

## Standard Terms And Conditions Governing Banking Facilities Granted By United Overseas Bank (Malaysia) Bhd (“Terms and Conditions”)

To :

Under the Letter of Offer dated \_\_\_\_\_ (Our ref : \_\_\_\_\_ )

The following are the Standard Terms and Conditions referred to in the Letter of Offer.

### 1. Before Any Banking Facilities Is Made Available

The following conditions must have been fulfilled before we make available or continue to make available any Banking Facilities to you:

1.1 Unless permitted by guidelines issued by any authority which has jurisdiction over us:-

- (i) you and/or your close relatives is/are not a director (including alternate director) in us or any of the financial institutions in the Group;
- (ii) you and/or your close relatives is/are not a controlling shareholder or influential shareholder in us or any of the financial institutions in the Group;
- (iii) you are not one of our executive officer or designated officer;
- (iv) you are not a firm, partnership, company or any other legal entity:-
  - (a) which is in control or is controlled by any persons stated in Clause 1.1(i) to (iii) above; or
  - (b) in which any person (including their close relatives in the case of individual) listed in Clause 1.1(i) to (iii) other than a designated officer is interested as a director, partner, executive officer, agent or guarantor and their subsidiaries or entities controlled by them;

For the purpose of this Clause:-

“close relatives” in relation to an individual means his/her spouse and dependents of the spouse, child (including step/adopted child) and spouse of the child, parent and brother or sister and their spouses.

“controlling shareholder” means a party who fulfils any of the following criteria, whether individually or with parties acting in concert with him:-

- (aa) controls more than 50% of the voting rights;
- (bb) holds more than 50% of the issued share (whether directly or indirectly (excluding preference shares));
- (cc) controls the composition of the board of directors;
- (dd) has the power to appoint and/or remove all or a majority of the board of directors;
- (ee) control our controlling shareholder; or
- (ff) is a person in accordance with whose direction or instruction, our director or a director of our holding company are accustomed to act;

“director” shall include a person who has ceased to be our director or a director of the Group for less than twelve (12) months from the date of a credit transaction origination’s request.

“influential shareholder” means a party who fulfils any of the following criteria, whether individually or with parties acting in concert with him:-

- (aa) holds 20% or more of our shares but is not a controlling shareholder;
- (bb) has the power to appoint at least one director to the board of directors.

“executive officer” means a person who is a member of our management having authority and responsibility for planning, directing and/or controlling our activities (other than in the capacity as a director) whether or not the officer has an official title, or is entitled to salary or other compensation and shall also include such person who has ceased to be in our employment or the employment of the Group for less than twelve (12) months from the date of a credit transaction origination’s request.

“designated officer” means a person who is responsible for or has the authority to appraise and/or approve credit transactions or review the status of existing credit transactions, either as a member of a committee or individually, and his close relatives.

1.2 If You are a company:

- (i) we must have received from you:
  - (a) proof acceptable to us that you are duly incorporated and validly existing under the laws of Malaysia and, that you have the necessary power and authority under your constitution (if you have a constitution) to own your assets, to carry on the business that you are carrying on, to borrow money, and to give or create Security for any money borrowed by you; and

- (b) a resolution of your directors passed in accordance with your constitution (if you have a constitution) or in compliance with the Companies Act 2016 (if you do not have a constitution):
    - (1) authorising you to accept the Banking Facilities and to give or create the Security for the Banking Facilities;
    - (2) specifying the names of the persons who are authorised to act for you and showing their sample signatures which have been certified as true by your company secretary; and
    - (3) authorising the affixing of your common seal on the Security Documents (if you have a common seal).
  - (c) we must be satisfied that your acceptance of the Banking Facilities and your performance and observance of your obligations as stated in the Letter of Offer, the Security Documents and these Terms and Conditions will not:
    - (1) conflict with or result in any breach of your constitution (if you have a constitution) or any law, regulation, order, guideline, judgment, contract or anything else which is binding on you; or
    - (2) cause to be exceeded, any powers which you or any of your directors have.
- 1.3 If you are an association or co-operative society, we must have received from you proof acceptable to us:
- (i) that you are duly registered and validly existing under the laws of Malaysia, that you have the necessary power and authority under your rules or constitutional documents to own assets, to borrow money, and to give or create Security for any money borrowed by you; and
  - (ii) that your members have given the necessary approval under your rules or constitutional documents for you to accept the Banking Facilities and to give or create the Security for the Banking Facilities; and
  - (iii) that the persons named by you as being authorised to act for you and whose sample signatures you have given to us certified as true by an advocate and solicitor are persons duly approved by your members to act for you in relation to the Banking Facilities under your rules or constitutional documents.
- 1.4 Any Security Party, its director, his/her spouse, parent or child must not be an employee or a director of any of the financial institutions within the Group.
- 1.5 Where a Security Party is a company:
- (i) we must have received a resolution of the directors of the Security Party authorising the creation or giving of the Security.
  - (ii) If the Security Party does not get any direct or indirect commercial benefit from creating or giving the Security, we must have received:
    - (a) the unanimous resolution of the shareholders of the Security Party authorising the creation or giving of the Security; and
    - (b) written confirmation from the directors of the Security Party that the Security Party is solvent and is not facing any winding-up proceedings and will not be facing any winding-up proceedings at the time when the Security is created or given.
- 1.6 If any of the Banking Facilities is to be used, whether partly or wholly, to redeem any outstanding loan owing by you to any person, we must have received from such person an undertaking in writing upon terms and conditions acceptable to us to refund to us any redemption money paid by us if any discharge or reassignment given by the person is not registrable or is not registered or is voidable or is not valid or not effective in any way.
- 1.7 You must have opened a current account with us.
- 1.8 Any of the Events of Default must not have occurred, must not be continuing or must not occur if we make any advance on the Banking Facilities or if we continue to make the Banking Facilities available.
- 1.9 All consents, licences, approvals, authorisations, orders and exemptions of any Ministry, agency, department, or authority in Malaysia and elsewhere which may be required or advisable for or in connection with the Bank's grant or your borrowing of the Banking Facilities, the execution, delivery, performance, legality, or enforceability of the Security, have been obtained, and are in full force and effect.
- 1.10 Your use or continued use of the Banking Facilities must not and will not be in breach of any law of Malaysia, any rule, guideline or regulation including all exchange control regulation and any other regulations issued by Bank Negara Malaysia or any other authority which has jurisdiction over us or the Group.
- 1.11 If you want us to act on instructions from you by telephone, facsimile transmission, telex or cable, we must have received from you a duly signed and witnessed Indemnity for Taking Fax, Oral and Written Instructions.
- 1.12 You and any Security Party must not be in default under any agreement which you and any of such Security Party, are a party to.
- 1.13 There is no litigation (whether civil or criminal) arbitration or administrative proceedings pending, on-going or threatened against you or any of the Security Party.
- 1.14 There is no investigation by the police, authorities or regulators pending, on-going or threatened against you or any Security Party.

- 1.15 All the information provided to us by you or any Security Party, in relation to your application for the Banking Facilities must be true, accurate and complete. No information which may cause us not to grant to you the Banking Facilities or not to accept the Security must have been withheld from us by you and/or any such Security Party.
- 1.16 We are satisfied with the results of such due diligence performed by us under the “Know your Customer” (KYC) requirements on you, any of your directors, shareholders or beneficial owners, your employees, your agents and/or any Security Party.
- 1.17 The Security Documents as prepared by us or our solicitors must have been duly executed within two (2) weeks of your being informed that the Security Documents are ready for execution. We reserve the right to cancel or withdraw the Banking Facilities if any of the Security Documents is/are not executed within the said period of two (2) weeks; however, any cost and expense incurred by us in the preparation of the Security Documents will still have to be borne and paid by you.
- 1.18 The Security Documents and all other documents which we consider are necessary to protect our interests must have been signed and delivered to us.
- 1.19 We must have received from any other relevant party all other documents which we consider are necessary to protect our interests.
- 1.20 We must have received from our solicitors an advice in writing confirming that the Security for the Banking Facilities is in place and that we may release the Banking Facilities or any part of the Banking Facilities.
- 1.21 Where property has been provided as Security for the Banking Facilities, the additional conditions precedent set out in Clause 2 must have been fulfilled to our satisfaction.
- 1.22 All conditions required by us to be fulfilled before we make available the Banking Facilities or any part of the Banking Facilities must have been fulfilled to our satisfaction.

