

## **TERMS AND CONDITIONS FOR TAWARRUQ DEPOSIT (TWD)**

### **Introduction**

1. The product is based on the Shariah principle of Commodity Murabahah via Tawarruq arrangement. The deposit placing entity (shall hereinafter be referred to as "DPE") appoints Bank Pembangunan Malaysia Berhad (shall hereinafter be referred to as "BPMB") to act as the DPE's agent with the limited authority to purchase and, only if the DPE so desires, to sell the commodity in accordance with these Terms and Conditions. BPMB shall act as such agent within the authority as stated in these Terms and Conditions. (The DPE and BPMB shall hereinafter collectively be referred to as "the Parties" and individually as "the Party").
2. The Parties agree that their respective rights and obligations herein are intended to be and in conformity with the Shariah as determined from time to time by the rulings of the Shariah Advisory Council of Bank Negara Malaysia ("BNM") and the Shariah Committee of BPMB.
3. These Terms and Conditions shall be read together with Islamic Financial Services Act 2013 (shall hereinafter be referred to as "IFSA 2013"), Development Financial Institution Act 2002 ("DFIA 2002") and other relevant Acts or policies or directives issued by BNM or other relevant authorities.

### **Commodity Murabahah via Tawarruq Arrangement**

4. DPE hereby appoint BPMB as the agent for the restricted purposes as set out below and as agent of the DPE, BPMB shall, during the tenure of the deposit thereof, have the following powers and authority:
  - a) to do and execute all acts with respect to the purchase of the commodity on an as is where is basis ("Purchase Transactions") through purchase agreements, certificates and other instruments as fully and effectually as the DPE could do itself and with full powers to negotiate with commodity traders or suppliers ("the Suppliers") on behalf of the DPE in relation thereto but without any representation or warranty from BPMB as to the quality, condition, quantity and description of the commodity and thereafter to take delivery of the commodity on behalf of the DPE; and
  - b) thereupon to sell the commodity to BPMB on a deferred payment basis at a price equivalent to the amount of the deposit ("Deposit Amount") plus profit thereon (together "Murabahah Sale Price") on behalf of the DPE and to do and execute all acts in relation thereto ("Sale Transaction") unless the DPE has notified BPMB otherwise. Both the Purchase Transaction and Sale Transaction shall hereinafter be referred to as "Trade Transaction".

The DPE hereby agrees and undertakes to indemnify BPMB against all actions, claims, demands, liabilities, losses, damages, costs and expenses of whatever nature which BPMB may sustain or incur as result of acting as DPE's agent. DPE may request for evidence of Trade Transaction which was duly conducted by BPMB on its behalf from time to time.

5. The Parties further acknowledge that the commodity shall be capable of physical delivery. The DPE may request physical delivery of the commodity provided that BPMB has received such request at the time it receives the DPE's instruction for the purchase of the commodity and BPMB has received the Deposit Amount. All costs and expenses related to the delivery of the commodity shall be borne and paid in full by the DPE prior to physical delivery.

In the event BPMB does not receive such request or the Deposit Amount, BPMB is deemed expressly authorized by the DPE to dispose the commodity in the market at such time and in such manner as BPMB may decide. The DPE shall reimburse and pay BPMB all costs and expenses incurred or sustained by BPMB on account thereof in full.

6. In exercising the duty as an agent, BPMB shall purchase the commodity on behalf of the DPE and subsequently thereafter, DPE may sell the commodity to BPMB at the Murabahah Sale Price on a deferred payment basis which will be made at Maturity Date. The Murabahah Sale Price shall comprise of:
  - i. the Deposit Amount; and
  - ii. the profit thereon.

