower to the Bank shall be served on the Bank's branch where the Facility is maintained.
- 16.4 Subject to this Agreement, the Bank may give any notice as may required to be given to the Borrower by sending the notice through a letter sent by ordinary post / by personal delivery to the address of the Borrower available in the Bank's records. The notice shall be deemed to have been served on the Borrower on the 5<sup>th</sup> day after posting of the letter or if delivered by hand, on the day it was delivered.

## **17.0 Dispute Resolution**

- 17.1 All complaints from the Borrower against the Bank in respect of this Agreement shall be addressed in writing to: P.O.BOX 12617 GPO Kuala Lumpur, 50784 Kuala Lumpur / Fax Number: 03-21713171 / E-mail Address: [customercare@ambankgroup.com](mailto:customercare@ambankgroup.com).
- 17.2 In the event any complaint by the Borrower is unresolved by the Bank or the Borrower is unsatisfied with the Bank's decision in respect of the complaint, the Borrower may refer the matter to BNM's complaint resolution arm BNMLINK at Walk-in Customer Service Centre, Ground Floor, D Block, Jalan Dato' Onn, 50480 Kuala Lumpur, Tel: BNMTELELINK at 1-300-88-5465 E-mail: [bnmtelelink@bnm.gov.my](mailto:bnmtelelink@bnm.gov.my)
- 17.3 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and in enforcing this Agreement, the Bank shall be at liberty to initiate and take action / proceeding against the Borrower in any Courts in any part of Malaysia as the Bank may deem fit.
- 17.4 All originating cause papers for any legal proceedings initiated by the Bank against the Borrower under this Agreement shall be served by personal delivery / ordinary post to the Borrower's address available in the Bank's records.
- 17.5 All originating cause papers for any legal proceedings initiated by the Borrower against the Bank under this Agreement shall be served by personal delivery / A.R registered post to the registered address of the Bank, which for the time being is 22<sup>nd</sup> Floor, Bangunan AmBank Group, No. 55, Jalan Raja Chulan, 50200 Kuala Lumpur. Borrower agrees not to serve such originating cause papers to the Bank's branches. Such service shall not be deemed to be valid service on the Bank. The Borrower agrees to unconditionally submit to the jurisdiction of the courts in the Federal Territory of Kuala Lumpur, Malaysia, in respect of all legal proceedings filed by the Borrower against the Bank.

## **18.0 Indemnity & Restrictions on Liability**

- 18.1 The Borrower shall keep the Bank fully indemnified on a full indemnity basis against all losses, damages, fees, costs, claims, charges, proceedings, taxes, duties, and expenses (including legal costs) which the Bank may incur and which have arisen either directly / indirectly under the following circumstances:
- (a) any breach of / non-adherence of this Agreement any applicable law by the Borrower;
  - (b) when the Bank complies with this Agreement / applicable law / banking industry practice;
  - (c) negligent acts / omissions of the Borrower; and
  - (d) enforcement by the Bank of its rights under this Agreement.
- 18.2 The indemnity stated in Clause 18.1 shall continue notwithstanding any termination of this Agreement.

- 18.3 The Bank shall not be liable to the Borrower in the following circumstances:
- (a) any breach of / non-adherence of this Agreement / any applicable law by the Borrower;
  - (b) negligent acts / omissions of the Borrower;
  - (c) any forgery / fraudulent actions by the Borrower / its servants, employees, agents, officers, authorised signatories, partners / directors (as applicable);
  - (d) when the Bank adheres to the directives / instructions from BNM / other regulatory bodies, authorities, government, court / tribunal / other judicial authority; and
  - (e) when any force majeure event occurs.
- 18.4 Subject always to any applicable law and provided further negligence and/ breach of duty is proven against the Bank, the Borrower agrees that the Bank's liability under this Agreement for the Bank's negligence / breach of duty, shall be limited to direct losses incurred by the Borrower.
- 18.5 Provided as permitted by law and further in consideration of the utilisation and enjoyment of the Facility by the Borrower, the Borrower agrees that the Bank shall not be liable for any type of indirect / consequential damages caused to the Borrower by the Bank's negligence / breach of duty.
- 19.0 **General Terms**
- 19.1 Time wherever stated in this Agreement shall be of the essence of the contract.
- 19.2 The Borrower hereby authorises the Bank to value the Property annually / at such interval as the Bank shall in its absolute discretion decide by any valuer of the Bank's choice at the Borrower sole cost and expense. In the event such valuation reveals that the forced sale value of the Property is lower than the amount owing under this Agreement, the Bank shall be entitled to request the Borrower to within fourteen (14) days from the date of a notice from the Bank to provide additional security for the Facility.
- 19.3 All costs charges and expenses incurred / extended by the Bank under this Agreement / the Security Documents, express / implied shall be payable by the Borrower to the Bank on demand and shall bear interest thereon at the Default Interest Rate if not paid within its due date.
- 19.4 This Agreement shall be binding upon the Borrower and its successor in title and shall be enforceable by and enure to the benefit of the Bank and its successors in title and assigns.
- 19.5 No failure / delay by the Bank in exercising any rights, entitlement, authority / power granted to the Bank herein shall operate as a waiver thereof.
- 19.6 Any terms / conditions / stipulations / provisions / covenants / undertakings / representations contained in this Agreement which is held to be illegal, prohibited / unenforceable by any tribunal/court of competent jurisdiction shall be ineffective to the extent of such illegality, voidness, prohibition / unenforceability, without invalidating the remaining provisions hereof.
- 19.7 The Bank may assign and/or transfer its rights and obligations under this Agreement / any part thereof, in its sole discretion deem fit, to a potential assignee / transferee. The Borrower cannot assign any of its rights under this Agreement.
- 19.8 In any legal proceedings relating to this Agreement, a letter of demand, notice, statement, reminder or certificate that is:
- (a) signed by an officer or solicitor or other agents appointed by the Bank; or
  - (b) in the form of a computer generated document from the Bank which requires no signature;
- shall be conclusive and binding on the Borrower as conclusive evidence of the Indebtedness in a court or tribunal, save for any manifest error.
- 19.9 In the event the Borrower request for an additional facility from the Bank, the Borrower shall obtain relevant consent from the Security Party for the additional facility. In such event, the Bank shall have the right to upstamp the Facility Agreement.

