**LETTER OF SET- OFF**

**(First/Third party)**

By

**THE PERSON NAMED IN SECTION 2 OF THE FIRST SCHEDULE**

(as the “**Chargor**”)

in favour of

**AFFIN BANK BERHAD**

(as the “**Bank**”)

# LETTER OF SET-OFF (FIRST/THIRD PARTY)

THIS LETTER OF SET-OFF is made on the date stated in Section 1 of the First Schedule by THE PARTY whose name and particulars are stated in Section 2 of the First Schedule (“**Chargor**”). This Letter of Set-off is given in favour of AFFIN BANK BERHAD[Registration No. 197501003274 (25046-T)], a company incorporated in Malaysia and having a place of business in Malaysia as stated in Section 3 of the First Schedule (the “**Bank**”).

# RECITALS

1. **APPLICATION FOR FACILITY**

Reference is made to the application more particularly described in Section 4 of the First Schedule (“**Application**”) by THE PARTY whose particulars are set out in Section 5 of the First Schedule (the “**Applicant**”) to the Bank. By the Application, the Applicant has applied for the Facility (as defined below).

# EXECUTION OF CHARGE OVER CASH DEPOSITS AND LETTER OF SET-OFF

It was agreed that the Facility, interest and all other moneys owing and payable by the Applicant under the terms of the Application should be additionally secured by this Letter of Set-Off and the Charge over Cash Deposits (as defined in this Letter of Set-Off).

# ARTICLE I

# DEFINITIONS AND INTERPRETATION

**Section 1.01 DEFINITIONS AND INTERPRETATION**

* 1. Except where the context otherwise requires or unless this Letter of Set-Off otherwise provides, all words and expressions defined in the Application when used or referred to in this Letter of Set-Off shall have the same meaning as that provided in the Application.
	2. The Facility shall refer to facility to be granted, granted or agreed to be granted or continue to be granted (past, present or future amount) to the Applicant or any portion of it.
	3. In addition to those words and expressions already defined in the Application, the following words and expressions shall, unless the context otherwise requires, have the meaning respectively assigned to them as per the following:

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| --- | --- |
| “**Applicant**” | The person named in Section 5 of the First Schedule. If more than one, to refer to any of them jointly and severally. |
| “**Application**” | The application more particularly described in Section 4 of the First Schedule by the Applicant to the Bank. Application includes any request for amendment to the Facility or the Bank Guarantee/Letter of Credit (whichever applicable) by the Applicant and agreed by the Bank (“**Amendment**”). |
| “**Bank**”  | AFFIN BANK BERHAD [Registration No. 197501003274 (25046-T)] and having a place of business stated in Section 3 of the First Schedule. |
| “**Document**” or “**Letter of Set-Off**” | Refers to this document. |
| “**Chargor**”  | The person named in Section 2 of the First Schedule. If more than one, to refer to any of them jointly and severally. If this Letter of Set-Off is a First Party Letter of Set-Off, then the Chargor is also addressed as the Applicant. |
| “**Charge over Cash Deposits**” or “**COCD**” | The Charge over the Cash Deposits executed by the Chargor simultaneously or concurrently with this Document. |
| “**Deposits**”  | Such deposits and interest accruing on the deposits or any part of it as described in Section 2.01 of the COCD and identified in Section 5 of the First Schedule of the COCD. It is wide enough to include deposits in savings or fixed deposits, money market instruments, repurchase agreements, cash margins, escrow accounts, sinking fund accounts, continuing deposits or other forms of deposits. It also includes the New Deposits referred in this Document.  |
| “**Facility**” | The facility specified in the Application granted or to be granted or continue to be granted or made available by the Bank to the Applicant in accordance with the terms and conditions in the Application. |
| “**Indebtedness**” | The aggregate of all amounts, whether principal, interest, fees, charges and all other monies due or payable or agreed to be payable from time to time to the Bank under or in connection with the Facility, including the Express BG Liability (for Express BG) or Express LC Liability (for Express LC). This includes not just the Facility but also all or any part of the monies agreed to be paid by the Applicant and Chargor under the Application. It also includes all liabilities of the Applicant whether actual or contingent. |
| “**New Deposits**” | The New Deposits as described in Section 2.02. |
| “**Security Interest**” | Includes (without limitation) any mortgage, charge, pledge, lien, right of set-off, caveats and any security interests of any nature in any property whether moveable or immoveable of any kind-created or arising. |

