

GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is made on the date stated in **Section 1 of the Schedule**.

To: **AmBank (M) Berhad (8515-D)**
22nd Floor, Bangunan AmBank Group
No.55, Jalan Raja Chulan
50200 Kuala Lumpur
Malaysia

1. GUARANTEE AND INDEMNITY

1.1 In consideration of **AmBank (M) Berhad** (Company No. 8515-D) (the “**Bank**”, whose place of business is stated in **Section 6 of the Schedule**) at the request of the Borrower (whose name and address are shown in **Section 2 of the Schedule**) and the Guarantor (whose name and address are shown in **Section 2 of the Schedule**):-

- (a) granting or making available or continuing to grant or continuing to make available banking facilities to the Borrower;
- (b) withholding institution or continuation of any legal proceedings against the Borrower for the recall or recovery of and/or enforcement of any right or security in respect of; and/or
- (c) as may agree to grant to the Borrower at any time and from time to time after the date of this Guarantee and Indemnity;

the Facilities, subject to the terms and conditions set out in the Agreement, a copy of which has been provided to, seen and reviewed by the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Bank as principal debtor and not merely as surety:-

- (i) the due and punctual payment by the Borrower of the Guaranteed Sum; and
- (ii) the due and punctual observance and performance by the Borrower of all the terms and conditions in the Agreement and in respect of the Facilities,

so that whenever the Borrower fails to perform its obligations in respect of or in connection with the Facilities and /or to pay the Guaranteed Sum, this Guarantee and Indemnity shall be deemed immediately to be invoked and the Guarantor will, on demand, pay to the Bank the Guaranteed Sum.

1.2 As a separate, additional and continuing obligation, the Guarantor irrevocably and unconditionally undertakes to fully and effectually indemnify the Bank from and against all claims, actions, losses, damages, costs (including legal fees and expenses incurred on a solicitor and client basis referred to in Clause 11 (*Fees And Expenses*)) whatsoever incurred or suffered by the Bank arising out of or in connection with the failure of the Borrower to perform its obligations in respect of or in connection with the Facilities and to pay the Guaranteed Sums.

2. DEFINITIONS AND CONSTRUCTIONS

2.1 *Definitions in the Agreement*

Words and expression used in this Guarantee and Indemnity (including Clause 1 (*Guarantee and Indemnity*)) shall, unless otherwise defined in this Guarantee and Indemnity, have the same meanings which are used in the Agreement.

2.2 Further Definitions

In addition to those words and expressions already defined in the Agreement, the following words and expressions shall, unless the context otherwise requires, have the meaning respectively assigned to them:-

Agreement	the Letter of Offer and/or the Facilities Agreement;
Authorisation	any consent, permission, approval (including but not limited to, any approvals from BNM pursuant to the FSA), authorisation, order, license, exemption, registration, recording, filing or notarisation, payment of duty or tax;
BNM	Bank Negara Malaysia and includes its subsidiaries and bureaus established by it;
Business Day	a day (other than a Saturday, Sunday or a public holiday) on which financial institutions licensed under FSA are open in the state where the place of business of the Bank is located;
Connected Parties	shall have the same meaning as prescribed in the Bank Negara Malaysia (Revised) “Guidelines on Credit Transactions and Exposures with Connected Parties” which includes, inter alia, directors, controlling shareholders, executive officers and credit officers and their close relatives;
Event of Default	any of the events of default mentioned in the Agreement or any events which will become with the passage of time and/or the giving of notice and/or determination being made, would constitute any of the events of default mentioned in the Agreement;
Facilities	collectively:- <ul style="list-style-type: none"> (a) the banking facility or facilities granted or made available or agreed to grant or make available or to continue to grant or to continue to make available by the Bank to the Borrower as at the date of the Agreement; and (b) such other subsequent or further banking facility or facilities granted or made available or agreed to grant or make available or to continue to grant or to continue to make available after the date of the Agreement from time to time by the Bank to the Borrower,

in each case, subject to the terms and conditions of the relevant Letter of Offer and/or the Facilities Agreement and shall include any banking facility or facilities made available to the Borrower pursuant to or following any addition, increase, substitution, interchanging, termination, reduction, restructuring, reinstatement or other variation whatsoever of such banking facility or facilities (or any of them or part thereof) provided always that the maximum aggregate principal amount of the Facilities is or shall be evidenced by the ad valorem stamp duty paid and endorsed from time to time and for the time being collectively on the Facilities Agreement or the Letters of Offer and the expression “Facilities” shall be construed accordingly and references to “Facility” shall mean any one of the Facilities;

Facilities Agreement	the facilities agreement made the date stated in Section 4 of the Schedule between the Bank and the Borrower;
Financing Documents	collectively this Guarantee and Indemnity, the Agreement and shall include all other documents in connection with the Facilities (including but not limited to those documents constituting security or additional security for repayment and payment of the Guaranteed Sum), and references to “Financing Document” means each or any one thereof;
Force Majeure	means any unforeseen events and/or circumstances not within the reasonable control of the Bank, which the Bank is unable to prevent, avoid or remove including but not limited to any fire, earthquake, flood, epidemic, accident, explosion, casualty, lockout, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of god;
FSA	the Financial Services Act 2013;
Guaranteed Sum	the aggregate of all principal monies, interest, capitalised interest, fees and all other monies due and payable under the Facilities and pursuant to the Financing Documents whether solely or jointly with any other person and whether as principal or surety and includes all liabilities, obligations and indemnities whether present or future or actual or contingent for the payment of any monies by the Borrower and/or Security Party in respect of or arising from the Facilities and/or the Financing Documents;
Letters of Offer	<p>collectively:-</p> <ul style="list-style-type: none">(a) the letter of offer dated the day as stated in Section 5 of the Schedule and issued by the Bank to the Borrower (which letter has been duly accepted by the Borrower); and(b) such subsequent or further letter(s) of offer issued after the date of this Guarantee and Indemnity from time to time by the Bank to the Borrower (which letter(s) has/have been duly accepted by the Borrower), <p>in relation to the Facilities and the expression “Letters of Offer” shall include any amendment, variation, addition, supplemental or substitution thereto. References to “Letter of Offer” means each or any one of them;</p>
Material Adverse Effect	<p>events or circumstances which in the opinion of the Bank have a material adverse effect on:-</p> <ul style="list-style-type: none">(a) the Guarantor’s operations, assets, business or condition (financial or otherwise); or(b) the Guarantor’s ability to perform its obligations under the Financing Documents;
Security Interest or security	includes without limitation any mortgage, debenture (whether fixed or floating), charge, pledge, assignment, hypothecation, lien, right of set-off and any other encumbrance or security interest of any nature whatsoever created or arising and any other agreement or arrangement having a similar effect or having the effect of providing a security or preferential treatment to a creditor;

Security Parties	collectively, the Borrower, the Guarantor and shall include any other party that provides security to the Bank from time to time for the payment of the Guaranteed Sum and references to “ Security Party ” means each or any one of them; and
Taxes	any taxes, including but not limited to sales and services tax, value added tax, consumption tax, consumer tax, indirect tax, service tax, duties, levies and other taxes which may now be or hereafter imposed by the Government of Malaysia.

2.3 *Constructions of Certain References*

Except to the extent that the context requires otherwise, any reference in this Guarantee and Indemnity to:-

an “agency” of a state includes, at any particular time:-

- (a) any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person or state-owned organisation (whether autonomous or not) of, or of the government of, that state or any political sub-division in or of that state; and
- (b) any person who in any capacity whatsoever then owns, holds, administers or controls any of the reserves of that state;

an “agreement” also includes a concession, contract, deed, franchise, license, treaty or undertaking (in each case, whether oral or written);

an “asset” or a “property” of any person shall be construed as a reference to the whole or any part of its business undertaking, and revenues (including any right to receive revenues) and the benefit of all licenses held in connection with it;

a “directive” includes any present or future directive, policy, regulation, request, requirement or voluntary credit restraint programme (in each case, whether or not having the force of law but, if not having the force of law, the compliance with that is in accordance with the general practice of persons to whom the directive is addressed);

the “dissolution” or “winding-up” of a person also includes the merger, consolidation, amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation or winding-up of that person and any equivalent or analogous proceedings and “dissolve” and “wind up” shall be construed accordingly;

a “guarantee” also includes any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by the advance of monies, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of, indemnify against the consequences of default in the payment of, or otherwise be responsible for, the indebtedness of any other person;

“indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, whether incurred as principal or surety or otherwise) for the payment of monies;

“land” (whether “freehold property” or “leasehold property” or “immovable property”) includes any buildings, structures or fixtures (including trade fixtures), fixed plant, machinery, or equipment at any time on the land;

