

# Tawarruq Terms and Conditions to Facilitate Payment Deferral for Personal Financing-i (“Facility”)

To facilitate the payment deferral of the Facility, Tawarruq Terms and Conditions of the Facility are detailed as follows:

## **PART A – GENERAL**

### **Facility Concept and Method of Financing.**

This Facility is in accordance to the Shariah principle of Murabahah via Tawarruq arrangement and pursuant to the Bank’s Deferral Program to assist Customers experiencing temporary financial constraints due to the COVID-19 outbreak, the Bank will sell its assets and/or commodities (“the Asset”) at an agreed price which shall comprise of the principal portion of the deferred instalment that shall be the cost of acquiring the Asset (“the Facility Amount”) and the disclosed existing profit rate which represents the profit amount of the Bank (“the additional Selling Price”) on an agreed deferred payment terms to the Customer in accordance to the terms and conditions herein. This trading shall be evidenced via the electronic sales certificate (or any other evidence of ownership).

Pursuant to the Purchase of Undertaking and Appointment of Agent herein, the Bank may, as an agent for and on behalf of the Customer, sell the Asset to any third party at an agreed price equivalent to the Facility Amount on cash payment terms whereby the payment proceeds thereof shall be disbursed to the Bank who is holding on behalf of the Customer in accordance to the terms and conditions herein. For this new/additional commodity trading, please be informed that the profit portion will be paid by the Customer directly to the Bank, while the principal portion will be paid by the Bank on behalf of the Customer.

1. **Facility Amount.** The Facility Amount shall be the principal portion of the deferred instalment.
2. **Asset.**
  - (a) The Asset in the form of Crude Palm Oil or any other Shariah compliant commodities to be traded under the Facility shall be acceptable to the parties and as approved by the Shariah Committee of the Bank;
  - (b) The trading is carried out on a multi-commodity trading platform such as Eiger or any other commodity trading platform, which, facilitates Tawarruq transactions and has been approved by the Shariah Committee of the Bank;
  - (c) The Bank is the legal and/or beneficial owner of the unencumbered Asset prior to the sale of the Asset to the Customer.
  - (d) In the event the Bank requires to re-execute the Sale of the Asset (“Sale”), the proceeds from the earlier Sale shall first be applied towards the payment of all amounts then outstanding and due to the Bank. The Bank shall grant rebate upon the settlement of the previous Sale and the obligations under previous Sale are deemed fulfilled.
3. **Purpose of Facility.** To facilitate payment of deferred profit arising from the deferral of the Facility until the extended maturity date.
4. **Purchase Undertaking.**  
The Customer hereby:
  - (a) Irrevocably and unconditionally agrees and undertakes to purchase the mentioned Asset (as stipulated in the Letter of Agency clause herein) at the additional Selling Price as defined in the Terms and Conditions of the Facility.
  - (b) The Asset will be sold to Customer on an “as is where is” basis without any representation or warranty in respect thereof and upon issuance of the purchase agreements, certificates and other instruments, all risk shall pass to the Customer and save and except for damages arising directly from the Bank’s wilful default or gross negligence, the Bank shall be freed from any liabilities, responsibilities or obligations relating to the Asset in any form or manner whatsoever.
  - (c) Any defects or non-delivery or any disputes whatsoever in relation to the Asset shall not in any way affect or absolve Customer’s obligations or undertakings hereunder, or under the Facility.
  - (d) This purchase undertaking shall be irrevocable (except with prior written consent of the Bank) and binding on the Customer and the Customer’s successors in title, permitted assigns and personal representatives.
5. **Appointment As Agent.**  
Customer hereby irrevocably and unconditionally appoints the Bank to be the Customer’s absolute and undisclosed agent, to do the following duties:
  - (a) to purchase Platinum or any other Shariah compliant commodities (“Asset”); from the Bank (in its capacity as seller) on deferred payment terms at the agreed price equivalent to the Facility Amount in a manner and terms as determined by the Bank at the Bank’s discretion.