## **2. Additional Conditions Precedent If Security Is Property**

- 2.1 Before we release the Banking Facilities or any part of the Banking Facilities:
  - (i) A private caveat over the property must have been lodged unless otherwise waived by us; you are to bear and pay all the fees and expenses incurred or to be incurred relating to the lodgment and subsequent removal of the private caveat.
  - (ii) You must have paid:
    - (a) the difference between the purchase price of the property and the relevant Banking Facilities granted to assist in the purchase of the property;
    - (b) all stamp duties including the stamp duty payable for the transfer or the assignment of the property in your favour and the stamp duty payable on all the Security Documents;
    - (c) all fees and expenses payable to any valuer we may have appointed to value the property;
    - (d) all fees and expenses payable to any solicitor we may have retained to prepare or to complete the Security Documents; and
    - (e) all moneys which may be payable by you as purchaser to any developer of the property.
- 2.2 If your sale and purchase agreement for the property prescribes that:-
  - (i) certain documents have to be delivered to us, we must have received those documents;
  - (ii) any consent is required from you by the vendor prior to any payment could be made, we shall be entitled to assume that such consent have been granted by you to the vendor; and/or
  - (iii) any payment is to be paid on the date you take vacant possession of the property, we shall be entitled to make such payment to the vendor at any time regardless of whether you have actually taken vacant possession of the property.
- 2.3 If the property is currently charged or assigned to another financial institution, we must have received from that financial institution:
  - (i) a statement in writing confirming the redemption sum payable, that is, the sum required to be paid in order to redeem the property;
  - (ii) an undertaking in writing to deliver to us upon our payment of the redemption sum to it:
    - (a) the original of the issue document of title, if the property is currently charged to it together with:-
      - (1) a registrable discharge of charge; and
      - (2) the duplicate charge, if the property is currently charged to it; or
    - (b) the stamped originals of all security documents held by it, including all previous stamped original sale and purchase agreements, deeds of assignments and deeds of receipts and reassignments, if the property is currently assigned to it together with a valid and effective deed of receipt and reassignment; and

- (iii) an undertaking in writing to refund to us the redemption sum paid to it by us if the discharge of charge is not registrable or if the deed of receipt and reassignment is void or voidable or is not valid or effective for any reason whatsoever or for such reasons only as are acceptable to us and upon such terms and conditions as we may agree;
- 2.4 If the property is currently not charged or assigned, we must have received from the vendor of the property:
- (i) the original of the issue document of title; and
  - (ii) an undertaking in writing to refund to us all sums received by the vendor from us if:
    - (a) the memorandum of transfer is not registrable in your favour for any reason whatsoever; or
    - (b) the deed of assignment in your favour is void or voidable or is not valid or is not effective for any reason whatsoever or for such reasons only as are acceptable to us and upon such terms and conditions as we may agree.
- 2.5 If no issue document of title has been issued to the property, we must have received the following (unless waived by us):
- (i) from the developer or the proprietor of the property an undertaking in writing:
    - (a) to deliver to us upon issuance of the title, the original of the issue document of title to the property together with a valid and registrable (unstamped) memorandum of transfer duly executed by the developer or the proprietor in your favour; and
    - (b) not to further charge or encumber the land on which the property is situated or comprised without having previously informed us in writing.
  - (ii) from you the stamped original of your sale and purchase agreement relating to the property.
  - (iii) from the master chargee of the land held under the master title governing the property, if there is such a master chargee:
    - (a) a disclaimer in writing disclaiming all rights, interest and title in and over the property; and
    - (b) an undertaking in writing to exclude the property from any foreclosure proceedings it may take against the land held under the master title which comprised the property.

### **3. Searches**

- 3.1 We may but is not obliged to conduct bankruptcy/winding up/ insolvency searches or credit related searches from any credit reference agencies, database or system on any person before and at any time after the disbursement of any of the Banking Facilities.
- 3.2 You consent, and will procure the consent of each Security Party, to us to carry out such searches on you and/or such Security Party and the Security to the extent permitted by the law.
- 3.3 All charges incurred and to be incurred in connection with the above searches will be borne and paid by you.

### **4. Representations And Warranties**

- 4.1 You represent and warrant that:
- (i) you and every Security Party has the power, right and capacity to execute, deliver and perform the terms of the Letter of Offer and the other Security Documents.
  - (ii) the Letter of Offer and the other Security Documents, when executed, will constitute your and the Security Party's legal, valid and binding obligations enforceable in accordance with their respective terms.
  - (iii) there are no litigation (whether civil or criminal) arbitration or administrative proceedings pending, on-going or threatened against you or any Security Party.
  - (iv) no Event of Default has occurred or is continuing or will occur as a result of us making any advance or continuing to make available the Banking Facilities to you.
  - (v) all the information given to us by you and the Security Party in connection with the Banking Facilities do not contain any untrue, inaccurate or misleading statement or omit to state any fact and that all expressions of expectation, intention, belief and opinion and all projections contained in such information were honestly made on reasonable grounds and after due and careful enquiry.
  - (vi) you and/or the Security Party are not involved in any illegal activities and all moneys and properties provided to us are not derived in any way from illegal activities.
  - (vii) you and/or the Security Parties are not:-
    - (a) nationals of any country which is subjected to Sanctions;
    - (b) entities incorporated under the laws of or owned or controlled (directly or indirectly) by a person located in or organized under the laws of a country which is subjected to Sanctions; or
    - (c) persons listed on or owned or controlled (directly or indirectly) by any person listed on, any sanctioned persons list published by any government, governmental institutions or agencies, regulator or authority or prepared by the Group.

- 4.2 You agree that each of the above warranties and representations shall be deemed to be repeated upon each drawing of the Banking Facilities and shall continue to be true, accurate and correct in all respects with reference to the prevailing circumstances so long as the Banking Facilities or any part of it remains outstanding and unpaid.

## 5. If Security Is Property

### 5.1 Outgoings

All moneys payable on the property which is charged or assigned to us, such as quit rent, assessment rates and maintenance charges, must be paid up to date; you must pay such charges on or before their respective due dates for payment and submit proof of each payment to us every year and within thirty (30) days from their respective due dates for payment.

### 5.2 Insurance

(i) You are to adequately insure or cause to be adequately insured at all times any landed property charged or assigned to us on a full reinstatement value basis up to its full insurable value against loss or damage by fire, lightning, tempest, flood, riot, civil commotion, malicious acts and strikes, landslides, earth movement, subsistence and such other risks as we may from time to time require with an insurance company acceptable to us in your name or, where applicable, the Security Party, with us endorsed on the insurance policy as charge, assignee or loss payee and deposit or cause to be deposited with us a certified true copy of the insurance policy effected under this clause together with the evidence of payment of the current premium payable under such policy.

(ii) If the property which is charged or assigned to us is:-

(a) landed residential property, a House owner's Policy shall be effected by you;

(b) landed commercial or industrial property, a Fire Policy shall be effected by you; and

(c) covered by the Strata Titles Act 1985, you must give us proof that the building comprising and including the property is insured against fire and such other risks as prescribed in the Strata Titles Act 1985 for its full reinstatement value and if we are not in receipt from you of such proof, a Houseowner's Policy shall be effected by you.

(iii) without affecting the provisions in Clause 5.2(i) (and whether or not you are in default), you agree that if we in our absolute discretion consider necessary, you authorized us to take out, maintain or renew the insurances referred to in Clause 5.2(i) or (ii) and:-

(a) all moneys and expenses incurred by us with interest thereon calculated at the default rate stated in the Letter of Offer shall form part of the Banking Facilities and Indebtedness be repayable to us on demand by us; and

(b) any commission which may be paid to us as an agent of the insurance company belongs to us.

For the avoidance of doubt, we shall not be held liable to you and/or the Security Party for anything whatsoever if we took out or fail to take out, maintain, renew or increase any such insurance.

