

## Bond/Sukuk Investment Account Opening

### Customer Declaration / Disclosure

1) I / We hereby

-request and authorise the Bank to open a Bond/Sukuk Investment Account in the above name(s)

-declare that all information given are correct and have not withheld any particulars which might prejudice my/our application.

-confirm that the Bank is authorised to verify and check any of the information given herein.

-confirm/authorise the linkage of my/our bonds/Sukuk Investment Account to my /our ATM card, Telebanking and online banking service (as and when available) without further verifying signatures of any party.

-confirm that I/We am/are aware and agree to be bound by this form, the Terms and Conditions Governing Bond/Sukuk Investments, Terms and Conditions for Online and Mobile Banking and the Universal Terms and Conditions including amendments as may be in force from time to time. The Universal Terms and Conditions are also available at [www.hsbc.com.my](http://www.hsbc.com.my) / [www.hsbcamanah.com.my](http://www.hsbcamanah.com.my).

-confirm that I/we am/are \*Malaysians/non-Malaysian(s) and am/are subject to the rules, regulations, guidelines and directives issued from time to time by the Malaysian Central Depository Sdn Bhd, Bursa Malaysia, Securities Commission, Bank Negara Malaysia and other relevant authorities from time to time.

### Representations and Warranties

1. I/We represent and warrant that I/We have read and understood the Terms and Conditions Governing bonds/Sukuk Investments, Terms and Conditions for Online and Mobile Banking and the Universal Terms and Conditions provided by the Bank and agree to be bound by the same and as may be amended from time to time.
2. I/We confirm that my/our acceptance of the terms and conditions herein contained constitutes a valid and subsisting Agreement between me/us as the Customer and the Bank under which the Bank may act on my/our behalf in connection with the purchase or sale of any bonds/Sukuk by me/us in accordance with the terms and conditions herein.
3. I/We have been explained to and am/are fully aware of the investment risks (including possible loss of the principal amount invested) associated with this investment since the value of the investment may go down as well as up. Accordingly, the Bank will not be held responsible for any losses that I/we may suffer in connection with this investment.
4. I/We am/are fully aware that my/our investment is not an obligation of, a deposit in nor guaranteed by the Bank or any company in the HSBC Group.
5. I/We hereby authorise the Bank to provide any information from time to time to the relevant issuing company in relation to my/our investment in bonds/Sukuk; the Bank executing orders on my/our behalf; and for any other purpose.
6. I/We acknowledge that the Bank and/or its employees will receive a commission in respect of my Trade in bonds/Sukuk and neither the Bank nor its employees have any obligation to account to me/us for all or any part of such commission.
7. I/We am/are fully aware that pursuant to the Terms and Conditions Governing Bond/Sukuk Investments, I/we will not be considered as bonds/Sukuk holder(s) under the trust deed of the bonds/Sukuk and consequently, will not have all the rights ordinarily exercisable by a bonds/Sukuk holder (for example, the right to call for a bonds/Sukuk holders' meeting, to attend any bonds/Sukuk holders' meeting, to vote thereat and the right to have my/our particulars appearing in the register of bonds/Sukuk holders).

8. I/We am/are 18 years old and above on my/our last birthday(s).
9. I/We hereby certify that :-
  - (i) I/We am/are not a citizen(s) or resident(s) # of the United States of America or Canada; and
  - (ii) I/We am/are not a person to whom the dealing/ selling restrictions as stated in the relevant bonds/Sukuk Term/Fact Sheet apply; and
  - (iii) If clause (i) or (ii) above changes or appears likely to change, I/we will notify the Bank in writing as soon as reasonably practicable and in any event within thirty (30) days from such change or I/we become aware of the likelihood of such change.

# resident(s) includes but is not limited to person(s) with the right to live in the United States of America or Canada or who are US taxpayers.
10. I/We confirm that the sales staff has explained the investment & insurance/Takaful services and the scope of wealth management services offered by HSBC Bank Malaysia Berhad/HSBC Amanah Malaysia Berhad.
11. I/We hereby confirm that the below information was disclosed to me/us:
  - (i) this product is not protected by Perbadanan Insurans Deposit Malaysia ("PIDM"); and
  - (ii) any money withdrawn from an insured deposit for the purpose of purchasing this product is no longer protected by PIDM.
  - (iii) I/We have received a copy of the PIDM brochure.
12. I/We consent and agree that the Bank may collect, disclose and process my/our information, for purposes as provided for in the Bank's Notice to Customers relating to the Personal Data Protection Act 2010 (the "Notice") and Clause 10 of the Bank's Generic Terms and Conditions on "Collection, Processing and Sharing of Customer Information" (available at [www.hsbc.com.my](http://www.hsbc.com.my) / [www.hsbcamanah.com.my](http://www.hsbcamanah.com.my) or upon request).

## Terms and Conditions Governing Bond Investments

### 1. Definitions

**"Bank"** refers to HSBC Bank Malaysia Berhad (Company No. 198401015221 (127776-V)).

**"Banking Day"** means a banking day and the banking hours of the Bank's main branch at Menara IQ, Lingkaran TRX, 55188 Tun Razak Exchange, Kuala Lumpur.

**"Bond"** means the debt securities or debt instruments, including:

- commercial papers;
- medium term notes;
- bonds;
- certificates of deposit; and
- other like interests

held or to be held, sold, purchased, transferred or deposited by either the Bank as a nominee, the Custodian or any other nominee decided by the Bank, for and on behalf of the Customer in accordance with the terms and conditions herein.

**"Bond Investment Account"** means the Customer's account maintained with the Bank for the purpose of holding Bond.

**"Bank Account"** means the Customer's account maintained with the Bank and/or HSBC Amanah Malaysia Berhad for the purpose of debiting and crediting funds for the Services. The Bank Account shall be maintained in the same currency as the Bond transacted.

**"Custodian"** refers to:-

- THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED; or
- any other custodians or sub-custodian appointed

to hold, keep, record or perform any other duties required, by and for the Bank for the performances of the Services provided herein.

**"Cut-off Time"** means 4:00 p.m. on a Banking Day and not later than the regular closing time of the market/exchange where a Bond is traded.

**"Settlement Date"** means the date:-

- the execution of the Trade is completed; and
- the proceeds of the purchase or sale of Bond are settled;

**"Services"** means the services provided by the Bank to the Customer as described in clauses 3 to 7 herein, subject always to the operation of Schedule 6 (Section 229), Schedule 7 (Section 230) and Schedule 9 (Section 257(2)) of the Capital Markets and Services Act 2007 (as amended and supplemented from time to time).

**"Trade"** means any purchase or sale orders of Bond by the Customer. All Trades are subject to a minimum investment amount as notified by the Bank from time to time.

**"Trade Date"** means the date on which the Bank received the Customer's completed Bond/Sukuk Sale Instruction Form or Bond/Sukuk Purchase Instruction Form pursuant to which a sum shall be withheld from the Customer's nominated Bank Account for the purposes of completing the execution of the Customer's purchase order.

### 2. Authority

- 2.1 The Customer irrevocably authorises the Bank or the Bank's appointed representative, without any further reference to or consent from the Customer, to execute all documents and to do all things required, in the Customer's name and on the Customer's behalf in the provision of the Services.

2.2 In the event of termination of the Services pursuant to Clause 14 below, the Customer may revoke this authority only upon the settlement of all transactions and liabilities incurred by or on behalf of the Customer by the Bank.

### 3. Bond Investment Services

3.1 The Customer may instruct the Bank to deal with brokers, dealers, agents and other appropriate person to purchase, subscribe, sell, dispose and deal with the proceeds for any type of Bond for the Customer.

3.2 If the Customer wishes to sell any Bond purchased through the Bank, the Bank at its discretion may repurchase such Bond from the Customer at the market price and conditions at the time of the repurchase.

3.3 The Customer acknowledges that:-

- the Bank is not obliged to buy back any Bond;
- the repurchase price by the Bank, if the Bank decides to repurchase the Bond may be lower than the original sale price; and
- the Bank is not obliged to create a market or market price for the said Bond if none exists, or if the price is below the Customer's expectation.

