

Dated

Between

**HSBC Amanah Malaysia Berhad (Company No. 807705-X) (the
“Bank”)**

and

•

(the “Customer”)

FACILITY AGREEMENT

In relation to the **Business Premises Smart-i**
Facility based on the Shariah principle of
Diminishing Musharakah provided by the
Bank to the Customer

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

- (1) **HSBC AMANAH MALAYSIA BERHAD (Company No. 807705-X)**, a licensed Islamic bank having its registered office at the address at No. 2 Leboh Ampang, 50100 Kuala Lumpur and includes its successors in title and assigns (hereinafter referred to as the “**Bank**”) of the one part;

and

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

Recitals

Whereas:

I. Applicable for financing of Customer's purchase of completed property

- (A) The Purchaser(s) (as defined herein) have entered into the Sale & Purchase Agreement (as defined herein) with the Vendor (as defined herein) for the purchase of the Property (as defined herein) in accordance with the terms and subject to the conditions contained in the Sale & Purchase Agreement, and the Settlor (as defined herein) is one of the Purchaser(s). For the avoidance of doubt, if there is only one Purchaser, then in such circumstance the Settlor refers to the said Purchaser even if the Purchaser is also one of the Customer who in turn is also one of the Musharakah Parties (as defined herein).
- (B) The Customer has applied to the Bank for the Facility (as defined herein) whereby the Bank is requested to enter into a Diminishing Musharakah arrangement with the Customer for the purpose of acquiring the Property where the Customer shall lease the Bank's undivided portion of beneficial ownership in the Property.
- (C) The Bank has approved the said application subject to the terms and conditions contained herein and to the Customer being appointed by the Settlor as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank.
- (D) Upon the first disbursement of the Facility by the Bank, the Customer will agree to take a lease in advance from the Bank in respect of the Bank's undivided portion of beneficial ownership in the Property by paying (or procuring any other party to pay) Advance Lease Rentals (as defined herein) to the Bank prior to the Bank assuming its entire undivided portion of beneficial ownership in the Property and such Advance Lease Rentals would be accounted for as part of the First Lease Rental (as defined herein) payment due by the Customer to the Bank.

- (D) Upon (i) the full disbursement of the Facility by the Bank, (ii) delivery of the Property and (iii) the Bank assuming its entire undivided portion of beneficial ownership in the Property, the Customer shall lease the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah by paying the Lease Rentals (as defined herein) and purchase the Bank's undivided portion of beneficial ownership in the Property progressively by paying the Purchase Price (as defined herein); and the Bank shall periodically transfer a proportion of its undivided portion of beneficial ownership in the Property, commensurate with the Customer's progressive payment of the Purchase Price based on the Shariah principle of Diminishing Musharakah.

II. Applicable for financing of Customer's purchase of property under construction

- (A) The Purchaser(s) (as defined herein) have entered into the Sale & Purchase Agreement (as defined herein) with the Vendor (as defined herein) for the purchase of the Property (as defined herein) in accordance with the terms and subject to the conditions contained in the Sale & Purchase Agreement, and the Settlor (as defined herein) is one of the Purchaser(s). For the avoidance of doubt, if there is only one Purchaser, then in such circumstance the Settlor refers to the said Purchaser even if the Purchaser is also one of the Customer who in turn is also one of the Musharakah Parties (as defined herein).
- (B) The Customer has applied to the Bank for the Facility (as defined herein) whereby the Bank is requested to enter into a Diminishing Musharakah arrangement with the Customer for the purpose of acquiring the Property in the following manner and subject to the terms and conditions of this Agreement:
- (i) Firstly, the Customer and the Bank will provide their respective capital contribution based on the Initial Capital Contribution Ratio (as defined herein) under the Diminishing Musharakah arrangement;
 - (ii) During the construction period of the Property and upon the first disbursement of the Facility by the Bank, the Customer will agree in advance to take a lease from the Bank in respect of the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah Mawsufah Fi Al-Dhimmah (forward lease) by paying (or procuring any other party to pay) Advance Lease Rental (as defined herein) to the Bank prior to the Bank assuming its entire undivided portion of beneficial ownership in the Property, and such Advance Lease Rentals would be accounted for as part of the First Lease Rental (as defined herein) payment due by the Customer to the Bank upon the delivery of the Property and upon the Bank assuming its entire undivided portion of beneficial ownership in the Property;
 - (iii) Upon the delivery of the Property by the Procurement Party (as defined herein) to the Musharakah Parties (as defined herein):
 - (a) the Customer shall lease the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah by paying the Lease Rentals (as defined herein) and purchase the Bank's undivided portion of beneficial ownership in the Property progressively by paying the Purchase Price (as defined herein); and

- (b) the Bank shall periodically transfer a proportion of its undivided portion of beneficial ownership in the Property, commensurate with the Customer's progressive payment of the Purchase Price based on the Shariah principle of Diminishing Musharakah.
- (C) The Bank has approved the said application subject to the terms and conditions contained herein and to the Customer being appointed by the Settlor as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank.

III. Applicable for refinancing from conventional to Islamic facility

- (A) The Customer has applied to the Bank for the Facility (as defined herein) to facilitate refinancing **[and to change the scheme of financing from conventional as given by [insert name of existing financier] to Shariah,]* whereby the Bank is requested to enter into a Diminishing Musharakah arrangement with the Customer for the purpose of acquiring the Property (as defined herein) where the Customer shall lease the Bank's undivided portion of beneficial ownership in the Property and provide an undertaking to acquire the Bank's entire undivided portion of beneficial ownership in the Property progressively.
- (B) The Bank has approved the said application subject to the terms and conditions contained herein and to the Customer being appointed by the Settlor (as defined herein) as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank.
- (C) Upon the first disbursement of the Facility by the Bank, the Customer will agree to take a lease in advance from the Bank in respect of the Bank's undivided portion of beneficial ownership in the Property by paying (or procuring any other party to pay) Advance Lease Rentals (as defined herein) to the Bank prior to the Bank assuming its entire undivided portion of beneficial ownership in the Property and such Advance Lease Rentals would be accounted for as part of the First Lease Rental (as defined herein) payment due by the Customer to the Bank.
- (C) Upon (i) the full disbursement of the Facility by the Bank, (ii) delivery of the Property and (iii) the Bank assuming its entire undivided portion of beneficial ownership in the Property, the Customer shall lease the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah by paying the Lease Rentals (as defined herein) and purchase the Bank's undivided portion of beneficial ownership in the Property progressively by paying the Purchase Price (as defined herein); and the Bank shall periodically transfer a proportion of its undivided portion of beneficial ownership in the Property, commensurate with the Customer's progressive payment of the Purchase Price based on the Shariah principle of Diminishing Musharakah.

IV. Applicable for financing of unencumbered property without title

- (A) The Customer and/or the Settlor are legally and beneficially entitled to the unencumbered Property (as defined herein) under the Sale & Purchase Agreement (as described in Item 4 of the First Schedule hereto) for which separate document of title has not been issued and there is no outstanding amount payable for the Property.
- (B) The Customer has applied to the Bank for the Facility (as defined herein) whereby the Bank is requested to enter into a Diminishing Musharakah arrangement with the Customer in the following manner and subject to the terms and conditions of this Agreement:
- (i) Firstly, the Settlor shall appoint the Customer as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank;
 - (ii) The Customer (in its personal capacity and/or as trustee under the Deed of Trust) has requested the Bank to purchase part an undivided portion of the Customer's undivided portion of beneficial ownership in the Property, for which the Bank will pay the Facility Amount (as defined herein) to the Customer as the Bank's capital contribution in the Musharakah. The Bank has, according to its financing procedure, approved the Customer's application and offered to purchase part of the Customer's undivided portion of beneficial ownership in the Property by way of a Sale Contract attached to the Letter of Offer (as defined herein) subject to the terms and conditions of this Agreement;
 - (iii) The Customer's capital contribution in the Musharakah shall be represented by the value of the Customer's remaining undivided portion of beneficial ownership in the Property in the same proportion as the Customer's share of the Initial Capital Contribution Ratio;
 - (iv) Thereafter:
 - (a) the Customer undertakes to lease the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah by paying the Lease Rentals (as defined herein) and purchase the Bank's undivided portion of beneficial ownership in the Property progressively by paying the Purchase Price (as defined herein); and
 - (b) the Bank shall periodically transfer a proportion of its undivided portion of beneficial ownership in the Property, commensurate with the Customer's progressive payment of the Purchase Price based on the Shariah principle of Diminishing Musharakah.
- (C) The Bank has approved the said application subject to the terms and conditions contained herein and to the Customer being appointed by the Settlor as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank.

V. Applicable for financing of unencumbered property with title

- (A) The Customer and/or the Settlor are legally and beneficially entitled to the unencumbered Property (as defined herein) for which separate document of title has been issued and there is no outstanding amount payable for the Property.
- (B) The Customer has applied to the Bank for the Facility (as defined herein) whereby the Bank is requested to enter into a Diminishing Musharakah arrangement with the Customer in the following manner and subject to the terms and conditions of this Agreement:
- (i) Firstly, the Settlor shall appoint the Customer as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank;
 - (ii) The Customer (in its personal capacity and/or as trustee under the Deed of Trust) has requested the Bank to purchase part of the Customer's undivided portion of beneficial ownership in the Property, for which the Bank will pay the Facility Amount (as defined herein) to the Customer as the Bank's capital contribution in the Musharakah. The Bank has, according to its financing procedure, approved the Customer's application and offered to purchase part of the Customer's undivided portion of beneficial ownership in the Property by way of a Sale Contract attached to the Letter of Offer (as defined herein);
 - (iii) The Customer's capital contribution in the Musharakah shall be represented by the value of the Customer's remaining undivided portion of beneficial ownership in the Property in the same proportion as the Customer's share of the Initial Capital Contribution Ratio;
 - (iv) Thereafter:
 - (a) the Customer undertakes to lease the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah by paying the Lease Rentals (as defined herein) and purchase the Bank's undivided portion of beneficial ownership in the Property progressively by paying the Purchase Price (as defined herein); and
 - (b) the Bank shall periodically transfer a proportion of its undivided portion of beneficial ownership in the Property, commensurate with the Customer's progressive payment of the Purchase Price based on the Shariah principle of Diminishing Musharakah.
- (C) The Bank has approved the said application subject to the terms and conditions contained herein and to the Customer being appointed by the Settlor as trustee of the Settlor's undivided portion of beneficial ownership in the Property pursuant to the Deed of Trust (as defined herein) for the purpose of facilitating the Diminishing Musharakah arrangement between the Customer and the Bank.

NOW IT IS HEREBY AGREED as follows:

1 Definitions and Interpretations

1.1 Definitions

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

Address for Service	means: (a) the Bank: The address stated above. (b) the Customer: The address as stated in Item 2 of the First Schedule hereto.
Advance Lease Rental	means the lease rental payable by the Customer (or any other party on the Customer's behalf) to the Bank from the first disbursement of the Facility by the Bank until full disbursement, which shall be payable by the Customer to the Bank in accordance with Item 1.3 of the Tenth Schedule (Ijarah Arrangement), and any reference to "Advance Lease Rentals" shall be construed accordingly;
Availability Period	means the availability period of the Facility as set out in the Letter of Offer unless otherwise determined under this Agreement;
Business Day	means a day on which the Bank is open for business in Kuala Lumpur;
Capital Expenditure	means all maintenance and repair expenses other than Operating Expenditure incurred in the course of owning the Property, including but not limited to takaful contributions, quit rent, assessment, rates and taxes;
Deed of Trust	means the appointment by the Settlor of the Customer as trustee to hold and deal with the Settlor's undivided portion of beneficial ownership in the Property upon trust for the benefit of the Settlor and includes any amendments, variations and/or supplementals made or entered into from time to time;
Diminishing Musharakah Arrangement	means the co-ownership arrangement based on the Shariah principle of Diminishing Musharakah between the Bank and the Customer pursuant to this Agreement, through the provision of capital contribution by the Bank and the Customer respectively based on the Initial Capital Contribution Ratio to facilitate the acquisition of the Property for beneficial co-ownership of the Bank and the Customer, and the progressive purchase by the

Customer of the Bank's undivided portion of beneficial ownership in the Property throughout the Tenure of the Facility;

Events of Default	means any of the events specified in Clause 11.1 hereof;
Facility	means the financing facility based on the Shariah principle of Diminishing Musharakah granted by the Bank to the Customer in accordance with the terms and conditions of this Agreement;
Facility Amount	means the amount as stated in the Letter of Offer;
First Lease Rental	means the aggregate of the total Advance Lease Rental payable by the Customer to the Bank throughout the construction period of the Property and the first monthly Lease Rental payment payable by the Customer to the Bank following the Transfer Date;
Ijarah	means the contract to lease the Bank's undivided portion of beneficial ownership in the Property as part of the Diminishing Musharakah Arrangement to the Customer based on the Ijarah Arrangement as set out in the Tenth Schedule of this Agreement;
Ijarah Arrangement	means the Ijarah arrangement for the lease of the Bank's undivided portion of beneficial ownership in the Property by the Customer from the Bank based on the Shariah principle of Ijarah in accordance with the terms and conditions set out in the Tenth Schedule of this Agreement;
Initial Capital Contribution Ratio	means the initial ratio of the capital contribution of the Bank and the Customer respectively in the Musharakah as stated in the Letter of Offer;
Istisna'	means the contract under which a party purchases from another party an asset which is to be constructed, built or manufactured according to agreed specifications and delivered by the seller on an agreed specified future date for an agreed pre-determined price;
Istisna' Agreement	means the agreement entered into between the Customer and the Bank (jointly as the Musharakah Parties as defined in the Istisna' Agreement) whereby the Musharakah Parties purchase from the Customer, (in the Customer's separate capacity as Seller and Procurement Party as defined in the Istisna' Agreement) at the Istisna' Price the rights and interest over the Property which is to be constructed, built or manufactured according to agreed specifications and delivered by the Seller and Procurement Party on an agreed specified future date, as part of the Diminishing