“law” includes common or customary law and any constitution, constitutional documents, decree, judgment, legislation, court order, ordinance, regulation, statute (includes statutory provisions, all statutory instruments or orders made pursuant to it as from time to time, amended, re-enacted extended or consolidated) guidelines, directive, policy, treaty or other legislative measure, in each case, in any jurisdiction whatsoever and whether or not having the force of law and “lawful” and “unlawful” shall be construed accordingly;

a “lease” includes any letting, underlease, sublease, or tenancy and any agreement for any letting, underlease, sublease or tenancy;

a “month” means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it commences or, where there is no date in the next calendar month numerically corresponding as aforesaid, the last day of such calendar month, and “months” and “monthly” shall be construed accordingly;

a “person” includes a natural person, company, corporation, firm, partnership, joint venture, consortium, association, organisation, unincorporated body of persons, trust, state or agency of a state (in each case, whether or not having separate legal personality);

a “receiver” includes a manager, and also a receiver and manager;

“shares” includes stock, options and other rights to acquire shares;

“tax” and “taxes” includes any present or future tax, Taxes, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, by or on whomsoever and wherever imposed, levied, collected, withheld or assessed (including any interest and penalty);

a “time” of day is a reference to Kuala Lumpur time (unless otherwise specified);

a “day” or “year” shall be construed by reference to the Gregorian calendar;

headings and sub-headings in this Guarantee and Indemnity are inserted for convenience only and shall be ignored in construing this Guarantee and Indemnity;

words or expression denoting the singular includes plural and vice versa. Any gender includes all genders;

words “written” and “in writing” include any means of visible reproduction;

“Clauses” and “Schedules” are to be construed as references to the clauses of, and schedules to, this Guarantee and Indemnity;

a sub-clause or a paragraph is to a sub-clause or paragraph of the Clause in which such reference appears;

an “associate corporation” has the meaning ascribed to it in Section 2(1) of the Financial Services Act 2013; ;

any reference to any document is to that document as the same may be amended from time to time with the written consent of the Bank and any document from time to time issued or executed supplemental, in addition or in substitution to or for it;

where there are two or more person or parties included or comprised in any expression, all agreements, covenants, terms, stipulations and undertakings expressed to be made by or on the part of such person or parties shall be deemed to be made by and binding upon such persons or parties jointly and severally unless where otherwise provided; and

words denoting an obligation on a person to do any act, matter or thing includes an obligation to procure that it be done and words placing a person under a restriction includes an obligation not to permit infringement of the restriction save where otherwise provided and “due”, “owing”, “payable” and “receivable” shall similarly construed.

3. **FURTHER ASSURANCE**

The Guarantor will, at its own expense, at any time and from time to time, whether before or after the Guaranteed Sum shall become payable, do all acts and things (including but not limited to executing such documents, doing all assurances and giving such directions or notices) as the Bank may reasonably require for perfecting and/or giving full effect of this Guarantee and Indemnity and for facilitating the exercise by the Bank of all its rights, powers and remedies conferred upon the Bank under this Guarantee and Indemnity. For such purpose, a certificate in writing signed by or on behalf of the Bank to the effect that any particular document, assurance, act or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

4. **ADDITIONAL AND CONTINUING GUARANTEE AND LIABILITIES**

4.1 This Guarantee and Indemnity shall:-

- (a) be in addition to and without prejudice to any other security which the Bank holds in respect of the Guaranteed Sum; and
- (b) be a continuing guarantee for the Guaranteed Sum until the occurrences of any of the following circumstances:
 - (i) full settlement of the Guaranteed Sum by the Security Parties;
 - (ii) set-off of full debt obligations between the Bank and the Borrower;
 - (iii) the Bank waives its right to claim the whole of the Guaranteed Sum from the Borrower; or
 - (iv) expiry of the guarantee period or period to claim the Guaranteed Sum by the Bank

4.2 The Guarantor shall be liable under this Guarantee and Indemnity and shall not be discharged, nor shall the Guarantor's liability be affected by anything which would discharge the Guarantor or affect the Guarantor's liability, including, without limitation:-

- (a) the fact that the account or accounts of the Borrower, the Guarantor or any other Security Party with the Bank may be closed and notwithstanding any settlement of such account;
- (b) any change in the constitution of, or any dissolution, amalgamation, reorganisation, reconstruction, merger, consolidation, sale or transfer by or involving the Borrower, the Guarantor, any other Security Party and/or the Bank and for the purpose of this Guarantee and Indemnity, all rights conferred on the Bank hereunder may be assigned or transferred by the Bank accordingly without the consent of the Guarantor;
- (c) the insolvency, dissolution, liquidation or winding-up of, whether voluntary or compulsory or the death, bankruptcy or insanity of the Borrower, the Guarantor and/or any other Security Party;
- (d) in the event of the death of the Guarantor, the Guarantor's obligation under this Agreement shall not cease and the Bank shall, at any time be at liberty to demand payment of the Guaranteed Sum or any other payment incidental to the Guaranteed Sum from the estate of the Guarantor, unless the death of the Guarantor occurs after his obligation is due. In such situation, the Bank must first exhaust the procedures to claim the Guaranteed Amount or any other payment incidental to the Guaranteed Amount from the Borrower before claiming against the Guarantor's estate;
- (e) the avoidance or invalidity of any assurance, security or payment on any ground whatsoever, including without limitation, avoidance under any legislation relating to insolvency or liquidation; and
- (f) the failure by the Bank to take, perfect and/or enforce any security, or the illegality, invalidity or unenforceability of, or any defect in any provision of the Agreement, this Guarantee and Indemnity and/or any other Security Documents, or the lack of power to borrow/take financing or charging powers or the lack of authority of the Borrower, the Guarantor and/or any other Security Party.

5. **MODIFICATIONS AND INDULGENCES**

5.1 The Bank may at any time without in any way affecting this Guarantee and Indemnity:-

- (a) determine, cancel, restructure, earmark, reduce or increase the amount of the Facilities or any other facilities granted or to be granted to the Borrower in accordance with the provisions in clauses 5.2, 5.3, 5.4 and 5.5 below and may open and/or continue any account current or otherwise of the Borrower at any branch of the Bank;
- (b) convert the Facilities or any balance outstanding to another facility upon terms and conditions deemed fit by the Bank in accordance with the provisions in clauses 5.2, 5.3, 5.4 and 5.5 below;
- (c) grant to the Borrower and/or to any Security Party or any other surety or guarantor any time indulgence or waiver or consent or release;
- (d) renew any bills, notes or other negotiable securities;
- (e) deal with, exchange, release, modify or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or at any time after the date of this Guarantee and Indemnity have from or against the Borrower, any Security Party and/or any other persons;
- (f) compound with the Borrower and/or any Security Party or any other person or guarantor; and/or
- (g) vary any of the terms and conditions of the Facilities or any other facilities granted or to be granted to the Borrower as the Bank deems fit in accordance with the provisions in clauses 5.2, 5.3, 5.4 and 5.5 below,

and the Guarantor irrevocably and unconditionally consents to all of the above events and declares no further consent shall be required from the Guarantor.

5.2 For the purposes of compliance to any new legislation applicable to the Bank / changes in law / any new guidelines issued by BNM, the Bank shall be entitled to amend any of the terms and conditions of this Guarantee and Indemnity through:

- (a) display of the amended terms and conditions in the Bank's branches; and/or
- (b) uploading the amended terms and conditions on the Bank's website.

5.3 The Guarantor agrees that the Bank may provide notice of the amendment of the terms and conditions of this Guarantee and Indemnity through any one / more of the following means:

- (a) notice on the notice board / any conspicuous section of the Bank's branches;
- (b) notice on the display screen of the Bank's electronic terminals;
- (c) notice on the Bank's website;
- (d) notice in the periodic statement of account sent to the Guarantee and Indemnity (if applicable);
- (e) notice in writing in the Bank's preferred format to the Guarantor's address as per the Bank's records; and/or
- (f) notice by any other means as the Bank deems fit and acceptable to the Guarantor.

5.4 Subject to this Guarantee and Indemnity, if the Guarantor is not agreeable to the amended terms and conditions of this Guarantee and Indemnity, the Guarantor shall notify the Bank in writing of the same within twenty-one (21) calendar days from the date of notice by the Bank and the Borrower shall redeem the Facility by paying the Guaranteed Sum and all sums dues to the Bank in full.

5.5 In the event the Borrower and the Guarantor continues to maintain the Facility, twenty-one (21) calendar days after the notice of any amendment to the terms and conditions of this Guarantee and Indemnity by the Bank, the Guarantor shall be deemed to have accepted the amendments to the terms and conditions of this Guarantee and Indemnity.

