



ALLIANCE ISLAMIC BANK

# **CashVantage Financing-i Terms & Conditions for Restructuring**

### **CashVantage Financing-i Terms & Conditions for Restructuring (“T&C”)**

The Customer applying to revise the terms of an existing CashVantage Financing-i facility (“Existing Facility”) for purposes of restructuring the Existing Facility (“Restructured Facility”) agrees to be bound by this Terms and Conditions and any variation thereof or addition thereto as Alliance Islamic Bank Berhad (“Bank”) may prescribe from time to time:

1. Customer warrants to the Bank that he (reference to the masculine gender in this Terms and Conditions includes all genders) is not an undischarged bankrupt, nor are there any bankruptcy proceedings, litigation, arbitration or administrative proceedings presently, current or pending or threatened against him and acknowledges reliance of the Bank on this warranty regardless of any checks the Bank may itself conduct in processing the application. While the Bank does not require a purpose to be stated, the Customer agrees that the Restructured Facility is intended for utilisation not contrary to the principles of Shariah.
2. Pursuant to the Customer’s application for the Restructured Facility, the Customer shall appoint the Bank as his agent to purchase and sell Shariah compliant commodities on his behalf (“**Agency Appointment**”).(Refer Annexure 1 for details of the Agency Appointment).
  - (a) The Bank shall purchase Shariah compliant commodities (“**the Commodity**”) from a commodities supplier at the Bank’s Purchase Price, equivalent to the Principal Amount for the Restructured Facility.
  - (b) Pursuant to the Customer’s appointment of the Bank as his agent, and subject always to the Commodity having been purchased by the Bank pursuant to Clause 2(a) above, the Bank shall in accordance with the terms of the Commodity Murabahah Contract (“**sale contract**”) sell the Commodity to the Customer at the Bank’s Selling Price which is the aggregate of the Principal Amount and the Profit thereon.
  - (c) The Bank is authorised by the Customer under the Agency Appointment to subsequently sell the Commodity on his behalf for a cash consideration on spot basis at an amount equivalent to the Bank’s Purchase Price.
  - (d) The agreed profit rate for the Restructured Facility and the Bank’s Selling Price will be stated in the Letter of Advice issued by the Bank for the Restructured Facility (“Letter of Advice”).
  - (e) The Customer may request for quotations on the price of the Commodity at any Alliance Bank branches. Upon receipt of such quotations from the Bank, the Customer shall provide confirmation to the Bank (if several quotations were provided) by electronic mail or telephone on the preferred price prior to the Bank purchasing the Commodity on the Customer’s behalf. The quotations are subject to market changes in the prices of commodities on a daily basis.
  - (f) The purchase and sale of the Commodity will be completed by the Bank before the Restructured Facility is made available to the Customer.
  - (g) The Customer may request for delivery of the Commodity at any Alliance Bank branches with prior notification given to the Bank before the Bank sells the commodity to any third party. Upon receipt of the Customer’s request, the Bank as Customer’s agent shall make arrangements for the said delivery on the Customer’s behalf. The delivery of the Commodity shall be in accordance with the procedures of the respective commodity trade service providers engaged by the Bank. The delivery process fee and all other delivery charges shall be borne by the Customer. Upon taking delivery of the Commodity, the Customer shall make payment of the Bank’s Selling Price on a deferred basis and the Bank shall immediately be discharged from all further liabilities in relation to the Agency Appointment including its obligation to

sell the Commodity to the commodity trade service providers. The Restructured Facility will no longer be available when Customer takes delivery of the Commodity.

- (h) If a defect in the Commodity existed prior to the sale by the Bank and is discovered after the execution of the sale contract, the Customer is entitled for *khiyar al-'ayb* (defect option), whereby the Customer has the right to:
- (i) terminate the sale contract;
  - (ii) vary the terms of the sale contract and mutually agreed by the contracting parties; or
  - (iii) continue with the sale contract on "as-is" basis.

Any defect in the Commodity which is discovered and consented by the Customer at the time of entering into each sale contract shall disqualify the Customer from the entitlement to the defect option.

The Bank and the Customer may mutually agree for the Bank to waive liability for any defect on the asset before entering into the sale contract. The Customer may agree to waive the Bank's liability for any defect on the Commodity that existed prior to the sale contract between the Bank and the Customer.

Any dispute with regards to the quality of the Commodity shall be dealt with in accordance with the procedures of the respective commodity trade service providers engaged by the Bank.

