

Part B for TAWARRUQ ARRANGEMENT

SECTION 1 DEFINITIONS

In this Agreement and Part B for *Tawarruq* ("**this Part B**"), the following words and expressions shall have the following meanings:

"Agent"	the agent to purchase and/or sell the Commodities;
"Agency Agreement"	means the agreement entered between the Customer and the Bank in the form as set out in Attachment 2 of the Letter of Offer whereby the Customer appoints the Bank as its agent to (i) purchase the Commodities from the Bank and (ii) sell the Commodities to any third party commodity trader upon the conclusion of the purchase by the Customer of the Commodities from the Bank;
"Commodities"	the commodity or other asset as specified in the Letter of Offer or other commodities or assets approved by <i>Shariah</i> as the underlying asset for the <i>Tawarruq</i> arrangement;
"Commodity Trader"	means commodity trader(s) in the commodity market as arranged by the Bank;
"Developer/Vendor /Contractor"	the party(ies) whose name(s) and particulars are set out in Item 7 of the First Schedule of the Part A of this Agreement and includes his/her/their/ its, personal representatives, successors in title and permitted assigns as the case may be, to construct/renovate the building (if applicable);
"Ibra"	rebate or waiver of partial or total claim against certain right in relation to payment of debt;
"Murabahah"	refers to a sale and purchase of an asset or commodity where the acquisition cost and the mark-up are disclosed to the purchaser;
"Murabahah Profit"	means the Bank's profit payable by the Customer to the Bank;
"Murabahah Sale Contract"	means the sale contract entered into between the Bank and the Customer in the form as set out in the First Schedule of Part B whereby pursuant to the Purchase Requisition annexed to the Letter of Offer which is attached in Part D of this Agreement, executed by the Customer, the Bank sells the Commodities to the Customer at the Selling Price based on the Murabahah contract, as agreed by the Bank and the Customer, which shall be payable on deferred payment basis and subject to the terms and conditions herein and therein contained;

"Purchase Price"	means the purchase price payable by the Bank for the purchase of the Commodities from a Commodity Trader and which is equal to the utilisation amount under the Purchase Requisition, the aggregate amount of which shall not exceed the total of the Facility amount;
"Purchase Request"	means the request by the Customer to purchase the Commodities from the Bank at the Selling Price, contained in the Purchase Requisition;
"Purchase Requisition"	means a request issued by the Customer to the Bank to utilise the Facility consisting of the Purchase Request and the Undertaking to Purchase (Wa'd), substantially in the form as attached in Attachment 1 of the Letter of Offer;
"Tawarruq"	means the arrangement that involves sale of an asset to the purchaser on a deferred basis and subsequent sale of the asset to a third party on a cash basis to obtain cash or vice versa;
"Undertaking To Purchase (Wa'd)"	means the undertaking by the Customer to purchase the Commodities from the Bank at the Selling Price upon the Bank having purchased the said Commodities from a Commodity Trader, contained in the Purchase Requisition.

SECTION 2 METHOD OF FINANCING

Under the arrangement of *Tawarruq* and the Bank's financing procedure, the arrangement is concluded in the following manner:-

2.1 Purchase of the Commodities by the Bank.

- (i) In accordance with the Shariah principle of *Tawarruq* and the Bank's Islamic financing facilities procedures, the Customer will issue the Purchase Requisition to purchase the Commodities from the Bank at the Selling Price;
- (ii) Upon receipt by the Bank of the Purchase Requisition from the Customer, the Bank will purchase the Commodities from a Commodity Trader at the cost price of the Commodities payable on cash basis which shall be an amount equivalent to the Purchase Price;
- (iii) The Commodity Trader will deliver the Commodities evidenced by a certificate together with the delivery order as evidence for the transfer of ownership to the Bank;

2.2 Purchase of the Commodities by the Customer from the Bank

Pursuant to the Agency Agreement under which the Customer appoints the Bank as its agent to purchase the Commodities on his/her behalf from the Bank on terms and conditions contained in Section 2.3 below, the Bank and the Customer will execute the Murabahah Sale Contract at the Selling Price based on the Murabahah concept (cost plus profit) which will be payable by the Customer to the Bank by way of instalment or deferred payment or any other manner as prescribed by the Bank;