6. DISCHARGE

- 6.1 The Guarantor agrees and declares that the Guarantor shall not be discharged or released from the Guarantor's obligations under this Guarantee and Indemnity until:-
- (a) the payment and settlement by the Borrower and/or the Guarantor and/or any other person to the Bank of all the Guaranteed Sum and all other monies due and payable to the Bank whether present or future or actual or contingent arising from any facility granted from time to time by the Bank to the Borrower; and
 - (b) an discharge or release of the Guarantor is signed by the Bank.
- 6.2 This Agreement may be dissolved when the Bank, at its liberty wishes to discharge the Guarantor from the guaranteed liability, provided that if the service fee is paid by the Borrower, consent from the Borrower shall be first obtained before such dissolution. However, the discharge of the Guarantor's liability shall not affect the responsibility of the Borrower to fulfil his obligations to the Bank.
- 6.3 Any such discharge or release pursuant to Clause 6.1 and 6.2 (*Discharge*) will be void, if any payment or security which the Bank may have previously received or may after the date of this Guarantee and Indemnity receive from any person in respect of the Guaranteed Sum are set aside, avoided or reduced under any applicable law or proves to have been for any reason invalid.

7. LIEN

The Bank shall have a lien on any securities which the Bank holds for or on account of the Guaranteed Sum in addition to the guarantee created pursuant to this Guarantee and Indemnity. Nothing contained in this Guarantee and Indemnity shall operate so as to merge or otherwise affect any bill, guarantee, mortgage or other security otherwise secured or any right or remedy of the Bank.

8. RIGHT TO CONSOLIDATION, DEBIT, SET-OFF AND PROHIBITED WITHDRAWAL

- 8.1 In respect of the Guaranteed Sum due and unpaid, the Bank may:-
- 1. consolidate any or all accounts of the Guarantor with the Bank, at the Bank's discretion in or towards the satisfaction of any monies payable to the Bank;
 - 2. debit any amount standing to the credit of any or all accounts of the Guarantor with the Bank for the satisfaction of the Guaranteed Sum including but not limited to any expenses, fee, charges, legal costs (whether or not the Bank has advanced the same for and on behalf of the Guarantor); and/or
 - 3. set-off any amount standing to the credit of any or all accounts of the Guarantor with the Bank against the Bank's liabilities to the Guarantor including any amount held by the Bank on behalf of the Guarantor (with the giving of prior notice in writing to the Guarantor which shall not be less than seven (7) calendar days). All payments to be made by the Guarantor under this Guarantee and Indemnity shall be calculated without taking into account any possible set-off. The Guarantor shall be prohibited from applying or making any set-off or counter-claim.
- 8.2 (a) All of the accounts mentioned in Clause 8.1(a), (b) and (c) (*Right To Consolidation, Debit, Set-Off and Prohibited Withdrawal*) shall include those accounts of the Guarantor with the Bank and/or any company within the AmBank Group and accounts jointly with others of any nature and wherever situated. If any of the amounts are in different currencies, the Bank may convert either amount at the Bank's prevailing spot exchange rate.
- (b) The Guarantor agrees that the Bank shall be entitled to consolidate the securities created under this Guarantee and Indemnity with all other Security Interest now or from time to time after the date of this Guarantee and Indemnity given by the Guarantor to the Bank or companies within the AmBank Group as security for any other existing or future indebtedness, obligations or liabilities whatsoever of the Guarantor.
- 8.3 In addition to the above rights, the Bank shall have the discretion to suspend and/or prohibit withdrawal from any accounts of the Guarantor.

9. **RIGHTS TO RESORT TO OTHER MEANS OF PAYMENT**

9.1 The Bank shall at any time be at liberty (without being bound to do so) and without any further notice or reference to the Guarantor, the Borrower or any other Security Party to:-

- (a) resort to any other means of payment of the Guaranteed Sum at any time and in any order as it may think fit without diminishing the Guarantor's liabilities under this Guarantee and Indemnity. Without prejudice to the generality of this Clause, the Bank may exercise its rights for the payment of the Guaranteed Sum, either after resorting to other means of payment or at any time notwithstanding that other means of payment have not been resorted to and without entitling the Guarantor to any benefit of such other means of payment for so long as the Guaranteed Sum remain owing and unpaid by the Guarantor to the Bank; or
- (b) require payment by the Guarantor of the Guaranteed Sum after the Bank has first claimed the Guaranteed Sum against the Borrower and the Borrower is unable to settle his liability.

9.2 The Guarantor waives any rights which the Guarantor may have against the Bank to claim prior exhaustion of remedies by the Bank against the Borrower and/or any other Security Party.

10. **INDEMNITY**

10.1 *Indemnity*

The Guarantor shall fully indemnify the Bank from and against any and all claims, proceedings, expenses, losses, damages and/or liabilities (as to the amount of which the certificate of the Bank shall, in the absence of indisputable error, be conclusive and binding on the Guarantor) which the Bank may incur or suffer:-

- (a) as a consequence of the occurrence of any Event of Default or otherwise; and
- (b) in connection with the Financing Documents or otherwise or to the grant of the Facilities by the Bank to the Borrower,

save and except where such cause of actions against the Bank were directly attributable to the Bank's gross negligence, wilful default or fraud.

The Guarantor shall, promptly upon a demand made by the Bank, pay to the Bank all amounts so paid, incurred, suffered or sustained by the Bank. The foregoing indemnity shall extend to any amount due or to become due under this Guarantee and Indemnity.

10.2 *Currency Indemnity*

- (a) The Guarantor's obligation under this Guarantee and Indemnity shall be to make payment to the Bank, in the currency in which payment is expressed to be contractually made under this Guarantee and Indemnity ("**Contractual Currency**").
- (b) The Bank may convert from any currency ("**First Currency**") to another ("**Second Currency**"), any money in any account of the Guarantor with the Bank at the spot exchange rate of the Bank for the purchase of the Second Currency in such recognised foreign exchange market as the Bank may, in its discretion, select. Any risk of loss arising from any conversion of any amount from one currency to another or from any fluctuation in any exchange rate or rates shall be borne by the Guarantor.

- (c) If, under any applicable law or a judgment being made or registered against the Guarantor or the Guarantor's liquidation or without limitation for any other reason, any payment under or in connection with this Guarantee and Indemnity is made or falls to be satisfied in a currency ("**Payment Currency**") other than the Contractual Currency then, to the extent that the amount of such payment actually received by the Bank, when converted into the Contractual Currency at the rate of exchange, falls short of the amount due under or in connection with this Guarantee and Indemnity, the Guarantor shall indemnify and hold harmless the Bank against the amount of such shortfall. For the purposes of this Clause, "rate of exchange" means the rate at which the Bank is able to purchase on or about the date of such payment, in accordance with its normal practice, the Contractual Currency with the Payment Currency and shall take into account (and the Guarantor shall be liable for) any premium and other costs of exchange including any taxes or duties incurred by reason of any such exchange.

10.3 *Separate and Independent Obligations*

Each of the obligations to indemnify by the Guarantor under Clauses 10.1 (*Indemnity*) and 10.2 (*Currency Indemnity*) shall:-

- (a) constitute and give rise to a separate and independent obligation;
- (b) apply irrespective of any waiver or indulgence granted by the Bank in respect of any other obligation;
- (c) remain in full force and effect; and
- (d) survive the cancellation and termination of the Facilities.

11. **FEES AND EXPENSES**

11.1 *Expenses*

The Guarantor shall on demand pay to the Bank all costs, fees, expenses and the Bank's solicitors' fees on a full indemnity basis incurred by the Bank in connection with:-

- (a) the negotiation, preparation, registration, completion and discharge of this Guarantee and Indemnity and any related documents;
- (b) the preservation or enforcement or attempted preservation or enforcement of any of the rights of the Bank under this Guarantee and Indemnity or any related documents;
- (c) the exercise, or any attempted or purported exercise or the consideration of any exercise, by or on behalf of the Bank of any of the powers of the Bank or any other action taken by or on behalf of the Bank with a view to or in connection with the recovery by the Bank of the Secured Amounts from the Guarantor or any other person; and
- (d) the collection of payment of any amount due and payable.

11.2 *Stamp Duty and Registration Fees*

The Guarantor shall pay directly any stamp duties, registration costs and other similar taxes on this Guarantee and Indemnity (including any penalties for late payment) and if the Bank has made any advances, the Guarantor shall reimburse and indemnify the Bank such expenses.

