**CHARGE OVER CASH DEPOSITS**

**(FIRST / THIRD PARTY)**

**Between**

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

**(as the “Chargor”)**

**And**

**AFFIN BANK BERHAD**

**(as the “Bank”)**

## CHARGE OVER CASH DEPOSITS

## (FIRST / THIRD PARTY)

THIS CHARGE 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 (the “**Chargor**”) in favour of AFFIN BANK BERHAD[Registration No. 197501003274 (25046-T)], a company incorporated in Malaysia and having a place of business in Malaysia stated in Section 3 of the First Schedule of this Charge (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 6 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

It was agreed that the Facility, the Indebtedness (as defined below) and all other monies owing and payable by the Applicant under the terms of the Application shall be additionally secured by this Charge and the Letter of Set-Off (as defined below) to be executed.

## ARTICLE I

## DEFINITIONS AND INTERPRETATION

**Section 1.01 DEFINITIONS AND INTERPRETATION**

* 1. All words and expressions defined in the Application when used or referred to in this Charge shall have the same meaning as that provided in the Application. However, if this Charge contains different definitions, then the definitions in this Charge applies.
  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 the definitions in the Application, the following words and expressions in this Charge shall have the following meaning:

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| “**Applicant**” | The person named in Section 6 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 of this Charge. |
| “**Charge**” | Refers to this document or Charge. |
| “**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 the Charge is a First Party Charge, then the Chargor is also the addressed as the Applicant. |
| “**Deposits**” | Such deposits and interest accruing on the deposits or any part of it as described in Section 2.01 and identified in Section 5 of the First Schedule. The term “**Deposits**” also includes deposits in savings or fixed deposits and it also refers to any statements of accounts showing the Deposits. |
| “**Facility**” | The facility as 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. |
| “**Letter of Set-Off**” | The document to be executed by the Chargor concurrently or simultaneously with this Charge. |
| “**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 “this Charge” includes any separate or independent agreement contained and also includes any amendment notified by the Bank or agreed by the parties.
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 liability shall be joint and several.
3. Words importing the singular shall include the plural and the same applies in reverse. Words importing one gender shall include all other genders and the same applies in reverse.
4. The headings used are for purposes of reference only and shall not be used in the construction of this Charge.
5. Terms in this Charge 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. It also includes any part or portion of the Facility or Indebtedness or any amount due.
7. Any action to be done at any time shall also include any action to be done from time to time and the same applies in reverse.
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 Charge 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 CHARGE

All the provisions of the Application shall form part of this Charge. All representations, warranties and covenants made by the Applicant in the Application shall be considered as if they have been made by the Chargor as well. 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 Charge, the provisions in this Charge shall prevail for the purposes of interpretation and enforcement, but only to the extent of such conflict or discrepancy.

## ARTICLE II

## CHARGE

## Section 2.01 CHARGE

In consideration of the Bank agreeing to make available the Facility at the request of the Applicant and/or the Chargor, the Chargor as beneficial owner charges by way of fixed charge all the Chargor’s present and future rights in the sums of money described below together with all interest owing and payable or earned or to be earned on such sums (the “**Deposits**”):

1. the Deposits identified in Section 5 of the First Schedule. It includes additions renewals or replacements of such sum(s) in any currency; and
2. the Deposits or other sums in any currency from time to time standing to the Chargor’s credit or the credit of any other person for the Chargor’s benefit. It shall also include any money market instruments, repurchase agreements, cash margins, escrow accounts, sinking fund accounts, continuing deposits or any account with the Bank, other banks of financial institutions acceptable to the Bank; and
3. the Deposits are to be free from encumbrances (not charged to anybody).

The Deposits shall be a continuing security for the due and punctual payment or discharge of all the Indebtedness owing, incurred or payable to the Bank by the Chargor from time to time. The Chargor as beneficial owner further assigns to the Bank upon the same terms as this Charge any Deposits together with all interest accruing from time to time.

## Section 2.02 CONTINUING SECURITY

The Chargor agrees that this Charge is a continuing security for the payment of the Indebtedness.

## ARTICLE III

## REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE CHARGOR

## Section 3.01 REPRESENTATIONS AND WARRANTY

The Chargor represents and warrants to the Bank that: (i) the Chargor has the capacity to execute, deliver and perform the terms of this Charge; (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 this Charge. 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 enforceable in accordance with its terms.

## Section 3.02 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 continuance of this Charge, 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 Charge 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.

## Section 3.03 AGREEMENT OF THE CHARGOR

The Chargor further agrees that:

1. the Bank shall have the right to convert the Deposits into another currency at any time with at least seven (7) calendar days’ prior notice to the Chargor;
2. the Chargor shall not be at liberty to withdraw the whole or any part of the Deposits without the Bank’s written consent;
3. the Chargor shall not during this Charge deal with, assign, transfer or create any Security Interest or encumbrances on the Deposits; and
4. the Chargor shall deposit with the Bank the respective Deposits (including statements or receipts) in the custody of the Bank until all the Indebtedness have been fully discharged. The Bank may retain the Deposits until full payment of the Indebtedness. After full payment, the Deposits shall be considered surrendered to the Chargor.

