

Appendix 1

Standard *Murabahah* Terms and Conditions for Commodity *Murabahah* Deposit-i (CMD-i)

These Terms and Conditions of Commodity *Murabahah* Deposit-i (“**these Terms and Conditions**”) are to be read as a whole with any other relevant terms and conditions as Mizuho Bank (Malaysia) Berhad (“**the Bank**”) may impose from time to time with prior notice to the Principal, as well as other rules and regulations binding on the Bank.

1. Definitions & Interpretations

1.1 Definitions

In these Terms & Conditions, the following terms and expression shall have the meaning designated to them unless the context requires otherwise:-

“**BNM**” means Bank Negara Malaysia, a body corporate governed under the Central Bank of Malaysia Act, 2009.

“**Business Day**” means a day (excluding Saturday, Sunday, and Public Holiday) on which commercial banks are generally open for business in Kuala Lumpur, Malaysia.

“**CMD-i**” means the Principal’s Commodity *Murabahah* Deposit Account-i which is a Shariah-compliant deposit account in Ringgit Malaysia (RM).

“**Commodity**” means any Shariah compliant commodities other than ribawi items in the category of medium of exchange such as currencies, gold and silver which is endorsed by the Shariah Committee and acceptable to the Bank.

“**Commodity Trading Platform**” means the commodity trading platform which facilitates the Trade Transaction, operated by the asset trader, asset exchange or commodity exchange as approved by the Shariah Committee.

“**IFSA**” means the Islamic Financial Services Act, 2013 (Act 759) including any statutory modification or re-enactment thereof.

“**Insolvency Proceeding**” means a case or application or proceeding or petition or resolution or any other steps taken to seek a judgment of or arrangement for insolvency, bankruptcy, composition, rehabilitation, reorganisation, judicial management, administration, winding-up, liquidation or other similar relief with respect to a party or its debts or assets or seek the appointment of a trustee, manager, receiver, judicial manager, liquidator, conservator, custodian or other similar official of a party or any substantial part of its assets, under any bankruptcy, insolvency or other similar law or any banking, companies, takaful/insurance, or similar law governing the operation of a party and any analogous proceeding in any jurisdiction to which a party is subject to.

“**Murabahah**” means a sale and purchase of an asset where the acquisition cost and the mark-up are disclosed to the purchaser.

“**Murabahah Profit**” means in relation to the Sale Transaction, the amount of *Murabahah* profit payable by the Bank to the Principal upon payment due date, which amount shall be calculated in accordance with Clause 3.6 (*Murabahah Profit*).

“**Placement**” means the CMD-i placement amount as detailed in the Placement Application Form.

“**Placement Application Form**” means the CMD-i placement application form that is duly executed and accepted by the Principal and includes any appendices, amendment or supplement to, or replacement or novation of the application form.

“**Principal**” means the deposit placing entity, a company incorporated in Malaysia under the Companies Act, 2016 and includes its successors in title and permitted assigns.

“**Purchase Price**” means the cost price paid by the Principal when purchasing the Commodity from the Supplier in the Purchase Transaction which is equivalent to either the Placement or the Renewal (as the case may be).

“**Purchase Transaction**” means the purchase of the Commodity by the Principal (with the Bank acting as its agent) from the Supplier at the Purchase Price through the Commodity Trading Platform on a cash basis on terms and conditions set out in these Terms and Conditions. The title, ownership, rights and interests of the Commodity shall pass to the Principal as purchaser of the Commodity. The Purchase Transaction shall be evidenced via the electronic sales certificate, or by the crediting and debiting the CMD-i, or by any other evidence of ownership as the Bank may determine.

“**Renewal**” means the renewal of the Placement at Tenure Expiry Date based on either a similar Tenure or a new Tenure (to be decided by the Principal) whereby a new Trade Transaction would be conducted.

“**Sale Price**” means the aggregate amount payable by the Bank when purchasing the Commodity from the Principal in the Sale Transaction which shall comprise of the Purchase Price and the *Murabahah Profit*.