**Section 1.02 CONSTRUCTION**

1. The expression “Letter of Set-Off” or “Document” includes any separate or independent agreement contained and also includes any amendment notified by the Bank or agreed by the parties to this Letter of Set-Off.
2. The expression “person” shall include any individual, firm, partnership, company or association or body of persons, corporate or unincorporated. If more than one, their obligations or liabilities shall be joint and several.
3. Words importing the singular shall include the plural and the same applies in reverse (vice versa). Words importing one gender shall include all other genders and the same applies in reverse (vice versa).
4. The headings used are for purposes of reference only and shall not be used in the construction of this Document.
5. Terms in this Document are binding on heirs, personal representatives, estate, successors in titles or permitted assigns of the parties.
6. The expression “and/or” also includes “or” (where applicable). The word “all” includes “any” and the same applies in reverse (vice versa). It also includes any part or portion of the Facility or Indebtedness or any amount due.
7. Any action to be done at anytime shall also include any action to be done from time to time and the same applies in reverse (vice versa).
8. The word “entering into”, “entered into”, “made available”, “granted”, “having agreed to grant or make available to” shall refer to past, present and future consideration for this Document and the usage of one phrase is sufficient to include all the past, present and future consideration without the need to repeat all the phrases.

## Section 1.03 APPLICATION INCORPORATED INTO THIS LETTER OF SET-OFF

All the provisions of the Application form part of this Letter of Set-Off. All representations, warranties and covenants made by the Applicant in the Application shall be considered as if it has also been made by the Chargor. References to the Applicant in the Application shall be read as if they were references to the Chargor. In the event of any conflict or discrepancy between the provisions of the Application and any of the provisions of this Letter of Set-Off, the provisions in this Letter of Set-Off shall prevail for the purposes of interpretation and enforcement, but only to the extent of such conflict or discrepancy.

# ARTICLE II DEPOSITS

**Section 2.01 RIGHT OF SET-OFF**

In consideration of the Bank agreeing to make available the Facility at the request of the Applicant and/or the Chargor, the Chargor agrees that the Bank shall have a continuing right at any time and with prior notice of at least seven (7) calendar days, transfer or set-off all or any part of the principals and/or accrued interests in respect of the Deposits. The right to transfer or set-off the Deposits with accruing interest is for payment or satisfaction of:

1. all Indebtedness due or owing to the Bank by the Applicant or the Chargor or any other Security Party as principal debtor or guarantor;
2. all other joint or several liabilities of the Applicant or the Chargor or any other Security Party to the Bank. The liabilities may be in or outside Malaysia and include all present, future, actual or contingent liabilities due or owing to the Bank by the Applicant or the Chargor or any other Security party as principal debtor or guarantor; and
3. all costs (including legal costs on a solicitor and client basis) charges and expenses incurred by the Bank in relation to this Letter of Set-off or such Indebtedness or liabilities on a full indemnity basis.

However if any of the liabilities is in a different currency from the credit balance in respect of which the Bank seeks to exercise the right of set-off, the Bank shall have the right to utilise the currency of the account in credit for the purchase, at the spot rate of exchange, of an amount in the currency of the said liability not exceeding the amount of such liability.

Upon issuance of the notice to set-off to the Chargor, the Bank may, at the same time, earmark or place a hold on the Deposits. The Chargor shall not be entitled to withdraw the Deposits so earmarked / put on hold without the Bank’s prior written consent.

# Section 2.02 NEW DEPOSITS

Notwithstanding the above, the Chargor agrees and confirms that the Bank shall be entitled and authorised to utilise all and/or any part of the principals and/or accrued interests in respect of any of the Deposits to apply for new Deposits (the “**New Deposits**”) on behalf of the Chargor upon the maturity of the Deposits.

# Section 2.03 RIGHTS TO RENEW ACCOUNTS/UPLIFT DEPOSITS

1. The Chargor agrees that the Bank shall have the right to extend or renew any of the accounts mentioned in Sections 2.01 and 2.02 above, on behalf of the Chargor from time to time for such period and at the prevailing rate offered by the Bank without reference to the Chargor. The Bank’s debt constituted by such Deposits shall not be repaid to the Chargor until all Indebtedness of the Applicant to the Bank has been fully paid and discharged. The Chargor shall have no right to withdraw transfer or deal with any part of the Deposits.
2. The Chargor agrees that the Bank shall be entitled to uplift or liquidate any Deposits, prior to its maturity. In the event the Bank uplifts or liquidates the Deposits before its maturity, the Bank shall not be liable in respect of any loss which the Chargor may suffer as a result of such uplifting or liquidating except for losses or damages caused by the Bank’s negligence, default or fraud.