- (b) to take possession (physical or constructive) of the Asset;
  - (c) upon Customer’s request, allow Customer to obtain possession of the Asset at Customer’s own costs and expenses subject that the Bank have yet to sell the Asset on the Customer’s behalf to any other commodity purchaser (“third party”);
  - (d) to sell the Asset to any third party at the Bank’s discretion on the Customer’s behalf at the price equivalent to the Facility Amount.
  - (e) to receive the Sale Proceeds on Customer’s behalf from the third party purchaser of the Asset, to hold the Sale Proceeds on trust for Customer and to or any part thereof to Customer into Customer’s account;
  - (f) to deliver possession of and title in and to the Asset to the third party purchaser of the Asset;
  - (g) to do all acts incidental to the above and pursuant to Facility Concept and Method of Financing but shall not be limited to the execution of the Electronic Sales Certificate of any document or instrument required thereof, delivery, possession and retention of the Asset in any manner as Bank deems fit;
  - (h) shall recognise that the Bank as the Customer’s absolute and undisclosed agent shall at all times be:
    - (i) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with its appointment as the Customer’s agent, or imposed under any sale transaction to the third party purchaser of the Asset;
    - (ii) authorised to delegate its rights and duties as an agent to any third party to do all acts necessary for the completion of the required transactions; and
    - (iii) required to do all the administrative duties regarding the holding and the sale of the Asset as well as takaful coverage and actions pursuant to Facility Concept and Method of Financing thereof where applicable.
  - (i) Notwithstanding any sale of the Asset by the Bank as the Customer’s agent and/or any defects and/or any non-delivery and/or any dispute whatsoever in relation to the Asset that the Customer may have with the third party purchaser pursuant to the sale by the Bank sold the Asset as agent on the Customer’s behalf subsequent to the Customer purchasing the Asset from the Bank but prior to the full settlement of the additional Selling Price and the Indebtedness created under the said Electronic Sales Certificate, it shall not in any way impair or absolve the Customer’s obligations as arising out in the Electronic Sales Certificate and in the Facility.
  - (j) Customer shall be bound by any contract or agreement that the Bank enters into on the Customer’s behalf with any third party pursuant to the Bank’s appointment as agent. Each sale and purchase transactions carried out shall not be unilaterally terminated by any of the contracting parties.
  - (k) Customer do not deem the Bank’s appointment as agent to create a partnership or a joint venture, nor does it establish a relationship of principal or agent in any other relationship between Customer and the Bank.
  - (l) This appointment shall immediately cease upon expiry or termination of the Facility;
  - (m) Customer hereby undertakes to indemnify the Bank from any losses, costs, expenses or damages that the Bank may suffer or incur as a result of fulfilling the Bank’s agency function as set out above unless such losses, costs, expenses or damages are due to the gross negligence, fraud and wilful misconduct of the Bank or the Bank’s agent.  
Customer understands and agrees that save and except for damages arising directly from the Bank’s wilful default or gross negligence, the Bank shall not, in any circumstances whatsoever, be liable to the Customer for any direct or consequential losses, even if informed in advance of the likelihood of them being incurred (including, without limitation, economic loss, loss of goodwill, loss of business opportunity or loss of profits).  
Customer hereby fully indemnify Bank from any losses, costs, expenses or damages that Bank may suffer or incur as a result of Bank acting as Customer agent as set out above.
6. **Ownership Transfer.** Upon execution of this Facility by the Bank, the legal and/or beneficial title, ownership, rights, risk and interests of the Asset shall immediately be transferred to the Customer and the Bank shall immediately enable the Customer to take possession of the Asset. The parties agree that the Asset is sold on an “as is where is basis” free from all encumbrances, charges, liens and/or restraints whatsoever and without any representation or warranty in respect thereof.
  7. **Agreement to Pay.**  
The Customer agrees, covenants and undertakes to pay punctually the additional Selling Price on deferred payment terms at such times as prescribed and at the existing Profit Rate of the facility.

