

# CapSphere

## Standard Terms & Conditions

### – Borrowers

#### *Version History*

Version	Issued to	Date
1.00	Securities Commission Malaysia	01/07/2016

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## STANDARD TERMS AND CONDITIONS

These standard terms and conditions and the fee schedule setting out fees payable by the Issuer to CapSphere and the date on which such Note (as defined herein) is payable (collectively the "Agreement"), the Privacy and Data Protection Policy and the Code of Conduct, constitute the entire agreement between the corporate user registered as a member of the Platform to obtain funds (the "Issuer") and CapSphere Services Sdn. Bhd. ("CapSphere"), being the owner and operator of the Platform.

All access and use of the contents and services provided on the Platform shall be governed by this Agreement. Unless otherwise provided, any updates, enhancement, variation or addition to the Platform or any Service, shall be subject to this Agreement.

The Issuer's electronic acceptance, acknowledgement of this Agreement, or commencement of its use of this Platform constitutes the Issuer acceptance of this Agreement, which shall take effect upon the Issuer's first access of the Platform.

## 1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set out against them: -

**"Agreement"** means these standard terms and conditions and any document which is supplemental hereto or which is expressed to be collateral herewith or which is entered into pursuant to or in accordance with the terms hereof;

**"Business Day"** means a day on which banks in Malaysia are open for business and shall exclude Saturdays, Sundays and public holidays;

**"Calculation Period"** means each period during which interest is payable, as applicable.

**"CapSphere Account"** shall have the meaning ascribed to it in Section 4.1;

**"CMSA"** means Capital Markets And Services Act 2007 (Act 671) of Malaysia.

**"Code of Conduct"** means the Code of Conduct available on the Platform as from time to time amended, varied and supplemented;

**"Day Count Fraction"** means, the fraction used to calculate a rate or an amount of interest for any Calculation Period, and where "30/360" is specified in the terms, the number of days in the Calculation Period divided by 360, calculated in accordance with the following formula:

$$\text{Day Count Fraction} = \frac{[360 - (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

**"Y1"** is the year expressed as a number, in which the first day of the Calculation Period falls;

**"Y2"** is the year, expressed as a number, in which the day immediately following the last day of the Calculation Period falls;

**"M1"** is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

**"M2"** is the calendar month, expressed as a number, in which the day immediately following the last day of the Calculation Period falls;

**"D1"** is the first calendar day, expressed as a number, of the Calculation Period, unless such number is 31 in which case D1, will be expressed as 30; and

**"D2"** is the calendar day expressed as a number immediately following the last day included in the Calculation Period, unless such number would be 31 and D1 is greater than 29, in which case D2 will expressed as be 30;

**“Debentures”** shall have the meaning ascribed to it in Section 2 of Part 1 of the CMSA, which shall include debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:-

- a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;
- b) a cheque, banker’s draft or any other bill of exchange or a letter of credit;
- c) a banknote, guarantee or an insurance policy;
- d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
- e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any investment note issued under the terms of such an agreement; or
- f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette ;

**“Early Redemption Option”** means the Issuer may redeem the Notes, in whole but not in part, on every Interest Payment Date upon giving an irrevocable notice to the Payee through the Platform at least 20 calendar days prior to the nearest Interest Payment Date.

**“Equal Instalment”** means a Investment Note by which an instalment of the Principal Subscription Amount and/or interest accrued and due up to the date of payment shall be payable on such dates as set out in a repayment schedule specified in the Investment Note, and on the Maturity Date, the Principal Subscription Amount would have been paid in full;

**“FSA”** means the Financial Service Act 2013 of Malaysia;

**“Issuer”** means a corporate borrower which is registered as a member on the Platform;

**“Issue Request”** shall mean the request by an Issuer for Payees to subscribe for a Investment Note to be issued by the Issuer;

**“MASB”** means the Malaysian Accounting Standard Board;

**“Maturity Date”** means the date on which the Maturity Period ends;

**“Maturity Period”** means such period within which the full amount of the Note will be due and payable;

**“Minister”** means the Minister for the time being charged with the responsibility for finance;

**“Parties”** mean the Payee and CapSphere, and each of them individually shall be a **“Party”**;

**“Payee”** means a user which is registered as a member on the Platform who is intending to fund Issue Requests;

**“Platform”** means [www.moolahsense.com](http://www.moolahsense.com);

**“Principal Subscription Amount”** means the principal amount payable or paid by Payees who have subscribed to the Notes;

**“Privacy and Data Protection Policy”** means the Personal Data Protection Act 2013 of Malaysia;

**“Investment Note”** or **“Note”** means the investment note issued by the Issuer in consideration of the Principal Subscription Amount paid by the Payee(s), which shall include the Standard Terms and Conditions to Investment Note set out on the Platform;

**“Prospectus”** shall have the meaning ascribed to it in Section 226 of Division 3 of Part 6 of the CMSA, which means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary

prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

**“Repayment Date”** means such date on which repayment of the Principal Subscription Amount, interest and/or such other amounts payable under the Note, such dates as set out in a repayment schedule specified in the Investment Note;

**“RM”** mean Malaysian Ringgit, being the lawful currency of Malaysia;

**“Securities”** shall have the meaning ascribed to it in Section 2 of Part 1 of the CMSA, which means:

- a) debentures, stocks or bonds issued or proposed to be issued by any government;
- b) shares in or debentures of, a body corporate or an unincorporated body; or
- c) units in a unit trust scheme or prescribed investments,

and includes any right, option or interest in respect thereof;

**“Services”** shall have the meaning ascribed to it in Section 2.6;

**“Subscription Offer”** means an offer submitted by a Payee over the Platform in response to an Issue Request, stating the Principal Subscription Amount that the Payee wishes to subscribe for upon the Note.

The expressions the **“Issuer”** and the **“Payee”** shall include their respective successors and assigns.

- 1.2 Any reference in this Agreement to **“Sections”** is to the sections of this Agreement.
- 1.3 The headings to the Sections are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires or permits, references to the singular number shall include references to the plural number and vice versa, references to persons shall be construed as including bodies corporate and vice versa and words denoting any gender shall include all genders.
- 1.5 Any reference to a statutory provision shall include such provision as from time to time modified, amended or re-enacted so far as such modification, amendment or re-enactment applies or is capable of applying to any transactions entered into hereunder.

## 2. REGISTRATION WITH THE PLATFORM

- 2.1 To become a registered member of the Platform, the Issuer shall fulfill the following criteria (or such other or additional criteria as may be notified by CapSphere generally through the Platform or specifically to the Issuer) and provide CapSphere with the information and documents set out hereinunder:
  - a) the Issuer shall be an established and creditworthy business currently operating and registered in Malaysia by way of a company or a sole proprietorship, limited liability partnership, private company or unlisted public company. For the avoidance of doubt, the Issuer shall not be an individual;
  - b) the Issuer shall furnish to CapSphere corporate documents and/or records filed with or provided by MASB to evidence that it fulfills the criteria set out in Section 2.1a);
  - c) the Issuer, if a limited liability partnership, shall furnish to CapSphere its Partnership Agreement, if available; or if a company, shall furnish to CapSphere its directors resolution approving the registration of the Issuer with CapSphere and a certified true copy of its Memorandum & Articles of Association (M&A);
  - d) the Issuer shall not have any outstanding court judgements entered against it;
  - e) the Issuer shall furnish to CapSphere its financial statements (audited where applicable) or such other equivalent documents;
  - f) the Issuer shall furnish to CapSphere its bank statements;

