

# GENERAL CONDITIONS

Effective from August 2019



**GENERAL CONDITIONS**  
**(2019 Version)**

**TABLE OF CONTENTS**

**Our obligations ..... 2**

1. Provision of facilities ..... 2

2. Term of the facilities ..... 2

**Your obligations ..... 2**

3. Repayment of the facilities ..... 2

4. Conditions precedent ..... 2

5. Representations made by you ..... 2

6. Insurance ..... 4

7. Information ..... 4

8. Environmental laws ..... 4

9. Variable interest rates ..... 4

10. Valuations ..... 4

11. Costs to be paid by you ..... 4

12. Excesses and overdue amounts ..... 5

**Review ..... 5**

13. Review of the facilities ..... 5

**Default ..... 6**

14. Default ..... 6

15. Consequences of default ..... 7

**Payments ..... 7**

16. Payments generally ..... 7

17. No deductions from your payments ..... 8

18. Different currencies ..... 8

**Notices ..... 8**

19. Notices ..... 8

**General ..... 9**

20. Engagement of Experts and Consultants ..... 9

21. Waiver ..... 9

22. Currency ..... 9

23. Currency Conversion of Facilities ..... 9

24. Changes in government requirements ..... 9

25. Changes in the law ..... 9

26. Law and jurisdiction ..... 10

27. Existing facilities ..... 10

28. Consolidation of accounts ..... 10

29. Privacy consent ..... 10

30. Financial covenants ..... 10

**Interpreting this agreement ..... 11**

31. Meanings of words and expressions ..... 11

32. Miscellaneous ..... 13

33. Inconsistency ..... 14

34. Other interpretation provisions ..... 14

## Our obligations

### 1. Provision of facilities

We agree to provide you with the facilities in accordance with this agreement. In return, you agree to carry out your obligations under this agreement.

### 2. Term of the facilities

We will provide each facility for the agreed period unless:

- (a) You default and we exercise our option to terminate a facility; or
- (b) There is a change in law that prevents us from providing the facility.

**Note:** *You will be in default if you break your obligations under this agreement. To find out what default means, see clause 14; for our rights if you are in default, see clause 15; for our rights if there is a change in the law which prevents us from making a facility available, see clause 25.*

#### The agreed period means:

- (a) if the letter of offer sets out a specific termination date for the facility, the period until the specific termination date;
- (b) if the letter of offer says that the facility is available at least until the next review date, at least until the next review date;
- (c) if the letter of offer says that the facility is "on demand", the period until we demand repayment.

**Note:** *Different facilities may be provided for different periods. Details of the period for which we agree to provide a particular facility are set out in our offer.*

## Your obligations

### 3. Repayment of the facilities

For each facility, you agree to pay us on the termination date the outstanding money.

You also agree to pay us, on the last of the termination dates for the facilities, all other amounts outstanding but unpaid under any transaction document.

### 4. Conditions precedent

#### What must be done before we will make the facilities available

Our obligation to make any of the facilities available to you is conditional upon our being satisfied that:

- (a) **acceptance:** you have accepted our offer;
- (b) **no default:** no event of default or potential event of default has occurred and is continuing;
- (c) **securities:** we have received the securities described in the letter of offer, properly completed and executed and legally enforceable (and, if a security is registrable, in registrable form) as well as all other documents needed to perfect the securities;

**Note:** *If a security provider is a company, a partnership or acts as a trustee, we may also require some of the documents set out in paragraphs (e), (f) or (g) (as applicable) in respect of the security provider.*

- (d) **account authority:** we have received an account operating authority;
- (e) **companies:** if you are a company we have received a copy of your constituent documents and certificate of incorporation; together with evidence satisfactory to us that each of these documents is complete, correct, fully in force and has not been amended or revoked;
- (f) **partnership:** if you are a partnership we have received a copy of the partnership contract or other constituent document of the partnership together with evidence satisfactory to us that each of these documents is complete, correct, fully in force and has not been amended or revoked;
- (g) **trust:** if you have entered into this agreement as trustee of a trust, we have received the trust deed or other constituent document of the trust together with evidence satisfactory to us that each of these documents is complete, correct, fully in force and has not been amended or revoked; and
- (h) **other conditions:** all the other conditions precedent set out in the letter of offer have been fulfilled.

### 5. Representations made by you

- (1) You represent that, on the date you accept our offer, each of the following statements is true:
  - (a) **transaction documents binding:** each of the transaction documents executed by you or a security provider is binding on you or the security provider, as applicable, and can be enforced against you or the security provider in accordance with its terms;
  - (b) **no present default:** there is no default (that is material in the context of this agreement) by you or any security provider under any other agreement, *undertaking or instrument*;  
**Note:** *The agreement, undertaking or instrument need not be this agreement or an undertaking or instrument under it. It may be with someone other than us.*
  - (c) **no potential default:** nothing has happened that would become a default mentioned in paragraph (b) simply by notice being given or time elapsing;
  - (d) **no trust:** except as notified to us in writing, neither you nor any of the security providers is acting as trustee of a trust;
  - (e) **no undisclosed security interests:** except as notified to us in writing, there are no security interests over:
    - (i) your property; or

- (ii) any security provider's property over which a security has or will be given to us;
- (f) **no undisclosed court cases:** except as notified to us in writing, no litigation, arbitration or administrative proceeding exists or is pending, and you do not know of any which is threatened, that may have a material adverse effect on:

- (i) your or a security provider's business, assets or financial condition; or
- (ii) your or a security provider's ability to perform obligations under any of the transaction documents;

- (g) **your financial statements:** your most recent annual financial statements:
- (i) show a true and fair view of your financial condition and the results of your operations for the financial year that they cover;
  - (ii) disclose all material liabilities; and
  - (iii) if you are a company - comply with the laws of your place of incorporation and (except where inconsistent with those laws) generally accepted accounting principles in your place of incorporation.

You also represent that there has been no material adverse change in your financial condition since the date of the financial statements;

- (h) **financial statements of certain security providers:**
- for each corporate security provider which is related to you, its most recent annual financial statements:
- (i) show a true and fair view of its financial condition and the results of its operations for the financial year that they cover;
  - (ii) disclose all material liabilities; and
  - (iii) comply with the laws of its place of incorporation and (except where inconsistent with those laws) generally accepted accounting principles in its place of incorporation.