11.3 *Taxes*

- (a) Unless expressly stated otherwise in this Guarantee and Indemnity, the parties agree that any charges, fees, expenses or similar amount to be used in the calculation of such charges, fees, expenses ("**Charges**") is exclusive of Taxes.
- (b) If any supply made under or in connection with this Guarantee and Indemnity is subject to Taxes, the Bank may increase the consideration provided for by the amount of the Taxes and recover that additional amount from the Guarantor in addition to the Charges.

12. **NO SECURITY AND SUBORDINATION OF GUARANTEED SUM**

12.1 The Guarantor declares that the Guarantor has not received any security from the Borrower or any other Security Party for entering into this Guarantee and Indemnity and agrees that the Guarantor will not, until such time as the Guarantor has been discharged or released in accordance with Clause 6 (*Discharge*):-

- (a) take any security from the Borrower or from any other Security Party in respect of the liability of the Guarantor under this Guarantee and Indemnity without obtaining the prior written consent of the Bank; and
- (b) upon liquidation of the Borrower or any Security Party, prejudice the Bank by increasing the proof in such liquidation or diminish the property distributable among the creditors of the Borrower or the Security Party.

The Guarantor further agrees that in the event the Guarantor has taken any security from the Borrower or any Security Party, such security shall be a security to the Bank for the fulfilment of the obligations and liabilities of the Guarantor or any Security Party to the Bank and shall be held in trust for the Bank and the Guarantor shall immediately deposit with the Bank and the Guarantor irrevocably and unconditionally authorises the Bank to do all acts and execute all documents on behalf of the Guarantor to protect the interests of the Bank.

12.2 The Guarantor shall, so long as this Guarantee and Indemnity shall remain in force, subordinate any and all indebtedness owing by the Borrower to the Guarantor whether or not incurred pursuant to or arising out of this Guarantee and Indemnity in respect of the Borrower's liabilities to the Bank for the Guaranteed Sum and in respect of all indebtedness so subordinated (the "**Subordinated Debt**") the following shall apply:-

- (a) the Guarantor will not claim or receive from the Borrower, by set off or in any other manner, any Subordinated Debt unless and until the Guaranteed Sum has been fully paid and no amount remains to be disbursed or remains owing or payable under the Agreement and no further indebtedness on the part of the Borrower shall arise under the Agreement;
- (b) in the event of any payment or distribution of the assets of the Borrower, in cash, in kind or in securities (a "**Distribution**") upon any dissolution, winding up, liquidation or reorganisation of the Borrower:-
 - (i) the Bank shall first be entitled to receive payment in full of the Guaranteed Sum before the Guarantor receives any payment in respect of the Subordinated Debt; and
 - (ii) any Distribution to which the Guarantor would be entitled but for these provisions shall be paid or delivered by the liquidator or other person making the Distribution directly to the Bank under the Facilities until the whole of the Guaranteed Sum shall have been paid in full; and
 - (iii) if, notwithstanding the above, any Distribution is received by the Guarantor in respect of the Subordinated Debt, such Distribution shall be paid over to the Bank for application against the Guaranteed Sum and until the Guaranteed Sum is paid in full, such distribution shall be held in trust for the Bank.

13. **BANK RANKS AS A CREDITOR**

13.1 This Guarantee and Indemnity shall be construed and take effect as a continuing security of the whole and every part of the Guaranteed Sum and accordingly, in the event of the bankruptcy, winding-up or liquidation of the Borrower or the Guarantor or any Security Party (as the case may be), the Bank (notwithstanding the payment by the Borrower, the Guarantor or any Security Party) may rank as a creditor and prove for the whole amount of its claims against the Borrower or the Guarantor or the Security Party (as the case may be) or agree to accept any composition in respect of the same and the Bank may receive and retain the whole of the dividends, composition or other payments thereon.

- 13.2 For the purpose of enabling the Bank to sue the Borrower, the Guarantor or any other Security Party to prove against the Borrower, the Guarantor or any other Security Party for the whole of the Guaranteed Sum, any monies received by virtue of or in connection with this Guarantee and Indemnity may be placed to the credit of a non-income bearing suspense account for such time as the Bank shall think fit without any intermediate obligation on the part of the Bank to apply such monies or any part thereof in or towards the discharge of the Guaranteed Sum.
- 13.3 Notwithstanding Clause 13.1 and Clause 13.2 (*Bank Ranks as a Creditor*), the full amount guaranteed shall be payable by the Guarantor until the Bank shall have received from all sources on the ultimate balance outstanding on the Guaranteed Sum.

14. **CESSATION OF THE GUARANTEE AND INDEMNITY**

- 14.1 If this Guarantee and Indemnity ceases to be continuing (whether by determination, calling in, invoking, demand or otherwise) for any reasons, the Bank may open a new account in the name of the Borrower.
- 14.2 If the Bank does not open a new account or accounts pursuant to Clause 14.1 (*Cessation of the Guarantee and Indemnity*), it shall nevertheless be treated as if it had done so at the time that this Guarantee and Indemnity ceases to be continuing (whether by determination, calling in, invoking, demand or otherwise) in relation to the Borrower.
- 14.3 As from that time, all payments made to the Bank by or on behalf of the Borrower shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount guaranteed under this Guarantee and Indemnity nor shall the liability of the Guarantor under this Guarantee and Indemnity be reduced or affected in any manner by any subsequent transactions, receipts or payments.

15. **EVIDENCE OF GUARANTEED SUM**

- 15.1 Any statement as to any amount of the Guaranteed Sum shall, save for manifest errors, be conclusive and binding against the Guarantor for all purposes (including but not limited to legal proceedings).
- 15.2 The certificate, confirmation or statement referred to above may be in the form of a computer generated statement or notice which requires no signature or which contains a printed signature.
- 15.3 Any admission or acknowledgment in writing by the Borrower and/or the Guarantor, or by any person authorised on its behalf or any judgment (by default or otherwise obtained against it), shall be binding and conclusive evidence against the Guarantor for any purpose including as being conclusive evidence of the Secured Amounts and/or the Guaranteed Sum in a court of law.

16. **PAYMENTS WITHOUT DEDUCTION**

- 16.1 The Ringgit Malaysia is the sole currency of account and all payments to be made by the Guarantor and shall be made to the Bank without set-off or counter-claim and without any deduction of or withholding for or on account of any taxes, duties, charges, fees or any other amount of any nature now or subsequently imposed by Malaysia or any other country in which the Guarantor is incorporated or is a resident or citizen of (as the case may be) or any subdivision or taxing authority of such country or any federation or any organisation of which such country is a member or any other amount from any sum paid or payable by the Guarantor or by the Borrower.
- 16.2 All payments made by the Guarantor under this Guarantee and Indemnity, whether in respect of interest, fees or any other account, shall be made in full without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes imposed by the government of the country in which the Guarantor is incorporated or resident/citizen of, interest or otherwise whatsoever) unless the deduction or withholding is required by law, in which event the Guarantor shall:-
- (a) ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - (b) immediately pay to the Bank for its account such additional amount so that the net amount received by the Bank will equal the full amount which would have been received by it had no such deduction or withholding been made;

- (c) pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding (including, but without prejudice to the generality of the foregoing, the full amount of any deduction or withholding from any additional amount paid pursuant to this Clause); and
- (d) furnish to the Bank, within the period for payment permitted by applicable law, either:-
 - (i) an official receipt of the relevant taxation authorities in respect of all amounts so deducted or withheld as aforesaid; or
 - (ii) if such receipts are not issued by the relevant taxation authorities on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

17. **WAIVER OF GUARANTOR'S RIGHTS AND APPROPRIATION OF PAYMENTS**

- 17.1 The Guarantor waives in favour of the Bank all or any of the Guarantor's rights against the Borrower so far as may be necessary to give effect to any of the provisions of this Guarantee and Indemnity.
- 17.2 Any moneys received hereunder may be placed and kept to the credit of a suspense account for so long as the Bank may think fit without any obligation in the meantime to apply the same or any part hereof in or towards the discharge of any moneys or liabilities due or incurred by the Borrower. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such moneys and liabilities in the same manner as if this Guarantee and Indemnity had not been given.

