

## TERMS AND CONDITIONS GOVERNING BANKING FACILITIES

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 “Bank” refers to Oversea-Chinese Banking Corporation Limited and shall include its successors and assigns.
- 1.2 “Borrower” refers to one or all of them (where more than one) and to the Borrower’s personal representatives or the successors and permitted assigns of the Borrower.
- 1.3 “Event of Default” refers to any and every event set out in Clause 12 herein.
- 1.4 “Facility” refers to the banking facilities referred to in the Letter of Offer including any part thereof and any other additional or further advances loans credit and/or other banking facilities or accommodations that may be granted or made by the Bank to the Borrower on the terms and conditions therein and herein contained and any such other terms and conditions as the Bank may decide at its sole discretion.
- 1.5 “Letter of Offer” refers to such letter(s) commitment arrangement or agreement between the Bank and the Borrower and from time to time, in relation to the Facility as may be revised, amended, supplemented, varied, superseded or modified by the Bank from time to time at its sole discretion.
- 1.6 “property corporation” means any body corporate where:-
  - 1.6.1 more than 50% of the total turnover of the body corporate is derived from property-related activities; or
  - 1.6.2 more than 50% of the total assets of the body corporate comprises interests in or rights over immovable property situate in Singapore.
- 1.7 “property-related activities” means:-
  - 1.7.1 the construction of or the causing of the construction of any building on, over or under land in Singapore for the purpose of sale by the person carrying out or causing such construction, of any right or interest in the land which would be appurtenant to such building;
  - 1.7.2 the acquisition or holding of any interest in or right over immovable property situate in Singapore for the purposes of rental, or for the purposes of securing a profit from its sale;
  - 1.7.3 the financing of any activity referred to in Clauses 1.7.1 or 1.7.2;
  - 1.7.4 the making of loans to any property corporation;
  - 1.7.5 the acquisition or holding as beneficial owner of shares or debentures issued by any property corporation; and
  - 1.7.6 the acquisition or holding as beneficial owner of debentures the payment of principal or interest on which is contingent, directly or indirectly, on the turnover, profits or cashflow from any activity under Clauses 1.7.1 to 1.7.5.
- 1.8 “Related Corporations” means related corporations as defined in Section 6 of the Companies Act (Cap 50).
- 1.9 “Security” refers to any and every asset covered by the Security Document and any and every mortgage, pledge, debenture, lien, charge, guarantee or other forms of security which are acceptable to the Bank.
- 1.10 “Security Document” refers to any and every document from time to time executed to secure, inter alia, the obligations of the Borrower and/or the Surety under this Agreement or in connection with the Facility as amended, supplemented or modified from time to time.
- 1.11 “Surety” includes any and every person or party providing guarantees, indemnities, pledges, charges, mortgages, letters of set-off or other Security as security for the Facility or part thereof.
- 1.12 “Taxes” shall refer to all taxes duties assessment impositions and outgoings including but not limited to any goods and services tax value-added tax consumption tax or such other taxes of whatever name called which may be levied or leviable or imposed upon in any respect on:-
  - 1.12.1 any payment or sum herein or otherwise required to be paid or payable in respect of the Security; and/or

- 1.12.2 any monies payable to or received or receivable by the Bank whether under this Agreement, the Security Document or otherwise or any expenses incurred by the Bank.
- 1.13 “Term Loan” means the Facility or any part thereof that is granted by the Bank under the Letter of Offer on a term loan basis with a regular repayment schedule.
- 1.14 “this Agreement” refers to the agreement for the Facility as evidenced by the Letter of Offer and in these Terms and Conditions governing Banking Facilities (as varied, amended, supplemented or modified from time to time).
- 1.15 Where two or more persons are included in the term “Borrower” or the term “Surety”:-
- 1.15.1 all covenants agreements terms conditions provisions restrictions or obligations shall be deemed to be made by and binding on and applicable to them jointly and each of them severally and shall also be binding on and applicable to their respective personal representatives or successors and permitted assigns jointly and severally;
- 1.15.2 any notice or instruction given to the Bank by any one of the Borrower or the Surety (where applicable) shall be binding on the others and any notice or demand given by the Bank to any one of the Borrower or the Surety shall be deemed to be served on all the Borrower and the Surety (where applicable).
- 1.16 Headings of clauses have been inserted for guidance only and shall not be deemed to form any part of the context or be taken into consideration in the interpretation thereof or of the terms and conditions in this Agreement.
- 1.17 Words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and firms unless the context otherwise requires and all such words shall be construed interchangeably in that manner.
- 1.18 Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 1.19 All references to statutory provisions shall be construed as including references to:-
- 1.19.1 any statutory modification consolidation or re-enactment (whether before on or after the date of this Agreement) for the time being in force;
- 1.19.2 all statutory instruments or orders made pursuant to a statutory provision; and
- 1.19.3 any statutory provisions of which a statutory provision is a consolidation, re-enactment or modification.
- 1.20 In the event of any inconsistency between the terms and conditions contained in the Letter of Offer and these Terms and Conditions governing Banking Facilities, the terms and conditions of the Letter of Offer shall prevail.

## **2. BANKING FACILITIES**

- 2.1 The Facility shall be deemed to have been advanced or disbursed on:-
- 2.1.1 the date of the Bank’s cheque or cashier’s order; or
- 2.1.2 the date on which the Facility is credited into the Borrower’s account with the Bank; or
- 2.1.3 the date on which the funds are transferred to the Borrower’s solicitors’ bank account(s); or
- 2.1.4 the date on which the Facility is otherwise availed to the Borrower,  
as the case may be.
- 2.2 Notwithstanding anything to the contrary, express or implied, contained herein, the Facility agreed to be made available and granted from time to time to the Borrower shall at the absolute discretion of the Bank be reviewed from time to time and the Bank shall, at its absolute discretion, without prior notice to or consent from the Borrower, be entitled to:-
- 2.2.1 require all or part of the monies outstanding under the Facility to be repaid;
- 2.2.2 vary the terms and conditions of, or decrease or restructure any of the Facility granted to the Borrower; or
- 2.2.3 cancel any of the Facility granted to the Borrower.
- Nothing contained in this Agreement and/or the Security Document shall be deemed to impose on the Bank any obligation either at law or in equity to make or continue to make the Facility available to the Borrower.
- 2.3 The Bank shall not be responsible for any loss or damage on account of any delay in documentation or in the release of the Facility or part thereof.
- 2.4 Notwithstanding the Borrower’s payment of a commitment fee and/or performance of any act(s) relating to or

in reliance of the grant of the Facility or anything whatsoever, the Bank may in its absolute discretion withhold the disbursement of the Facility or part thereof as the Bank in its absolute discretion shall deem fit.

2.5 Where the Facility is granted for personal use, the Borrower shall nonetheless immediately notify the Bank in writing in the event that the Borrower and/or its Related Corporations, where applicable, wishes to use the Facility for property-related activities.

2.6

2.6.1 Where the Facility is subject to an Available Limit and/or an Authorised Limit stipulated in the Letter of Offer, the Borrower shall forthwith repay all drawings/debit balances in excess of the Available Limit or (where no such limit is stipulated) the Authorised Limit together with interest thereon at the rate stipulated in Clause 5 Provided Always that the Bank may at its absolute discretion allow the Borrower's account to be overdrawn in excess of the Available Limit or (where no such limit is stipulated) the Authorised Limit on such terms and conditions and at such rate(s) of interest as the Bank may determine from time to time.