### 4. Custodian Services

4.1 The Customer further appoints and authorises the Bank to perform the following custodian services for the Customer:

- to hold or to appoint a Custodian to hold the Customer's Bond in safe custody;
- to hold or arrange for bearer instruments to be held in that form and to register any other instruments in the name of the Bank, the Custodian or any other person appointed by the Bank;
- to notify the Customer of information received by the Bank, the Custodian or any other person appointed by the Bank on the Bond deposited, and to request, collect, receive and make payments or distributions attributable to such Bond arising from the acquisition, ownership, disposal, conversion, exchange, corporate or financial restructuring, capital reorganisation, credit events (including rating downgrade, rating suspension and default by Bond issuer of any payment obligations) or otherwise.

4.2 The Bank is entitled and can also authorise the Custodian to appoint, without the Customer's further consent, any bank, trust company or member firm of any securities exchange to act as:-

- a Sub-Custodian of any of the Bond on the Customer's behalf pursuant to these terms and conditions; and
- an administrator to assist the Bank or the Custodian to perform the obligations of the Services on such terms as the Bank may consider appropriate.

4.3 The Bank shall not be liable for any loss suffered by the Customer for any acts or omissions of the Sub-Custodian in connection with any Bond held, in the case where the Sub-Custodian has been properly and lawfully appointed.

## 5. Provision of Services

### Accounts

- 5.1 The Customer shall open and maintain:
- a Bank Account; and
  - a Bond Investment Account
- with the Bank for the Services.
- 5.2 The Bank shall:
- credit all income and proceeds derived from the Bond to the Customer's Bank Account; and
  - maintain separate records in the Bank's books of the Customer's Bond holdings.
- 5.3 The Customer will receive transaction or confirmation statements from the Bank for Trades conducted for the Customer. Where applicable, the Customer's Bond holding may be indicated in the Customer's monthly consolidated statements.

### Trades

- 5.4 The Customer agrees that all Trades conducted and all Bond delivered, purchased or held pursuant to the Services will be made or held:-
- in the name of the Bank, as nominee; or
  - by the Bank's Custodian or any other nominee as the Bank deem fit.
- 5.5 Consequently, the Customer acknowledges that:-
- the Customer is not considered as bondholder(s) under the trust deed of the respective Bond;
  - the Customer has no rights ordinarily exercisable by a bondholder (for e.g. to call for, attend and/or vote at a bondholders' meeting, or to have the Customer's particulars appearing in the register of bondholders); and
  - the Bank and/or the Custodian is also not required or obliged to attend or make arrangements to attend any meetings, complete proxies, exercise any rights or vote on any matters relating to the Customer's Bond.

### Bank's Prerogative

- 5.6 The Bank has the power or right :
- (a) to take or refrain from taking action as required under any law, regulation, order, directive, notice or request of any government agency (whether or not having the force of law), provided always that such rights shall not impinge any rights of the Customer under such law;
- (b) to withhold/make payment of any taxes or duties payable for the Bond on behalf of the Customer;
- (c) to act or refrain from acting according to the default option specified in any notification or request sent to the Customer under Clause 4.1 above if the Bank does not receive the Customer's Instruction or the Customer delays giving such Instructions;
- (d) to co-mingle the Customer's Bond with the property of other owners;
- (e) to deposit, process or hold the Customer's Bond in a depository or system providing central clearing and settlement facilities, and such case to absolve the Bank of any liability for any acts or omissions by the manager or operator of such depository or system.

### Distribution

- 5.7 The Bank shall distribute any entitlement or benefits, including cash proceeds attributable to a Bond as set out in clause 4.1 above to the Customer in accordance with the proportion of the Customer's Bond holding relative to the Bank or Custodian/nominee's total pooled holding of all customers.

- 5.8 If the Bond issuer defaults in making payment, and:
- if the Customer instructs the Bank to sell the Bond, the Bank, or its Custodian/nominee shall make the sale, and the Customer shall receive such sale proceeds (if any) on the Bank's/ Custodian's /nominee's best effort basis at the then prevailing market price; or
  - if the Customer does not instruct the Bank to sell the Bond, the Customer shall receive the residual value of the Bond (if any) paid by the defaulting bond issuer.
- 5.9 If a distribution necessitates the allocation of a fraction of an asset or unit of currency to the Customer, the Bank or its Custodian/nominee shall calculate the value of such fraction entitlement of the Customer and credit the same to the Customer's Bank Account.
- 5.10 The Bank or its Custodian/nominee will not deliver the documents of title, certificate and any other instruments relating the defaulted Bond to the Customer.
- 5.11 The Customer bears the default risk of the Bond issuer and has no claim against the Bank for such default.

### **Agents**

- 5.12 The Bank:-
- may appoint any other person as its nominee or agent to perform any of the Services; and
  - may delegate any of its powers under this Agreement to such appointee.

### **Disclosure**

- 5.13 The Customer irrevocably consents and permits the Bank to disclose the Customer's data as per the terms set out in the Bank's Notice Relating To The Personal Data Protection Act 2010 and Clause 10 of the Bank's Generic Term & Conditions ("GTC") on "Collection, Processing and Sharing of Customer Information" that can be found at [www.hsbc.com.my](http://www.hsbc.com.my) (as updated from time to time).
- 5.14 These terms and conditions on Disclosure will continue to apply even after termination of the Services.

## **6. Instructions**

### **Identity of Customer**

- 6.1 The Bank is under no duty to verify the identity of the person/s giving the instruction for the Services, and the Bank may at its discretion accept any instruction which the Bank, acting in good faith, believes to have come from the Customer (whether so authorised or not). In such case the Customer agrees that:-
- such instructions shall be binding on the Customer; and
  - the Bank shall not be liable to the Customer for any loss in doing so.
- 6.2 The Bank shall act on any instructions received as soon as it is reasonably possible. The Customer agrees that the Bank will not be liable to the Customer for:-
- any loss, damage or expense ; or
  - any consequential loss, damage or expense (including any change in the price of the Bond between the time of giving/receipt of instruction and the time the instruction is acted on) arising from any delay in acting, partial completion or failure/inability to act on any instruction unless the Bank had acted negligently.

6.3 The Bank will not act on any instructions given by the Customer orally.

**Purchase Instructions**

6.4 The Customer agrees that the Bank is not obliged to act on, proceed with or complete any instructions to purchase the Bond unless and until the Customer has sufficient funds in the Bank Account to pay for the purchase price and any other estimated expenses for such purchase.

**Sale Instructions**

6.5 The Customer agrees that the Bank is not obliged to act on, proceed with or complete any instructions to sell the Bond unless the Customer has sufficient units of such unencumbered Bond in the Bond Investment Account to be sold.

**Cut-off Time**

6.6 The Customer acknowledges that each instruction submitted before the relevant Cut-off Time is only valid for the trading date specified in the instruction, and any instruction or any part of such instruction that has not been fully carried out shall lapse at the expiry of the trading date. The Bank does not guarantee that any or all purchase or sale instruction will be successfully carried out. The Customer is required to submit an instruction for the Trade again the next working day for any uncompleted Trade or uncompleted part of the Trade.

6.7 The Customer agrees that for all other instructions to be given to the Bank, the Customer's instructions shall allow the Bank sufficient or reasonable time to comply with such instructions.

**7. Procedure on Instruction**

**Purchase of Bond**

7.1 The Customer agrees that the following provisions shall apply on the Bank's receipt of an instruction to purchase Bond:

- First, the Bank shall calculate the total sum required (including any actual or estimated tax, duty or other expenses) for the purchase.
- Thereafter, the Bank shall debit such sum calculated from the Customer's Bank Account. If the Bank Account has insufficient balance, the Bank, at its absolute discretion, may set-off the shortfall amount (including any other additional expenses incurred or to be incurred in doing so) from other accounts (in the form of credit balance and/or credit facility) of the Customer with the Bank and/or HSBC Amanah Malaysia Berhad.