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18. REPRESENTATIONS AND WARRANTIES AND UNDERTAKINGS

18.1 The Guarantor represents and warrants to the Bank as follows:-

- (a) **Status:** The Guarantor,
- (i) who is a body corporate, is a company duly incorporated with limited liability under the laws of Malaysia or is legally established, duly organised or constituted under its memorandum and articles of association or constitutional documents (collectively "**Constitution**"), and is validly existing; or
 - (ii) who is a natural person, is of full age, of sound mind and is not an undischarged bankrupt,
- and is acting as principal for its own account and not as agent or trustee in any capacity on behalf of any party in relation to this Guarantee and Indemnity;
- (b) **Powers and Authorisations:**
- (i) the Constitution of the Guarantor include provisions:-
 - (i-i) to own its assets;
 - (i-ii) to carry on its business and operations as they are now being conducted; and
 - (i-iii) to execute, deliver, and perform the transactions contemplated in this Guarantee and Indemnity;
 - (ii) the Guarantor has all the requisite power to execute and perform its obligations under this Guarantee and Indemnity; and
 - (iii) this Guarantee and Indemnity constitutes legal, valid, binding and unconditional obligations of the Guarantor and enforceable in accordance with its terms;
- (c) **Non-violation:** the execution and delivery of this Guarantee and Indemnity and the performance of any transactions contemplated in this Guarantee and Indemnity do not and will not contravene:-
- (i) any law applicable to the Guarantor or its assets;
 - (ii) the Constitution of the Guarantor; or
 - (iii) any agreement binding upon the Guarantor or affecting any of its assets;
- (d) **Consents:** all Authorisations have been duly and unconditionally obtained, made or taken for the due execution, delivery of and performance of this Guarantee and Indemnity to ensure the validity, enforceability or priority of the liabilities and obligations of the Guarantor or the rights of the Bank under this Guarantee and Indemnity and/or for the Guarantor to own its assets, carry on its business and operations as they are now being conducted and are in full force and effect;
- (e) **No Default:** no event has occurred which constitutes or has occurred which with the giving of notice and/or lapse of time and/or relevant determination would constitute a contravention of, or default under any agreement or instrument by which the Guarantor or any of its assets are bound or affected being a contravention or default which might have a Material Adverse Effect;
- (f) **Litigation:** no litigation, arbitration or administrative proceedings or claim which might by itself or together with any other proceedings or claims might have a Material Adverse Effect is presently in progress or pending or, to the best of the knowledge, information and belief of the Guarantor after making due and careful inquiry, threatened against the Guarantor or any of its assets;
- (g) **Tax Liabilities:** all necessary returns have been delivered by or on behalf of the Guarantor to the relevant taxation authorities and the Guarantor is not in default in the payment of any taxes, and no claim is being asserted with respect to any taxes which is not disclosed in its financial statements referred to in Clause 18.1(h)(*Representations and Warranties and Undertakings-Accounts*);
- (h) **Accounts:** the latest audited financial statements (including the income and balance sheets) of the Guarantor furnished to the Bank have been prepared on a basis consistently applied in

accordance with generally accepted accounting principles in Malaysia and give a true and fair view of the results of its operations for that year and the state of its affairs at the date of the said financial statements, and in particular accurately disclose or reserve against all the liabilities (actual or contingent) of the Guarantor as at such date and all material unrealised or anticipated losses from any commitment entered into by it and which existed on that date;

- (i) Material Change in Financial Condition: there has been no material adverse change in the financial condition or operations of the Guarantor and its subsidiaries taken as a whole (as the case may be) since the date of the last audited financial statement furnished to the Bank;
- (j) No Security: save as previously disclosed in writing by the Guarantor to the Bank prior to the date of execution of this Guarantee and Indemnity, none of the assets and rights of the Guarantor is affected by any Security Interest and the Guarantor is not a party to, nor is it or any of its assets bound by, any order, agreement or instrument under which the Guarantor is, or in certain events may be, required to create, assume or permit to arise any Security Interest;
- (k) Information: all information and documents furnished by the Guarantor in connection with this Guarantee and Indemnity:-
 - (i) are up to date as at the date they were provided or as at the date to which they refer, do not contain any untrue statement or omit to state any fact the omission of which makes any statements made in the light of the circumstances under which they are made, misleading;
 - (ii) all expressions of expectation, intention, belief and opinion contained were honestly made on reasonable grounds after due and careful inquiry by the Guarantor; and
 - (iii) the Guarantor is not aware of any material facts or circumstances that have not been disclosed to the Bank which might, if disclosed, adversely affect the decision of a person considering whether or not to provide financing to the Borrower;
- (l) Disclosure: the Guarantor has fully disclosed in writing to the Bank all facts relating to the Guarantor which the Guarantor knows or should reasonably know and which are material for disclosure to the Bank in the context of this Guarantee and Indemnity;
- (m) No Event of Default: no Event of Default has occurred and/or is continuing;
- (n) Dissolution/Bankruptcy: no steps have been taken or any legal proceedings or applications have been started or threatened:-
 - (i) to restructure the debt of the Guarantor;
 - (ii) for a scheme of arrangement by the court;
 - (iii) for the dissolution of the Guarantor; or
 - (iv) the appointment of a receiver, trustee or similar officer of the Guarantor, in respect of its assets;
- (o) No Immunity: the Guarantor is subject to civil and commercial law with regard to its obligations under this Guarantee and Indemnity and the execution, delivery and performance of this Guarantee and Indemnity constitute private and commercial acts rather than governmental or public acts and neither the Guarantor nor any of its properties enjoy any immunity on the grounds of sovereignty or otherwise in respect of its obligations under this Guarantee and Indemnity;
- (p) Conduct of Business: the Guarantor is conducting its business and operations in compliance with all applicable laws and Authorisations;
- (q) Connected Parties: to the best of the Guarantor's knowledge and information after due and careful inquiry, the granting of the Facilities is not a related party

transaction and to the best of the Guarantor's knowledge and information after due and careful inquiry:-

- (i) the Guarantor's directors are not a close relative to any Connected Parties of the Bank, or any of the Bank's subsidiaries or entities controlled by the Bank;
- (ii) it has no control over the Bank's Connected Parties; and
- (iii) none of the Bank's Connected Parties are interested as director, partner, executive officer, agent of or guarantor for the Guarantor, its holding company and/or its ultimate holding company.

The Guarantor shall immediately inform the Bank if the above is not true and correct and shall provide the Bank with the names of the Connected Parties and their relationship; and

- (r) Commercial Benefit: it is commercially beneficial to the Guarantor to execute, deliver and perform this Guarantee and Indemnity and the execution, delivery and performance of this Guarantee and Indemnity does not contravene or violate any law.

18.2 The Guarantor shall be deemed to represent and warrant to the Bank that the representations and warranties set out in Clause 18.1 (*Representations and Warranties and Undertakings*) are true and correct in all respects and will continue to be so for as long as any amount remains payable under this Guarantee and Indemnity as if repeated by reference to the circumstances then existing save that each reference to annual accounts in Clause 18.1(h) (*Representations and Warranties and Undertakings-Accounts*) and to the date referred to in Clause 18.1(i) (*Representations and Warranties and Undertakings-Material Change In Financial Condition*) shall be construed to be a reference to the latest audited annual accounts of the Guarantor then available and to the date of the financial year end of such accounts respectively.

18.3 The truth and correctness of all the matters stated in the representations and warranties under Clause 18.1 (*Representations and Warranties and Undertakings*) shall form the basis of the Bank's commitment under the Agreement to grant or make available or to continue to grant or to continue make available the Facilities to the Borrower.

18.4 The Bank's right and remedies in relation to any misrepresentation or breach of warranty shall not be prejudiced by any investigation by or on behalf of the Bank into the Guarantor's affairs or by the execution or the performance of this Guarantee and Indemnity or by any other act or thing which may be done by or on behalf of the Bank or might, apart from this provision, prejudice or impair such rights or remedies.

18.5 The Guarantor undertakes and covenants with the Bank that so long as the Facilities remain subsisting, or until all its liabilities under this Guarantee and Indemnity have been discharged:-

- (a) Preparation of Accounts: the Guarantor shall prepare all its financial statements on a basis consistently applied in accordance with generally accepted accounting principles and applicable laws in Malaysia and those financial statements shall give a true and fair view of the results of the operations of the Guarantor;
- (b) Information: the Guarantor shall deliver and cause to be delivered to the Bank:-
 - (i) as soon as they become available (and in any event within one hundred and eighty (180) days after the end of each of its financial periods), copies of the consolidated and/or unconsolidated audited financial statements of the Guarantor for that period which shall contain an income statement and a balance sheet and be audited and certified without qualification by a firm of independent accountants acceptable to the Bank;
 - (ii) within ninety (90) days after the end of each half year of its financial periods, copies of the consolidated and/or unconsolidated unaudited accounts for that period (including cash flow statements) of the Guarantor as at the end of such periods, certified by two (2) of its

directors confirming that such unaudited accounts represent true and fair view of the financial condition of the Guarantor; and

- (iii) promptly, such additional information (financial or otherwise) on the Guarantor (including any change in the tax and taxing jurisdiction), as the Bank may from time to time reasonably request;
- (c) Authorisations: the Guarantor shall obtain, renew and maintain any Authorisation in full force and effect required under any applicable law:-
 - (i) to ensure the validity, enforceability or admissibility of this Guarantee and Indemnity; and
 - (ii) to enable the Guarantor to perform its obligations under this Guarantee and Indemnity and to carry on its business.