8. **Compensation Charges.** It is expressly agreed by both parties that the Bank shall be entitled to impose on the Customer compensation (ta'widh) charges on the amount of actual loss incurred by the Bank as a direct result of delay in payment or default by the Customer based on the following mechanisms:

(a) During Facility Tenure

- (i) for default of any payments during the tenure of the Facility, at the compensation rate of one per centum (1%) per annum or such other rates approved by Bank Negara Malaysia on the overdue scheduled payment, calculated from the date immediately following the date of such default until the date of receipt of payment in full;
- (ii) for default causing the Facility to be terminated or brought to court for judgment prior to the expiry of the tenure of the Facility, at the compensation rate of one per centum (1%) per annum or such other rates approved by Bank Negara Malaysia on the outstanding balance (outstanding principal and accrued profit);

(b) After expiry or maturity of Facility tenure for default of any payment exceeding the tenure of the Facility, at such rate which shall not be more than the Bank Negara Malaysia's prevailing daily overnight Islamic Interbank Money Market ("IIMM") rate or such other rates approved by Bank Negara Malaysia on the outstanding balance (outstanding principal and accrued profit) of the Facility subject to any rebate (Ibra') that may be applicable, calculated from the date immediately following the expiry of the tenure of the Facility until date of receipt of payment in full.

(c) Post Judgment for default of payment of Facility where judgment amount has been awarded by the court, at such rate which shall not be more than the Bank Negara Malaysia's prevailing daily overnight Islamic Interbank Money Market ("IIMM") rate or such other rates approved by Bank Negara Malaysia on the basic judgment sum of the Facility subject to any rebate (Ibra') that may be applicable, calculated from the date the judgment is made until the judgment sum is fully settled.

The compensation amount shall not be compounded and the reference rate for the actual loss shall be determined at the point of default, computed on a daily basis from the payment due date.

9. **Government Taxes and/or statutory/regulatory imposed charges, fees etc.**

(a) For the purpose of this Clause:

"Tax" means any present or future, direct or indirect, Malaysian or foreign tax, levy, impost, duty, charge, fee, deduction or withholding of any nature, that is imposed by any Appropriate Authority, including, without limitation, any consumption tax and other taxes by whatever name called and any interest, fines or penalties in respect thereof. "Appropriate Authority" means any government or taxing authority.

(b) All fees, charges and all other monies to be paid by Customer to the Bank under these Terms and Conditions including any amount representing reimbursements to be paid by Customer to the Bank, are exclusive of any Tax, and shall be paid without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding.

(c) If the Customer is required to deduct any Tax from a payment to the Bank under these Terms and Conditions, the Customer must increase the amount payable so that the Bank receives the amount the Bank would have received if no Tax deduction had been required. If the Bank is required to deduct any Tax from a payment to the Customer, the Bank does not have to increase the amount payable.

(d) Customer shall in addition to the fees, charges and/or all other monies payable, pay to the Bank all applicable Tax at the relevant prevailing rate and/or such amount as is determined by the Bank to cover any Tax payments/liabilities/obligations in connection therewith, without any set-off, restriction or condition and without any deduction for or on account of any counterclaim or any deduction or withholding, apart from any Taxes which may be required under any laws to be paid by the Customer directly to any Appropriate Authority, which the Customer shall remit directly to the Appropriate Authority.

(e) If at any time an adjustment is made or required to be made between the Bank and the relevant taxing authority on account of any amount paid as Tax as a consequence of any supply made or deemed to be made or other matter in connection with these Terms and Conditions by the Bank, a corresponding adjustment may at the Bank's discretion be made as between the Bank and Customer and in such event, any payment necessary to give effect to the adjustment shall be made.

(f) All Tax as shall be payable by the Customer to the Bank as herein provided shall be paid at such times and in such manner as shall be requested by the Bank.