“**Sale Transaction**” means the sale of the Commodity by the Principal (with the Bank acting as its agent) to the Bank at the Sale Price through the Commodity Trading Platform, on *Murabahah* basis and for a deferred cash consideration on terms and conditions set out in these Terms and Conditions. The title, ownership, rights and interests of the Commodity shall pass to the Bank as purchaser of the

Commodity. The Sale Transaction shall be evidenced via the electronic sales certificate, or by the crediting and debiting the CMD-i, or by any other evidence of ownership as the Bank may determine.

“**Shariah**” means the Shariah rulings and decisions issued by the Shariah Advisory Council of BNM and the Shariah Committee respectively.

“**Shariah Committee**” means Shariah Committee of the Bank.

“**Supplier**” means the third party, including but not limited to commodity trading houses, commodity brokers, industrial firms and/or their supplier registered with the relevant exchange and/or any other parties acceptable to the Bank, from which the Commodity are purchased/ to be purchased under the Purchase Transaction.

“**Tenure**” means the tenure of the CMD-i, as selected by the Principal in the Placement Application Form and will be the duration in days or month(s) or year(s) (as the case may be) which is effective from the date of the Sale Transaction to the Tenure Expiry Date.

“**Tenure Expiry Date**” means the last day of the Tenure.

“**Trade Transaction**” means collectively the Purchase Transaction and the Sale Transaction.

2. Operation of the CMD-i

2.1 Appointment of the Bank as an Agent (Dual Agency Arrangement)

- (a) The Principal hereby irrevocably and unconditionally appoint the Bank and the Bank hereby accepts the appointment as the agent of the Principal to do and execute all acts in connection to the Trade Transaction in accordance with these Terms and Conditions (Dual Agency Arrangement) and to negotiate with the Supplier and their clients on behalf of the Principal in relation thereto.
- (b) The Bank shall at all times act as an undisclosed agent and the Bank shall be (i) authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with this appointment as agent, or imposed under any agreement of sale of the commodity to any third party; (ii) authorised to delegate its rights and duties as an agent to any third party to do all acts necessary for the completion of the required transaction; and (iii) required to do all the administrative duties regarding the holding and the selling of the Commodity(ies).
- (c) The Bank will, in performing its obligations and activities in the transactions look after the best interest of the Principal and act in good faith. The

appointment of the Bank shall not create or be deemed to create a partnership or a joint venture between the parties hereto, nor shall it establish a relationship of principal or agent in any other relationship between the parties hereto, other than those for which specific provision is made in these Terms and Conditions.

- (d) The Principal hereby unconditionally and irrevocably undertakes to indemnify and keep the Bank harmless from and against all and any losses, claims, actions, proceedings, damage, costs and expenses (including, without limitation, all costs and expenses incurred in disputing or defending any of the foregoing on a full indemnity basis, but other than those resulting from any wilful default or gross negligence of the Bank) whatsoever brought or claimed by any party and/or incurred or sustained by the Bank as a result of the purchase of the Commodity under any transaction hereunder as agent of the Principal or a breach by the Principal of any of his obligations herein or as a result of or in connection with the exercise or purported exercise by the Bank of the authorities, discretion and power granted herein. The indemnity given shall survive termination of these Terms and Conditions and any sums payable under it shall not be subject to any deduction whether by way of set off counter claim or otherwise.
- (e) The Bank shall not be obliged to enter into any transaction, nor follow any instruction of the Principal, if in the opinion of the Bank by entering into such transaction or following such instruction, the Bank and/or any of its affiliates would be in contravention or violation of any law, policy, rule or regulation.