2.6.2 For the purposes of ascertaining whether the Available Limit or (where no such limit is stipulated) the Authorised Limit is exceeded, all capitalised interest shall be deemed to be principal monies.

### 3. CONDITIONS PRECEDENT

The obligation of the Bank to avail and/or disburse any part of the Facility shall be subject to each of the following conditions precedent:-

3.1 There shall have been previously delivered to the Bank the following documents in form and substance satisfactory to the Bank:-

3.1.1 duly executed Security Document in such form (s) and containing such terms and conditions as the Bank may in its sole discretion require;

3.1.2 all insurance policies and assignments required by the Bank;

3.1.3 a formal valuation of the Security in terms satisfactory to the Bank;

3.1.4 all other documents as the Bank may require from time to time to the satisfaction of the Bank or the Bank's solicitors;

3.1.5 where the Borrower and/or the Surety is a corporation, a copy of the Certificate of Incorporation and the Memorandum and Articles of Association of the Borrower and/or the Surety certified as a true copy by its director or secretary;

3.1.6 where the Borrower and/or the Surety is a corporation, a copy, certified as a true copy by the chairman and the secretary of the Corporation, of resolutions of the board of directors and shareholders of the Corporation in form and substance satisfactory to the Bank.

3.2 The Bank shall be satisfied inter alia that:-

3.2.1 there is no event occurring or circumstances arising including material changes in the financial condition of the Borrower the Surety and/or their Related Corporations or circumstances which in the opinion of the Bank could adversely affect the ability decision or willingness of the Bank to offer or continue to grant the Facility to the Borrower;

3.2.2 the Security is an acceptable security in all respects;

3.2.3 all legal expenses stamp fees and disbursements in connection with the Facility and/or the Security and all relevant documentation in connection therewith have been paid or will otherwise be paid;

3.2.4 there are no legal proceedings suits or actions of any kind whatsoever (whether criminal or civil) instituted against the Borrower the Surety and/ or their Related Corporations;

3.2.5 there is no bankruptcy judicial management or winding-up (whether voluntary or compulsory) petition/proceedings or order made against the Borrower the Surety and/or their Related Corporations, the Borrower the Surety and/or their Related Corporations are not in any event unable to pay their debts or are insolvent within the meaning of the Bankruptcy Act (Cap 20), the Borrower the Surety and/ or their Related Corporations have not entered into any statutory or other arrangement (voluntary or otherwise) or composition for the benefit of creditors generally and that no statutory demands have been

made against and no receiver(s) appointed in respect of the Borrower the Surety and/or their Related Corporations;

- 3.2.6 no Event of Default has occurred and is continuing or is anticipated;
- 3.2.7 the Borrower and/or the Surety have established an account or accounts with the Bank as may be required by the Bank; and
- 3.2.8 all other conditions precedent as the Bank may require or impose have been fulfilled to the satisfaction of the Bank or otherwise have been duly complied with.

#### 4. INTEREST

##### 4.1 General

- 4.1.1 A certificate by the Bank as to the board lending rate or prime lending rate or such other rate of interest shall be conclusive and binding for all purposes upon the Borrower.
- 4.1.2 All interest shall accrue from the date of disbursement by way of simple or compound interest as determined by the Bank at its absolute discretion until the date of payment (as well after as before judgment) notwithstanding the relationship of banker and customer may have ceased by a demand for repayment of the Facility and/or any other monies due to the Bank or otherwise.
- 4.1.3 Unless otherwise provided, all interest shall be calculated on a 360 day year and 30 day month basis.
- 4.1.4 The Bank is entitled without prior notice at any time and from time to time, to increase decrease or vary at its absolute discretion any applicable interest rate(s) and/or the periodic rest(s). Such new interest rate(s) and/or periodic rest(s) shall take effect from the date determined by the Bank.
- 4.1.5 Interest shall be calculated on monthly, annual or such periodic rest(s) as the Bank may from time to time at its absolute discretion decide. The amount of interest payable shall be calculated from the day of each drawing under the Facility or charge or expenditure imposed or expended by the Bank up to the last day of the month, year or other relevant period as the case may be (during which such drawing, charge or expenditure was made imposed or expended, both dates inclusive) on such drawing, charge or expenditure. Thereafter interest shall be calculated on the aggregate of the monies outstanding under the Facility, accrued and unpaid interest, charge and expenditure as at the last day of the preceding month, year or other relevant period as the case may be.
- 4.1.6 In the event the rate of interest and/or periodic rest is revised on the Facility or any part thereof from time to time:-
  - (i) the repayment of the same shall be by way of such increased or decreased monthly instalments, interest payments or such other repayment scheme(s) as the Bank may at its absolute discretion decide based on the revised rate of the interest and/or periodic rest; and
  - (ii) prior to disbursement of the Facility or any part thereof, the revised rate of interest and/or periodic rest shall apply without further notice to the Borrower.

##### 4.2 Overdraft

- 4.2.1 Interest shall be calculated on a daily basis on the actual number of days in the year based on a 365 day year and where it is a leap year, a 366 day year, except:-
  - (i) where the Overdraft is granted in a currency other than Singapore Dollars, British Pounds, Hong Kong Dollars or Thai Baht, interest calculation shall be based on a 360 day year; and
  - (ii) where the Overdraft is granted in British Pounds, Hong Kong Dollars or Thai Baht, interest calculation shall be based on a 365 day year, and on the amount outstanding on the Overdraft payable monthly in arrears on the last day of each calendar month or such other method of calculation as shall be determined by the Bank from time to time in accordance with its prevailing practice.
- 4.2.2 Interest on the principal amount disbursed/ utilised in respect of the Overdraft shall be capitalised and added to the principal sum then owing on the last day of each calendar month and shall bear interest accordingly.
- 4.2.3 The Borrower shall pay at least the minimum monthly payment being the interest for the outstanding sum used for the calendar month or such sum(s) as the Bank shall determine from time to time.

## 5. DEFAULT INTEREST AND FEE

In the event that the Borrower fails or refuses to pay the monthly instalments, interest and/or any repayments of the Facility and/or any other monies due to the Bank when due and payable ("Overdue Amounts") and/or the Borrower's account is overdrawn as described in Clause 2.6.1 herein, the Borrower shall pay:-

- 5.1 additional interest at the rate of 4.75% per annum above the Bank's prime lending rate prevailing from time to time or at such other rate(s) as the Bank may stipulate from time to time on the Overdue Amounts from the due date until the date of payment and/or on the amount overdrawn from such date upon which the Borrower's account shall be overdrawn until the date of payment, as the case may be, as well after as before judgment, such interest accumulating by way of simple or compound interest as determined by the Bank at its absolute discretion, subject to a minimum payment of S\$30.00 per late repayment or overdrawn, or of such amount as the Bank shall decide at its absolute discretion; and
- 5.2 an administrative fee of such amount as the Bank may at its absolute discretion charge per month or part thereof shall also be payable.

## 6. REPAYMENT

- 6.1 No payment or any part thereof made by the Borrower shall be treated as repayment of the principal amount of the Facility until all interest due or deemed to be due or accrued or in arrears thereof has been paid.
- 6.2 Overdraft  
The Overdraft shall be repayable on demand.