(g) Customer hereby agrees to do all things reasonably requested by the Bank to assist the Bank in complying with its obligations under any applicable legislation under which any Tax is imposed. In the event a new Tax is introduced and such Tax is required to be charged on the transaction contemplated in these Terms and Conditions, the Customer agrees to provide its fullest cooperation to the Bank in assisting the Bank in complying with its obligations under the relevant laws.

(h) For the avoidance of doubt, the parties agree that any sum payable or amount to be used in the calculation of a sum payable expressed elsewhere in these Terms and Conditions has been determined without regard to and does not include amounts to be added on

under this clause on account of Tax.

10. **Prepayment.**

Customer is allowed to make any prepayment towards the additional Selling Price or any part thereof and all payment will reduced the profit portion first, followed by the principal portion.

11. **Early Settlement.**

The Customer may at any time effect early settlement of the Financing.

12. **Rebate.**

(a) A rebate (Ibra') for early settlement on the remaining profit to be charged will be granted to the Customer over the unexpired period. The rebate shall be calculated in accordance with the following formula:

**Rebate = remaining unearned profit**

(b) Rebate shall be granted to all Customers who settle their financing before the end of the financing tenure. Settlement prior to the end of the financing tenure by the Customer shall include, but is not limited to the following situations:

- (i) Customers who make an early settlement or early redemption,
- (ii) including those arising from prepayments;
- (iii) Settlement of this Facility due to financing restructuring exercise;
- (iv) Settlement by Customers in the case of default;
- (v) Settlement by Customers in the event of termination or cancellation of this Facility before the maturity date; and
- (vi) The rebate shall only be deemed granted upon receipt of the settlement /redemption sum as determined by the Bank.

13. **Variation of Instalments.** The Bank reserves the right to vary the number and/or amount of instalments at any time with notice to the Customer in writing.

14. **Events of Default.** The Selling Price, compensation charges and all other monies for the time being owing or remaining unpaid by the Customer under these Terms and Conditions and any other agreements which shall become due and immediately payable by the Customer to the Bank and the Bank shall be entitled to recover the same at the applicable Compensation Charges specified above together with any costs and fees due on the part of the Customer upon the happening of any of the following events:

- (a) if the Customer fails to pay any monies due and payable to the Bank;
- (b) if the Customer defaults or fails to perform or in breach of any of its undertakings, agreements or any of the Terms and Conditions herein;
- (c) if the Customer commits an act of bankruptcy or enters into any composition or arrangement with or for the benefit of its creditors;
- (d) if any distress or execution is levied or enforced upon any of the Customer's property;
- (e) if the Customer serves any custodial sentence, becomes insane or dies;
- (f) if there shall be any material change in the financial condition of the Customer which in the Bank's reasonable opinion is likely to prejudice the Customer's ability to fulfil its obligation under the Facility and compensation charges thereon;
- (g) any representation or statement made by the Customer is materially incorrect or not complied with;
- (h) if a change in applicable law or regulation makes it impossible or unlawful for the Bank to continue its making available the Facility to the Customer; or
- (i) if any event or events has/have occurred or a situation exists which could or might prejudice the Customer's performance of the terms of these Terms and Conditions.

15. **Cancellation.** The Bank is entitled to review, cancel, withdraw, suspend or terminate the Facility approved or disbursed by providing seven (7) days' notice to the Customer where the circumstances affecting the Customer which in the reasonable opinion of the Bank has an adverse impact on the Customer or the Bank.

16. **Review.** The Bank reserves the right to review the Facility at any time and from time to time irrespective of whether or not an event of default has occurred. Upon such review, subject to compliance with Shariah principles, the Bank shall be entitled to vary the terms and conditions of the Facility or to withdraw, cancel, suspend or terminate the Facility or any part thereof by providing seven (7) days' notice to the Customer. In such event, the Customer agrees to immediately accept such decision and pay to the Bank the indebtedness then due and outstanding under the Facility. The Customer agrees that the Bank has no further obligation either at law or in equity to make or continue to make available the Facility to the Customer. Notwithstanding anything contained in these Terms and Conditions, the Facility, any compensation charges, costs and fees due shall be payable by the Customer on demand by the Bank.