2.3 Execution of Murabahah Sale Contract

(a) For the purpose of Section 2.2 above, the Customer will appoint the Bank as its execution agent to execute the Murabahah Sale Contract on behalf of the Customer, (for the purpose of the purchasing of the Commodities from the Bank at the Selling Price). With this appointment, the Bank will at all times act as the Customer's agent and the Bank will:-

- (i) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with or imposed under any agreement of purchase of the Commodities; and
- (ii) be authorized to delegate its rights and duties as an agent herein to any third party to do all acts necessary for the completion of the required transactions; and
- (iii) be required to do all the administrative duties regarding the purchasing of Commodities and subsequently holding the Commodities; and
- (iv) take possession (physical or constructive) of the Commodities (if any).

(b) The Customer will be held liable for the sale and purchase contract entered into by the Bank in accordance with specified terms and conditions agreed upon under this Agreement. The Bank will not be held liable except in the event of misconduct, negligence or breach of specified terms for any of the appointment made under Section 2.2 above, and Section 2.4 below. In such case, the Bank will be liable for loss or damage including any actual cost suffered by the Customer.

In the event that a breach of specified terms results in any gain to the Customer (such as selling at the higher price or buying at a lower price) than that the Bank is authorised for, the Bank shall disclose this to the Customer and must not retain any portion of the gains without the consent of the Customer.

(c) The parties agree that the Commodities shall not be the subject matter of any other *Tawarruq* transaction at any one time.

Any defect in the Commodities which occurred before entering into the Murabahah Sale Contract which is discovered by the Customer after the execution of the Murabahah Sale Contract shall entitle the Customer to the defect option as stated in Section 2.3(d) below. Nonetheless, the Customer hereby agrees to waive the Bank from any liability due to any defect on the Commodities before the Customer entering into the Murabahah Sale Contract with the Bank.

- (d) Under the defect option, the Customer has the right to:
 - (i) terminate the Murabahah Sale Contract;
 - (ii) continue with mutually agreed variation of the terms of the Murabahah Sale Contract as a result of the defect discovered; or
 - (iii) continue with the Murabahah Sale Contract as it is.
- (e) Any defect in the Commodities which is discovered and consented to by the Customer at the time of entering into the Murabahah Sale Contract shall disentitle the Customer from the defect option.
- (f) The period of defect option mentioned in Section 2.3 (e) above shall commence immediately after the completion of the Murabahah Sale Contract and shall lapse at the expiry of twenty four (24) hours therefrom.

2.4 Sale of the Commodity by the Customer

- (a) The Customer, pursuant to the Appointment of the Bank as Sale Agent, has appointed the Bank as its agent to sell the Commodity for the purpose of realizing the Proceeds on the terms and conditions contained herein. In the event the Customer chooses not to take delivery of the Commodity referred to in Clause 2.6 below, the Bank will proceed to act as the Customer's agent to sell the Commodity on the Customer's behalf to a Commodity Trader on a spot payment basis and to pay the Proceeds to the Customer or to any third party in accordance with the Purpose.
- (b) The Bank (in its capacity as the Customer's appointed agent) is irrevocably authorised by the Customer to:-
 - (i) take possession (physical or constructive) of the Commodity;
 - (ii) sell the Commodity to any third party at the Bank's Purchase Price;
 - (iii) receive payment of the Bank's Purchase Price on behalf of the Customer; and
 - (iv) deliver possession of and title in and to the Commodity to a purchaser of the Commodity.

2.5 Nature and Scope of agency

Pursuant to any agency appointment under Section 2.2 and 2.3 above, the rights and responsibilities arising from the transaction by the Bank on behalf of the Customer with any third party must be assumed by the Customer. Any intended effect of the transaction entered into by the Bank pursuant to the appointment and authorization under Section 2.2 and 2.3 above will be binding on the Customer.

2.6 Delivery of the Commodities

After the Commodity has been purchased pursuant to sub-clause 2.2 above, the Customer has the right to take delivery of the Commodity. Should the Customer choose to exercise this right, the Customer shall notify the Bank in writing of such

intention within three (3) days from the date of acceptance of the Letter of Offer failing which the Bank shall deem that the Customer is agreeable for the Bank to proceed to act as the Customer's agent and deal with the Commodity in the manner as set out in sub-clause 2.4(b) above. The Customer further acknowledges and agrees that pursuant to the Customer exercising the Customer's right to take delivery of the Commodity, all reasonable costs and expenses incurred by the Bank to deliver such Commodity to the Customer shall be borne by the Customer

2.7 Proceeds from the Sale of the Commodities

The Bank then, is hereby irrevocably instructed and authorised by the Customer to release the Facility towards the purpose as specified in Section 1.02 of Part A unless otherwise agreed in writing by the Customer.