7.2 The Customer agrees and authorises the Bank:

- to withhold from the Customer's Bank Account, sufficient monies to pay for the purchase price of the Bond and estimated expenses required to complete the purchase on the Trade Date; and
- to debit the Customer's Bank Account, or other Customer's accounts held in the Bank and/or HSBC Amanah Malaysia Berhad (in the form of credit balance and/or credit facility) should there be insufficient balance in the Customer's Bank Account, any time prior to Settlement Date to settle the Trade on Settlement Date.

7.3 In the interim, the Customer agrees that the Customer is not entitled to utilise or deal with all or any part of such sum in the Bank Account and agrees that such amount debited does not become a debt due from the Bank to the Customer.

- 7.4 The Customer further agrees and hereby charges the aforesaid sum calculated in favour of the Bank as security for the Bank's liabilities (actual or contingent) arising from the purchase instruction.
- 7.5 The Customer also acknowledges and agrees that:
- the Bank may act for other customers, in addition to the Customer, in bidding for Bond;
  - the Bank is entitled, at its sole discretion to allocate the total bonds secured by the Bank between the Customer and the other customers and the Customer acknowledges that the amount thus allocated may be less than the amount stipulated by the Customer in the Sukuk/Bond Purchase Instruction Form;
  - the Customer accepts such allocation of the Bond by the Bank as final and conclusive; and
  - the Customer will have no claim whatsoever (including the recovery of any loss or anticipated profit) against the Bank.
- 7.6 If the Bank is unable to process the Trade, the Customer's payment for the Bond will be refunded in full without interest within ten (10) Banking days from the date of payment.

### **Sale of Bond**

- 7.7 The Customer agrees that the following provisions shall apply to each of the Customer's instruction to sell Bond:
- The Customer is only entitled to sell Bond which the Customer has fully paid for (including any interest for late payment, fees and charges payable, if any).
  - The Bond to be sold must be held in the Bond Investment Account, and short selling of Bond is not permitted.
  - On receipt of any Instruction to sell any Bond, the Bank, at its sole discretion, is entitled to debit the Bond Investment Account with the relevant Bond (which shall be held on trust for the Bank) on or at any time before the Settlement Date for completion of the Trade.

### **Interim Position**

- 7.8 In the interim, the Customer agrees that it is not entitled to withdraw or deal with all or any part of the relevant Bond until completion of the Trade or upon notification that the Trade cannot be carried out for whatever reason.

## **8. Cancellation of Instructions**

- 8.1 The Customer agrees that the Bank is not obliged to act on any instruction to cancel, vary or amend any previously given instruction if the original instruction has already been completed or if the Bank is of the view that it has insufficient time or is unable to act on such instruction to cancel, vary or amend the original instruction. The Customer acknowledges that the Bank is not liable to the Customer for any loss or expenses suffered or incurred by the Customer in such case.

## **9. Payment**

- 9.1 The Bank will pay the proceeds received for a Trade to sell Bond to the Customer within ten (10) Banking days from the Settlement Date of the Trade.



9.2 Any proceeds due from coupon payment and redemption/maturity of a Bond payable to the Customer will be paid to the Customer within ten (10) Banking days from the date the said proceeds are received by the Bank.

9.3 All proceeds of coupon payment, redemption/maturity, sale and any other proceeds received by the Bank for the Bond Trade will be credited to the Customer's Bank Account, free of any accrued interest (if any), and minus any fees, expenses, charges and withholding tax (if any).

## 10. Limitations on Liability and Indemnity

10.1 The Customer acknowledges that the Bank is not a trustee and the Bank has no trust or other obligations for the Bond except those set out here.

10.2 The Bank owes no duty to the Customer or any other party to verify the validity of the ownership/title to any Bond and is not liable for any defect in ownership or title of any Bond.

10.3 The Bank (including its market information providers) is also not be liable:-

- for any taxes or duties payable for the Bond; or
- for the management of/diminution in the value of the Bond.

10.4 The Bank is not liable for any kind of losses which may be incurred by the Customer in using the Services (including any delay, error or failure to make available any essential features of a securities transaction) unless there is negligence or wilful default by Bank.

10.5 The Customer agrees to indemnify the Bank, its market information providers, Custodian, appointees and their respective officers and employees against:

- all claims, liabilities, damages, losses, costs and expenses of whatever nature which may be sustained, incurred or suffered by any of them; and
- all actions or proceedings which may be brought by or against any of them; as a result of the Bank providing or performing the Services, or due to any default by the Customer unless the same was caused by or arose from the Bank's negligence or wilful default. This indemnity will continue even after the termination/conclusion of the Services provided.

10.6 The Customer agrees that the Bank may exercise all or any of the Bank's rights and take the action/s as set out in clause 12.6 below if:

- the Bank accepts or incurs liability for or at the Customer's request; or
- the Customer fails to make payment of any amount due to the Bank (whether in relation to any Trade or transactions in Bond or otherwise); or
- the Customer fails to return to the Bank any amount wrongly credited to the Customer's Bank Account.

## 11. Customer Representations, Warranties and Undertakings

11.1 The Customer represents and warrants that:

- (a) the Customer is not a citizen or resident of the United States of America or Canada;
- (b) the Customer has not been and does not anticipate or expect to be present in the United States of America or Canada for a period totaling more than 183 days during the calendar year;
- (c) the gains from the Bond transacted under this Agreement are not connected or related to any trade or business in the United States of America or Canada which the Customer is engaged in or plan to engage in during the calendar year;
- (d) if the Customer's circumstance pertaining to the representations and/or warranties

in Clauses 11.1 (a) to 11.1 (c) above changes or appears likely to change, the Customer must notify the Bank in writing as soon as reasonably practical of such change or likely change, and in any case, within thirty (30) days from the Customer becoming aware of the likelihood of any such change;

(e) the Customer is not a citizen or resident of a country where there is any restriction on the Customer purchasing any Bond;

(f) if the Customer becomes or appears likely to become a citizen or resident in any such country in Clause 11.1 (e) above, the Customer must notify the Bank in writing as soon as reasonably practicable and in any case, within thirty (30) days from the Customer becoming such citizen or resident, or becoming aware of such likelihood. The Customer will, in such case, if required by the Bank, sell or redeem any such restricted Bond;

(g) in making any transaction on any Bond under this Agreement, the Customer is not subject to any prohibition or restriction against such transaction;

(h) any decision to sell or purchase any Bond is based on the Customer's own judgment and from information derived independently, and not from any advice, representation or information provided or which may be considered to be provided by the Bank.

11.2 In this regard, the Customer acknowledges and agrees that:

- the Bank does not and will not give any advice or recommendation to the Customer on whether or not to invest in any Bond, or in connection with the performance of the Bond;
- the Bank's sales staff are prohibited from directly or indirectly advising, guiding, recommending or making suggestions to the Customer on the selection of Bond or Bond issuers without performing a suitability assessment on the Customer;
- the Customer make his/her own independent analysis, judgment, risk appraisal and decision or shall seek his/her own independent financial/ professional advice in connection with any such proposed or intended Bond transaction; and
- the Bank owes no responsibility or liability to the Customer for any investment or custodian services decisions made or taken by the Customer.
- The Bank's obligation to the Customer is to execute and complete the transaction based on the Customer's Instructions only on the terms and conditions herein.

11.3 The Customer represents and warrants that the Customer is acting as principal in relation to the Bond.

11.4 The Customer also undertakes and warrants that the Customer's particulars given to the Bank including the Customer's resident status are accurate, true and complete.

11.5 The Customer shall notify the Bank immediately of any change in the Customer's particulars or of any the Customer's account with the Bank in writing or via channels made available by the Bank.

11.6 The Bank shall be entitled to rely on the Bank's existing records until the written notice of any such change is received by the Bank. The Bank is under no obligation to verify any particulars given by the Customer and the Bank is not liable for any loss or damage caused by any error or omission in the Customer's instruction or in any application made by the Customer.