17. **Assignment.** The Bank shall be entitled to assign and/or transfer the whole or any part of the Bank's rights or obligations under these Terms and Conditions at any time with notice to the Customer.

18. **Notices And Legal Process.** All notices and communications to be given by the Bank herein including any demand for payment of the monies due, outstanding and remaining unpaid by the Customer shall be in writing and may be given to the Customer at the Customer's address, facsimile numbers or electronically (including electronic mail ["e-mail"] and short messaging system ["SMS"]) as stated in the Customer's application for the Facility and/or last appearing in the Bank's records. The notices may be given or made by post, facsimile, electronically (including e-mail and SMS), personal delivery, general notice by way of advertisement at the Bank's branches, the Bank's website or through the Bank's internet/mobile banking channels or such other electronic means as may be determined by the Bank.

The notices or other communication are given to the Customer:

- (a) in the case of registered or ordinary post, five (5) days after the date of posting;
- (b) in the case of facsimile, on the day of transmission;
- (c) in the case of e-mail and/or SMS and/or any type of electronic means, on the day of transmission;
- (d) in the case of personal delivery, at the time of delivery; and
- (e) in the case of notice issued by way of advertisement, on the date of advertisement.

It is the Customer's responsibility to ensure the Bank is kept informed of the Customer's most up to date address and other contact details. Service of any court process shall be effected by leaving or sending the same to the usual or last known place of residence or business or at the address of the Customer as stated in the Customer's application for the Facility, or may be effected by any other manner permitted by law.

19. **Islamic Financial Services Act 2013 ("IFSA") and BNM Guidelines on Credit Transactions & Exposures with Connected Parties for Islamic Banks ("Guidelines").**

To enable the Bank to comply with the IFSA and the said Guidelines, the Customer shall declare to the Bank whether the Customer is a connected party under the Guidelines, which includes but is not limited to, a spouse, child, parent or financial dependant of the Bank's Director, Executive Officer or credit-approving/appraising/reviewing officer or in the case of a corporate/business-customers, includes an entity controlled by such abovementioned Bank's persons.

If at any time the Customer becomes a connected person, the Customer must notify the Bank in writing immediately. The Bank reserves the right to terminate the Facility in the event the Customer fails to make the appropriate or correct declaration, resulting in the Bank contravening the IFSA or the said Guidelines.

20. **Right to Disclose Information.** In addition to the permitted disclosures provided under Schedule 11 of the IFSA, the Customer irrevocably authorises and permits the Bank, its officers and employees to disclose and furnish all information concerning the Facility, these Terms and Conditions, present and future accounts of the Customer and any other matters relating to the Customer or its business and operations to:

- (a) other financial institutions granting or intending to grant any financing or credit facilities to the Customer, the Credit Bureau or any other central credit bureau established by Bank Negara Malaysia ("BNM"), Cagamas Berhad, Credit Guarantee Corporation, any other relevant authority as may be authorised by law to obtain such information or such authorities/agencies established by Bank Negara Malaysia or any agency established by the Association of Islamic Banking and Financial Institutions Malaysia or Association of Banks in Malaysia;
- (b) any current or future corporation which may be associated with or related to the Bank and Hong Leong Bank Berhad (as defined in the Companies Act 2016), including representative and branch offices and their respective representatives as well as subsidiaries of the Bank's holding company and/or Hong Leong Bank Berhad's holding company;
- (c) the Security Parties or any party intending to provide security in respect of the Facility;
- (d) the Bank's auditors, solicitors and/or other agents in connection with the recovery of moneys due and payable hereunder; and
- (e) the Bank's professional advisers, service providers, nominees, agents, contractors or third party service providers who are involved in the provision of products and services to or by the Bank and its related or associated companies.