- (i) The sale and purchase contract between the Bank and the Customer is dissolved when:
    - (i) the Customer exercises the defect option as described in sub clause (h) above to terminate the sale and purchase contract;
    - (ii) either the Bank or the Customer exercises mutually agreed options to terminate the sale and purchase contract within the agreed time period;
    - (iii) either the Bank or the Customer exercises the option to terminate the sale contract due to breach of the terms and conditions for the Restructured Facility; or
    - (iv) both contracting parties mutually agree to terminate the sale contract. Upon dissolution of the sale contract, the asset shall be returned to the Bank if it has not been sold to a third party and the price paid shall be returned to the Customer. The dissolution of the sale contract shall be effective provided that the asset can be returned to the Bank, failing which the Bank shall be entitled to the value of the asset which shall be payable by the Customer.
  - (j) The changes in prices of Commodity are subject to market changes and the financing amount will not be affected. The Bank shall sell and purchase London Metal Exchange metals via Eiger Trading Advisors Ltd., crude palm oil via Bursa Suq Al-Sila' or any other Shariah-compliant commodity through any commodity trade service providers engaged by the Bank.
  - (k) The Bank shall not be held liable except in the event of ta'addi (misconduct), taqsir (negligence) or mukhalafah al-shurut (breach of specified terms) for any of the appointment as stated above, and in such a case, the Bank shall be liable and shall compensate for loss or damage including any actual cost suffered by the Customer.
3. Payment of the Bank's Selling Price shall be made by the Customer via monthly instalments as stated in the Letter of Advice. The monthly instalments will be due and payable on the 5<sup>th</sup> day of the month or on such other date as shall be fixed by the Bank from time to time.
- Profit Rate on the Restructured Facility shall be calculated on a flat rate basis based on Rule of 78.

#### 4. Compensation for Non Payment / Late Payment

In the event of default/non-payment during the tenure of the Restructured Facility and up to the maturity date of the Restructured Facility, the customer shall pay late payment charges as compensation (ta'widh) at the Bank's actual cost up to a compensation rate not exceeding 1% per annum or such other maximum rate prescribed by Bank Negara Malaysia on the overdue amount accruing from the due date up to the date of settlement.

In the case of default causing the entire Restructured Facility to be recalled or brought to court for judgement prior to the maturity date of the Restructured Facility, the customer shall pay late payment fees as compensation (ta'widh) at the Bank's actual cost up to a compensation rate not exceeding 1% per annum or such other maximum rate prescribed by Bank Negara Malaysia on the outstanding balance (outstanding principal and accrued profit) accruing from the due date up to the date of settlement or judgement (whichever is earlier).

In the event of default/non-payment after the maturity date of the Restructured Facility, the Bank shall collect late payment fees as compensation (ta'widh) at the Bank's actual cost up to a compensation rate not exceeding the prevailing daily overnight Islamic Interbank Money Market (IIMM) rate prescribed by Bank Negara Malaysia on the outstanding balance (outstanding principal and accrued profit).

In the event of default causing the Restructured Facility to be recalled and brought to court for judgement, the customer shall pay compensation (ta'widh) at the at the Bank's actual cost not exceeding the current prevailing IIMM rate prescribed by Bank Negara Malaysia on the outstanding balance (which excludes outstanding uncollected late payment charges and other costs prior to judgement) from the date of judgement until the judgement sum is fully settled.

Notwithstanding the above, the amount of compensation shall not be compounded.

5. The Bank reserves the right to change the terms and conditions by providing at least twenty one (21) calendar days notice to Customer prior to implementing the changes.
6. In the event of partial prepayment of the monthly instalment amount for the Restructured Facility, the amount prepaid will be automatically credited into the financing account of the Restructured Facility as advance payment for the following month's monthly instalment. The Customer is advised to visit any of the Bank's branches for assistance should the Customer wish to utilise the prepaid amount to reduce the outstanding principal balance for the Restructured Facility.
7. The Bank has the right to set-off any credit balance in the Customer's accounts against any outstanding balance in the financing accounts and Customer will be informed at least seven (7) calendar days in advance. The Bank may also concurrently earmark the available funds in the Customer's accounts against the outstanding balance in the financing accounts upon the issuance of the notice to Customer.
8. The Restructured Facility is subject to there not having occurred any of the following Events of Default, and the full Bank's Selling Price or the unpaid balance thereof, as well as any other sums due herein, shall become payable on demand if Customer:
  - (a) defaults in the payment of any monies payable hereunder or any one or more of the instalments or any part thereof or any other sums or monies due under the Aqad on sale of the Commodity, or in the opinion of the Bank the account of the Customer has been unsatisfactorily conducted; or
  - (b) fails to observe or perform any of the agreements, covenants, stipulation, terms and conditions that must be observed or performed on his part; or
  - (c) dies or becomes of unsound mind; or