	Musharakah Arrangement;
Land Code	means the National Land Code 1965 or the Sarawak Land Code (Sarawak Cap. 81) or the Sabah Land Ordinance (Sabah Cap. 68) as the case may be, according to where the Property is located;
Lease Maturity	means the date on which the Bank’s entire undivided portion of beneficial ownership in the Property has been transferred to the Customer;
Lease Rental	means the rental under the Ijarah calculated in accordance with the formula as stated in the Letter of Offer which shall be payable by the Customer to the Bank in accordance with the Ijarah Arrangement in the Tenth Schedule of this Agreement, and any reference to “Lease Rentals” shall be construed accordingly. For the avoidance of doubt, the rentals calculated and received by the Bank herein shall constitute the rentals payable to the Bank for the Bank’s undivided portion of beneficial ownership in the Property;
Legal Process	means pleadings, all forms of originating processes, interlocutory applications of whatever nature, affidavits, orders and such documents other than the aforesaid which are required to be served under the Rules of Court;
Letter of Offer	means the letter of offer issued by the Bank in favour of the Customer and includes any amendment(s) or variation(s) thereof and addition(s) thereto from time to time executed supplemental thereto or in substitution thereof;
Loss Sharing Ratio	means the distribution ratio in the event of losses under the Diminishing Musharakah Arrangement in accordance with the formula as described in Item 2 of the Second Schedule hereto;
Monthly Payment	means the aggregate of (i) the Lease Rental due and (ii) the Purchase Price, for any particular Monthly Payment Date and any reference to “Monthly Payments” shall be construed accordingly;
Monthly Payment Date	means the date the Monthly Payment falls due as more particularly set out in accordance with Item 1 of the Second Schedule hereto;
Musharakah Parties	means the Customer and the Bank and references to “Musharakah Party” include references to any one thereof;
Non-Permitted Use	means use (a) for illegal or immoral purpose; or (b) for any business primarily involving gambling or gaming;

		the manufacture or sale of pork, alcohol and/or tobacco; the provision of non-Islamic financial services, insurance and/or stockbroking; or entertainment activities that are non-permissible according to Shariah;
Operating Expenditure		means all maintenance and repair expenses incurred in the course of occupying and maintaining the Property as a business premises;
Ownership Price	Share	means the initial price paid by the Bank for each unit of undivided portion of beneficial ownership in the Property or the price at which the Bank and the Customer may subsequently agree to if an Event of Default has occurred for each unit of undivided portion of beneficial ownership in the Property;
Procurement Party		means the party appointed by the Musharakah Parties to procure the construction and delivery of the Property based on the terms and conditions of the Istisna' Agreement, and applicable for properties under construction only;
Profit Sharing Ratio		means the distribution ratio if there is profit under the Diminishing Musharakah Arrangement in accordance with the formula as described in Item 2 of the Second Schedule hereto;
Property		means the property as set out in Item 4 of the First Schedule hereto and includes all fixtures and buildings erected or to be erected thereon or affixed or to be affixed thereto;
Purchase Price		means the amount equivalent to the Facility Amount payable progressively by the Customer to the Bank for the purchase of the Bank's entire undivided portion of beneficial ownership in the Property;
Purchase Undertaking		means the irrevocable and unconditional undertaking made by the Customer to the Bank to purchase the Bank's entire undivided portion of beneficial ownership in the Property progressively in accordance with the terms and conditions of the Purchase Undertaking given by the Customer in favour of the Bank and includes any amendment(s) or variation(s) thereof and addition(s) thereto from time to time executed in supplemental thereto or in substitution thereof;
Ringgit Malaysia		means the lawful currency of Malaysia;
Rules of Court		means rules or other subsidiary regulation regulating the practice and procedure of a court or courts in Malaysia;

Sale & Purchase Agreement	means the sale and purchase agreement or construction agreement or building contract or such other agreement made between the Customer and the Vendor on the date as stated in Item 3(a) of the First Schedule hereto with regard to the purchase of the Property by the Customer from the Vendor or the appointment of and/or instructions to the Vendor in relation to the construction, completion and delivery of the Property to the Customer and includes any amendments, variations and/or supplemental agreements made or entered into from time to time;
Security Documents	means this Agreement and the documents executed hereunder now and hereafter or from time to time by the Customer and/or any Security Party to secure the payment of all monies payable by the Customer and any Security Party under the Facility and shall include the same as may be amended, supplemented, varied or substituted from time to time;
Security Party	means any party providing or which shall hereafter from time to time provide any guarantee or security to secure the payment of all monies payable by the Customer under the Facility or any part thereof;
Settlement Amount	means the amount payable by the Customer to the Bank upon exercise of the Purchase Undertaking by the Bank and/or the sale of the Bank's entire undivided portion of beneficial ownership in the Property to the Customer pursuant to Clause 6.2(b) herein;
Settlor	means the party in relation to the Deed of Trust whose name and particulars are as stated in the Letter of Offer;
Shariah Principles	means the Islamic principles of banking and finance as adopted and approved by the Shariah Committee of the Bank and the Shariah Advisory Council of Bank Negara Malaysia under Section 51 of the Central Bank of Malaysia Act 2009;
Tenure	means the tenure as stated in the Letter of Offer unless otherwise determined under this Agreement;
this Agreement	means this facility agreement entered into and executed between the Bank and the Customer in relation to the Facility which sets out the terms and conditions of the Facility and includes any amendments, variations and/or supplementals made or entered into from time to time;
Transfer Date	means the date deemed certified by the Bank pursuant to this Agreement whereby:

Applicable for financing of completed property

- (a) the purchase price for the Property under the Sale & Purchase Agreement has been paid in full together with (b) and (c) below;

Applicable for financing of property under construction

- (a) the construction of the Property is completed and the Bank receives notice that the Certificate of Fitness for occupation in respect of the Property is issued by the relevant authority together with (b) and (c) below;

Applicable for refinancing cases and financing of unencumbered property

- (a) the Facility Amount has been disbursed in full; together with (b) and (c) below;
- (b) the Bank grants the right to full possession of the Property to the Customer; and
- (c) the Customer accept the right to full possession of the Property.

Vendor

means the party in relation to the Sale & Purchase Agreement whose name and particulars are as set out in Item 3(b) of the First Schedule hereto.

1.2 Interpretation

- (a) Unless the context otherwise requires any reference in this Agreement relating to:
 - (i) “encumbrances” shall include any lease, mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention or other encumbrances of any kind or any right conferring priority of payment in respect of any obligation of any person but does not include liens arising in the ordinary course of business by operation of law and not by way of contract; and
 - (ii) “law” includes common law or custom and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request or requirement is addressed).
- (b) Words importing the masculine gender only shall include the feminine and neuter genders and vice versa.
- (c) Words and expressions denoting the singular number only shall include the plural and vice versa.

- (d) References to Clauses, Articles and Schedules shall unless otherwise expressly provided be references to the clauses, articles and schedules to this Agreement.
- (e) Headings and the table of contents are for ease of reference only.
- (f) Where an act is required to be done within a specified number of days after or from a specified date, the period is inclusive of and begins to run from the date so specified.
- (g) Any reference to statutes and the rules made thereunder includes all amendments which may be enacted from time to time.
- (h) Where the Customer is an individual, the provisions contained herein shall be construed to include and bind all estate and successors-in-title.
- (i) Where the Customer is a company, the provisions contained herein which are primarily and literally applicable to the case of natural persons shall be construed and take effect as if the Customer were a natural person, and shall bind all of its permitted assigns and successors-in-title. Accordingly, any references herein relating to death or bankruptcy shall thereafter be references relating to the winding-up, liquidation, amalgamation or reconstruction, as the case may be, of the Customer.
- (j) Where there is more than one party as Customer, the reference to Customer shall be to all and the liability of each Customer is hereby agreed as joint and several.
- (k) For the avoidance of doubt, notwithstanding the participation in the Diminishing Musharakah Arrangement by the Customer both in its personal capacity and/or as trustee under the Deed of Trust, the Customer hereby agrees and acknowledges that the Customer is personally liable for the financing obtained from the Bank under the Facility.
- (l) The Diminishing Musharakah Arrangement between the Bank and the Customer shall continue to be valid and binding for all purposes notwithstanding any dispute and/or challenge to the Deed of Trust entered between the Settlor and the Customer.

2 Musharakah

2.1 Diminishing Musharakah Arrangement and its purpose

The Bank and the Customer (in its personal capacity and/or as trustee under the Deed of Trust) hereby agree to enter into the Diminishing Musharakah Arrangement for the purpose of acquiring the Property.

2.2 Capital Contribution for the Diminishing Musharakah Arrangement

The Bank and the Customer hereby agree to provide capital contribution for the Diminishing Musharakah Arrangement whereby the Customer's initial capital contribution shall be the amount as set out in the Letter of Offer and the Bank's initial capital contribution shall be equal to the amount disbursed under the Facility hereunder, subject always that the Bank's and the Customer's respective undivided

portion of beneficial ownership in the Property, prior to the adjustment of undivided portion in accordance with Clauses 2.8, 5.3 and 6 hereof, shall be in accordance with the Initial Capital Contribution Ratio.

2.3 Commencement of the Diminishing Musharakah Arrangement

The Diminishing Musharakah Arrangement shall commence on the date when the Bank first releases the Bank's initial capital contribution under the Facility.

2.4 Diminishing Musharakah Arrangement not to constitute as partnership under Partnership Act 1961

For the avoidance of doubt, no partnership consequence or relationship as coming within the purview of the Partnership Act 1961 and/or any common law principles relating to partnership is contemplated or intended and no agency shall be implied as between the Customer and the Bank other than those as expressly stipulated in this Agreement and further, no registrable ownership interest in respect of the Property is deemed or intended or contemplated to be transferred, transmitted, vested, conveyed and/or created in favour of the Bank within the purview of the Land Code and neither is the Ijarah registrable under the Land Code as a consequence of the Diminishing Musharakah Arrangement.

2.5 Beneficial Co-Ownership in the Property

- (a) The Customer and the Bank hereby agree that their respective undivided portion of beneficial ownership in the Property shall be measured in percentage terms based on the proportion of their respective capital contribution to the total capital contribution for the Diminishing Musharakah Arrangement.
- (b) The capital contribution for the Diminishing Musharakah Arrangement by the Customer and the Bank entitles the Customer and the Bank to an undivided portion of beneficial ownership in the Property equal to the capital contribution contributed.
- (c) The ratio of the capital contribution for the Diminishing Musharakah Arrangement by the Customer and the Bank shall be in such ratio prevailing at the time upon which such determination is made. The initial capital contribution ratio of the Bank and the Customer respectively as at full disbursement of the Facility by the Bank shall be the Initial Capital Contribution Ratio.
- (d) The Customer's percentage of total capital contribution shall not be dealt with in any manner whatsoever other than that contemplated under the terms of the Diminishing Musharakah Arrangement as contained in this Agreement. The rights, benefit, title and interest over the Customer's percentage of total capital contribution shall not be assigned, transferred, encumbered, charged, surrendered, disposed, created security over or be declared on trust in favour of any party other than the Bank or unless with the prior written approval of the Bank.
- (e) The Customer's percentage of total capital contribution shall not be transferable to any party other than to the Bank.

- (f) The Bank's percentage of total capital contribution shall be transferable to any other party and the Customer hereby declares its waiver of all its rights and any right relating to the transfer of the Bank's percentage of total capital contribution.

2.6 Declaration of Trust

- (a) The Customer hereby declares that the Property shall be held on trust for the purposes of the Diminishing Musharakah Arrangement created pursuant to this Agreement. It shall be a term of this trust that dealings in respect of the Property shall be restricted to the Ijarah to the Customer upon the terms and conditions of the Ijarah Arrangement as set out in the Tenth Schedule of this Agreement and any monies realised or arising from the Property including the use, disposal or any compensation received in respect of the same shall be for the benefit of the Diminishing Musharakah Arrangement and the Customer shall not otherwise deal with the Property unless the prior written approval of the Bank is had and obtained.
- (b) For the avoidance of doubt, any dealings in respect of the Property shall be subject to the trust created under Clause 2.6(a) above and to the terms of the Diminishing Musharakah Arrangement between the Bank and the Customer.
- (c) The Customer and/or the Settlor (pursuant to the Deed of Trust) shall hold the legal ownership of the Property in the Customer's and/or the Settlor sole name on trust for the benefit of the Musharakah Parties pursuant to the terms of the Diminishing Musharakah Arrangement.
- (d) The Customer and/or the Settlor (pursuant to Clause 7 of the Deed of Trust) is authorised only to create security over the Property to secure all amounts payable by the Customer to the Bank and shall be further authorised to execute all such documents and do such acts as necessary to perfect any such security created including for the avoidance of doubt, where issue document of title is issued to create a charge under the Land Code or where issue document of title has yet to be issued, to assign all rights relating to the Property, and to grant a power of attorney, all in such form as may be prescribed by the Bank and to permit the custody of such original documents relating to the ownership and title of the Property with the Bank. No other dealing, security or encumbrance shall be permitted on the Property or relating to the ownership and title of the Property other than those expressly allowed under the terms of the Diminishing Musharakah Arrangement.

2.7 Release of the Facility

The payment by the Bank of the Bank's capital contribution for the Diminishing Musharakah Arrangement shall be utilised towards meeting the acquisition cost of the Property, where applicable, under the Sale & Purchase Agreement. The Bank is authorised to make such payments in the following circumstances to any of the following parties:

A. Applicable for completed Property

- (a) to the Vendor; or
- (b) where redemption of the Property is required from an existing financier, to that financier and, where applicable, any balance thereof (if any), to the Vendor; or
- (c) to such other party as agreed by the Bank,

B. Applicable for Property under construction

- (a) to the appropriate party as set out in the Istisna' Agreement; or
- (b) where redemption of the Property is required from an existing financier, to that financier and, where applicable, any balance thereof (if any), to the Vendor; or
- (c) to such other party as agreed by the Bank,

directly and for such amounts as required for the completion of the Sale & Purchase Agreement upon satisfaction of the conditions precedent as set out in the Third Schedule hereto and the disbursement conditions as set out in the Fourth Schedule hereto. All such release of the Facility by the Bank shall be deemed to be the Bank's capital contribution towards the Bank's percentage of total capital contribution in the Diminishing Musharakah Arrangement.