The Customer hereby irrevocably consents to such disclosure and confirms that the Bank, its officers and employees shall be under no liability for furnishing such information or for the consequences of any reliance which may be placed on the information so furnished in accordance with these Terms and Conditions.

21. **Representation and warranty on Processing of Personal Information.** The Customer hereby represents and warrants that the Customer has obtained the consent of all persons named in the Customer's application for the Facility or such other document submitted to the Bank in support of such application and/or their authorised representatives, including but not limited to the Customer's directors, shareholders, authorised signatories or such other persons as specified by the Bank ("Relevant Data Subjects"), for the Bank's collection, holding and use of the personal information of the Relevant Data Subjects in accordance with the Bank's Privacy Notice as may be amended from time to time.
22. **Representation and warranty on Processing of Personal Information.** The Customer hereby agrees and consents to the holding, collection and use of all personal data provided to the Bank by the Customer and/or acquired by the Bank from the public domain, as well as personal data that arises as a result of the provision of services to the Customer in connection with the Facility in accordance with the Privacy Notice of the Bank as may be amended from time to time. "Privacy Notice" shall mean the Bank's policies and principles pertaining to the collection, use and storage of personal information of existing and prospective individuals and entities dealing with the Bank as may be amended from time to time and made available at the Bank's website respectively or in such manner as the Bank deems appropriate from time to time.
23. **Waiver and Indulgence.** The Terms and Conditions herein may be waived by the Bank in whole or in part with or without conditions with notice to the Customer without prejudicing the rights of the Bank. Any failure by the Bank to enforce any of the provisions hereunder or any forbearance delay or indulgence granted by the Bank to the Customer shall not mean that the Bank has waived any of the Bank's rights hereunder.
24. **No Set-Off Or Counterclaim By The Customer.** The Customer shall not be entitled to deduct or set-off or counterclaim any amount which is owed or said to be owed by the Bank to the Customer from any amount due from the Customer under the Facility. The Customer agrees that nothing in the arrangements between the Bank and the Customer and/or any other party shall prejudice or be treated as constituting an implied agreement restricting or negating any lien, charge, pledge, right of set-off or other right to which the Bank is at any time otherwise entitled (whether by operation of law, contract or otherwise).
25. **Set-Off/Consolidation of Account.**
- (a) The Bank has the right to set-off any credit balance in all or any of the Customer's accounts against any liabilities or outstanding balance due and owing by the Customer presently and/or in future which shall include joint liabilities of the Customer ("Outstanding Amounts"), by giving the Customer at least seven (7) calendar days prior notice. The Bank may also concurrently earmark the available funds in the Customer's accounts against the Outstanding Amount with notice to the Customer.
  - (b) In the event that the currency of the credit balance in all or any of the Customer's accounts differs from the currency of the Outstanding Amounts, the Bank is entitled to effect any necessary currency conversions at the Bank's prevailing exchange rate.
26. **Right of Appropriation.**
- (a) In the event that the Customer fails to punctually pay all monies due to the Bank, the Bank shall be entitled to apply any payments of monies or any part thereof towards settlement of any sums, arrears, Monthly Instalment payable and other outstanding charges due hereunder.
  - (b) Any surplus shall be treated as excess payment for that particular account ("Excess Payment"). Any Excess Payment shall not be applied towards reduction of profit or principal outstanding.
  - (c) The Bank is not obliged to utilise the Excess Payment to set off against any other monies due in any Customer's account with the Bank.
  - (d) If any amount received or recovered in respect of the Customer's liabilities hereunder is less than the amount due and payable, the Bank shall apply the amount in such proportions and order or priority in such manner as the Bank may determine.
27. **Appointment of Agent.** The Bank shall have the right, at its sole discretion, to appoint an agent of its choice to collect all and any sums due to the Bank from the Customer under these Terms and Conditions by providing seven (7) day's notice to the Customer.
28. **Telephone Monitoring And Recording.** Subject to applicable laws, the Bank may record and the Customer consents to the Bank recording all telephone conversations made with the Customer for purposes which may include sales, training, investigation purposes etc. The Customer agrees that:
- (a) all telephone recordings shall be the property of the Bank;
  - (b) the Bank shall be entitled to use such recordings as evidence in any disputes.
29. **Representations And Warranties.** The Customer hereby represents and warrants to the Bank that:
- (a) the Customer has the capacity to execute, deliver and perform the Terms and Conditions herein;