## 7. REDUCTION OF VALUE OF SECURITY

- 7.1 Where the Bank is of the opinion that the security provided by the Security shall at any time be inadequate in any respect whatsoever whether owing to its prevailing market value or otherwise, the Bank shall be entitled to take any one or more of the following actions without prejudice and in addition to all other rights powers and remedies of the Bank:-
  - 7.1.1 review, reduce, restructure and/or cancel the Facility or such part thereof as the Bank may in its absolute discretion think fit; and/or
  - 7.1.2 withhold or disallow any disbursement or drawdown as the Bank may in its absolute discretion think fit; and/or
  - 7.1.3 require the Borrower to repay to the Bank such amount of monies outstanding under the Facility or to reduce its liabilities to the Bank by such extent as the Bank may in its absolute discretion think fit; and/or
  - 7.1.4 realise and set-off the Security against the Borrower's liabilities to the Bank; and/or
  - 7.1.5 require or call upon the Borrower to furnish to the Bank such additional or collateral security for such amount as the Bank may in its absolute discretion think fit within such time as may be stipulated by the Bank; and/or
  - 7.1.6 adopt such other measures as the Bank in its absolute discretion deems fit.
- 7.2 The Bank reserves the right to appoint a valuer to conduct a valuation of the Security periodically from time to time at the Bank's absolute discretion and such valuation shall be accepted by the Borrower and the Surety as being final and conclusive. The costs and expenses incurred for the valuation shall be borne by the Borrower.

## 8. CANCELLATION OF FACILITY

- 8.1 Where provided in the Letter of Offer, a cancellation fee shall be payable on the amount of the Facility cancelled or deemed cancelled by the Borrower after acceptance of the Letter of Offer.
- 8.2 The Facility or any part thereof shall be cancelled or deemed cancelled by the Borrower if:-
  - 8.2.1 the Borrower by written notice to the Bank elects to cancel the Facility or any part thereof;
  - 8.2.2 where the availability period of the Facility is stated in the Letter of Offer, any part or whole of the Facility is not disbursed within the said availability period; or
  - 8.2.3 any part or whole of the Facility is not disbursed upon the full repayment of the outstandings under the Facility,whichever is the earlier.

- 8.3 In the event that there is no drawdown of the Facility within 3 months from the date of the Letter of Offer, or such other periods as may be stated in the Letter of Offer or agreed in writing by the Bank, the Bank reserves the right to cancel the Facility.

## 9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Borrower and the Surety for themselves and for each other warrant declare and represent that:-
- 9.1.1 there are no litigation arbitration or other proceedings or claims pending or threatened against the Borrower the Surety and/or their Related Corporations or any of their assets;
  - 9.1.2 there are no bankruptcy or winding-up (whether voluntary or compulsory) petition/proceedings or order made against the Borrower the Surety and/ or their Related Corporations;
  - 9.1.3 the Borrower the Surety and/or their Related Corporations are not in any event unable to pay their debts or are insolvent within the meaning of the Bankruptcy Act (Cap 20);
  - 9.1.4 the Borrower the Surety and/or their Related Corporations have not entered into any statutory or other arrangement (voluntary or otherwise) or composition for the benefit of creditors generally;
  - 9.1.5 no statutory demands have been made against the Borrower the Surety and/or their Related Corporations;
  - 9.1.6 the Borrower the Surety and their Related Corporations have the power and authority to own their assets and to carry on their businesses and all authorisations of any governmental or other competent authorities which are required to authorise the Borrower the Surety and/or their Related Corporations for the same have been duly and unconditionally obtained and are in full force and effect;
  - 9.1.7 all acts conditions and things required to be performed or observed by the Borrower and/or the Surety prior to the acceptance of the Letter of Offer and the execution of the Security Document to constitute them valid and enforceable obligations of the Borrower and/or the Surety in accordance with their respective terms have been performed and observed in due and strict compliance with all applicable laws and regulations;
  - 9.1.8 where the Borrower and/or the Surety is a corporation, all necessary forms required to be filed in the Registry of Companies and Businesses have been or will be duly filed within the period prescribed by the Companies Act (Cap 50) and rules and regulations made thereunder;
  - 9.1.9 the Letter of Offer when accepted and the Security Document when executed will constitute the legal valid and binding obligations of the Borrower and the Surety (as the case may be) and be enforceable in accordance with its terms;
  - 9.1.10 the Surety shall not create or make further or subsequent charge or otherwise howsoever charge or encumber the Security without the prior written consent of the Bank;
  - 9.1.11 the Borrower shall duly pay and discharge all rents, taxes, assessments and government charges upon the Borrower or against the Borrower's property prior to the date on which penalties are attached thereto;
  - 9.1.12 the acceptance and performance of this Agreement and the Security Document do not and will not:-
    - (i) contravene or constitute a default or breach under any provision contained in any agreement, instrument, law, judgment, order, licence, permit or consent by which the Borrower the Surety and/or any of their assets are bound or affected;
    - (ii) cause any limitation on the Borrower and/ or the Surety and/or the powers of their directors (where applicable), whether imposed by or contained in any law, order, judgment, agreement, instrument or otherwise to be exceeded; or
    - (iii) result in the creation or imposition of any lien, charge, security, interest or other encumbrance over any assets of the Borrower and/or the Surety other than those created by the Security Document.
  - 9.1.13 the Borrower and/or the Surety have fully disclosed in writing to the Bank all facts and information relating to the Borrower and/or the Surety which the Borrower and/or the Surety know or should reasonably know and which are material for disclosure to the Bank in the context of this Agreement;
  - 9.1.14 the Borrower and/or the Surety will, if so required, make any disclosure, announcement or report pursuant to any legislation, laws, rules and regulations or otherwise to the relevant authorities;
  - 9.1.15 that the Borrower and the Surety are not in default in the payment or performance of any of their



obligations for borrowed money and no Event of Default has otherwise occurred or is continuing or is anticipated; and

9.1.16 the Facility shall be used for the purpose declared to the Bank and is not assignable or transferable.

9.2 The Borrower and the Surety hereby further warrant declare and represent as follows:-

9.2.1 that the Borrower and the Surety are not involved in any activities that will attract investigation and/or prosecution under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A);

9.2.2 that the Security to be provided to the Bank or any part thereof is not a benefit derived from any drug trafficking or criminal conduct both as defined under the said Act; and

9.2.3 that there are no court orders and/or warrants under the said Act, whether actual pending or threatened, which would affect the Security or any of the Bank's interests therein, whether directly or indirectly, wholly or partially.

9.3 Where the Borrower and/or the Surety is a corporation, the Borrower and the Surety hereby further represent and warrant as follows:-

9.3.1 that the certified true copies of the Memorandum and Articles of Association or other constitutional documents and the resolutions of the board of directors and shareholders delivered to the Bank in form and substance satisfactory to the Bank are true and accurate copies;

9.3.2 no steps have been taken or are being taken to appoint a receiver and/or manager and/or a judicial manager to take over the assets of the Borrower the Surety and/or any of their Related Corporations, or a liquidator a provisional liquidator or any other such official to wind up the Borrower the Surety and/or any of their Related Corporations;

9.3.3 the audited financial statements of the Borrower the Surety and/or their Related Corporations which have previously been submitted to the Bank are complete and correct and fairly represent the financial condition of the Borrower the Surety and/or their Related Corporations and the results of their operations for the period stated in accordance with generally accepted accounting principles applied on a consistent basis; and

9.3.4 the execution delivery and performance by the Borrower the Surety and/or their Related Corporations of the transactions contemplated in this Agreement and/or the Security Document are within the Borrower's the Surety's and/or their Related Corporations' corporate powers and have been duly authorised.