Murabahah Sale Price is the aggregate of the Deposit Amount and the profit thereon whereby the profit is computed in accordance with the following formula:-

$$\frac{\text{Deposit Amount} \times \text{Rate} \times \text{No. of Days}}{\text{No. of Days in Particular Year}}$$

7. If any Murabahah Sale Price due from BPMB falls on a day which is a non-Business Day, the payment shall be made on the next Business Day. If the Maturity Date is the last day of the month, and such Maturity Date falls on a Saturday, Sunday or known public holiday, the Maturity Date shall be the last working day of the month. In the event the Maturity Date falls on a non-Business Day, the DPE agrees that no additional profit is payable by BPMB to the DPE. However, BPMB may grant gift (*hibah*) on the extra day.
8. Deposit placement will be auto renewed upon maturity on the same amount and tenure in the event that DPE does not provide instruction to withdraw. Profit rate shall be at prevailing rate on the date of renewal.
9. BPMB agrees that no proceeds from the sale of the commodity or any transactions contemplated herein shall be invested in any Shariah non-compliant securities, financial instruments or activities.

10. BPMB shall ensure the commodity to be used is Shariah-compliant commodity which includes but not limited to crude palm oil, plastic resin, oleo chemicals, rubber, cocoa and soya products or such other acceptable commodities (excluding ribawi items in the category of medium of exchange such as currency, gold and silver) as approved by its Shariah Committee.
11. Upon premature withdrawal before the expiry date or any other circumstances that resulting in early redemption of the TWD facility, DPE will grant BPMB full rebate (*ibra'*) on the profit amount comprised in the agreed sale price. Therefore, the profit will not be paid to DPE.

### **Undertaking (*Wa'd*) Arrangement in TWD**

12. The undertaking between the Parties is deemed binding when DPE agrees to apply for the TWD facility.
13. Pursuant to the agency (*wakalah*) contract between DPE and BPMB, BPMB as the agent (*wakil*) shall purchase the commodity from the available supplier at Purchase Price. Pursuant to this, BPMB undertakes to purchase the commodity from DPE at Murabahah Sale Price.
14. BPMB shall purchase the commodity from DPE on the same day after successfully acquiring the commodity from the supplier. The undertaking between the Parties is deemed completed once BPMB proceed to purchase the commodity from DPE.
15. DPE may invoke the undertaking before BPMB concludes the purchase of commodity from DPE.
16. The undertaking between the Parties will be revoked under any of the following circumstances :
  - i. DPE agrees to BPMB's revocation request; or
  - ii. BPMB does not execute the action(s) and the DPE does not invoke the undertaking.
17. The undertaking between the Parties is considered breach in the event BPMB does not proceed to purchase the commodity from DPE. In the event of a breach of undertaking, DPE has the right to claim compensation for any actual loss suffered resulting from the event due to the breach of undertaking. DPE is required to submit to BPMB evidences attributable to the failure of BPMB to purchase the commodity at Murabahah Sale Price, such as the cost of legal action, storage cost and any shortfall between the disposal price and Purchase Price (if any). However, the actual loss shall not include indirect costs such as overhead costs, salary or opportunity cost i.e. cost of funds.

## General Provisions

18. All sums payable by the DPE under any Purchase Transaction shall be deemed to be exclusive of any tax levied in respect thereof. Without prejudice to any other provision herein, the DPE shall be liable for any tax, levies, charges, duties and the like payable in connection with or arising out of this Terms and Conditions or Trade Transactions or any services in connection therewith unless otherwise agreed by the Parties.
19. For the purposes of the interpretation of Clause 18, any reference to tax, levies, charges, duties and the like shall be a reference to any tax imposed by the public authorities (inclusive of the inland revenue board and the custom department) in Malaysia or any other jurisdiction where the commodity is traded on the income or profits of the DPE arising out of a Trade Transaction, but excluding any tax payable by reason of the residence for tax purposes of the Principal in either Malaysia or any other jurisdiction where the commodity is traded or by reason of the DPE carrying on activities in such jurisdictions other than as contemplated by this Terms and Conditions.
20. In the event that BPMB fails to pay the Murabahah Sale Price upon maturity, BPMB shall be subjected to the compensation of late payment (*ta'widh*) as below:

For RM settlement – based on mechanism stated under the BNM's Guidelines on Late Payment Charges for Islamic Banking Institutions

$$\text{Compensation} = \frac{\text{Amount} \times \text{IIMM Rate} \times \text{Day}}{365}$$

Where:

Amount	=	the outstanding principal + profit
IIMM Rate	=	the prevailing daily overnight Islamic Interbank rate
Day	=	no. of delayed days

Note: All compensation payments shall be computed to the nearest one cent.