- (b) these Terms and Conditions constitute legal, valid and binding obligations enforceable against the Customer;
- (c) all acts, conditions, things, permissions, consents, authorisations, approvals, licences and exemptions which are required to be done, executed, delivered, fulfilled, performed or obtained to enable the Customer to lawfully enter into and exercise and perform the Customer's rights and obligations hereunder and under any related documents executed by the Customer, have been done, executed, delivered, fulfilled, performed or obtained and are in full force and effect;
- (d) the Customer's acceptance and performance of the Customer's obligations under these Terms and Conditions, any law, regulation, order or decree of any governmental authority, body, agency, and court to which the Customer is subject;
- (e) the information furnished by the Customer to the Bank in connection with these Terms and Conditions and the Facility is accurate, correct, true and complete and there has been no omission whatsoever which would render the said information inaccurate, incorrect, erroneous, misstated, untrue, incomplete or misleading in any respect. The Customer shall promptly notify the Bank in writing if the said information shall cease to be so and/or of any change thereto;
- (f) the Customer is not in default under any agreement to which the Customer is a party or by which the Customer may be bound; and
- (g) the Customer is not an undischarged bankrupt and no bankruptcy proceedings, legal action, litigation, arbitration, administrative, civil or criminal proceedings are presently current, pending or threatened against the Customer which will affect the ability of the Customer to meet the Customer's obligations under these Terms and Conditions.
- 30. Suspense Account.** The Bank may place any monies received or recovered from the Customer into a separate non-profit bearing account ("Suspense Account") towards payment of any monies due and payable by the Customer to the Bank ("Indebtedness") and for the purposes of preserving the Customer's liability in legal proceedings or to prove in the Customer's bankruptcy or winding up. Despite such payment, in the event of the Customer's insolvency, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such Indebtedness.
- Until the Indebtedness has been fully paid to the Bank, the Bank is entitled to treat such monies or dividends received or recovered as if they had not been made. Upon full payment of the Indebtedness, any excess monies remaining with the Bank in the Suspense Account shall be returned to the Customer or the Customer's legal representatives, as may be applicable.
- 31. Successors.** These Terms and Conditions shall be binding upon the heirs, liquidators, receivers, representatives, permitted assigns and successors-in-title of the Customer and enforceable by the successors-in-title and assigns of the Bank.
- 32. Indemnity.** The Customer agrees to indemnify and keep harmless and indemnified the Bank from and against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever which the Bank may incur or sustain by reason of providing the Facility to the Customer.
- 33. Events Beyond the Bank's Control.** Notwithstanding any other provisions herein, in the event the Bank is unable to perform any operations or to provide any services due to any reason beyond the Bank's control including but not limited to fire, flood, riots, act of God, any failure or disruption to telecommunications, electricity, water, fuel supply or any factor in nature of unforeseen circumstances beyond the Bank's control, the Bank shall not in any way be liable for any inconvenience, loss, injury, damages suffered or incurred by the Customer arising from the same.
- 34. Severability.** Any term, condition, stipulation, provision, covenant or undertaking in these Terms and Conditions or any part which is illegal, void, prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions or parts of these Terms and Conditions and any such illegality, voidness, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any other term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.
- 35. Cross Default.** The Bank reserves the right to proceed with legal proceedings against the Customer or to terminate the Facility and demand for all monies payable to the Bank under these Terms and Conditions or withhold or withdraw the Facility if there is a default in the payment of any monies due by the Customer hereunder or under any other account with the Bank or with any other financial institution or if there is a default in the payment of any monies under the accounts of any other party of which the Customer is a guarantor or when the Customer becomes insane or dies.