## Section 2.04 UNDERTAKINGS OF THE CHARGOR

The Chargor undertakes that there is no Security Interest or encumbrances over all or any part of the Deposits and confirms that:

1. until the obligations of the Chargor to the Bank has been fully discharged, the Chargor shall not during the subsistence of this Letter of Set-Off without the consent in writing of the Bank execute any form of Security Interest or encumbrances over the Deposits. The Bank shall not unreasonably withhold such consent; and
2. this Letter of Set-Off shall not affect security already given by the Chargor or any other security which may in future be given to the Bank by the Chargor.

# ARTICLE III MISCELLANEOUS PROVISIONS

**Section 3.01 STATEMENT OF ACCOUNT**

A statement of account in writing stating the amount payable by the Chargor under this Letter of Set-Off issued by an authorised officer of the Bank shall in the absence of obvious error be conclusive evidence of the Indebtedness.

# Section 3.02 INSOLVENCY

In addition and without prejudice to the provisions of this Letter of Set-Off in the event that the Chargor, commits an act of bankruptcy, becomes mentally incapacitated or dies, the Indebtedness or liabilities (including both actual and contingent liabilities) under this Letter of Set-Off shall become immediately due and payable. The Bank may exercise its right to set-off in this Letter of Set-Off or such other rights as provided in the Charge over Cash Deposits or in the Application.

# Section 3.03 RIGHT TO RETAIN DEPOSITS

Until all the Indebtedness have been satisfied, the Bank shall continue to hold this Letter of Set-Off and retain such Deposits of the Chargor (including statements or receipts) in the custody of the Bank. After full payment, the Deposits shall be considered surrendered to the Chargor.

# Section 3.04 OTHER SECURITIES NOT AFFECTED

Nothing continued in this Letter of Set-Off shall affect any other security held by the Bank at any time to secure the Indebtedness.

# Section 3.05 TIME

Time shall be of the essence of this Letter of Set-off.

# Section 3.06 REPRESENTATIONS AND WARRANTIES

The Chargor represents and warrants to the Bank that: (i) the Chargor has the capacity to execute, deliver and perform the terms of this Letter of Set-Off; (ii) the Chargor is the absolute and beneficial owner of all the Deposits free from any Security Interest or encumbrances, other than Security Interest created pursuant to the Chargeover Cash Deposits. The Chargor has not sold or disposed of any part of the Deposits; and (iii) this Charge constitutes valid and binding obligations of the Chargor.

# Section 3.07 AMENDMENTS AND ADDITIONAL TERMS

# It is agreed and declared by the parties that the provisions and terms of this Letter of Set-Off may at any time be varied or amended by the Bank by giving prior notice (together with the reasons for such variation or amendment) of at least twenty-one (21) calendar days to the Chargor.

# If the Chargor is not agreeable to the amended terms and conditions of this Letter of Set-Off, the Chargor shall notify the Bank.

# In the event the Chargor does not raise any objections within the twenty-one (21) calendar days after the notice of amendments, the Chargor shall be considered to have accepted the amendments to the terms and conditions of this Letter of Set-Off.

# Section 3.08 SEVERABILITY

Any term or condition of this Letter of Set-Off which turns out to be illegal or invalid shall not cause the remaining terms and conditions to be likewise illegal or invalid.

## Section 3.09 SUSPENSE ACCOUNT

Any monies received by the Bank under this Letter of Set-Off may be placed and kept to the credit of a non-income bearing suspense account for so long as the Bank thinks fit. The Bank is not obliged to apply the monies to discharge the Indebtedness under this Letter of Set-Off. In the event of any proceedings in bankruptcy, liquidation, composition or arrangement the Bank may prove for and agree to accept any dividend or composition as declared by the relevant authority.

# Section 3.10 CHANGES IN CONSTITUTION

This Letter of Set-Off shall continue to be valid and binding even upon the Chargor’s death, bankruptcy, mental incapacity.

## Section 3.11 TRANSFER OF SECURITY

(a) Save and except if the transfer and/or assignment is to the detriment of the Chargor, the Bank may at any time transfer, sell, participate in secondary debt markets or assign all or any part of its rights, benefits and obligations under this Letter of Set-Off by notice to the Chargor. The Bank may disclose to such potential assignee or third party such information regarding the Applicant and/or Chargor for all lawful or legitimate purpose to facilitate the transfer, sale or assignment.

(b) Any statement in the transfer, sale or assignment of the amount then due to the Bank under this Letter of Set-Off or the Application shall be conclusive and binding on the Chargor except for obvious errors.

(c) The Chargor shall not assign any of its rights or obligations in this Letter of Set-Off without the prior written consent of the Bank.