- g) the Issuer shall furnish to CapSphere details of a valid Malaysia bank account to facilitate the repayments of Principal Subscription Amounts; and
  - h) the Issuer, its directors, members or partners must meet the minimum credit and fraud risk criteria required by CapSphere, which include, inter alia, obtaining reports from credit bureaus and/or other sources specified by CapSphere and providing such reports to CapSphere;
- 2.2 As part of the registration process, CapSphere shall have the right to authenticate the identity of the Issuer and persons authorized to act on its behalf, including without limitation, requesting for the document authorizing such person to act on the Issuer's behalf and other information and documents not described in Section 2.1 above. The Issuer shall not be admitted to the Platform unless CapSphere is in its sole discretion satisfied with the relevant identification documents.
- 2.3 Registration with the Platform includes the provision by the Issuer of a valid email address and a password (or such other security measures as the Platform may from time to time implement), which are necessary for the Issuer to gain access to restricted areas of the Platform. Each time the Issuer accesses the Platform, the Issuer shall enter its email address and password (or such other security measure as the Platform may from time to time implement).
- 2.4 The email address and password belong exclusively to the Issuer and are not transferable. The Issuer shall keep its email address and password confidential and secure at all times. The Issuer shall be responsible for all information and activity on the Platform by anyone using its username and password. In particular, the Issuer shall be responsible for the use of its account by its employee, sub-contractor, agent or other authorized persons. CapSphere reserves the right to terminate, suspend or restrict the access of the Issuer to the Platform and to cease acting on the Issuer's instructions, if there is the reasonable suspicion that the person logged into the Issuer's account is not the Issuer or an authorized person of the Issuer or where CapSphere suspects that the account will be used for illegal, fraudulent or unauthorized uses. Any breach of security, loss, theft or unauthorized use of the Issuer's email address, password or security information must be notified to CapSphere immediately.
- 2.5 Upon successful registration with the Platform, the Issuer agrees not to adapt or circumvent the systems in place in connection with the Platform, nor access the Platform other than through the normal use of it.
- 2.6 Upon successful registration with the Platform, the Issuer agrees that CapSphere, as the owners and operators of the Platform, may collect, use and disclose the information it collects in accordance with the purposes and uses identified in the Privacy and Data Protection Policy. If the Issuer has provided CapSphere with an email address, the Issuer consents to receive, from time to time, email messages from and through CapSphere, including information about our products and services.
- 2.7 Upon successful registration by the Issuer on the Platform, the Issuer shall be entitled to enjoy, for the duration of this Agreement, the services which CapSphere may provide through the Platform ("**Services**"), subject to any addition, modification, suspension or termination of such Services whether specifically or only in relation to the Issuer, from time to time, at the discretion of CapSphere without prior notice to the Issuer.
- 2.8 Upon successful registration by the Issuer on the Platform and/or on submission of Issue Requests, CapSphere shall have the rights to carry out credit and fraud checks on the Issuer, its member(s), partner(s), director(s) and other aspects of its business. CapSphere applies its own internal guidelines and policies when assessing registrations and Issue Requests, and has complete discretion over the admission of Issuers onto the Platform and/or the successful posting of Issue Requests on the Platform.

### 3. THE PLATFORM

- 3.1 As a member of the Platform, the Issuer shall be able to submit Issue Requests ("Issue Requests") to obtain Principal Subscription Amounts from Payees willing to fund these Issue Requests. The Issuer agrees and acknowledges that it shall ensure the aggregate Principal Subscription Amounts obtained by the Issuer through the Platform, together with funds raised through the issuance of other Securities and Debentures, during any 12 month period shall not exceed RM5,000,000. The aggregate amount shall be calculated on a 12 months rolling basis.

- 3.2 Such Issue Request should include such details as shall be specified in the form for the Issue Requests including but not limited to:
- a) the aggregate Principal Subscription Amounts required by the Issuer;
  - b) the tenure of the Principal Subscription Amounts; and
  - c) purpose and / or planned use of fund to be raised from Issue Request and relevant business case.
- 3.3 The Issuer warrants that all information submitted to the Platform, whether in the Issue Requests or in any other forms or documents submitted, shall be true and correct and shall not have any material non-disclosure that would result in the information being submitted by the Issuer being misleading.
- 3.4 The Issuer agrees to full disclosure by CapSphere of all information collected by CapSphere from the Issuer, whether from the Platform or from other means, to the Payee and any other third parties as CapSphere may decide in its discretion in connection with the Services, Platform, this Agreement or to comply with any regulatory requirement or directive, or for marketing or promotional purposes.
- 3.5 The Issue Requests are not made in or accompanied by a Prospectus that is registered by the Securities Commission Malaysia.
- 3.6 Directors and/or shareholders (where the Issuer is a private company or unlisted public company) and partners (where the Issuer is a limited liability partnership) of the Issuer may be required to give personal guarantees before the Issue Request will be successfully posted on the Platform;
- 3.7 Upon the publishing of an Issue Request, prospective Payees shall have up to 28 days (the "Subscription Period") (or such other period as may from time to time be notified on the Platform) to make Subscription Offers (the "Subscription Process"). The details of the Issue Request can be edited at any time before it is submitted to CapSphere. For the avoidance of doubt, the Issue Request may not be amended after the Issuer's acceptance of Subscription Offers.
- 3.8 An Issue Request shall be considered as provisionally accepted and successfully matched where it is satisfied that the Subscription Offers amounts to at least 80% (or such other percentage as may from time to time be prescribed by CapSphere) of amount requested for in the Issue Request
- 3.9 When an Issue Request is successfully matched, a single Investment Note (in accordance to Appendix 1) shall be issued by the Issuer to all Payee electronically, and signed and endorsed by the Issuer. The Issuer agrees that it shall be bound by the terms of the Investment Note executed in this manner. The Issuer shall execute the physical copy of the Investment Notes. If the Issuer fails to execute the Investment Notes within three (3) Business Days of being notified to do so by CapSphere, the Issuer shall be deemed to have withdrawn its Issue Request.
- 3.10 The Issuer agrees that the Investment Note issued by an Issuer shall incorporate the terms of the Standard Terms and Conditions to the Investment Note.
- 3.11 This Section 3 is subject to the internal policy guidelines of CapSphere, which may be varied and/or amended from time to time. Any changes, variations or amendments to any part of this Section 3 will be notified to the Issuer through the Platform.
- 3.12 The Issuer acknowledges that upon issue of the Investment Notes, it shall undertake to pay to the relevant Payees named thereon the Principal Subscription Amount.

## **4. ARRANGEMENT FOR THE ISSUE OF THE INVESTMENT NOTE**

- 4.1 CapSphere maintains an account ("CapSphere Account") with a financial institution licensed in Malaysia and the account is held in trust by a third party trustee. Respective Payee shall transfer into the CapSphere Account the amount of Principal Subscription Amount it is intending to fund before submitting the respective Subscription Offer, which will be disbursed to the respective Issuer upon the execution of the Investment Note.