9.4 The Borrower shall from time to time on demand provide the Bank with evidence acceptable to the Bank that all warranties and representations made to the Bank by the Borrower and/or the Surety remain true and correct.

9.5 If any information, warranty, representation, statement or declaration made by the Borrower and/or the Surety whether in the application form for the Facility, this Agreement, the Security Document or otherwise is in the Bank's opinion untrue or incorrect in any respect whatsoever, the Bank reserves the right to recall and/or cancel the Facility forthwith.

9.6 The Borrower shall promptly furnish to the Bank copies of all documents and any information on the Borrower the Surety their Related Corporations and/or the Security as and when required by the Bank.

9.7 The Borrower and/or the Surety agree that each of the abovementioned warranties declarations and representations shall be deemed to be repeated upon each drawing of the Facility and shall continue to be true and correct in all respects with reference to the prevailing circumstances so long as the Facility remains outstanding and unpaid. The Bank reserves the right to vary review restructure recall or cancel the Facility if any information statement warranty declaration or representation made by the Borrower and/or the Surety is untrue or incorrect in any respect.

## 10. UNDERTAKINGS

10.1 Where the Borrower is a corporation, the Borrower undertakes and agrees with the Bank that the Borrower shall:-

10.1.1 furnish to the Bank annually within 120 days after the close of its financial year the audited financial statements of the Borrower and the audited consolidated financial statements of the Borrower and its

- Related Corporations, in each case including a balance sheet and profit and loss account and report for the period then ended audited and certified by a qualified independent auditor setting forth the financial condition of the Borrower in accordance with generally accepted accounting standards;
- 10.1.2 obtain all necessary licences and comply with all laws regulations rules and orders relating to the carrying on of its business; and
- 10.1.3 promptly advise the Bank of any material adverse change in the condition (financial or otherwise) of the Borrower or its Related Corporations and notify the Bank of the institution of any litigation or other proceedings against the Borrower or its Related Corporations. Such advice or notice must be given to the Bank within 7 days after the Borrower has knowledge of the said change or proceedings and (in the latter case), the Borrower shall also notify the Bank of the amount of the contingent liability.
- 10.2 Except with the prior written consent of the Bank, such consent not to be unreasonably withheld, the Borrower shall not create or permit to arise or subsist, any mortgage, charge (whether fixed or floating), pledge, hypothecation, lien or any other encumbrance whatsoever on any of its properties or assets or any part thereof, both present and future whatsoever and wheresoever situate.
- 10.3 The Borrower undertakes and agrees with the Bank to execute and/or procure the execution of any document which the Bank may from time to time require.

## **11. CHANGES IN CIRCUMSTANCES**

- 11.1 If at any time the Bank determines that as a result of any introduction of or any change in any law regulation directive notice circular rule or guideline applicable to the Bank (collectively referred to as “the said regulations”) or in the interpretation or application thereof by any governmental authority and/or any agency of any state including but not limited to The Association of Banks of Singapore (“the ABS”) and The Monetary Authority of Singapore (“the MAS”) it is or will become unlawful or contrary to any of the said regulations for the Bank to maintain or give effect to its obligations as contemplated by this Agreement and/or the Security Document and/or to charge or receive interest at the applicable rate(s) the Bank shall use its best efforts to fund the Borrower from other sources provided that this is not unlawful or contrary to any of the said regulations, failing which the Bank shall forthwith give notice thereof to the Borrower whereupon the Bank shall be deemed discharged from its obligations under this Agreement and/or the Security Document and the Borrower shall on receipt of notice to this effect, immediately repay to the Bank all monies for the time being outstanding and unpaid and interest thereon accrued up to the date of payment and all other amounts and fees remaining unpaid.
- 11.2 Without prejudice to the provisions of this Agreement and/or the Security Document but in addition thereto, in the event that any introduction of or any change in any of the said regulations or in the interpretation or application thereof by any governmental authority and/ or any agency of any state including but not limited to the ABS and the MAS shall subject the Bank to any interest equalisation tax or other taxes of any kind whatsoever with respect to this Agreement and/or the Security Document or the Facility secured thereby or shall change the basis of taxation of payments to the Bank of the principal of or interest payable on the Facility (except for changes in the rate of tax on the overall net income of the Bank), or shall impose, modify or deem applicable any reserve or other requirements against assets held by or deposits in or for the account of, or credit extended by the Bank or shall impose on the Bank any other conditions affecting this Agreement and/or the Security Document or the Facility and the result of any of the foregoing is to increase the costs to the Bank of making or maintaining the Facility hereunder or reduce the amount of principal and interest receivable by the Bank by an amount which the Bank deems to be material, then the Bank shall use its best efforts to fund the Borrower from other sources failing which the Bank shall forthwith give notice to the Borrower and during the next succeeding 30 days the Bank and the Borrower shall negotiate in good faith to provide for a mutually satisfactory new interest rate or basis for computing interest. If within such 30 day period, the Borrower and/ or the Surety and the Bank shall fail to agree upon a new substituted interest rate the Borrower and/or the Surety shall repay on or before the expiry of the next period of 30 days the whole (and not any part) of all monies for the time being outstanding and unpaid together with interest accrued up to the date of payment and all other amounts or fees remaining unpaid and in default of such repayment the Borrower and/or the Surety shall thenceforth be deemed to have agreed to or accepted the new rate of interest or new basis of computing interest stipulated by the Bank and shall repay the Facility with interest thereon at the new rate or on the new basis and in all other respects in



accordance with this Agreement and/or the Security Document. The certificate of the Bank as to the amount of any additional interest payable pursuant to this clause shall be conclusive.

- 11.3 Without prejudice to the provisions of this Agreement and/or the Security Document, the Borrower and/or the Surety shall bear the risk of any introduction of or any change in any of the said regulations or in the interpretation or application thereof by any governmental authority and/or any agency of any state affecting the availability of the currency or currencies in which the Facility is denominated availed or repaid and/ or in which a deposit is denominated or resulting in the illegality of payments in such currency or currencies, and the Bank shall not be liable to the Borrower the Surety and/or any other person(s) for any losses or damages resulting therefrom.