- 36. Statement by Bank.**
- (a) The Bank will provide a financing statement to the customer at least once a year indicating the outstanding balance at the beginning and end of the period covered by the statement, the amount credited and charged, including profit and other non-profit charges, and the dates when those amounts were posted to the account.
- (b) It is the customer's obligation to check that financing statement furnished by the Bank is correct. If the bank does not receive a written objection from the customer to the contents of the financing statement within 21 days of the financing statement date, in the absence of any obvious error on the face of the statement or fraud by the Bank, the customer shall be deemed conclusively to have accepted the contents of such financing statement shall be final and conclusive and binding on the customer for all purposes whatsoever.
- 37. Instructions via Telephone or Facsimile Transmission or Electronic or Digital Means.** The Bank is hereby requested and authorised by the Customer, to rely upon and act in accordance with any instructions, confirmation and/or other communication by the Customer ("Instructions"), whether oral or written, and whether given by the telephone, facsimile transmission or electronic or digital means given by the Customer and/or a person authorised by the Customer. The Bank shall be entitled to rely and act on those Instructions accordingly once the necessary verification of the said Instructions are performed on the Bank's part. The Bank shall not be held liable or responsible for any loss, damages or costs (including legal costs) which may be incurred or sustained by the Customer directly or indirectly arising from the giving of the Instructions, any non-transmission of the Instructions and/or any errors in transmission of the Instructions hereunder.
- 38. Illegality.** If the Bank determines that the introduction or variation of any law, regulation or official derivative (whether or not having the force of law) or any change in the interpretation or application thereof make it unlawful for the Bank to maintain, fund or give effect to its obligations hereunder, the Bank shall forthwith give notice of such determination to the Customer whereupon the Facility to such extent shall be cancelled and the Customer will forthwith upon notice from the Bank pay all monies agreed to be paid by the Customer hereunder including any cost and fees due. The determination shall take effect from the date specified in the Bank's notice and the decision of the Bank as to the date from which such determination shall take effect shall be final and conclusive.
- 39. Continuing Security.** The liabilities and/or obligations of the Customer under this Facility shall continue to be valid and binding for all purposes whatsoever notwithstanding any change whether by reason of bankruptcy, death, insanity or otherwise howsoever of the Customer and/or any change by amalgamation, reconstruction or otherwise which may be made in the constitution of the Bank.
- 40. Amendment.** These Terms and Conditions and the availability, limits, profit rates, fees and charges of the Facility are subject to guidelines from BNM and/or any other relevant authority. Subject to the provision of Shariah, the Bank reserves the right to vary, add to, delete or amend the Terms and Conditions herein at its discretion by providing twenty one (21) days' notice to the Customer.
- 41. Single Agreement.** The relevant application for the Facility by the Customer, where the Payment Schedule, the Disbursement Notice and all other agreements and documents issued by the Bank in connection with the Facility as well as any Instructions from the Customer shall form and be construed as a single agreement between the Bank and the Customer.
- 42. Governing Law.** The Terms and Conditions contained herein shall be governed by and construed in accordance with the laws of Malaysia. The Customer hereby agrees to submit to the non-exclusive jurisdiction of the courts of Malaysia. In the event of a dispute or difference of opinion whatsoever in respect of, relating to, or in connection with Shariah, the parties shall refer the matter to the Shariah Advisory Council of BNM and such ruling shall be binding and conclusive.
- 43. Time.** Time wherever mentioned shall be of the essence.
- 44. Interpretation.** Words importing the singular shall include plural number and vice versa and those importing the masculine gender shall include the feminine and neuter gender and vice versa.