- 4.2 For the repayment of the Principal Subscription Amount, the Issuer shall execute such instructions and forms for the purposes of payment, in accordance with the terms of the Investment Note and this Agreement, via standing instructions including but not limited to the Interbank GIRO ("IBG"), to CapSphere, of payments (including but not limited to payments of Principal Subscription Amounts and payments to CapSphere of fees and charges) under the Investment Note and this Agreement respectively. The Issuer authorises CapSphere on its behalf to:
- a) Deduct from any monies held by CapSphere on behalf of the Issuer, whether under trust or escrow, without notice to the Issuer, any such payments due to any Payee or CapSphere; and
  - b) Instruct the Payee or any other third person proposing to make any payment to the Issuer to make such payment directly to CapSphere.
- 4.3 In the event that the Issuer misses, fails to pay, or only partially pays any instalment on such due date of the repayment of the Principal Subscription Amount or interest other payment that is due to any Payee in accordance with the repayment schedule specified in the Investment Note, or fails to fully pay up the Principal Subscription Amount upon the Maturity Date, the Issuer authorizes CapSphere and CapSphere shall have the right to: -
- a) contact and deal with the Issuer, either by CapSphere itself or through an agent acting on its behalf to request for an explanation for the non-payment and to collect the payment the Business Day after the payment is due;
  - b) treat the account of the Issuer as delinquent one (1) Business Day (or such other period as may from time to time be prescribed by CapSphere) after the payment was due, and levy an overdue administrative charge of the higher of RM500 or 1% of the unpaid and overdue amounts (or such other amounts as may from time to time be prescribed by CapSphere) as at that date;
  - c) on behalf of Payees, levy a late interest charge on the unpaid, overdue and/or outstanding amounts as at that date, at a minimum rate of 30% per annum (or such other amount as may from time to time be prescribed by CapSphere), such late interest charge to be calculated and shall accrue on a daily basis. For the avoidance of doubt, CapSphere shall pay such late interest charge collected to the Payee, and the obligation of the Issuer to pay such late interest charge shall in no circumstances be waived by CapSphere;
  - d) report such default in payment to the third party credit bureaus from which the credit ratings of the Issuer are obtained, and adjust the information and/or indicators published to the Payee accordingly;
  - e) at the cost and expense of the Issuer, if any amount of Principal Subscription Amount is due but not repaid, at any time appoint such persons (including but not limited to third party professional debt collectors and/or legal advisers and/or bailiffs) to collect from and/or institute proceedings against the Issuer for such amount due. The Issuer acknowledges that in doing so, the debt owing under the Note may be assigned by the Payees to CapSphere or a company appointed by CapSphere; and
  - f) undertake such action as may from time to time be authorised by the Payees
- 4.4 The Issuer acknowledges that notwithstanding any other section in this Agreement, CapSphere may, at such time in its sole and absolute discretion, agree with the Issuer to restructure the remaining amounts payable under the Investment Note and amend the Investment Note, and amend the Investment Note, in any manner that it deems fit, and as many times as it deems necessary. For the avoidance of doubt, no such restructuring can take place without the written agreement of the Issuer. The Issuer further acknowledges and agrees that CapSphere may require additional and/or restated security documentation to be executed by the Issuer (and any third party or guarantor as the case may be), or independent advice to be taken by the Issuer, each as a precondition to any restructuring.

## 5. PROCESSING AND ADMINISTRATIVE FEES

- 5.1 Upon registering with CapSphere to become an Issuer, the Issuer shall pay to CapSphere a processing fee of RM1,200 (or such other rate as may be notified by CapSphere, generally through the Platform or specifically to the Issuer). Such processing fee is to be paid prior to the raising of Issue Request by the Issuer.



- 5.2 In consideration of the Services provided, the Issuer shall pay to CapSphere an administrative fee ("Issuer Success Fee") at a rate as specified prior to the publishing of an Issue Request (or such other rate as from time to time notified by CapSphere to the Issuer within 30 days prior written notice). Such administrative fee to be paid upfront upon the completion of each Issue Request in accordance to Section 3.8.
- 5.3 CapSphere shall be authorized to deduct, from all Principal Subscription Amount and other sums received by CapSphere on behalf of the Issuer, any fees (including the administrative fee and trust account charges) and other amounts due to CapSphere. CapSphere may at its discretion require that any fees and any other amounts due to CapSphere be paid by a fund transfer to the bank account stipulated by CapSphere.

## **6. PAYEE'S OBLIGATIONS AND UNDERTAKINGS**

- 6.1 The Issuer warrants, undertakes and agrees as follows:-
- a) each of its Issue Request will be considered successfully matched and the Principal Subscription Amount will be disbursed to it only when all the conditions herein are satisfied;
  - b) the maximum amount of Investment Notes the Issuer can issue during a 12 months period shall, together with funds raised through the issuance of other Securities and Debentures during that same 12 months period, be RM5,000,000 or such other amount as from time to time notified by CapSphere on the Platform. The maximum amount shall be calculated on a 12 months rolling basis;
  - c) the Issuer has not made, and shall not make, in connection with any fundraising, during any 12 months period, any offers of Securities and Debentures, including Issue Requests, to more than 50 persons, including the Payees or potential Payees approached through the Platform;
  - d) the Issuer shall, when submitting an Issue Request, complete such form as shall be prescribed by CapSphere through the platform;
  - e) any Issue Request made shall be irrevocable but the acceptance of such Issue Request through the Platform or Services shall not constitute any legal obligation on the part of CapSphere to process or fulfill the Issue Request and such Issue Request may be withdrawn or terminated by CapSphere in its absolute discretion at any time;
  - f) the Issuer shall repay all Principal Subscription Amount in accordance with the terms of the respective Investment Notes, such repayment to be made by IBG into the CapSphere Account or in such other manner as may be notified by CapSphere to the Issuer;
  - g) the Issuer shall not act in any manner that constitutes a breach of any terms of the Investment Note (incorporating the Standard Terms and Conditions to Investment Note), the Privacy and Data Protection Policy, the Code of Conduct, and any Security Documents; and
  - h) the Issuer shall comply, in all respect, with all laws.
- 6.2 The Issuer further undertakes and warrants to CapSphere as follows:-
- a) the Issuer warrants and represents that all information provided in the Issue Request, through the Platform or the Services, or under this Agreement are true, correct and not misleading in any respect and shall forthwith notify CapSphere in writing when any information earlier provided becomes untrue, false or misleading in any respect;
  - b) any Issue Requests made and Principal Subscription Amount obtained by the Issuer shall be by the Issuer as principal and not as nominee for any other person;
  - c) the Issuer shall promptly notify CapSphere of any instances in which a Payee contacts the Issuer to request for the details relating to the Issuer including but not limited to contact information of the shareholders, directors or officers of the Issuer;

- d) the Issuer shall not pass any resolution approving the change in directors of the Issuer or the divestment of any or all of the shareholding or any shareholder of the Issuer, without first obtaining the prior written consent of CapSphere;
  - e) the Issuer shall promptly, after becoming aware of them, notify CapSphere of the occurrence of any event described in Section 8.1g) and 8.1j); and
  - f) the Issuer shall not pass any resolution for the winding-up of the Issuer, nor cause a petition for winding-up to be presented against the Issuer, or the appointment of a receiver or receiver and manager of the respective undertakings or assets of the Issuer.
- 6.3 The Issuer acknowledges that in undertaking its fundraising through the Platform, it shall satisfy the applicable requirements under the CMSA, and does not rely on the Platform to ensure compliance.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 The Issuer hereby represents and warrants as follows:-

- a) the Issuer is a company duly incorporated and validly existing or a limited liability partnership duly set up and validly existing under the laws of Malaysia with full power and authority to own its properties and to conduct its business as currently conducted;
- b) the information provided by the Issuer pursuant to Section 2.1, prior to it becoming a registered user of the Platform, and any other information provided by the Issuer to CapSphere, represent the true state and knowledge of the Issuer, and is true, accurate, complete and valid to the best of the Issuer's knowledge;
- c) the Issuer has the power and authority to enter into and perform its obligations under this Agreement and that this Agreement, when executed, constitutes valid and legally binding obligations enforceable against the Issuer in accordance with the terms herein;
- d) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents), in order
  - i. to enable the Issuer lawfully to enter into, exercise its rights and perform and comply with its obligations under this Agreement and
  - ii. to ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done;
- e) the execution and delivery of, and the performance by it of its obligations under, this Agreement do not:
  - i. infringe, or constitute a default under, any instrument, contract, document or agreement to which it is a party or by which it or its assets are bound; and
  - ii. result in a breach of any law, rule, regulation, ordinance, order, judgement or decree of or undertaking to any court, government body, statutory authority or regulatory, administrative or supervisory body (including, without limitation, any relevant stock exchange or securities council) to which it is a party or by which it or its assets are bound, whether in Malaysia or elsewhere; and
- f) no litigation, arbitration or administrative proceedings are taking place, pending or, to the Issuer's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or conditions, or its ability to perform its obligations under this Agreement.