You also represent that there has been no material adverse change in the security provider's financial condition since the date of the financial statements;

- (i) **full disclosure:** you have disclosed to us all material matters that you know of which affect:
- (i) your or a security provider's business, assets or financial

- condition; or
- (ii) your or a security provider's ability to perform obligations under any of the transaction documents;

- (j) **no contravention:** your entering into this agreement, your executing any of the other transaction documents and carrying out your obligations under them will not contravene:
- (i) a law, regulation or government requirement that applies to you or any of your property;
  - (ii) an authorisation, licence or exemption that applies to you or any of your property;
  - (iii) an agreement which binds you or any of your property;
  - (iv) if you are a company, your constituent documents;
  - (v) if you are a partner, any partnership contract or other constituent document of the partnership; or
  - (vi) if you has entered into any transaction document as trustee of a trust, the trust deed or other constituent document of the trust.

You also represent that your execution of the documents will not give rise to a need for an authority, licence or exemption that you do not already hold;

- (k) **environmental laws:** in the case of business loan facilities and general corporate facilities:
- (i) you and each security provider have complied with all environmental laws relating to your and each security provider's business and property; and
  - (ii) you and each security provider have complied with all environmental laws for property secured or to be secured by you or them;

- (l) **no contravention by security provider:** the execution by a security provider of any of the transaction documents and the carrying out of its obligations under them will not contravene:
- (i) a law or government requirement that applies to it or any of its property;
  - (ii) an authorisation, licence or exemption that applies to it or any of its property;
  - (iii) an agreement which binds it or any of its property;
  - (iv) if a company, its constituent documents;
  - (v) If a partner, any partnership contract or other constituent document of the partnership;

- (vi) if it has provided any security as trustee of a trust, the trust deed or other constituent documents for the trust.

You also represent that execution by a security provider will not give rise to a need for an authority, licence or exemption that it does not already hold.

- (2) Each time you make a drawing under, or otherwise use, the facilities, you will be representing that, as at the time you make the drawing, or otherwise use the facilities, each of the statements set out in clause 5(1) is true.
- (3) You agree to give us prompt written notice if, after it was made or given to us, a representation or statement made to us or information given to us ceases to be true or becomes misleading.

## 6. Insurance

If your letter of offer requires you to insure any property:

- (a) you will insure that property for all usual risks under a policy acceptable to us. The Bank must be recorded on the insurance policy as the appropriately ranked mortgagee. Before drawdown, and annually, you must provide us with either a cover note or a certificate of currency, together with a receipt for the premium(s) paid, for the property; and
- (b) to the extent you have an existing insurance policy over that property, you must provide evidence satisfactory to us that premiums are paid to date on the existing policy over the security property (which we confirm is adequate for our requirements).

## 7. Information

- (a) You agree to provide us with any financial or other information we ask for by the time that we specify. We agree that we will only ask you for information which we consider relevant. You only need to provide the information to us in writing if we ask for it to be in writing.
- (b) If you or a security provider are a public company, you also agree to provide us with all written information that you give to your shareholders (generally or to any class of them) or to a stock exchange, at the same time as you give it to them.

## 8. Environmental laws

In the case of business loan facilities and general corporate facilities, you agree to:

- (a) comply, and ensure each security provider complies, with the requirements of all environmental laws; and
- (b) ensure that each security provider complies with the requirements of all environmental laws in relation to property given or to be given by it to us as security.

## 9. Variable interest rates

- (a) If your letter of offer provides that the interest rate of a facility is variable, the interest rate may be varied by the Bank from time to time.
- (b) Movements in interest rates applicable to any facility will be notified to you through either, or both of, local newspaper advertisements or notification displayed in branches of the Bank.

## 10. Valuations

If your letter of offer provides that property provided as security may be required to be revalued, or must be periodically revalued, then

- (a) any such revaluation:
  - (i) must be carried out at your cost while facilities continue to be provided by the Bank; and
  - (ii) must be undertaken by a reputable property valuer acceptable to the Bank; and
- (b) any offer contained in the letter of offer is subject to the property valuations being at an acceptable level to the Bank.

## 11. Costs to be paid by you

- (1) You agree to pay us, on demand, the amount of all our costs in connection with the transaction documents or transactions under this agreement.

This includes our costs in taking any action in connection with a transaction document. In particular:

- (a) negotiating, preparing, translating, reviewing, amending, executing, registering and terminating or releasing a transaction document;
  - (b) any government charges, fees or duties;
  - (c) valuing anything that we require to be valued;
  - (d) giving a consent; or
  - (e) enforcing or protecting our rights under the transaction documents
- (2) You agree to reimburse us for costs and expenses incurred by us in relation to any of the matters referred to in clause (1) and any inquiry, notice or order by a government agency (with respect to which we consider we are obliged to comply) concerning:
    - (a) you or a security provider or any past or present officer of yours or a security provider; or
    - (b) a transaction or activity the subject of the transaction documents or in relation to which any form of credit or benefit is provided or to be provided under a transaction document, including reimbursement for our management time and expenses (which is to be charged at reasonable rates) and legal costs and expenses (including inhouse lawyers). This clause survives the termination of this agreement or any facility under this agreement.

### **Break consequences**

- (3) If our obligations in respect of a facility are terminated:
- (a) before the termination date for any reason; or
  - (b) because we give you notice under clause 15(3), you agree to pay to us the amount which we determine is required to compensate us for all costs which we may incur or losses which we may suffer, directly or indirectly, because of the termination.

**Warning:** If you prepay a facility, the amount of costs or losses may be significant, particularly in the case of fixed rate facilities or certain treasury products (such as swap transactions) where we have entered into contracts with third parties.

If you wish to prepay part or all of a facility, you should discuss it with us first and we can calculate the costs or losses that you would have to pay if you made the prepayment. This will help you to decide whether you want to go ahead with the prepayment.