(iv) You shall ensure that all insurance proceeds received pursuant to the policy referred to in Clause 5.2(i), (ii) or (iii) are applied for or towards making good any loss or damage in respect of which the money is received or towards discharge of the Banking Facilities or any part thereof unless we shall decide otherwise. If the insurance proceeds is paid to or received by you, such insurance proceeds shall be held by you in trust for us.

(v) You are not to renovate or refurbish the property without having obtained our prior written consent. We have the right not to give our consent but if we do give our consent, we have the right to impose such terms and conditions as we deem fit which may include your taking up of a Contractors' All Risk Policy for the renovation or refurbishment work before the start of the work with an insurance company appointed by us and with us named as chargee and loss payee. If you do not give us proof acceptable to us that you have taken up the Policy, we may arrange for insurance coverage at your expense by debiting your account.

### 5.3 Disbursements

(i) If the property is charged or assigned to some other party, we have the right to pay such party the redemption sum out of the Banking Facilities or part of the same to redeem the property. If we exercise this right, the acknowledgement or receipt by that other party will be binding on you as if it was you who had received payment from us.

(ii) We also have the right to pay the vendor who sold you the property the balance of the purchase price payable for the property out of the Banking Facilities or any part of the Banking Facilities. If we exercise this right, the acknowledgement or receipt by the vendor will be binding on you as if it was you who had received payment from us.

## 6. If Security Is Stocks And Shares

6.1 The stocks and shares (whether such stocks and shares are listed on any exchange or otherwise) to be charged to us are to be registered in the name of our nominee company unless otherwise provided in the Letter of Offer.

6.2 We have the absolute discretion to accept or reject any stocks and shares you offer to us as Security without giving you any reasons. Notwithstanding that any stocks and shares have been previously accepted and charged to us as Security, we remain entitled to and have the right to reject any of such stocks and shares charged which are subsequently found to be unacceptable to us for any reason and you shall upon our request replace or substitute them with such other stocks and shares that are acceptable to us.

6.3 We are not responsible for the collection of any dividends or bonuses and for the exercise of rights issues relating to the stocks and shares charged to us.

## 7. Conversion Of Foreign Currency Facility

- 7.1 If the Banking Facility is a foreign currency facility, we can at our sole discretion convert the Banking Facility to a Ringgit Banking Facility upon such terms as we may in our sole discretion prescribe.
- 7.2 If we suffer a loss as a result of the said conversion, you agree to indemnify us against the loss and the conversion cost.

## 8. Break Funding Cost

If we allow you to prepay the Banking Facilities, that is, to repay to us in full or in part the amount owing to us under the Banking Facilities and the Security Documents, at any time before the amount owing to us is due to be repaid, you will have to pay to us a prepayment fee plus an amount to compensate us for any loss which we may suffer as a result of your prepayment; the fee and the amount will be decided upon by us at our sole discretion.

## 9. Banking Facility Callable On Demand

Unless the Banking Facility is a Term Loan, Fixed Loan or a Housing Loan, the Banking Facility will be callable on demand by us at our sole discretion; this means that we have the right to terminate or cancel the Banking Facility at any time and to require you to make immediate payment and repayment of all moneys and liabilities owing by you to us in relation to the Banking Facility regardless whether the moneys and liabilities have become due to be paid or repaid to us.

## 10. Interest

- 10.1 Unless we expressly prescribe otherwise in our sole discretion, interest for the Banking Facilities must be paid to us every month in arrears. If any interest is not paid when due, the unpaid interest will be added on to the principal amount of the Banking Facilities owing and further interest will be charged on the unpaid interest until we have received all interest due to us whether or not we have obtained judgment against you in a court of law and whether or not you have ceased to be our customer.
- 10.2 Before you begin any repayment to us for a non-revolving Banking Facility, that is, a Banking Facility which cannot be reused even if you have repaid any principal amount of the Banking Facility, interest on the amounts of the Banking Facilities that we released from time to time will be calculated on a daily basis and must be paid to us every month in arrears. If such interest is not paid when due, then such unpaid interest will be added on to the principal amount of the Banking Facilities owing and further interest will be charged on the unpaid interest until we have received all interest due to us whether or not we have obtained judgment against you in a court of law and whether or not you have ceased to be our customer.
- 10.3 Interest rates may be varied from time to time at our sole discretion and any new interest rate will apply and be payable by you as from the date specified in a written notice which we will give to you. We reserve the right not to give you any notice if the variation of interest rates relates only to the variation on our Base Lending Rate or Base Rate.

## 11. Commitment Fee

If the Banking Facility is an overdraft or other facility for which commitment fee is payable, we shall have the right to charge a commitment fee of one per centum (1%) per annum if no other rate has then been prescribed by us on the unutilised portion of the Banking Facilities for such period the Banking Facility is available for use but not utilized or for such other time interval as we may stipulate. The commitment fee will be payable monthly in arrears at the end of every month and if not paid when due, the unpaid commitment fee will be added on to the principal sum then owing and will from that time bear interest at the rate prescribed by us.

## 12. Financial Statements And Information

- 12.1 If you are a company, you are to deliver to us on request all statements, information, materials and explanations relating to your business and financial position including your Annual Audited Financial Statements and Directors' and Auditors' Reports which are to be delivered within thirty (30) days of the close of each of your financial years or within such longer period as we may allow.
- 12.2 You must provide and disclose to us within such time prescribed by us, any information which we deemed necessary in order to:-
- (i) comply with the laws or Sanctions of Malaysia or any other country (including but not limited to those relating to anti-money laundering, anti-terrorism financing or proceeds of unlawful activities);
  - (ii) manage money-laundering risk or terrorism-financing risk or economic and trade sanctions risk or proceeds of unlawful activities risk; and/or
  - (iii) conduct and be satisfied with the results of all necessary "know your customer" or other similar procedures under applicable laws and regulations.
- 12.3 Pending our receipt of the information from you and until we have verified the information to our satisfaction, we are not obliged to proceed with any transactions or disbursements.
- 12.4 You declare and undertake to us that the processing of any transactions will not breach any laws or Sanctions of Malaysia or any other country. We will not be liable for any loss arising from any delay or failure to process any transactions due to inadequate information and documentation provided by you or any failure or omission to provide any information or documents to us.

### 13. Reorganisation Or Changes In Share Capital Or Constitution

If you are a company, you agree and undertake that you must not without our prior written permission, undertake or allow to be undertaken:-

- 13.1 any re-organisation, amalgamation, reconstruction, take-over, reduction or alteration to your authorized or issued and paid up share capital, including the redemption of any preference shares, substantial change of shareholders or your management or any other schemes of companies; or
- 13.2 any corporate schemes or other arrangement affecting your present constitution or residential status; or
- 13.3 any amendment or alteration to any of the provisions in your constitution (if any) or adopt a constitution relating to your borrowing powers and principal business activities; or
- 13.4 any of your partners (applicable to partnership).

### 14. Change In Constitution

- 14.1 If you are a company, these Terms and Conditions and all the provisions governing the Banking Facilities and the Security will continue to be valid, binding and enforceable on or against you even if there is any change in your constitution, whether by amalgamation, consolidation, reconstruction or otherwise.
- 14.2 If you are a firm, these Terms and Conditions and all the provisions governing the Banking Facilities and the Security will continue to be valid, binding and enforceable on or against you even if there is any change in your constitution, whether by retirement, expulsion, death, admission, accession or change of any of the partners or otherwise.

### 15. Security Margin

- 15.1 If the market value of any Security falls below what we in our sole discretion consider to be adequate security for the Banking Facilities, we are entitled and may do any one or more of the following without affecting any other right which we may have:
  - (i) reduce the credit limit of the Banking Facilities;
  - (ii) withhold further release or utilisation of any part of the Banking Facilities;
  - (iii) require you to make repayment of such amount of the Banking Facilities as we may decide upon;
  - (iv) require you to make prepayment of the Banking Facilities in which case we will not charge you any prepayment fee; and/or
  - (v) require additional security to be furnished for the Banking Facilities.