2.2 Trade Transaction

- (a) Subject to the provisions herein contained, the Trade Transaction shall be as follows:-
 - (i) On any Business Day, the Principal shall first appoint the Bank as its agent to enter into the Trade Transaction in relation to the Commodity by submitting a duly completed and executed Placement Application Form to the Bank.
 - (ii) The Principal shall then immediately transfer the Placement to the Bank to enable the Bank to effect the payment of the Purchase Price for the Purchase Transaction.
 - (iii) Thereafter (or on the next Business Day), the Bank, as agent for and on behalf of the Principal, will effect the Purchase Transaction. The Principal hereby agree to waive its right to take physical delivery of the Commodity.
 - (iv) Subsequently, the Bank shall enter into the Sale Transaction to purchase the Commodity from the Principal on a Murabahah basis and on deferred payment basis.
 - (v) On the Tenure Expiry Date, the Bank shall pay the Sale Price under the Sale Transaction in accordance with the standing instruction

given by the Principal in the Placement Application Form and subject to *Ibra'* (rebate) if any.

- (b) Notwithstanding the above, once the Principal has instructed the Bank to enter into a Purchase Transaction and the Principal fails to comply with Clause 2.2(a)(ii) above, on or before 10.00 a.m. on the date as specified by the Bank, the Principal shall bear all losses and indemnify the Bank pursuant to Clause 2.1(d) above.
- (c) The Principal is responsible to keep the CMD-i records safely and is required to immediately report, in writing, its loss, theft or destruction to the Bank.
- (d) If any payment due from the Bank as purchaser under any Sale Transaction falls on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day where the next succeeding Business Day falls in the next calendar month, in which event the payment shall be due and made on the day immediately preceding the Business Day.
- (e) If the Principal decides not to accept the Bank's offer to purchase for any reason whatsoever, the Principal hereby agrees that all costs associated with the physical delivery or the safe-keeping of the Commodity by the Bank as requested by the Principal, including the delivery costs, storage costs and takaful/ insurance (if any), shall be borne by the Principal.

3. The CMD-i

3.1 Application

- (a) The Principal applying for the opening of the CMD-i with the Bank shall be bound by these Terms and Conditions governing the operations of the CMD-i in force from time to time.
- (b) The Bank shall not be bound to perform any obligation expressed to be assumed by it hereunder until the Bank shall have received in form and substance satisfactory to the Bank each of the following documents (where applicable):
 - (i) a certified true copy of the constitutive corporate documents of the Company, including its Memorandum and Articles of Association and its Certificate of Incorporation;
 - (ii) original signatures book or other appropriate document evidencing authorisation of the signatories to the Transaction Documents and all other documents required in relation to it;
 - (iii) a certified copy of the latest audited financial statements of the Company; and

- (iv) any other documents as the Bank may reasonably require in writing addressed to the Principal in connection with the Transaction Documents.
- (c) Regardless of the clauses in these Terms and Conditions, the Bank shall be entitled to refuse to accept or act on any instructions, whether for a withdrawal or any other transaction or any matter relating to the CMD-i, if the following situations take place: -
 - (i) the Bank is unable to verify the Principal's authorised signatory to its satisfaction;
 - (ii) the Bank acting in good faith has any doubt on the authenticity, clarity or completeness of the instructions by the Principal;
 - (iii) the form or content of such instructions by the Principal is not in accordance with the requirements or policies or practices as the Bank prescribes from time to time;
 - (iv) the instructions by the Principal are not in accordance with the mandate(s) for the time being in effect in respect of the operation of the CMD-i;
 - (v) the Bank believes or suspects that the instructions by the Principal are unauthorised, fraudulent or forged; or
 - (vi) the signature on the instructions by the Principal differ from the specimen signature in the Bank's records.
- (d) The Bank may waive or defer the delivery of any of the documents referred to in Clause 3.1(b) above but the Principal shall be bound by the terms of these Terms and Conditions and the Transaction Documents notwithstanding such waiver or deferment.

3.2 Placement and Renewal (If Applicable)

- (a) Any Placement or Renewal made shall be in Ringgit Malaysia (RM) and the minimum sum prescribed for the corresponding Tenure as may be determined by the Bank from time to time with prior notice in writing.
- (b) The Placement shall be effective on the date the Purchase Transaction are executed. A placement advice or renewal advice by the Bank detailing the Placement or Renewal will be sent to the Principal on the next Business Day.
- (c) For cases where the Principal returns to the Bank within fourteen (14) days from the Placement date or Renewal date to cancel the Placement or Renewal thereof, the Bank will only return the Purchase Price value from the Sale Price with no *Murabahah* Profit to be claimed by Principal pursuant to the termination/ cancellation of the Sale Transaction.