## 12. EVENTS OF DEFAULT

- 12.1 Without prejudice to Clause 6.2 hereof, upon the occurrence of any of the following events:-
- 12.1.1 Non-payment: if the Borrower and/or the Surety fail to pay any sum due or payable hereunder on the due date therefor or on demand;
- 12.1.2 Breach of Other Obligations: if the Borrower and/or the Surety fail to perform or commit or threaten to commit a breach of any of the provisions of this Agreement and/or the Security Document and/or fail to observe and perform any rule regulation and policy in respect of the Security;
- 12.1.3 Events Affecting Individuals: where the Borrower and/or the Surety is an individual, if he (or where more than one, any one or more of them) shall:-
- (i) die become insane or suffer any disability during the continuance of the security created under the Security Document; or
  - (ii) assign his estate for the benefit of creditors; or
  - (iii) have a statutory demand served against him; or
  - (iv) leave Singapore permanently for any reason whatsoever; or
  - (v) have a petition presented for an order of bankruptcy or sequestration of his estate; or
  - (vi) have a bankruptcy order made against him or have a receiver or a trustee in bankruptcy appointed over his estate or property or any part thereof.
- 12.1.4 Cross Default:
- (i) if any borrowing of the Borrower the Surety and/or their Related Corporations becomes prematurely due and payable as a result of a default thereunder;
  - (ii) if any event of default (or event which with giving of notice, lapse of time, determination of materiality or other condition may constitute such an event of default) occurs under any contract or document relating to any such borrowing;
  - (iii) if any other borrowing or other indebtedness or any sum payable in respect thereof is not paid when due;
  - (iv) if any encumbrance over any assets of the Borrower the Surety and/or their Related Corporations is or becomes enforceable;
- (in this clause “borrowing” means (1) monies borrowed or raised (including hire under financial leases) and interest thereon, (2) any liability under any bond, note, guarantee, indemnity or other security or under acceptance credit facilities, (3) any liability in respect of the acquisition cost of assets or services to the extent payable after the time of the acquisition or possession thereof, and (4) any guarantee or other assurance against financial loss in respect of such monies borrowed or raised, interest or liability)
- 12.1.5 Insolvency: if the Borrower the Surety and/or any of their Related Corporations becomes insolvent or unable to pay its debts as and when it falls due, stops, suspends, or threatens to stop or suspend payment of all or a material part of its debts, begins negotiations or takes any steps with a view to readjustment, rescheduling or deferral of all its indebtedness (or part of its indebtedness which it shall or might otherwise be unable to pay when due) or proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or material part of its indebtedness;
- 12.1.6 Judicial Management: if a receiver or manager is appointed over any of the Borrower’s the Surety’s and/or their Related Corporations’ property or assets, or if the Borrower the Surety and/or their Related

- Corporations shall be placed under judicial management under the provisions of the Companies Act (Cap 50) or a petition is presented or a resolution passed to wind-up the same whether voluntarily or compulsorily;
- 12.1.7 Enforcement Proceedings: if a distress or execution is levied or enforced upon or sued against any part of the properties or assets of the Borrower the Surety or any of their Related Corporations;
- 12.1.8 Legal Proceedings: if any legal proceedings suits or action of any kind whatsoever (whether criminal or civil) shall be instituted against the Borrower the Surety and/or their Related Corporations;
- 12.1.9 Illegality: if it is or shall become unlawful for the Borrower and/or the Surety to perform or comply with any one or more of their obligations under this Agreement and/or the Security Document;
- 12.1.10 Security Affected: if any step is taken by any person or agency with a view to the confiscation seizure compulsory acquisition expropriation or nationalisation of the Security or any part thereof, or any other asset or property of the Borrower and/or the Surety;
- 12.1.11 Non-payment of Demand: if the Borrower does not pay or fails to pay on demand any monies owing or payable under or on or in respect of any facility granted by the Bank which is repayable on demand;
- 12.1.12 Dissolution: if any step or petition is taken by any person for the dissolution or winding-up of the Borrower the Surety and/or any of their Related Corporations or a receiver is appointed over the assets and undertakings of the Borrower the Surety and/or any of their Related Corporations;
- 12.1.13 Cessation of Business: if the Borrower the Surety and/or any of their Related Corporations shall cease or threaten to cease to carry on business;
- 12.1.14 Further Encumbrance: if any encumbrance is created over or against the Security without the prior written consent of the Bank including without limitation any caveat charging order or charge;
- 12.1.15 Default of Other Agreements: if any default or potential default which with the lapse of time will be an event of default occurs under any agreement involving or relating to any other loan guarantee or credit facility whatsoever given or to be given by the Bank or any other person firm or corporation to the Borrower and/or the Surety which gives rise to a right against the Borrower and/or the Surety, whether such agreement is entered into before on or after the date of this Agreement and/or the Security Document and notwithstanding that written notice has not been served thereunder to recall or withdraw that loan or credit facility or any part thereof or to accelerate any payment by the Borrower and/ or the Surety in respect thereof or to enforce any security in connection therewith;
- 12.1.16 Transfer of Assets: if the Borrower and/or the Surety shall transfer or otherwise dispose of all or substantially all their assets to any person, firm or corporation;
- 12.1.17 Security in Jeopardy: if in the opinion of the Bank the security in the Security Document is in jeopardy and notice thereof has been given by the Bank to the Borrower and/or the Surety or if notice of revocation or termination of any guarantee or other security is received by the Bank;
- 12.1.18 Authorisation and Consents: if any action, condition or thing (including the obtaining of any necessary consent) at any time required to be taken, fulfilled or done is not taken, fulfilled or done or any such consent ceases to be in full force and effect or any condition in or relating to any such consent is not complied with;
- 12.1.19 Accounts: if the accounts of the Borrower and its Related Corporations delivered to the Bank are qualified in a manner or to an extent unacceptable to the Bank;
- 12.1.20 Declared Company: if the Borrower and/or the Surety is declared by the Minister to be a declared company under the provisions of Part IX of the Companies Act (Cap 50) or similar action is taken against it under corresponding legislation of any other jurisdiction applicable;
- 12.1.21 Material Adverse Change: if there shall occur a material adverse change in the business, assets or financial position of the Borrower and/or the Surety or if any situation shall have arisen which in the opinion of the Bank shall make it improbable that the Borrower and/or the Surety will be able to perform their obligations under this Agreement and/or the Security Document;
- 12.1.22 Taxes: if the Borrower and/or the Surety shall default in the payment of any of the Taxes;

- 12.1.23 Representations: if any confirmation warranty undertaking representation statement or declaration made or acknowledged or deemed to have been made or acknowledged by the Borrower and/or the Surety to the Bank at any time is found to be incorrect or false in any respect or ceases to be correct or true in any respect or if the Borrower and/or the Surety breaches or does not fully comply with the same at any time;
- 12.1.24 Constitution: if the Borrower and/or the Surety, being a firm or a corporation, changes its constitution or, being a corporation, changes its shareholding, capital structure and/or Memorandum and Articles of Association without obtaining the Bank's prior written consent;
- 12.1.25 Unenforceability: if any provision of this Agreement and/or the Security Document shall become void voidable or unenforceable in whole or in part for any reason whatsoever; or
- 12.1.26 Default Under Security Document: if any event of default occurs under the Security Document, the whole of the monies outstanding and unpaid together with all interest thereon and all other sums of money due or to become due and payable by the Borrower and/or the Surety under the Facility and all other monies owing or liabilities accruing to the Bank under this Agreement and/or the Security Document shall immediately become due and payable upon written demand or notice and the Borrower shall provide cash cover for all contingent liabilities 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 the Bank for the Borrower's account. No further drawings may be made and the Facility shall automatically cease to be available to the Borrower and shall be deemed to have been cancelled.

- 12.2 Notwithstanding the provisions of this Agreement and without prejudice to the Bank's other rights and remedies the Bank may at any time give to the Borrower 1 months' notice in writing demanding repayment of the Facility together with interest and all other monies owing hereunder and upon the expiry of such notice the Borrower shall forthwith pay to the Bank the Facility and interest accrued up to the date of expiry of the said notice together with all other monies owing or liabilities accruing to the Bank.
- 12.3 Upon the occurrence of any Event of Default, the Bank shall forthwith be entitled to exercise forthwith all or any of its rights, powers or remedies under this Agreement and the Security Document and shall have the overriding right (without any obligation) to cover and/or revise any or all transactions outstanding under the Facility.

