

### 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.

**9. Canvassing, Gifts, Inducements and Rewards**

- a. The Promisor hereby acknowledges that the Promisee practices a zero-tolerance position towards any form of bribery and corruption in line with its Anti Bribery and Corruption (ABC) Policy.
- b. The Promisor shall not in any circumstances offer, promise or make any gift, payment, loan, financing, advances, reward, inducement, benefit, or other advantage to any of the Promisee’s employees, members of its board of directors, representatives and/or agents. Such acts are criminal offence under the Malaysian laws and shall entitle, but not oblige, the Promisee, without liability and without prejudice to the Promisee’s other rights and remedies, to terminate this KFH Promissory FX-i forthwith, and the Promisor shall be liable for all losses incurred by the Promisee as a result of such termination, and shall indemnify and render the Promisee harmless from all such costs.
- c. The Parties hereby declare that they are aware of the practice wherein persons and companies may take advantage of the position or office that they are in or the information that they are in possession of for the purposes of obtaining for themselves any illicit gratification, reward, benefit or advantage or make or made any bribe, rebate, payoff, influence payment, unlawful kickback or other unlawful payment, the Promisor recognises that such practice is in violation of the Promisee’s policies including its procurements ethics, and Malaysian Anti-Corruption Commission (Amendment) Act 2018 or any regulation implementing any anti-corruption or other similar law in Malaysia and hereby warrants and undertakes not to utilize such information or assistance offered by such persons or companies or allow the existence or the continuation of such practice for purpose of this KFH Promissory FX-i.
- d. The Promisor has instituted and has maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve compliance with this clause.

- e. The Promisor, upon being informed of any violation of these provisions, which have either occurred or may have occurred, shall immediately notify the Promisee in writing of the nature of the violation.
- f. The Promisor hereby acknowledges and undertakes as follows:
  - (i) that it has read and understood the Promisee's ABC Statement as published in Promisee's corporate website;
  - (ii) that it shall, and shall cause its directors, officers, employees and its authorized representatives or agents, to comply with anti-corruption or other similar law in Malaysia; and
  - (iii) the Promisor, upon being informed of any violation of these provisions, which have either occurred or may have occurred, shall immediately notify the Promisee in writing of the nature of the violation;
  - (iv) to notify the Promisee of any non-compliance or attempted non-compliance with the Anti-Bribery Laws by any of its employees or persons associated with the Promisor by reporting the same via the [whistleblow@kfh.com.my](mailto:whistleblow@kfh.com.my) on the Promisee's corporate website.

## 10. Disclosure

- a. In addition to the permitted disclosures provided under Schedule 11 of the Islamic Financial Services Act 2013, the Promisor hereby authorizes and permits Promisee, its officers and employees to disclose and furnish all information concerning the account, this KFH Promissory FX-i, present and future accounts of the Promisor and any other matters relating to the Promisor or its business and operations in whatever form including but not limited to documents or materials, records, books, registers or any form of communication to:
  - (i) the Central Credit Unit (including for purposes of storage in the Central Credit Reference Information System ("CCRIS") which information is available to all participating financial institutions), Dishonoured Cheques Information System (DCHEQS), Bank Negara Malaysia, credit reporting agencies and such other persons as Bank Negara Malaysia deems necessary, Syarikat Jaminan Pembiayaan Perniagaan Malaysia (if applicable) and any other governmental agency, or such other regulatory authorities having jurisdiction over Promisee and / or Promisee's holding company;
  - (ii) the security parties or any party intending to provide security in respect of the account(s);
  - (iii) any company which is or which in the future may be a subsidiary and / or parent company and / or member and / or related concern (as defined by Section 7 of the Companies' Act (2016) and / or associate (as defined by Section 2(1) of the Islamic Financial Services Act (2013) of Promisee and / or its holding company);
  - (iv) any of Promisee's branches, representative offices, affiliates (present as well as future) and Promisee's head office;
  - (v) any person who provides services to Promisee and / or its holding company (including without limitation the auditors, legal counsels and other professional advisors of Promisee and / or its holding company);
  - (vi) any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation or other legal provisions or rules or orders (including subpoenas) issued by any court of law of any jurisdiction within or outside Malaysia, or to the extent that disclosure of

information is deemed by Promisee to be prudent or reasonably necessary to defend itself in any court of law of any jurisdiction within or outside Malaysia;

