

## ADDITIONAL TERMS GOVERNING ISLAMIC TERM DEPOSITS

The terms and conditions set out herein (“**Terms and Conditions**”) supplement and are additional to the Terms and Conditions governing the operation of Singapore Dollar Time Deposit / iSAVvy Time Deposit Account and the Rules and Regulations governing Foreign Currency Time Deposit Account / iSAVvy Foreign Currency Time Deposit, as amended from time to time (“**Conditions**”). These Terms and Conditions shall be read together with the Conditions and shall be considered as an integral part of the Conditions.

The Customer shall, from time to time and through the Agent, purchase Commodities from a commodities broker on immediate payment and delivery terms (a “**Purchase Transaction**”) and shall sell such Commodities to the Bank for immediate delivery and on a deferred payment basis (a “**Sale Transaction**”).

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In these Terms and Conditions, unless the context otherwise requires:

“**Account**” means an account of the Customer with the Bank, opened or to be opened pursuant to Clause 2 of these Terms and Conditions.

“**Agency Terms and Conditions**” means the standard master agency terms and conditions setting out the relationship between the Customer and the Agent, which form is attached as the Schedule to these Terms and Conditions and which is deemed to be incorporated into these Terms and Conditions.

“**Agent**” means the Bank or such other agent as approved by the Bank, appointed by the Customer to facilitate the Purchase Transaction and the Sale Transaction on behalf of the Customer, upon the terms and conditions of the Agency Terms and Conditions.

“**Application Form**” means the application form enclosing the transaction request issued by the Customer in favour of the Bank setting out the details of a proposed Purchase Price, the Sale Price and such other details in the form as the Bank may prescribe from time to time.

“**Bank**” means Malayan Banking Berhad, Singapore branch.

“**Business Day**” means a day (excluding Saturday and Sunday) on which commercial banks are open for business in Singapore, provided that:

- (a) for the purposes of payments in a currency other than Singapore dollars, also includes a day on which commercial banks in the principal financial centre of such currency are open for business; and
- (b) for the purposes of a Purchase Date, also includes a day on which commercial banks in the principal financial centre in which the relevant commodities brokers operate are open for business.

“**Buyer**” means such party as identified by the Bank from time to time (other than the Customer) to purchase the Commodities from the Bank pursuant to a Resale Transaction.

“**Commodities**” means the Shariah-compliant commodities as determined by the Bank in its sole discretion from time to time.

“**Customer**” means such individual or body corporate as set out in the Conditions.

**“Deferred Payment Date”** in relation to any Sale Transaction or New Sale Transaction, means the Business Day on which the Bank is obliged to make payment of the Outstanding Sale Price pursuant to such Sale Transaction or New Sale Transaction (as the case may be), and where relevant, may also include a Profit Payment Date.

**“Deposit Advice”** means the confirmation in the Bank’s prescribed format setting out the key terms of a Transaction and which is issued by the Bank.

**“Effective Date”** means the effective date as set out in the Deposit Advice.

**“Insolvency Proceeding”** means a case or proceeding seeking a judgment of or arrangement for insolvency, bankruptcy, composition, rehabilitation, reorganisation, administration, judicial management, winding-up, liquidation (except a voluntary liquidation for the purpose of a solvent reconstruction or amalgamation) or other similar relief with respect to a party or its debts or assets, or seeking the appointment of a trustee, receiver, liquidator, conservator, custodian or other similar official of a party or any substantial part of its assets, under any bankruptcy, insolvency or other similar law or any banking, takaful/insurance, or similar law governing the operation of a party and any analogous proceeding in any jurisdiction to which a party is subject.

**“New Purchase Transaction”** has the meaning ascribed to it in Clause 5.8.1.

**“New Sale Transaction”** has the meaning ascribed to it in Clause 5.8.2.

**“Outstanding Sale Price”** means, in respect of a Sale Transaction, the amount representing the difference between the Sale Price and the aggregate Profit that has been paid to the Customer on the Profit Payment Date.

**“Profit”** means profit amount as reflected in the relevant Deposit Advice and which is calculated as follows:

$$\text{Profit} = (\text{Purchase Price} \times R \times \frac{N}{D})$$

Where:

**“N”** is the number of days to elapse between the proposed Purchase Date and the Deferred Payment Date;

**“R”** is the Profit Rate; and

**“D”** means 365, or in the case of a leap year, 366.

**“Profit Payment Date”** means the date on which Profit in respect of a Transaction is to be paid, provided that such date falls on or before the relevant Deferred Payment Date for that Transaction. .