### 16. Events Of Default

- 16.1 When an Event of Default happens:
  - (i) we will not be under any further obligation and/or commitment to you in relation to the Banking Facilities;
  - (ii) all moneys and interest then owing to us under the Banking Facilities and any other moneys then owing to us by you will immediately become payable on demand by us;
  - (iii) we will immediately become entitled to recover all moneys and interest then owing to us with interest thereon at the rate of three point five per centum (3.5%) per annum above our prevailing Base Lending Rate with monthly rests or at such other rate and/or other periodic rests as we may at our sole discretion prescribe from time to time;
  - (iv) you will provide cash cover on demand for all your contingent liabilities to us, and for all notes or bills accepted, endorsed, or discounted, and all bonds, guarantees, indemnities, documentary or other credits, or any instruments whatsoever from time to time entered into by us for or at your request; and
  - (v) we will be entitled, without any previous notice to you, to exercise any right or power:
    - (a) which we may have upon an Event of Default by virtue of these Terms and Conditions and the Security Documents; and
    - (b) which may be available to us in law;
- 16.2 The following are the Events of Default:
  - (i) if you fail to pay on any due date any money which you are to pay to us or if you fail to discharge any obligation or liability owing to us;
  - (ii) if you, or any Security Party, fails to observe or perform any of the terms and conditions contained in these Terms and Conditions or the Security Documents;
  - (iii) if any representation, warranty or undertaking made to us by you and/or any Security Party is or will become incorrect or misleading in a material respect;
  - (iv) if you, or any Security Party, dies or becomes insane;

- (v) if you, or any Security Party, becomes bankrupt or insolvent or allows any judgment to remain unsatisfied for a period of twenty-one (21) days;
- (vi) if you, or any Security Party, commits any act of bankruptcy, insolvency or is unable to pay your or its debts, as the case may be, or suspend the payment of your or its debts, as the case may be, or enter into any composition or arrangement with or for the benefit of your or its creditors, as the case may be;
- (vii) if you or any Security Party proposes any voluntary arrangement with your/their creditors or a nominee is appointed for the purpose of the voluntary arrangement or if any resolution is passed, or a petition is presented against you, or any Security Party:
  - (a) for bankruptcy, insolvency, liquidation, winding-up or dissolution; or
  - (b) for the appointment of a nominee, liquidator, receiver, trustee or judicial manager;
- (viii) if a nominee, liquidator, receiver, trustee, judicial manager or a similar official is appointed for all or a substantial part of your assets or the assets of any Security Party;
- (ix) if execution or any form of recovery or enforcement action is levied or taken against any of your assets or the assets of any Security Party;
- (x) if you, or any Security Party, stops or threatens to stop carrying on your or its business, as the case may be;
- (xi) if you, or any Security Party, changes or intends to change the nature or scope of your or its business as is presently conducted, as the case may be;
- (xii) if you, or any Security Party, transfers or disposes of or intends to transfer or dispose of a substantial part of your or its assets, as the case may be;
- (xiii) if, in our opinion, there is any change or threatened change in:
  - (a) circumstances which would materially and adversely affect your or any Security Party's business or financial condition or your or its ability to perform your or its obligations under these Terms and Conditions or the Security Documents; or
  - (b) circumstances in relation to you, any director or member of the management board or any direct or indirect shareholder that could, in our opinion, expose us to the risk of loss or reputation or regulatory action in any country; or
  - (c) your status or the status of any Security Party as a resident or resident controlled company, as the case may be; or
  - (d) your shareholders, shareholding structure, directors or management, if you are a company; or
  - (e) the shareholders, shareholding structure, directors or management of any Security Party, if it is a company;
- (xiv) if a notice or proposal for the compulsory acquisition of any of your properties or the properties of any Security Party that is charged or encumbered to us as security is issued or made under any law;
- (xv) if you, or any Security Party, is blacklisted pursuant to the Dishonoured Cheques Information System (DCHEQS) guidelines or any guidelines issued by Bank Negara Malaysia or any other authority having jurisdiction over us;
- (xvi) if your account with us is re-designated or closed by us for any reason whatsoever;
- (xvii) if you, any Security Party or any Associated Party fails to discharge any obligation or liability to us or to any other person;
- (xviii) if you, any Security Party or any Associated Party, commits a default in any loan, facility or similar arrangement with any person, (including us) which gives the right to the creditor concerned (including us) the right to demand repayment of the Banking Facilities or any part thereof or any arrangement of the same before its due date, to withdraw the Banking Facilities or any part thereof or any arrangement made; or to enforce the Security for the Banking Facilities or any part thereof or any arrangement made;
- (xix) if there is a default in the payment of any moneys under the account of any other person for whom you, any Security Party or any Associated Party, are providing security;
- (xx) if there is any litigation (whether civil or criminal) arbitration or administrative proceedings pending, on-going or threatened against you or any Security Party;
- (xxi) if your credit rating as determined by us has deteriorated;
- (xxii) if we suspect or have reasons to believe that the Banking Facilities or any part of it is used for any unlawful activity;
- (xxiii) if there is any investigation by the police, authorities or regulators pending, on-going or threatened against you and/or any Security Party;
- (xxiv) if you and/or any Security Party have been charged or convicted for any criminal offences or have any criminal records;
- (xxv) if there is any report lodged against you and/or any Security Party under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001; or

(xxvi) if we decide in our sole discretion that the continuation of the Banking Facilities could likely be detrimental to our own position or that our security position could be in jeopardy; Any decision made under our discretion is final and is not subject to query by you.

## 17. Application Of Moneys

If any money paid to us or recovered by us in respect of your liabilities under the Banking Facilities is less than the amount then owing to us, we may at our sole discretion apply the money towards payment of interest, fees, principal or any amount due to us in such proportions and order and generally in such manner as we consider fit; we may also choose to credit the money or some of it into a non-interest bearing suspense account.

## 18. Certificate

Any certificate or statement issued by us showing the outstanding amount due and owing from you to us in relation to the Banking Facilities will be conclusive proof as to the outstanding amount due and owing from you to us in relation to the Banking Facilities save for any manifest error; this certificate or statement will be binding on you for all purposes whatsoever including for the purposes of any legal proceedings.

## 19. Costs And Expenses

19.1 You are to pay for all the costs and expenses of:

- (i) providing, creating, maintaining, protecting, preserving, enforcing and realising the Security; and
- (ii) processing, implementing and recovering moneys owing under the Banking Facilities.
- (iii) the Bank defending, prosecuting or otherwise howsoever taking part in or attending at (whether on a watching brief as observer or otherwise howsoever) any action, enquiry, hearing, suit or other proceedings whatsoever affecting, relating to or in connection with the Security and/or any fixture thereon".

19.2 The costs and expenses are to be paid on a full indemnity basis.

19.3 Interest at a rate to be prescribed by us is payable on the costs and expenses from the date they are incurred until full payment.

19.4 If any of the Banking Facilities is cancelled for any reason whatsoever before any part of it has been utilised, you will still have to pay for all costs and expenses which may already have been incurred in relation to the providing of the Banking Facilities and the preparation of the Security Documents.

19.5 For the avoidance of doubt, the costs and expenses payable by you includes the costs and expenses of our solicitors.

## 20. Taxes, Duties Or Levies

20.1 You are liable to pay for any goods and services tax or other taxes or levies which as at the date of the Letter of Offer or at any date subsequent to the date of the Letter of Offer, is required by law (including the Goods and Services Tax Act) to be paid to anybody or authority having jurisdiction over us, in respect of any moneys charged or incurred by us, during the continuation of the Banking Facilities so long as the Banking Facilities or any part of it remains outstanding and unpaid.

20.2 Any goods and services tax or other taxes or levies incurred by us in relation to the Banking Facilities and any other goods or services provided under the Banking Facilities shall be borne by and charged to you and in the event that we shall effect payment on your behalf, you shall be liable to reimburse us for such amounts paid.

## 21. Right To Debit

21.1 Without affecting any other rights that we may have, we may, at any time, at our sole discretion, and without giving you any prior notice, debit your account current or any other account (including the balance on any overdraft account) which you may have with us with any moneys whatsoever which is payable by you to us, including but not limited to costs, expenses, disbursements, taxes, duties or levies.

21.2 If we do debit your account, the debiting is not to be taken as a waiver of any of the Events of Default.

21.3 If any debiting of your account causes your account to be overdrawn, interest at the default rate shall be payable accordingly.