## Section 3.12 PAYMENT IN GROSS

All monies received from the Chargor from the set-off of the Deposits may be treated by the Bank as payments in gross. It will not be attributable to any specific part of the Indebtedness even if appropriated as such by the Bank. The Chargor or any other person claiming under the Chargor shall have no claim to the Deposits unless and until the Bank has received the full amount due to the Bank by the Applicant or Chargor.

**Section 3.13 CHARGOR AS PRINCIPAL DEBTOR**

The Chargor’s liability under this Letter of Set-Off is as a principal debtor unless the Bank agrees to limit the Chargor’s liability to the Deposits only.

**Section 3.14 DISCLOSURE AND INFORMATION**

The Chargor agrees and permits the Bank to disclose any information relating to the Chargor to:

1. the Central Credit Unit and Central Credit Reference Information System (CCRIS) of Bank Negara Malaysia (BNM) or such other authority having jurisdiction over the Bank; or

1. any party (including professional advisers and debt collection agent) pursuant to any enforcement, preservation and/or attempted enforcement or preservation of this Letter of Set-Off; or
2. any party providing additional security or any guarantor; or
3. any party or authority, if required by any law, regulation or by-law or pursuant to any order from any court of competent jurisdiction; or
4. companies which are now or which in the future may be subsidiaries within the banking group of the Bank, subject to the Financial Services Act 2013 [Act 758] and any regulations from BNM; or
5. any credit reporting agencies.

The full Privacy Notice is contained in the Bank’s website at www.affingroup.com and www.affinalways.com. In the event of conflict, the Privacy Notice to prevail but only to the extent of such conflict.

The Chargor expressly consents to the Bank conducting credit checks on the Chargor for the purpose of this Letter of Set-Off at the Central Credit Bureau, CCRIS, CTOS Sdn Bhd, Financial Information Services Sdn Bhd (FIS), RAM Credit Information Sdn Bhd or any registered credit reporting agencies.

The above is in addition to any disclosure allowed by BNM or other regulatory authority. In the event of conflict, the disclosure allowed by BNM or other regulatory authority shall prevail.

## Section 3.15 CHARGES AND EXPENSES

(a) The Chargor shall on demand pay:

1. to the Bank all expenses (including legal and out-of-pocket expenses on a full indemnity basis) incurred by the Bank in connection with the negotiation, preparation or completion of this Letter of Set-Off;
2. any expenses agreed to be paid by the Applicant under the Application which forms part of the Indebtedness.
3. if any amount due under the Application shall be required to be recovered through any process of law, or placed in the hands of solicitors for recovery, to pay all the solicitors’ fees and expenses on a solicitor-client basis.

For the purpose of sub-clauses (i) to (iii) above, the Bank shall have the right to debit any account of the Chargor with the Bank.

(b) The Chargor agrees to indemnify and keep the Bank indemnified against any other losses (not specified above) which may be incurred as a result of the Chargor’s breach of the terms and conditions of in this Document. However, the Chargor will not be liable if the losses, damages or expenses are caused by the Bank’s negligence, default or fraud.

## Section 3.16 SUCCESSORS BOUND

This Letter of Set-Off shall be binding upon the heirs, personal representatives, successors in title and permitted assigns of the Chargor and on the successors in title and assigns of the Bank.

## Section 3.17 WAIVER

1. The rights of the Bank under this Letter of Set-Off are cumulative and may be exercised as often as the Bank consider it reasonably appropriate.
2. The rights of the Bank shall not be capable of being waived or varied except in writing.
3. No failure or delay in exercising nor any omission to exercise any rights or remedy of the Bank under this Letter of Set-Off upon any breach of the Chargor shall affect such right or remedy of the Bank.
4. It shall also not be regarded as the Bank waiving its right or remedy or accepting such a breach.
5. The Bank reserves the right to exercise its rights or remedy at such future time without reference to the Chargor.

## Section 3.18 RIGHT TO COMBINE

The Chargor agrees that the Bank may at any time upon a default pursuant to the provisions of the Application combine or consolidate all existing Deposits. Where the Deposits is jointly owned with a third party, consent must be obtained from the third party. Where combination or consolidation requires conversion of currency, the Bank’s prevailing spot rate of exchange to be used and prior notice of at least seven (7) calendar days shall be given to the Chargor.

## Section 3.19 GOVERNING LAW AND JURISDICTION

This Letter of Set-Off is governed by the laws of Malaysia and the parties agree to submit to the jurisdiction of the Courts in Malaysia.