**“Profit Rate”** means the profit rate as specified in the Deposit Advice.

**“Purchase Date”** means the Business Day on which a Purchase Transaction is to be effected.

**“Purchase Price”** means such price at which the Customer shall purchase the Commodities which are the subject of a Purchase Transaction, inclusive of any expenses, charges and Taxes that may be incurred in the process of purchasing the Commodities.

**“Rebate (Ibra’) Rate”** means the amount of rebate (ibra’) granted by the Customer to the Bank which is calculated as follows:

**For Term Deposits Renewed or Placed Before 1 March 2020:-**

**(A) Rebate (Ibra') in respect of Singapore Dollar Islamic Term Deposit****a) Where the Term is calculated based on a tenure of a fixed number of month(s)**

- (i) Where early payment is made within 3 months from the Effective Date:

$$\text{Rebate (Ibra')} = \text{Profit}$$

and;

- (ii) Where early payment is made after 3 months from the Effective Date:

$$\text{Rebate (Ibra')} = \text{Sale Price} - \left[ (P \times R \times \frac{T}{D} \times 50\%) + P \right]$$

Where:

“P” is the Purchase Price;

“T” is the actual number of days elapsed between the Purchase Date and the prepayment date ;

“R” is the Profit Rate; and

“D” means 365, or in the case of a leap year, 366

**b) Where the Term is calculated based on a tenure of a fixed number of days**

$$\text{Rebate (Ibra')} = \text{Profit}$$

**(B) Rebate (Ibra') in respect of Islamic Foreign Currency Term Deposit**

$$\text{Rebate (Ibra')} = \text{Replacement Cost}$$

Where

“Replacement Cost” is the Profit Differential x Purchase Price x No. of days to maturity / y days

Where “y” is:

- (i) 365 where the currency of the deposit is GBP or HKD; and  
(ii) 360 where the deposit is in any other currency.

**For Term Deposits Renewed or Placed On or After 1 March 2020:-****Rebate (Ibra') in respect of all Islamic Term Deposits**

- (i) Where early payment is made without notice, no profit shall be paid:

$$\text{Rebate (Ibra')} = \text{Profit}$$

and;



- (ii) Where early payment is made with notice given, profit paid up to the expiry of notice date:

$$\text{Rebate (Ibra')} = \text{Sale Price} - [((P \times R \times \frac{T}{D}) - \text{Replacement Cost}) + P]$$

Where:

“P” is the Purchase Price;

“T” is number of days up to the expiry of notice date;

“R” is the Profit Rate; and

“D” means 365, or in the case of a leap year, 366

“Replacement Cost” is the Profit differential x Purchase Price x No. of days to maturity / y days

Where “y” is:

- (i) 365 where the currency of the deposit is GBP, HKD or SGD; and
- (ii) 360 where the deposit is in any other currency.

“Resale Transaction” means the sale of the Commodities by the Bank to the Buyer upon the completion of a Sale Transaction or a New Sale Transaction, upon such terms and conditions as agreed to between the Bank and such Buyer.

“Sale Date” means the Business Day on which the Sale Transaction or a New Sale Transaction takes place.

“Sale Price” means such price as agreed by the Customer and the Bank being the price at which the Bank shall purchase and the Customer shall sell the Commodities which are the subject of a Sale Transaction or a New Sale Transaction, inclusive of any Tax.

“Singapore Dollars” or “S\$” means the lawful currency of Singapore.

“Tax” means any present or future tax, zakat, levy, duty, charge, fee, deduction or withholding in the nature of tax, whatever called, wherever imposed, levied, collected, withheld or assessed and shall include, without limitation, any penalty or late payment amount payable in connection with any failure to pay or any delay in paying the same.

“Term” means the tenor of each Sale Transaction as selected by the Customer, which shall, for the avoidance of doubt:

- (a) in respect of a Sale Transaction, commence from the Effective Date and end on the Deferred Payment Date; and
- (b) in respect of a New Sale Transaction, commence from the relevant Effective Date and end on the relevant Deferred Payment Date.

“Transaction” as the context requires, means the Purchase Transaction and/or the Sale Transaction, and if the context so requires, the New Purchase Transaction and/or the New Sale Transaction, collectively as contemplated under these Terms and Conditions.

“Transaction Date” means the Business Day on which a Transaction occurs.