## 22. Right Of Set-Off

22.1 We have the right, without any notice to you, to combine, consolidate or merge all or any of your accounts and liabilities with and to us, whether singly or jointly with any other person. We also have the right, after giving you seven (7) days' notice, to transfer or set off any sums in credit in such accounts in or towards the satisfaction of any of your liabilities to us, whether actual or contingent, primary or collateral, joint or several.

22.2 If any of your liabilities is contingent, we have the right to set-off and transfer any sum standing to the credit of any of your accounts towards satisfaction of your contingent liabilities and if your actual liabilities are less than the amount set-off by us, we will refund the surplus to you.

22.3 If any of your accounts in credit is maintained in a currency other than the currency of the liabilities, we may convert them into the currency of the liabilities at our own prevailing rate.

22.4 Upon the issuance of the notice mentioned in Clause 22.1, you agree that we have the right to earmark or to place a hold on any monies standing to the credit of all or any of your accounts with us prior to the setting-off, and you shall not be entitled to withdraw the monies without our prior written consent.

### 23. Bank's Right To Make Adjustments

We have the right to adjust the entries in our records or the account statement if there is any error or missing entries.

### 24. Indemnity

24.1 In addition and without affecting the powers, rights, and remedies granted under the Letter of Offer, you will indemnify us against any loss or expenses (including legal expenses on a solicitor and client basis) which we sustain or incur because of:

- (i) any of your cancellation or failure to draw the whole or any part of the Banking Facilities; or
- (ii) any prepayment of the Banking Facilities or any part of it unless otherwise provided under the Letter of Offer; or
- (iii) any default in payment by you of any sum due under the Letter of Offer, including any interest or fees paid or payable on account of, or in respect of, any funds borrowed or deposits from third parties in order to maintain the amount in default, or in liquidating or re-employing such funds or deposits; or
- (iv) the occurrence of any Event of Default; or
- (v) any demand, claims, actions and/or proceedings in respect of or arising from the Banking Facilities and/or the Security;
- (vi) any taxation laws or regulations of any country having jurisdiction over us.

24.2 Our certification of the amount of the said loss or expenses will be conclusive and binding upon you unless there is any obvious mistake.

### 25. Currency Indemnity

Unless otherwise specifically agreed in writing by us in relation to the Banking Facilities:-

25.1 your obligation shall be to pay the obligations or liabilities in Ringgit Malaysia in immediately available funds on the due date ("Payment Currency").

25.2 Any amount received or recovered by us in respect of any sums expressed to be due to us from you under the Letter of Offer and/or the Security Documents in a currency ("Relevant Currency") other than the Payment Currency (whether as a result of, or arising from the enforcement of, a judgement or order of court of any jurisdiction or your death, bankruptcy or insolvency or otherwise) shall only constitute a discharge to you to the extent of the amount in the Payment Currency which we are able, in accordance with our usual practice, to purchase with the Relevant Currency so received or recovered on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount in the Payment Currency purchased with the Relevant Currency is less than the amount of the Payment Currency expressed to be due to us under the Letter of Offer and/or the Security Documents, you shall indemnify us against any loss sustained by us as a result thereof. In any event, you shall indemnify us against the cost of making any such purchase.

### 26. Market Disruption

Notwithstanding these Terms and Conditions or the provisions in any Security Document, if at any time and from time to time we are of the view that there is any change, whether national or international, in the monetary, financial, political or economic conditions, or currency exchange rates which in our sole opinion would make it impractical or difficult if not impossible for us to grant or continue to grant the Banking Facilities or to allow the indebtedness under the Banking Facilities to remain outstanding upon the terms as set out in the Security Document or these Terms and Conditions, we shall have the right to give you notice in writing without having to give you any reason, to cancel or suspend the Banking Facilities.

### 27. Circumstances Beyond Our Control

27.1 If we are unable to do or carry out any of the matters below due to any event beyond our control stated in Clause 27.2, we will not be in any way liable for any failure to perform or for any inconvenience, loss, injury or damage which you may directly or indirectly suffer as a result:

- (i) to perform any of our obligations under these Terms and Conditions or any Security Document;
- (ii) to carry out any part of our usual business operations; or
- (iii) to provide any service;

27.2 Events beyond our control include, but not limited to:

- (i) any fire, earthquake, flood, epidemic, natural disaster, accident, riot, civil disturbance, industrial dispute, act of terrorism, embargo, war or Act of God;
- (ii) any failure, stoppage or disruption:-
  - (a) of any telecommunication services, internet, electricity supply, water supply or fuel supply; or
  - (b) of services outsourced by us to service providers, whether in or outside Malaysia for any reason whatsoever, including but not limited to hardware and/or software malfunction or system down due to virus attach, hacking etc. or
- (iii) any circumstance in the nature of a force majeure, that is, an unforeseeable event that prevents us from performing any of our obligations under these Terms and Conditions or any Security Document.

## 28. Increased Costs

- 28.1 Clause 28.2 shall apply if we in our sole discretion decide that, as a result of any new law, guideline, directive or regulation, or as a result of any change to any existing law, guideline, directive or regulation:
- (i) we would incur increased costs because of our having to granted you or continuing to grant you the Banking Facilities and having to continue to perform our obligations under the Banking Facilities or the Security Documents;
  - (ii) we would not be able to obtain the rate of return on our overall capital which we would have been able to obtain if not for our having granted to you or continuing to grant you the Banking Facilities and having to continue to perform our obligations under the Banking Facilities or the Security Documents;
  - (iii) any sum received or receivable by us under the Security Documents is reduced;
  - (iv) there is an increase in our costs us of paying for or maintaining your use of the Banking Facilities; or
  - (v) we have to make any payment or forgo any interest or other payment to us on the basis of any sum repayable or to be paid to us under the Banking Facilities or the Security Documents;
- 28.2 If any of the events in Clause 28.1 occurs, you will have to pay to us upon demand by us an amount sufficient to make good:
- (i) the increased costs, the reduced return and the reduced sum suffered by us;
  - (ii) the payment we have to make; and
  - (iii) the interest or other payment which we have to forgo.

## 29. Illegality

If we deem that because of any applicable law, regulation or regulatory requirement is changed, interpreted or applied differently by any relevant governmental or other authority after the date of the Letter of Offer and it becomes unlawful or impractical for us to comply with our obligations under the Letter of Offer, or to continue to make available the Banking Facilities granted to you or to charge or receive interest at the rate applicable, we will notify you, and following that notification:

- 29.1 the Banking Facilities and our obligations under the Banking Facilities will be suspended immediately and we will have no further obligations under the Banking Facilities, which will be deemed cancelled; and
- 29.2 you must prepay the Banking Facilities to us together with accrued interest and all other amounts payable to us on the date deemed necessary by us to comply with the relevant law.

## 30. Disclosure Of Information

You agree that we (including our officers, employees, agents or any other persons to whom we grant access to our records, correspondence or any material relating to you or your account) can disclose at any time at our sole discretion without notifying you beforehand, any information relating to you, your account and any of your Authorised Persons to the following:

- 30.1 any one or more members of the Group for any of the following purposes:
- (i) providing you with banking services and/or improving and furthering the provision of other services by us;
  - (ii) reporting or data matching;
  - (iii) fraud or crime prevention or investigating, preventing or otherwise in relation to money laundering or any other criminal activities;
  - (iv) debt collection or any legal process initiated by or served on us;
  - (v) outsourcing our operations or any part of our operations;
  - (vi) performance of duties as an officer of the bank or in connection with the conduct of audit or the performance of risk management;
  - (vii) facilitating the performance of our or any member of the Group's functions;
  - (viii) compliance with the Group's policies, guidelines, directives or requirements;
  - (ix) corporate exercise;
- 30.2 any person, whether in Malaysia or elsewhere, who provides electronic or other services to us for the purpose of providing, updating, maintaining and upgrading the services including, but not limited to, investigating discrepancies, errors or claims;
- 30.3 any person, whether in Malaysia or elsewhere, engaged by us in connection with the performance of services or operational functions which have been out-sourced;
- 30.4 the police or any public officer conducting an investigation in connection with any offence including suspected offences;
- 30.5 credit card companies and financial institutions in connection with credit card enquiries;