## 8. SUSPENSION AND TERMINATION OF SERVICE

- 8.1 CapSphere reserves the right to restrict, temporarily or permanently suspend or terminate the Services, at any time, without incurring liability of any kind to the Issuer, if any of the following events occur:-
- a) the Issuer fails to make any payment to CapSphere when due, whether under this Agreement or for the Platform or Services;
  - b) any representation or warranty made by the Issuer under this Agreement or through the Platform or Services is incomplete, untrue, incorrect or misleading in any material respect;
  - c) the Issuer has breached the terms of this Agreement or is reasonably suspected by CapSphere of having breached the terms of this Agreement, any Security Documents, the Privacy and Data Protection Policy or the Code of Conduct or the Investment Note;
  - d) the Issuer is charged in any court of law with any criminal offence or is reasonably suspected by CapSphere of having committed any criminal offence;
  - e) Any action, proceedings, procedure or step is taken for:
    - i. the suspension of payments or a moratorium of any obligation of the Issuer to pay or repay money, present or future, actual or contingent, sole or joint ("Indebtedness");
    - ii. winding up, dissolution, administration or reorganization (using a voluntary arrangement, scheme of arrangement or otherwise) of the Issuer; or
    - iii. the appointment of a liquidator, receiver, administrator in respect of the Issuer or any part of the undertaking or assets of the Issuer;
  - f) there is a change in directors of the Issuer or a divestment of any or all of the shareholding or any shareholder of the Issuer, without the prior written consent of CapSphere being obtained;
  - g) the Issuer commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness;
  - h) the Issuer ceases, or threatens to cease, to carry on all or a substantial part of its business;
  - i) litigation, arbitration or administrative proceedings are initiated, pending or, to the Issuer's knowledge, threatened against the Issuer, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or conditions, or its ability to perform its obligations under this Agreement or the Investment Note;
  - j) the Issuer uses the Platform in a manner that may cause CapSphere to have legal liability or disrupt others' use of the Platform;
  - k) there is scheduled downtime or recurring downtime; or
  - l) there is an occurrence of a Force Majeure Event (as defined in Section 9).
- 8.2 Provided that there is no Investment Note currently in force between the Issuer and a Payee and provided that there are no outstanding fees, costs or expenses to be paid to CapSphere or any Payee, the Issuer may terminate this Agreement by terminating his membership at the Platform.
- 8.3 CapSphere shall not in any way be liable to the Issuer for breach by CapSphere of the Code of Conduct and the Privacy and Data Protection Policy.
- 8.4 CapSphere shall be, in its sole discretion, at any time, entitled to, by notice in writing to the Issuer, bring forward the date for payment of the Principal Subscription Amount in its entirety to such date as CapSphere may specify in the notice, including requirement immediate payment of the entirety of the Principal Subscription Amount.

## 9. FORCE MAJEURE

- 9.1 CapSphere shall not be in breach of this Agreement, nor liable for any failure or delay in the performance of any other obligations under this Agreement arising from or attributable to acts, events, omissions, accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:-
- a) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
  - b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
  - c) terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
  - d) nuclear, chemical or biological contamination or sonic boom;
  - e) fire, explosion or accidental damage;
  - f) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
  - g) interruption or failure of utility service, including but not limited to electric power, gas or water;
  - h) epidemics and quarantine restrictions;
  - i) any labour disputes, including but not limited to Strikes, lockouts, labour or other industrial disturbances (including sabotage) and civil disturbances;
  - j) any interruption to the Platform or Services outside the reasonable control of CapSphere; and/or
  - k) acts of any government or authority.
- 9.2 In the event that any such delay or non-performance continues for a period in excess of 120 days, CapSphere shall have the right to terminate this Agreement by giving the Issuer fourteen (14) days' notice in writing prior to such termination without affecting any rights accruing prior to such termination.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The names, images and logos ("**Marks**") identifying CapSphere or third parties and their products and services are subject to copyright, design rights and trade marks of CapSphere and/or third parties, and all rights to the Marks are expressly reserved by CapSphere or the relevant third parties. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel or otherwise any license or right to use any trademark, patent, design right or copyright of CapSphere or any other third party, without the prior written consent of CapSphere or such third party. The name of CapSphere or any other Marks may not be used in any way, including in any advertising or publicity, or as a hyperlink without prior written permission of CapSphere.
- 10.2 CapSphere and its affiliates and licensors own and retain all right, title and interest in and to (a) the Platform; (b) all hardware, software, and other items used to provide the Services; and (c) all materials, including without limitation, the information, databases, data, documents, online graphics, audio and video, in the Platform, which contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by CapSphere, the Issuer shall not copy, modify, publish, transmit, distribute, perform, display or sell any of CapSphere's proprietary information. The Issuer shall also not decompile, reverse engineer or otherwise attempt to discover the source code of any content available on the Platform except under the specific circumstances expressly permitted by law or CapSphere in writing.
- 10.3 By submitting, posting or displaying content on or through the Platform, the Issuer grants to CapSphere a worldwide, non-exclusive, royalty-free license to reproduce, adapt and publish such content on the Platform for the purpose of displaying, distributing and promoting the Platform or any other of our Services. The Issuer further grants to CapSphere an irrevocable non-exclusive license to use such content submitted, posted or displayed, including any ideas, inventions, concepts, techniques or know-how disclosed herein, for any purpose, including the developing

and/or marketing of Services. CapSphere reserves the right to retain an archival record of all such content including those deleted or removed by the Issuer.

- 10.4 In the event that the Issuer downloads any software, applications or script from the Platform, the software applications or script, including any files, images incorporated in or generated by the software, and data accompanying the software (collectively, the “Software”) are licensed to the Issuer by CapSphere on a non-exclusive, non-transferable, and non-sublicensable basis for the sole purpose only of utilizing the Services in accordance with this Agreement, the Privacy and Data Protection Policy and the Code of Conduct Policy. For the avoidance of doubt, CapSphere does not transfer title ownership or any other rights to the Software to the Issuer. The Issuer shall not redistribute, sell, decompile, reverse-engineer, disassemble or otherwise deal with the Software. Any Software downloaded from the Platform shall be at the Issuer’s own risk.