- (d) is unable to pay his debts or suspends payment thereof or enters into any arrangement or composition with his creditors or commits an act of bankruptcy; or
  - (e) has other indebtedness howsoever arising to the Bank or any third party that becomes capable according to its terms of being declared due prematurely by reason of his default or otherwise, or the security for such indebtedness becomes enforceable, including due to his failure to pay within the required period any such debts incurred; or
  - (f) as a distress or execution level or enforced upon any of his properties; or
  - (g) for any reason any guarantee or security given to the Bank for the payment of this Restructured Facility shall be terminated or lapse for any reason whatsoever or if the guarantor and/or security provider shall be in default under the terms of the guarantee and/or security documents or dies or becomes of unsound mind or is wound-up or commits any act of bankruptcy; or
  - (h) ceases or threatens to cease carrying on his business or transfers or disposes or intends to the transfer or dispose of a substantial part of his assets or changes the nature or scope of his business as now conducted; or
  - (i) has petition presented against him for bankruptcy or a trustee, or similar official, is appointed over all or a substantial part of his assets or if execution or any form of action is levied or taken against his assets; or
  - (j) in the Bank's opinion, undergoes any change or threatened change in circumstances which would materially, and adversely affect his business or financial condition or ability to perform obligations under the Restructured Facility, or any other agreement with the Bank; or
  - (k) makes representations and warranties in this application for the Restructured Facility or otherwise to the Bank which are untrue, materially misleading or incorrect; or
  - (l) by reason of any change in circumstances, applicable law or regulations or in the interpretation or application thereof it shall become unlawful for the Bank to comply with its obligations herein or to continue to make available the Restructured Facility; or
  - (m) has any of his current accounts closed by any bank following the requirements of DCHEQS, notwithstanding that his current account(s) with Bank, whether held solely or jointly with others, has been conducted satisfactorily.
9. Applicable stamp duty [as per Stamp Duty Act 1949 (revised 1989)] on the approved Restructured Amount shall be payable by the Customer before restructuring takes place.

The Restructured Amount comprises of the Principal Amount for the Restructured Facility (equivalent to the Bank's Purchase Price), accrued profit that has yet to be paid and any miscellaneous charges and compensation charges due under the Existing Facility.

Miscellaneous charges refer to legal fees, stamp duty, takaful contribution and/or valuation fees, if any that remain outstanding under the Existing Facility.

10. All solicitors' fees (on solicitor and client basis) incurred by the Bank in relation or in connection with or incidental to provision of the Restructured Facility and/or the Bank's enforcement of its rights under the Restructured Facility shall be payable by the Customer and may, at the Bank's discretion, be debited to the Customer's stated account or other account(s) with the Bank.
11. The Customer is solely responsible for assessing this Terms and Conditions when applying for the Restructured Facility, and is advised to seek independent legal advice in respect thereof. Customer confirms that no warranties, promises, representations or collateral agreements have been made by or with the Bank, orally or otherwise, and even if any, to the extent not included in this Terms and Conditions shall hereafter lapse and not be legally binding upon the Bank nor be raised as a defense or support of any claims by the Customer in any legal proceedings.
12. The Bank will apply any payment of monies received firstly for instalment, then for other outstanding monies, with discretion to revise the priorities accordingly if necessary. If any

amount received or recovered in respect of the Customer's liabilities hereunder or any part thereof is less than the amount than due, Bank shall apply that amount in such proportions and order or priority and generally in such manner.

13. The Bank shall be entitled (but shall not be obligated) at any time with seven (7) days notice to the Customer or without making demand notwithstanding any settlement of account(s) or other matter whatsoever to combine, consolidate or merge all or any of the Customer's then existing accounts and liabilities with and to the Bank, whether individually or jointly with any other person(s); and to transfer and/or set off any monies in credit in any one or more of such accounts in or towards satisfaction of any moneys owing or obligations or liabilities of the Customer to the Bank whether in or outside Malaysia, whether in principal or surety, whether present or future, actual or contingent, primary or collateral, individually or jointly with any other persons(s), and to effect any necessary currency conversions at the Bank's own rate of exchange then prevailing.
14. In the event that the effect of any law or regulation or a change of thereof, is to increase the cost to the Bank of providing, maintaining, or funding this Restructured Facility or reduces the effective return to the Bank, the Bank reserves the right to require payment on demand of such amounts being actual costs incurred to compensate it therefore.
15. If the Customer decides to pay in full the Bank's Selling Price prior to the relevant due date or dates thereof, the Bank shall grant rebate (*ibra'*) on the balance of the Bank's Selling Price.
16. Rebate (*ibra'*)