- 30.6 other banks, financial institutions, credit bureau or credit reference agents (only for credit information);
- 30.7 our auditors, solicitors, and professional advisors;
- 30.8 our stationery printers, vendors of the computer systems we use, and to such persons installing and maintaining them and other suppliers of goods or service providers we engage;
- 30.9 any receiver appointed by us or by any other party;
- 30.10 any credit bureau of which we are a member, and any other members and/or compliance committee of such credit bureau;
- 30.11 any rating agency, insurer or insurance broker or direct or indirect provider of credit protection;
- 30.12 any actual or potential participant or sub-participant in relation to any of our obligations under the banking agreement between you and us, or assignee, novatee or transferee (or any officer, employee, agent or adviser) of any of them;
- 30.13 for transactions effected or processed with or without your authority in or through the automated teller machines of other banks or financial or non-financial institutions or terminals or other card operated machines or devices we approve, to the bank, financial institution or non-financial institution, trader or other party accepting the use of the automated teller machine card and their respective agents or contractors;
- 30.14 any court, tribunal or authority, whether governmental or quasi-governmental with jurisdiction over us or any member of the Group;
- 30.15 any person to whom we or any member of the Group, are permitted or required to disclose to under the laws of any country;
- 30.16 any other person to whom such disclosure is considered by us to be in our interest, or the interest of any members of the Group (not applicable to strategic alliance for marketing and promotional purpose);
- 30.17 any person intending to settle any moneys outstanding under the Banking Facilities and any person connected to the enforcement or preservation of any of our rights under these Terms and Conditions and the Security Documents;
- 30.18 the Central Credit Bureau or any other authority or body established by Bank Negara Malaysia or any other authority having jurisdiction over us;
- 30.19 any Security Party;
- 30.20 any of your directors.

### **31. Compliance With Court Orders**

We and the Group can act in any way we see fit, without consulting you beforehand, if we are served with a court order issued by a court of any jurisdiction. You agree that you will not hold us liable for any loss or damage in connection with our actions.

### **32. Data Protection**

- 32.1 You hereby confirm that you have received, read, understood and agreed to be bound by the Privacy Notice issued by us (which is available at our branches as well as at our website at [www.uob.com.my](http://www.uob.com.my)) and the clauses in these Terms and Conditions as may relate to the processing of your Personal Data. For the avoidance of doubt, you agree that the said Privacy Notice shall be deemed to be incorporated by reference into these Terms and Conditions.
- 32.2 You agree and consent that we may transfer the Personal Data outside of Malaysia. All Personal Data held by us and the Group will be accorded a reasonable level of protection against any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or deletion.
- 32.3 In the event you provide Personal Data relating to third parties, including data relating to your next-of-kin and dependents (where you are an individual) or data relating to your directors, shareholders and/or officers (where you are a corporation), data relating to individual and/or corporate guarantors and security providers, for the purpose of opening or operating your accounts or facilities with us or otherwise subscribing to our products and services, you:
  - (i) confirm that you have obtained their consent or are otherwise entitled to provide this data to us and for us to use it in accordance with these Terms and Conditions;
  - (ii) undertake that you have informed the said third parties to read the Privacy Notice at our website [www.uob.com.my](http://www.uob.com.my);
  - (iii) have informed the said third parties:-
    - (a) that we may collect or verify their personal and financial data with third party sources;
    - (b) that we may disclose their personal data to classes of third parties described in our Privacy Notice;
  - (iv) agree to ensure that the personal and financial data of the said third parties is accurate;
  - (v) agree to update us in writing in the event of any material change to the said personal and financial data; and
  - (vi) agree that we have the right and are entitled to terminate the Banking Facilities should any of such consent be withdrawn by any of the said third parties.

- 32.4 Where you instruct us to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including data relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible by overseas regulators and authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing us and/or our agents to enter into any cross-border transaction on your behalf, you agree to the above said disclosures on behalf of yourself and others involved in the said cross-border transaction.
- 32.5 Additionally, but always subject to any laws (including regulations, guidelines and/or obligations) applicable to the Group (whether in or outside Malaysia), you agree that the Group, and our merchants and strategic partners may contact you about products, services and offers, which we believe may be of interest to you or benefit you financially. Notwithstanding the foregoing, we will only disclose your Personal Data (excluding data relating to your affairs or account) to our merchants and strategic partners where you have given to us your express prior consent.
- 32.6 You may choose not to receive any direct marketing materials from the Group by writing in to us at 'Personal Financial Services, P.O. Box 13525, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur' (or such other address notified by us) with your request and we will abide by your latest written instructions to us.
- 32.7 You acknowledge that certain communications such as statements of account and our websites contain standard information regarding our other products and services that cannot be removed without affecting the delivery/provision of our services and/or products, the operation of your accounts and/or facilities with us, and/or without imposing additional costs to you.
- 32.8 You are entitled to request in writing:
- (i) for any information relating to your Personal Data that we hold or store, upon payment of a prescribed fee;
  - (ii) for any information held or stored by us to be updated, amended and/or corrected;
  - (iii) for us to limit the processing of your Personal Data held or stored by us; and
  - (iv) to make an enquiry or complaint in respect of our processing of your Personal Data.
- For requests under (a) or (b), you may make a request to us via our Data Access Request Form or Data Correction Request Form respectively. These forms are available at our branches and at our website at [www.uob.com.my](http://www.uob.com.my).
- You may direct all your requests to any of our branches or 'Customer Communications Management, UOB Call Centre, P.O. Box 11212, Menara UOB, Jalan Raja Laut, 50738 Kuala Lumpur'.
- We may charge a fee for processing your request for access or correction. We may also refuse to comply with your request in respect of (a) or (b) above if the information supplied by you is determined by us to be insufficient for the purpose or where to carry out such request may breach or violate any law or regulation or any other reason which we deem not to be in our interest to do so. If we refuse to comply with such request, we will inform you of our refusal and the reason for our refusal.
- 32.9 You are responsible for ensuring that the information you provide us is accurate, complete and not misleading and that such information is kept up to date.
- 32.10 Please note that if you subsequently withdraw your consent to process your Personal Data as given earlier to us, as we will not be able to process and/or disclose your Personal Data in relation to the purposes set out in the Privacy Notice, we will have the right to stop or not to provide or to discontinue the provision of any product, service, account and/or facilities that is linked to such Personal Data.
- 32.11 We reserve the right to amend this Clause 32 from time to time at our sole discretion and shall provide prior notification to you in writing and place any such amendments on our websites or by placing notices at the banking halls or at prominent locations within our branches or by such other means of communication deemed suitable by us.
- 32.12 This Clause 32 shall be without prejudice to any other clause in these Terms and Conditions which provides for the disclosure of data.

### 33. Compliance With FATCA

- 33.1 You shall:-
- (i) within seven (7) days of a request by us:-
    - (a) confirm to us whether or not you are a FATCA Exempt Party;
    - (b) provide to us all required documentation or information, including but not limited to date of birth, countries of citizenship, countries of permanent residence, countries of tax residency and associated taxpayer identification numbers, that may be required to enable us or any member of the Group to comply with all requirements of FATCA or other agreement by or between governments; and
  - (ii) notify us in writing promptly of any change that affects your tax status in relation to FATCA or under any laws, rules, regulations or other agreement by or between governments, including when you become aware that you are not, or have ceased to be, a FATCA Exempt Party subsequent to you having notified us that you are an FATCA Exempt Party.

If you fail to confirm to us whether you are or are not a FATCA Exempt Party as requested or to supply forms, documentation or other information relating to your status under FATCA under Clause 33.1 above (including where Clause 32.3 applies),

then you may be treated for the purposes of the Security Documents (and payments made under them) as if you are a FATCA Exempt Party until you have received from you the requested confirmation, forms, documentation or other information.

You must comply with this Clause 33.1 notwithstanding that such compliance would or might in your reasonable opinion constitutes a breach of any fiduciary duty or duty of confidentiality unless to do so will breach any law or regulation.

- 33.2 You represent and warrant that you have provided to us all documentation or other information as may be required by us for compliance with FATCA and in connection with any change in tax status and shall provide all required documentation or other information within seven (7) days of a request from us in writing or otherwise.

You further acknowledge that any failure on your part to provide to us accurate and timely information pursuant to requirements and requests by us may result in us having to deem you recalcitrant and/or reportable and take all necessary action against you in order for us to be compliant with requirements under FATCA, local legislation in connection with FATCA and any other provision arising out of an agreement between governments pertaining to FATCA.