## **11. DISCLAIMERS**

- 11.1 The Issuer acknowledges that CapSphere’s principal role is to perform introductory functions on behalf of Issuers and Payees in order to bring together prospective Issuers and Payees, to provide a streamlined process for the issue of Investment Notes and to facilitate the payments and collection of sums due under or in connection with those Investment Notes (including taking certain actions on behalf of Payees upon the Issuer’s default or if the Issuer becomes, or is likely to become, insolvent). Save as set out in this Agreement and the Payee’s Agreement, CapSphere will not perform any management or administrative functions on the Issuer’s behalf. CapSphere shall not be a party to any Investment Note, save for third party rights granted under such Investment Note. CapSphere does not in any manner warrant that an Issue Request can or will be fulfilled, or that any Payee will perform the terms of the Investment Note in accordance with the terms thereof.
- 11.2 The Issuer understands and acknowledges that CapSphere and the Platform is licensed and regulated by the Securities Commission Malaysia, and the funds placed by the Payee and the Issuer in the CapSphere Account are monies of the Payee and the Issuers respectively, to be applied for purposes directed by the Payee and the Issuer. The Payee understands that such monies placed in the CapSphere Account are not, and shall not be, deposits as defined under the Section 136 of Division 5 of the Financial Services Act 2013 of Malaysia.
- 11.3 The content and material available on the platform is for informational purposes only and should not be regarded as an offer, solicitation, invitation, advice or recommendation to buy or sell investments, securities or any other financial services or banking product. The Issuer should not rely on any information contained in the Platform in making an investment or other decision but should obtain appropriate specific professional advice in connection therewith. Nothing contained in the Platform constitutes or should be construed to constitute investment, legal, tax or other advice.
- 11.4 The Issuer acknowledges that the use of the Platform and Services involves risks, including without limitation, the risk of the Platform discontinuing its services and the risks of Issue Requests not being fulfilled or fulfilled to the satisfaction of the Issuer. CapSphere shall in no manner be responsible for the conduct of the Payee and shall not be liable if the Payee takes any action (including but not limited to harassment of the Issuer or its director or shareholders) or proceedings against the Issuer.
- 11.5 The Issuer acknowledges and agrees that this Agreement and the membership of the Issuer of the Platform do not in any way constitute an obligation on CapSphere to procure funding for the Issuer or constitute a warranty by CapSphere that such funding will be available.
- 11.6 The Platform is provided “AS IS” on an “IS AVAILABLE” basis without any representations or any kind of warranties whatsoever (whether expressed or implied by law). CapSphere and its licensors expressly disclaim to the fullest extent permitted by law all express, implied and statutory warranties, including without limitation, the warranties as to functionality, operability, accessibility, accuracy, correctness, reliability, updatedness, timeliness, satisfactory quality, merchantability, fitness for a particular purpose, and non-infringement of proprietary rights.
- 11.7 Without limiting the foregoing, CapSphere does not warrant that the Services, functions contained in or access to the Platform or other content will be timely, uninterrupted or error-free without omission, that defects will be

corrected, or that the Platform or its contents are free of infection by computer viruses, and/or other harmful or corrupting code, programme, macro and such other unauthorized software, or that the download, installation or use of any Software or content of Platform in or with any computer will not affect the functionality or performance of the computer. The Issuer (and not CapSphere) shall assume the entire cost of all necessary servicing, repair, or correction, including any defect, problem or damage in the computer. The Issuer agrees not to hold CapSphere liable for the loss of any of the content in its computer that is due to any circumstances beyond the control of CapSphere.

- 11.8 The Issuer agrees that CapSphere has no responsibility or liability for the deletion or failure to store any content maintained or posted by or through the Platform.
- 11.9 The Platform contains links to other websites which are not maintained by CapSphere. Similarly, other websites may contain links to the Platform. CapSphere has no control over such sites and resources, and the Issuer acknowledge and agree that CapSphere is not responsible for the availability or contents of those websites and shall not be liable for any damages or injury arising from the availability or contents of those websites. Any links to other websites are provided as a convenience to the Issuer as a user of the Platform, and does not imply CapSphere's endorsement of the linked website or association with their operators. CapSphere disclaims all responsibility and liability, direct or indirect, for any damage or loss (including any virus, spyware, malware, worms, errors or damaging materials contained in the linked sites) caused or alleged to be caused by or in connection with the use or reliance on any such content available on or through any such site or resource, which are accessed and used at the Issuer's own risk.

## 12. LIMITATION OF LIABILITY

- 12.1 CapSphere, or any of its directors, officers, employees, agents, affiliates, subsidiaries, contractors, suppliers, successors or assigns, shall not be liable for any direct, indirect, punitive, incidental, special, consequential damages, losses, expenses, liabilities under any causes of action or any damages whatsoever, including, without limitation, damages for loss of use or data, loss of opportunity, loss of goodwill, loss of profits (whether revenue or anticipated profits) or losses to third parties, arising out of or in any way connected with:-
- a) the use or performance of the Platform or Services;
  - b) the delay or inability to use the Platform or Services;
  - c) the provision of or failure to provide the Platform or Services;
  - d) any information, data, software, products, services and related graphics obtained through the Platform or Services;
  - e) any reliance on any statement, opinion, representation or information on the Platform or Services;
  - f) the inability of the Issuer to have its Issue Requests fully funded by Payees through the Platform; or
  - g) otherwise arising out of the use of this Platform or Services,
- whether based on contract, tort, strict liability or otherwise, except where such loss or damage arises from the breach of this Agreement by CapSphere or was caused by the willful default or fraud by CapSphere.
- 12.2 In the event that CapSphere is liable for damages, the Issuer agrees that CapSphere's aggregate liability to the Issuer for any and all damages, losses and causes of action (whether in contract, tort including, without limitation, negligence, or otherwise) in relation to the Platform and the Services shall not exceed the total amount of fees and charges paid by the Issuer to CapSphere in the 12 months period immediately preceding the time such liability arose.
- 12.3 Without prejudice to the other provisions herein, the Issuer hereby agrees to indemnify and hold CapSphere, its subsidiaries, affiliated companies, directors, officers, agents, partners, and employees (collectively the "**Indemnified Parties**"), harmless at all times against all actions, proceedings, costs, claims, expenses (including all legal costs on a full indemnity basis), demands, liabilities, losses (whether direct, indirect or consequential) and damages (whether in tort, contract or otherwise) whatsoever and howsoever arising, including without limitation claims made by third parties and claims for defamation, infringement of intellectual property rights, death, bodily injury, wrongful use of computers, unauthorised or illegal access to computers (including but not limited to hacking), property damage or

pecuniary losses which the Indemnified Parties may sustain, incur, suffer or pay arising out of, in connection with or pursuant to the access to and/or the use of the Platform or Services by the Issuer, whether or not such access or use was authorised or whether it was due to any act or omission on its part, the breach of this Agreement by the Issuer, the violation by the Issuer of any rights of another person or entity or the breach by the Issuer of any statutory requirement, duty or law.

## 13. NOTICES

- 13.1 All notices, demands or other communications required or permitted to be given or made under this Agreement by CapSphere to the Issuer shall be in writing and may be sent through the internal messaging system of the Platform, delivered personally, sent by prepaid registered post with recorded delivery, by facsimile transmission, by electronic mail, by telephone calls or through the short messaging system ("**SMS**"), addressed to the Issuer at its address, its facsimile number, its telephone number or its email address. Any notices or other communication by the Issuer to CapSphere shall be regarded as effective and received by CapSphere only if in writing, sent by prepaid registered mail, to the address of CapSphere.
- 13.2 The address, facsimile number, telephone number and email address of CapSphere for the purposes of this Agreement are specified on the Platform, and the address, facsimile number, telephone number and email address of the Payee are specified in its registration data or as time to time notified by the Issuer to CapSphere or CapSphere to the Issuer.
- 13.3 Any such notice, demand or communication by CapSphere to the Issuer shall be deemed to have been duly served (if sent through the internal messaging system, delivered personally, given or made by facsimile, sent through electronic mail, or by a telephone call or SMS) immediately or (if given or made by letter) two (2) Business Days after posting and in proving the same it shall be sufficient to show that personal delivery was made or that the envelope containing such notice was properly addressed, and duly stamped and posted or that the internal message, facsimile transmission, electronic mail or SMS was properly addressed and dispatched. Any such notice, demand or communication by the Issuer to CapSphere shall be subject to actual receipt by CapSphere.