2.8 Purchase of the Bank's Undivided Portion of Beneficial Ownership in the Property

- (a) Notwithstanding the Lease Rental required to be paid by the Customer pursuant to and in accordance with the Ijarah Arrangement in the tenth Schedule of this Agreement, the Customer hereby undertakes, in addition to the Lease Rental, to pay the Purchase Price to the Bank for the Bank's own account at the Ownership Share Price for the purchase of the proportionate undivided portion of beneficial ownership in the Property from the Bank and such undivided portion of beneficial ownership in the Property shall be transferred to the Customer on clearance of the payment made by the Customer to the Bank.
- (b) For the purpose of Clause 2.8(a) above, the payment of the Purchase Price by the Customer to the Bank for such purchase of the Bank's undivided portion of beneficial ownership in the Property shall fall due on the same dates on which the Lease Rentals shall fall due under the Ijarah Arrangement.
- (c) For the avoidance of doubt, the payments of the Purchase Price shall, for the purpose of this Clause, be deemed due and payable for such amounts as stated in the Letter of Offer on the corresponding dates the Lease Rentals shall fall due and the obligation to pay the Lease Rentals is a separate and independent obligation from the obligation of the Customer to pay the Purchase Price to the Bank for the purchase of the Bank's undivided portion of beneficial ownership in the Property pursuant to this Agreement.

[Applicable for Property under construction]

2A Effect of failure to complete and deliver the Property

In the event that the Procurement Party fails to procure the construction up to completion and delivery of the Property to the Musharakah Parties due to whatever reason including the failure of the Vendor to complete the construction and delivery of the Property in accordance with the terms and conditions of the Sale & Purchase Agreement (“**Non-Completion Event**”), it will result in the Procurement Party breaching the procurement contract with the Musharakah Parties as set out in the Istisna’ Agreement.

3 Lease of the Property

The parties hereby agree that the Customer shall lease the Bank’s undivided portion of beneficial ownership in the Property based on the Shariah principle of Ijarah subject to the terms and conditions of the Ijarah Arrangement as set out in Tenth Schedule hereof. The parties further agree that the Ijarah Arrangement shall take effect no earlier than the Transfer Date.

4 Use and Maintenance of the Property

4.1 Use of the Property

- (a) The Customer shall at all times, subject to fulfillment of all its obligations under this Agreement and the other Security Documents as from the Transfer Date, be entitled to quiet and peaceful enjoyment of the Property, and at the same time shall comply with all requirements of law in relation to the possession use maintenance and/or repair of the Property.
- (b) The Customer shall ensure that the Property is not used for (a) for illegal or immoral purpose; or (b) for any business primarily involving gambling or gaming; the manufacture or sale of pork, alcohol and/or tobacco; the provision of non-Islamic financial services, insurance and/or stockbroking; or entertainment activities that are non-permissible according to Shariah.

4.2 No Warranties, Conditions Etc.

The Customer acknowledges that as of the Transfer Date, the Customer accepts the right to full possession of the Property, on an “as is where is” basis. The Bank does not make any nor give, and shall not be deemed to have made or given, nor shall the contract for the lease of the Property hereunder or any other contract whatsoever contain or be deemed to contain and the Bank hereby expressly disclaims any representation, warranty or condition express or implied, as to the title, value, condition, design or fitness for use for any purpose of the Property or any part thereof or any other representation, warranty or condition whatsoever, express or implied, with respect to the Property (including, without limitation, any statutory warranty or condition under the laws of Malaysia), and if any is deemed by law it is hereby fully waived by the Customer.

4.3 Satisfaction of Property

It is the responsibility of the Customer to ensure that the Property is to the specifications required for the Customer's purposes including satisfaction as to the quality, suitability and fitness of the Property before the execution of this Agreement and to examine all applicable documents relating to the Property, if any, on or before the Transfer Date and to obtain any conditions, undertakings and warranties which the Customer may require directly from the Vendor of the Property. Execution of this Agreement shall be deemed as an acceptance of the Property by the Customer to the Customer's satisfaction for the purposes of the Ijarah contemplated herein.

4.4 Disclaimer of Liability

The Customer hereby agrees that the Bank shall not under any circumstances after the Transfer Date be liable to the Customer and/or any third party for any liability, cost, claim, demand, loss, damage or expense of any kind or nature caused directly or indirectly by, out of, or by the use of any part or the whole of any of the Property or for any incompleteness or any inadequacy thereof for any purpose or any deficiency or defect thereon or the use or maintenance thereof or any repairs or any works thereto or any delay in providing or failure to provide as such or any interruption or loss of use thereof or any loss or damage whatsoever and howsoever caused. The Customer agrees to indemnify and to hold the Bank harmless from and against all or any such liabilities, cost, claims, demands, losses, damages and expenses whatsoever, legal or otherwise which the Bank may sustain, suffer or incur thereto.

4.5 Ownership of Property

The Bank and the Customer hereby acknowledge that the legal ownership of the Property remains with the Customer and/or the Settlor (in their capacity as Purchaser(s)) who shall hold the legal ownership of the Property on trust via the Customer (in its personal capacity and/or as trustee under the Deed of Trust) for the benefit of the Musharakah Parties pursuant to the Diminishing Musharakah Arrangement under this Agreement. For the avoidance of doubt, any dealings in respect of the Property shall be subject to the trust created under Clause 2.6(a) herein pursuant to the Diminishing Musharakah Arrangement under this Agreement.

4.6 Maintenance of the Property

(a) The Bank and the Customer hereby agree that the maintenance and repair expenses of the Property shall be borne as follows:

(i) **Operating Expenditure**

The Operating Expenditure in respect of the Property shall be fully borne by the Customer as lessee and occupier of the Property.

(ii) **Capital Expenditure**

The Capital Expenditure in respect of the Property shall be proportionately borne by the Bank and the Customer as the Musharakah Parties in accordance with the Profit Sharing Ratio.

- (b) At the request of the Customer, the Musharakah Parties have agreed to appoint the Customer as the Musharakah Parties' agent in respect of the maintenance and repair of the Property and pursuant thereto the Customer shall be responsible to carry out the maintenance and repair in relation to the whole Property for and on behalf of the Musharakah Parties in the following manner during the Tenure of the Facility:
- (i) maintain the Property in reasonable condition satisfactory to the Bank at least in accordance with the general standard of maintenance which is expected from owners of similar properties;
 - (ii) conduct regular and proper inspections of the Property as necessary to determine when maintenance and repair is required;
 - (iii) keep the Property in good and tenantable repair and condition (fair wear and tear excepted) and replace all missing, damaged or broken articles and parts with articles or parts of a quality and value such that the performance and condition of the Property would not be materially and adversely affected;
 - (iv) ensure that the Property is maintained by persons who are competent to maintain the Property and that no person who is prohibited by law from so doing will carry out work involving the maintenance of the Property; and
 - (v) ensure that accurate, complete and current records are kept of all maintenance activities on the Property, and shall provide copies of such to the Bank promptly upon request.
- (c) If the Customer as agent of the Musharakah Parties upon notice from the Bank fails to carry out the maintenance and repair in accordance with this Clause to the satisfaction of the Bank within any such stipulated timeline, the Bank shall be entitled (but shall not be bound) to have its representatives or agents enter upon the Property at any time to effect such maintenance and repair and shall be entitled to be indemnified for any costs and expenses relating thereto in accordance with Clause 15.2 herein.
- (d) As agent of the Musharakah Parties in respect of the maintenance and repair of the Property, the Customer is entitled to claim the Capital Expenditure from the Musharakah Parties in proportion to the Profit Sharing Ratio subject to Clause 4.8 herein, provided that the Capital Expenditure which is claimed by the Customer from the Musharakah Parties is not due to the negligence or fault of the Customer.
- (e) For the purposes of this Clause, "maintenance and repair" shall mean all repairs, replacements, maintenance and upkeep works required for the general upkeep of the Property and to keep, repair, maintain and preserve the Property in good tenantable condition, and in accordance with such maintenance, repair and upkeep standards generally expected of an owner in occupation including compliance with all local by-laws.

4.7 Responsibilities of the Customer

- (a) It is hereby agreed that the Customer shall pay the quit rent, assessment rates, taxes, service charges and all other outgoings whatsoever payable from time to time in respect of the Property as and when the same shall become due and payable. In default whereof it shall be lawful for but not obligatory upon the Bank to pay the same or any part thereof and upon such payments by the Bank all sums so paid shall be for the account of the Customer and shall form part of the amount due under the Facility.
- (b) Without prejudice to the foregoing terms and provisions of this Clause and in addition and without prejudice to any other powers, rights and remedies which the Bank may be entitled to, the Customer 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 client basis) which the Bank may sustain, suffer or incur as a consequence of appointment of the Customer as agent hereunder, or on account of the non-observance of all or any of the terms stipulations agreements and provisions on the part of the Customer contained herein or under the Security Documents, and such losses, damages and expenses shall include but not be limited to such amount as the Bank shall certify (such certification being conclusive and binding upon the Customer save for any manifest error).

4.8 Set-off of Lease Rentals Against Capital Expenditure

The Customer hereby agrees that if the Customer claims the Capital Expenditure from the Bank in accordance with Clause 4.6(d) herein, the Bank is entitled to impose additional Lease Rental of an amount equal to the said Capital Expenditure claimed, and the payment of the additional Lease Rental by the Customer and the payment of the said Capital Expenditure by the Bank shall be effected by way of set-off.

5 Monthly Payment

5.1 Monthly Payment in relation to the Facility

The Monthly Payment obligations of the Customer in relation to the Facility pursuant to this Agreement shall be paid and satisfied entirely by payments by the Customer to the Bank in accordance with the terms and conditions of this Agreement. A notice in relation to the commencement of the Monthly Payment will be issued by the Bank to the Customer at a time that shall be determined by the Bank.

5.2 Application of Monthly Payment

Notwithstanding anything to the contrary herein contained, all payments made by the Customer under the Facility prior and without prejudice to the Bank exercising any of its rights under Clause 11.2 herein shall be applied in the following order of priority:

- (a) all costs and expenses payable by the Customer to the Bank under the Facility;
- (b) all Lease Rental due; and
- (c) all Purchase Price due for the purchase of the Bank's undivided portion of beneficial ownership in the Property.

5.3 Excess Monthly Payment

[Only applicable for accounts with redraw facility/flexi]

- (a) It is hereby agreed that in the event that the Customer pays to the Bank an amount exceeding the Monthly Payment due, such excess amount paid shall be deemed as payment made for the purchase of the Bank's undivided portion of beneficial ownership in the Property, and such purchase shall be at the Ownership Share Price for the proportionate undivided portion of beneficial ownership in the Property, and this undivided portion of beneficial ownership in the Property shall be transferred to the Bank on clearance of such excess payment. Such amount paid in excess of the Monthly Payment due is available for redrawing by the Customer from time to time at the discretion of the Bank and upon the terms and conditions herein, where each redrawing made by the Customer shall be deemed as payment made by the Bank for the purchase of the Customer's undivided portion of beneficial ownership in the Property, provided that:
 - (i) such redrawing is made within the Tenure;
 - (ii) at the time of redrawing, the Bank is satisfied that the redrawing will not result in any breach of any terms contained in this Agreement or in any of the Security Documents or in the non-compliance with any guidelines or directives or laws or regulations currently in force at the time or from time to time, including but not limited to such guidelines or directives issued by Bank Negara Malaysia;
 - (iii) at the time of redrawing, the Bank is satisfied that no Event of Default under this Agreement has occurred or is continuing or will result from the utilisation of the amount redrawn or any part thereof;
 - (iv) such redrawing by the Customer herein is agreed to be effected by way of cheque, ATM/debit card, telebanking and/or internet banking;
 - (v) the purchase of the Customer's undivided portion of beneficial ownership in the Property shall be at the Ownership Share Price and such undivided portion of beneficial ownership in the Property which is proportionate to the amount redrawn shall be transferred to the Bank on clearance of the redrawn amount; and
 - (vi) any other conditions and/or requirements as notified by the Bank to the Customer is fulfilled to the satisfaction of the Bank.

- (b) It is hereby nevertheless agreed that unless otherwise stipulated by the Customer in writing to the Bank in accordance with the requirements of Clause 5.5 herein prior to making such excess payment referred to in Clause 5.3(a) above, any amount paid in excess of the Monthly Payment due which may result in the acquisition of all of the Bank's undivided portion of beneficial ownership in the Property shall not result in a dissolution of the Diminishing Musharakah Arrangement herein.
- (c) Upon each purchase by either the Customer or the Bank of the undivided portion of beneficial ownership in the Property in accordance with Clause 5.3(a) above, the Lease Rental shall be adjusted accordingly.

5.4 Insufficient Monthly Payment

It is agreed that in the event the Customer pays to the Bank an amount less than the Monthly Payment due, such amount paid shall first be applied towards the Lease Rental due subject always that:

- (a) if there shall be any shortfall towards meeting the Lease Rental due, then such shortfall shall be considered as a late payment to which the Customer undertakes to pay compensation (ta'widh) upon the terms contained in this Agreement; and
- (b) if there shall be any balance after applying towards the Lease Rental due, then such balance shall be applied for the purchase of the Bank's undivided portion of beneficial ownership in the Property. The shortfall of the payment due by the Customer for the purchase of the Bank's undivided portion of beneficial ownership in the Property shall be deemed as a breach of Clause 2.8(a) herein and such shortfall shall be an amount due and owing by the Customer to the Bank.

5.5 Early Settlement

Notwithstanding Clauses 2.8 and 5.3(a) above, the Customer may effect an early settlement by paying the Settlement Amount and acquiring the Bank's entire undivided portion of beneficial ownership in the Property and thereby dissolving the Diminishing Musharakah Arrangement. To dissolve the Diminishing Musharakah Arrangement, the Customer is required to serve on the Bank one (1) month's notice in advance stating the Customer's intention to dissolve the Diminishing Musharakah Arrangement.

5.6 Currency of Payment

All payments to be made hereunder and, where appropriate, under the Security Documents by the Customer shall be made by the Customer in Ringgit Malaysia in immediately available funds on the due date or dates to the Bank.

5.7 Business Day

If any sum becomes due for payment under or pursuant to the terms of this Agreement or any of the Security Documents on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day unless such next succeeding Business Day falls in another calendar month in which event such payment shall be made on the Business Day preceding the due date. The Customer

shall ensure that all payments are made on a timely basis in accordance with Clause 5.6 herein.

5.8 Payments to be Free and Clear

All sums payable by the Customer and, where applicable, any Security Party under the Security Documents shall be paid:

- (a) free of any restriction or condition;
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) without deduction or withholding (except to the extent required by law) on account of any bank charges or commission or any other charges or deductions or any other amount, whether by way of set-off or counterclaim or otherwise.