- 33.3 For individual borrowers, you consent to the collection, storage, and disclosure by us or any member of the Group of any Personal Data to persons from whom we or any member of the Group receive or make payments on your behalf and to governmental authorities as required by law or other agreement by or between governments. Your consent shall be effective notwithstanding any applicable non-disclosure agreement. You represent that you have secured from any third party whose information is provided to us any consents and waivers necessary to permit us or any member of the Group to carry out the actions described in this Clause 33, and that you will secure such consents and waivers in advance of providing similar information to us in the future.
- 33.4 For borrowers who are a sole proprietorship, partnerships or other business entity, a corporation, or an association, club or society or trust, you consent to the collection, storage, and disclosure by us or any member of the Group of any Confidential Information to persons from whom we or any member of the Group receive or make payments on behalf of you and to governmental authorities as required by law or other agreement by or between governments. Confidential Information includes your Personal Data, your bank account details, transactional information, and any other information that a reasonable person would consider being of a confidential or proprietary nature. Your consent shall be effective notwithstanding any applicable non-disclosure agreement. You represent that you have secured from any third party whose information is provided to us any consents and waivers necessary to permit us or any member of the Group to carry out the actions described in this Clause 33, and that you will secure such consents and waivers in advance of providing similar information to us in the future.
- 33.5 You agree and acknowledge that we are entitled to take all necessary action to be and remain compliant with FATCA as is required by law or other agreement by or between governments. If some of your income is reportable and some is not, we will report all income unless we can reasonably determine the reportable amount. You hereby authorise us or any member of the Group, where appropriate, to withhold or otherwise collect from any payment any required tax or other government assessment, including but not limited to any requirement to withhold or deduct an amount under the Code and the regulations and other guidance issued under the Code, each as amended from time to time or any other agreement by or between authorities.
- 33.6 We or any member of the Group, may take whatever action we consider appropriate to meet any obligations, either in Malaysia or elsewhere in the world, relating to the prevention of tax evasion. This may include, but is not limited to, investigating and intercepting payments into and out of your account(s) (particularly in the case of international transfer of funds), investigating the source of or intended recipient of funds, sharing information and documents with domestic and international tax authorities and withholding income from your account and transferring it to such tax authorities. If we are not satisfied that a payment in or out of your account is lawful, we may refuse to deal with it.
- 33.7 To the fullest extent as may be permitted by law, we will not be liable to you for any losses, costs, expenses, damages, liabilities you may suffer as a result of our complying with legislation, regulations, orders or agreements with tax authorities or by and between tax authorities or if we make an incorrect determination as to whether or not you should be treated as being subject to tax or tax reporting obligations.
- 33.8 This Clause 33 will override any inconsistent term or consent provided by you under any agreement with us to the extent that such agreement provides fewer or lesser rights for us, whether before or after the date of these Terms and Conditions. This Clause 33 shall be without prejudice to any other clause in these Terms and Conditions which provides for our right to request for information or disclosure of data.

#### **34. Retention Of Your Records**

You agree that we are not obligated to maintain any records of your account, including but not limited to the Security Documents, transaction documents, statements of account, correspondences or documents provided to us by you or any other third party, exceeding any retention period as set out under our internal policies, guidelines and procedures and/or as provided under any applicable laws or regulations of any country having jurisdiction over us.

#### **35. Notices**

- 35.1 Any notice (including a notice or statement generated by our computer which need not be signed), demand, request or communication (other than Legal Process) (collectively the "Notices") that we send to you may be:
- (i) delivered by hand to your address as stated in the Letter of Offer or any Security Documents signed by you or such other address last known to us;
  - (ii) sent by post (registered, AR registered, ordinary or otherwise) to your address as stated in the Letter of Offer or such other address last known to us;
  - (iii) sent by facsimile transmission to the facsimile number last known to us;

- (iv) sent by electronic mail to the electronic mail address last known to us;
  - (v) sent by short message system (SMS) to the mobile phone number last known to us;
  - (vi) by posting on our website; or
  - (vii) by insertion in any statement of account which we send to you.
- 35.2 The Notices will be deemed to have been received by you:
- (i) at the time of delivery at your address, if delivered by hand;
  - (ii) on the third (3rd) day (including the day of posting) from the date it is posted, even if it is undelivered or returned;
  - (iii) at the time the facsimile transmission is completed;
  - (iv) at the time the transmission of the electronic mailing is completed;
  - (v) at the time the sending by short message system (SMS) is completed;
  - (vi) at the time of posting on our website; or
  - (vii) at the time the statement of account is deemed to have been received by you.
- 35.3 We will not be responsible for what may happen to the Notices after they are sent, for example if any Notice is delayed, intercepted, lost, fails to reach or is disclosed to any one during transit.
- 35.4 We also reserve the right to serve on you any notice in connection with the Banking Facilities or the Security by:-
- (i) advertisement in any one daily newspaper and such Notice will be deemed to have been served you on the day the advertisement appears in the newspaper regardless of whether you have actually seen the advertisement or not; or
  - (ii) displaying at any of our place of business, any of our branches or premises and such Notice will be deemed to have been served on you on the day of such display regardless of whether you have actually seen the displayed Notice.
- 35.5 You must notify us in writing immediately on any change in your address, facsimile number, electronic mail address or mobile phone number.
- 35.6 If we are not in receipt from you of any written notice of any change in your address, facsimile number, electronic mail address or mobile phone number, you agree that we may at our absolute discretion rely on:
- (i) any address as stated in the Letter of Offer or any Security Documents signed by you; or
  - (ii) any address, facsimile number, electronic mail address or mobile phone number we obtain from any communication purportedly issued by you to us or last known to us.
- 35.7 Our rights under these Terms and Conditions and the Security Documents are not to be affected by any failure on your part to notify us of any change in your address, facsimile number, electronic mail address or mobile phone number.

## **36. Service Of Legal Process**

In addition to and not in substitution of any mode of service that may be permitted or prescribed by any written law in force for the time being, any service of Legal Process by or on our behalf can be effected on you:

- 36.1 if you are an individual, by leaving a copy at the address as stated in the Letter of Offer or any Security Documents signed by you or in any communication purportedly issued by you to us or last known to us and it shall be deemed to have been duly received by you on the day it was left at the address; or
- 36.2 if you are a sole-proprietorship, partnership, company, association, club, society or trust, by leaving a copy at the address as stated in the Letter of Offer or any Security Documents signed by you or in any communication purportedly issued by you to us or last known to us or your last known place of business or registered or principal office address and it shall be deemed to have been duly received by you on the day it was left at the address; or
- 36.3 by sending a copy via prepaid registered or ordinary post to the address as stated in the Letter of Offer or any Security Documents signed by you or in any communication purportedly issued by you to us or last known to us or your last known place of business or registered or principal office address and it shall be deemed to have been duly received by you on the third (3rd) day (including the day of posting) from the date it is posted, even if it is undelivered or returned.

## **37. Agent For Service Of Legal Process**

- 37.1 If you reside outside Malaysia or does not have permanent address in Malaysia (for individuals) or primarily conduct your business outside Malaysia or is a company incorporated outside Malaysia (for companies), you are required at all times to maintain a Process Service Agent in Malaysia to accept service of all Legal Process on your behalf arising out of or connected to the Banking Facilities and the Security Documents.
- 37.2 You shall not revoke the authority of the Process Service Agent without appointing a new Process Service Agent and notifying us in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

37.3 If for any reason whatsoever the Process Service Agent no longer serves as your Process Service Agent, you shall be required to immediately appoint another Process Service Agent and notifying us in writing of such appointment and promptly delivering a copy of the acceptance by the new Process Service Agent of its appointment.

37.4 Service on the Process Service Agent shall be effected in the same manner specified in Clause 36.

### **38. Variation**

38.1 These Terms and Conditions, the Security Documents, and the availability, limits, interest rates, commission, fees and charges of and relating to the Banking Facilities are subject to:

- (i) guidelines issued from time to time by Bank Negara Malaysia or any other authority having jurisdiction over us; and
- (ii) our review and variation from time to time at our sole discretion.

38.2 If there is a change in any fees and charges, we will give you twenty-one (21) days' prior notice before the change takes effect.