The Bank shall grante rebate (*ibra'*) on the settlement date based on the formulas as set out below in the event of any of the following scenarios:

- (i) Early redemption/settlement, where the Customer has given to the Bank prior written notice;

$$\text{Settlement Amount} = \text{Outstanding Principal Amount} + \text{Profit due} - \text{Rebate } (ibra') + \text{Miscellaneous charges}$$

Where:

$$\text{Rebate } (ibra') = \text{Deferred profit} - \text{Early settlement charges}$$

- (ii) Settlement due to further restructuring of the Restructured Facility;

$$\text{Settlement Amount} = \text{Outstanding Principal Amount} + \text{Profit Due} - \text{Rebate } (ibra') + \text{Late payment charges} + \text{Miscellaneous charges}$$

Where:

$$\text{Rebate } (ibra') = \text{Deferred profit} - \text{Early settlement charges (if any)}$$

- (iii) Settlement by Customer where the Restructured Facility is in default; and

$$\text{Settlement Amount} = \text{Outstanding Principal Amount} + \text{Profit due} - \text{Rebate } (ibra') + \text{Late payment charges} + \text{Miscellaneous charges}$$

Where:

$$\text{Rebate } (ibra') = \text{Deferred profit} - \text{Early settlement charges (if any)}$$

- (iv) Settlement by Customer in the event of termination or cancellation of the Restructured Facility before the maturity date.

Settlement Amount = Outstanding Principal Amount + Profit due - Rebate (*ibra*) + Late payment charges + Miscellaneous charges

Where:

Rebate (*ibra*) = Deferred profit - Early settlement charges (if any)

Note: Miscellaneous charges refer to legal fees, stamp duty and/or takaful contribution, if any that remain outstanding under the Existing Facility.

17. Unless otherwise specified herein, the Bank's charges exclude any current taxes and future taxes that may be imposed, under the relevant legislation. Upon the effective date of implementation of any such taxes in the future and wherever applicable, the Bank will be entitled to recover such taxes from the customer.
18. The Customer consents to and authorises the Bank and its officers and employees to disclose and furnish all information concerning the Customer's particulars and affairs (financial or otherwise), account details, relationship with the Bank, the terms of agreement and any other matters relating to the Customer or its business and operations to the following classes of persons in such manner and to such extent as the Bank at its discretion may consider necessary for the Restructured Facility:
- (a) the Bank's related companies by virtue of Section 7 of the Companies Act 2016 or any associated company of the Bank (the Bank together with the aforesaid related/associated companies are collectively referred as "Alliance Bank Group") and their assignees and successors-in-title. For avoidance of doubt, disclosure to the Alliance Bank Group shall be for facilitating the operations, businesses, cross-selling and other purposes of the Bank and/or the Alliance Bank Group provided always that disclosure for cross-selling purposes shall not be effected if such disclosure is objected by the Customer upon written notification to the Bank;
  - (b) any person for or in connection with any legal action or proceeding taken to recover monies due and payable by the Customer to the Bank;
  - (c) regulatory bodies, government agencies, tax authorities, the police, law enforcement bodies and courts, both within and outside Malaysia including pursuant to the Foreign Account Tax Compliance Act of the United States;
  - (d) Cagamas Berhad, Credit Guarantee Corporation (Malaysia) Berhad (if applicable) and any other relevant authority as may be authorised by law to obtain such information, or such authorities/agencies established by Bank Negara Malaysia, or any agency established by the Association of Islamic Banking and Financial Institutions Malaysia (AIBIM);
  - (e) Central Credit Reference Information System, credit bureaus, Credit Reporting Agencies Act 2010 and corporations set up under Credit Rating Agency Act;
  - (f) the Bank's accountants, auditors, lawyers, advisors, consultants and/or other authorised agents as may be required for the proper performance of their functions, duties and obligations to the Bank and the Alliance Bank Group;
  - (g) the Bank's service providers, nominees, agents, contractors or third party service providers engaged by the Bank and its related or associated companies to carry out the Bank's functions and activities;
  - (h) an external party as may be required for any due diligence activities approved by the board of directors of Alliance bank Group in connection with merger and acquisition/ capital raising exercise/ sales of assets /acquire an interest / shareholding in the Bank / pursuant to any proposed arrangement, composition, / restructuring between the Bank and such parties; and
  - (i) the security parties/guarantors or any party providing security in respect of the Restructured Facility.

The Customer hereby consents to such disclosure and confirms that the Bank, Alliance Bank Group, its officers and employees shall not be liable for furnishing such information for the purpose of this Restructured Facility.

