Terms & Conditions for Facilities
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These Terms and Conditions apply to the Facility Letter and the Investment Services Terms and Conditions and may be modified or changed by Standard Chartered Bank (the “Bank”) in its absolute discretion from time to time.

1. Definitions

“Business Days” means any day (other than Friday or Saturday) on which the commercial banks in Kingdom of Bahrain are open for business.

“Facility Letter” means the Facility Letter dated on the date hereof between the Borrower and the Bank to which these Terms and Conditions attach.

“Facilities” means the facilities as listed in paragraph 1 of the Facility Letter as entered into between the Borrower and the Bank.

“Guarantee” shall mean any guarantee, SBLC or any other credit or any other instrument whatsoever from time to time issued or entered into by the Bank for or at the request of the Borrower pursuant to the Facility Letter under which the Bank incurs a liability to a third party (including without limitation, another branch of the Bank).

“Investments” mean investments that are made available by the Bank to the Borrower in debeatures, obligations, shares, stocks, bonds, sukukus, warrants, negotiable instruments, certificates of deposit, notes, units (and rights of participation or other interests in a unit trust scheme, mutual fund or, other collective investment arrangement), unit trust investment(s), all investments in a single or multiple underlying(s), with or without principal protection of the investment at maturity including single or multiple or combination across classes of equity, credit, commodity, FX or rates or any index and other securities of any nature or description.

“Investment Services Account” means the Borrower’s account under which the Bank can on request charge the Borrower for the Investment Services.

“Investment Services Terms and Conditions” mean the terms and conditions that apply to Investment Services entered into by the Borrower and the Bank on or about the date hereof whereby the Bank has agreed to provide the Investment Services and operate the Investment Services Account.

“Security Provider” each person or company that provides Security to the Bank.

“SBLC” shall mean Standby Letter of Credit.

2. The Facilities

The Borrower is only entitled to those Facilities, the details of which are listed in paragraph 1 of the Facility Letter and should disregard those sections of these Terms and Conditions which refer to any other types of Facilities the details of which are not set out in paragraph 1 of the Facility Letter.

(A) Overdraft
(1) Financing by way of an overdraft (the “Overdraft”) on the Borrower’s account with the Bank.
(2) Interest on each overdraft will be charged on monthly basis at the rate shown in paragraph 1 of the Facility Letter.
(3) The Bank may, from time to time, agree with the Borrower the currencies in which this overdraft facility may be utilised. In the absence of an express agreement the overdraft facility may only be drawn in BHD.

(B) Leverage
Such Facility may only be used for the purpose of financing the purchase of Investments and is granted on the basis that the amount of advance made by the Bank shall not exceed a certain value (as stated in the Facility Letter). The Borrower shall be required to fund the balance of the purchase price for such Investments (the “Equity Amount”) from other sources of funding. Interest on each leverage will be charged on quarterly basis at the rate shown in paragraph 1 of the Facility Letter.

The Borrower shall repay to the Bank each leverage loan made hereunder so that the same is received by the Bank in cleared funds on or before 10a.m. on the day which such loan fails due to be repaid.

3. Interest

(A) The Bank shall charge interest over the Facilities as specified in the Facility Letter
(B) Interest shall be calculated daily on a product basis and for the calendar year of 360/365 days as per the market convention of the currency.
(C) Default interest on any sums outstanding under the Facility Letter shall be charged at a rate of 15% p.a. or such other rate determined by the Bank from time to time.

March 2018
4. Conditions Precedent

The Facilities will become available when the Bank has received the following in form and content satisfactory to it:

(a) The duplicate of the Facility Letter duly countersigned by the Borrower, if the Borrower is a company or a corporate entity, applicable, either a certified extract of a resolution of the Borrower authorising acceptance of Facility Letter and naming the person(s) authorized to sign a copy of Facility Letter on behalf of the Borrower, or a notarized power of attorney as determined by the Bank;

(b) Duly signed Security documentation in the form acceptable to the Bank;

(c) Such account opening documentation and declarations as the Bank may require duly completed by the Borrower;

(d) If the Borrower is a company or other corporate entity, a certified copy of the Borrower’s commercial registry and constitutional documents duly certified as being true copies, current and complete annual audited reports, and any other documents related to the company’s profile;

(e) In the case of a Leveraged Facility, evidence that the Equity Amount has been placed on deposit with the Bank by the Borrower;

(f) Any other documentation or information that is deemed by the Bank at its absolute discretion necessary for granting or continuing to grant the Facilities.