### **39. Severability**

If any of these Terms and Conditions or the terms and conditions of the Letter of Offer is or becomes invalid or unenforceable, the invalid or unenforceable term and condition is to be treated as not having been included in these Terms and Conditions or the Letter of Offer; the remainder of these Terms and Conditions or the terms and conditions of the Letter of Offer is to continue to be effective and in force and is not to be affected in any way by the invalid or unenforceable term and condition.

### **40. Non-Waiver**

40.1 If you breach any of the terms and conditions governing the Banking Facilities or any security for the Banking Facilities, we may at our sole discretion decide not to exercise any right which we may have in relation to your breach.

40.2 Any decision of ours not to exercise any right which we may have in relation to your breach is not to be treated as a waiver of our rights and we retain the right at any time afterwards to strictly enforce or to insist on our rights in relation to that breach or any subsequent breach by you.

### **41. Preservation Of Rights And Entitlement**

Regardless of what is stated anywhere else in these Terms and Conditions or the Security Documents, our rights as stated in these Terms and Conditions or the Security Documents will continue to remain in full force and effect and shall survive any cancellation, revocation or suspension of the Banking Facilities by us.

### **42. Legal Advice**

You are advised to seek independent legal advice before accepting the Banking Facilities and before signing the Letter of Offer and the Security Documents prepared by us or our solicitors.

### **43. Prevailing Document**

If there is any inconsistency between these Terms and Conditions and the terms and conditions contained in the Letter of Offer, the terms and conditions contained in the Letter of Offer will prevail, that is, the terms and conditions contained in the Letter of Offer will take precedence.

### **44. Governing Law**

The Letter of Offer and these Terms and Conditions are to be governed by and interpreted in accordance with the laws of Malaysia and, upon your acceptance of the Banking Facilities, you are deemed to have unconditionally and irrevocably:

- 44.1 agreed that any dispute involving the Letter of Offer and these Terms and Conditions and the Security Documents may be submitted to the courts of law within and outside of Malaysia; and
- 44.2 agreed not to raise any objection to any dispute being submitted in any particular court of law on the basis that it is not the correct or most convenient court for the dispute to be submitted to.

### **45. Definitions And Interpretation**

45.1 When used in these Terms and Conditions:

- (i) **“Associated Party”** means any of the following:
  - (a) your director;
  - (b) your shareholder;
  - (c) a company of which any of your directors is a director or a shareholder;
  - (d) a company of which any of your shareholders is a shareholder or a director;
  - (e) your parent or holding company;

- (f) your subsidiary company;
- (g) a company of which you are directly or indirectly a shareholder;
- (h) a partnership of which you are a partner;
- (i) a sole-proprietorship of which you are a proprietor;
- (j) a company of which you are a director;
- (ii) **“Authorised Persons”** means any person you authorise (either alone or collectively), and notified in writing to us, to operate your account, and to act on your behalf in giving instructions, to perform any acts under an agreement between you and us, or to use any facility, product or service we make available to you;
- (iii) **“Banking Facilities”** means the banking facility or facilities offered to you in the Letter of Offer or if the banking facility or facilities is varied in any way by a letter from the Bank to you, **“Banking Facilities”** will also refer to and to include such further or other banking facilities accepted by you and to the Banking Facilities as varied. **“Banking Facility”** means any one of the Banking Facilities;
- (iv) **“Base Lending Rate”** means the rate of interest (fixed by us from time to time based on guidelines issued by Bank Negara Malaysia from time to time) which is reflective of the total cost to us for maintaining the Banking Facilities including but not limited to our credit and liquidity risk premiums and operating costs plus a profit margin or such substituted rate by whatever name called as fixed by us from time to time which we are allowed to include by Bank Negara Malaysia or any other authority having jurisdiction over us;
- (v) **“Base Rate”** means the rate of interest (fixed by us from time to time based on guidelines issued by Bank Negara Malaysia from time to time) based on amongst others our benchmark cost of funds and statutory reserve requirement;
- (vi) **“Code”** means the Internal Revenue Code of 1986 issued by the US;
- (vii) **“Constitution”** means:
  - (a) constitution of a company as described in Section 34 of the Companies Act 2016; or
  - (b) for an entity which is not a company registered under the Companies Act 2016, such documents analogous to the constitution of a company stated in (a) above.
- (viii) **“Event of Default”** means any of the events or matters specified in Clause 16.2;
- (ix) **“FATCA”** means:
  - (a) sections 1471 through 1474 of the Code or any associated regulations or other official guidance;
  - (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; and
  - (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
- (x) **“FATCA Exempt Party”** means a party that is entitled to receive payments free from any FATCA Deduction;
- (xi) **“FATCA Deduction”** means a deduction or withholding from a payment under the Letter of Offer or the Security Document required by FATCA;
- (xii) **“Group”** means our branches, agencies, representative offices, affiliated, associated or related corporations, and their respective officers, servants or agents, whether situated in or out of Malaysia, and includes us;
- (xiii) **“Legal Process”** include, but is not limited to, any originating process including writ of summons and originating summons as well as any other forms of originating process, pleadings, interlocutory applications, affidavits, orders, judgments and any other documents which are required to be served under any written law and such notices under the Companies Act 2016 and the Bankruptcy Act 1967 and the National Land Code 1965;
- (xiv) **“Letter of Offer”** means the letter of offer from us to you agreeing to grant you the Banking Facilities (including these Terms and Conditions annexed thereto) and if further or other banking facilities are subsequently offered by us to you, shall include those letters of offer subsequently issued by us to you or if any of the Banking Facilities is varied by a letter of variation issued by us to you, **“Letter of Offer”** will also refer to and include such letters of offer or variation;
- (xv) **“Partnership”** shall include a limited liability partnership registered under Section 11 or a foreign limited liability partnership registered under section 45 of the Limited Liability Partnerships Act 2012;
- (xvi) **“Personal Data”** may include, but is not limited to, your name, address, occupation, contact details, information captured on security systems [including a recording of your image on Closed Circuit Television (CCTV)], the information contained in any of your account(s) you may have with us either singly or jointly with any other person, the type of products and/or services that you have subscribed to with us and such other necessary data regarding yourself and your transaction(s) with us;

- (xvii) **“Privacy Notice”** means the privacy notice contain in and as defined by our website;
- (xviii) **“Process Service Agent”** means an agent appointed by you and who has accepted your appointment, to accept service on your behalf of all Legal Process arising out of or connected to the Banking Facilities and/or Security Documents;
- (xix) **“Sanctions”** means the sanctions, embargoes or restrictive measures administered, enacted or enforced by any government, governmental institutions or agencies, regulator or authority;
- (xx) **“Security”** means the security or securities required to be created in our favour or given to us in exchange for our granting to you of the Banking Facilities; the Security is more particularly described in the Letter of Offer;
- (xxi) **“Security Documents”** means any document relating to the Banking Facilities and the Security and includes the Letter of Offer and any loan agreement or facility agreement signed by you and us;
- (xxii) **“Security Party”** means any person creating or giving the Security and can also mean you if you are the person creating or giving the Security;
- (xxiii) **“US”** means United States of America;
- (xxiv) **“US Person(s)”** means a US citizen or resident individual, a partnership or corporation organised in the US or under the laws of the US or any state of the US, a trust if (i) a court within the US would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of trust, and (ii) one or more US Person(s) have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the US. This definition shall be interpreted in accordance with the Code. Please note that persons who have lost their US citizenship and who live outside US may nonetheless in some circumstances be treated as a US Person(s);
- (xxv) **“We/Our/Ours/Us or we/our/ours/us”** means and refers to United Overseas Bank (Malaysia) Bhd (Company No. 271809 K);
- (xxvi) **“You/Your/Yourself or you/your/yourself”** means and refers to the borrower to whom the Letter of Offer is addressed; if the Letter of Offer is addressed to more than one borrower, **“You/Your/Yourself or you/your/yourself”** refer to all those borrowers jointly and severally so that the obligations and liabilities of those borrowers are also joint and several; and
- (xxvii) words and phrases applicable to natural persons (including the word “person”) also apply to non-natural persons such as companies, corporations, partnerships, firms and other bodies whether corporate or unincorporated.