- (d) The CMD-i may not be assigned, transferred, pledged, or charged as security unless with prior written consent by the Bank.
- (e) The Principal hereby agrees that the Bank's determination of any amount payable to the Principal under the CMD-i save for manifest error shall be final, conclusive and binding against the Principal.
- (f) The Principal must examine all entries in the placement advice, renewal advice and statement of the CMD-i and to immediately report to the Bank of any error found therein. If the Principal does not, within fourteen (14) days (or such other period specified by the Bank) after the receipt of the same object to any entry therein, the Principal shall be deemed to have accepted the entries made in the placement advice, renewal advice and statement of the CMD-i as correct and discharge the Bank from all liabilities.
- (g) Where any cheque(s) is used for a Placement, and where the placement advice or renewal advice is issued to the Principal, it shall be subject to clearance of the cheque(s).

3.3 Tenure

- (a) The Tenure of the Placement shall range from one (1) to sixty (60) months or such other period as may be selected by the Principal and determined by the Bank from time to time with prior notice. The acceptance of the Placement and/or the Renewal, Tenure(s) and rate(s) quoted is/are entirely at the absolute discretion of the Bank.
- (b) The Principal may opt for Renewal upon maturity of the CMD-i in the Placement Application Form. A new Trade Transaction shall be required for any Renewal. The *Murabahah* Profit shall be placed together with the Placement for the same Tenure unless otherwise instructed by the Principal in the Placement Application Form.

3.4 Withdrawal

- (a) Partial and pre-mature withdrawal is not allowed prior to the Tenure Expiry Date. Nevertheless, the Bank may consider such request with condition that the *Ibra'* (rebate) under Clause 3.7 below shall apply.
- (b) Any instruction relating to withdrawals from the CMD-i shall be in accordance with the operating mandate of the CMD-i and the Bank shall be discharged and released from any liability to the Principal or to any other party.
- (c) Any proceeds withdrawn from the CMD-i shall be credited into the Principal's account which was used for the Placement or in such other manner as mutually agreed between the Bank and the Principal.

3.5 Fees and charges

- (a) Charges will be imposed according to the Bank's charges. The Bank shall comply with all relevant rules and decisions by BNM.

- (b) The Bank has the right to vary the change in fees and charges applicable to the CMD-i by giving twenty one (21) days' notice or communication of the said variation, and any such notice or communication of any variations may be delivered personally, or by registered/ ordinary post to the Principal at the last known address by the Bank, or by it being displayed at the Bank's premises or newspaper, or e-mail, or web page, or short messaging service, or by any other modes which the Bank deems fit.
- (c) If there is any change in the Principal's postal address, the Principal shall notify the Bank promptly. All communication posted to or left at the Principal's last registered address with the Bank shall be deemed to be duly delivered to the Principal.

3.6 **Murabahah Profit**

Formula for the computation of the *Murabahah* Profit and the Sale Price are as follows:

- (a) Calculation of the profit

$$\text{Murabahah Profit} = P \times R \times T / 365 *$$

P= Deposit Amount

R= Profit Rate (%) given upon Placement

T= Tenure (from date of the Placement to maturity date, number of days)

*Denominator = To follow the market's day convention

- (b) Calculation of the Sale Price

$$\text{Sale Price} = \text{Placement} + \text{Murabahah Profit}$$

3.7 **Ibra' (Rebate)**

Notwithstanding the *Murabahah* Profit calculation as described in Clause 3.6 above and subject to Clause 3.2(c) above, in the event of the occurrence of any of the termination event as specified under Clause 3.8 below or if the Principal makes an early demand for the payment of the Sale Price before the Tenure Expiry Date, the Principal agree to provide *Ibra'* (rebate) to the Bank on the *Murabahah* Profit of the Sale Price based on the following:

- (a) for any termination event or full withdrawal before the Tenure Expiry Date, the *Ibra'* (rebate) is for all of the *Murabahah* Profit, whereby the Bank would not be crediting any *Murabahah* Profit into the CMD-i; or
- (b) for partial withdrawal before the Tenure Expiry Date, the *Ibra'* (rebate) is for the *Murabahah* Profit of the withdrawn amount whereby the Bank would not be crediting any *Murabahah* Profit for any withdrawn amount into the CMD-i.