## 14. GENERAL

- 14.1 **No Partnership.** Nothing in this Agreement shall constitute a Party as a partner of the other. Nothing in this Agreement is intended to constitute a Party as an agent of the other and except as otherwise expressly provided under this Agreement, no Party shall have any power or authority to act in the name or on behalf of or to incur or accept any liability or obligation binding upon the other Party except with the prior written consent of the other Party.
- 14.2 **Further Assurance.** Each Party shall execute such other documents, do such acts and things and take such further actions as may be reasonably required or desirable to give full effect to the provisions of this Agreement and the transactions hereunder and each Party shall use its best endeavours to procure that any necessary third party shall execute such documents, do such acts and things and take such further actions as may be reasonably required for giving full effect to the provisions of this Agreement and the transactions hereunder.
- 14.3 **Time of Essence.** Any time or period mentioned in any provision of this Agreement may be extended by mutual written agreement between the Parties but as regards any time, date or period originally fixed or any time, date or period so extended as aforesaid, time shall be of the essence.
- 14.4 **Remedies.** No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by a Party hereto shall not constitute a waiver by such Party of the right to pursue other available remedies. No failure on the part of a Party hereto to exercise, and no delay in exercising any right under this Agreement will operate as a waiver thereof, nor

will any single or partial exercise of any right under this Agreement preclude any other or further exercise of any right thereof or of the exercise of any other right.

- 14.5 **Release and Indulgence.** Any liability to any Party hereto may in whole or in part be released, compounded or compromised or time or indulgence given by that Party in that Party's absolute discretion as regards the other Party hereto under such liability without in any way prejudicing or affecting the first Party's rights against the second Party.
- 14.6 **Assignment.** Save as provided for in this Agreement, Issuers shall not have the right to assign or transfer any of such rights, undertakings, agreements, duties, liabilities and/or obligations hereunder.
- 14.7 **Entire and Continuing Effect of Agreement.** This Agreement and the documents referred to in this Agreement collectively embody the entire terms and conditions agreed upon by the Parties as to the subject matter of the same and supersedes and revokes in all respects all other documents, agreements, letters of intent, and undertakings entered into between the Parties, whether such be written or oral, with respect to the subject matter hereof. All provisions of this Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding completion of the matters set out therein except in respect of those matters then already performed and except where expressly stated to the contrary. This Agreement shall be binding on and shall endure for the benefit of each of the Parties' successors in title or legal personal representatives.
- 14.8 **Amendment.** CapSphere reserves the right to supplement, vary or amend the terms of this Agreement from time to time immediately upon notification to the Issuer. Changes to this Agreement will be posted on the homepage of the Platform or specifically notified by CapSphere, and the "Last Updated" date at the top of this Agreement will be revised. It is the responsibility of the Issuer to review this Agreement upon each access or use to ensure that it are aware of any changes made by CapSphere. The continued access or use of the Platform and/or the Services by the Issuer after changes are posted constitutes its agreement to be legally bound by this Agreement as updated and/or amended and for such revised Agreement to apply to all current and past usage by the Issuer of this Platform. In the event that the Issuer does not agree to any of the changes, CapSphere not obliged to continue providing the Issuer with any Service, and the Issuer must stop using the Platform and Services.
- 14.9 **Survival on Termination.** All disclaimers, indemnities and exclusions in this Agreement shall survive the termination of this Agreement by any reason.
- 14.10 **Severance.** If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and no further and, for the avoidance of doubt, the rest of this Agreement shall continue in full force and effect and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.
- 14.11 **No Third Party Rights.** A person who is not a party to this Agreement shall have no right under the Contracts Acts of Malaysia or under any law, to enforce any provision in this Agreement.
- 14.12 **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. Any dispute arising out of or in connection with this Agreement and/or the documents referred to herein, including any question regarding their existence, validity or termination, shall be referred to and finally resolved by the Courts of Malaysia and the Parties hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.



## Appendix 1 – INVESTMENT NOTE

For value received, the Issuer promises to pay to each Payee, in Malaysia Ringgit, the relevant Principal Subscription Amount and Interest as specified in this Investment Note, on such Repayment Date and in accordance with the schedule specified in this Investment Note.

### Note Profile

Investment Note Request ID	
Name of Issuer	
Registration Number of Issuer	
Issue Date	
Principal Subscription Amount	
Maturity Date	
Maturity Period	
Number of Accepted Offers	
Number of Unique Investors	
Simple Interest Rate (p.a.)	
Late Interest Rate (p.a.)	
Total Interests Payable	

### Repayment Schedule

Repayment Date	Principal Payable	Interests Payable	Total Amount Payable	Fee to CapSphere	Total Investor Receivable

### Payee(s)

Payee ID	Name of Payee	Identification Number	Principal Subscription Amount	Total Interests Payable	Fee to CapSphere

This Note is issued subject to the “Standard Terms and Conditions to Investment Note”

### Issued and Endorsed by:

Name of Director / Partner :

Signature :

For and on behalf of Issuer

## STANDARD TERMS AND CONDITIONS TO INVESTMENT NOTE

These standard terms and conditions, together with the Investment Note entered into between the Payee(s) and the Issuer, setting out the particulars of the Payee, the Issuer and the Principal Subscription Amount, and the repayment schedule setting out the interests and amounts payable and the date on which such repayment is payable (collectively the "Note"), constitutes the terms on which this Investment Note is issued.

### 1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set out against them: -

**"Agreement"** means these standard terms and conditions and any document which is supplemental hereto or which is expressed to be collateral herewith or which is entered into pursuant to or in accordance with the terms hereof;

**"Business Day"** means a day on which banks in Malaysia are open for business and shall exclude Saturdays, Sundays and public holidays;

**"Calculation Period"** means each period during which interest is payable, as applicable.

**"CapSphere Account"** shall have the meaning ascribed to it in Section 4.1;

**"Day Count Fraction"** means, the fraction used to calculate a rate or an amount of interest for any Calculation Period, and where "30/360" is specified in the terms, the number of days in the Calculation Period divided by 360, calculated in accordance with the following formula:

$$\text{Day Count Fraction} = \frac{[360 - (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

**"Y1"** is the year expressed as a number, in which the first day of the Calculation Period falls;

**"Y2"** is the year, expressed as a number, in which the day immediately following the last day of the Calculation Period falls;

**"M1"** is the calendar month, expressed as a number, in which the first day of the Calculation Period falls;

**"M2"** is the calendar month, expressed as a number, in which the day immediately following the last day of the Calculation Period falls;

**"D1"** is the first calendar day, expressed as a number, of the Calculation Period, unless such number is 31 in which case D1, will be expressed as 30; and

**"D2"** is the calendar day expressed as a number immediately following the last day included in the Calculation Period, unless such number would be 31 and D1 is greater than 29, in which case D2 will expressed as be 30;

**"Debentures"** shall have the meaning ascribed to it in Section 2 of Part 1 of the CMSA, which shall include debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:-

- a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;
- b) a cheque, banker's draft or any other bill of exchange or a letter of credit;
- c) a banknote, guarantee or an insurance policy;
- d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any investment note issued under the terms of such an agreement; or

f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette;

**“Early Redemption Option”** means the Issuer may redeem the Notes, in whole but not in part, on every Interest Payment Date upon giving an irrevocable notice to the Payee through the Platform at least 20 calendar days prior to the nearest Interest Payment Date.