1.2 References to Clauses and the Schedule are references to clauses and the schedule of these Terms and Conditions.

1.3 The Schedule shall form an integral part of these Terms and Conditions.

- 1.4 The headings in these Terms and Conditions are for the purpose of reference only and shall be ignored in the interpretation of these Terms and Conditions.

2. **Opening of Account**

The Customer acknowledges and agrees that following the delivery to the Customer of the Deposit Advice, the Customer shall be taken to have opened a non-interest bearing account in the Customer's name with the Bank. The Customer shall maintain the Account during the term of these Terms and Conditions. The Account shall be utilised solely for the purposes of facilitating the Transactions.

3. **Representations and Warranties**

- 3.1 The Customer warrants and represents to the Bank on the date of these Terms and Conditions that:

- 3.1.1 the obligations expressed to be assumed by the Customer under these Terms and Conditions, the Agency Terms and Conditions and each Transaction are legal, valid, binding and enforceable obligations (subject to any general principles of law limiting its obligations);
- 3.1.2 the Customer has the power to enter into, perform and deliver, and has taken all necessary action to authorise the Customer's entry into, performance and delivery of these Terms and Conditions, the Agency Terms and Conditions and the Transactions;
- 3.1.3 the Customer's obligations under these Terms and Conditions, the Agency Terms and Conditions and each Transaction constitute its legal, valid and binding obligations in accordance with their respective terms and that the Customer has waived any immunity that may be available to the Customer, including sovereign immunity, to the fullest extent practicable;
- 3.1.4 the Customer has and will at all times maintain all authorisations, approvals, licences and consents required to enable it lawfully to perform the Customer's obligations under these Terms and Conditions, the Agency Terms and Conditions and each Transaction;
- 3.1.5 neither the entry nor performance of these Terms and Conditions, the Agency Terms and Conditions or any other document pursuant to these Terms and Conditions shall constitute or give any rise to any breach or default under:
  - (a) any agreement by which the Customer is bound;
  - (b) where the Customer is a body corporate, such Customer's constitutional documents; or
  - (c) any law or regulation applicable to the Customer; and
- 3.1.6 all authorisations required or desirable:
  - (a) to enable the Customer to lawfully enter into, exercise the Customer's rights and comply with the Customer's obligations under these Terms and Conditions, the Agency Terms and Conditions and each Transaction; and
  - (b) where the Customer is a body corporate, to make these Terms and Conditions admissible in evidence in such Customer's jurisdiction of

incorporation, have been obtained or effected and are in full force and effect; and

3.1.7 the Customer is not required to make any deduction for or on account of Tax from any payment it may make under these Terms and Conditions.

3.2 The Customer warrants and represents on the date of these Terms and Conditions that the Customer is not relying upon any advice (whether written or oral) of the Bank. The Customer has made and will make the Customer's own decisions regarding the entering into of any Transaction under these Terms and Conditions based upon the Customer's own judgement and upon advice from such professional advisors as the Customer has deemed necessary to consult. The Customer understands the terms, conditions and risks of each Transaction and is willing to assume (financially and otherwise) those risks.

3.3 The representations and warranties set out in this Clause 3 shall be deemed to be repeated by the Customer on each Transaction Date and Deferred Payment Date and shall be valid for as long as the Account is maintained.

3.4 The Customer acknowledges that each Transaction is entered into for the Customer's account and risk and the Bank and its agents shall have no duty or responsibility towards the Customer in relation to any anticipated or actual breach of the terms of a Transaction by the Customer or any counterparty, save where such breach arises directly as a result of the gross negligence, wilful default or fraud of the Bank or its agents.

#### **4 Obligations of the Customer**

4.1 Upon the execution of an Application Form and in exchange for the receipt of the Deposit Advice, the Customer shall deposit an amount equal to the Purchase Price as stated in the relevant Deposit Advice in the Account.

4.2 The Customer may, on each Deferred Payment Date, deposit a further amount of such minimum sum or its multiples thereof, as may be approved by the Bank from time to time (the "**Additional Purchase Price**"), in the Account, upon which the provisions of Clause 5.8 shall apply to the amount so deposited.

#### **5. Purchase Transaction and Sale Transaction**

5.1 The Customer shall pursuant to the Agency Terms and Conditions request the Agent to enter into a Purchase Transaction on behalf of the Customer by submitting a duly completed and executed Application Form to the Bank.