**Note:** *When calculating prepayment costs or losses, we will make an allowance to you for any benefit that we will get because of the prepayment.*

### **Security Documents – Costs and Fees**

- (4) If your letter of offer includes a security schedule then, unless we have set out in the letter of offer the liability for likely costs of preparing and registering a security document, including the payment of any government charges, fees or duty, you agree that such costs will be for your account.

### **12. Excesses and overdue amounts**

- (1) You agree to pay us interest on each amount (including interest) which:
- (a) is in excess of a facility limit (an "excess"); or
  - (b) is not paid when it is due (an "overdue amount").
- (2) The interest rate for excesses and overdue amounts is a rate determined by us which may vary from time to time. Details can be found in your letter of offer.
- (3) Interest accrues daily from and including the day when:
- (a) in the case of an excess, the excess first occurred until there is no longer an excess; or
  - (b) in the case of an overdue amount, the amount becomes due and payable until the amount is paid. You agree to pay us that interest on the first business day of each month.

**Note:** *We may change the day for payment of this interest. See clause 16.*

- (4) You agree to pay us, on demand, any excess and any overdue amount.
- (5) You agree to pay us, on demand, in addition to the interest payable under sub-clause (1), a fee determined by us so that the interest and the fee will compensate us for the costs we incur or loss we suffer as a result of an excess and an overdue amount.

- (6) If your letter of offer for a facility refers to an excess fee then this fee, if charged, is payable on the date of the excess and any subsequent increase.

## **Review**

### **13. Review of the facilities**

#### **Right of review**

- (1) We have a right to review the facilities (and the conditions of the facilities, including pricing and securities) in accordance with this clause,

#### **What we can do on a review**

- (2) If, following a credit re-assessment, we determine that there has been a change in credit, we may give you a written notice stating that we wish:
- (a) to change any of the conditions of the facilities provided to you; or
  - (b) to terminate a facility, but only if the letter of offer says that the particular facility is provided until at least the review date.

We must give you at least 30 days written notice, unless you agree to a shorter period. If we give notice before a review date, the notice period cannot expire before the review date.

**Note:** *Sub-clause (2) does not allow us to do any of the following things unless you agree or unless you are in default:*

- (i) *alter the period which we have agreed with you to make a facility available (see clause 2 for agreed period);*
- (ii) *change the conditions of a facility before the review date; or*
- (iii) *change a condition of a facility, if we have previously agreed with you in writing that we will not change that condition (for example, if we have agreed to a fixed rate of interest for a particular period, we cannot change that fixed rate of interest for that period).*

- (3) If we give you notice that we wish to change any of the conditions of the facility provided to you, then unless we agree otherwise with you:
- (a) the changes take effect from the day when you accept the changes; and
  - (b) if you do not accept the changes before the end of the notice period then, with effect from the end of the notice period, all the facilities become repayable on demand by us.
- (4) If we give you notice under sub-clause (2) that we wish to terminate a facility, then termination takes effect at the end of the notice period. You must pay us immediately upon termination the outstanding money under the facility (including any costs or losses determined under clause 11(2)).

#### **Our Rights under other clauses**

- (5) This clause does not affect:
- (a) any other rights we have if you are in default; or
  - (b) our right at any time to terminate

immediately a facility which is "on demand" by making a demand for payment.

### **Forms of Review**

- (6) If your letter of offer provides that your facility is subject to annual review and the annual review is not carried out on or before the next review date, we may carry out the annual review at any time after the next review date.
- (7) If your letter of offer provides that your facility is subject to periodic review, we may, at our discretion, and at any time during the term of your facility exercise this right. We will notify you in advance if we decide to do this.

### **New Basel Capital Accord or Mandatory Legal or Financial Reporting Standards**

- (8) Irrespective of any other right under clause 13 we may review the facilities (and the conditions on which they are made available) upon the commencement or implementation of the New Basel Capital Accord or any law or financial reporting standard (whether under Cambodian law or under any other law or requirement internationally) with which we must comply. We will notify you of this review in writing and negotiate in good faith with you on the conditions (including pricing) of the facilities. If an acceptable agreement cannot be reached within 30 days on the terms and conditions for continuing the facilities, then you must repay the facilities in full within 90 days of receipt of written notice.

## Default

### **14. Default**

#### **Events of default for all customers**

- (1) You will be in default if any of the following things happen:
- (a) **failure to pay:** you fail to pay on time an amount that is due and payable by you under a transaction document;
- (b) **securities become enforceable:** an event occurs that causes a security interest or a security given by you to become enforceable;
- (c) **statements false or misleading:** a representation or statement made to us or information given to us (whenever it was made or given) in or in connection with the transaction documents was false or misleading (whether by omission or otherwise) when it was made or given;
- (d) **other obligations not paid:** you fail to pay before the end of any grace period an amount that is due and payable to someone other than us in respect of obligations relating to an arrangement under which you have been provided with credit or any other financial arrangements;
- (e) **acceleration of other obligations:** any obligation that you have to any person becomes due and payable, or capable of being declared due and payable, before its stated maturity, but this does not include where it

does so at your option;

- (f) **transaction documents ineffective:** a provision of a transaction document:
- (i) does not have effect, or ceases to have effect, in accordance with its terms; or
- (ii) is or becomes void, voidable, illegal, invalid or unenforceable;
- (g) **distress or execution:** some or all of your property is seized by or on behalf of a creditor or under legal process;
- (h) **ceasing business:** you stop, or threaten to stop, carrying on all or a material part of your business;
- (i) **insolvency:**
- (i) you suspend payment of your debts;
- (ii) you are, or state you are, or are presumed by law to be, insolvent or unable to pay your debts; or
- (iii) you take a step for the purpose of entering into a compromise or arrangement with any of your creditors or with any of your members;
- (j) **facilities used for different purpose:** in our opinion, you use the credit provided under a facility for a purpose other than the purpose for which we made it available;
- (k) **change in circumstances:** circumstances arise that, in our opinion, may have a material adverse on:
- (i) your business, assets or financial condition; or
- (ii) your ability to perform your obligations under any transaction document;
- (l) **other events specified in letter of offer:** an event occurs which is specified in the letter of offer to be an event of default;
- (m) **garnishee notice:** a garnishee notice (or any notice (whatever called) under which we are required to deal with money in accordance with the notice regardless of any contrary direction you may give us) is given in respect of tax or other money you are said to owe;
- (n) **failure to perform obligations:** you breach an obligation under a transaction document and either:
- (i) the breach cannot be remedied; or
- (ii) if it can be remedied-we give you a written notice requiring you to remedy it and, 5 business days later, it is still not remedied.