## Section 3.20 NOTICES

1. Any notice, demand or other communication (including computer generated notices/statements that do not require signature) from the Bank under this Letter of Set-Off shall be given in writing to the Chargor at the Chargor’s address, or electronically (including email) as stated in the Schedule and/or last appearing in the Bank’s records. The notices may be given or made by post, electronic email, personal delivery or such other mode as may be determined by the Bank;
2. The notices or other communications are deemed to be received by the Chargor:
3. in the case of post, five (5) days after the date of posting;
4. in the case of electronic mail, on the day it is sent provided that the Bank has not received a failed or undeliverable message from the host provider on the date of transmission;
5. in the case of personal delivery, at the time of receipt; and
6. in the case of courier, at the time of receipt.
7. The Chargor expressly agrees with the Bank to inform the Bank immediately of any change in the contact information such as correspondence address, phone number, and/or email address of the Chargor. Any change in the Chargor’s contact information such as address, phone number, and/or email address is not binding on the Bank unless the Chargor has given notice in writing to the Bank and/or via other channels provided by the Bank.

## Section 3.21 MODIFICATION AND INDULGENCE

The Bank may at any time (by letter or other form of agreement), without in any way affecting this Letter of Set-Off:

1. grant to the Chargor any time or indulgence; or
2. renew any bill, notes or any negotiable securities; or
3. deal with, exchange, release or modify or abstain from perfecting or enforcing any securities or other guarantees or rights it may now or from time to time have from or against the Chargor; or
4. compound with the Chargor or any persons claiming under the Chargor; or
5. enter into any settlement arrangement with the Chargor, or any person claiming under the Chargor; or
6. enter into any modification or indulgence under the terms of the COCD or the Application.

# Section 3.22 FURTHER ASSURANCE

The Bank may from time to time, by notice to the Chargor require the Chargor do such acts or things or execute and deliver to the Bank, such documents as may be necessary to preserve, improve or enforce all or any of its rights under this Letter of Set-Off.

## Section 3.23 CONCURRENT REMEDIES

1. Upon occurrence of an Event of Default, the Bank shall have the right to exercise all or any of the remedies available under this Letter of Set-Off.
2. The Bank shall be entitled to exercise such remedies at the same time or at such other time.
3. In the event the Bank does not wish to exercise its remedies under this Letter of Set-Off, the Bank may also institute civil suit against the Applicant or Chargor to recover the Indebtedness under the Application.

## Section 3.24 DEFECTS IN BORROWING POWERS

## This Letter of Set-Off shall not be impaired, invalidated or be rendered void as a result of any lack of borrowing/or other powers of the Applicant, Chargor or any security party.

## Section 3.25 SCHEDULE

It is agreed that the Schedule shall be an essential part of this Letter of Set-Off and, in the event of any conflict or discrepancy, the Schedule shall prevail for enforcement and interpretation but only to the extent of such conflict or discrepancy.

## Section 3.26 ADDITIONAL SECURITY AND STAMP DUTY

IT IS AGREED AND DECLARED THAT this Letter of Set-Off is additional security for all the Indebtedness of the Applicant. Full stamp duty has been paid on the Charge over Cash Deposits thus this Letter of Set-Off is considered a subsidiary instrument.

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## REMINDER: The Chargor is reminded to read and understand the contents of this Letter of Set-Off before signing below. If there are any terms and conditions in this Letter of Set-Off that the Chargor does not understand, the Chargor is hereby advised to seek independent advice and/or discuss further with the Bank’s representative before signing below.

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| Signed by for and on behalf of the Bank by its attorney in the presence of: | ))) | ……………………………………………………… |
|  Signed by the Chargor(s) in the  presence of:  | ))) | …………………………………………………… |

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| **THE FIRST SCHEDULE**(To be read and construed as an essential part of this Letter of Set-Off) |
| SECTION | ITEM | PARTICULARS |
| 1 | Date of this Letter of Set- Off |       |
| 2 | Name of Chargor Passport/Identity Card No. Address |                 |
| 3 | Place of Business of the Bank in Malaysia |       |
| 4 | Details of Application | Application for \*Express Bank Guarantee / Express Letter of Credit.Applicant:      Beneficiary:      Date of Application:      Amount and currency:      Validity Period:      *[•Delete whichever not applicable]* |

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| --- | --- | --- |
| SECTION | ITEM | PARTICULARS |
| 5 | Details of Applicant\*Where the Applicant is a limited company or other corporationName Registration/Certificate of Incorporation No.Registered Address\*Where the Applicant is an Individual or natural personName of ApplicantPassport/Identity Card No.Address\*Where the Applicant is a Sole Proprietorship / PartnershipNameRegistration No.*\*Delete where not applicable* |                                              |