5.2 The details of the Transaction shall be confirmed by the issuance of the Deposit Advice by the Bank. In the event of a discrepancy between the terms of the Application Form and the terms contained in the Deposit Advice, the terms of the Deposit Advice shall prevail.

5.3 Upon the Bank's receipt of the Application Form, the Bank shall convey to the Agent the Customer's request that the Agent enter into a Purchase Transaction on the Purchase Date.

5.4 On the Purchase Date, the Agent shall purchase a sufficient quantity of Commodities for value equal to the Purchase Price on spot delivery terms and shall continue to hold the Commodities (together with Commodities purchased by the Agent on behalf of other Customers of the Bank) on trust for the Customer together with such documents of title and documents to evidence that the constructive delivery of the



Commodities has passed to the Agent. Such Commodities shall be delivered in their present state and condition on an “as is” basis.

- 5.5 Upon the completion of the Purchase Transaction, the Agent (acting on behalf of the Customer) shall enter into a Sale Transaction with the Bank as follows:
- 5.5.1 The Sale Transaction shall be carried out under the principles of Murabaha, and shall be a sale at the Sale Price (being the aggregate of the Purchase Price and the Profit (subject to Clause 5.7) as calculated based on the Profit Rate for the Term) and on a deferred payment basis, such payment being due on the Deferred Payment Date.
- 5.5.2 The Agent, on behalf of the Customer, shall be obliged to deliver the Commodities which are the subject of the Sale Transaction to the Bank on the Sale Date. It is agreed that settlement of Commodities shall take place as follows:
- (a) the Agent shall, on behalf of the Customer, effect the constructive delivery of the Commodities to the Bank on an “as is where is” basis; and
  - (b) the release of funds for the payment of the Sale Price by the Bank shall be effected and, subject to Clause 5.7:
    - (i) the Profit shall be credited by the Bank to such account of the Customer maintained with the Bank as notified by the Customer to the Bank on the Profit Payment Date; and
    - (ii) the Outstanding Sale Price shall be credited by the Bank to the Account on the Deferred Payment Date.
- 5.6 The Profit and the Outstanding Sale Price shall be credited by the Bank into the relevant account(s) on the Profit Payment Date and the Deferred Payment Date respectively as stated in clause 5.5 above.
- 5.7 The Customer may require early payment of any part of the Outstanding Sale Price or the Sale Price (as the case may be) prior to expiry of the Term subject to the Bank’s consent and to the following conditions:

**5.7.1 For Term Deposits Renewed or Placed Before 1 March 2020:-**

- (i) only the whole (and not part of) the Outstanding Sale Price or the Sale Price (as the case may be) is to be prepaid;
- (ii) the Customer agrees to provide a rebate (ibra’) to the Bank at the Rebate (Ibra’) Rate as agreed by both parties;
- (iii) the Customer shall reimburse to the Bank the Profit received by the Customer in full or in part in the event that the Profit was paid to the Customer at any time prior to the expiry of the Term; and
- (iv) the Customer authorises the Bank to deduct the amounts to be reimbursed to the Bank from the Outstanding Sale Price or the Sale Price (as the case may be) due to the Customer as may be necessary to give effect to the provisions of Clause 5.7.1 (iii) above.

**5.7.2 For Term Deposits Renewed or Placed On or After 1 March 2020:-**

- (i) The Customer must provide the Bank with 31 calendar days’ notice;





- (ii) The notice of early payment must be acknowledged by the Bank;
- (iii) only the whole (and not part of) the Outstanding Sale Price or the Sale Price (as the case may be) is to be prepaid;
- (iv) the Customer agrees to provide a rebate (ibra') to the Bank at the Rebate (Ibra') Rate as agreed by both parties;
- (v) Based on the Customer's notice, the early payment amount will be credited by the Bank into the Customer's Account on the 32<sup>nd</sup> day;
- (vi) The accrued Profit (if applicable) will be calculated daily up to the end of the notice period;
- (vii) the Customer shall reimburse to the Bank the Profit received by the Customer in full or in part in the event that the Profit was paid to the Customer at any time prior to the expiry of the Term;
- (viii) The Customer acknowledges that once notice is provided the Customer is not allowed to change the instructions on the withdrawal until the end of the notice period; and
- (ix) the Customer authorises the Bank to deduct the amounts to be reimbursed to the Bank from the Outstanding Sale Price or the Sale Price (as the case may be) due to the Customer as may be necessary to give effect to the provisions of Clause 5.7.2 (vii) above.