### **13. COMBINATION OF ACCOUNTS AND RIGHTS OF SET-OFF**

Without prejudice and in addition to any right of setoff, combination of accounts, lien, security or other rights to which the Bank is at any time entitled (whether by operation of law, contract or otherwise), the Bank shall also be entitled (but shall not be obliged) at any time and without notice to the Borrower to:-

- 13.1 withhold any sum(s) standing to the credit of all or any of the Borrower's accounts with the Bank anywhere, whether in or outside Singapore, whether singly or jointly with any other person so long as any monies are outstanding under the Facility;
- 13.2 combine, consolidate or merge all or any of the Borrower's accounts and liabilities with and to the Bank anywhere, whether in or outside Singapore, whether singly or jointly with any other person;
- 13.3 transfer or set-off any obligations of the Bank to the Borrower (including any sum(s) standing to the credit of such account(s) as the Borrower may have with the Bank) in or towards satisfaction of any obligations or liabilities of the Borrower to the Bank anywhere whether singly or jointly with any other person(s), whether as principal or surety, actual or contingent, primary or collateral, booked or payable at different branches (including branches outside Singapore) or at different currencies. The Bank may effect any necessary conversions at such rate of exchange as the Bank may determine. Any risk or loss arising or relating to such conversion or from fluctuation of the rate of exchange shall be borne solely by the Borrower; and
- 13.4 if the amount of the Borrower's obligations and liabilities are unascertained, estimate the said amount and set-off in respect of the estimate, subject to final settlement being made between the Borrower and the Bank when the amount of the obligations is ascertained.

### **14. DEBITING OF ACCOUNT(S)**

- 14.1 The Bank shall have the right (but not the obligation) at any time and without prejudice to the Bank's other rights

and remedies nor any prior notice to the Borrower to debit the Borrower's current account or other account (s) with the Bank including the Overdraft account with any outstanding payments, interest, commission, charges, fees, expenses, costs, taxes, premia and all monies payable under and arising from the Facility this Agreement and/or the Security Document as well as all amounts and sums of monies which are otherwise payable by the Borrower. Provided Always that no such debiting shall be deemed to be a payment of the amount due (except to the extent of any amount in credit in the Borrower's current account or other account(s) with the Bank) or a waiver of any event of default under any agreement relating to the Facility. If such debiting causes the Borrower's account(s) to be overdrawn, default interest at the Bank's prevailing rate(s) shall be payable by the Borrower accordingly and shall be repayable forthwith.

- 14.2 In the event that the Borrower's said account(s) has insufficient funds on the due date to fully discharge any amount due, it shall be the Borrower's responsibility to notify the Bank in writing if the Borrower's funds are credited into the said account(s) after the due date and to request the Bank to make the appropriate debit to the account(s). The Bank is entitled but not obliged to monitor the level of funds in the said account(s) or to debit the same for the amount due to the Bank.

## **15. INDEMNITY**

The Bank shall not be responsible nor liable for, and the Borrower and the Surety shall indemnify and at all times keep the Bank fully and completely indemnified against any loss, costs, charges, liabilities, claims, demands, actions, proceedings or expenses which the Bank, its officers, employees and/or agents may sustain or incur as a direct or indirect consequence of inter alia:-

- 15.1 the occurrence of an Event of Default;
- 15.2 any exercise or attempted exercise of any right, power or remedy under this Agreement and/or the Security Document or any failure to exercise any right, power or remedy thereof;
- 15.3 the Facility from time to time as agreed to be provided by the Bank is not being provided for any reason (including without limitation failure to fulfil any of the conditions precedent but excluding any default by the Bank);
- 15.4 the Bank receiving payment of principal in respect of the Facility on or before the last day of any repayment due date relating to the Facility for any reason; and
- 15.5 the Facility, this Agreement and the Security Document.

Without prejudice to its generality, the foregoing indemnity shall extend to any interest, fees, or other sums whatsoever paid or payable on account of any funds borrowed by the Bank in order to carry any unpaid amount, and to any loss (including loss of profit), premium, penalty or expense which may be incurred in liquidating or employing deposits from third parties acquired to make maintain or fund the Facility or any part thereof or any other amount due or to become due under this Agreement.

## **16. APPLICATION OF MONIES**

If any sum paid or recovered in respect of the Borrower's liabilities is less than the amount then owing, the Bank may apply that sum to interest, fees, principal or any amount due in such proportion and order and generally in such manner as the Bank may think fit or may credit the same or part thereof to a non-interest bearing suspense account as the Bank thinks fit.

## **17. RIGHTS CUMULATIVE, WAIVERS**

- 17.1 The rights, powers and remedies of the Bank under this Agreement and the Security Document are cumulative and may be exercised as often as the Bank considers appropriate and are in addition to any other rights, powers and remedies which the Bank has or may have under the general law.
- 17.2 The Bank may waive any breach by the Borrower and/or the Surety of the terms of this Agreement and/or the Security Document. No such waiver of any such breach shall prejudice the rights of the Bank in respect of any other or subsequent breach of the terms of this Agreement and/or the Security Document.
- 17.3 Any waiver or consent by the Bank may be subject to such conditions as the Bank deems fit and shall only be effective if given in writing.
- 17.4 No failure or delay on the part of the Bank to exercise or enforce any of its rights, powers or remedies under this Agreement or the Security Document shall impair or operate as a waiver of such rights, powers or remedies, and any single or partial exercise or enforcement of any such rights, powers or remedies shall not preclude any other

or further exercise or enforcement thereof or of any other rights, powers or remedies.

## 18. DISCLOSURE OF INFORMATION

The Borrower irrevocably and unconditionally consents for the Bank and any officer (as defined in the Banking Act (Cap. 19) (the “Banking Act”)) of the Bank to disclose any customer information (as defined in the Banking Act) relating to the Borrower or any information whatsoever relating to the Borrower as the Bank shall consider appropriate to any person to whom disclosure is permitted or required by any statutory provision or law or to any other person wherever situate for any purpose whatsoever and it is hereby agreed that the Bank and any officer of the Bank may disclose the foregoing information to the fullest extent permitted by the Banking Act or any other statutory provision or law. Without prejudice to the foregoing, the Borrower consents to such disclosure to any credit bureau or any other organisation or corporation set up for the purpose of collecting and providing information relating to the credit standing of persons, and to the disclosure by such credit bureau or other organisation or corporation to any member thereof, for the purposes of assessing the Borrower’s credit worthiness or for any other purpose whatsoever. The rights conferred on the Bank herein shall be in addition to and shall not be in any way prejudiced or affected by any other agreement, expressed or implied, between the Borrower and the Bank in relation to any information referred to herein nor shall any such other agreement be in any way prejudiced or affected by any provision herein. This consent and provision shall survive the termination of any or all of the Borrower’s and/or the Surety’s accounts or facilities with the Bank, and/or the termination of any relationship between the Borrower and/or the Surety and the Bank, for any reason whatsoever.