The Guarantor shall promptly deliver to the Bank certified copies of any Authorisation and the Guarantor shall comply and/or procure compliance with the terms of the aforesaid and shall immediately notify the Bank upon becoming aware of the revocation or variation of any Authorisation;

- (d) Default, Adverse Change and Litigation: the Guarantor shall immediately notify the Bank of:-
 - (i) any event which has or might have a Material Adverse Effect;
 - (ii) an occurrence of an Event of Default;
 - (iii) any substantial change in the nature of the business of the Guarantor; and
 - (iv) any existing or threatened litigation, investigation or other proceedings of any nature before any court, tribunal, regulatory bodies or administrative agency which may exist at any time between the Guarantor and any governmental authority or any third party which if determined, might have a Material Adverse Effect.

Such notice shall be accompanied by a statement of the authorised signatory(ies) of the Guarantor setting out details of such occurrence and stating the action which the Guarantor proposes to take together with, in the case of the notification referred to in Clause 18.5(d)(iv) (*Default, Adverse Change and Litigation*), the amount of any contingent liability if such amount is ascertainable;

- (e) Taxes and Outgoings: the Guarantor shall punctually pay and discharge all taxes, quit rents, rates, outgoings, assessments and governmental charges or levies imposed on it, its income, interests or any of its assets when the same shall become due and payable; and
- (f) Conduct of Business: the Guarantor shall conduct its business and affairs in a proper manner with due diligence and efficiency and in accordance with sound financial and business standards and practices and in accordance with its Constitution.

19. DISCLOSURE OF INFORMATION

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

- (a) the next of kin / administrator / executor / beneficiary of a deceased Guarantor/solicitors acting for them in intending to apply for a court order / who had applied for a court order in respect of a deceased Guarantor's estate;
- (b) BNM / other relevant authorities acting under powers granted under any applicable law;

- (c) insurance companies/takaful operators, brokers, loss adjusters pursuant to any claims to be made by the Bank under such insurance/takaful policy in respect of the Facilities;
 - (d) the purposes of any legal suit / proceedings filed against the Bank by any third party in relation to this Guarantee and Indemnity/ Facilities;
 - (e) the purpose of any legal suit / proceedings filed by the Bank against any third party for the recovery of its losses under this Guarantee and Indemnity/ Facilities;
 - (f) the police/ other investigative authorities, for the purposes of their investigation into any crime (including any money laundering and terrorism financing activities) whether by the Guarantor or otherwise;
 - (g) the police/ other investigative authorities for the purposes of lodging of relevant reports by the Bank and investigation thereof, if the Bank is of the view that a crime has been committed/ to prevent/ recover any losses incurred by the Bank/ for prevention of crime;
 - (h) any party who intend to acquire the Bank's interests, assets and obligations under this Guarantee and Indemnity;
 - (i) any party which in the future may express intention to acquire any interest/ shareholding in the Bank pursuant to any proposed arrangement, composition, merger, acquisition/ restructuring between the Bank and such parties; and/or
 - (j) external professional advisors of the Bank and AmBank Group.
- 19.2 In the event any legal proceedings is initiated by the Bank against the Guarantor under this Guarantee and Indemnity for the recovery of the Guaranteed Sum, the Guarantor provides consent to the Bank to disclose the details and information related to the Guarantor and the cause papers related to the said legal proceedings to any credit reporting agency in Malaysia.
- 19.3 The Guarantor is reminded to read and understand the Privacy Notice of AmBank Group (which is available at www.ambankgroup.com) and the sections herein, as may related to the processing of the Guarantor's personal information.

20. **APPOINTMENT OF PROCESS AGENT (IF APPLICABLE)**

For the purposes of this Guarantee and Indemnity, the Guarantor irrevocably and unconditionally:-

- (a) designates and directs the agent, whose name and address are shown in **Section 6 of the Schedule ("Process Agent")**, who currently has an office/offices in Malaysia, as process agent of the Guarantor to receive service of any and all processes and documents on behalf of the Guarantor in respect of any legal proceeding in Malaysia; and
- (b) agrees to notify the Bank immediately in writing in accordance with Clause 21 (*Notices*) if the Process Agent shall cease to be or be prevented from acting as an agent and in such event, promptly designate another agent in Malaysia acceptable to the Bank and deliver to the Bank written evidence of such substitute agent's acceptance of such designation.

21. **NOTICES**

- 21.1 Any demand, notice, request (other than Legal Process) in connection with this Guarantee and Indemnity shall be in writing and shall be delivered personally, or by ordinary post with certificate of posting or ordinary post or facsimile (followed by post) or electronic mail to the addresses given in this

Guarantee and Indemnity or at such other address as the recipient may have notified to the other party in writing. Proof of posting or despatch of any notice shall be deemed to be proof of receipt:-

- (a) if it is personally delivered, at the time of delivery and duly acknowledged;
- (b) in the case of an ordinary post with certificate of posting or ordinary post, five (5) calendar days after the date of posting;
- (c) in the case of a facsimile when received in a readable and legible form, on the Business Day immediately after transmission Provided Always That the sender has received an answer back confirmation; and
- (d) in the case of electronic mail, on the day of transmission provided that the sender has not received a failed or undeliverable message from the host provider of the recipient within the day of transmission.

21.2 The service of any Legal Process in respect of any action or proceedings may be effected on the Guarantor by delivering a copy of the Legal Process personally or by ordinary post with certificate of posting or ordinary post to the Guarantor's address given in this Guarantee and Indemnity or at such other address as the Guarantor shall have notified to the Bank in writing. Proof of posting or despatch of any Legal Process shall be deemed to be served:-

- (a) if it is personally delivered, at the time of delivery and duly acknowledged; and
- (b) in the case of an ordinary post with certificate of posting or ordinary post, seven (7) calendar days after the date of posting.

If any Legal Process is served on a Process Agent, it shall be served to the address specified in **Section 6 of the Schedule** or such other address as may from time to time be notified in writing by the Process Agent to the Bank for the purposes of this Clause 21 (*Notices*) or to the Process Agent's last known address.

For the purpose of this Clause, reference to "**Legal Process**" means any pleadings, all forms of originating processes, interlocutory applications, affidavits, orders, such other documents which are required to be served under the rules of court and such notices under the Companies Act 2016 and the Insolvency Act 1967 (includes any insolvency legislation enacted from time to time).

21.3 No change in the address of the Guarantor shall be effective or binding on the Bank unless actual notice of the change of address has been received by the Bank.

21.4 Any complaints that the Guarantor may have against the Bank in relation to any matters arising may be lodged at the following address:-

AmBank Group Service Resolution Department
 Level 22, Menara AmBank
 No. 8, Jalan Yap Kwan Seng
 50450 Kuala Lumpur
 Contact Number : 03-21788888
 Fax Number : 03-27800223
 Email Address : customercare@ambankgroup.com

In the event, the complaint by the Guarantor is unresolved by the Bank or the Guarantor is unsatisfied with the Bank's decision in respect of the complaint, the Guarantor may refer the matter to:

- (a) BNMLINK
 Laman Informasi Nasihat dan Khidmat (LINK)
 Block D, Bank Negara Malaysia
 Jalan Dato' Onn
 50480 Kuala Lumpur
 Tel: 1-300-88-5465
 E-mail: bnmtelelink@bnm.gov.my

- (b) Association of Banking Malaysia
34th Floor, UBN Tower
10, Jalan P. Ramlee
50250 Kuala Lumpur
Tel: 1300-88-9980
E-mail: banks@abm.org.my
- (c) Ombudsman for Financial
Services Level 14, Main Block
Menara Takaful Malaysia No.
4, Jalan Sultan Sulaiman
50000 Kuala Lumpur
Tel: 03-2272 2811
E-mail: enquiry@ofs.org.my

22. **SEVERABILITY**

- (a) Any provision contained in this Guarantee and Indemnity which is illegal, prohibited or unenforceable in any jurisdiction, as to such jurisdiction, be ineffective to such extent without invalidating the remaining provisions.
- (b) Any such illegality, prohibition or unenforceability in any jurisdiction or by any such Decision shall not invalidate or render illegal, void or unenforceable any such provision in any other jurisdiction.