5.9 Continuing Obligations

Without prejudice to the survival of any other agreement of the Customer hereunder, the agreements and obligations of the Customer contained in Clause 5.8 above shall survive the payment in full of the Monthly Payment hereunder and under any instrument delivered hereunder.

6 Transfer of undivided portion of beneficial ownership in the Property

6.1 Transfer of the Bank's undivided portion of beneficial ownership in the Property

When the Customer makes progressive payment of the Purchase Price to the Bank, such payment will be treated as an offer by the Customer to acquire the Bank's undivided portion of beneficial ownership in the Property pro rata with the proportion of the Customer's progressive payment of the Purchase Price. Unless the Bank notifies the Customer that the progressive payment of the Purchase Price is not accepted by the Bank as an offer by the Customer to acquire the Bank's undivided portion of beneficial ownership in the Property within three (3) Business Days of the Bank receiving such payment, the offer shall be treated as accepted (unless the payment is dishonoured or returned unpaid) and pursuant thereto a proportion of the Bank's undivided portion of beneficial ownership in the Property shall be transferred to the Customer commensurate with the Customer's progressive payment of the Purchase Price, and the Bank's undivided portion of beneficial ownership in the Property shall be proportionately reduced and the Customer's undivided portion of beneficial ownership in the Property shall be proportionately increased.

6.2 Transfer of undivided portion of beneficial ownership in the Property

The Bank and the Customer hereby agree that after the commencement of the Diminishing Musharakah Arrangement, the Bank and the Customer may negotiate subject to the Bank's approval, for the transfer of undivided portion of beneficial

ownership in the Property, including but not limited to the following circumstances:

- (a) the Bank may purchase from the Customer the Customer's undivided portion of beneficial ownership in the Property at anytime during the continuation of the Facility in order to provide cash flow assistance to the Customer for the purpose of making improvements to the Property, whereby the Bank shall be entitled to the right to revise the structure and/or schedule for the Lease Rentals and/or the Purchase Price after the Bank's buy back subject to the revised quantum of the Lease Rentals and/or the Purchase Price being made known to the Customer and agreed upfront in such manner as provided thereto in Ninth Schedule prior to the commencement of the revised structure and/or schedule. Such buy back shall be by way of cheque, ATM/debit card, telebanking and/or internet banking; and
- (b) subject to Clause 5.5 herein, the Customer may acquire all the Bank's undivided portion of beneficial ownership in the Property by purchasing the Bank's entire remaining undivided portion of beneficial ownership in the Property with full payment of the Settlement Amount.

7 Representations and Warranties

7.1 Representations and Warranties

The Customer hereby expressly represents and warrants to the Bank the representations and warranties as set out in the Fifth Schedule hereto.

7.2 Continuation of Representations and Warranties

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

8 Covenants and Undertakings

8.1 Positive Covenants

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

8.2 Negative Covenants

The Customer hereby covenants with the Bank those covenants as set out in the Seventh Schedule hereto and agrees such covenants to be in force for as long as the Bank remains a capital contributor for the Diminishing Musharakah Arrangement

or there are any monies howsoever due and payable to the Bank by the Customer under this Agreement and/or the Security Documents.

8.3 Specific Covenants in respect of the Property

The Customer further covenants with the Bank those covenants as set out in the Eighth Schedule and agrees such covenants to be in force for as long as the Bank remains a capital contributor for the Diminishing Musharakah Arrangement or there are any monies howsoever due and payable to the Bank by the Customer under this Agreement and/or the Security Documents.

9 Takaful

9.1 Procurement of Takaful

- (a) The Customer hereby agrees as agent of the Musharakah Parties, to procure immediately after the signing of this Agreement and at all times during the Tenure, takaful protection in respect of the Property with any licensed and reputable takaful operators against loss or damage by fire, lightning, riot and strike, malicious damage, explosion and other relevant risks up to the replacement cost in the name of the Customer for the Musharakah Parties, with the interest in the takaful certificate and all future certificates vested in the name of the Bank as chargee/assignee.
- (b) The Customer hereby agrees as agent of the Musharakah Parties, to punctually pay all contributions payable under the takaful certificates taken out pursuant to the terms hereof, produce the receipts for such payments to the Bank on demand, do anything necessary to maintain the said certificates in full effect and not do or permit or suffer to be done anything whereby the said certificates be prejudiced or vitiated. Provided always that the Bank shall be under no duty to examine any such takaful certificates or to advise the Customer in the event that the takaful is not in compliance with the terms of the Diminishing Musharakah Arrangement hereunder and PROVIDED FURTHER that failure to recover under any such takaful shall not relieve the Customer from any of its duties and covenants under this Agreement and/or any other Security Documents.

9.2 Cost of Procurement of Takaful

The cost of procuring takaful protection on the Property by the Customer as agent of the Musharakah Parties shall be borne by the Customer and the Bank in accordance with Clauses 4.6(a)(ii) and 4.6(d) herein.

9.3 Takaful Mortgage Plan

The Customer may take/sign up and maintain a takaful mortgage plan. The Customer hereby agrees and undertakes to assign or procure that the Security Party, where applicable, assigns absolutely all rights title interest and benefits to the proceeds payable under the takaful mortgage plan to the Bank as further security and the Customer shall name or procure that the Security Party shall name the Bank as the sole beneficiary. The proceeds payable under the takaful mortgage plan shall be applied by the Bank in the same manner and order as the application of the

proceeds of sale as set out in Clause 11.3 herein as if such takaful proceeds were the proceeds of sale as described in Clause 11.3 herein.

9.4 Application of Takaful Proceeds

Other than in relation to the takaful mortgage plan referred to in Clause 9.3 herein:

- (a) The Customer shall immediately notify the Bank as soon as an event covered by takaful arises and also give all necessary notices to or make all necessary claims on the takaful operators immediately.
- (b) If the Property shall be damaged during the term of the Diminishing Musharakah Arrangement hereunder and in the opinion of the Bank it is economical that such damage be made good, the takaful monies payable or paid under any takaful certificate for the Property shall be applied in making good the said damage. If such monies are insufficient, the Musharakah Parties shall be liable to pay the difference forthwith in accordance with the Loss Sharing Ratio.
- (c) If the Property shall be damaged to such an extent as to be in the opinion of the Bank incapable of economic repair, the takaful proceeds payable or paid under any takaful certificate for the Property shall be applied by the Bank in the same manner and order as the application of the proceeds of sale as set out in Clause 11.3 herein as if such takaful proceeds were the proceeds of sale as described in Clause 11.3 herein.

10 Security

10.1 Security Documents

For better securing the obligations and performance of the duties of the Customer as a Musharakah Party and the Procurement Party under the Diminishing Musharakah Arrangement and all monies that may be payable by the Customer to the Bank including the Settlement Amount, the Customer shall execute and perfect all Security Documents in the form and substance as prescribed by the Bank and shall procure any Security Party to execute and perfect all Security Documents which they are a party to in the form and substance as prescribed by the Bank.

10.2 Continuing Security

The security herein created is expressly intended to be and shall be a continuing security for all monies whatsoever now or hereafter from time to time owing to the Bank by the Customer including the Settlement Amount whether alone or jointly and severally with another or others and whether as principal or surety notwithstanding that the Customer may at any time cease to be indebted to the Bank for any period or periods of time.

10.3 Covenant to Provide Further Security

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

10.4 Irregularity in Diminishing Musharakah Arrangement (if any)

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

11 Default

11.1 Events of Default

The Customer is deemed to have committed a default if the Customer commits, or threatens to commit, a breach of any of the covenants, undertakings, stipulations, terms, conditions or provisions herein stipulated or as agreed anytime between the Customer and the Bank from time to time and without prejudice to the generality of the foregoing, upon the happening of any one or more of the following events:

- (a) if the Monthly Payments are at any time not current, or if the Customer fails or defaults in the payment of any amounts due and outstanding to the Bank whether formally demanded or not including the Customer failing to pay such amounts covenanted to be paid for the acquisition of the Bank's undivided portion of beneficial ownership in the Property pursuant to Clause 2.8 hereof; or
- (b) if the Customer fails to comply with any notice given hereunder, under the Purchase Undertaking and under the other Security Documents requiring him to remedy any breach of the terms of this Agreement, the Purchase Undertaking or the other Security Documents within the time stipulated therein; or
- (c) if any of the Customer's other indebtedness to the Bank, HSBC Bank Malaysia Berhad ("**HSBC Bank**") or any third party or parties become, or become capable in accordance with the relevant terms thereof of being accelerated in payment or repayment or declared due prematurely by reason of a default by the Customer in his obligations with respect to the same, or the Customer fails to make any payment in respect thereof on the due date for payment or upon the security for any such indebtedness becoming enforceable; or
- (d) if a receiver or other similar officer is appointed on the whole or any part of the assets or the undertaking of the Customer or the Settlor (if applicable), or if any step or action is taken or a resolution is passed for the judicial management, winding up, dissolution, liquidation or bankruptcy of the Customer or the Settlor or a petition for winding-up or bankruptcy, as the case may be, is presented against the Customer or the Settlor or, if such proceeding or action has been taken by the Customer or the Settlor such steps or petition is not discharged or stayed within twenty one (21) days from the date of the taking of such step or petition; or

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

- (q) if the Property turns out to be used for (a) for illegal or immoral purpose; or (b) for any business primarily involving gambling or gaming; the manufacture or sale of pork, alcohol and/or tobacco; the provision of non-Islamic financial services, insurance and/or stockbroking; or entertainment activities that are non-permissible according to Shariah; or
- (r) any other event or events occur or circumstances arise which in the sole opinion of the Bank give reasonable grounds for believing that (i) it is improbable that the Customer will be able to perform any of its obligations under this Agreement, the Purchase Undertaking or the relevant Security Documents or the Customer may not (or may be unable to) duly and punctually perform or comply with its obligations under this Agreement, the Purchase Undertaking or the relevant Security Documents; or (ii) the Facility is being threatened or placed in jeopardy for any reasons whatsoever; or
- (s) for any reason any guarantee or security given to the Bank for the payment of any moneys payable and secured hereunder shall be terminated or shall lapse for any reason whatsoever or if the guarantor and/or security provider shall be in default under the terms of such guarantee and/or security document or dies or become of unsound mind or is wound up or commits any act of bankruptcy or becomes bankrupt or enters into any composition or arrangement with or for the benefit of such guarantor and/or security provider or allows any judgment of the creditors against such guarantor and/or security provider to be made; or
- (t) where the Customer is conducting business, if the Customer ceases or threatens to cease carrying on its business or transfer or dispose or intend to so transfer or dispose of a substantial part of the Customer's assets or change or intend to change the nature or scope of the Customer's business as now conducted; or
- (u) by reason of any change after the date of this Agreement in circumstances, applicable law, regulation or regulatory requirements or, in the interpretation or application thereof of any governmental or other authority charged with the administration thereof it shall become unlawful for the Bank to comply with its obligations herein; or
- (v) any payment of any moneys payable and secured hereunder is made through the Customer's current account (which include all accounts for which cheques may be drawn against, howsoever described) and the account is closed by any bank following the applicable guidelines as issued by Bank Negara Malaysia and/or the policies of the relevant bank in effect from time to time governing continued operations of current accounts (regardless of whether any overdraft/cash line has been granted or otherwise) notwithstanding the Customer's current account(s) with the Bank whether held solely or jointly with others has/have been conducted satisfactorily; or

- (w) there is a total loss of the Property due to misconduct, negligence or breach of Clause 4 or Clause 8 caused by the Customer; or
- (x) such events of default as stated in the other Security Documents.

11.2 Rights of Bank on Default

- (a) If the Customer shall commit a default pursuant to Clause 11.1 hereof or if any of the events stipulated in Clause 11.1 hereof shall happen, and which is capable of remedy is not remedied within a period of one (1) month from the date of notice by the Bank requesting remedy of the same, or is not remedied within the time specifically stipulated therefor (if any) in respect of the event in question, the Bank will be entitled to exercise the following:
 - (i) exercise the Purchase Undertaking whereby the Customer shall be legally obliged to redeem the Property by purchasing the Bank's entire remaining undivided portion of beneficial ownership in the Property and promptly paying in full the Settlement Amount which includes all sums payable hereunder, under the Purchase Undertaking and under the other Security Documents. Subject to full payment of the Settlement Amount, the Bank will transfer all of the Bank's undivided portion of beneficial ownership in the Property to the Customer at the Customer's cost and expense whereupon the Diminishing Musharakah Arrangement hereunder will be dissolved accordingly; and
 - (ii) if the Customer fails to honour the Purchase Undertaking, the Bank shall proceed to sell the Property to any third party where the proceeds of sale shall be applied in accordance with Clause 11.3 hereof whereupon the Diminishing Musharakah Arrangement hereunder will be dissolved accordingly.
- (b) In addition to the above remedies available under Clause 11.2(a) hereof, the Bank shall be entitled without further notice to the Customer to enforce all or any of the Security Documents and all of the remedies available under the law.

11.3 Proceeds of Sale

- (a) All moneys received by the Bank from the sale of the Property or any proceedings instituted or steps taken herein and/or under any of the Security Documents shall, subject to statutory priorities (if any), be applied by the Bank in payment of all costs, charges and expenses incurred and payments made by the Bank under the provisions of all or any of the Security Documents and in or towards any unpaid amount accruing and of all other moneys due and remaining unpaid under any or all the Security Documents.
- (b) Where the Bank has exercised its rights upon the occurrence of Event of Default as specified in Clause 11.2(a) hereof, if there is any surplus or deficiency after the proceeds of sale have been applied in accordance with Clause 11.3(a) hereof, such surplus, if any, shall be paid to the Customer and/or such persons entitled thereto as the case may be, or in cases of

deficiency, the Customer shall promptly pay in full to the Bank the difference between the amount due under the Purchase Undertaking and the amount so realised pursuant to the Bank exercising its rights under Clause 11.2(a)(i) above.

11.4 Bank's Right to Commence other Legal Proceedings Concurrently

Notwithstanding any provision hereof, it is hereby expressly agreed that upon default or breach by the Customer of any term, covenant, stipulation and/or undertaking provided and on the part of the Customer to be observed and performed, the Bank shall thereafter have the right to exercise all or any of the remedies available whether by this Agreement or the other Security Documents or by statute or otherwise and shall be entitled to exercise such remedies concurrently, including pursuing all remedies of sale or possession and civil suit to recover all monies due and owing to the Bank.