#### **Companies - additional events of default**

- (2) If you are a company, you will also be in default if any of the following things happen:

- (a) **dissolution or liquidation:** an application is made, a resolution is passed or an order is made for your dissolution or liquidation;
- (b) **administration, etc.:** an administrator, receiver, receiver manager or similar officers is appointed to you or any part of your property or any step is taken by anyone for this purpose;
- (c) **maintenance of capital:** without our written consent, you pass a resolution or take a step:
  - (i) to reduce your share capital;
  - (ii) to limit your ability to make calls on your uncalled share capital; or
  - (iii) to buy shares in yourself other than by redeeming redeemable preference shares.

**Individuals - additional events of default**

- (3) If you are an individual (including a partner), you will also be in default if any of the following things happen:
  - (a) **act of insolvency:** you commit an act of insolvency;
  - (b) **insolvency notice:** an insolvency, bankruptcy or similar notice is issued against you;
  - (c) **insolvent:** you become personally insolvent (however described in any applicable law); or
  - (d) **administrator appointed:** an administrator or other trustee for creditors in insolvency is appointed in respect of any of your property.

**Partnerships - additional events of default**

- (4) If you are a partnership, you will also be in default if any of the following things happen:
  - (a) **change in partnership:** without our written consent there is a change in the partner contract or other constituent document of the partnership; or
  - (b) **dissolution of partnership:** without our written consent, the partnership is dissolved or liquidated.

**Security providers**

- (5) Sub-clauses (1) to (4) inclusive (modified as necessary) apply to a security provider. If a security provider is in default, then you are in default.

**You will notify us of a default**

- (6) You agree to notify us in writing promptly if you are in default or a potential event of default occurs.

**15. Consequences of default**

**Our options**

- (1) If you are in default, we may (in our direction) waive any or all of the rights that we have.

**Note:** *Clause 21 deals with waiver.*

- (2) If you are in default, we may do any one or more of the following:
  - (a) terminate immediately some or all of our

obligations under this agreement;

- (b) change immediately some or all of the conditions on which one or more of the facilities are made available (for example, we may cancel an unused facility limit by reducing the facility limit for the facility or we may make the facility "on demand");
- (c) make some or all of the money that is or may become owing to us in respect of one or more of the facilities immediately due and payable to us (this includes the face value of all outstanding bills); and
- (d) require you to provide us with enough cash to cover us for any contingents liabilities we may have under a facility (for example, a contingent liability under a letter of credit).

- (3) We will give you written notice after acting under sub-clause (2)(a) or (b).

- (4) We will give you written notice before acting under sub-clause (2)(c) or (d). The notice is effective immediately once we give it.

**You agree to compensate us for losses caused by defaults**

- (5) You agree to pay us, on demand, the amount of all the costs we incur, and the losses we suffer, because of, or in connection with, an event of default.

Without limiting what this amount may be, it includes whatever amount we determine is needed to compensate us for costs incurred or losses suffered because of early payment of amounts outstanding. We will take into account any benefit that, in our opinion, we will get because of the early payment or the failure.

**Defaults affect other agreements with us**

- (6) You agree that an event of default under this agreement is an event of default or an acceleration event under all other agreements that you have with us.

For example: This sub-clause applies to default under a security. This sub-clause applies despite anything in the other agreement.

**Payments**

**16. Payments generally**

**Payments need to be cleared**

- (1) Every payment you make to us must be in immediately available funds.

**Due date for payment not a business day**

- (2) Unless this agreement provides otherwise, if the due date for a payment is not a business day, the amount is payable on the preceding business day. Where the due date falls on the 29th, 30th or 31st of a month which does not contain such a date, the payment will be due on the last day of that month.

**We may make payments from your account with us**

- (3) You authorise us to debit any of your accounts with any amount payable by you under this agreement. We may debit an amount to your account without making



a demand even though another provision of this agreement says that the amount is payable on demand. However, we do not have to debit your account and we may ask you to pay the amount to us. If we debit your account, we will give you written notice that we have done this.

**Note:** For example, clause 11(1) of this agreement requires you to pay on demand certain costs incurred (such as government charges, fees and duty and registration fees on securities). Clause 16(3) allows us to debit these fees to your account without having to serve a formal demand. Other amounts which may be debited to your account include interest which is due on a facility.

**We may change the time for payment of interest**

- (4) We may, at any time, change when, how often and how you will pay us interest under any of the facilities.

**Note:** If we make a change of this kind, we will give notice of the change before it happens. We will do this by giving you written notice no later than 30 days before the change takes effect.

**Changes to fees and charges**

- (5) We may introduce new fees or charges for facilities. We may also change existing fees or charges as well as when, how often and how you will pay them. Any new fee or charge or change will be notified to you no later than the day on which the change takes effect.

**Changes to names**

- (6) We may change any of the names of any of our interest rates, facilities or publications.

**Notices**

- (7) We may notify you under clause 16(5) or 16(6) by notice given to you in writing or notice displayed in any of our branches, on our website or by advertisement in a major or national daily newspaper. You will be deemed to have received the notice immediately after any such display or advertisement.

**We will provide you with information on current interest rates and standard fees and charges.**

- (8) Information on current interest rates and our standard fees and charges will be made available to you on request from your Relationship manager.

**Repayment to the facility by cheque**

- (9) If you are able to make a repayment to your facility by cheque, and the cheque is dishonored, the repayment will be treated as not having been made and interest will continue to accrue on the unpaid daily balance until actual payment is received by us.

**17. No deductions from your payments**

**Payments will be made without deductions**

- (1) You agree to make each payment to us under this agreement without any:
- (a) set-off or counterclaim;
  - (b) deduction; or
  - (c) withholding for or on account of tax or duty (to the maximum extent that the law allows).

