



### Terms and Conditions: Promissory FX Contract-i

1. **Definition:** This KFH Promissory FX-i is a written instrument to evidence the Wa'd by the Promisor to the Promisee to enter into an FX Contract as set out in the Details of the Wa'd overleaf.
2. **Shariah compliance:** This Promissory FX Contract-i adopts the Shariah concept of Wa'd or unilateral promise where one party makes a promise to enter into an FX transaction. It has been approved as a Shariah compliant product by the Shariah Committee of the Promisee on 7<sup>th</sup> March 2006 (Fatwa number 168 and 171). Bank Negara Malaysia (**BNM**) has approved the product on 10<sup>th</sup> April 2006 (Ref. No.: JPIT/OB/1/5/21/AA) and it is also consistent with the BNM Policy Document on Wa'd dated 2 February 2017. No party shall be entitled to set aside or refuse to honor the obligations created herein on the grounds of Shariah non-compliance.
3. **Product mechanism:**
  - a. **At inception:** The Promisor intending to enter into the Promissory FX transaction shall make a unilateral promise to the Promisee to enter into the FX transaction which details shall be followed up with this written confirmation. The promise shall be made by an Authorised person of the Promisor whose name shall be specified in this confirmation either via Bloomberg, or via Reuters, or by telephone using the usual telephone number of the Promisor, or if in writing, signed by the Authorised person using the letterhead of the Promisor transmitted through the usual facsimile number of the Promisor to the usual facsimile number of the Promisee or if by an electronic message, sent by the Authorised person of the Promisor to the Authorised Dealer of the Promisee on the date that the electronic message was received.
  - b. **Two business days prior to the FX Settlement Date:** The Promisee shall send an FX Contract for value spot to the Promisor. The FX Contract will be based on the terms and conditions of this confirmation.
  - c. **On Settlement Date:** Settlement of the FX Contract will take place i.e. both Promisor and Promisee shall make the relevant settlement as provided in the FX Contract.
4. **The Promisor irrevocably agrees** that:
  - a. this Wa'd is binding on it from the FX Promise Date.
  - b. its Authorised person of the Promisor and the promisor have the requisite legal capacity to make and execute this Wa'd.
  - c. it shall not unilaterally revoke the Wa'd.
  - d. it shall fulfill this Wa'd in accordance with the terms specified herein.
  - e. the FX Contract pursuant to the Wa'd is to mitigate its own pre-existing risk exposures.
  - f. the Promisee has the right to claim such remedies including without limitation, compensation for actual loss suffered due to failure of the promisor to fulfil his Wa'd.

*For this purpose, "actual loss" shall be calculated as follows:*

    - i. *The amount shall be the actual or estimated direct cost incurred or loss suffered by the Promisee to mitigate risks which may be calculated either on actual basis (i.e. specific back-to-back arrangement with a third party) or on estimated basis (i.e. risk mitigation to portfolio basis)*
    - ii. *The actual or estimated direct costs or loss shall be determined by using the prevailing market pricing obtained from reliable sources (namely as quoted on widely used market information system such as Bloomberg or Thomson Reuters) at the time of the loss and the outstanding amount under the Wa'd arrangement.*
5. **Fulfilment of Wa'd:** This Wa'd shall be fulfilled upon completion by the Promisor or his guarantor (*if any*) of all of its obligations in accordance with the terms and conditions herein after which the Promisor or his guarantor (*if any*) are released from its obligations herein.
6. **Revocation of Wa'd:** This Wa'd may be revoked under two circumstances, namely:
  - i. The Promisee consents in writing to the revocation; or
  - ii. The Promisee elects not to invoke the Wa'd

7. **Compliance with relevant laws, regulations, rules and procedures:** The Promisor and the Promisee shall ensure due and timely compliance to all relevant laws, regulations, rules and procedures including without limitation to the Islamic Financial Services Act 2013, the applicable foreign exchange administration rules and all other relevant acts, rules and regulations that are issued by the relevant regulatory authorities from time to time.

**8. Mode of Communication:**

- a. The Promisee is authorised to rely upon and act on all instructions and correspondences (“Instruction”) from the Promisor communicated by telephone or transmitted by facsimile or other electronic mode of communication as may be mutually agreed upon by the parties.
- b. The Promisor releases the Promisee who has relied upon or acted on the Instruction from the Promisor and indemnifies and holds the Promisee harmless from and against all actual and direct actions, suits, proceedings, costs (including reasonable legal costs), claims, demands, charges, expenses, losses and liabilities however arising (unless due to the gross negligence, willful default or fraud of the Promisee) in consequence of, or in any way related to: -
  - i. the Promisee having acted in good faith in accordance with the Promisor’s Instruction, notwithstanding that such Instruction(s), as above have been initiated or transmitted in error or fraudulently altered, misunderstood or distorted in the lines of communication or transmission; and/or
  - ii. the Promisee having refrained from acting in accordance with the Promisor’s Instruction by reason of failure of either actual transmission thereof to the Recipient, whether connected to the fault or failure or other cause connected to the sending or receiving machine; and/or
  - iii. the Promisor’s failure to forward all original copies of Instruction to the Promisee within such period as the Promisee may specify.
- c. The Promisor agrees that it will not raise any objection in respect of the agreed mode of communication in respect of or in relation to the Instruction nor will it challenge the authenticity of the Instruction given to the Promisee in the courts of law.