11.5 Deficiency in Proceeds of Sale

If the amount realised by the Bank pursuant to the proceedings referred to in Clause 11.4 hereof after all deductions thereof is less than the amount due and payable to the Bank, and whether at such sale the Bank is the purchaser or otherwise, the Customer shall pay to the Bank the difference between the amount due and the amount so realised.

11.6 Payment of Settlement Amount in Full

Upon payment of the Settlement Amount, the Bank's entire undivided portion of beneficial ownership in the Property shall immediately pass to the Customer at the Customer's cost and expense.

12 Termination

12.1 Dissolution of Musharakah

Subject to the terms and conditions of this Agreement and provided that no Event of Default has occurred and is continuing hereunder and under the other Security Documents:

- (a) the Diminishing Musharakah Arrangement hereunder will be dissolved when the Customer has acquired the Bank's entire undivided portion of beneficial ownership in the Property and has paid all sums due and payable by the Customer under this Agreement and under the other Security Documents, whereupon the Bank will transfer the Bank's entire undivided portion of beneficial ownership in the Property to the Customer at the Customer's cost and expense Provided Always that the Diminishing Musharakah Arrangement shall not be dissolved if such acquisition of the Bank's entire undivided portion of beneficial ownership in the Property was made in accordance with Clause 5.3(a) herein and no notification in accordance with Clause 5.5 herein were made to the Bank by the Customer; or
- (b) if the Customer has not acquired the Bank's entire undivided portion of beneficial ownership in the Property upon expiry of the Tenure, the

Customer may redeem the Property by purchasing the Bank's entire remaining undivided portion of beneficial ownership in the Property and paying all sums payable hereunder and under the other Security Documents, whereupon the Bank will transfer the Bank's entire undivided portion of beneficial ownership in the Property to the Customer at the Customer's cost and expense and thereafter the Diminishing Musharakah Arrangement shall be dissolved. If the Customer does not so purchase the Bank's entire remaining undivided portion of beneficial ownership in the Property, the Bank shall have the right to exercise its rights as stipulated in Clause 11.2(a)(ii) hereof; or

- (c) if the Customer has become incapable of effecting commercial transactions in accordance with Shariah, or upon death of the Customer or the Customer being declared of unsound mind, the Bank shall have the right to exercise its rights as stipulated in Clause 11.2(a)(ii) hereof and the Diminishing Musharakah Arrangement hereunder will be dissolved accordingly.

13 Government Acquisition

13.1 Government Acquisition

- (a) In the event that the said Property or any part thereof, shall at any time become the subject matter of, or be included in any notice, notification or declaration concerning or relating to acquisition by the government, or any government authority or any enquiry or proceeding in respect thereof, in the event such notice, notification or declaration is given or served to the Customer, the Customer shall forthwith inform the Bank of the same and shall forward to the Bank a copy or copies of any such notice, notification or declaration as soon as the same shall be delivered to or served on the Customer.
- (b) The Customer and the Bank hereby agree that upon the Bank's receipt of the notice, notification or declaration relating to the acquisition of the Property by the government or any government authority from the Customer, the Bank will be entitled to exercise the Purchase Undertaking whereby the Customer shall be legally obliged to redeem the Property by purchasing the Bank's entire remaining undivided portion of beneficial ownership in the Property and promptly paying in full the Settlement Amount which includes all sums payable hereunder and under the other Security Documents. Subject to full payment of the Settlement Amount, the Bank will transfer the Bank's entire undivided portion of beneficial ownership in the Property to the Customer at the Customer's cost and expense whereupon the Diminishing Musharakah Arrangement hereunder will be dissolved accordingly.

13.2 Application of Compensation Proceeds

- (a) The Customer hereby declares that all monies received as or by way of compensation for any such acquisition of the said Property or any part thereof shall, subject to statutory priorities (if any), be applied towards payment of the Settlement Amount and other costs, charges and expenses

incurred in relation to the Facility under the provisions of all or any of the Security Documents.

- (b) If there is any surplus or deficiency after the compensation proceeds have been applied in accordance with Clause 13.2(a) hereof, such surplus, if any, shall be paid to the Customer and/or such other persons entitled thereto, or in cases of deficiency, the Customer shall pay to the Bank the difference between the amount due and the amount so realised pursuant to the Bank exercising the Purchase Undertaking under Clause 13.1(b) herein.

14 Force Majeure

14.1 Force Majeure

In the event that the Property or any part thereof is, destroyed or substantially damaged beyond economic repair, indefinitely detained, distrained, confiscated, compulsory required or lost or damaged for any reason whatsoever beyond the control of the Bank and/or the Customer, the Customer shall give notice as soon as practical to the Bank and the Facility shall be terminated immediately and:

- (a) the Customer shall ensure that a claim in respect of such damage to the Property is made promptly in accordance with the terms of the relevant takaful certificate(s) and that no settlement of any such claim shall be agreed by any person without the prior written consent of the Bank. The Customer irrevocably undertakes to procure that in the event that any takaful proceeds in respect of a claim for damages is paid to the Customer as agent of the Musharakah Parties by the takaful provider, the Customer shall hold such takaful proceeds as agent for the Musharakah Parties whereby the Musharakah Parties shall apply such takaful proceeds received to repair, rebuild or reinstate (so far as the takaful proceeds extend) the Property as it deem fit as soon as reasonably practical;
- (b) if the damage to the Property is beyond repair, the Customer agrees that the takaful proceeds shall be applied by the Bank in the same manner and order as the application of the proceeds of sale as set out in Clause 11.3 herein as if such takaful proceeds were the proceeds of sale as described in Clause 11.3 herein;
- (c) the Customer shall promptly indemnify the Bank, as one of the Musharakah Parties, to the fullest extent against any damage to the Property where such damage is not covered by takaful or the takaful sum is insufficient or inadequate due to the Customer's negligence or fault or any other losses suffered by the Bank whether due to the Customer's failure to insure or renew the takaful over the Property as agent of the Musharakah Parties, properly and sufficiently insure the same or to claim takaful from the takaful provider or where the takaful provider fails or refuses to pay the takaful amount due to any negligence or default on the Customer's part either acting as lessee or as agent of the Musharakah Parties.

15 Miscellaneous

15.1 Disclosure to Bank Negara Malaysia

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

15.2 Indemnity

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

15.3 Effective Date

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

15.4 Determination of Amount Invested

It is hereby agreed that any admission or acknowledgment in writing by the Customer or by any person authorised on behalf of the Customer, or a judgment (by default or otherwise obtained against the Customer), or a statement of account in writing showing the amount of the Bank's remaining undivided portion of beneficial ownership in the Property which is duly certified by an authorised officer of the Bank, shall be binding and conclusive evidence against the Customer for whatever purpose including as being conclusive evidence of the Bank's remaining undivided portion of beneficial ownership in the Property in a court of law.

15.5 Discharge of Amount Due and Payable

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

15.6 Cross-Default

Notwithstanding any other provisions herein:

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

whether such sums are due jointly or individually by the Customer or such security provider, then in such event, the Bank shall be entitled to exercise its rights under Clause 11.2 herein.

15.7 Suspense Account

- (a) Any monies received hereunder and under the Security Documents may be placed and kept to the credit of a suspense account for so long as the Bank thinks fit without any obligation in the meantime to apply the same or any part thereof in or towards the discharge of any money or liability due or incurred by the Customer to the Bank. Notwithstanding any such payment, in the event of proceedings in or analogous to bankruptcy, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liability in the same manner as if this security had not been created.
- (b) In addition to the foregoing provision, the Bank shall be entitled to apply any payments made by the Customer under this Facility towards payments of profit, principal or any other amount due and payable to the Bank, in such proportions and order of priority and generally in such manner as the Bank may determine.

15.8 All Payments Received to be Payment in Gross

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

15.9 Consolidation and Combination of Account

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

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

The Bank further reserves the right at any time, with notice to the Customer, to combine or consolidate all of the Customer's accounts including jointly with others (of any nature whatsoever and wheresoever situate, whether in Ringgit Malaysia or any other currency) with the Bank, to place a hold on the credit balances in such accounts which the Bank estimates in good faith to be sufficient, including taking into account exchange rate fluctuations (if applicable) up to the amount due and payable by the Customer to the Bank hereunder and under the Security Documents, and after seven (7) days' prior notice to the Customer, to set-off or apply and transfer such credit balance (even if it involves uplifting and withdrawing any deposit/investment before maturity date and where necessary, converting the same into Ringgit Malaysia at the prevailing spot rate of exchange on the day of conversion) in or towards satisfaction of the amount due and payable to the Bank.

In respect of the Customer's accounts including joint accounts held with HSBC Bank, the Customer confirms that the Customer has irrevocably authorised HSBC Bank via the Letter of Offer to debit such accounts and pay the proceeds to the Bank for any amount due in respect of the Facility and authorises the Bank to liaise with HSBC Bank in connection therefor.

15.10 Waiver

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

acquiescence in any such default, affect or impair any right, power, privilege, or remedy of the Bank in respect of any other or subsequent default.

15.11 Reconstruction of the Bank or Customer

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

15.12 Modification and Indulgence

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

- (a) vary, modify, restructure, reduce, increase, suspend, cancel or terminate the Facility or any other facility granted to the Customer and may open and/or continue any accounts with the Customer at any branch or branches of the Bank Provided Always that the Bank may charge different Lease Rental rates other than the rates contained herein and all covenants as to the Lease Rental rates hereunder shall apply to the varied or increased Facility or other credit or facility;
- (b) grant to the Customer, the Security Party, any other surety or guarantor or any other person any time or indulgence;
- (c) deal with exchange, release, modify or abstain from perfecting or enforcing any securities or rights the Bank may now or hereafter have from or against the Customer, the Security Provider or any other person;
- (d) enter into any deed of composition with the Customer; or
- (e) compound with the Customer, the Security Party or any other person or guarantor to accept payment of the Indebtedness by such increased or reduced Monthly Payments as shall be agreed to by the Bank or to suspend payment of the Indebtedness.

15.13 Expenditure Incurred by the Bank for and on behalf of the Customer

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

15.14 Severability

Any term, condition, stipulation, provision, covenant or undertaking contained herein and/or in the Security Documents which is or becomes illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any such term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.

15.15 Time

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

15.16 Stamp Duties

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

15.17 Costs

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

For avoidance of doubt, this would include fees, charges and expenses expended on legal proceedings and foreclosure proceedings (including but not limited to legal fees, valuation fees (to the extent not restricted by any laws or regulations), real estate agents fees and/or auctioneer fees), if applicable.

15.18 Collection, Processing and Sharing of Customer Information

- (a) The Bank's Generic Terms & Conditions ("GTC") (available at www.hsbcamanah.com.my or upon request) on "Collection, Processing and Sharing of Client Customer Information" and any subsequent alteration, variation or substitution to the same, shall be incorporated herein.
- (b) The Customer hereby also agrees to the following:-
 - (i) the Bank carrying out credit checks and obtaining credit reports and information on the Customer and also on all guarantors and Security Party (as applicable) (collectively, "Data Subjects") from time to time from the Credit Bureau Malaysia and any other registered credit reporting agencies registered under the Credit Reporting Agencies Act 2010 (as listed on the Bank's website at www.hsbcamanah.com.my);
 - (ii) the Credit Bureau Malaysia and any other credit reporting agencies registered under the Credit Reporting Agencies Act 2010 (as listed on

the Bank's website at www.hsbcamanah.com.my) sourcing and retaining information on the Customer and all Data Subjects from any available data source, and disclosing to the Bank any such information as may be requested by the Bank.

The Customer warrants that the Customer has been irrevocably authorised by the Data Subjects to give this consent on their behalf.

- (c) The Bank may appoint a debt collection agency to collect the amount due and payable by the Customer hereunder and under the Security Documents and/or to sell any non-performing financing to third parties and thereby reserves the right at any time in its absolute discretion, without further notice or reference to the Customer to disclose any relevant information relating to the Facility to the said agency and/or third parties.

15.19 Incorporation of Letter of Offer

It is hereby agreed between the Bank and the Customer that all the terms and conditions in the Letter of Offer including all subsequent variations shall be deemed to be incorporated into and form part of this Agreement and in the event of any conflict or discrepancy between the terms and conditions in the Letter of Offer and the provisions of this Agreement, the Customer hereby agrees that the Bank shall be entitled to decide as to which terms conditions or provisions shall prevail and be applicable.

15.20 Successors Bound

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

15.21 Schedules

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

15.22 Governing Law

- (a) The Security Documents and the rights and duties of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of Malaysia and Shariah Principles and in relation to any legal action or proceedings arising out of or in connection with the Security Documents ("**Proceedings**"), the Customer irrevocably submits to the jurisdiction of the courts of Malaysia, and waives any objections to Proceedings in any court on the grounds that the Proceedings have been brought in an inconvenient forum and the parties further agree to make an application for the courts to refer any question involving a Shariah matter to the Shariah Advisory Council of Bank Negara Malaysia pursuant to Section 56 of the Central Bank of Malaysia Act 2009 for a ruling.
- (b) Such submission shall however not affect the right of the Bank to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any jurisdiction preclude the Bank from taking Proceedings in any other

jurisdiction and the Bank shall be at liberty to initiate and take actions or Proceedings or otherwise against the Customer in Malaysia and/or elsewhere as the Bank may deem fit.

15.23 Assignment and Transfer

The Customer may not assign or transfer any of its rights, benefits and/or obligations hereunder or under any of the Security Documents to any person without the Bank's prior written consent. The Bank shall be at liberty at any time (with notice to the Customer, to the extent it is required by law) assign or transfer any of its rights, benefits and/or obligations under this Agreement and under the Security Documents at any time as the Bank deems fit provided always that the interests and obligations of the Customer are not adversely affected in any material respect by such assignment or transfer as of the date of assignment or transfer..