**If withholding tax or other deductions are made**

- (2) You agree that if a law requires you to make a deduction or withholding for or on account of tax or duty (other than any imposed on our overall net income) from a payment to us:
- (a) you will pay us, when the payment is due, whatever additional amount is needed so that what we actually receive, after taking into account the deduction or withholding, is what we would have been entitled to receive if no deduction or withholding had been made;
  - (b) you will indemnify us against any loss we suffer or cost we incur because you do not make the deduction or withholding; and
  - (c) you will promptly give us a copy of any document relating to the amounts paid or payable in respect of the deduction or withholding.

**18. Different currencies**

**United States dollars**

- (1) Unless a transaction document provides otherwise, all payments made under or for the purposes of this agreement or another transaction document must be made in United States dollars.

**Converting from one currency to another**

- (2) The method to be applied for conversion of one currency to another will be to use our standard procedures for currency conversion.

**If you make a payment in a different currency**

- (3) This sub-clause applies if, because of a law, an order of a court or for any other reason, a payment under this agreement or another transaction document must be made in a currency other than the currency in which it is required to be paid under the relevant transaction document. If the amount paid in the other currency, when converted by us into the currency in which it is required to be paid under the relevant transaction document, falls short of the amount due and payable under the relevant transaction document, you agree to pay us, on demand, the amount of the shortfall.

The amount to be paid will be determined:

- (a) on the day when the payment is actually made; or
- (b) if the payment is made in the case of a dissolution, liquidation or other insolvency administration - the date fixed by the relevant law for the determination of claims.

Your obligation to make this payment is separate from and independent of your other obligations under this agreement or the other transaction documents.

**Notices**

**19. Notices**

**How we give you notices**

- (1) A notice or demand that we give to you under this agreement or the other transaction documents will be signed by one of our bank managers or by our lawyers.

(2) We may give you a notice or demand under this agreement or the other transaction documents by leaving it at your address or by posting it in a pre-paid envelope addressed to you. Your address is that shown in the letter of offer or the last address for you that we have recorded in our books.

(3) A notice or demand that we give you for the purposes of this agreement or the other transaction documents will be given and received:

- (a) if we leave it at your address mentioned in sub-clause (2) - when left; or
- (b) if we post it in accordance with sub-clause (2) - on the next business day after posting.

#### **How you give us notices**

(4) A notice that you give to us under this agreement or the other transaction documents must be signed by you or by your authorised representative.

(5) You may give us a notice under this agreement or the other transaction documents by leaving it or by posting it in a pre-paid envelope addressed to us. Our address is that shown in the letter of offer or some other address that we have given you written notice of. Your notice will be effective when we receive it.

(6) If you give us a notice that is expressed to be, or must be read as, irrevocable, you are not able to revoke it and it binds you from the time you give it

(7) Despite the rest of this agreement, we may act in accordance with any instruction in relation to a drawing or in relation to anything else under or in connection with this agreement given, or purporting to be given to us, by telephone or facsimile or other electronic means, orally or in writing, by you or your authorised representative. You agree that, if we do an act in accordance with an instruction given in any of these ways, our act is done with your authority and we shall not be liable for any loss or damage incurred as a result of any error, omission or misinterpretation of such instruction howsoever caused. You also agree that we shall not be liable for any loss or damage incurred as a result of us accepting instructions from any person purporting to act on your behalf. We reserve the right to refuse to accept or act on any such instructions.

## **General**

### **20. Engagement of Experts and Consultants**

You agree that any Bank appointee commissioned by the Bank is engaged exclusively for our benefit, whether or not their fees are to our account or borne directly or indirectly by you; and neither we nor any Bank employee will be liable to you or any other person for any loss, liability, cost or expense that is caused (directly or indirectly) by anything that a Bank appointee does or does not do arising out of the provision of a service to the Bank.

### **21. Waiver**

The rights that we have under the transaction documents can not be waived except by our giving you written notice waiving the particular right.

In particular:

(a) we do not waive any right that we have in connection with this agreement merely because we do not exercise it, or do not exercise it as soon as we can; and

(b) if we exercise a right once or partly, it does not mean that we cannot exercise that right again or other rights.

### **22. Currency**

Unless provided otherwise in a letter of offer, a reference to *dollars*, \$, *US\$*, or *USD* is to the lawful currency of the United States of America.

### **23. Currency Conversion of Facilities**

In the event that the United States Dollars depreciate against the Cambodian Riel or if the Royal Government of Cambodia introduces currency controls that limits or prevents the purchase of United States Dollars, we may at our discretion convert your facility to the Cambodian Riel using our standard procedures for currency conversion. We will promptly inform you in writing if we decide to this. We need not notify you in advance. We can do this despite any previous agreement to the contrary. Our right under this clause is in addition to any other right we have at law or under any other agreement.

### **24. Changes in government requirements**

(1) This clause applies if:

- (a) after the date of the letter of offer:
  - (i) a change in a government requirement or a new government requirement;
  - (ii) a change in a tax or a new tax; or
  - (iii) a change in the interpretation of a government requirement or a tax, affects facilities of the kind contemplated in the letter of offer; and
- (b) its effect is, in our opinion, directly or indirectly:
  - (i) to increase the cost to us of providing or maintaining the facilities or of providing funds under them; or
  - (ii) to reduce the effective rate of return to us (whether on capital, assets, deposits or otherwise) on the facilities. For the purposes of this clause "tax" includes duties but does not include a tax on our net income in the normal course of our business.

(2) You agree to pay to us, on demand, the amount calculated by us as necessary to compensate us for the increase in cost or reduction in rate. The amount payable will be calculated by us from the day when we first incurred the cost or suffered the reduction.

### **25. Changes in the law**

If we give you notice that, in our opinion it has become illegal in a jurisdiction or otherwise impracticable for us to continue to make a facility available, our obligations in relation to the facility thereupon terminate. Such a

situation could arise because of:

- (a) a change in a government requirement or a new government requirement;
- (b) a change in the law, written or unwritten, or a new law; or
- (c) a change in the interpretation or implementation of a government requirement or law.