### 18A. DATA PROTECTION

- 18A.1 (Where personal data relating to the Borrower is or will be collected, used or disclosed by the OCBC Group (as defined herein) and/or the OCBC Representatives (as defined herein)) The Borrower consents to the Bank, its Related Corporations (collectively, the “OCBC Group”), and their respective business partners and agents (collectively, the “OCBC Representatives”) collecting (including by way of recorded voice calls), using and disclosing the Borrower’s personal data for purposes reasonably required by the OCBC Group and the OCBC Representatives to enable them to provide any facilities (including without limitation the Facility) to the Borrower. Such purposes are set out in a Data Protection Policy, which is accessible at [www.ocbc.com/policies](http://www.ocbc.com/policies) or available on request and which the Borrower has read and understood.
- 18A.2 (Where personal data relating to any of the Individuals (as defined herein) is or will be collected, used or disclosed by the OCBC Group and/or the OCBC Representatives) The Borrower hereby confirms and represents to the OCBC Group and the OCBC Representatives that with respect to any personal data of individuals (“Individuals”) disclosed to the OCBC Group and/or the OCBC Representatives in connection with any facilities granted to the Borrower (including without limitation the Facility) or at the request of, or by or through the Borrower from time to time, the Individuals to whom the personal data relates have, prior to such disclosure, agreed and consented to such disclosure, and the collection (including by way of recorded voice calls), use and disclosure of their personal data by the OCBC Group and the OCBC Representatives for purposes reasonably required by them to enable them to provide any facilities (including without limitation the Facility) to the Borrower. Such purposes are set out in a Data Protection Policy, which is accessible at [www.ocbc.com/policies](http://www.ocbc.com/policies) or available on request and which the Borrower confirms that each of the Borrower and the Individuals have or will have read and consented to.

## 19. FOREIGN CURRENCY

- 19.1 Where the Bank has agreed to avail the Facility in any currency or currencies other than US Dollars or Singapore Dollars:-
- 19.1.1 the Facility shall be availed in such currency or currencies which are freely available and freely convertible into US Dollars in the Singapore interbank market and are acceptable to the Bank; and
- 19.1.2 the currency in which the outstandings under the Facility are denominated shall be subject to change from time to time at the Bank’s absolute discretion and without prior notice. In this connection, the Bank may convert the outstandings under the Facility into such other currency or currencies as the Bank deems fit at the Bank’s own rate of exchange and the Borrower and/or the Surety shall bear all charges, fees and expenses relating to such conversion.
- 19.2 Any amount received or recovered by the Bank in respect of any sum due to it in a currency (such currency being referred to as the “Relevant Currency”) other than the currency in which such sum is expressed to be due under

this Agreement and/or the Security Document and/or incurred by the Bank under or pursuant to this Agreement and/or the Security Document (such currency being referred to as the "Currency of Account") whether as a result of, or of the enforcement of, a judgment or order of a court or tribunal of any jurisdiction, in the bankruptcy/ dissolution of the Borrower and/or the Surety or otherwise, shall only constitute a discharge to the Borrower and/or the Surety to the extent of the amount in the Currency of Account which the Bank is able, in accordance with its usual practice, to purchase with the amount 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).

- 19.3 Without prejudice to the other provisions of this Agreement and/or the Security Document, where the Bank has agreed to avail the Facility in any currency or currencies other than Singapore Dollars and the amount to be availed to the Borrower is limited to the equivalent of a specified Singapore Dollar amount ("the equivalent sum") then the Bank may determine the equivalent sum at such rate of exchange as the Bank may at its absolute discretion deem fit, such determination to be accepted by the Borrower as final and conclusive.
- 19.4 Without prejudice to the other provisions of this Agreement and/or the Security Document, the Bank shall be entitled at any time, including without limitation, where any restrictions or controls on the trading in or on the convertibility or on the remittance of any currency or currencies is imposed or introduced whether in Singapore or in any other country, or where in the Bank's opinion the imposition or introduction of any such restrictions or controls is imminent, to effect any conversion of currency or currencies without prior notice and at such rate of exchange as the Bank may in its absolute discretion determine.
- 19.5 Any risk or loss arising or relating to any conversion of currency or from fluctuation of the rate of exchange shall be borne solely by the Borrower and/or the Surety and the Borrower and/or the Surety shall indemnify the Bank against the same. No proof or evidence of any actual loss is required. The indemnity shall give rise to a separate and independent cause of action and shall apply irrespective of any indulgence granted by the Bank and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Facility or any judgment or order.

## 20. INSURANCE

- 20.1 The Borrower and/or the Surety shall:-
- 20.1.1 on first disbursement of the Facility effect such insurance(s) as the Bank may require from time to time;
  - 20.1.2 pay the insurance premia promptly when due;
  - 20.1.3 assign the relevant insurance policy or policies to the Bank; and
  - 20.1.4 deposit all insurance certificates, renewal certificates and premium receipts with the Bank.
- 20.2 Notwithstanding the foregoing, the Borrower and/or the Surety:-
- 20.2.1 agree that all insurance arrangements shall at the Bank's discretion, be made by the Bank on behalf of the Borrower and/or the Surety;
  - 20.2.2 agree that the Bank may in its absolute discretion vary the sum insured at any time and from time to time; and
  - 20.2.3 authorise the Bank to debit the Borrower's account(s) for such amount as may be required to pay for the insurance premia when due;
- 20.3 The Bank shall not be liable to the Borrower and/or the Surety in any way whatsoever for any insurance arrangements made by the Bank, for any lapse in insurance coverage and/or for any damage loss or expense incurred howsoever during any period when no insurance(s) is in effect. The Borrower and/or the Surety shall be responsible to ensure that the requisite insurance policy is effected and/or renewed annually or at such relevant period(s) of time as is required up to the date of full repayment of the Facility.

## 21. MORATORIUM

This Agreement and the Security Document, the obligations of the Borrower and/or the Surety and the rights and remedies of the Bank shall not be prejudiced diminished or affected or discharged or impaired nor shall the Borrower and/or the Surety be released or exonerated by any moratorium or other period staying or suspending by any laws or statutes or rules or regulations or proclamations or edicts or decrees or orders in Singapore or any other country or countries or the order of any court or other authority in or of Singapore or elsewhere.



## **22. EXPENSES, TAXES AND OTHER FEES**

- 22.1 The Borrower and/or the Surety shall pay on demand (unless otherwise stated) and indemnify the Bank against:-
- 22.1.1 all insurance premia legal fees stamp duties valuation costs and such other fees commissions costs charges and expenses whatsoever imposed by the Bank from time to time and/or payable in connection with the grant of the Facility or otherwise pursuant to this Agreement and/or the Security Document;
  - 22.1.2 all legal fees on a full indemnity basis and other costs disbursements and out of pocket expenses incurred by the Bank in the administration and enforcement of the provisions contained in this Agreement and/or the Security Document; and
  - 22.1.3 without prejudice to Clauses 22.1.1 and 22.1.2 above, all abortive legal costs and expenses incurred by the Bank whether due to the Bank's decision to cancel the Facility, the Borrower's and/or the Surety's failure or refusal to proceed with the Facility and/or the Security or otherwise.
- 22.2 The Borrower and/or the Surety shall in addition promptly pay the Taxes and shall comply with all government and statutory requirements relating thereto.
- 22.3 Without prejudice to Clause 15, the Bank shall be entitled but shall not be obliged to pay the sums mentioned in Clause 22 herein on behalf of the Borrower and/or the Surety in which event the Borrower and/or the Surety shall forthwith reimburse the Bank all such sums paid together with interest thereon at the rate per annum of 4.75% over the Bank's prevailing prime lending rate or such other rate as the Bank may determine from time to time, calculated from the date of payment by the Bank up to the date of full repayment by the Borrower and/or the Surety, such interest to be payable as well after as before judgment and accumulating by way of compound interest.