15.24 Service of Notices/Legal Process

- (a) The service of any notice to be given or issued hereunder; or any Legal Process by the Bank to the Customer may be given by hand, ordinary / registered post (either AR or non AR registered post) or courier sent to the Customer's Address for Service hereto or to the Customer's address last known to the Bank, and such notice or Legal Process shall be deemed to have been duly served three (3) days after posting or despatch to the courier service provider (as the case may be) and if delivered by hand, on the day it was delivered.
- (b) No change in the Address for Service howsoever brought about shall be effective or binding on the Bank unless the Customer has given to the Bank actual notice of the change of Address for Service and nothing done in reliance above shall be affected or prejudiced by any subsequent change in the Address for Service over which the Bank has no actual knowledge of at the time the act or thing was done or carried out.
- (c) The affidavit or oral evidence of the Bank or his servant or agent, as to the delivery, posting or service of any notice or document required or authorised to be served, given or sent by this Agreement is admissible as ¹prima facie proof of the service, giving or sending of the notice or document.
- (d) In the case of the death of the Customer and until receipt by the Bank of notice in writing of the grant of probate of the will or administration of the estate of the deceased any notice or demand by the Bank sent in the manner provided for in this Agreement to the aforesaid address to the deceased or his personal representatives at the deceased's last known address or as stated herein this Agreement shall for all purposes be deemed to be sufficient notice or demand by the Bank to the deceased and his personal representatives and shall be as effectual as if the deceased was still living.

¹ "Prima facie proof" means sufficient proof.

15.25 Section 57 of the Islamic Financial Services Act, 2013 and other laws and guidelines

The Customer understands and accepts that the granting of the Facility under this Agreement is subject to legislation which have imposed certain restrictions and prohibitions on the Bank providing banking facilities (i) to persons related to officers, directors or shareholders of the Bank, its parent company, HSBC Bank and that of the holding company of the Bank's parent company, The Hongkong And Shanghai Banking Corporation Limited, or (ii) to directors of any entity within the HSBC Group. These are (i) Section 57 of the Islamic Financial Services Act, 2013 ("IFSA") read with the Guidelines on Credit Transactions and Exposure with Connected Parties for Islamic Banks² issued by Bank Negara Malaysia or in accordance with the prevailing guidelines, as the same may be replaced, amended or updated from time to time (the "**Restrictions**"), (ii) Part 8 of the Banking (Exposure Limits) Rules (Cap. 155S) of the Hong Kong Special Administrative Region,³ the law of the place in which the holding company of the Bank's parent company is located, and (iii) Sections 224⁴ and 225⁵ of the Companies Act 2016, as the same may be amended, re-enacted or replaced (collectively, the "**Prohibitions**").

The Customer represents and warrants to the Bank that that the Customer: (a) is/are not in any way connected to any of the officers, directors, shareholders or service providers (including professional services) or landlords/lessors/vendors or purchasers of real estate or capitalised leases of the Bank and/or the Bank's parent company and/or the holding company of the Bank's parent company or if the Customer is so connected, that the Customer has informed the Bank of the same, and (b) do(es) not hold directorships within the meaning of the Restrictions and/or Prohibitions. The Customer shall immediately inform the Bank if the Customer becomes is an individual so connected or prohibited under paragraphs (a) and/or (b). The Customer further agrees that it shall be an Event of Default in the event the Facility should at any time, whether at the time of granting or after the time of

² Bank Negara Malaysia (BNM) imposes on the Bank certain limitations, restrictions and requirements on credit transactions with persons (including firms, partnerships or any legal entities) connected to the Bank or any of its directors, controlling or influential shareholders, executive directors, officers who have authority to appraise, approve or review credit transactions. Please get the latest guidelines on this topic from the website of BNM at <http://www.bnm.gov.my>.

³ Part 8 of the Banking (Exposure Limits) Rules (Cap. 155S) (which has replaced Section 83 of the Hong Kong Banking Ordinance as at 1 July 2019 (with six (6) months implementation grace period)) imposes on the Bank certain limitations and restrictions on advances to persons (including firms, partnership and non-listed companies) related to the Bank or any of its directors, employees with lending authority or controllers. The said Banking (Exposure Limits) Rules may be assessed or downloaded from the website of Hong Kong Monetary Authority at <https://www.hkma.gov.hk> or the website of Hong Kong Legal Information Institute at <http://www.hklii.org/eng/hk/legis/reg/155S/>

⁴ Section 224 of the Companies Act 2016 provides that, unless otherwise exempted under the provision, a company shall not make a loan to a director of the company or its related company or enter into any guarantee or provide any security in connection with a loan made to such director by any other person.

⁵ Section 225 of the Companies Act 2016 provides that, unless otherwise exempted under the provision, a company other than an exempt private company shall not make a loan to a person connected with a director of the company or of its holding company or enter into any guarantee or provide any security in connection with a loan made to such person by any other person.

granting, be in contravention of the Prohibitions, and that the Bank reserves the right to cancel the Facility if it contravenes the Restrictions and/or Prohibitions.

Explanatory Notes:

1. *Please note that for the purposes of the IFSA, "officer" encompasses "any employee or the chief executive officer of the body corporate or unincorporated" and relative to an individual includes, "(a) the spouse of the individual; (b) the brother or sister of the individual, or of the spouse of the individual; (c) any lineal ascendant or descendant of the individual, or of the spouse of the individual; (d) the spouse of any individual referred to in paragraph (b) or (c); (e) any lineal descendant of an individual referred to in paragraph (b) or (d); (f) any uncle, aunt or cousin of the individual, or of the spouse of the individual; or (g) any spouse, or any lineal ascendant or descendant, of an individual referred to in paragraph (f)."*
2. *"HSBC Group" refers to HSBC Holdings plc and its subsidiaries, and companies in which any of the aforesaid has an associate interest.*

15.26 Authority to Deduct Salary

- (a) If the Customer is a salaried employee, the Customer shall forthwith upon request made by the Bank authorise his employer to deduct from the Customer's monthly salary and pay the same direct to the Bank for the credit of the Customer's said Facility account with the Bank to be utilised towards payment of the Facility in accordance with this Agreement.
- (b) Notwithstanding any other similar clause herein, if the Customer has a current or other account with HSBC Bank, the Customer hereby irrevocably authorises the Bank to instruct HSBC Bank to debit its account and pay the Bank the proceeds for all sums payable from the Customer to the Bank hereunder and under the other Security Documents. The Customer shall arrange to have funds available therefore. If there is for any reason insufficient funds in the Customer's HSBC Bank account(s) to cover the full amounts sought to be debited, then the Customer agrees that the Bank is still authorised to instruct HSBC Bank to effect the debit notwithstanding that an overdraft (or any excess thereon) is created. It shall be the Customer's responsibility to address the effects of such overdrawing, or having such overdraft excess, as the case may be, according to the terms and conditions imposed by HSBC Bank.

15.27 Compensation (Ta'widh)

- (a) The Customer hereby acknowledges that the Bank shall have the right to be compensated on late payment/default payment of Monthly Payment in accordance with the following, calculated on a daily basis:
 - (i) for failure to pay any part of the Monthly Payment within the Tenure, at the rate of one per centum (1%) per annum of the outstanding Monthly Payments or total outstanding balance as applicable; and
 - (ii) for failure to pay any Monthly Payment which continues beyond the Tenure or after judgment (whichever is earlier), at the rate per

annum as determined by the Bank from time to time provided that the rate shall not at any time exceed the prevailing “IIMM rate” (namely the daily weighted average overnight rate for Mudharabah interbank investment quoted in Malaysia’s Islamic interbank money market) on the total outstanding balance;

or any other method approved by the Shariah Advisory Council of Bank Negara Malaysia, and such compensation (ta’widh) shall not be compounded. The right to such compensation (ta’widh) shall not prejudice any of the Bank’s other rights.

- (b) The compensation at the aforesaid rate shall be payable by the Customer after, as well as before, any judgment or order of court.

15.28 Other Terms and Conditions

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

15.29 Amendments and Additional Terms

- (a) Save for Clauses 15.29(b), and 15.29(c) upon agreement by both parties, the terms of this Agreement herein may be varied, amended, supplemented or additional terms may be added by an exchange of letters and shall be effective without the necessity of having to enter into any formal instrument or supplemental document and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall read and be construed as if such amendments or variations has been incorporated in and had formed part of this Agreement at the time of execution hereof upon notice to the Customer. In the event of any inconsistency between the provisions of this Agreement and the terms as varied or amended by the aforesaid exchange of letters or formal or supplemental documents, the latter shall prevail. The varied terms and conditions shall not be in contravention of Shariah rulings and guidelines issued by the Bank’s Shariah Committee and Shariah Advisory Council of Bank Negara Malaysia.
- (b) The Customer hereby agrees to be bound by any decision or conclusion related to Shariah matters pronounced or made by the Bank’s Shariah

Committee and/or by the Shariah Advisory Council of Bank Negara Malaysia established under Section 51 of the Central Bank of Malaysia Act 2009 and/or any related bodies from time to time in respect of the Facility.

- (c) If any change in the applicable law, rules, regulation or official requirement or in the interpretation or application thereof by any government authority or court or tribunal or other authority charged with the administration thereof or compliance by the Bank with any request from Bank Negara Malaysia or other fiscal, monetary or other authority (whether or not having the force of law) will cause or result in additional cost burden liability or obligation on the Bank to make or maintain the Facility, the Bank reserves the right to vary any terms and conditions in respect of the Facility and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall read and construed as if such amendments or variations has been incorporated in and had formed part of this Agreement at the time of execution hereof.

15.30 Changes in Circumstances

- (a) Where the Bank determines that:-
- (i) the introduction, imposition or variation of any law, order, rule, regulation, directive (whether or not having the force of law) or HSBC Group policy; or
 - (ii) any change in the interpretation or application of any law, order, rule, regulation, directive (whether or not having the force of law) or HSBC Group policy; or
 - (iii) any compliance with any directive, guideline, circular, note or request (whether or not having the force of law) from or agreement with or requirement of the central bank or other fiscal, monetary or other authority or agency whether in Malaysia or in the jurisdiction of the holding company of the Bank's parent company or ultimate holding company;

makes it unlawful or impractical without breaching or causing material non-compliance with any such law, order, rule, regulation, HSBC Group policy, guideline, circular, note or request for the Bank to allow all or any part of the Facility to remain outstanding or to carry out all or any of its other obligations under this Agreement or to charge or receive lease rentals at the rate applicable, then the Bank shall notify the Customer in writing of such event and upon expiry of thirty (30) days of such notification:-

- (i) the Bank's obligation to release the Facility or continue to make available the Facility shall terminate and the Facility shall be cancelled; and
- (ii) if any part of the Facility has been released, the Customer shall prepay the released amount without premium or prepayment

charges to the Bank all of the sums advanced on such date as the Bank shall deem to be necessary or expedient to comply with the relevant law, order, rule, regulation, directive, guideline, circular, note or request.

- (b) The right of the Bank under Clause 15.30(a) above shall remain unfettered irrespective of whether the Facility was approved or made available before or after the relevant law, order, rule, regulation, directive, guideline, circular, note or request.

15.31 No Inference of Condonation or Acquiescence

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

15.32 No payment of interest

For the avoidance of doubt and notwithstanding any other provisions to the contrary herein contained, it is hereby agreed and declared that nothing in the Security Documents shall oblige any party to the Security Documents to pay or to receive interest (by whatever means or name called) on any amount due or payable to another party to the Security Documents or to do anything contrary to Shariah Principles.

15.33 Ibra' (Rebate)

- (a) As and when applicable and in accordance with the Guidelines on Ibra' (Rebate) for Sale-based Financing issued by Bank Negara Malaysia, the Bank may grant Ibra' (rebate) on any amount payable by the Customer in respect of any payment due under the Security Documents.
- (b) The Bank's calculation of such Ibra' (rebate) shall, save for manifest error, be treated as final and conclusive.

15.34 Financial Crime Risk Management Activity

- (a) At all times during the Tenure, the Customer shall ensure that the Customer has never and would not:
 - (i) engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - (ii) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or bring into Malaysia proceeds of any unlawful activity; or

- (iii) conceal, disguise or impede the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity.
- (b) In any event, the Customer shall ensure that the Facility shall not be used for any purpose that may contravene any Shariah principles or for any illegal activities as stipulated under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001⁶.
- (c) The operations of the Customer's company/ business, and of the Customer's subsidiaries and their affiliates, are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements, and the money laundering statutes, and the rules and regulations thereunder, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Customer, any of the Customer's subsidiaries or any of their affiliates (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Customer, any of the Customer's subsidiaries or any of their affiliates with respect to the Money Laundering Laws is pending or, to the best of the Customer's knowledge, threatened.
- (d) The Bank's GTC (available at www.hsbcamanah.com.my or upon request) on "Financial Crime Risk Management Activity" or any equivalent and/or relevant clause(s) which may be subsequently inserted to alter, modify, supplement, vary or substitute the same, shall be incorporated into this Agreement.

15.35 Evidence of payments due

It is hereby agreed that any admission or acknowledgement in writing by the Customer, or by any person authorised on their behalf or a judgment (by default or otherwise obtained against any of them) or a statement of account in writing showing the payments due and payable by the Customer, which is duly certified by an authorised officer of the Bank or by any solicitor or firm of solicitors purporting to act for the Bank shall, save for manifest error, be binding and conclusive evidence against the Customer for whatever purpose including as being conclusive evidence of the Settlement Amount and all other amounts which are payable under the terms of the Security Documents in a court of law. Notwithstanding the above provisions, the Customer hereby agrees that a demand for payment of the Settlement Amount (or any part thereof) may be made by the Bank in the form of a computer generated demand or notice which requires no signature or which

⁶ For more information, please visit the website of BNM on this topic at <http://amlcft.bnm.gov.my/>). The latest Act may also be downloaded from the said website.

contains a printed or facsimile signature. Any such demand or notice shall (save for manifest error), be binding and conclusive on the Customer.

15.36 Appropriation

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

15.37 Independent payment obligations

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

15.38 Condition of discharge or release of the Customer

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

15.39 Defects in Powers

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

15.40 Recitals and Annexures

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

15.41 Exchange Control

The Customer shall procure any approval as may be required from time to time under the Foreign Exchange Administration Rules⁷ in relation to the Facility.

15.42 Tax Compliance

The Bank's GTC (available at www.hsbcamanah.com.my or upon request) on "Tax Compliance" or any equivalent and/or relevant clause(s) which may be subsequently inserted to alter, modify, supplement, vary or substitute the same, shall be incorporated into this Agreement.