## 26. Law and jurisdiction

- (1) This agreement is governed by the law in force in Cambodia.
- (2) Unless we choose otherwise, any dispute, controversy or claim about or in connection with the transaction documents shall be settled by arbitration in Singapore in accordance with the UNCITRAL Arbitration Rules as at present in force. For this purpose:
  - (a) The appointing authority shall be the Chairman or Deputy Chairman of the Singapore International Arbitration Centre (SIAC). The arbitration shall be managed by SIAC in accordance with its practice rules and regulations.
  - (b) The number of arbitrators shall be one.
  - (c) The language to be used in the arbitrator proceedings shall be English (unless agreed otherwise by the Bank). If we choose to refer any dispute to arbitration in accordance with this clause, the rules of arbitration, the arbitral process or the decision of the arbitral panel appointed under this clause shall not be objected to, disputed or appealed against or otherwise challenged on any grounds whatsoever under the laws of Cambodia. The decision of the arbitral panel shall be registered in Cambodia pursuant to the Law on the Adoption and Implementation of the UN Convention on the Recognition of Foreign Arbitral Awards. It shall be fully enforced in accordance with its terms.
- (3) Despite sub-clause (2), if we choose, we and you will submit to the non-exclusive jurisdiction of the courts of Cambodia.

## 27. Existing facilities

### ***The effect this agreement has on existing facilities***

- (1) This clause only applies if we are already making facilities available to you at the date of the letter of offer.
- (2) The arrangements for the facilities that we are making available to you at the date of the letter of offer, including the conditions on which those facilities are being made available, (the "existing arrangements") continue until both of the following things happen:
  - (a) you accept our offer; and
  - (b) everything that must be done before we will make the facilities available in accordance with the letter of offer has been done to our satisfaction.

In particular, until both of the above things happen, we are still able to exercise the rights that we have under the existing arrangements, including the right to terminate, or vary the conditions of, the existing facilities.

**Note:** *The letter of offer tells you what to do to accept the offer. Clause 4 sets out things that have to be done before we will make the facilities available. Others may be set out in the letter of offer.*

- (3) When both of the things referred to in Sub-clause (2)(a) and (b) have happened, the conditions of the existing facilities will from that time onwards be those contained or referred to in this agreement. However:
  - (a) this agreement does not replace any security, guarantee, authority, power or indemnity in force at the date of the letter of offer (these documents and their provisions are not affected in any way); and
  - (b) if the letter of offer says that some or all of the conditions of an existing facility are not to be changed, those conditions will not be replaced by the conditions of this agreement.

## 28. Consolidation of accounts

We may at any time combine, consolidate, merge or apply any credit balance in any of your accounts, or any amount available to us by way of set-off, lien or counterclaim, towards payment of money which is then, or will become, due and payable by you to us under any transaction document. If we do any of these things, we will tell you in writing. We can do any of these things despite any previous agreement to the contrary. You authorize us to do anything in your name which is necessary for us to be able to do any of these things. Our rights under this clause are in addition to any other rights we have at law or under any other agreement.

## 29. Privacy consent

You consent to the Bank disclosing your personal information to:

- (a) any organization that is in an arrangement or alliance with the Bank;
- (b) any service provider the Bank engages to carry out or assists its functions and activities;
- (c) any security provider, assignee or transferee or any one who is considering becoming one; and
- (d) any credit bureau or similar registry for the purpose of performing a credit check.; and
- (e) otherwise where required by law.

## 30. Financial covenants

If your letter of offer prescribes financial covenants with which you must comply, the following definitions, ratio formulae and rules of interpretation shall apply:

### (1) Definitions

**"Total Liabilities"** means the total of current liabilities

and non-current liabilities of you and your controlled entities as disclosed in the consolidated financial statements. This, by definition, includes redeemable preference shares, subordinated loans, provisions and dividends declared or accrued but not paid.

**"Total Equity"** is the aggregate of issued and paid-up capital, non-redeemable preference shares, capital reserves, general reserves, revenue reserves, foreign currency translation reserves, minority interest, retained profits and share buybacks.

**"Total Intangible Assets"** is the aggregate of future income tax benefit, preliminary expenses, prepayments, goodwill, patents/trademarks/licences/brand names and other intangibles. The Bank may, for the purposes of calculating this ratio, reclassify some assets as "Intangible". We will advise you if we do this.

**"Effective Equity"** means Total Equity less Total Intangible Assets.

**"Interest Expense"** means all interest expenses, including those of intra-group loans and directors, owner and shareholder loans.

**"Non Current Subordinated Debt"** means those loans from directors/owners/ shareholders/associated and related companies that have been postponed or subordinated under the Bank's security to the Bank's satisfaction to the extent of the amount postponed or subordinated.

**"EBITDA"** means the consolidated net profit (loss) before deduction of interest, tax depreciation and amortisation.

**"Total Debt Serving"** means principal payments plus interest and plus ongoing fees.

## (2) Ratio Formulae

### Current Ratio:

$$\frac{\text{Total Current Assets}}{\text{Total Current Liabilities}}$$

### Interest Cover Ratio:

$$\frac{\text{Net Profit (Loss) Before Interest and Tax}}{\text{Total Interest Expense}}$$

### Adjusted Gearing Ratio:

$$\frac{\text{Total Liabilities} - \text{Non Current Subordinated Debt}}{\text{Effective Equity} + \text{Non Current Subordinated Debt}}$$

### Debt Service Ratio:

$$\frac{\text{Net Operating Cash (EBITDA)}}{\text{Total Debt Serving}}$$

## (3) Interpretation

You agree that the interpretation and testing of the financial covenants set out in the letter of offer will be carried out in accordance with rules determined in the absolute discretion of the Bank and the accounting concepts, standards and disclosure requirements of Cambodian Accounting Standards.

## Interpreting this agreement

### 31. Meanings of words and expressions

(1) In this agreement and (subject to paragraph (4) below) in any letter of offer, unless the context otherwise requires:

**"acceleration event"** means an event which, if it happens, results in money becoming due and payable to us immediately under another agreement that you have with us.

**"account operating authority"** means an authority that appoints your authorized representative, given by you in a form acceptable to us.