11.7 The Customer:

- acknowledges that investment in any securities including Bond are subject to risks (including market risks, Benchmark interest rate risks, currency risks, credit risks of Bond issuer, default risks, and possible loss of capital or the principal amount invested);
- represents and warrants that the Customer understands and is fully aware of such risks; and

- will solely bear all risks, including the default risk of the bond issuer and has no claim against the Bank for such loss.
- 11.8 The Customer agrees that the Bank is not liable to the Customer for any error, misstatement or omission in any information memorandum, prospectus, issue document, materials/ information prepared by / issued by any Bond issuer.
- 12. Fees, Commission and Expenses**
- 12.1 The Customer agrees to pay the Bank's charges, services fees and any other charges imposed (including brokerage, discounts, commission, charges and fees levied by any broker, dealer, depository, custodian, nominee or stock exchange in relation to the Bond) for the Services. Such charges, fees and expenses are determined by the Bank and notified to the Customer, and may by advance notice by the Bank be changed from time to time.
- 12.2 The Customer further agrees that the Customer shall pay all charges, fees and expenses imposed at the full prevailing rate payable for the Services even if the Bank is charged a lower rate for or granted discounts, rebates, deductions or waivers of such brokerage, commission, charges or fees.
- 12.3 The Bank and Custodian may also retain for themselves (without obligation to account to the Customer) all or any part of the commission, discount, fees or otherwise which the Bank and Custodian may receive from any persons in relation to the Services.
- 12.4 The Bank is entitled to debit Customer's Bank Account for such charges, fees and expenses imposed notwithstanding that such debiting may result in Customer's Bank Account being overdrawn.
- 12.5 A certificate by an officer of the Bank as to the amount for the time being due and owing to the Bank from or by the Customer shall be conclusive evidence against the Customer for all purposes including any legal proceedings.
- 12.6 In addition to any other rights herein or in law, if the Customer owes any money to the Bank, whether solely or jointly with any other party (including any withholding tax), the Customer agrees that the Bank may do the following:-
- impose a Banker's lien over the Customer's Bond as security for such fees and expenses;
  - retain as security any funds, chattels, securities (including stocks and shares) and other valuables which Customer has deposited with the Bank as bailee; and/or
  - consolidate the credit balances, including any demand deposits (which may be uplifted before maturity) or any balances in different currencies (which the Bank may convert to form one common currency using the Bank's spot exchange rate on the day of conversion) in all the Customer's accounts with the Bank (including at any branch of the Bank) and put a hold on such amount of the credit balances equivalent to the amount owed to the Bank and after the end of seven (7) days prior notice given to the Customer of the Bank's action and intention :
  - at the Bank's full and absolute discretion sell the Bond and/or security by public or private sale, and thereafter use the proceeds to settle the fees and expenses or any part thereof;
  - apply the Customer's monies consolidated and put on hold by the Bank against the amount owed or any part thereof by the Customer to the Bank as the case may be. There shall be no implied duty on the Bank to obtain the best possible price or return for the sale or currency conversion.

- 12.7 The Customer agrees to immediately pay the Bank, upon demand, any shortfall of payment due and all costs, charges and expenses incurred and incidental to the sale or set-off.
- 12.8 Any excess monies received from the sale conducted after settlement will be refunded to the Customer free of charges.
- 12.9 Any remaining credit balances of the Customer's consolidated accounts after set off will be held on substantially the same terms as before the consolidation or on such other terms as the Bank considers appropriate in the circumstances.
- 12.10 The Bank's right and authorisation under this Clause shall not be affected by the Customer's death, bankruptcy, insolvency, composition with other creditors or any legal proceedings against Customer.

### 13. Power to Debit

- 13.1 In addition to any other rights, the Bank may debit the Customer's Bank Account and/or any of the Customer's account with the Bank and/or HSBC Amanah Malaysia Berhad for such charges, fees and expenses imposed and/or any sums payable by the Customer for any Trade and/or Services performed notwithstanding that such debiting may result in Customer's Bank Account and/or any of the Customer's account with the Bank and/or HSBC Amanah Malaysia Berhad being overdrawn.

### 14. Termination of Services

#### Termination by either party

- 14.1 Either party may terminate the Services by giving the other party one (1) months' notice in writing.
- 14.2 Upon termination, the Customer must:
- arrange the sale of the existing Bond, or
  - transfer the existing Bond
- from the Bank or its Custodian/nominee using the Services before the effective termination date failing which the Bank or its Custodian/nominee will, at the Customer's costs and liability:
- be entitled to sell or transfer the Bond held in such manner; and
  - be further authorised to instruct any third parties on the Customer's behalf to execute any documents and to do all things necessary
- as the Bank deems fit. The Bank shall not be liable for any losses suffered by the Customer.
- 14.3 If the Bank is of the opinion that any of the following events have occurred, the Bank may give reasonable written notice to the Customer of the event in question and Bank's intention to exercise any or all of the Bank's rights set out in Clause 14.5 below, the events being:
- any breach of the terms of the Services by Customer; or
  - any failure by the Customer to pay the monies due under the Services, the purchase monies due, or any other monies due and payable by the Customer to the Bank of whatever nature;
  - any bankruptcy, winding up, insolvency, schemes of arrangement or any similar proceedings have been commenced or taken against/by the Customer;
  - any attachment levied against the Customer's Bank Account or Bond held in the Bond Investment Account; or
  - where the Agreement is entered into with more than one party as the Customer, any dispute or proceedings between or amongst the Customer.
- 14.4 The Bank is also entitled, without the need to give any written or prior notice to the Customer, to exercise the Bank's rights set out in Clause 14.5 below where there is any

law requiring the Bank to terminate the Services or where the Bank determines that there is a matter or event which requires a termination of the Services in the interest of the Bank.

14.5 Where any of the events as stated in Clauses 14.3 or 14.4 above has occurred, the Bank may at its option:

- cancel any outstanding Instruction(s) or Trade(s);
- close any outstanding contracts entered into on behalf of or with the Customer; or
- the Bank may at its option put a hold on any monies in the Customer's Bank Account or received from the sale of any Bond; and after the end of seven (7) days prior notice given to the Customer, set off such monies on hold against any monies due and payable to the Bank by the Customer whether under the Services or otherwise. In the exercise of the Bank's rights under this clause, the Bank may sell or dispose of any Bond on such terms and to any party (including the Bank or the Bank's associated entity) at the Bank's discretion.

14.6 Notwithstanding any termination of the Services, the Customer agrees that the Bank is entitled to proceed to settle any transactions entered into or liability incurred by or on behalf of the Customer under the Services prior to the termination.

## 15. Prices

15.1 While the Bank and the Bank's market information providers will endeavour to ensure the accuracy and reliability of the Bond prices quoted to the Customer, the Bank does not guarantee, and is not responsible or liable for the accuracy of the price quoted.

15.2 Any Bond price quoted by the Bank to the Customer is for the Customer's reference only and is not binding on the Bank or the Bank's market information providers. The Customer shall check the Bond price stated in the Bond Sale Instruction Form or Bond Purchase Instruction Form prior to the sale or purchase.

15.3 The Bank is entitled to act on any Instruction or Trade for the sale or purchase of any Bond at the Bond price stated in the Bond Sale Instruction Form or Bond Purchase Instruction Form notwithstanding any subsequent change to the actual sale/purchase price of the Bond adverse to the Customer in the period between the receipt of instructions and when the transaction is completed.

15.4 A Customer who has obtained quotes of the prices of any Bond from the Bank shall:

- only use such quotes (or any part of it) for the trading or dealing of Bond conducted through the Bank; and/or
- use such quotes (or any part of it) only for the Customer's own personal use; and shall not:
- disseminate such quotes (or any part of it) to any other person; and/or
- use or permit such quotes (or any part of it) to be used for any illegal purpose.

## 16. Assignment, Transfer and Encumbrance

16.1 The Customer shall not assign, transfer, encumber or create any security interest (save in the Bank's favour) over the Customer's right to or beneficial interest in the Customer's Bond without the Bank's prior written consent.