## Section 3.04 AUTHORISATION BY THE CHARGOR

**For Express BG Facility**

The Chargor agrees that the Deposits shall be earmarked for the BG Liability. Upon the Bank’s receipt of a demand/claim under the Bank Guarantee, the Chargor irrevocably authorises the Bank to uplift the Deposits (and if the Deposits are uplifted prior to its maturity, upon such terms then applicable to the termination prior to maturity) without being liable to the Chargor for any loss arising from such termination or uplifting of the Deposits or any accrued interest and apply the Deposits towards settlement of the BG Liability as and when the BG Liability falls due or is required to be settled by the Bank.

**For Express LC Facility**

The Chargor agrees that the Deposits shall be earmarked for the LC Liability. Upon presentation of the required documents under the Letter of Credit or where the Applicant has requested for endorsement of the Bill of Lading/Airway Bill prior to examination of the required documents under the Letter of Credit-i, upon the Bank’s receipt of documents presented, the Chargor irrevocably authorises the Bank to uplift the Deposits (and if the Deposits are uplifted prior to its maturity, upon such terms then applicable to the termination prior to maturity) without being liable to the Chargor for any loss arising from such termination or uplifting of the Deposits or any accrued interest and apply the Deposits towards settlement of the LC Liability as and when the LC Liability falls due or is required to be settled by the Bank.

## ARTICLE IV

## MISCELLANEOUS PROVISIONS

## Section 4.01 STATEMENT OF ACCOUNT

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

## Section 4.02 LIMITATION OF BANK’S LIABILITIES

The Bank shall not be liable for any loss caused by the set-off of the Deposits under the terms of this Charge unless such loss is caused by the negligence, default or fraud of the Bank.

## Section 4.03 RIGHT TO COMBINE

The Chargor agrees that the Bank may at any time upon a default of any of the provisions of the Application combine or consolidate all existing Deposits. Where the Deposits is joint 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 shall be used and prior notice of at least seven (7) calendar days shall be given to the Chargor.

## Section 4.04 RIGHT OF SET-OFF

## Upon default of the Applicant or the Chargor under the Application, the Bank may with at least seven (7) calendar days’ notice given to the Chargor, set-off the Deposits to settle the Indebtedness (wholly or partially).

Upon issuance of the notice of 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 available funds so earmarked / put on hold without the Bank’s prior written consent.

## Section 4.05 TIME

Time shall be of the essence of this Charge.

## Section 4.06 TRANSFER OF SECURITY

(a) Save and except if the transfer and/or assignment 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 Charge by notice to the Chargor. The Bank may disclose to such potential assignee or third party such information regarding the 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 Charge 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 Charge without the prior written consent of the Bank.

## Section 4.07 OTHER SECURITIES NOT AFFECTED

Nothing contained in this Charge shall affect any other security held by the Bank at any time to secure the Indebtedness.

## Section 4.08 ALL PAYMENTS RECEIVED TO BE 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 the Chargor.

## Section 4.09 PAYMENT PROVISIONS

1. Place of Payment: All payments to be made by the Chargor shall be made to the Bank at place of business of the Bank which the Bank may specify in writing or servicing branch. However, for Facility granted to the Applicant in foreign currency, the payments may be made in the currency in which the Facility was provided subject to compliance of any foreign exchange rules.
2. Debit: The Bank may debit the Chargor’s account with the Indebtedness and other recovery fees on a solicitor-client basis or other fees allowed by the regulatory authorities to be imposed. If debiting causes the accounts to be overdrawn, interest will be charged accordingly.

## Section 4.10 TAXES

All sums to be paid by the Chargor shall be paid without any deduction or withholding of tax. If the Chargor has to withhold taxes as required by law, the Chargor shall notify the Bank accordingly. Similarly, if the Bank has to withhold part of the Deposits as taxes before the combination and set-off, the Bank shall notify the Chargor.

## Section 4.11 RELEASE OF DOCUMENTS

Upon repayment to the Bank of all Indebtedness, the Chargor shall be entitled to obtain the discharge and release of the Deposits from the Bank at the cost and expense of the Chargor.

## Section 4.12 AMENDMENTS AND ADDITIONAL TERMS

(a) The provisions and terms of this Charge 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.

(b) If the Chargor is not agreeable to the amended terms and conditions of this Charge, the Chargor shall notify the Bank in writing of the same within twenty-one (21) calendar days from the date of notice by the Bank.

(c) 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 Charge.

## Section 4.13 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 Charge; 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 759] 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.

The Chargor expressly consents to the Bank conducting credit checks on the Chargor for the purpose of this Charge 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.

## Section 4.14 WAIVER

1. The rights of the Bank under this Charge are cumulative and may be exercised as often as the Bank considers 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 Charge upon any breach of the Chargor shall affect such right or remedy.
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 4.15 SEVERABILITY

Any term or condition in this Charge which turns out to be illegal, void, invalid or unenforceable shall not cause the remaining terms or conditions to be likewise illegal, void, invalid or unenforceable.