15.43 Anti-Bribery

Neither the Customer and/or any of its affiliates, nor, to the Customer's knowledge, any director, partner, officer, agent, employee or other person acting on behalf of the Customer or any of its affiliates, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to, the Malaysian Anti-Corruption Commission Act 2009⁸ (the "MACCA"), the United Kingdom Bribery Act 2010⁹ (the "UK Bribery Act") and the U.S. Foreign Corrupt Practices Act of 1977¹⁰ (the "FCPA"). Furthermore, the Customer and, to the Customer's knowledge, its affiliates, have conducted their businesses in compliance with the MACCA, the UK Bribery Act, the FCPA and similar laws, rules or regulations, and have instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

15.44 Sanctions

Neither the Customer and/or any of its subsidiaries, nor any of the Customer's/its subsidiaries' director or partner or officer or employee, agent, or affiliate, is/are an individual or entity ("**Person**") that is, or is owned or controlled by Persons that are, (i) the target or subject of any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury and/or Bank Negara Malaysia (collectively, "**Sanctions**"), or (ii) located,

⁷ Foreign Exchange Administration ("FEA") rules are a set of rules administered by Bank Negara Malaysia to safeguard the value of the Malaysian currency. Residents who are dealing in foreign currencies and non-residents who are dealing in Malaysian Ringgit are required to comply when performing remittance transaction, invest in foreign currency asset or transact through External Account or Foreign Currency Accounts. Penalties may be imposed if FEA rules are not complied with. Please get the latest FEA rules from BNM's website at <http://www.bnm.gov.my/>.

⁸ Please get the latest MACCA from the website of Malaysia Anti-Corruption Commission (<https://www.sprm.gov.my>) by clicking on the "Education" tab.

⁹ Please get the latest Bribery Act 2010 and Bribery Act 2010 Guidance from the website of the United Kingdom Ministry of Justice (<https://www.gov.uk/government/organisations/ministry-of-justice>).

¹⁰ Please get the latest U.S. Foreign Corrupt Practices Act 1977 and the FCPA Guide from the website of the United States Department of Justice (<https://www.justice.gov/>).

organised or resident in a country or territory that is, or whose government is, the target or subject of Sanctions, including, without limitation, currently the Crimea region, Cuba, Iran, North Korea, Sudan and Syria.

15.45 Shariah Compliance

It is hereby agreed and declared that the structure of the Facility and all Security Documents relating to the Facility have been reviewed and approved in principle by the Shariah Committee of the Bank.

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FIRST SCHEDULE

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

Item	Matter	Particulars
1.	Date of Business Premises Smart-i Facility Agreement (Diminishing Musharakah)	
2.	Name and description of the Customer	
3.	<p><i>Applicable for Property without individual title only</i></p> <p>(a) Date of Sale & Purchase Agreement</p> <p>(b) Name and description of the Vendor</p>	
4.	Description of the Property	

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SECOND SCHEDULE

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

DIMINISHING MUSHARAKAH ARRANGEMENT

Item	Matter	Particulars
1.	Monthly Payment	<p>The Monthly Payment shall consist of the Lease Rental and the Purchase Price as stated in the Letter of Offer. The Monthly Payments shall commence on the day falling one (1) month from full disbursement of the Facility or from the expiry of the Availability Period, whichever is earlier.</p> <p>Subject to one (1) month’s written notice, the Monthly Payment may be re-adjusted based on the outstanding Facility Amount and Tenure, at the request of either party.</p> <p>Notwithstanding the above, the Bank may at its discretion reduce the Facility Amount by giving one (1) month’s notice to the Customer.</p>
2.	Profit Sharing Ratio / Loss Sharing Ratio	<p>In accordance with the ratio of the Musharakah Parties’ respective prevailing capital contribution for the Diminishing Musharakah Arrangement.</p>

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THIRD SCHEDULE

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

CONDITIONS PRECEDENT

(Clause 2.7)

- (a) The Bank shall have received the Customer's acceptance of the Letter of Offer within the time prescribed.
- (b) This Agreement, the Purchase Undertaking and all security documents which are required herein and/or such other documents as may be required by the Bank and/or its solicitors shall have been executed by the Customer and/or the Settlor and/or the relevant Security Party within the time prescribed, and duly stamped and registered at such registries as the Bank may deem necessary or expedient.
- (c) The Customer shall have paid all fees or charges payable or agreed to be paid by the Customer to the Bank for or in connection with the Facility.
- (d) No extraordinary circumstances or change of law or other governmental action shall have occurred which makes it improbable that the Customer will be able to observe or perform the covenants and obligations herein.
- (e) The Bank's solicitors shall have made a search on the Customer or Security Party at the Director-General of Insolvency's Office or Companies Commission of Malaysia and the results thereof shall have been satisfactory to the Bank.
- (f) Such other additional condition(s) precedent to disbursement as stated in the Letter of Offer or as may be deemed necessary by the solicitor(s) of the Bank and/or the Bank.

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FOURTH SCHEDULE

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

FACILITY RELEASE CONDITIONS

(Clause 2.7)

FIFTH SCHEDULE

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

REPRESENTATIONS AND WARRANTIES

(Clause 6.1 and Clause A3.1)

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

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

Each of this Agreement, the Purchase Undertaking and the Security Documents constitutes the legal, valid and binding obligations of the Customer, the Settlor and where applicable, any Security Party, in accordance with their respective terms and do not contravene Sections 224 and/or 225 of the Companies Act 2016 (as applicable).

(b) **Consents**

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

(c) **Information**

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

(d) **Change in the Customer**

The Bank is satisfied that as from the date when the Customer first applied for the Facility, there has been no material adverse changes in the financial affairs of the Customer and where applicable, any Security Party, which could or might adversely affect the decision of the Bank to proceed with the Facility.

(e) **No Security**

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

(f) **Disclosure**

The Customer has fully and accurately disclosed in writing to the Bank all facts relating to the Customer and the Settlor which the Customer knows or should reasonably know and which are material for disclosure to the Bank in the context of the Facility to which the Customer is a party and the information (be it in writing or otherwise) furnished by the Customer in connection with the Security Documents to which the Customer is a party does not contain any untrue statement or omit to state any material fact the omission of which makes the statements therein, in the light of the circumstances under which they were made, misleading in a material adverse respect, and all expressions, intention, belief and opinion contained therein were honestly and carefully made on reasonable grounds.

(g) **Use of Property**

The Customer does not use nor permit the Property to be used for (a) for illegal or immoral purpose; or (b) for any business primarily involving gambling or gaming; the manufacture or sale of pork, alcohol and/or tobacco; the provision of non-Islamic financial services, insurance and/or stockbroking; or entertainment activities that are non-permissible according to Shariah.

(h) **Status**

The Customer is a company duly incorporated and validly existing under the laws of Malaysia and has full authority and the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, this Agreement, the Purchase Undertaking and the Security Documents.

(i) **Powers and Authorisations**

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

(j) **Non-violation**

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

(k) **No default**

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

(l) **Litigation**

No litigation, arbitration or administrative proceeding or claim which might by itself or together with any other such proceedings or claims either have a material effect on the Customer's or the Settlor's assets or condition or materially affect the Customer's or the Settlor's ability to observe or perform the Customer's respective obligations under this Agreement, the Purchase Undertaking and the Security Documents, is presently in progress or pending or, to the best of the knowledge, information and belief of the Customer, threatened against the Customer or the Settlor or any of his assets, save for what has been previously disclosed by the Customer.

(m) **Tax Liabilities**

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

(n) **Lawsuits**

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

(o) **No Immunity**

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

(p) **Bankruptcy**

The Customer and the Settlor have not committed any act of bankruptcy.

(q) **Event of Default**

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

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SIXTH SCHEDULE

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

POSITIVE COVENANTS

(Clause 7.1)

The Customer shall:

(a) **Direct and Unconditional Obligations**

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

(b) **Indebtedness**

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

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

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

(d) **Ranking**

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

(e) **Other Incidental Acts**

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

(f) **Information**

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

(g) **Settlor**

procure the Settlor to observe and perform all the terms and conditions contained in this Agreement, the Deed of Trust and the Security Documents;

(h) **Legal Proceedings**

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

(i) **Consents**

shall obtain and promptly renew or cause and procure the attainment and renewal, from time to time, and will promptly deliver to the Bank certified copies of any authorisation, approval, consent, licence, exemption, registration, recording, filing or notarisation as may be necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Customer or the rights of the Bank under the Security Documents and the Customer shall comply and/or procure compliance with the terms of the same;

(j) **Notice**

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

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

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

(k) **Authorisations**

- (i) maintain in full force and effect all relevant authorisations (governmental and otherwise) and will promptly obtain any further authorisations which may become necessary to enable it to own its assets, carry on its business and perform its obligations under, and any of the transactions contemplated

by the Security Documents and pay all taxes levied on the Customer by the due date thereof; and

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

(l) **Default**

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

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SEVENTH SCHEDULE

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

NEGATIVE COVENANTS

(Clause 7.2)

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

(a) **Create Security**

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

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

(b) **Create Further Security**

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

(c) **Effect Additional Takaful**

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

(d) **Indebtedness**

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

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

(e) **Disposal of Property**

sell, transfer or lease or otherwise dispose of the Property or in any case cease to exercise control over, whether by a single transaction or a number of transactions, all or a substantial part of the Property.

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EIGHTH SCHEDULE

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

SPECIAL CONDITIONS

(Clause 8.3)

The Customer hereby covenants that:

- (a) the title to the Property is good, valid, subsisting and free from all encumbrances and that any charges rates and taxes relating to the Property have been paid and any other terms covenants, conditions and obligations relating to the Property to be performed and observed by the Customer have been duly paid, performed and observed up to the date hereof; and that the Customer has good right and title to execute the charge in favour of the Bank free from all encumbrances save as may herein be specified;
- (b) it shall maintain and keep all structures and fixtures now or at any time hereafter erected on or affixed to the Property in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon the Bank to carry out such repairs as deemed necessary PROVIDED THAT in doing so the Bank shall not be deemed to have been taken possession of the Property and if the Bank shall carry out repairs, the costs and expenses thereof shall be for the account of the Customer and shall form part of the amount due hereunder;
- (c) it shall permit the Bank and its agents and workmen at all reasonable times of the day to enter upon the Property and have access to any fixture thereof and to view and inspect the condition or repair thereof;
- (d) until the full payment of the monies hereunder secured, the Bank, its employees and/or agents shall be allowed to inspect for purposes of valuing the Property once every two (2) years or such other period of time as determined by the Bank, and the Customer shall provide all assistance to the Bank for such purpose including but not limited to granting access to the said Property and any related documents required by the Bank to the Bank's officer and/or representative. All costs and expenses incurred relating to this inspection and valuation shall be borne by the Customer (to the extent not restricted by any laws or regulations) and shall be repaid by the Customer on demand by the Bank. In default of such payment, such moneys shall be deemed to form part of the amount due and payable by the Customer to the Bank and to be secured accordingly hereunder and the account of the Customer shall be debited accordingly;
- (e) it shall not use the Property or suffer the same to be used for purposes other than those for which the same has been built nor store or bring upon the Property any articles of a combustible inflammable or dangerous nature nor do or permit or suffer to be done anything by reason whereof any takaful certificates may be rendered void or voidable;
- (f) it shall provide the Bank with copies of all notices to or from all relevant government authorities or notices or information given by the Vendor relating to the Property not later than seven (7) days of the service of such notices by or on the

Customer and to comply with all governmental and other legal requirements and notices whether statutory or otherwise in respect of the Property;

- (g) it shall comply with and observe all the conditions restrictions and category of use, express or implied, imposed upon, relating to, or affecting the Property or to which the Property is subject as well as the provisions of any Act of Parliament, ordinance or enactment for the time being in force and of any rule or order made thereunder affecting the same including all local by-laws and directives;
- (h) it shall inform the Bank of any application, demand, notice, order whatsoever or any other notice, document or transaction in any way affecting, or concerning the Property or any part thereof forthwith upon its issue, publication or service (time being of the essence in respect hereof) and produce the same to the Bank whether demanded or not AND the Customer shall do all acts and take all steps necessary or expedient to safeguard and preserve the Property or any part thereof or the title or ownership thereto AND the Bank may if it thinks fit and on behalf of or in the name and at the expense of the Customer do all such acts and employ all such persons as the Bank shall deem fit for the purpose of safeguarding and preserving the Property;
- (i) it shall give full particulars in writing within fourteen (14) days to the Bank upon receipt of any notice or order or proposal therefore given issued or made to the Customer in respect of the Property by or on behalf of any planning, local government, public health, sanitary, housing or other authority and if so required by the Bank, without delay and within the period prescribed by such notice, take all reasonable or necessary steps to comply with the provisions of such notice or order and also at the request of the Bank and at the cost of the Customer make or join with the Bank in the making of any such notice or order or proposal therefor as the Bank may deem expedient;
- (j) it shall observe and perform all the terms and conditions contained in the Security Documents and on the part of the Customer to be observed and performed and in addition thereto any condition and covenant binding upon the Property and not do or omit to do any act matter or thing on or in respect of the Property which shall contravene the provisions of the Security Documents or of any act, ordinance, enactment, order, rule or regulation now or hereafter affecting the same and at all times hereafter indemnify and keep indemnified the Bank against all actions proceedings costs expenses claims and demands in respect of such act matter or thing done omitted or suffered to be done in contravention of the said provisions;
- (k) it shall not use nor permit the Property to be used for any Non-Permitted Use;
- (l) it shall not without the written consent of the Bank first had and obtained:
 - (i) assign, transfer, sell, charge or otherwise howsoever deal with the Customer's rights, title and interest on the Property or any part thereof or any interest therein or make the same subject to any charge, encumbrance, liability or lien whatsoever or rescind remove or amend any condition or restriction affecting the Property;
 - (ii) alter, pull down, or remove any building or fixture now or at any time hereafter erected on or affixed to the Property or any part thereof without the consent in writing of the Bank first had and obtained and shall forthwith

replace or make good the same in the event of such alteration, pulling down or removal; and

- (iii) use the Property for any purpose other than for the purpose it was being used at the date hereof;

Provided that such consent by the Bank may be given or refused either absolutely or on such terms and conditions as the Bank deems fit and the decision of the Bank shall be final and conclusive;

- (m) it shall obtain all necessary licenses, permits and permissions for the use of the Property and not use the Property or permit the same to be used contrary to any law or regulation or by-law for the time being in force;
- (n) it shall inform the Bank immediately if the Property is the subject matter of any litigation or such similar proceedings which would or may jeopardize any security held by the Bank by any person whosoever and shall bear all costs and expenses (including legal costs on a fully indemnity basis) to have the Property released therefrom;
- (o) it shall at the request of the Bank affix such signage as maybe necessary indicating the Bank's interest in the Property and the Customer shall not deface or remove such signage; and
- (p) it shall undertake or carry out or cause to be undertaken or carried out any renovation, extension or modification work on the Property Provided that where the Bank grants such consent the work shall be undertaken or carried out at the sole risk and responsibility of the Customer and in the event any damage is caused to the Property or any part of it is destroyed by or by reason of such work the Customer shall repair and make good such damage or destruction at his sole cost and expense and shall not hold the Bank responsible therefore in any manner whatsoever.