16.2 A Customer who intends to transfer Bond (or any interest in the Bond) to any third party (and having obtained the Bank's written consent to do so) shall be solely responsible and liable for complying with all applicable laws, regulations and rules, including any provision of any required risk warnings and disclosures, for any such transfer.

16.3 The Customer further agrees that such third party transferee is not and shall not be treated as a customer of the Bank unless the third party is also a Bond Investment Account holder of the Bank.

17. **Notices**

17.1 The Customer agrees that any statement, notice, communication or demand shall be given to the Customer as provided in the Bank's Generic Terms and Conditions.

18. **Non-Exclusivity**

18.1 The Customer agrees that the Services here are provided to the Customer on a non-exclusive basis.

19. **Governing Law**

19.1 The provision of the Services is governed by Malaysian law and the Customer submits to the non-exclusive jurisdiction of the courts in Malaysia.

20. **Conflict & Order of Priority**

20.1 The Customer is also bound by the Bank's Universal/Generic Terms & Conditions, which can be found on the Bank's website at [www.hsbc.com.my](http://www.hsbc.com.my) (as updated from time to time).

20.2 If there is any inconsistency between the terms and conditions herein and the Bank's Universal/Generic Terms & Conditions, the terms and conditions shall prevail in the following order:

- these terms and conditions; and
- the Universal/Generic Terms & Conditions.

20.3 The Customer agrees that the Bank has the right to add, vary or amend any or all the terms and conditions of this Agreement from time to time.

21. **Miscellaneous**

21.1 The terms and conditions herein shall remain valid and effectual on all heirs, successor-in-titles, assignees or transferees of any party as a result of any sale, amalgamation, merger, reconstruction, assignment, transfer or vesting of any business, asset, rights, benefits or undertaking of any party, and will continue to bind all such parties, as if the new party is a party to the Services.

**Issued by HSBC Bank Malaysia Berhad (Company No. 198401015221 (127776-V))**

## Terms and Conditions Governing Sukuk Investments

“**Bank**” refers to HSBC Amanah Malaysia Berhad (Company No. 200801006421 (807705-X)).

“**Banking Day**” means a banking day and the banking hours of the Bank’s main branch at Menara IO, Lingkaran TRX, 55188 Tun Razak Exchange, Kuala Lumpur.

“**Sukuk**” means certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or the assets of particular project or special investment activity, arising after receipt of the value of the Sukuk, the closing subscription and the employment of funds received for the purpose for which the Sukuk were issued (as defined in Accounting and Auditing Organization for Islamic Financial Institutions [AAOIFI], 2012), and which are held or to be held, sold, purchased, transferred or deposited by either the Bank as a nominee, the Custodian or any other nominee decided by the Bank, for and on behalf of the Customer in accordance with the terms and conditions herein.

“**Sukuk Investment Account**” means the Customer’s account maintained with the Bank for the purpose of holding Sukuk.

“**Bank Account**” means the Customer’s account maintained with the Bank and/or HSBC Bank Malaysia Berhad for the purpose of debiting and crediting funds for the Services. The Bank Account shall be maintained in the same currency as the Sukuk transacted.

“**Custodian**” refers to:-

- THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED; or
- any other custodians or sub-custodian appointed

to hold, keep, record or perform any other duties required, by and for the Bank for the performances of the Services provided herein.

“**Cut-off Time**” means 4:00 pm on a Banking Day and not later than the regular closing time of the market/exchange where a Sukuk is traded.

“**Settlement Date**” means the date:-

- the execution of the Trade is completed; and
- the proceeds of the purchase or sale of Sukuk are settled;

“**Services**” means the services provided by the Bank to the Customer as described in clauses 3 to 7 herein, subject always to the operation of Schedule 6 (Section 229), Schedule 7 (Section 230) and Schedule 9 (Section 257(2)) of the Capital Markets and Services Act 2007 (as amended and supplemented from time to time).

“**Trade**” means any purchase or sale orders of Sukuk by the Customer. All Trades are subject to a minimum investment amount as notified by the Bank from time to time.

“**Trade Date**” means the date on which the Bank received the Customer’s completed Bond/Sukuk Sale Instruction Form or Bond/Sukuk Purchase Instruction Form pursuant to which a sum shall be withheld from the Customer’s nominated Bank Account for the purposes of completing the execution of the Customer’s purchase order.

## 2. **Authority**

2.1 The Customer irrevocably authorises the Bank or the Bank’s appointed representative, without any further reference to or consent from the Customer, to execute all documents and to do all things required, in the Customer’s name and on the Customer’s behalf in the provision of the Services.

2.2 In the event of termination of the Services pursuant to Clause 14 below, the Customer may revoke this authority only upon the settlement of all transactions and liabilities incurred by or on behalf of the Customer by the Bank.

### 3. **Sukuk Investment Services**

- 3.1 The Customer may instruct the Bank to deal with brokers, dealers, agents and other appropriate person to purchase, subscribe, sell, dispose and deal with the proceeds for any type of Sukuk for the Customer.
- 3.2 If the Customer wishes to sell any Sukuk purchased through the Bank, the Bank at its discretion may repurchase such Sukuk from the Customer at the market price and conditions at the time of the repurchase.
- 3.3 The Customer acknowledges that:-
- the Bank is not obliged to buy back any Sukuk;
  - the repurchase price by the Bank, if the Bank decides to repurchase the Sukuk may be lower than the original sale price; and
  - the Bank is not obliged to create a market or market price for the said Sukuk if none exists, or if the price is below the Customer's expectation.

### 4. **Custodian Services**

- 4.1 The Customer further appoints and authorises the Bank to perform the following custodian services for the Customer:
- to hold or to appoint a Custodian to hold the Customer's Sukuk in safe custody;
  - to hold or arrange for bearer instruments to be held in that form and to register any other instruments in the name of the Bank, the Custodian or any other person appointed by the Bank;
  - to notify the Customer of information received by the Bank, the Custodian or any other person appointed by the Bank on the Sukuk deposited, and to request, collect, receive and make payments or distributions attributable to such Sukuk arising from the acquisition, ownership, disposal, conversion, exchange, corporate or financial restructuring, capital reorganisation, credit events (including rating downgrade, rating suspension and default by Sukuk issuer of any payment obligations) or otherwise.
- 4.2 The Bank is entitled and can also authorise the Custodian to appoint, without the Customer's further consent, any bank, trust company or member firm of any securities exchange to act as:-
- a Sub-Custodian of any of the Sukuk on the Customer's behalf pursuant to these terms and conditions; and
  - an administrator to assist the Bank or the Custodian to perform the obligations of the Services on such terms as the Bank may consider appropriate.
- 4.3 The Bank shall not be liable for any loss suffered by the Customer for any acts or omissions of the Sub-Custodian in connection with any Sukuk held, in the case where the Sub-Custodian has been properly and lawfully appointed.

### 5. **Provision of Services**

#### Accounts

- 5.1 The Customer shall open and maintain:
- a Bank Account; and
  - a Sukuk Investment Account
- with the Bank for the Services.
- 5.2 The Bank shall:



- credit all income and proceeds derived from the Sukuk to the Customer's Bank Account; and
  - maintain separate records in the Bank's books of the Customer's Sukuk holdings.
- 5.3 The Customer will receive transaction or confirmation statements from the Bank for Trades conducted for the Customer. Where applicable, the Customer's Sukuk holding may be indicated in the Customer's monthly consolidated statements.

#### Trades

- 5.4 The Customer agrees that all Trades conducted and all Sukuk delivered, purchased or held pursuant to the Services will be made or held:-
- in the name of the Bank, as nominee; or
  - by the Bank's Custodian or any other nominee as the Bank deem fit.
- 5.5 Consequently, the Customer acknowledges that:-
- the Customer is not considered as Sukukholder(s) under the trust deed of the respective Sukuk;
  - the Customer has no rights ordinarily exercisable by a Sukukholder (for eg to call for, attend and/or vote at a Sukukholders' meeting, or to have the Customer's particulars appearing in the register of Sukukholders); and
  - the Bank and/or the Custodian is also not required or obliged to attend or make arrangements to attend any meetings, complete proxies, exercise any rights or vote on any matters relating to the Customer's Sukuk.