3.8 Suspension or Termination

- (a) These Terms and Conditions shall remain in force until and unless the Bank has given at least fourteen (14) days' notice of termination or suspension in writing to the Principal with reason for any such closure, termination, suspension or freezing of the CMD-i to the extent permissible by Shariah and the law.
- (b) Supplementary to Clause 3.8(a) above, the Bank herein shall be entitled to terminate these Terms and Conditions forthwith by giving written notice to the Principal if:-
 - (i) the Principal herein becomes subject to Insolvency Proceedings; or
 - (ii) in the event where any application is made by any person for an order for the Principal to be placed under judicial management and for the appointment of a judicial manager; or
 - (iii) the Principal threatens a breach and/or commits a breach of any of its obligations under these Terms and Conditions or any of its representations or warranties as stated in Clause 4.9 below is false or incorrect in any material respect, and (if such breach shall be capable of remedy) shall not be remedied by the Principal within fourteen (14) days of receipt of a notice served by the Bank requiring it to make good such breach; or
 - (iv) the Principal is or is deemed for the purposes of any law to be, unable to pay its indebtedness as they fall due or insolvent; or
 - (v) there is any material litigation (civil or criminal), arbitration or administrative proceedings, pending, on-going or threatened against the Principal; or
 - (vi) there is a report lodged against the Principal under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act, 2001 (as amended or replaced from time to time); or
 - (vii) the Bank suspects or has reasons to suspect that any part of the CMD-i of the Principal is being used for unlawful or illegal activity; or
 - (viii) the Bank receives any legal process or court order against the CMD-i of the Principal.
- (c) Termination of these Terms and Conditions will be without prejudice to any rights or obligations of the Bank accrued up to the date of termination and the completion of any Trade Transaction already executed, whichever is the later.
- (d) Following any termination of these Terms and Conditions under the provisions above, the Bank may set off any obligation owed under these

Terms and Conditions against the Principal (whether or not matured) owed by the Principal, regardless of place of payment. Written notice is to be given to the Principal after such setting off.

4. General Terms

4.1 Amendment or Variation by the Bank

Subject to Shariah, the Bank reserves the right to vary the rules specified above at any time or from time to time at its sole and absolute discretion to comply with relevant rules, decisions and rulings of BNM by providing prior written notice to the Principal and/or displaying a notice of the amendment or variation at the Bank's premises and the Bank's official website and/or other manner as the Bank deems fit shall be conclusive, final and binding on the Principal.

4.2 Amendment or Variation by the Principal

- (a) Subject to Shariah, the Principal may amend or vary the operating mandate (i.e amending the name of address or contact details) by notifying the Bank in writing immediately and the Principal's authorised signatories shall provide the necessary supporting documents to the Bank in relation to such amendment or variation.
- (b) The Bank is entitled to a reasonable period of time to effect the amendment or variation provided that the documents or information required by the Bank are in order and sufficient.
- (c) The Bank is entitled to act on any instructions given by the Principal based on the existing mandate in the Bank's system before the Bank effects the change or variation in the Bank's system.

4.3 Disclosure of Information

- (a) The Bank will keep information provided by, or relating to, any Principal confidential except that the Bank may disclose such information about the transaction documents or assets or affairs of the Principal whether or not confidential and whether or not the disclosure would be in breach of any law or any of the duty owed to the Principal provided that the Principal has informed the Bank to be confidential.
- (b) Without prejudice to the rights of the Bank to disclose information relating to the Principal, its affairs or otherwise (whether arising under the IFSA), the Principal expressly and irrevocably consents to the disclosure by the Bank, its officers and agents and all persons to whom Section 146 of the IFSA applies, of any information relating to the Principal, its accounts, affairs or the transactions contemplated under the these Terms and Conditions and any related documents to:
 - (i) to any of the Bank's agents, contractors or third party service providers or any other professional advisors and service providers, insurers/Takaful operators or insurance/Takaful brokers or

professional advisers, who are under a duty of confidentiality to the discloser to keep such information confidential to the Bank, whether in Malaysia or outside Malaysia in connection with the Banks' business or operations (including and not limited to provision of the Banks' host server and storage provider), for the purpose of processing applications, transactions and storing statements of account, advices, transaction records and other documents, data or records on which the Principals' name or other particulars appear;