**"J Trust Royal Bank Base Rate"** means the rate of interest determined from time to time by the Bank to be an appropriate benchmark of prevailing interest rates, as published by the Bank from time to time.

**"this agreement"** means the agreement constituted by your acceptance of our offer.

**"Your authorized representative"** means, at a particular time, a person authorized by you, in the most recent account operating authority that you have given to us, to act on your behalf for all dealings, matters and transactions with us.

**"the Bank"** means J Trust Royal Bank Ltd.;

**"bank appointee"** means an expert or consultant providing services to the Bank.

**"bank manager"** means:

- (a) an officer of ours who holds or is acting in a position the title of which is or includes the word "manager" or "accountant"; or
- (b) someone whom we have appointed as our attorney.

**"business day"** means:

- (a) for a payment or a drawing which is required under this agreement to be made in a place other than in Phnom Penh, a day on which our office is open in the place where the payment or drawing is to be made;
- (b) otherwise, a day on which our head office is open for general banking business.

**"change in credit"**; a change in credit occurs if, following a credit re-assessment:

- (a) we would only be prepared to provide any one or more of the facilities on different conditions from those on which it or they are provided at the time of the credit re-assessment; or
- (b) we would not be prepared to provide a particular facility.

**"change of control"** means that, without our prior written consent, effective control of you or any security provider or any of your or their subsidiaries is, in our opinion, altered to any material extent from that subsisting at the date of our offer.

**"condition"**, in relation to a facility, means any provision of this agreement.

**"costs"** include for example:

- (a) our charges and commissions;
- (b) fees;
- (c) expenses;
- (d) taxes or duties (for example, any government charge, fee or duty); and
- (e) legal costs, for this agreement or transactions under this agreement

**"credit re-assessment"** means an assessment of the facilities made by us:

- (a) applying our then current criteria for assessing applications for the provision of facilities; and
- (b) as if we were assessing a new application at that time by you for the provision of the facilities.

**"customer"** means, in relation to a facility, the person named as the customer in the letter of offer and includes the person's executors, administrators, successors and permitted transferees.

**"default"**: you will be in default if an event of default occurs.

**"drawdown date"** means the day on which a drawing is, or is proposed to be, provided to you under this agreement.

**"drawdown notice"** means a notice, given by you in accordance with the Specific Conditions for a facility, asking for a drawing.

**"drawing"** means any form of credit provided or to be provided to you under any of the facilities.

"to make a drawing" and similar expressions mean to obtain financial accommodation under any of the facilities.

**"effective control"** of a corporation means:

- (a) control of the composition of the board of directors of that corporation;
- (b) control of more than half the voting rights attaching to shares in that corporation; or
- (c) control of more than half the issued share capital of that corporation (excluding any part which carries no right to participate beyond the specified amount in the distribution of either profit or capital),

and includes the acquisition by any means by a person of an interest in shares in that corporation sufficient to allow that person either alone or jointly to exercise the control referred to in items (a), (b) or (c) of this definition.

**"environmental law"** means any law which has the purpose of protecting the environment from pollution including, without limitation, pollution relating to air, water, noise or chemicals (and any modification of, or substitution for, the law).

**"environmental representation"** means the representation in clause 5(1)(k).

**"event of default"** means any of the circumstances described in clause 14 of these General Conditions.

**"facility"** means each and every facility to be made available to you under this agreement.

**"financial statements"** means:

- (a) of a company means:
  - (i) its balance sheet and profit and loss statement for each financial year; and
  - (ii) any other financial statements that is required by any law of its place of incorporation to be prepared.

The financial statements must be certified by a director of the company as giving a true and fair view of:

- (A) its financial condition as at the end of the financial year; and
- (B) the results of its operations for that financial year;
- (b) of an individual - means a statement of financial position signed by the individual, in a form satisfactory to us, describing his or her present assets and liabilities and setting out an income and expenditure budget for the following year; and
- (c) of a partnership - means the partnership accounts, certified by two partners as giving a true and fair view of the financial condition of the partnership as at the end of the financial year, together with copies of the partnership income tax return for the previous financial year.

**"garnishee"** means a person (including us) who:

- (a) holds, or may hold, money for you or on your account; or
- (b) owes, or may owe, you money;

**"garnishee notice"** means a notice which is validly given to a garnishee under any law which requires a garnishee to deal with money in accordance with the notice regardless of any contrary direction which you may give a garnishee.

**"government agency"** means:

- (a) a government or government ministry, department, authority or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) charged with the administration of a law.

**"government requirement"** means a law, or a direction or requirement, whether it has the force of law or not, imposed by the National Bank of Cambodia or a government agency in Cambodia or a similar body in a foreign country.

Examples of government requirements include reserve requirements, minimum capital and net worth requirements, special deposit requirements, borrowing limitations, gearing constraints and capital adequacy rules;

**"instruction"** includes:

- (a) a notice.
- (b) a request; and
- (c) an acceptance (including an acceptance of additional varied facilities).

**"law"** includes any law, royal decree, or decree, sub-decree, prakas, decision, circular or order issued by the Royal Government of Cambodia.

**"New Basel Capital Accord"** is an internationally implemented standard developed to strengthen the way in which Banks measure their capital requirements internally (taking account of the risk of their loan portfolios).

**"originators or brokers"** mean third parties accredited by the Bank to introduce new customers to us. Originators or brokers are not agents of the Bank.

**"our offer"** means our offer in the letter of offer.

**"outstanding money"**, for a particular facility, means the amount (without converting the currency in which it is expressed) actually or contingently owing by you to us under the facility and includes interest and costs.

**"other security"** means a mortgage, pledge, antichrese, gage, lien, charge assignment or any other arrangement with any person or entity other than the Bank (including any set-off arrangement) having a similar effect as a grant of security, other than any security:

- (a) advised to us by notice from you before entering into the agreement; or
- (b) created subsequently with our prior written consent.

**"potential event of default"** means circumstances that will become an event of default simply by the passing of time or if some notice is given.

**"review date"** means the date specified as such in the letter of offer.

**"security"** means a security interest granted to us for your obligations (whether under this agreement or not) and which has been given to us previously or will be given to us in the future.