5. Prepayment

The Borrower may prepay any or all part(s) of the Facilities by giving notice to the Bank, and shall bear all costs, expenses and fees that may arise (directly or indirectly) as a consequence of such prepayment.

6. Availability and Duration

(A) The Facilities are available upon satisfaction with paragraph 4 (Conditions Precedent) hereof until withdrawn by the Bank;

(B) The Bank may at its sole and absolute discretion, review the Facilities at any time and from time to time and may, pursuant to such review, vary or extend the availability or repayment period, or terminate the Facilities or any part thereof by giving notice thereof;

(C) Any such termination shall cease to be available for utilization;

(D) The Bank may with immediate effect, terminate the Facilities or any part thereof by giving notice thereof;

(E) Unless otherwise agreed by the Bank all amounts outstanding under the Facilities shall be repayable by the Borrower to the Bank by the date of termination so notified by the Borrower by the Bank.

7. Exchange Rate

If any transaction under the Facility Letter involves the conversion of one currency into another the Borrower shall make such conversion at its then prevailing exchange rate (as determined by the Bank) for purchasing the currency for which the Borrower is liable to be converted to the currency of which the prepayment is made at the Bank’s then prevailing rate of exchange (as determined by the Bank) for purchasing the currency for which the prepayment is made.

8. Set-Off

The Borrower agrees that the Bank may at any time without notice or without making demand apply any credit balance to which the Borrower is entitled on all or any of the Borrower’s then existing accounts at any of its branches whether in the KINGDOM OF BAHRAIN or elsewhere (whether current, deposit, loan or any other nature and whether in KINGDOM OF BAHRAIN BHD or in any other currency including any deposits with the Bank and any other investments, whether matured or not) and set-off or transfer any sum outstanding to the credit of any one or more such accounts in or towards the satisfaction of any of the Borrower’s obligations or liabilities to the Bank in the KINGDOM OF BAHRAIN (or elsewhere) whether as principal or surety, actual or contingent, primary or collateral, singly or jointly with any other person.

Where such set-off or transfer requires conversion of one currency into another such conversion shall be calculated at the Bank’s then prevailing rate of exchange (as determined by the Bank) for purchasing the currency for which the Borrower is liable to be converted to the currency of which any such credit balance.

March 2018
9. Representations and Warranties

The Borrower represents and warrants to the Bank on the date of the Facility Letter, the date on which each Facility (or part thereof) is advanced by the Bank and each day thereafter until the Facilities have been repaid in full that:

(a) The Borrower has the power to enter into Facility Letter and has taken all necessary action to authorize the execution, delivery and performance of Facility Letter;

(b) This Facility Letter constitutes legal, valid and binding obligations of the Borrower and is fully enforceable in accordance with its terms;

(c) The Borrower’s obligations under the Facility Letter will rank at least pari passu with all its other present and future unsubordinated obligations;

(d) There are no legal or other proceedings pending or threatened against the Borrower before any court or tribunal which are likely to have a material adverse effect on the Borrower’s financial condition, and

(e) There has been no material adverse effect in the financial condition of the Borrower since the date of this Facility Letter.

10. Events of Default

Upon or at any time after the occurrence of any of the following:

(A) The Borrower fails to pay any sum due to the Bank under the Facilities, any counter-indemnity or any other agreement entered into in respect of any of the Facilities when due or demanded;

(B) The Borrower fails to comply with any other obligation under the Facility Letter or any other agreement entered into in respect of any of the Facilities;

(C) The Security becomes unsalable, invalid, unenforceable or unacceptable to the Bank;

(D) The loan to value ratio (LTV), as specified in the Facility Letter, exceeds the relevant Foreclosure Percentage;

(E) Any circumstances shall arise which, in the opinion of the Bank, give reasonable grounds for belief that the Borrower may not be willing or may be unable to perform any of their obligations under Facility Letter;

(F) The Bank has reason to believe that a material adverse change has occurred or is likely to occur in the Borrower’s financial position or business which is likely in the Bank’s sole opinion, to adversely affect the willingness or ability of the Borrower to comply with its obligations under the Facility Letter;