Where the Customer wants to make an early payment of the Outstanding Sale Price or the Sale Price and the Customer is unable to give the Bank 31 calendar days' notice, as stated under Clause 5.7.2(i), no Profit shall be paid to the Customer.

5.8 The Customer hereby authorises the Agent, on each Deferred Payment Date:

- 5.8.1 to purchase a further quantity of Commodities ("**New Commodities**") for a purchase consideration equal to the consideration paid for the immediately preceding Purchase Transaction entered into by the Customer, and, where relevant, the Additional Purchase Price referred to in Clause 4.2 (the "**New Purchase Transaction**"); and
- 5.8.2 to immediately thereafter enter into a new Sale Transaction on immediate delivery and deferred payment terms ("**New Sale Transaction**") with the Bank for the sale of such New Commodities. For the purpose of effecting this Clause 5.8:
  - (a) in the event that a New Purchase Transaction and a New Sale Transaction takes place, the provisions of Clauses 5.4, 5.6, 5.7 and 5.8 shall apply *mutatis mutandis* to such New Purchase Transaction;
  - (b) the New Sale Transaction shall be for the prevailing Profit Rate and Term applicable to the original Sale Transaction.

5.9 The authorisation of the Customer set out in Clause 5.8 shall be automatically revoked upon the termination of the Agency Terms and Conditions.

5.10 The Customer acknowledges that from time to time, the Agent may seek instructions or further information from the Customer. The Customer agrees to respond to such requests in a timely manner. If, in the opinion of the Agent, any instructions are unclear or ambiguous, it will attempt to obtain clarification of those instructions and



the Agent and the Bank may postpone or cancel execution of any Transaction without liability whilst such clarification is being sought.

- 5.11 The Customer agrees to perform and ratify any Transaction entered into by the Agent and/or any action taken by the Agent within the scope of its authority as laid down by the Agency Terms and Conditions as a result of any communications made on behalf of the Customer, or purporting to be made on behalf of the Customer and reasonably believed in good faith to be genuine by the Agent.

6. **Settlement and Transfer of Title**

The Customer agrees and acknowledges that physical delivery of the underlying Commodities shall not be the responsibility of the Agent or the Bank unless otherwise specifically requested by the Customer. The Customer shall bear all costs and expenses related to such physical delivery. In all other circumstances, possession and ownership of the Commodities shall be evidenced by constructive delivery.

7. **Termination**

The Account may be closed in accordance with the provisions of the Conditions applicable to closure of an Account and/or termination, withdrawal or revocation of any Service (as defined in the Conditions).

8. **Change in Circumstances**

- 8.1 If, in respect of a Sale Transaction or a New Sale Transaction, any court of competent jurisdiction finds that any Sale Transaction or New Sale Transaction is void ab initio the rights and remedies of the parties shall be solely as follows in respect of each Sale Transaction or New Sale Transaction (as the case may be):

8.1.1 If there has been no delivery of Commodities under that Sale Transaction or New Sale Transaction (as the case may be), the parties shall have no liability towards each other under such Sale Transaction or New Sale Transaction (as the case may be).

8.1.2 If there has been a delivery of Commodities under a Sale Transaction or New Sale Transaction (as the case may be) (each an “**Affected Transaction**”), the Bank may, in respect of each Affected Transaction pay to the Customer an amount equal to such price as would have been payable to the Customer in respect of the Affected Transaction if payment had been agreed to be made on a spot basis on the Purchase Date, net of any Taxes, charges or losses (which amount shall be reasonably determined by the Bank).

- 8.2 Upon the occurrence of any of the following events in relation to a party (the “**Defaulting Party**”) the other party (the “**Non-Defaulting Party**”) shall be entitled to terminate all outstanding Sale Transactions and/or accelerate all obligations of the Non-Defaulting Party thereunder to the date of termination and/or seek damages from the Defaulting Party for any loss (including in relation to any related transaction):

8.2.1 failure to comply with its obligations under a Sale Transaction or New Sale Transaction in full on the date set for performance and such failure continues for two (2) Business Days after the Non-Defaulting Party has given the Defaulting Party written notice of default; or

8.2.2 the Defaulting Party becomes subject to Insolvency Proceedings; or



8.2.3 any warranty or representation made or given or deemed made or given by the Defaulting Party proves not to be accurate or true in any material respect and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof.

9. **Set off**

Following any termination of a Sale Transaction and/or a New Sale Transaction (as the case may be) under Clause 8.2, the Bank may exercise its rights of set-off and combination and consolidation of accounts in accordance with the Conditions.