## **23. PAYMENTS TO BE FREE AND CLEAR**

All payments by the Borrower and/or the Surety to the Bank shall be made in full without set-off, deductions or counterclaim and free of and without deduction for or on account of tax unless the Borrower and/or the Surety are required by law in any jurisdiction to make any such payments subject to such withholding or deduction, in which case the Borrower and/or the Surety shall pay such additional amount to the Bank as may be necessary in order that the actual amount received after such withholding or deduction shall be equal to the amount that would have been received if such withholding or such deduction were not required. The Borrower and/or the Surety shall pay in full to the appropriate taxing authority all taxes or charges imposed by law in any jurisdiction on the Borrower the Surety and/or the Bank with regard to their payment obligations to the Bank and promptly deliver to the Bank the original or certified copy of each receipt evidencing such payment. The Borrower and/or the Surety shall fully indemnify the Bank from any liability with respect to the delay or failure by the Borrower and/or the Surety to pay such taxes or charges.

## **24. CHANGE OF ADDRESS**

Any change of address of the Borrower and/or the Surety must be promptly notified to the Bank in writing or in any other manner as agreed by the Bank.

## **25. STATEMENT BINDING**

A statement or certificate duly signed by an authorised officer of the Bank stating the amount of the monies for the time being due, owing or payable to the Bank under this Agreement and/or the Security Document, or any part thereof shall in the absence of manifest error be conclusive evidence as to its contents without the Bank being required to produce any books of account or other records or any copies of any of them.

## **26. CONTINUING SECURITY**

Save as expressly herein provided, nothing in this Agreement shall affect the validity and enforceability of the rights powers and remedies of the Bank under any "all monies" Security Document as security for all monies now or hereafter owing or remaining unpaid to the Bank whether under this Agreement or otherwise and the covenants provisions and powers contained in or subsisting under such "all monies" Security Document shall continue to apply thereto and shall subsist and be in full force and effect notwithstanding that all monies owing under this Agreement shall have been paid. (In this clause, the term "all monies Security Document" shall refer to any Security Document which secures all monies now or hereafter owing or remaining unpaid to the Bank.)

## **27. NOTICES**

- 27.1 Any notice or certificate to be given to, or demand to be made on, the Borrower and/or the Surety (notwithstanding

the death, insanity, bankruptcy, liquidation {whether voluntary or compulsory} or dissolution of the Borrower and/or the Surety) shall be deemed to have been duly given or made if it is in writing, and delivered personally or sent by telex, facsimile, telegram or pre-paid post to:-

- 27.1.1 the address(es) of the Borrower and/or the Surety as shown in the Letter of Offer and/or the Security Document or, where a new address has been notified in writing to the Bank, that new address;
  - 27.1.2 in the case of a corporation, its registered office;
  - 27.1.3 the address of any property of the Borrower and/ or the Surety mortgaged to the Bank;
  - 27.1.4 the Borrower's and/or the Surety's last known place of business or abode in Singapore; or
  - 27.1.5 the Borrower's and/or the Surety's then published telex or facsimile number, or the last such number advised to the Bank by the Borrower and/or the Surety in writing.
- 27.2 A communication sent by post shall be deemed to have been received by the Borrower and/or the Surety on the second day after posting (excluding days on which no mail deliveries are normally made) notwithstanding that it may be returned by the post office undelivered.
- 27.3 A communication sent by telex, facsimile or telegram shall be deemed to have been received by the Borrower and/or the Surety at the time of despatch.
- 27.4 A statement signed by an authorised officer of the Bank stating the date upon which any demand or notice was posted shall in the absence of manifest error be prima facie evidence of the date upon which that demand or notice was posted.
- 27.5 Notices, certificates and other correspondence required to be given to the Bank shall be sent to the Bank's address specified in the Letter of Offer (or to such other address as may from time to time be given by the Bank for the purpose). Any such notice shall be deemed to have been given, served or received at the time of acknowledgement of receipt by a duly authorised officer of the Bank.

## **28. SERVICE OF PROCESS**

Personal service of any writ of summons or other originating process or sealed copy thereof pleadings or other documents may be effected on the Borrower and/or the Surety by leaving the same at the address stated in the Letter of Offer or at the place of business or abode or the address in Singapore of the Borrower and/or the Surety last known (and in this connection the Bank shall be entitled to rely on the records kept by it or that of any registry or government or statutory authority) and if the last known address of the Borrower and/or the Surety shall be a postal box number or other hold mail address then personal service may be effected by posting the same to such address or addresses and the Borrower and/or the Surety irrevocably confirm that service of such writs of summons originating process pleadings or documents in the manner aforesaid shall be deemed good sufficient personal service on the Borrower and/or the Surety.

## **29. CONSENT AND DISCRETION**

- 29.1 In this Agreement where the Bank's prior consent, written or otherwise is required to be obtained, such consent may be withheld by the Bank at its absolute discretion without the Bank being required to provide any reason therefor.
- 29.2 The Bank may exercise its discretion relating to any of the provisions in this Agreement where applicable without being required to provide any reason therefor and the Bank's discretion when so exercised shall not be challenged in any way by the Borrower and/or the Surety.

## **30. SEVERABILITY**

If any one or more of the provisions contained in this Agreement shall be deemed invalid, unlawful or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

## **31. SUCCESSORS AND ASSIGNS**

- 31.1 This Agreement shall continue to be valid and binding for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the corporation by which the business of the Bank for the time being is carried on and shall be available to the corporation carrying on that business for the time being. This Agreement and/or the Security Document shall be binding upon and inure to

the benefit of the Borrower and/or the Surety and the Bank and the successors in title and assigns of the Bank. All undertakings, agreements, representations and warranties given, made or entered into by the Borrower and/or the Surety under this Agreement and/or the Security Document shall survive the making of any assignments hereunder.

- 31.2 The Borrower and/or the Surety shall have no right to assign or transfer any of their rights hereunder.
- 31.3 Without prejudice to Clause 31.2 above, this Agreement and/or the Security Document shall be valid and binding on the successors of the Borrower and/or the Surety and notwithstanding any change in the constitution of the Borrower and/or the Surety by re-organisation amalgamation consolidation reconstruction or otherwise if a company, or if a firm, by retirement expulsion death admission accession or change of any partner(s) or otherwise.
- 31.4 The Bank may assign all or part of its rights or transfer all or part of its obligations under this Agreement and/or the Security Document without the consent of the Borrower and/or the Surety.

### **32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT (CAP.53B)**

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act (CAP.53B) to enforce any of its terms.

### **33. GOVERNING LAW AND JURISDICTION**

- 33.1 This Agreement and/or the Security Document and all matters relating to the Facility shall be governed by and construed in accordance with the laws of Singapore.
- 33.2 All parties to this Agreement and/or the Security Document and in particular, the Borrower and/or the Surety hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Singapore in all matters connected with this Agreement and/or the Security Document Provided Always that submission to the jurisdiction of the courts of Singapore shall not preclude the Bank from commencing proceedings in the courts of any other country.