- (ii) to any actual or potential participant, sub-participant or transferee of the Bank's rights or obligations under any transaction between the parties (or any of its agents or professional advisers) and any other person in connection with a transaction or potential transaction between the parties;
- (iii) to any rating agency, or direct or indirect provider of credit protection;
- (iv) to any credit reference agency that the Bank uses for credit assessment or credit review of the Principal and parties related to the Facility;
- (v) as required by any law or any Authority; or
- (vi) any party for the purpose of giving effect to the transactions contemplated in the Transaction Documents (including without limitation, such information as is requested by agent, correspondent, intermediary or beneficiary banks for the purpose of effecting payment or transfers of funds).

The Principal expressly consent to such disclosure and hereby confirm and declare that no further consent from the Principal is necessary or required in relation thereto.

4.4 Personal Data

The Principal agree that the Bank require, from time to time, to have the Principals' director(s), authorised signatories or such other persons specified ("**Authorised Person(s)**")'s personal details and information ("**Personal Data**") as specified by the Bank. The Personal Data will include and without limitation to the Authorised Person(s)'s Personal Data, its accounts details with the Bank, or transactions and dealings with the Bank. The Principal hereby represent and warrant to the Bank that the Principal have obtained the consent of the Authorised Person(s) for the process and disclosure of data under the Personal Data Protection Act 2010 and for the disclosure of information according to the Clause 4.3 herein.

4.5 Shariah Compliance

The Principal and the Bank hereby irrevocably agree and acknowledge that as at this date hereof, these Terms and Conditions (including each of the terms contained herein and the underlying structure herein) and the Trade Transaction are Shariah Compliant. Accordingly, each party hereto agrees that it shall not henceforth raise any dispute in relation to whether these Terms and Conditions

and the Trade Transaction are Shariah compliant. The Principal acknowledges that the Terms and Conditions do not contravene the Shariah principles as determined by the Shariah Committee.

4.6 Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613):

The Principal shall ensure that the Principal never and would not:

- (a) engage, directly or indirectly, in a transaction that involves proceeds of any unlawful activity; or
- (b) acquire, receive, possess, disguise, transfer, convert, exchange, carry, dispose, use, remove from or brings into Malaysia proceeds of any unlawful activity; or
- (c) conceal, disguise, or impede the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity; and

the Principal confirm to the Bank that it is not involved in any money laundering activity within the meaning of Section 3 of the Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

4.7 Call Option by the Bank

The Bank may at any time and from time to time terminate or call the whole or any part or parts of its obligation under these Terms and Conditions prior to the date of maturity (provided where its obligation under these Terms and Conditions has a variable return feature, the Bank may only terminate or call the whole or any part or parts of its obligation under these Terms and Conditions on a profit payment date), whereby the nominal value of the terminated or called portion of its obligation under these Terms and Conditions shall be returned together with any accrued profit to the Principal, as the case may be.

4.8 Changes in Circumstances

(a) Illegality

Notwithstanding the provisions of these Terms and Conditions, the Bank has the right to suspend the operation of the CMD-i, upon written notice to the Principal, if the Bank suspects that the CMD-i is being used for any illegal purpose whatsoever.