21. If the fulfillment of the terms and conditions is rendered impossible due to force majeure events i.e. extraordinary and unforeseen circumstances which are beyond the affected Party's reasonable control, each Party shall not be liable to the other Party for any delay in performance of its obligation under the Trade Transaction but shall not be released from the obligations under these Terms and Conditions. The Party affected by such events shall promptly inform the other Party in writing of the circumstances and shall use all reasonable endeavours to comply with its obligations or provide alternate performance reasonably acceptable to the other Party. In the event such incapacitation continues for a period of fourteen (14) days from the date of the first such force majeure event, the Parties shall have the right to terminate the Trade Transaction fully or in part after making mutually

agreeable reasonable settlements. For the avoidance of doubt, force majeure events shall include war, hostilities, any state of riots, civil commotion, earthquake, flood, fire, tempest and any other natural disaster or any event beyond the reasonable control of the Parties.

22. These Terms and Conditions shall be governed by and construed in accordance with the laws of Malaysia in so far as it complies with Shariah Standards set by BNM and each of the Parties hereto irrevocably agrees that the Courts of Malaysia shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in connection with these Terms and Conditions in so far as it complies with Shariah Standards set by BNM and for such purposes, irrevocably submits to the jurisdiction of such courts.
23. Notwithstanding the provisions of these Terms and Conditions, the Parties hereto recognize and agree that the principle of the payment of interest is prohibited and accordingly, to the extent that laws of Malaysia would but for the provisions of Clause 22 above impose whether by contract or by statute any obligation to pay interest, the Parties hereto hereby irrevocably, unconditionally and expressly waive and reject any entitlement to recover interest from each other.
24. The Parties hereby grant their respective consent to the other Party to use information relating to these Terms and Conditions or as notified by each other from time to time.
25. The Parties confirm and undertake that they:
  - a. have received, read and understood and hereby agree to be bound by these Terms and Conditions governing the operations of the product and agree to be bound by them; and
  - b. are not subject to any proceedings or petition for insolvency, composition, winding-up, liquidation or other similar relief under any insolvency or similar law in any jurisdiction to which the Parties are subject.
26. DPE acknowledges and agrees that the TWD product does not violate the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.
27. BPMB will take all reasonable precautions to preserve the integrity and confidentiality of information set out within the Terms and Conditions. However, DPE acknowledges and agrees that BPMB may disclose such information to any third party(ies) in accordance with Development Financial Institutions Act 2002 including but not limited to the following:
  - i. Bank Negara Malaysia;
  - ii. other regulatory bodies/ relevant Ministries and its agencies including but not limited to Minister of Finance Incorporated and Inland Revenue Board of Malaysia;

- iii. employees, officers, directors, shareholder(s), committee(s), agents, advisers and/or consultants; and
  - iv. Pursuant to any law.
28. To the extent that the information set out within the Terms and Conditions constitutes personal data under the Personal Data Protection Act 2010, DPE acknowledges and agrees that BPMB may collect, use, process or disclose such personal data in connection with:
- a) the processing of TWD product;
  - b) the carrying out of statistical and other analysis and analytics; and
  - c) the monitoring and enforcement of compliance with these Terms and Conditions.
29. The DPE hereby consents and authorises that all information relating to DPE may be obtained from or forwarded to any bureau or agencies established or approved by BNM or registered and licensed under the Credit Reporting Agencies Act 2010.
30. If DPE wishes to complain about TWD product, you may contact:

**BANK PEMBANGUNAN MALAYSIA BERHAD**

**Corporate Communications**

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