(G) Where the Borrower is a Company or the Security Provider, it becomes insolvent or ceases to carry on all or a substantial part of its business, or a receiver is appointed in respect of the Borrower or the Security Provider goes into liquidation or is dissolved;

(H) It becomes illegal for the Bank to make or maintain any of its obligations under the Facility Letter;

(I) It becomes prohibited for the Bank to continue offering the Facilities due to a change in the Bank’s internal policies;

(J) Any indemnity of the Borrower to any party is not paid when due or any creditor of the Borrower declares or is entitled to declare any indebtedness due prior to its specified maturity;

(K) An event of default howsoever described occurs under any of the agreements entered into between the Bank and the Borrower in respect of any of the Facilities;

(L) Any representation or warranty made under the Facility Letter and the relevant terms and conditions is incorrect in any material respect as at the date on which the same is made or deemed to be repeated;

(M) Where interest is not paid on the due date, as specified to the Borrower;

(N) Performance of any obligation by either Borrower or the Bank under any of our banking agreements or breaches, or is likely to breach, a law or a requirement of any authority.

Then the Bank shall be entitled by notice to the Borrower to:

1. Declare all monies outstanding under the Facilities to be immediately due and payable together with all interest accrued thereon and all other amounts payable thereunder and declare the Facilities to be terminated and no longer available;

2. Require the Borrower to pay the Bank immediately an amount or amounts by way of cash cover sufficient to indemnify the Bank for all amounts for which it may be liable (contingency or otherwise) to pay under the Facilities for all amounts which the Borrower may be liable to pay to the Bank in respect thereof;

3. Invoke its rights under the Security and sell (or instruct the Custodian to sell) the Investments and/or liquidate the pledged deposits and to apply the proceeds of such sale to set-off against the outstanding Facilities and any other sums outstanding and payable to the Bank under the terms of the Facility regardless of the terms and conditions of the Facilities and the applicable moratoriums;
11. ISSUE OF GUARANTEES

11.1 The Borrower may, subject to receiving the prior approval of the Bank (including without limitation, prior approval of the Bank to the terms and conditions and the form and duration of the relevant Guarantee), request for the issuance of a Guarantee (including a SBLC) by borrowing and delivering to the Bank, not later than the Business Days before the proposed date of issue of such Guarantee under the Facilities, such documents, including such application (and any related undertaking to indemnify and reimburse the Bank) and any approvals and consents which the Bank may require in connection with such issue.

11.2 In consideration of the Bank issuing, at the Borrower’s request, Guarantees from time to time (whether as surety, principal debtor, primary obligor or otherwise), the Borrower hereby agrees:

(A) That the Bank need not check or verify the use or purpose of any Guarantee which the Borrower requests be issued under the Facilities;

(B) if the Bank notifies the Borrower that a beneficiary or any other person entitled to enforce any Guarantee (including a SBLC) obtained by the Borrower and on whose behalf the Guarantees are issued has made a claim or demand on the Bank to pay any sum, including any Costs arising out of any action for injunctive relief or other judicial or administrative relief or any Proceedings in respect of such Guarantee, including without limitation, any Costs arising out of, resulting from or in any way connected with the Borrower’s failure to act in connection with any Guarantee or any Amendments to or in connection with any Guarantee, the Bank shall have no duty to sell the Investments at the best or any particular price.

11.3 The Borrower further undertakes to indemnify and hold harmless the Bank, its subsidiaries, affiliates and parent company, and their respective officers, directors, agents and employees (each, including the Bank, an “Indemnified Person”) from and against any and all acts, omissions, liabilities, obligations, damages, losses, claims, demands, costs or expenses (including without limitation, legal fees and cost of legal proceedings) (together, “Costs”) which any of the Indemnified Persons or the Borrower may suffer or incur arising out of, resulting from or in any way connected with the Guarantee, including without limitation, any Costs arising out of any action for injunctive relief or other judicial or administrative relief or arbitration arising out of or in connection with any Guarantee.

11.4 Unless otherwise expressly agreed by the Bank in writing, and without standing any automatic reduction clause in any Guarantee, the obligation of the Borrower to indemnify the Bank for the full amount of the Bank’s liability under any Guarantee shall not be reduced by reason of any partial performance of the contract between the Guarantor and the Borrower.