**“Equal Instalment”** means an Investment Note by which an instalment of the Principal Subscription Amount and/or interest accrued and due up to the date of payment shall be payable on such dates as set out in a repayment schedule specified in the Investment Note, and on the Maturity Date, the Principal Subscription Amount would have been paid in full;

**“FSA”** means the Financial Service Act 2013 of Malaysia;

**“Issuer”** means a corporate borrower which is registered as a member on the Platform;

**“Issue Request”** shall mean the request by an Issuer for Payees to subscribe for an Investment Note to be issued by the Issuer;

**“MASB”** means the Malaysian Accounting Standard Board;

**“Maturity Date”** means the date on which the Maturity Period ends;

**“Maturity Period”** means such period within which the full amount of the Note will be due and payable;

**“Note”** means the Investment Note, this Standard Terms and Conditions to Investment Note and any document which is supplemental hereto or which is expressed to be collateral herewith or which is entered into pursuant to or in accordance with the terms hereof;

**“Parties”** mean the Payee and CapSphere, and each of them individually shall be a **“Party”**;

**“Payee”** means a user which is registered as a member on the Platform who is intending to fund Issue Requests;

**“Platform”** means [www.moolahsense.com](http://www.moolahsense.com);

**“Principal Subscription Amount”** means the principal amount payable or paid by Payees who have subscribed to the Notes;

**“Privacy and Data Protection Policy”** means the Personal Data Protection Act 2013 of Malaysia;

**“Prospectus”** shall have the meaning ascribed to it in Section 226 of Division 3 of Part 6 of the CMSA, which means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

**“Repayment Date”** means such date on which repayment of the Principal Subscription Amount, interest and/or such other amounts payable under the Note, such dates as set out in a repayment schedule specified in the Investment Note;

**“Securities”** shall have the meaning ascribed to it in Section 2 of Part 1 of the CMSA, which means:

- a) debentures, stocks or bonds issued or proposed to be issued by any government;
- b) shares in or debentures of, a body corporate or an unincorporated body; or
- c) units in a unit trust scheme or prescribed investments,

and includes any right, option or interest in respect thereof **“Services”** shall have the meaning ascribed to it in Section 2.6;

“**RM**” mean Malaysian Ringgit, being the lawful currency of Malaysia;

“**Subscription Offer**” means an offer submitted by a Payee over the Platform in response to an Issue Request, stating the Principal Subscription Amount that the Payee wishes to subscribe for upon the Note.

The expressions the “**Issuer**” and the “**Payee**” shall include their respective successors and assigns.

- 1.2 Any reference in this Agreement to “**Sections**” is to the sections of this Agreement.
- 1.3 The headings to the Sections are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires or permits, references to the singular number shall include references to the plural number and vice versa, references to persons shall be construed as including bodies corporate and vice versa and words denoting any gender shall include all genders.
- 1.5 In the absence of any expression to the contrary, all payments and repayments made under the provisions of this Note, including damages, shall be made in Malaysia Dollars unless otherwise agreed by Parties.

## 2. INVESTMENT NOTE

- 2.1 The Issue Requests are not made in or accompanied by a Prospectus that is registered by the Securities Commission Malaysia.

This Note shall not be subsequently sold to any person

## 3. INTEREST

- 3.1 The Issuer shall pay an interest (“**Interest**”) on the Principal Subscription Amount specified in the Investment Note.
- 3.2 Interest shall accrue daily and shall be payable on such date in accordance to the Note.
- 3.3 If the Issuer fails to make any payment due under this Note on any Repayment Date, interest payable upon late payment of the unpaid, overdue and/or outstanding amounts shall in addition accrue and compound daily, at a rate as set out under “Late Interest Rate” in the Investment Note, from the date of non-payment to the date of the actual payment.

## 4. REPAYMENT UPON THE INVESTMENT NOTE

- 4.1 The Issuer shall repay the Principal Subscription Amount in instalments (“**Instalment**”), together with all interest accrued and due up to each Repayment Date. Such amount payable and the Repayment Dates shall be set out in a payment schedule specified in the Investment Note.
- 4.2 The Principal Subscription Amounts shall be payable in full by the Maturity Date.
- 4.3 Repayment shall be made by the Issuer via Interbank GIRO (“**IBG**”), into the account maintained by CapSphere with a local bank for the purposes of this Note. The Issuer shall be entitled to require presentation of the Note prior to the payment of the final Instalment.

## 5. REPRESENTATIONS AND WARRANTIES

- 5.1 The Issuer hereby represents and warrants as follows:-
  - a) the Issuer is a company duly incorporated and validly existing or a limited liability partnership duly set up and validly existing under the laws of its country of incorporation with full power and authority to own its properties and to conduct its business as currently conducted;

- b) the Principal Subscription Amounts are for the Issuer's own use;
- c) the Issuer has the power and authority to issue this Note and that this Note, when executed, constitutes valid and legally binding obligations enforceable against the Issuer in accordance with the terms herein;
- d) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents), in order
  - i. to enable the Issuer lawfully to enter into, exercise its rights and perform and comply with its obligations under this Note and
  - ii. to ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done;
- e) the execution and delivery of, and the performance by it of its obligations under, this Note do not:
  - i. infringe, or constitute a default under, any instrument, contract, document or agreement to which it is a party or by which it or its assets are bound; and
  - ii. result in a breach of any law, rule, regulation, ordinance, order, judgement or decree of or undertaking to any court, government body, statutory authority or regulatory, administrative or supervisory body (including, without limitation, any relevant stock exchange or securities council) to which it is a party or by which it or its assets are bound, whether in Malaysia or elsewhere;
- f) No litigation, arbitration or administrative proceedings are taking place, pending or, to the Issuer's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or conditions, or its ability to perform its obligations under this Note;
- g) the maximum amount of Investment Notes the Issuer can issue during a 12 months period shall, together with funds raised through the issuance of other Securities and Debentures during that same 12 months period, be RM5,000,000 or such other amount as from time to time notified by CapSphere on the Platform. The maximum amount shall be calculated on a 12 months rolling basis;
- h) the Issuer has not made, and shall not make, in connection with any fundraising, during any 12 months period, any offers of Securities and Debentures, including Issue Requests, to more than 50 persons, including the Payees or potential Payees approached through the Platform;

5.2 The Payee's acceptance of this Note is subject to it representing that:

- a) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents), in order
  - i. to enable the Payee lawfully to enter into, exercise its rights and perform and comply with its obligations under this Note and
  - ii. to ensure that those obligations are valid, legally binding and enforceable, have been taken, fulfilled and done; and
- b) the execution and delivery of, and the performance by it of its obligations under, this Note do not:
- c) infringe, or constitute a default under, any instrument, contract, document or agreement to which it is a party or by which it or its assets are bound; and
  - i. result in a breach of any law, rule, regulation, ordinance, order, judgement or decree of or undertaking to any court, government body, statutory authority or regulatory, administrative or supervisory body (including, without limitation, any relevant stock exchange or securities council) to which it is a party or by which it or its assets are bound, whether in Malaysia or elsewhere;

## 6. COVENANTS

- 6.1 The Issuer covenants with the Payee(s) that, as from the date of this Note until the date the Principal Subscription Amounts are fully paid up and discharged:-
- a) the Issuer shall comply, in all respect, with all laws, if failure to do so has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Note;
  - b) the Issuer shall promptly, after becoming aware of them, notify the Payee of any Event of Default described in Section 7.1 below;
  - c) the Issuer shall not pass any resolution approving the change in directors of the Issuer or the divestment of any or all of the shareholding or any shareholder of the Issuer, without first obtaining the prior written consent of CapSphere;
  - d) the Issuer shall not pass any resolution for the winding-up of the Issuer, nor cause a petition for winding-up to be presented against the Issuer, or the appointment of a receiver or receiver and manager of the respective undertakings or assets of the Issuer.