23. **SIGNING IN COUNTERPARTS**

This Guarantee and Indemnity may be signed in counterparts and such counterparts shall be deemed to be one and the same instrument.

25. **NO OBLIGATION TO MAKE ADVANCES**

Nothing herein contained shall be deemed to impose on the Bank any obligation either at law or in equity to make or to continue to make any advances or give other accommodation to the Borrower and/or the Guarantor.

26. **TIME**

Time shall be of the essence in this Guarantee and Indemnity.

27. **RIGHTS CUMULATIVE AND WAIVERS**

- 27.1 The rights and remedies of the Bank in this Guarantee and Indemnity are cumulative and are in addition to any rights and remedies provided by law.
- 27.2 No failure to exercise, nor delay in exercising, on the part of the Bank, any right under this Guarantee and Indemnity shall operate as a waiver to the exercise of such right.
- 27.3 No partial exercise of a right shall prevent any further exercise of such right, nor more generally the exercise of rights and remedies provided by law.
- 27.4 The rights of the Bank arising under this Guarantee and Indemnity shall not be capable of being waived or varied unless by an express waiver or variation in writing.

28. **SUCCESSORS BOUND**

This Guarantee and Indemnity shall be binding upon and for the benefit of the successors in title, transferees and assigns of the Bank and upon the successors in title, permitted assignees or upon the heirs and personal representatives of the Guarantor.

29. LIABILITY AS PRINCIPAL DEBTOR

As a separate and independent stipulation, the Guarantor shall be liable under this Guarantee and Indemnity as a principal debtor and not merely as surety and the Guarantor shall not be discharged, nor shall the Guarantor's liability be affected by anything which would discharge the Guarantor or affect the Guarantor's liability if the Guarantor had not been a principal debtor.

30. JOINT AND SEVERAL LIABILITY

Where this Guarantee and Indemnity is signed by or on behalf of a firm or otherwise by or on behalf of more than one person, any liability arising under this Guarantee and Indemnity shall be deemed to be the joint and several liability of the partners in the firm or of such persons as referred to above and:-

- (a) any demand made or notice given by the Bank to any one or more of such persons so jointly and severally liable shall be deemed to be a demand made or notice given to all such persons;
- (b) the Bank may release or discharge any one or more of such person(s) from liability under this Guarantee and Indemnity or compound with, accept compositions from or make any other arrangements with any of such person(s) without further consents from any of them and without as a result releasing or discharging or otherwise prejudicing or affecting the Bank's rights and remedies against the other person(s) to this Guarantee and Indemnity;
- (c) this Guarantee and Indemnity shall not be terminated or prejudiced or affected by the death of any one or more of such persons; and
- (d) in the event any one or more of such persons is/are not bound by the provisions of this Guarantee and Indemnity, whether by reason of his or their lack of capacity or improper execution of this Guarantee and Indemnity or for any other reason, the other person or persons to this Guarantee and Indemnity shall continue to be bound by the provisions of this Guarantee and Indemnity as if such first-mentioned person or persons had never been a party or parties to this Guarantee and Indemnity.

31. INDEPENDENT LEGAL ADVICE

The Guarantor is hereby reminded to seek, obtain and rely on its own independent legal advice.

32. FORCE MAJEURE

The Bank shall not be liable to the Guarantor for any failure in performing any of its obligations or in respect of or arising from the Facilities or any claim in respect of any loss, damages or injury to earnings or interest or goodwill or business caused directly or indirectly or any other fault if such failure, loss, damage or other fault is caused by circumstances beyond the reasonable control of the Bank, including but not limited to, any fire, earthquake, flood, epidemic, accident, explosion, casualty, lock-out, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war, act of God and/or any mechanical, electronic or communications failure.

33. IRREGULARITIES

This Guarantee and Indemnity shall be binding on the Guarantor and its successors in title, permitted assignees or upon the heirs and personal representatives of the Guarantor notwithstanding the invalidity, excessiveness, defect or irregularity of the powers to create securities or incur liabilities under this Guarantee and Indemnity of the Guarantor or any director, attorney, agent or other person purporting to create securities or act on behalf of the Guarantor and/or the Security Party.

34. ASSIGNMENT/TRANSFER BY BANK

34.1 The Bank may, at the Guarantor's cost and expense, assign its rights and/or novate its obligations under this Guarantee and Indemnity or any part of it and in such event the Bank reserves its rights to notify the Guarantor within such period of time as it may determine of any assignment of its rights and/or novation of its obligations under this Guarantee and Indemnity, and:-

- (a) for this purpose may disclose to a potential assignee or transferee or any other person who derives or may derive rights or obligations such information about the Guarantor;
- (b) where the Bank transfers or novates its obligations or any part of it, the Guarantor shall execute such documents as are reasonably necessary to release the Bank to the extent of the transfer and join the transferee as a party; and
- (c) in the event such assignment, novation or transfer is to the detriment of the Guarantor (whether financial or otherwise), the Bank shall obtain a prior written consent from the Guarantor.

34.2 The Guarantor shall not assign, novate or transfer any of its rights and/or obligations.

35. ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ("AMLATFA") AND THE STRATEGIC TRADE ACT 2010

- (a) The Guarantor represents and warrants that:-
 - (i) unless and until the Guarantor notifies the Bank to the contrary in writing, all monies which will be paid to the Bank and all Security Interest created or to be created in favour of the Bank to secure the Facilities shall come from a lawful source of activity and not unlawful activity or instrumentalities of an offence under the AMLATFA or in contravention of the Strategic Trade Act 2010;
 - (ii) on notification that the Guarantor is an intermediary for other persons:-
 - (ii-i) the Bank may require, and the Guarantor agrees and undertakes to provide verification of the identity of the beneficiary and such other information as the Bank may require, including but not limited to certified true copies of any authorisation to act or documents that may be required for the purposes of verifying the information provided by the Guarantor, which copies may thereafter be retained by the Bank;
 - (ii-ii) the Guarantor further declares and certifies that the necessary "know-your-client" checks have been conducted including but not limited to the identity, existence, address and nature of the business of the beneficiary, it being confirmed by the Guarantor that the monies, funds or collateral are from a lawful source of activity and not unlawful activity or instrumentalities of an offence under the AMLATFA or in contravention of the Strategic Trade Act 2010; and
 - (ii-iii) it is further clearly agreed and understood that the provision of details of the Guarantor's beneficiary shall not make the Guarantor's beneficiary a customer of the Bank and the Bank shall be entitled to hold the Guarantor as the principal debtor.
- (b) In addition to Clause 35(a)(i) and (ii), the Guarantor agrees and undertakes irrevocably and unconditionally that:-
 - (i) the Guarantor shall disclose and furnish to the Bank any information required or deemed necessary and to the satisfaction of the Bank in a timely manner within the period specified by the Bank;

- (ii) pending receipt of information by the Bank from the Guarantor and until received and verified to the satisfaction of the Bank and/or the relevant authorities, the Bank shall neither be obliged to proceed with any transactions or disbursements nor accept any monies, funds or collateral (“Assets”). In relation to Assets already in the possession of the Bank, the Bank shall be entitled (and authorised) to retain the Assets for the time being. Any Assets requested to be returned to the Guarantor shall be returned to the Guarantor after the Bank receives satisfactory clearance from the relevant authorities;
 - (iii) the Guarantor will ensure that the Borrower will not use the Facilities for money laundering offence under the AMLATFA or in contravention of the Strategic Trade Act 2010; and
 - (iv) in no event shall the Bank or companies within the AmBank Group be liable for any direct, indirect, consequential or any losses whatsoever arising or by reason of the Bank’s exercise of its duties under the laws for the time being in force, in particular but not limited to its statutory duties under the AMLATFA.
- (c) In the event the payment of the Guaranteed Sum is at any time or from time to time after the release and discharge of the Guarantor’s obligations under this Guarantee and Indemnity by the Bank, found to be from an unlawful source of activity or instrumentalities of an offence under the AMLATFA or in contravention of the Strategic Trade Act 2010, the Guarantor agrees and acknowledges that:-
- (i) the release and the discharge of the Guarantor’s obligations under this Guarantee and Indemnity shall be automatically deemed to be invalid from the date it is established that the source of payment of the Guaranteed Sum falls within the ambit of the AMLATFA or in contravention of the Strategic Trade Act 2010 and the Guarantor shall continue to be liable to the Bank under the terms of this Guarantee and Indemnity notwithstanding any document issued and/or executed by the Bank to release and discharge the Guarantor; and
 - (ii) the Guarantor shall indemnify the Bank for any losses, damages, costs, fees and charges incurred by the Bank as a result of contravention by the Guarantor of the provisions of any laws relating to money laundering offences of the provisions of the AMLATFA and/or the Strategic Trade Act 2010.