- (vii) any service provider (including debt collection agencies and short message service provider);
  - (viii) Where the Promisor instructs Promisee to effect any sort of cross-border transaction (including remittance and/or receiving any payments), the details relevant to the cross border transaction (including but not limited to information relating to those involved in the said transaction) may be received from or sent abroad, where it could be accessible (whether directly or indirectly) by any regulators, authorities in connection with their legitimate duties (e.g. the prevention of crime), legal proceedings or any court of law of any jurisdiction within or outside Malaysia. In instructing Promisee to enter into any cross-border transaction on the Promisor's behalf, the Promisor hereby agrees and consent to the abovesaid disclosures; and
  - (ix) any person or party for such purposes as Promisee may in its discretion deems necessary or expedient.
- b. The Promisor hereby consents to such disclosure both as to information that Promisee already has in its possession, and information that it will receive in the future, and that no further consent from the Promisor is required for the purposes of this section and the Promisor hereby confirms that Promisee shall not be liable in any manner for disclosing or furnishing such information referred to herein provided that in respect of the documents or records or information which are classified as confidential, the person receiving such information from Promisee may be required to undertake to maintain the confidentiality of the documents or records or information received.
- c. Notwithstanding para (d), in the event the Promisor opts to withdraw the consent given earlier, Promisee will have the right to not provide or discontinue the provision of any products, services, account(s) and/or facility(ies) that is/are linked with such information.
- d. In relation to the disclosure of information for the purpose of cross selling, marketing and promotions in the application of the account(s), in the event the Promisor(s) subsequently wants to opt-out or vice versa, Promisor(s) may contact Promisee to change the option.

## 11. Personal Data Protection

- a. Where "Personal Data" as defined in the Personal Data Protection Act 2010 (PDPA) is processed for the purpose or during the term of this KFH Promissory FX-i, both Parties shall:
- (i) process the Personal Data to the extent and in such manner as is necessary for the performance of this KFH Promissory FX-i;
  - (ii) procure that its employees, shareholders, affiliates, agents and/or consultants agree, observe and comply with the requirements of PDPA and ensure reliability of any personnel having access to the Personal Data;
  - (iii) take appropriate technical and or organizational measures to protect the Personal Data from any loss, misuse, modification, authorisation or accidental access or disclosure, alteration or destruction including ensuring a level of security appropriate to the harm that might result from the said acts and appropriate to the nature of the Personal Data;
  - (iv) promptly notify the other Party in writing when it becomes aware or reasonably ought to have become aware of any breach of its obligations under this KFH Promissory FX-i that results in an actual or reasonably suspected unauthorized disclosure of Personal Data whether on part of itself or its

officers, employees, agents or sub-contractor and of steps taken to manage and repair the breach;  
and

- b. Notwithstanding anything herein contained, both Parties shall at all times comply with the provisions of PDPA. The Promisor hereby fully indemnifies and shall keep the Promisee indemnified from and against all costs, expenses, actions, damages and claims whatsoever resulting from or in connection with such non-compliance by the Promisor of the provisions of the PDPA.
- c. The Promisor hereby agrees and consents to the holding, collection and use of all personal data provided to the Promisee by the Promisor or acquired by the Promisee from the public domain, as well as personal data that arises as a result of the provision of services to the Promisor in connection with this KFH Promissory FX-i with the Promisee in accordance with the Privacy Policy under Personal Data Protection Act 2010 of the Promisee as may be amended from time to time.

[End of clauses]