## 7. EVENTS OF DEFAULT

- 7.1 In the event that Issuer misses, fails to pay, or only partially pays an Instalment or other payment that is due, or any part of the Principal Subscription Amount is not fully repaid by the Maturity Date, the Parties agree that CapSphere has the authority to act as follows: -
- a) to attempt to contact the Issuer to remedy the default and make such payment within ninety (90) days (or such other period as CapSphere shall in its discretion determine) of the date on which such Instalment or payment is due;
  - b) if the Instalment or other payment is not fully paid within the ninety (90) days (or such other period as CapSphere shall in its discretion determine), to hire a third party professional debt collector to collect from the Issuer such unpaid amounts. For the avoidance of doubt, the respective Payee(s) shall bear the costs and expenses incurred in relation to the services provided by the third party professional debt collectors but the Issuer shall ultimately be responsible for such costs upon recovery; and
  - c) if (A) such sums are still not recovered after one-hundred and twenty days (120) days (or such other period as CapSphere shall in its discretion determine) or (B) it becomes evident (in the sole discretion of CapSphere) that the Issuer is unable to satisfy the payment of all instalments and payment due and payable:
    - i. to, in its sole and absolute discretion and without any further consent or agreement required from the Payee, commence legal proceedings against the Issuer to recover such sums; or
    - ii. to, in its sole and absolute discretion, require the Payee(s) to assign the Note to CapSphere or a company appointed by CapSphere, which may sell the Note to a Note purchaser or commence legal proceedings against the Issuer to recover such sums. The assignment can be on the basis that
      - (aa) the company buys over the outstanding debt by paying to the Payee (where there is only one Payee) a price agreed to by the Payee, or paying to the Payees (where there is more than one Payee) a price agreed to by the Payees, whether collectively or individually, as the case may be, hold 75% or more of the Note's Principal Subscription Amount, and the proceeds from the recovery shall be retained by the company, or
      - (bb) on the basis that the Note is assigned without the debt, and what is recovered by the company, after deducting all costs and expenses incurred by the company in the course of recovery, shall be paid to the Payee(s); and
  - d) to take such other action as may from time to time be authorised by the Payee(s).
- 7.2 Each of the events or circumstances set out in this Section is an Event of Default:

- a) The Issuer has breached a term of this Note or Security Documents, and such default is not remedied within seven (7) Business Days of the earlier of:-
  - i. CapSphere notifying the Issuer of the default and the remedy required; or
  - ii. the Issuer becoming aware of the default.
- b) Any representation or warranty made by the Issuer in Section 5 above is incomplete, untrue, incorrect or misleading in any material respect.
- c) The membership of the Issuer in the Platform, the online platform on which this Note was executed, is terminated for any reason under the agreement entered into between the Issuer and CapSphere, the owner and operator of the Platform.
- d) The Issuer ceases to pay its debts or is unable to pay its debts as they fall due or is deemed unable to or admits its inability to do so or makes a general assignment for the benefit of or a composition with its creditors.
- e) Any action, proceedings, procedure or step is taken for:
  - i. the suspension of payments or a moratorium of any obligation of the Issuer to pay or repay money, present or future, actual or contingent, sole or joint ("Indebtedness");
  - ii. winding up, dissolution, administration or reorganization (using a voluntary arrangement, scheme of arrangement or otherwise) of the Issuer; or
  - iii. the appointment of a liquidator, receiver, administrator in respect of the Issuer or any part of the undertaking or assets of the Issuer.
- f) The Issuer commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness.
- g) The Issuer ceases, or threatens to cease, to carry on all or a substantial part of its business.
- h) There is a change of directors of the Issuer, where any existing shareholder of the Issuer divests all or any part of his shareholding, direct or indirect, in the Issuer, without the prior written consent of CapSphere.
- i) Litigation, arbitration or administrative proceedings are initiated, pending or, to the Issuer's knowledge, threatened against the Issuer, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or conditions, or its ability to perform its obligations under this Note.

7.3 At any time after an Event of Default has occurred, CapSphere may, upon notice to the Issuer, on behalf of the Payee(s), terminate this Note and demand immediate repayment of the entire amount of the Principal Subscription Amount, including accrued Interest up to the date of repayment, in accordance with Section 7.1.

## 8. INDEMNITIES

- 8.1 Each of the Issuer and the Payee(s) shall keep the other parties fully and effectively indemnified against all losses, costs, damages, claims, demands, actions, proceedings, liabilities and expenses whatsoever, that may incur in connection with or arising from any material breach of its representations, warranties, obligations, covenants and undertakings under this Note.

## 9. COSTS, EXPENSES AND TAXES

- 9.1 Each of the Issuer and the Payee(s) shall bear all their own costs and expenses in relation to the entering of this Note, including the administration fees to be paid to CapSphere.

## 10. NOTICES

- 10.1 All notices, demands or other communications required or permitted to be given or made under this Note between the Payee(s) and the Issuer shall firstly be through the online messaging system on the Platform, or alternatively, in writing and delivered personally or sent by prepaid registered post with recorded delivery, addressed to the intended recipient thereof at its registered address or to such other address as a party hereto may from time to time duly notify the other in writing.
- 10.2 The addresses of the Issuer and the Payee(s) hereto for the purposes of this Note are specified in Form above.
- 10.3 Any such notice, demand or communication shall be deemed to have been duly served (if sent through the online messaging system on the Platform or delivered personally) immediately or (if given or made by letter) two (2) Business Days after posting and in proving the same it shall be sufficient to show that personal delivery was made or that the envelope containing such notice was properly addressed, duly stamped and posted.

## 11. GENERAL

- 11.1 **Further Assurance.** Each Party shall execute such other documents, do such acts and things and take such further actions as may be reasonably required or desirable to give full effect to the provisions of this Agreement and the transactions hereunder and each Party shall use its best endeavours to procure that any necessary third party shall execute such documents, do such acts and things and take such further actions as may be reasonably required for giving full effect to the provisions of this Agreement and the transactions hereunder.
- 11.2 **Time of Essence.** Any time or period mentioned in any provision of this Agreement may be extended by mutual written agreement between the Parties but as regards any time, date or period originally fixed or any time, date or period so extended as aforesaid, time shall be of the essence.
- 11.3 **Remedies.** No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by a Party hereto shall not constitute a waiver by such Party of the right to pursue other available remedies. No failure on the part of a Party hereto to exercise, and no delay in exercising any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right under this Agreement preclude any other or further exercise of any right thereof or of the exercise of any other right.
- 11.4 **Release and Indulgence.** Any liability to any Party hereto may in whole or in part be released, compounded or compromised or time or indulgence given by that Party in that Party's absolute discretion as regards the other Party hereto under such liability without in any way prejudicing or affecting the first Party's rights against the second Party.
- 11.5 **Assignment.** Save as provided for in this Agreement, Issuers shall not have the right to assign or transfer any of such rights, undertakings, agreements, duties, liabilities and/or obligations hereunder.
- 11.6 **Entire and Continuing Effect of Agreement.** This Agreement and the documents referred to in this Agreement collectively embody the entire terms and conditions agreed upon by the Parties as to the subject matter of the same and supersedes and revokes in all respects all other documents, agreements, letters of intent, and undertakings entered into between the Parties, whether such be written or oral, with respect to the subject matter hereof. All provisions of this Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding completion of the matters set out therein except in respect of those matters then already performed and except where expressly stated to the contrary. This Agreement shall be binding on and shall endure for the benefit of each of the Parties' successors in title or legal personal representatives.
- 11.7 **Severance.** If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and no further and,



for the avoidance of doubt, the rest of this Agreement shall continue in full force and effect and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

- 11.8 **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. Any dispute arising out of or in connection with this Agreement and/or the documents referred to herein, including any question regarding their existence, validity or termination, shall be referred to and finally resolved by the Courts of Malaysia and the Parties hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.
- 11.9 **Privacy and Data Protection.** This Note shall be subject to, and the Parties agree to be bound by, the Privacy and Data Protection Policy.