Where the introduction, imposition or variation of any law, order, rule, regulation or official directive (whether or not having the force of law) and/or any change in the interpretation or application of any law, order, rule, regulation or official directive (whether or not having the force of law) and/or any compliance with any directive, guideline, circular, note or request (whether or not having the force of law) from or agreement with or requirement of the central bank or other fiscal, monetary or other authority or agency makes it unlawful or impractical without breaching any such law,

order, rule, regulation or official directive or causing material non-compliance with such directive, guideline, circular, note or request for the Bank to maintain, fund or give effect to its obligations under these Terms and Conditions :

- (i) the Banks' obligation (if any) in respect of any future availability shall forthwith be terminated and shall be cancelled to such extent; and
- (ii) the Principal shall upon being so notified, be obliged to settle any amount due under these Terms and Conditions on such date as the Bank shall certify to be necessary to comply with the relevant law and the Banks' obligation (if any) in respect of any future payment to the Principal under these Terms and Conditions shall terminate and these Terms and Conditions shall be cancelled.

(b) Adverse Market

The Bank retains the right to amend, withdraw and/or terminate these Terms and Conditions if there occurs any event or circumstance which, in the reasonable opinion of the Bank, may materially and adversely affect any of the domestic money, capital or syndicated loan/financing markets, the business activities of the Principal and/or any of its subsidiaries and/or associated companies, and/or the social, political, financial and/or economic situation in Malaysia.

(c) Clear Market

From the date of these Terms and Conditions until the date of the execution of the Trade Transaction documents, the Principal shall ensure that no other borrowings, financings, debt instruments or securities issued and/or guaranteed by the Principal or any of its subsidiaries are mandated, syndicated or privately placed which might, in the opinion of the Bank have the effect of prejudicing the successful completion of these Terms and Conditions.

4.9 Representation and Warranties

- (a) The Principal warrants and represents to the Bank that:-
 - (i) it has and will at all times for the duration of these Terms and Conditions have the legal capacity to enter into these Terms and Conditions and each Trade Transaction thereby contemplated, and will cause all necessary corporate resolutions and authorities to be made and/or passed to ensure that the party who purports to enter into transactions on its behalf are able to commit it in accordance with terms of these Terms and Conditions;
 - (ii) its execution of these Terms and Conditions and each document delivered by it under these Terms and Conditions is and will be duly authorised;
 - (iii) its obligations under these Terms and Conditions and each Trade Transaction will constitute its legal, valid and binding obligations in

- accordance with their respective terms (subject to generally applicable insolvency laws and principles of equity) and will not violate the terms of any agreement to which it is a party of, and it has waived any immunity that may be available to it, including sovereign immunity, to the fullest extent practicable;
- (iv) it has and will at all times maintain all authorisations, approvals, licences and consents required to enable it to lawfully perform its obligations under these Terms and Conditions and each Trade Transaction;
 - (v) save as otherwise disclosed, it shall enter into these Terms and Conditions and each Trade Transaction pursuant to these Terms and Conditions as Principal and not as Agent, or in any other capacity, fiduciary or otherwise; and
 - (vi) it is duly incorporated and validly existing under the laws of its incorporation and, if relevant under such laws, is in good standing and no Insolvency Proceeding has been threatened or commenced against it (which is not frivolous or vexatious) and that no application has been made for a judicial management order in relation to it.
- (b) In respect of each Sale Transaction, the Principal hereby represents and warrants to the Bank as purchaser of the Commodity that:-
- (i) the Principal has not created and shall not create any charge or encumbrance, and has not granted and shall not grant any third party rights, over its profit in the Commodity which is the subject of a Sale Transaction; and
 - (ii) the Principal shall not take any steps which may impair the quiet possession of the purchaser of the Commodity after completion of the sale without due cause.

4.10 Indemnity

Subject to the Bank not being in breach of its obligations or negligent, the Principal hereby unconditionally and irrevocably undertakes to indemnify and keep the Bank harmless from and against all and any liabilities, losses, claims, actions, proceedings, damage, costs and expenses (including, without limitation, all costs and expenses incurred in disputing or defending any of the foregoing on a full indemnity basis, but other than those resulting from any wilful default or gross negligence of the Bank) whatsoever brought or claimed by any party and/or incurred or sustained by the Bank as a result of the purchase of Commodity(ies) under any Purchase Transaction as agent of the Principal or any breach by the Principal of its obligations herein or as a result of or in connection with the exercise or purported exercise by the Bank of the authorities, discretions and power granted by this Agreement but other than those resulting from any wilful default or gross negligence of the Bank. The indemnity given herein shall survive termination of these Terms and Conditions and any sums payable under it shall not be subject to any deduction whether by way of set off, counter claim or otherwise.