SECTION 3 THE BANK'S OBLIGATION

The Bank's obligation to disburse the Facility shall be limited to and not exceed the aggregate amount of the proceeds of sale of the Commodities stated in Section 2.7 above. Any monies payable by the Customer to any party which exceed the Facility Amount shall be borne and paid by the Customer.

SECTION 4 PAYMENT BY THE CUSTOMER

- 4.1 The Customer shall pay to the Bank the Selling Price in the manner as specified in the Letter of Offer.
- 4.2 Where applicable, the Bank may, with prior written notice to the Customer, vary the terms of payment set out in the Letter of Offer so as to ensure that the Selling Price and other charges (if any) are paid in full upon the maturity date.
- 4.3 Upon request of the Customer, the Bank may extend the duration for the payment of the Selling Price to a further term on such terms and conditions as determined by the Bank provided that the Selling Price remain unchanged.
- 4.4 In the event of Early Settlement of the financing, the Bank shall grant to the Customer an *Ibra'* in accordance with the provisions of this Agreement, the Guidelines of BNM and *Shariah* principle.

SECTION 5 IBRA' (REBATE)

- 5.1 The Bank will grant rebate (Ibra') to the Customer where there is:-
 - (i) Early settlement or early redemption, including those arising from prepayments;
 - (ii) Settlement of the original financing contract due to financing restructuring exercise;
 - (iii) Settlement by the Customer in the case of default;

- (iv) Settlement by the Customer in the event of termination or cancellation of the Facility before expiry of the Facility Tenure; and
- (v) In the event the Effective Profit Rate is lower than the Ceiling Profit Rate.

5.2 The rebate (Ibra') for settlement is calculated in accordance to the following formula:-

Settlement Amount:

Outstanding Selling Price	+	Instalment Due	+	Late Payment Compensation (Ta'widh)	+	Other Charges	-	Rebate (Ibra')
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Where:-

Rebate (Ibra') = Deferred Profit – Early Settlement Charges

Deferred Profit means unaccrued profit at the point of settlement of the Facility.

Early Settlement Charges means the charges that may be imposed by the Bank on the Customer for early settlement of the Facility before the end of the Facility Tenure. Such charges may include:-

- (i) costs that have not been recovered because a financing contract has a structure with discount elements at the initial period of financing (if applicable); and
- (ii) initial costs that have not been recovered (e.g.; legal fees, valuation fees and takaful contribution),

but shall in any event be a reasonable estimate of the costs incurred by the Bank as a direct result of such early settlement.

Other Charges includes but is not limited to the following:

- (i) Advances paid by the Bank including takaful contribution/insurance premium, legal fees, quit rent, other incidental cost incurred and etc.;
- (ii) Any cost, expenses and charges (excluding ta'widh) which have not been paid on the settlement date.

5.3 In the event the Customer is a first-time house buyer, the Facility will be subject to a lock-in period of five (5) years from the date of the Letter of Offer. Should the Customer make an early settlement of the Selling Price within the said lock-in period, the Customer will pay to the Bank, Early Settlement Charges not exceeding two (2%) percent of the outstanding principal balance.

5.4 The ibra' (rebate) to be granted will be reduced by the Early Settlement Charges subject always that it does not exceed the remaining Deferred Profit.

5.5 For the avoidance of doubt, it is agreed that the rebate (Ibra') referred to in this

Section shall not in any way be construed as cash rebate payable to the Customer, but shall be reflected as a reduction in the Murabahah Profit.