10. **Instructions**

The Customer agrees that all communications from the Customer relating to a Transaction are “Instructions” for the purposes of the Conditions and all indemnities and other provisions in the Conditions relating to Instructions shall be applicable.

11. **Tax**

For the purpose of any Sale Transaction or New Sale Transaction arising under these Terms and Conditions, any consideration payable by the Bank to the Customer will be deemed to be inclusive of any Tax and no other sum shall be payable by the Bank.

12. **Indemnity**

The Customer shall keep the Bank indemnified from and against any loss, cost (including any cost of enforcement), liability (including any Tax liability), claim or damage which the Bank suffers or incurs as a result of any breach by the Customer of the terms and conditions of these Terms and Conditions, the Agency Terms and

Conditions or the Transactions or by reason of any negligent act or wilful default on the part of the Customer.

13. **Miscellaneous**

13.1 **No payment of interest.** Both parties agree that they will not give or receive any interest payment under these Terms and Conditions or the Agency Terms and Conditions.

13.2 **Application of funds.** The parties agree that any proceeds received from the Transactions shall be applied solely towards purposes which are compliant with Shariah requirements as determined from time to time by the Shariah committee of the Bank.

13.3 **Operation of the Account.** The Account shall be subject to the terms of the Conditions, provided that in the event of any inconsistency between the Conditions and these Terms and Conditions, the provisions of these Terms and Conditions shall prevail in respect of the Account and the Transactions.

13.4 **Incorporation of the Agency Terms and Conditions.** By signing these Terms and Conditions, the Customer agrees to be bound by these Terms and Conditions and the terms and conditions of the Agency Terms and Conditions.

**SCHEDULE  
AGENCY TERMS AND CONDITIONS**

- (A) The terms and conditions set out herein (the “**Agency Terms and Conditions**”) supplement and are additional to the enclosed terms and conditions (the “**Terms and Conditions**”). These Agency Terms and Conditions shall be read together with the Terms and Conditions and shall be considered as an integral part of the Terms and Conditions.
- (B) The Customer wishes to engage the services of the Agent in relation to the purchase and sale of Commodities under which the Agent will, from time to time, to engage in the purchase and sale of Commodities whereby it shall purchase Commodities from a commodities broker on immediate payment and delivery terms (a “**Purchase Transaction**”) and shall sell such Commodities to the Bank for immediate delivery and deferred payment basis (a “**Sale Transaction**”).
- (C) The Customer has or will enter execute the Terms and Conditions governing the terms and procedures relating to the Purchase Transaction, the Sale Transaction, the New Purchase Transaction and the New Sale Transaction.
- (D) The Customer also wishes to appoint the Agent to provide operational support services and the Agent is willing to accept that appointment on the terms and conditions set out in the Terms and Conditions and these Agency Terms and Conditions.

**IT IS AGREED AS FOLLOWS:**

**1. Definitions**

Unless otherwise defined herein, all capitalized terms in these Agency Terms and Conditions shall bear the same meaning as those set out in the Terms and Conditions.

**2. Appointment of Agent**

- 2.1 The Customer hereby appoints the Agent as its agent and, in consideration of the Customer agreeing to be bound by these Agency Terms and Conditions and to execute the Terms and Conditions, the Agent accepts such appointment to enter into the Transactions on the Customer’s behalf and in its name from time to time, subject to the terms of these Agency Terms and Conditions and the Terms and Conditions, and to carry out the acts and duties more particularly described hereinafter and to do all such other things and acts in its name and on its behalf as are incidental thereto, including, without limitation the execution of any master or other agreement with any counterparty.

**3. Duties of the Agent**

- 3.1 The Agent shall enter into the Transactions on behalf of the Customer and in the Customer’s name from time to time, subject to the terms of these Agency Terms and Conditions and the Terms and Conditions (including the sale and purchase pricing as set out in therein), and to carry out the acts and duties more particularly described hereinafter and to do all such other things and acts in the name of the Customer and



on the Customer's behalf as are incidental thereto, including, without limitation the execution of any master or other agreement with any counterparty.