#### Bank's Prerogative

- 5.6 The Bank has the power or right:
- (a) to take or refrain from taking action as required under any law, regulation, order, directive, notice or request of any government agency (whether or not having the force of law), provided always that such rights shall not impinge any rights of the Customer under such law;
- (b) to withhold/make payment of any taxes or duties payable for the Sukuk on behalf of the Customer;
- (c) to act or refrain from acting according to the default option specified in any notification or request sent to the Customer under Clause 4.1 above if the Bank does not receive the Customer's Instruction or the Customer delays giving such Instructions;
- (d) to co-mingle the Customer's Sukuk with the property of other owners;
- (e) to deposit, process or hold the Customer's Sukuk in a depository or system providing central clearing and settlement facilities, and such case to absolve the Bank of any liability for any acts or omissions by the manager or operator of such depository or system.

#### Distribution

- 5.7 The Bank shall distribute any entitlement or benefits, including cash proceeds attributable to a Sukuk as set out in clause 4.1 above to the Customer in accordance with the proportion of the Customer's Sukuk holding relative to the Bank or Custodian/nominee's total pooled holding of all customers.
- 5.8 If the Sukuk issuer defaults in making payment, and:
- if the Customer instructs the Bank to sell the Sukuk, the Bank, or its Custodian/nominee shall make the sale, and the Customer shall receive such sale

- proceeds (if any) on the Bank's/ Custodian's /nominee's best effort basis at the then prevailing market price; or
- if the Customer does not instruct the Bank to sell the Sukuk, the Customer shall receive the residual value of the Sukuk (if any) paid by the defaulting Sukuk issuer.
- 5.9 If a distribution necessitates the allocation of a fraction of an asset or unit of currency to the Customer, the Bank or its Custodian/nominee shall calculate the value of such fraction entitlement of the Customer and credit the same to the Customer's Bank Account.
- 5.10 The Bank or its Custodian/nominee will not deliver the documents of title, certificate and any other instruments relating the defaulted Sukuk to the Customer.
- 5.11 The Customer bears the default risk of the Sukuk issuer and has no claim against the Bank for such default.

### **Agents**

- 5.12 The Bank:-
- may appoint any other person as its nominee or agent to perform any of the Services; and
  - may delegate any of its powers under this Agreement to such appointee.

### **Disclosure**

- 5.13 The Customer irrevocably consents and permits the Bank to disclose the Customer's data as per the terms set out in the Bank's Notice Relating To The Personal Data Protection Act 2010 and Clause 10 of the Bank's Generic Term & Conditions ("GTC") on "Collection, Processing and Sharing of Customer Information" that can be found at [www.hsbcamanah.com.my](http://www.hsbcamanah.com.my) (as updated from time to time).
- 5.14 These terms and conditions on Disclosure will continue to apply even after termination of the Services.

## **6. Instructions**

### **Identity of Customer**

- 6.1 The Bank is under no duty to verify the identity of the person/s giving the instruction for the Services, and the Bank may at its discretion accept any instruction which the Bank, acting in good faith, believes to have come from the Customer (whether so authorised or not). In such case the Customer agrees that:-
- such instructions shall be binding on the Customer; and
  - the Bank shall not be liable to the Customer for any loss in doing so.
- 6.2 The Bank shall act on any instructions received as soon as it is reasonably possible. The Customer agrees that the Bank will not be liable to the Customer for:-
- any loss, damage or expense ; or
  - any consequential loss, damage or expense (including any change in the price of the Sukuk between the time of giving/receipt of instruction and the time the instruction is acted on)

arising from any delay in acting, partial completion or failure/inability to act on any instruction unless the Bank had acted negligently.

- 6.3 The Bank will not act on any instructions given by the Customer orally.

### **Purchase Instructions**

- 6.4 The Customer agrees that the Bank is not obliged to act on, proceed with or complete any instructions to purchase Sukuk unless and until the Customer has sufficient funds in the Bank Account to pay for the purchase price and any other estimated expenses for such purchase.

#### **Sale Instructions**

- 6.5 The Customer agrees that the Bank is not obliged to act on, proceed with or complete any instructions to sell Sukuk unless the Customer has sufficient units of such unencumbered Sukuk in the Sukuk Investment Account to be sold.

#### **Cut-off Time**

- 6.6 The Customer acknowledges that each instruction submitted before the relevant Cut-off Time is only valid for the trading date specified in the instruction, and any instruction or any part of such instruction that has not been fully carried out shall lapse at the expiry of the trading date. The Bank does not guarantee that any or all purchase or sale instruction will be successfully carried out. The Customer is required to submit an instruction for the Trade again the next working day for any uncompleted Trade or uncompleted part of the Trade.
- 6.7 The Customer agrees that for all other instructions to be given to the Bank, the Customer's instructions shall allow the Bank sufficient or reasonable time to comply with such instructions.

### **7. Procedure on Instruction**

#### **Purchase of Sukuk**

- 7.1 The Customer agrees that the following provisions shall apply on the Bank's receipt of an instruction to purchase Sukuk:
- First, the Bank shall calculate the total sum required (including any actual or estimated tax, duty or other expenses) for the purchase.
  - Thereafter, the Bank shall debit such sum calculated from the Customer's Bank Account. If the Bank Account has insufficient balance, the Bank, at its absolute discretion, may set-off the shortfall amount (including any other additional expenses incurred or to be incurred in doing so) from other accounts (in the form of credit balance and/or credit facility) of the Customer with the Bank and/or HSBC Bank Malaysia Berhad.
- 7.2 The Customer agrees and authorises the Bank:
- to withhold from the Customer's Bank Account, sufficient monies to pay for the purchase price of the Sukuk and estimated expenses required to complete the purchase on the Trade Date; and
  - to debit the Customer's Bank Account, or other Customer's accounts held in the Bank and/or HSBC Bank Malaysia Berhad (in the form of credit balance and/or credit facility) should there be insufficient balance in the Customer's Bank Account, any time prior to Settlement Date to settle the Trade on Settlement Date.
- 7.3 In the interim, the Customer agrees that the Customer is not entitled to utilise or deal with all or any part of such sum in the Bank Account and agrees that such amount debited does not become a debt due from the Bank to the Customer.
- 7.4 The Customer further agrees and hereby charges the aforesaid sum calculated in favour of the Bank as security for the Bank's liabilities (actual or contingent) arising from the purchase instruction.
- 7.5 The Customer also acknowledges and agrees that:
- the Bank may act for other customers, in addition to the Customer, in bidding for Sukuk ;

- the Bank is entitled, at its sole discretion to allocate the total Sukuk secured by the Bank between the Customer and the other customers and the Customer acknowledges that the amount thus allocated may be less than the amount stipulated by the Customer in the Bond/Sukuk Purchase Instruction Form;
- the Customer accepts such allocation of the Sukuk by the Bank as final and conclusive; and
- the Customer will have no claim whatsoever (including the recovery of any loss or anticipated profit) against the Bank.

7.6 If the Bank is unable to process the Trade, the Customer's payment for the Sukuk will be refunded in full without charges within ten (10) Banking days from the date of payment.

### **Sale of Sukuk**

7.7 The Customer agrees that the following provisions shall apply to each of the Customer's instruction to sell Sukuk:

- The Customer is only entitled to sell Sukuk which the Customer has fully paid for (including any charges for late payment, fees and charges payable, if any).
- The Sukuk to be sold must be held in the Sukuk Investment Account, and short selling of Sukuk is not permitted.
- On receipt of any Instruction to sell any Sukuk, the Bank, at its sole discretion, is entitled to debit the Sukuk Investment Account with the relevant Sukuk (which shall be held on trust for the Bank) on or at any time before the Settlement Date for completion of the Trade.

### **Interim position**

7.8 In the interim, the Customer agrees that it is not entitled to withdraw or deal with all or any part of the relevant Sukuk until completion of the Trade or upon notification that the Trade cannot be carried out for whatever reason.

## **8. Cancellation of Instructions**

8.1 The Customer agrees that the Bank is not obliged to act on any instruction to cancel, vary or amend any previously given instruction if the original instruction has already been completed or if the Bank is of the view that it has insufficient time or is unable to act on such instruction to cancel, vary or amend the original instruction. The Customer acknowledges that the Bank is not liable to the Customer for any loss or expenses suffered or incurred by the Customer in such case.

## **9. Payment**

9.1 The Bank will pay the proceeds received for a Trade to sell Sukuk to the Customer within ten (10) Banking days from the Settlement Date of the Trade.

9.2 Any proceeds due from coupon payment and redemption/maturity of a Sukuk payable to the Customer will be paid to the Customer within ten (10) Banking days from the date the said proceeds are received by the Bank.

9.3 All proceeds of coupon payment, redemption/maturity, sale and any other proceeds received by the Bank for the Sukuk Trade will be credited to the Customer's Bank Account, net of any income, fees, expenses, charges and withholding tax (if any).

## **10. Limitations on Liability and Indemnity**

- 10.1 The Customer acknowledges that the Bank is not a trustee and the Bank has no trust or other obligations for the Sukuk except those set out here.
- 10.2 The Bank owes no duty to the Customer or any other party to verify the validity of the ownership/title to any Sukuk and is not liable for any defect in ownership or title of any Sukuk.
- 10.3 The Bank (including its market information providers) is also not liable:-
- for any taxes or duties payable for the Sukuk; or
  - for the management of/diminution in the value of the Sukuk.
- 10.4 The Bank is not liable for any kind of losses which may be incurred by the Customer in using the Services (including any delay, error or failure to make available any essential features of a securities transaction) unless there is negligence or wilful default by Bank.
- 10.5 The Customer agrees to indemnify the Bank, its market information providers, Custodian, appointees and their respective officers and employees against:
- all claims, liabilities, damages, losses, costs and expenses of whatever nature which may be sustained, incurred or suffered by any of them; and
  - all actions or proceedings which may be brought by or against any of them
- as a result of the Bank providing or performing the Services, or due to any default by the Customer unless the same was caused by or arose from the Bank's negligence or willful default. This indemnity will continue even after the termination/conclusion of the Services provided.
- 10.6 The Customer agrees that the Bank may exercise all or any of the Bank's rights and take the action/s as set out in clause 12.6 below if:
- the Bank accepts or incurs liability for or at the Customer's request; or
  - the Customer fails to make payment of any amount due to the Bank (whether in relation to any Trade or transactions in Sukuk or otherwise); or
  - the Customer fails to return to the Bank any amount wrongly credited to the Customer's Bank Account.

## 11. **Customer Representations, Warranties and Undertakings**

11.1 The Customer represents and warrants that:

- (a) the Customer is not a citizen or resident of the United States of America or Canada;
- (b) the Customer has not been and does not anticipate or expect to be present in the United States of America or Canada for a period totaling more than 183 days during the calendar year;
- (c) the gains from the Sukuk transacted under this Agreement are not connected or related to any trade or business in the United States of America or Canada which the Customer is engaged in or plan to engage in during the calendar year;
- (d) if the Customer's circumstance pertaining to the representations and/or warranties in Clauses 11.1 (a) to 11.1 (c) above changes or appears likely to change, the Customer must notify the Bank in writing as soon as reasonably practical of such change or likely change, and in any case, within thirty (30) days from the Customer becoming aware of the likelihood of any such change;
- (e) the Customer is not a citizen or resident of a country where there is any restriction on the Customer purchasing any Sukuk;
- (f) if the Customer becomes or appears likely to become a citizen or resident in any such country in Clause 11.1(e) above, the Customer must notify the Bank in writing as soon

as reasonably practicable and in any case, within thirty (30) days from the Customer becoming such citizen or resident, or becoming aware of such likelihood. The Customer will, in such case, if required by the Bank, sell or redeem any such restricted Sukuk;

(g) in making any transaction on any Sukuk under this Agreement, the Customer is not subject to any prohibition or restriction against such transaction;

(h) any decision to sell or purchase any Sukuk is based on the Customer's own judgment and from information derived independently, and not from any advice, representation or information provided or which may be considered to be provided by the Bank.

11.2 In this regard, the Customer acknowledges and agrees that:

- the Bank does not and will not give any advice or recommendation to the Customer on whether or not to invest in any Sukuk, or in connection with the performance of the Sukuk;
- the Bank's sales staff are prohibited from directly or indirectly advising, guiding, recommending or making suggestions to the Customer on the selection of Sukuk or Sukuk issuers without performing a suitability assessment on the Customer;
- the Customer make his/her own independent analysis, judgment, risk appraisal and decision or shall seek his/her own independent financial/ professional advice or Shariah advice in connection with any such proposed or intended Sukuk transaction; and
- the Bank owes no responsibility or liability to the Customer for any investment or custodian services decisions made or taken by the Customer.
- The Bank's obligation to the Customer is to execute and complete the transaction based on the Customer's Instructions only on the terms and conditions herein.

11.3 The Customer represents and warrants that the Customer is acting as principal in relation to the Sukuk.

11.4 The Customer also undertakes and warrants that the Customer's particulars given to the Bank including the Customer's resident status are accurate, true and complete.

11.5 The Customer shall notify the Bank immediately of any change in the Customer's particulars or of any the Customer's account with the Bank in writing or via channels made available by the Bank.

11.6 The Bank shall be entitled to rely on the Bank's existing records until the written notice of any such change is received by the Bank. The Bank is under no obligation to verify any particulars given by the Customer and the Bank is not liable for any loss or damage caused by any error or omission in the Customer's instruction or in any application made by the Customer.

11.7 The Customer:

- acknowledges that investment in any securities including Sukuk are subject to risks (including Shariah non-compliance risks, market risks, Benchmark interest rate risks, currency risks, credit risks of Sukuk issuer, default risks, and possible loss of capital or the principal amount invested);
- represents and warrants that the Customer understands and is fully aware of such risks; and
- will solely bear all risks, including the default risk of the Sukuk issuer and has no claim against the Bank for such loss.

11.8 The Customer agrees that the Bank is not liable to the Customer for any error, misstatement or omission in any information memorandum, prospectus, issue document, materials/ information prepared by / issued by any Sukuk issuer.

12. **Fees, Commission and Expenses**

- 12.1 The Customer agrees to pay the Bank's charges, services fees and any other charges imposed (including brokerage, discounts, commission, charges and fees levied by any broker, dealer, depository, custodian, nominee or stock exchange in relation to the Sukuk) for the Services. Such charges, fees and expenses are determined by the Bank and notified to the Customer, and may by advance notice by the Bank be changed from time to time.
- 12.2 The Customer further agrees that the Customer shall pay all charges, fees and expenses imposed at the full prevailing rate payable for the Services even if the Bank is charged a lower rate for or granted discounts, rebates, deductions or waivers of such brokerage, commission, charges or fees.
- 12.3 The Bank and Custodian may also retain for themselves (without obligation to account to the Customer) all or any part of the commission, discount, fees or otherwise which the Bank and Custodian may receive from any persons in relation to the Services.
- 12.4 The Bank is entitled to debit Customer's Bank Account for such charges, fees and expenses imposed notwithstanding that such debiting may result in Customer's Bank Account being overdrawn.
- 12.5 A certificate by an officer of the Bank as to the amount for the time being due and owing to the Bank from or by the Customer shall be conclusive evidence against the Customer for all purposes including any legal proceedings.
- 12.6 In addition to any other rights herein or in law, if the Customer owes any money to the Bank, whether solely or jointly with any other party (including any withholding tax), the Customer agrees that the Bank may do the following:-
- impose a Banker's lien over the Customer's Sukuk as security for such fees and expenses;
  - retain as security any funds, chattels, securities (including stocks and shares) and other valuables which Customer has deposited with the Bank as bailee; and/or
  - consolidate the credit balances, including any demand deposits (which may be uplifted before maturity) or any balances in different currencies (which the Bank may convert to form one common currency using the Bank's spot exchange rate on the day of conversion) in all the Customer's accounts with the Bank (including at any branch of the Bank) and put a hold on such amount of the credit balances equivalent to the amount owed to the Bank

and after the end of 7 days prior to the notice given to the Customer of the Bank's action and intention :

- at the Bank's full and absolute discretion sell the Sukuk and/or security by public or private sale, and thereafter use the proceeds to settle the fees and expenses or any part thereof;
- apply the Customer's monies consolidated and put on hold by the Bank against the amount owed or any part thereof by the Customer to the Bank

as the case may be. There shall be no implied duty on the Bank to obtain the best possible price or return for the sale or currency conversion.

- 12.7 The Customer agrees to immediately pay the Bank, upon demand, any shortfall of payment due and all costs, charges and expenses incurred and incidental to the sale or set-off.
- 12.8 Any excess moneys received from the sale conducted after settlement will be refunded to the Customer free of charges.

- 12.9 Any remaining credit balances of the Customer's consolidated accounts after set off will be held on substantially the same terms as before the consolidation or on such other terms as the Bank considers appropriate in the circumstances.
- 12.10 The Bank's right and authorisation under this Clause shall not be affected by the Customer's death, bankruptcy, insolvency, composition with other creditors or any legal proceedings against Customer.

### 13. Power to Debit

- 13.1 In addition to any other rights, the Bank may debit the Customer's Bank Account and/or any of the Customer's account with the Bank and/or HSBC Bank Malaysia Berhad for such charges, fees and expenses imposed and/or any sums payable by the Customer for any Trade and/or Services performed notwithstanding that such debiting may result in Customer's Bank Account and/or any of the Customer's account with the Bank and/or HSBC Bank Malaysia Berhad being overdrawn.

### 14. Termination of Services

#### Termination by either party

- 14.1 Either party may terminate the Services by giving the other party 1 month's notice in writing.

- 14.2 Upon termination, the Customer must:

- arrange the sale of the existing Sukuk, or
- transfer the existing Sukuk

from the Bank or its Custodian/nominee using the Services before the effective termination date failing which the Bank or its Custodian/nominee will, at the Customer's costs and liability:

- be entitled to sell or transfer the Sukuk held in such manner; and
- be further authorised to instruct any third parties on the Customer's behalf to execute any documents and to do all things necessary

as the Bank deems fit. The Bank shall not be liable for any losses suffered by the Customer.

- 14.3 If the Bank is of the opinion that any of the following events have occurred, the Bank may give reasonable written notice to the Customer of the event in question and Bank's intention to exercise any or all of the Bank's rights set out in Clause 14.5 below, the events being:

- any breach of the terms of the Services by Customer; or
- any failure by the Customer to pay the monies due under the Services, the purchase monies due, or any other monies due and payable by the Customer to the Bank of whatever nature;
- any bankruptcy, winding up, insolvency, schemes of arrangement or any similar proceedings have been commenced or taken against/by the Customer;
- any attachment levied against the Customer's Bank Account or Sukuk held in the Sukuk Investment Account; or
- where the Agreement is entered into with more than one party as the Customer, any dispute or proceedings between or amongst the Customer.

- 14.4 The Bank is also entitled, without the need to give any written or prior notice to the Customer, to exercise the Bank's rights set out in Clause 14.5 below where there is any law requiring the Bank to terminate the Services or where the Bank determines that



there is a matter or event which requires a termination of the Services in the interest of the Bank.

14.5 Where any of the events as stated in Clauses 14.3 or 14.4 above has occurred, the Bank may at its option:

- cancel any outstanding Instruction(s) or Trade(s);
- close any outstanding contracts entered into on behalf of or with the Customer; or
- the Bank may at its option put a hold on any monies in the Customer's Bank Account or received from the sale of any Sukuk; and after the end of seven (7) days prior notice given to the Customer, set off such monies on hold against any monies due and payable to the Bank by the Customer whether under the Services or otherwise. In the exercise of the Bank's rights under this clause, the Bank may sell or dispose of any Sukuk on such terms and to any party (including the Bank or the Bank's associated entity) at the Bank's discretion.

14.6 Notwithstanding any termination of the Services, the Customer agrees that the Bank is entitled to proceed to settle any transactions entered into or liability incurred by or on behalf of the Customer under the Services prior to the termination.

## 15. **Prices**

15.1 While the Bank and the Bank's market information providers will endeavour to ensure the accuracy and reliability of the Sukuk prices quoted to the Customer, the Bank does not guarantee, and is not responsible or liable for the accuracy of the price quoted.

15.2 Any Sukuk price quoted by the Bank to the Customer is for the Customer's reference only and is not binding on the Bank or the Bank's market information providers. The Customer shall check the Sukuk price stated in the Bond/Sukuk Sale Instruction Form or Bond/Sukuk Purchase Instruction Form prior to the sale or purchase.

15.3 The Bank is entitled to act on any Instruction or Trade for the sale or purchase of any Sukuk at the Sukuk price stated in the Bond/Sukuk Sale Instruction Form or Bond/Sukuk Purchase Instruction Form notwithstanding any subsequent change to the actual sale/purchase price of the Sukuk adverse to the Customer in the period between the receipt of instructions and when the transaction is completed.

15.4 A Customer who has obtained quotes of the prices of any Sukuk from the Bank shall:

- only use such quotes (or any part of it) for the trading or dealing of Sukuk conducted through the Bank; and/or
- use such quotes (or any part of it) only for the Customer's own personal use;

and shall not :

- disseminate such quotes (or any part of it) to any other person; and/or
- use or permit such quotes (or any part of it) to be used for any illegal purpose.

## 16. **Assignment, Transfer and Encumbrance**

16.1 The Customer shall not assign, transfer, encumber or create any security interest (save in the Bank's favour) over the Customer's right to or beneficial interest in the Customer's Sukuk without the Bank's prior written consent.

16.2 A Customer who intends to transfer Sukuk (or any interest in the Sukuk) to any third party (and having obtained the Bank's written consent to do so) shall be solely responsible and liable for complying with all applicable laws, regulations and rules, including any provision of any required risk warnings and disclosures, for any such transfer.

16.3 The Customer further agrees that such third party transferee is not and shall not be treated as a customer of the Bank unless the third party is also a Sukuk Investment Account holder of the Bank.

**17. Notices**

17.1 The Customer agrees that any statement, notice, communication or demand shall be given to the Customer as provided in the Bank's Generic Terms and Conditions.

**18. Non-Exclusivity**

18.1 The Customer agrees that the Services here are provided to the Customer on a non-exclusive basis.

**19. Governing Law**

19.1 The provision of the Services is governed by Malaysian law and the Customer submits to the non-exclusive jurisdiction of the courts in Malaysia.

**20. Conflict & Order of Priority**

20.1 The Customer is also bound by the Bank's Universal/Generic Terms & Conditions, which can be found on the Bank's website at [www.hsbcamanah.com.my](http://www.hsbcamanah.com.my) (as updated from time to time).

20.2 If there is any inconsistency between the terms and conditions herein and the Bank's Universal/Generic Terms & Conditions, the terms and conditions shall prevail in the following order:

- these terms and conditions; and
- the Universal/Generic Terms & Conditions.

20.3 The Customer agrees that the Bank has the right to add, vary or amend any or all the terms and conditions of this Agreement from time to time.

**21. Miscellaneous**

21.1 The terms and conditions herein shall remain valid and effectual on all heirs, successor-in-titles, assignees or transferees of any party as a result of any sale, amalgamation, merger, reconstruction, assignment, transfer or vesting of any business, asset, rights, benefits or undertaking of any party, and will continue to bind all such parties, as if the new party is a party to the Services.

**Issued by HSBC Amanah Malaysia Berhad (Company No. 200801006421 (807705-X))**