End of Part B for *Tawarruq*

FIRST SCHEDULE

(Which is to be taken as read and construed as an essential part of this Agreement)

MURABAHAH SALE CONTRACT

THIS MURABAHAH SALE CONTRACT is made on the day _____ of _____ 20____
BETWEEN:

- (1) **MBSB BANK BERHAD (Company No.: 716122-P)**, a company incorporated in Malaysia pursuant to the Companies Act, 2016 and having its registered office at 11th Floor, Wisma MBSB, 48, Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur ("the Bank" and includes its successors in title and lawful assigns); and
- (2) the party as stated in Section 1 of the Appendix ("**the Customer**")

The parties **HEREBY AGREE AND DECLARE** as follows:

1. AGREEMENT TO SELL

- (a) Pursuant to a Purchase Requisition of an even date issued by the Customer to the Bank, the Bank hereby sells and the Customer hereby purchases the Commodities on an "as is where is basis" as stated in Section 2 of the Appendix at the Selling Price set out in Section 3 of the Appendix.
- (b) The Selling Price shall be paid on deferred payment terms and subject to terms and conditions in the Facility Agreement referred to in Section 5 of the Appendix.

2. TRANSFER OF OWNERSHIP

- (a) Upon completion of this Murabahah Sale Contract, the liabilities and beneficial ownership to the Commodities (including the risk in the Commodities) shall immediately pass to the Customer.
- (b) The transfer of ownership of the Commodities shall be evidenced by the certificate and the delivery order issued by the Commodity Trader.
- (c) The Bank shall retain the relevant certificate relating to the Commodities in its custody as trustee for the benefit of the Customer for the purpose of subsequent sale of the Commodities to a Commodity Trader pursuant to the Agency Agreement of even date executed between the Customer and the Bank. The Customer shall have the right to inspect the said certificate at the premise of the Bank or to require the Bank to furnish the Customer with a photocopy of the said certificate by written notification to the Bank.

3. PAYMENT OF THE SELLING PRICE

The payment of the Selling Price by the Customer to the Bank shall be by way of deferred payments in the amount and in the manner as specified in Section 4 of the Appendix of the Schedule 3.

4. TERMS AND CONDITIONS

The terms and conditions set out in the Facility Agreement are hereby repeated and shall be binding on the Customer (including its successors in title) and the Bank (including persons deriving title there under and its successors in title and assigns).

In this Murabahah Sale Contract unless otherwise stated, all the terms and references shall bear the same meaning as designated to them in the Facility Agreement and the Letter of Offer.

IN WITNESS WHEREOF the parties have hereunto set their respective hand(s) the day and year, first above written.

THE BANK

SIGNED by)	The Bank
)	
as Attorney for and on behalf of)	by its Attorney(s)
MBSB BANK BERHAD)	
)	
in the presence of:)	
)

The Customer

*SIGNED by The Bank)	The Bank
)	
for the Customer as agent of the Customer)	by its Attorney(s)
)	
)	
in the presence of:)	
)

APPENDIX

(to Murabahah Sale Contract)

1.	<p>*(where the Customer is an individual)</p> <p>Name</p> <p>NRIC/Passport No.</p> <p>Address</p> <p>(where the Customer is a body corporate)</p> <p>Name</p> <p>Registration No.</p> <p>Registered Address</p> <p>Business Address</p>	(Please insert)
2.	Commodities	means the Commodities as per the Commodity Trading Certificate No.: _____ being the Shariah compliant goods and/or commodities acceptable to the Bank, purchased under the platform of any commodity trader appointed by the Bank which will be transacted as the underlying asset to facilitate the <i>Tawarruq</i> transaction.
3.	Selling Price	The description of the Selling Price as per the Commodity Trading Certificate No.: _____.

4.	Payment of Selling Price	<p>The payment of the Selling Price by the Customer to the Bank shall be by way of deferred payments in the manner as specified below:-</p> <p>The payment of the Selling Price shall be based on the Effective Profit Rate as follows:-</p> <p>(a) Grace Period Profit payment</p> <p>The payment of Grace Period Profit shall commence on the first (1st) day of the month following the first disbursement of the Purchase Price until the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier. The monthly Grace Period profit to be paid will be based on actual amount disbursed, as advised by the Bank; and</p> <p>(b) Monthly Instalments payment</p> <p>The monthly instalment payment as set out in the Letter of Offer. The payment of monthly instalment shall commence on the first (1st) day of the month following the expiry of the Grace Period or full disbursement of the Purchase Price, whichever is earlier.</p>
5.	Facility Agreement	Dated

**delete whichever is not applicable*