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NINTH SCHEDULE

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

Provision of cash flow assistance to the Customer
in accordance with the Bank's buy back under Clause 5.2(a)

FORM OF NOTICE FROM THE CUSTOMER TO THE BANK

To: Bank
Name & Address

Re: Business Premises Smart-i Facility Agreement (Diminishing Musharakah) dated [●]
between the [Customer] and the Bank ("**Facility Agreement**"):

Offer to Sell Undivided Portion of Beneficial Ownership in the Property

1. The above matter is referred.
2. Unless the context otherwise requires or unless it is otherwise expressly assigned to them hereunder, the words and expressions defined in the Facility Agreement shall have the same meanings herein.
3. *I/We hereby wish to inform you that pursuant to Clause 5.2(a) of the Facility Agreement, we hereby offer to sell to you:

[insert percentage]% of undivided portion of beneficial ownership in the Property ("**Sale Portion**").
- 4.. Pursuant to the Diminishing Musharakah Arrangement *I/We promise, covenant and undertake to lease the Sale Portion from you under the contract of Ijarah, upon conclusion of the sale of the Sale Portion and to purchase back the Sale Portion from you progressively.

Dated

20[]

for [the Customer]

Name:

NRIC No:

FORM OF NOTICE TO THE CUSTOMER FROM THE BANK

To: Customer
Name & Address

Re: Business Premises Smart-i Facility Agreement (Diminishing Musharakah) dated [●]
between the [Customer] and the Bank (“Facility Agreement”):
Offer to Sell Undivided Portion of Beneficial Ownership in the Property

1. We refer to your letter dated [] (“Letter”).
2. Unless the context otherwise requires or unless it is otherwise expressly assigned to them hereunder, the words and expressions defined in the Letter and the Facility Agreement shall have the same meanings herein.
3. Pursuant to Clause 5.2(a) of the Facility Agreement, we are pleased to inform you that your offer for the sale of the Sale Portion has been accepted subject to the following terms and conditions:

(aa) particulars of the Sale Portion purchased by the Bank:

Percentage of undivided portion of beneficial ownership in the Property	The Bank’s capital contribution for the Sale Portion
[]%	RM -00

(bb) Structure and Schedule of Monthly Payment for the Customer’s lease and progressive purchase of the Sale Portion from the Bank:

Lease Rental Rate	Tenure	Monthly Payment
BFR – % per annum	[] months	RM -00

(cc) Subject to the variations contained in this Letter and such other alterations (if any) as may be necessary to make the Facility Agreement consistent with this Letter, the terms of the Facility Agreement shall apply mutatis mutandis¹¹ and shall be construed and read and enforceable as if the terms of the Facility Agreement are inserted herein by way of addition or substitution as the case may be.

Dated 20[]

for [the Bank]

¹¹ mutatis mutandis means with the necessary changes having been made

ACCEPTANCE

* I/We understand and accept this Letter and the terms stated herein

.....
Name: (Customer)

Date:

Identification No.:

TENTH SCHEDULE

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

IJARAH ARRANGEMENT

(Clause 3)

1.1 Agreement for Lease of the Property

- (a) The Bank agrees to lease and the Customer accepts the lease of the Bank's undivided portion of beneficial ownership in the Property based on the Shariah principle of *Ijarah* (lease) in consideration of the Lease Rentals to be paid by the Customer to the Bank, upon the Bank assuming its entire undivided portion of beneficial ownership in the Property.
- (b) The lease shall take effect and commence from the Transfer Date, which date shall be as determined and certified by the Bank. The parties agree that on the Transfer Date, it shall be deemed that the Bank grants the right to full possession of the Property to the Customer and the Customer accepts the right to full possession of the Property.
- (b) Such date so certified by the Bank as the Transfer Date shall be binding and conclusive on the Musharakah Parties save for any manifest error.

1.2 *Ijarah* Term

The term of the *Ijarah* shall be from the Transfer Date until the end of the Lease Rental payment period, unless earlier terminated pursuant to this Agreement.

1.3 Payment of Lease Rentals

A. *Applicable for financing of completed Property*

- (a) Prior to the Transfer Date and in accordance with this *Ijarah* Arrangement, the Customer (or any other party on the Customer's behalf) shall make payment of the Advance Lease Rentals to the Bank, such payment to commence on such date as advised by the Bank. A notice in relation to the commencement of the Advance Lease Rentals payment will be issued by the Bank to the Customer at a time that shall be determined by the Bank.
- (b) The payment of the Advance Lease Rentals shall be paid by the Customer to the Bank from the first disbursement until the full disbursement of the Facility by the Bank and the total Advance Lease Rentals received by the Bank under Item 1.3(a) herein shall form part of the First Lease Rental payment.
- (c) Effective from the Transfer Date until the *Ijarah* is terminated, the Customer shall pay Lease Rentals in favour of the Bank under the terms and conditions contained herein, such payment to commence on the day falling one (1) month from the final disbursement of the Facility by the Bank.
- (d) The payment of the Lease Rentals by the Customer hereunder shall be in the manner as specified in the Letter of Offer or by such other manner as shall be mutually agreed between the parties, and the proceeds of the Lease

Rentals so received by the Bank shall be held and retained for the benefit of the Bank.

- (e) The parties agree that the obligation to pay Lease Rentals is a separate and independent obligation from the obligation of the Customer to pay the Purchase Price to the Bank for the purchase of the Bank's undivided portion of beneficial ownership in the Property.
- (f) The minimum monthly Lease Rentals shall be calculated and accrued on a monthly basis at the Lease Rental Rate multiplied by the daily outstanding Facility Amount; and the difference between the Monthly Payment amount and the Lease Rental represents the Purchase Price amount payable for your progressive purchase of the Bank's undivided portion of beneficial ownership in the Property. The maximum monthly Lease Rentals shall not exceed the Facility Amount.
- (g) The parties hereby agree that in the event that there is a change in the Bank's base financing rate ("**BFR**") at any time during the Tenure, the Lease Rentals shall be revised accordingly. Notice as to changes in the BFR, fees and all other charges may be effected by a notification in the periodic statements furnished to the Customer from time to time or by way of an unsigned notice or letter produced by the Bank's computer or by way of advertisement in any newspaper or by notification at any of the Bank's premises or in such manner as the Bank deems fit and such variation shall take effect from the date stipulated therein.

B. *Applicable for financing of Property under construction*

- (a) Prior to the Transfer Date and in accordance with this *Ijarah* Arrangement, the Customer (or any other party on the Customer's behalf) shall make payment of the Advance Lease Rentals to the Bank, such payment to commence on such date as advised by the Bank. A notice in relation to the commencement of the Advance Lease Rentals payment will be issued by the Bank to the Customer at a time that shall be determined by the Bank.
- (b) The payment of the Advance Lease Rentals shall be throughout the construction period of the Property and the total Advance Lease Rentals received by the Bank under Item 1.3(a) herein shall form part of the First Lease Rental payment.
- (c) If there is a failure of the Procurement Party to procure the construction up to completion and delivery of the Property to the Musharakah Parties due to whatever reason ("**Non-Completion Event**"), the Bank shall refund all Advance Lease Rentals paid by the Customer during the construction period of the Property (the "**Refund Sum**"), as the *Ijarah* Agreement cannot commence due to the Non-Completion Event.
- (d) Effective from the Transfer Date and until the *Ijarah* hereunder is terminated, the Customer shall make payment of the Lease Rentals to the Bank, such payment to commence on the day falling one (1) month from the final disbursement of the Facility by the Bank. A notice in relation to the commencement of the Monthly Payment which comprises therein the Lease

Rentals payment will be issued by the Bank to the Customer at a time that shall be determined by the Bank.

- (e) The payment of the Lease Rentals by the Customer hereunder shall be in the manner specified in the Letter of Offer or by such other manner as shall be mutually agreed between the parties, and the proceeds of the Lease Rentals so received by the Bank shall be held and retained for the benefit of the Bank.
- (f) The parties agree that the obligation to pay Lease Rentals is a separate and independent obligation from the obligation of the Customer to pay the Purchase Price to the Bank for the purchase of the Bank's undivided portion of beneficial ownership in the Property.
- (g) The minimum monthly Lease Rentals shall be calculated and accrued on a monthly basis at the Lease Rental Rate multiplied by the daily outstanding Facility Amount; and the difference between the Monthly Payment amount and the Lease Rental represents the Purchase Price amount payable for your progressive purchase of the Bank's undivided portion of beneficial ownership in the Property. The maximum monthly Lease Rentals shall not exceed the Facility Amount.
- (h) The parties hereby agree that in the event that there is a change in the Bank's base financing rate ("BFR") at any time during the Tenure, the Lease Rentals shall be revised accordingly. Notice as to changes in the BFR, fees and all other charges may be effected by a notification in the periodic statements furnished to the Customer from time to time or by way of an unsigned notice or letter produced by the Bank's computer or by way of advertisement in any newspaper or by notification at any of the Bank's premises or in such manner as the Bank deems fit and such variation shall take effect from the date stipulated therein.

1.4 Variation of Dates for Payment

It is hereby expressly agreed and declared by the parties that notwithstanding the provisions of Item 1.3 hereof, the manner therein provided for the payment of the Lease Rentals and any other payment payable under this Agreement may at any time and from time to time be varied in accordance with Shariah principles, and thereupon such variation in the manner aforesaid shall be deemed to become effective and the respective relevant due dates for payment of the Lease Rental and all such other payments shall be deemed to have been amended accordingly and shall be read and construed as if such variation had been incorporated in and formed part of this Agreement at the date of execution thereof.

1.5 Revision of Lease Rentals

The parties hereby agree that the Lease Rentals shall be revised accordingly in the following events:

- (a) there is a change in the Bank's BFR at any time during the Tenure;
- (b) upon the purchase by the Customer or the Bank of the other party's undivided portion of beneficial ownership in the Property in accordance with the provisions of this Agreement;

- (c) the Bank's buy back of the Customer's undivided portion of beneficial ownership in the Property at anytime during the Tenure in order to provide cash flow assistance to the Customer for the purpose of making improvements to the Property, which is subject to the Bank's approval; or
- (d) any other event as shall be determined by the Bank in good faith.

The Lease Rentals revised in accordance with this Clause shall be deemed to be mutually agreed between the Customer and the Bank.

1.6 Insufficient Monthly Payment

It is agreed that in the event the Customer pays to the Bank an amount less than the Monthly Payment due, such amount paid shall first be applied towards the Lease Rental due subject always that:

- (a) if there shall be any shortfall towards meeting the Lease Rental due, then such shortfall shall be considered as a late payment to which the Customer undertakes to pay late payment charges upon the terms contained in this Agreement; and
- (b) if there shall be any balance after applying towards the Lease Rental due, then such balance shall be applied for the purchase of the Bank's undivided portion of beneficial ownership in the Property. The shortfall of the payment due by the Customer for the purchase of the Bank's undivided portion of beneficial ownership in the Property shall be deemed as a breach of Clause 2.8(a) of the Agreement and such shortfall shall be an amount due and owing by the Customer to the Bank.

1.7 Set-off of Lease Rentals against Capital Expenditure

In the event the Customer claims the Capital Expenditure from the Bank pursuant to Clauses 4.6(d) and 4.8 of this Agreement, the Bank is entitled to impose additional Lease Rental of an amount equal to the said Capital Expenditure claimed, and the payment of the additional Lease Rental by the Customer and the payment of the said Capital Expenditure by the Bank shall be effected by way of set-off.

A1.8 Default in Lease Rentals

- (a) The Customer agrees that if there is a default in payment of any part of the Lease Rentals, it shall constitute a default of the Monthly Payments due whereupon it shall be deemed an Event of Default (as described in Clause 11.1 of this Agreement) and the Bank may take all actions stated in Clause 11.2 thereof.
- (b) The Customer also agrees that the Bank shall have the right to be compensated on late payment/default payment of Lease Rentals in accordance with Clause 15.27 of the Agreement.

1.9 Use and Maintenance of the Property

- (a) Clauses 4.1 to 4.7 of this Agreement shall apply to the Ijarah.

- (b) The Customer may sub-lease the Property and shall ensure that the Property is not used for Non-Permitted Purposes at all times.

1.10 Force Majeure

In the event that the Property or any part thereof is, destroyed or substantially damaged beyond economic repair, indefinitely detained, distrained, confiscated, compulsory required or lost or damaged for any reason whatsoever beyond the control of the Bank and/or the Customer, Clause 14 of the Agreement shall apply.

1.11 Incorporation of Letter of Offer

It is hereby agreed between the Bank and the Customer that all the terms and conditions in the Letter of Offer including all subsequent variations in so far as they apply to the Ijarah Arrangement, shall be deemed to be incorporated into and form part of this Schedule and in the event of any conflict or discrepancy between the terms and conditions in the Letter of Offer and the provisions of this Schedule, the Customer hereby agrees that the Bank shall be entitled to decide as to which terms conditions or provisions shall prevail and be applicable.

1.12 Expiry of *Ijarah*

The *Ijarah* shall expire on the Lease Maturity unless the Diminishing Musharakah Arrangement is earlier dissolved in accordance with this Agreement and/or upon mutual agreement between the Bank and the Customer to terminate this Agreement, in which case any Lease Rentals paid in advance (if applicable) shall be returned to the Customer.

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Execution

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

THE BANK

Signed by

as Attorney for and on behalf of
**HSBC AMANAH MALAYSIA
BERHAD (Company No. 807705-X)** in
the presence of:

**HSBC AMANAH MALAYSIA BERHAD
(Company No. 807705-X)
by its Attorney**

.....
Witness

.....
Signatory

Name:

NRIC No:

Name:

Designation:

NRIC No:

THE CUSTOMER

Signed by

(NRIC No. ●)

*for and on behalf of:

in the presence of:

.....
Witness

.....
Signatory

Name:

NRIC No:

Name:

Designation:

NRIC No:

** To cancel if not applicable*