## Section 4.16 MODIFICATION AND INDULGENCE

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

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 with the Applicant in accordance with the terms of the Application.

## Section 4.17 CHANGES IN CONSTITUTION

This Charge shall continue to be valid and binding regardless of the Chargor’s death, bankruptcy, or mental incapacity.

## Section 4.18 MULTIPLE CHARGORS

1. Where this Charge is given by two or more persons, the terms and conditions in this Charge shall be binding on them jointly and severally.
2. The Bank may with prior notice release any of the Chargors from this Charge. The Bank may also vary, settle, compound or give indulgence to any of the Chargors without affecting the Bank’s rights, remedies against the other Chargors.
3. Any notice served under to this Charge on any party comprising the Chargor shall be considered to have been duly served on all the parties comprising the Chargor.
4. The Bank may make a demand under this Charge on any one or more of the persons comprising the Chargor and it shall be binding on the rest.

## Section 4.19 SUSPENSE ACCOUNT

With reasonable justification, any monies received by the Bank under this Charge 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 Charge. 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 4.20 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 Charge;
2. any expenses agreed to be paid by the Applicant under the Application which forms part of the Indebtedness.
3. if the Indebtedness or 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. The debited amount shall be added to the Indebtedness and bear interest according to the terms of the Application.

(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 this Charge. However, the Chargor will not be liable if the losses, damages or expenses are caused solely by the Bank’s negligence, default or fraud.

## Section 4.21 SUCCESSORS BOUND

This Charge 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 4.22 GOVERNING LAW AND JURISDICTION

This Charge is governed by the laws of Malaysia and the parties agree to submit to the jurisdiction of the Courts in Malaysia.

## Section 4.23 NOTICES

1. Any notice, demand or other communication (including computer generated notices/statements that do not require signature) from the Bank under this Charge shall be given in writing to the Chargor at the Chargor’s address or electronically (including email) as stated in the First 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 given to 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 delivery; and
6. in the case of courier, at the time of delivery.
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 4.24 NON-RESIDENTS

In the event that the Chargor is a non-resident the Chargor agrees as follows: -

1. To appoint an agent whose name and particulars are stated in Section 7 of the First Schedule (the “Chargor’s Agent”) whose registered office or address is presently at in Malaysia as the Chargor's agent for service of process out of the courts of Malaysia;

(b) confirms that service of process on the respective agent shall be considered service upon the Chargor;

1. if no agent is appointed, then service on the Chargor’s address in this Charge shall be considered service on the Chargor five (5) days after posting.

## Section 4.25 DEPOSITS OUTSIDE MALAYSIA

In respect of Deposits outside Malaysia, and should the Bank require, the Chargor may provide at the Chargor's own costs and expense a legal opinion from a firm of solicitors acceptable to the Bank to confirm the Chargor's capacity to execute this Charge and application of law governing the same.

## Section 4.26 SCHEDULES

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

## Section 4.27 CONCURRENT REMEDIES

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

**Section 4.28 PRINCIPAL OR PRIMARY SECURITY**

(a) For the purpose of the Section 4(3) of the Stamp Act 1949, this Charge is intended to be, and has been executed as the principal or primary instrument to secure such principal amount as evidenced by the ad valorem stamp duty paid and endorsed from time to time on this Charge together with all interest and monies payable under this Charge from time to time.

(b) In the event of any increase in the Facility following the Applicant's request for Amendment and/or the total monies and liabilities due and owing to the Bank in this Charge shall at any time exceed the principal limit for which this Charge is for the time being stamped, this Charge shall be upstamped for such increased amount.

**Section 4.29 CHARGOR AS PRINCIPAL DEBTOR**

The Chargor’s liability under this Charge is as principal debtor unless the Bank agrees to limit the Chargor’s liability to the Deposits only.

*[the remainder of this page is intentionally left blank]*

**REMINDER: The Chargor is reminded to read and understand the terms and conditions of this Charge before signing below. If there are any terms and conditions in this Charge that the Chargor does not understand, the Chargor is 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 Charge) | | |
| **SECTION** | **ITEM** | **PARTICULARS** |
| 1 | Date of this Charge |  |
| 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 / Letter of Credit  Applicant:  Beneficiary:  Date of Application:  Amount and currency:  Validity Period:  *\*Delete whichever not applicable.* |
| 5 | * Specified Deposits / Ref No. / Account No.   Held with\* (specify the financial institutions holding the Deposits)  Existing Amount |  |
| 6 | Details of Applicant  \*Where the Applicant is a limited company or other corporation  Name  Registration / Certificate of Incorporation No.  Registered Address  \*Where the Applicant is an individual or natural person    Name of Applicant  Passport/Identity Card No.  Address  \*Where the Applicant is a Sole-Proprietorship  / Partnership  Name  Registration No. |  |
| 7 | Detail of the Chargor’s Agent  Name  Address |  |
| *\* Delete where not applicable*   * *Deposits account details may change from time to time as notified by the Bank* | | |