- 3.2 The Agent shall do all acts and observe and perform all obligations required or to be done or imposed by any agreement for the Transactions. In the execution of its appointment as the agent of the Customer, the Agent shall take all reasonable measures to protect the interests of the Customer.
- 3.3 The Agent shall not be authorised to enter into any Transaction in respect of gold, silver, financial futures, pork, firearms, ammunition, alcohol or any other commodity that the Bank shall specify by from time to time. The Agent does not have any duties, obligations or liabilities (whether fiduciary or otherwise) to the Customer other than those expressly stated in these Agency Terms and Conditions.
- 3.4 The Agent shall not be obliged to follow any of the Customer's instructions which the Agent believes is not practicable or would cause the Agent, its agents, associates or the Customer to be in contravention of any law, rule or regulation.
- 3.5 The Agent shall at all times act as an agent for the Customer as an undisclosed principal and shall not be obliged to disclose to any party (excluding the Bank) that the Agent is acting as an agent unless otherwise required by law or any regulatory body having jurisdiction over the Agent or the Bank
- 3.6 The Customer hereby authorises the Agent, in the exercise of its duties hereunder, to delegate the Agent's duties and other related powers to a sub-agent, delegate, proxy, attorney or any other party as the Agent thinks fit.
- 3.7 The Agent shall have no authority to give or make any representation or warranty on the Customer's behalf to any prospective purchaser or seller (excluding the Bank) in relation to the Commodities.
- 3.8 Any purchase of Commodities by the Agent in terms hereof must provide for effecting constructive delivery of the Commodities on a same day value basis upon full and immediate payment of the relevant Purchase Price, free from any set off, deduction, withholding or counterclaim. Further, other than in respect of Commodities purchased on any reputable exchange on which such Commodities are publicly traded, the Agent shall not enter into any Purchase Transaction without having first assured itself using all reasonable due diligence that the Commodities to be purchased are free from defect and that the Agent shall subsequently be able to sell the Commodities to the Bank under the Sale Transaction with delivery to be made on the same date.
- 3.9 Whilst not envisaged, to the extent physical delivery is required, the Customer shall request the same in writing to the Agent prior to the submitting the Application Form. Such physical delivery will be arranged at the Customer's own risk and cost, and the Customer will be responsible for the payment of all fees, costs and expenses relating to the shipping, delivery, takaful/insurance and storage of such Commodities and all taxes arising from or payable in connection with such physical delivery.
- 3.10 The Agent understands and agrees that the Customer wishes to pursue a single style of trading whereby:
  - (a) the Purchase Transactions and the Sale Transactions shall always be separate transactions provided that, at the Agent's discretion, a Purchase Transaction shall be followed as soon as reasonably practicable by a Sale Transaction; and
  - (b) no Sale Transaction shall be entered into without being preceded by a Purchase Transaction.

The Agent agrees to make all such arrangements as are reasonably required to ensure each Purchase Transaction is immediately followed by a Sale Transaction and agree that the Agent will not commit the Customer to any Sale Transaction unless the Agent has first executed a Purchase Transaction. The Agent shall not be obliged to enter into Transactions other than in the manner set out in these Agency Terms and Conditions and the Terms and Conditions or otherwise act upon any of our instructions



which have been provided otherwise than in accordance with these Agency Terms and Conditions.

- 3.11 In the event the Agent enters into a New Purchase Transaction or a New Sale Transaction, the provisions of Clause 3.10 shall apply *mutatis mutandis* to such New Purchase Transactions or New Sale Transactions.
- 3.12 The Agent shall store, warehouse, keep the Commodities together with the Commodities which the Agent has purchased on behalf of its other principals, provided that the Commodities shall, at any point in time, be easily identifiable.
- 3.13. The Agent shall not be liable to the Customer for any direct or indirect financial or economic losses, costs, liabilities or expenses (including, without limitation, loss of profit, loss of savings or loss of goodwill) save for those directly arising as a result of the Agent's gross negligence, wilful default or fraud. The Agent shall not be liable in relation to any default, negligence or fraud of any person, firm or company with whom Purchase Transactions are effected for the account of the Customer.

#### **4. Obligations of the Customer**

The Customer shall keep the Agent indemnified from and against any loss, cost (including any cost of enforcement) liability (including any Tax liability), claim, demand or damage which the Agent suffers or incurs in the lawful and proper exercise of its duties under these Agency Terms and Conditions or the Terms and Conditions save where such losses, costs, liabilities, claims, demands or damages directly arise by reason of any grossly negligent or fraudulent acts or wilful default on the part of the Agent.

#### **5. No Partnership**

Nothing in these Agency Terms and Conditions shall be construed so as to constitute a partnership between the Agent and the Customer or an assignment (at law or in equity) of all or any part of the Agent's rights under any Transaction.