- 19.10 The Borrower agrees that the Bank shall have the right at any time without prior notice to debit the Borrower's deposit account / Facility account with the Bank for any charges, fees and outgoings, If such debiting causes the Borrower' deposit account / Facility account to be overdrawn, then additional interest at the Default Interest Rate shall be payable accordingly.
- 19.11 Unless expressly stated otherwise in this Agreement, the parties agree that fees and other monies payable from the provision of any supply made by the Bank under this Agreement and the Security Documents are exclusive of GST as may be applicable under the provision of the GST Law and such GST shall be borne by the Borrower.
- 19.12 This Agreement and the Security Documents are instruments employed for the completion of one and the same transaction within the meaning of Section 4(3) of the Stamp Act 1949 and for the purpose of that Section, this Agreement shall be the principal instrument.

*{The remainder of this page is intentionally left blank.}*

**FIRST SCHEDULE**

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

<b>SECTION</b>	<b>MATTER</b>	<b>PARTICULARS</b>
<b>1.</b>	<b>Date of this Agreement</b>	
<b>II.</b>	<b>Borrower</b> <b>NRIC No.</b>  <b>Address</b>	
<b>III</b>	<b>Name and description of the Security Party</b>	<b>(a) Assignor / Chargor</b>  <b>Name :</b> <b>NRIC No. :</b> <b>Address :</b>  <b>(b) Guarantor</b>  <b>Name :</b> <b>NRIC No. :</b> <b>Address :</b>

**SECOND SCHEDULE**  
**(which is to be taken and construed as an essential part of this Agreement)**

**LETTER OF OFFER**

**-As per attached-**



IN WITNESS WHEREOF the Borrower and the Autorised Officer/Attorney for the Bank have executed this Agreement the day and year first abovewritten.

SIGNED by  
[Authorised Officer/Attorney]

for and on behalf of  
**AmBank (M) Berhad**  
(Company No. 8515-D)  
in the presence of :-

}

\_\_\_\_\_  
Authorised Officer/ Attorney  
Name:  
NRIC No./Passport No.:

(where Borrower is an individual)

Signed by the )  
Borrower )  
In the presence of:- )

.....

(where Borrower is a company)

SIGNED by  
[Director]  
  
for and on behalf of  
[COMPANY]  
(Company No. [ ])  
in the presence of :-

}

\_\_\_\_\_  
Director  
Name:  
NRIC No./Passport No.:

AND/OR

SIGNED by  
[Director/Authorised Officer]

for and on behalf of  
[COMPANY]  
(Company No. [ ])  
in the presence of :-

}

\_\_\_\_\_  
Director/Authorised Officer  
Name:  
NRIC No./Passport No.:

OR

SIGNED by  
[COMPANY]  
(Company No. [ ])  
under its common seal duly affixed  
in accordance with its [Constitution]  
in the presence of:-

}

---

Director  
Name:  
NRIC No./ Passport No.:

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Director/Secretary  
Name:  
NRIC No./ Passport No.:

OR

SIGNED for and on behalf of  
[COMPANY]  
(Company No. [ ])  
by [Director/Authorised Officer]  
  
in the presence of :-

}

---

Director/Authorised Officer  
Name:  
NRIC No./Passport No.: