

## **TERMS AND CONDITIONS OF MITB COMMODITY MURABAHAH**

The MITB Commodity Murabahah will be issued on [09 February 2023](#) pursuant to the Government Funding Act 1983 by the Minister of Finance.

Subject to provisions of the MITB Commodity Murabahah Agreement, payments in respect of the MITB Commodity Murabahah will be made in accordance with the CSDPAR.

Copies of the MITB Commodity Murabahah Agreement shall be available for inspection at the registered office for the time being of the Facility Agent which, at the date of the issue of the MITB Commodity Murabahah, is at [09 February 2023](#).

The statements in these Terms and Conditions include summaries of, and shall be subject to, the provisions of the MITB Commodity Murabahah Agreement, and the CSDPAR.

The MITB Commodity Murabahah Holder shall be entitled to the benefit of and shall be bound by, and shall be deemed to have notice of, all the provisions of the MITB Commodity Murabahah Agreement and the CSDPAR.

### **1. FORM**

The issuance of MITB Commodity Murabahah shall be represented by the Global Certificate.

### **2. STATUS**

2.1 Each MITB Commodity Murabahah is a direct, unconditional, unsecured obligations of the Government and shall at all times rank *pari passu* and rateably without discrimination, preference or priority amongst themselves and at least *pari passu* with all other present and future unsecured obligations of the Government subject to the provisions of the MITB Commodity Murabahah Agreement and those preferred by law.

2.2 The provisions of the MITB Commodity Murabahah Agreement bind the Government, the Facility Agent, the MITB Commodity Murabahah Holders and all persons claiming through or under them and the MITB Commodity Murabahah shall be issued subject to the provisions of the MITB Commodity Murabahah Agreement.

### **3. REDEMPTION**

3.1 Unless previously purchased, cancelled or otherwise satisfied by the Government, the MITB Commodity Murabahah will, subject to Condition 6, be redeemed in full at their Nominal Values on the respective Maturity Date. The MITB Commodity Murabahah can be redeemed in whole or in part before their respective Maturity Dates.

3.2 The Government or any of its related corporations may at any time and from time to time redeem the MITB Commodity Murabahah at any price in the open market or by private arrangement.

3.3 The MITB Commodity Murabahah which has been redeemed by the Government shall be cancelled and such MITB Commodity Murabahah may not be re-issued.

#### **4. PAYMENTS**

- 4.1 The Government shall pay or procure to be paid unconditionally to the Paying Agent in Ringgit Malaysia immediately available funds (a) the Nominal Value of the MITB Commodity Murabahah on the Maturity Date of such MITB Commodity Murabahah or such earlier date as the same or any part thereof may become payable in accordance with the MITB Commodity Murabahah Agreement and (b) the accrued profit, payable and calculated in accordance with the MITB Commodity Murabahah Agreement, on each Profit Payment Date or such earlier date as the same or any part thereof may become payable in accordance with the MITB Commodity Murabahah Agreement PROVIDED THAT every payment in respect of the MITB Commodity Murabahah to or to the account of the Paying Agent in the manner provided in the CSDPAR shall operate in satisfaction *pro tanto* of:
- (i) the covenant of the Government set out in this Condition 4.1; and
  - (ii) the Government's obligation to pay the BNM's Sale Price pursuant to the relevant Transaction Document.
- 4.2 In the event that the Government fails to make any payment in respect of the MITB Commodity Murabahah in accordance with the Condition 4.1, it shall pay compensation (Ta'widh) on such overdue amounts at the rate and manner prescribed by the Shariah Advisory Council from time to time in accordance with the principles of Shariah.
- 4.3 All payments by the Government shall be made without withholding or deductions for or on account of any present or future tax, duty or charge of whatsoever nature imposed or levied by or on behalf of Malaysia or any other applicable jurisdictions, or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law (in which event the Government shall be required to make such additional amount so that the payee would receive the full amount which the payee would have received if no such withholding or deductions are made).
- 4.4 A certificate by the Facility Agent as to any sum payable to it (for the account of the MITB Commodity Murabahah Holders) under the MITB Commodity Murabahah Agreement and these Terms and Conditions and any other certificate, determination, notification or opinion of the Facility Agent provided for in these Terms and Conditions and the MITB Commodity Murabahah Agreement shall, in the absence of manifest error, be final and binding on the Government and the MITB Commodity Murabahah Holders.

#### **5. LIMITATION PERIOD**

- 5.1 Subject to the provisions of the Unclaimed Moneys Act 1965, each MITB Commodity Murabahah becomes void unless presented for payment within six (6) years from the relevant date and thereafter no cause of action shall accrue therefrom against the Government.
- 5.2 If a MITB Commodity Murabahah becomes void in accordance with Condition 5.1, the Paying Agent shall as soon as practicable pay to the Facility Agent any money held by the Paying Agent in respect of that MITB Commodity Murabahah.

## **6. EVENTS OF DEFAULT**

- 6.1 The Facility Agent may declare by giving written notice to the Government that an Event of Default has occurred and that, notwithstanding the stated maturity of the MITB Commodity Murabahah, the MITB Commodity Murabahah are immediately due and payable, and the MITB Commodity Murabahah (which include such MITB Commodity Murabahah which have matured but remain unpaid) will thereupon become due and payable, if any of the following events shall occur-
- (a) the Government fails to distribute/pay any amount in respect of the MITB Commodity Murabahah and/or Transaction Documents as and when it falls due from it or when demanded from it, under any of the Transaction Documents; or
  - (b) any representation or warranty made or given by the Government in any of the Transaction Documents or which is contained in any certificate, statement or document furnished at any time pursuant to the terms of the MITB Commodity Murabahah and/or any Transaction Documents proves to have been incorrect or misleading in any material respect on or as of the date made or given or deemed made or deemed given; or
  - (c) the Government fails to observe or perform any of its obligations under any of the Transaction Documents or the MITB Commodity Murabahah Agreement or under any undertaking or arrangement entered into in connection therewith (other than an obligation of the type referred to in paragraph (a) above) and such failure shall continue for a period of thirty (30) days or more after having been notified of the same by the Facility Agent; or
  - (d) at any time any provision of the Transaction Documents relating to the payment obligations of the Government is or becomes, for any reason, invalid, illegal, void, voidable or unenforceable; or
  - (e) the Government repudiates any of the Transaction Documents or alleges that any Transaction Document is not in proper legal form for enforcement thereof or the Government does or causes to be done any act or thing to repudiate any of the Transaction Documents to which it is a party.

Each of paragraphs (a) to (e) above is to be construed independently and no one Event of Default limits the generality of any other Event of Default.

## **7. NOTICES**

- 7.1 Subject to Condition 7.2, a notice may be given by the Facility Agent to the MITB Commodity Murabahah holders by publishing it via FAST.
- 7.2 If at any time publication via FAST is not practicable, the notice may be given in such other manner as the Facility Agent deems appropriate.
- 7.3 A notice is deemed to have been given on the date of publication or, if published more than once or on different dates, on the first date on which it is published.

## **8. MODIFICATIONS**

- 8.1 In addition to and without prejudice to the MITB Commodity Murabahah holders, the Facility Agent may at any time or times without the consent or sanction of the MITB Commodity Murabahah holders concur with the Government in making any modifications to this Agreement subject to compliance with Shariah which in the opinion of the Facility Agent will not be materially prejudicial to the interests of the MITB Commodity Murabahah holders or is to correct a manifest error or to comply with mandatory provisions of the laws of Malaysia.
- 8.2 The Facility Agent shall not exercise its powers under Condition 8.1 if it receives a request from the MITB Commodity Murabahah holders pursuant to Condition 6 to declare that the MITB Commodity Murabahah are immediately due and payable.
- 8.3 Subject to Condition 8.2, any such modification shall be binding on the MITB Commodity Murabahah holders, and if, but only if, the Facility Agent shall so require, be notified to the MITB Commodity Murabahah holders in accordance with Condition 7 as soon as practicable thereafter.
- 8.4 This Condition 8 shall be read subject to Clause 4 of the MITB Commodity Murabahah Agreement.

## **9. AUTHORISATION AND WAIVER OF BREACHES**

- 9.1 The Facility Agent may from time to time and at any time, provided that it is satisfied that the interests of the MITB Commodity Murabahah holders will not be materially prejudiced, waive or authorize on such terms and conditions (if any) as shall seem expedient to the Facility Agent any breach or proposed breach by Government of any of the covenants, conditions, provisions or obligations on its part contained in this Agreement PROVIDED ALWAYS the Facility Agent shall not exercise any powers conferred on it by this Condition 9 in contravention of any express direction given to it by the MITB Commodity Murabahah holders (such direction not being inconsistent with any of the express terms and conditions of this Agreement or the MITB Commodity Murabahah) but no such direction shall effect any such authorization or waiver previously given or made. Any such waiver or authorization shall be without prejudice to the rights of the Facility Agent in respect of any subsequent breach thereof.
- 9.2 Any waiver or determination by the Facility Agent under this Condition 9, shall be conclusive and binds the MITB Commodity Murabahah holders.

## **10. GUIDELINES AND RULES**

The MITB Commodity Murabahah shall at all times be governed by the guidelines issued and to be issued from time to time by BNM and the rules issued or to be issued from time to time by MyClear over matters pertaining to the MITB Commodity Murabahah.

## **11. GOVERNING LAW**

The MITB Commodity Murabahah Agreement and the MITB Commodity Murabahah shall be governed by and construed in accordance with the laws of Malaysia.