11.5 In the event that, at the request of the Borrower, the Bank agrees to amend any Guarantee so as to extend the expiry of that Guarantee or the time for presentation of claims under that Guarantee, or to modify any other terms of that Guarantee or to increase the amount of that Guarantee, the obligations of the Borrower under the Terms and Conditions for Facilities, notwithstanding such amendment, be binding on the Borrower with regard to that Guarantee as so amended and to any action taken by the Bank or any of the Bank’s agents or correspondents pursuant to such amendment.
The Borrower shall, as applicable, accept and pay, or accept upon presentation and pay at maturity, all documents presented or drafts drawn in accordance with the terms of any SBLC.

In relation to the tender of documents under any SBLC, it shall be a sufficient and proper compliance with the terms thereof if the documents purport to be in order and, taken as a whole, contain the description of the obligations as given in the SBLC and appear complete and regular on their face under general scrutiny and none of the Bank, the other branches or offices of the Bank, any correspondents or agents of the Bank shall be responsible for the genuineness, correctness or form of documents or any endorse- ments thereon or any misrepresentation therein as to any matter.

The Borrower shall hold the Bank, the other branches or offices of the Bank, or any correspondents and agents of the Bank free from any liability or responsibility for the consequences (which shall not, in any way, affect the rights of the Bank hereunder) arising from delay or loss in transit, transmission or otherwise of any message, letter, document, draft or the proceeds thereof or the delay, interruption, mutilation, omission or other error in the transmission or delivery of any messages, by mail, facsimile, telex or otherwise, or any error in translation or interpretation of technical terms or arising from any ambiguity in instructions from the Borrower and the Bank shall have the right to transmit the terms of any SBLC without translating them.

The Borrower shall indemnify the Bank, the other branches or offices of the Bank, or any correspondents and agents of the Bank in respect of any claim, loss, liability or expense howsoever arising from or in connection with any SBLC or the related documents, property or proceeds.

None of the Bank, the other branches or offices of the Bank, or any correspondents and agents of the Bank shall be responsible for the following and none of the following shall, in any way, affect the rights of the Bank hereunder:

(a) the form, legal effect, correctness, validity, sufficiency or genuine- ness of documents even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;

(b) failure of any draft to bear any reference or adequate reference to the relevant SBLC, or failure of documents to accompany any draft at negotiation, or failure of any person to send documents apart from drafts as required by the terms of the SBLC or failure of any person to note the amount of any draft on the reverse of a SBLC or to surrender or take up a SBLC; and

(c) any consequences arising from causes beyond the control of the Bank.

12. Joint Borrowers

(a) Operations on the account are governed by the account operating authority;

(b) The Bank does not need to enquire into the circumstances of any instructions any of the Borrowers may give in relation to the conduct of the account;

(c) The Bank is authorised to accept for credit of the account, any cheque or other instrument payable to one or more of the Borrowers;

(d) Each of the Borrowers is liable to the Bank jointly and singly for any outstanding balance; and

(e) If one of the Borrowers die or becomes incapacitated, the surviving accountholder must notify the Bank in writing and the Bank has the right to declare all monies outstanding under the Facilities to be immediately due and payable and take necessary action against the surviving Borrower singly or jointly to pay the Bank.
16. Indemnity

The Borrower agrees to fully indemnify the Bank against all cost and expenses (including legal fees) arising in any way in connection with breach of the Facility Letter, the Investment Services Terms and Conditions and any other agreement derived therefrom and in enforcing these Terms and Conditions and in recovering any amounts due to the Bank or incurred by the Bank in any legal proceedings of whatsoever nature.

17. Notices

The Borrower consents to the Bank, its officers and agents, disclosing information relating to the Borrower and the Borrower’s account(s) and/or dealing relationship(s) with the Bank including but not limited to details of facilities, any security taken, transactions undertaken and balances or positions with the Bank to:

(A) The head office of the Bank, any of its subsidiaries or subsidiaries of its holding company, affiliates, representative and branch offices in any jurisdiction (the “Permitted Parties”);
(B) Professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
(C) Any actual or potential participant or sub-participant in relation to any of the Bank’s rights and/or obligations under any agreement between the Bank and the Borrower, or assignee, novatee or transferee (or any agent or adviser of any of the foregoing);
(D) Any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party; and
(E) Any court, tribunal, regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties.

18. Governing Law

This Facility Letter shall be governed by and construed in accordance with the laws of, as applicable, in the Kingdom of Bahrain.