37. **EFFECTIVE DATE**

The parties agree that this Guarantee and Indemnity shall come into force on the date of this Guarantee and Indemnity irrespective of the diverse dates upon which the Guarantor may have each executed this Guarantee and Indemnity.

38. **GOVERNING LAW AND JURISDICTION**

- 38.1 This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of Malaysia. In relation to any legal action or proceedings arising out of or in connection with this Guarantee and Indemnity, the Guarantor irrevocably submits to the exclusive jurisdiction of the Courts of Malaysia.
- 38.2 The Guarantor irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such court as referred to in this Clause and any claim that any such proceedings have been brought in an inconvenient or inappropriate forum and further irrevocably agrees that a judgment in any proceedings brought in the Courts of Malaysia shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

39. PRIVACY

- 39.1 The Guarantor is hereby reminded to read and understand before agreeing to be bound by the Privacy Notice of AmBank Group (which is available at www.ambankgroup.com) and this Clause, as may relate to the processing of the Guarantor's personal information. For the avoidance of doubt, the Guarantor agrees that the said Privacy Notice shall be deemed to be incorporated by reference into this Guarantee and Indemnity.
- 39.2 In the event the Guarantor provides personal and/or financial information relating to third parties, including but not limited to information relating to the Guarantor's next-of-kin, dependents, authorised signatories, directors, shareholders, officers, and Security Parties for the purpose of this Guarantee and Indemnity, the Guarantor:-
- (a) confirms that the Guarantor has obtained their consent or is otherwise entitled to provide the information to the Bank and for the Bank to use it in accordance with this Guarantee and Indemnity and to provide information on the Bank's products, services and/or offers (inclusive of the products, services and offers of the other entities within the AmBank Group) which the Bank and the AmBank Group believe may be of interest and/or beneficial to them;
 - (b) agrees to ensure that the personal and financial information of the said third parties is accurate;
 - (c) agrees to update the Bank in writing in the event of any material change to the said personal and financial information; and
 - (d) agrees to the Bank's right to terminate the Facilities should such consent be withdrawn by any of the said third parties.
- 39.3 Where the Guarantor instructs the Bank to effect any sort of cross-border transaction (including to make or receive payments), the details relevant to the cross-border transaction (including information relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by the Bank's agents abroad, overseas regulators and/or authorities in connection with their legitimate duties (e.g. the prevention of crime). In instructing the Bank and/or the Bank's agents to enter into any cross-border transaction on the Guarantor's behalf, the Guarantor agrees to the said disclosures on behalf of the Guarantor and others involved in the said cross-border transaction.
- 39.4 Subject always to any laws (including regulations, guidelines and/or obligations) applicable to the Bank (whether in or outside Malaysia), the Guarantor agrees that other companies in the AmBank Group, their merchants and strategic partners may contact the Guarantor about products, services and offers, which the Bank and the AmBank Group believe may be of interest or beneficial to the Guarantor.
- 39.5 The Bank and the AmBank Group may communicate with the Guarantor through various channels, including telephone, electronic mail, electronic/mobile messaging, facsimile or post, using the contact information the Guarantor has provided.
- 39.6 The Guarantor may inform the Bank at any time if the Guarantor does not wish to receive marketing communications from the Bank, the AmBank Group and/or their merchants and business partners, by contacting the Bank at the various channels given below:-
- Borrower Service Officer
Phone: (603) 2178 8888 [24 hours]
E-mail: customercare@ambankgroup.com
Post: Privacy, AmBank Contact Centre, P.O. Box No. 12617, 50784 Kuala Lumpur
- 39.7 The Guarantor's latest written instructions to the Bank will prevail. The Guarantor acknowledges that certain communications and the AmBank Group's websites may contain standard information regarding other

products and services of the Bank and the AmBank Group that cannot be removed without affecting the delivery/operation provision of the Facilities and/or without additional costs to the Guarantor.

- 39.8 The Bank may use a credit reporting agency to help make decisions, for example when the Bank needs to:-
- (a) check details on applications for the Facilities, financing and financing -related or other facilities granted to the Borrower;
 - (b) check details of the Guarantor;
 - (c) manage and review the Facilities; and/or
 - (d) recover debts owed by the Guarantor.
- 39.9 The Guarantor will be linked by credit reporting agencies to any other names the Guarantor uses or may have used, and any joint and several applicants. The Bank may also share information about the Guarantor and how Guarantor manages the Guarantor's liabilities and obligations under this Guarantee and Indemnity with relevant credit reporting agencies.
- 39.10 Even after the Guarantor has provided the Bank with any information, the Guarantor will have the option to withdraw the consent given earlier. In such instances, the Bank will have the right to not provide or discontinue the provision of the Facilities that are linked with such information.
- 39.11 The Bank reserves the right to amend this Clause from time to time at the Bank's discretion by providing notice to the Guarantor.
- 39.12 This Clause shall be without prejudice to Clause 19 (*Disclosure of Information*).

40. THE LANGUAGE OF THE DOCUMENT

The language in this document is the chosen language of this Guarantee and Indemnity. This chosen language shall prevail in the event of differences in meaning over the version of this Guarantee and Indemnity in any other language.

41. DEMANDS

Any demand for payment of the Guaranteed Sum for the time being outstanding may be made by a notice in writing requiring payment from the Guarantor to be made within the specific time stated in the notice and may be signed on behalf of the Bank by any officer of the Bank or by any solicitor or firm of solicitors purporting to act for the Bank and such notice shall be deemed to have been sufficiently served on the Guarantor if it is served in accordance with Clause 21 (*Notices*).

42. UPSTAMPING OF THE AGREEMENT

In the event that the Facility due or owing to the Bank shall at any time exceed the principal limit for which the Facility Agreement (and/or as the case may be the relevant Letter of Offer) is for the time being stamped, the Bank shall be at liberty at any time without prior notice to the Guarantor to upstamp the Facility Agreement (and/or as the case may be the relevant Letter of Offer) at ad valorem duty for the excess amount, upon which the principal amount in respect of which additional stamp duty on an ad valorem basis is or shall be paid and endorsed on the Facility Agreement and/or the relevant Letters of Offer as aforesaid shall henceforth form part of the Guaranteed Sum and be secured by this Guarantee and Indemnity. Any such ad valorem stamp duty including any penalty incurred shall be borne by the Borrower and/or the Guarantor.

43. STAMP DUTY DECLARATION

IT IS AGREED AND DECLARED that the Financing Documents are instruments employed in one transaction to secure such principal amount as the ad valorem stamp duty paid and endorsed on the Facilities Agreement (and/or as the case may be, the relevant Letter of Offer) together with interest and fees within the meaning of Section 4(3) of the Stamp Act 1949 and for the purpose of the said section, the Facilities Agreement (and/or as the case may be, the relevant Letter of Offer) is deemed to be the principal instrument and this Guarantee and Indemnity is deemed to be the secondary instrument.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF the Guarantor abovenamed has executed this instrument this _____ day of _____, 20____

REMINDER: The Guarantor is hereby reminded to read and understand the terms and conditions of this Guarantee and Indemnity before signing below. In the event there are any terms and conditions in this Guarantee & Indemnity that the Guarantor do not understand, the Guarantor is hereby advised to discuss further with the Bank's authorised representative before signing below.

*By individual(s)

Name and Signature of
Guarantor _____

Witnessed by Advocate
and Solicitor or Notary Public

Name:

Name:

Name:

Name:

[N.B.:- The execution of this instrument by the Guarantor shall be witnessed by an Advocate & Solicitor or Notary Public]

*By Company or Corporation

The Common Seal of the)
Guarantor was hereunto duly)
affixed in the manner)
authorised under the)
Articles of Association in)
the presence of:)

.....
Director

.....
Director/Secretary

*Delete whichever is not applicable

SCHEDULE

Section 1 : THE GUARANTOR		
Name	Address	Identity Card No. / Company's Local No. or Registration No.

Section 2 : THE BORROWER		
Name	Address	Identity Card No. / Company's Local No. or Registration No.

Section 3 : THE FACILITY	
Principal Amount or Principal Limit of the Facility	Description of the Facility

SCHEDULE (CONTINUE)

Section 4 : THE AGREEMENT	
Description of the Agreement	Date of the Agreement
*Letter of Offer or Facility Agreement * Delete whichever is not applicable	

Section 5: THE PROCESS AGENT (if applicable)		
Name	Address	Identity Card No. / Company's Local No. or Registration No.

Section 6 : BANK		
Name	Business Address	Company's Local No. :
AmBank (M) Berhad		8515-D