#### **6. Termination**

- 6.1 The appointment of the Agent may be terminated at any time by the Customer giving written notice to become effective not earlier than at the expiration of seven (7) Business Days from the date of such notice to that effect.
- 6.2 Either party shall be entitled to terminate these Agency Terms and Conditions forthwith by giving written notice to the other if:
  - (a) that other party becomes subject to Insolvency Proceedings; or
  - (b) the other party commits any material breach of its obligations under these Agency Terms and Conditions and (if such breach shall be capable of remedy) shall fail within 30 days of receipt of a notice served by the first party requiring it to make good such breach.
- 6.3 Termination of these Agency Terms and Conditions will be without prejudice to any rights or obligations of a party accrued up to the date of termination and the completion of any Transactions already executed.



7. Collection, Use or Disclosure of Information

The Customer consents to and procures that all relevant individuals whose information has been disclosed to the Agent by or through the Customer (including authorised signatories and authorised persons) (collectively “**Relevant Individuals**”) consent to the Agent, its officers, employees, agents and advisers collecting, using or disclosing such information relating to the Customer (and the Relevant Individuals) including details of the Customer’s accounts to the following persons wherever situated (whether in Singapore or elsewhere) to the extent that the information is personal data, in connection with the purposes set out in the Maybank Data Protection Policy, or as is otherwise required or permitted in accordance with applicable law:-

- (a) to any person or organisation providing electronic or other services to the Agent whether in Singapore or elsewhere, for the purpose of providing, updating, maintaining and upgrading the said services, including but not limited to investigating discrepancies, errors or claims;
- (b) to any person or organisation whether in Singapore or elsewhere which is engaged by the Agent for the purpose of performing or in connection with the performance of services or operational functions of the Agent where such services or operational functions have been out-sourced;
- (c) to the police or any public officer conducting an investigation and to any government or regulatory agency or authority;
- (d) to the Agent’s head office, representative and branch offices and to any related corporations and associated companies of the Agent in any jurisdiction wherever situated;
- (e) to any potential assignee or transferee of the Agent’s interests herein;
- (f) where applicable, to any auditors for the time being the auditors of the Customer, and the Customer shall pay all costs, charges, fees and other out-of-pocket expenses, whether legal or otherwise, in respect of such disclosure;
- (g) in any judicial proceedings to which the Agent is a party where the Transaction(s) may be a relevant issue;
- (h) to any service provider, computer, telecommunications;
- (i) to the extent the information is personal data, to the persons identified in the Agent’s Data Protection Policy; and
- (j) to any other person to whom disclosure is permitted or required by law.

This clause 7 is not and shall not be deemed to constitute, an express or implied agreement by the Agent with the Customer for a higher degree of confidentiality than that prescribed under any applicable law, including the Banking Act (Chapter 19). The consent and the Agent’s right under this clause 7 are in addition and are not affected by any other agreement with the Customer and shall survive the termination of any or all of the Customer’s accounts and the termination of any relationship between the Customer and the Agent.

If any Relevant Individuals should withdraw their consent to any or all use of their personal data, depending on the nature of the withdrawal request, the Agent may not be in a position to continue providing its products or services to the Customer or administer his Account. Such withdrawal may accordingly constitute a repudiatory breach of the Customer’s obligations under these Agency Terms and Conditions, and the Agent may upon notice to the Customer terminate the Account without prejudice to its other rights and remedies at law against the Customer.



8. **Force Majeure**

In the event of any strike, hostilities, riot, civil commotion or any circumstances over which the Agent has no control which causes the cessation or disruption of or substantial interference with the performance of the Agent's services under these Agency Terms and Conditions, then the duty of the Agent to perform the services under these Agency Terms and Conditions will be suspended until such circumstances have ceased and the Agent shall not be liable to the Customer for any loss or damage suffered by the Customer during the period of the suspension.

9. **Governing Law**

These Agency Terms and Conditions shall be governed by the laws applicable in Singapore and the parties hereby irrevocably submit to the jurisdiction of the Courts of Singapore. Submission to such jurisdiction shall not limit the Agent's right to initiate proceedings against the Customer in any other court with jurisdiction over the Customer, the Customer's assets or revenue.

10. **The Contracts (Rights of Third Parties) Act of Singapore**

A person who is not a party to these Agency Terms and Conditions may not enforce its terms under the Contracts (Rights of Third Parties) Act of Singapore.