**"security interest"** means:

- (a) any right or interest of any kind given by way of security (including, for example, a mortgage, antichrese, gage, pledge, lien, charge or assignment);
- (b) any other arrangement (including any preferential, trust, title retention or set-off arrangement) having a similar commercial effect as a grant of security; or
- (c) a guarantee or indemnity.

**"security provider"** means a person who has given, gives or is to give a security and includes the person's executors, administrators, successors and transferees.

**"settlement"** means the action we take on your behalf to acquire or dispose of assets or property.

**"termination date"**, for a facility, means:

- (a) the termination date for the facility set out in

the letter of offer; or

- (b) the day when we terminate our obligations in relation to the facility under this agreement.

**"transaction document"** means any of the following:

- (a) the letter of offer;
- (b) these General Conditions;
- (c) any Specific Conditions for each of the facilities;
- (d) the securities; or
- (e) any other document required in connection with this agreement, and also means any documents or agreements that supplement or amend any of these or replace them.

**"us"** and **"we"** mean the Bank.

**"you"** means customer.

### ***Provisions about companies***

(2) For the purposes of this agreement:

- (a) **"subsidiary"** means a company in which the customer owns more than half of the issued capital and **"wholly-owned subsidiary"** means a company in which the customer owns all of the issued capital; and
- (b) **"related company"** means a company in which the customers or the shareholders of the customer own more than 50% of the issued capital.

### ***Customer more than one person***

(3) If a customer is made up of more than one person:

- (a) the liability of those persons under this agreement is joint and several; and
- (b) a reference to "you" or "customer" includes a reference to each of those persons individually and to any two or more of them together.

### ***Word and expressions defined elsewhere***

(4) Despite sub-clauses (1) to (3), words and expressions defined in the letter of offer or in the Specific Conditions for a facility have the meaning they have in the letter of offer or the Specific Conditions, whichever is relevant.

## **32. Miscellaneous**

(1) Any obligation that you have under this agreement to pay us amounts of money as costs, or on account of a loss that we may have suffered, is a continuing and independent obligation and survives even if this agreement is terminated.

(2) You agree that our written determination of any amount in connection with this agreement (including a determination of how much you owe us at a particular time) is conclusive unless there has been a manifest error.

(3) If, in any jurisdiction, a provision of this agreement is illegal or unenforceable, this agreement is to be interpreted, for the purposes of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable.

(4) You may not transfer any of your rights or obligations under the transaction documents unless we consent in writing. We may transfer any of our rights or obligations under the transaction documents.

**We may pay fee to originators or brokers**

(5) We may pay fees to originators or brokers because, for example, they may have referred your application for finance to us. Originators or brokers are not agents of ours but they independently contract with us to refer loans and in return are paid a fee.

**Statement**

(6) In relation to accounts for which we would normally issue statements, we will issue statements as agreed between you and us. Deposits or repayments which are made to your facility on the last day of a statement period may not appear on the statement issued for that period. The deposits or repayments will, however, be shown on your next statement, together with a note confirming the effective date of the deposit or payment.

**Accounts reconciliation**

(7) You must review and reconcile your records in respect of each account held with us within 7 days (as arranged between you and us) after the end of each calendar month and notify us immediately if:

- (a) there has been any alleged omission from, or debits wrongly made to, an account, or
- (b) any unauthorized transaction has been effected in respect of an account.

**Except to the extent:**

- (i) you notify J Trust Royal Bank pursuant to this clause 32(7);
- (ii) any bank fees or charges incorrectly debited or credited by J Trust Royal Bank, all entries in the statement of account at the end of that 7 days shall be conclusive evidence without further proof that they are correct and complete and we shall be free from all claims in respect of such accounts.

**Disruption to service**

(8) A disruption is where a service is temporarily unavailable or where a system or equipment fails to function in a normal or satisfactory manner. We will only be liable for loss or damage suffered because of a disruption where that disruption is caused by an event within our reasonable control. We will not be liable for consequential loss or damage because of such disruption. This disclaimer is in addition to, and does not restrict, any other provision contained in these terms and conditions which limits the Bank's liability.

**Anti money laundering**

(9) You agree that we may delay, block or refuse to make a payment if we believe on reasonable

grounds that making the payment may breach any law in Cambodia or any other country, or may directly or indirectly involve the proceeds of unlawful conduct and we will incur no liability to you if we do so. You agree to provide all information to us who we reasonably require to comply with any law in Cambodia or any other country. You agree we may disclose information which you provide to us and or make reports to law enforcement agencies or regulators where required by any law in Cambodia or any other country. You declare and undertake to us that the payment of money in accordance with your instructions by us will not breach any law in Cambodia or any other country.

**Drawing down or operating on facilities**

(10) The law requires that all account owners and signatories be properly identified. Some facilities may be provided that are not associated with an account. For the purposes of this clause, facilities provided without an associated account will be regarded as accounts. Before you drawdown or operate on facilities, we will, if you have not previously been identified by us, require you to provide documents or identification to verify your identity.

**Right to withdraw offer**

(11) We may withdraw our offer under any letter of offer at any time before you accept it if we become of anything which, in our opinion, adversely alters the basis on which we made our offer.

**33. Inconsistency**

- (1) If there is an inconsistency between the letter of offer and either these General Conditions or the Specific Conditions for a facility, the letter of offer prevails.
- (2) If there is an inconsistency between these General Conditions and the Specific Conditions for a facility, the Specific Conditions prevail.
- (3) If there is an inconsistency between this agreement and a security, this agreement prevails.

**34. Other interpretation provisions**

- (1) A reference to an individual or person includes a reference to a company and vice versa.
- (2) The singular includes the plural and vice versa.
- (3) A reference to an agreement, a document or a law is a reference to the agreement, document or law (and, if applicable, any of its provisions) as amended, notated, supplemented or replaced for the time being.

For example: Where our original letter of offer has subsequently been varied, a reference in any of the transaction documents to the letter of offer means the letter of offer as varied.

- (4) A schedule to a document is a part of the document.
- (5) Section, clause and other headings and notes are not part of this agreement; they are for convenience only.
- (6) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

J Trust Royal Bank Ltd.

 J Trust Royal Bank