4.11 Covenants

The Principal hereby undertakes with the other that it will:

- (a) comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under these Terms and Conditions; and
- (b) use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to these Terms and Conditions and shall use all reasonable efforts to obtain any consent that may become necessary in the future.

4.12 Notices and communications

- (a) Any notice or communication under or in connection with these Terms and Conditions shall be in writing and shall be delivered personally, or by post or facsimile to the addresses set out in these Terms and Conditions or at facsimile numbers or at such other address or facsimile number as the recipient may have notified to the other party hereto in writing. Proof of posting or dispatch of any notice or communication shall be deemed to be proof of receipt:
 - (i) if it is personally delivered, at the time of delivery and duly acknowledged;
 - (ii) if by way of electronic mail, when actually received in readable form and only if it is addressed in such a manner as the Bank shall specify for this purpose;
 - (iii) in the case of a letter sent by post, on the third (3rd) Business Day after posting;
 - (iv) in the case of telex or cable, on the Business Day immediately after transmission; or
 - (v) in the case of a facsimile, on the Business Day immediately after transmission provided that the sender has received an answer back confirmation and has sent a copy by post confirming the facsimile transmission.
- (b) If to the Customer, by referring to the details in the Placement Application Form.
- (c) If to the Bank: Mizuho Bank (Malaysia) Berhad
(Registration No. 201001039768 (923693-H))
Level 27, Menara Maxis
Kuala Lumpur City Centre
50088 Kuala Lumpur, Malaysia

4.13 Service of legal process

The service ("**Service**") of any legal process pursuant to any rules of courts of competent jurisdiction, may be:

- (a) given by prepaid registered or ordinary post;
- (b) sent to the respective address for such Service.

Howsoever brought about, such Service shall be effective or binding on the Bank unless the Principal has given to the Bank actual notice of the change of the address and nothing done in reliance on this Clause 4.13 shall be affected or prejudiced by any subsequent change in the Principal's address for which the Bank has no actual knowledge of at the time the act or thing was done or carried out.

4.14 Severability

The illegality, invalidity, or unenforceability of any provision of these Terms and Conditions under the laws of any jurisdiction shall not affect the validity or enforceability of any other provision of these Terms and Conditions or other agreements and/or documents to be entered into pursuant herein.

4.15 Force Majeure

In the event the Bank is unable to perform its obligations under these Terms and Conditions due to any reason beyond the Bank's control, including but not limited to:

- (i) any malfunction or failure of equipment, system or transmission link;
- (ii) any fire, earthquake, flood, explosion acts of elements, acts of God, acts of terrorism, war, accidents, epidemic, pandemic, strikes, lockouts, labour disputes, embargo, riot, civil disturbance or tsunami;
- (iii) any failure of or disruption to telecommunications, internet and electricity supply; or
- (iv) any other circumstance in the nature of a force majeure, that is, an unforeseeable event that prevents the Bank from performing its obligations under these Terms and Conditions,

the Bank will not be liable for the delay, loss, damage or inconvenience which the Principal may suffer as a result of such failure to perform, provided that the Bank shall use all endeavours to mitigate any delay in the performance of its obligations under these Terms and Conditions.

4.16 Governing Law and Jurisdiction

The governing law shall be the laws of Malaysia in relation to any legal action or proceedings arising out of or in connection with the CMD-i, and each of the Parties hereto irrevocably agree that the Courts of Malaysia shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in connection with the CMD-i and, for such purposes, irrevocably submits to the jurisdiction of such courts.

4.17 Successors Bound

These Terms and Conditions shall be to the benefit of and bind the Parties and their respective permitted assigns and transferees.

4.18 Time

Time wherever mentioned shall be of the essence.

[End of Clauses]

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