19. The Customer hereby declares and agrees that any data/information (including personal data) relating to or arising from or in connection with the Customer's application hereunder and also information pertaining to the Customer's affairs whether hereunder or otherwise on this application may be held, used and disclosed by the Bank for purposes of processing this application.
20. Delay or failure by the Bank in exercising any rights, power, privilege or remedy accruing to the Bank hereunder or in law or equity upon default by the Customer shall not impair any such rights, power, privilege or remedy or be constructed as waiver thereof or acquiescence of such default. No action by the Bank in respect of any default or acquiescence in such default shall impair any rights, power, privilege or remedy of the Bank in respect of any other antecedent or subsequent default.
21. Any provision of this Terms and Conditions which is prohibited or unenforceable by law (whether Shariah or otherwise) shall be ineffective to the extent only of such prohibition or unenforceability without invalidating or affecting the remaining terms in the Terms and Conditions or the validity or enforceability of any terms in the Terms and Conditions in any other jurisdiction where it is valid.
22. In the event that the Customer withdraws this application for the Restructured Facility at any time after submission (excluding withdrawal before approval or rejection thereof), Customer shall be required to pay for all legal expenses and disbursements (if any) incurred by the Bank for making the Restructured Facility available to the Customer.
23. Regardless of what is stated in any Letter of Offer, a demand, notice, request or other communication given by or on behalf of the Bank to the Customer will be deemed to have been given to or served on, and received by, the Customer:
  - (a) if sent by facsimile, on the day of transmission as confirmed by a transmission report produced or generated by or from the facsimile machine by or from which such demand, notice, request or other communication was sent by facsimile;
  - (b) if sent by personal delivery or courier, at the time it was delivered to or left at the Customer's address required or permitted;
  - (c) if sent by prepaid registered or ordinary post, three (3) days after (and excluding) the date of posting. In proving service, it shall be sufficient to prove that the demand, notice, request or other communication was properly addressed and posted to the last known address as per the Bank's record;
  - (d) if sent by electronic mail or short message system (SMS), on transmission of the electronic mail or text message sent by short message system;
  - (e) if posted on the Bank's website, at the time it was first posted on the Bank's website;
  - (f) if displayed in or about any of the Bank's places of business, branches or premises, at the time it was first displayed;
  - (g) if published in one issue of any daily national newspaper of the Bank's choice, immediately on such publication; or
  - (h) if inserted in any statement of account given to or served on the Customer by or on behalf of the Bank, at the time the statement of account is deemed to have been received by the Customer.
24. The Customer must immediately notify the Bank in writing of any change in the mailing address, electronic mail address or mobile phone number.
25. The Customer agrees that any admission or acknowledgement in writing by him or by any person authorised on his behalf or a judgment (by default or otherwise obtained against him) or a certificate showing the amount due under the financing duly certified by an officer of the Bank shall be binding and conclusive evidence of the amount due under the Restructured Facility in a court of Law.
26. The Customer declares that he shall not use the Restructured Facility for any immoral or improper purpose or laundering of monies or to assist in any of the above. The Customer acknowledges that the Bank may be obliged under the Anti-Money Laundering,



AntiTerrorism Financing and Proceeds of Unlawful Activities Act 2001 and/or other laws and regulations to report certain transactions to Bank Negara Malaysia and/or other relevant authorities and that the Bank, its officers and employees shall be under no liability for the report made.

27. The Restructured Facility is granted subject to Malaysian Law. Time wherever stipulated for Customer's performance of the requirements in this Terms and Conditions and his obligations shall be of the essence. The Bank shall have the right to effect assignment of its rights and liabilities under the Restructured Facility.
28. Subject to proper verification, the Bank may rely and act upon any verbal or written instructions received from Customer through any mode acceptable to the Bank including but not limited to, by telephone, online or facsimile. The Bank shall not be held liable to Customer in any way for acting in good faith upon such instructions notwithstanding that it is subsequently proven that the same was not given by Customer or for any misunderstanding or any error, loss, delay, loss or damages suffered as a consequence of the Bank acting on or acceding to any such instruction or request.

**ANNEXURE 1****Agency Appointment for Restructuring of CashVantage Financing-i**

- 1) In order to facilitate the restructuring of the Existing Facility, I/We irrevocably and unconditionally appoint the Bank to be my/our agent to (a) purchase the Commodity from the Bank by accepting and executing the sale transaction on my/our behalf (b) sell the Commodity to any third party Commodity Purchaser on my/our behalf.
- 2) I/We agree that the Bank as my/our agent shall at all times (a) be authorised to sign and execute all documents and do all acts and observe and perform all obligations required to be done in connection with its appointment as my/our agent, or imposed under any sale transaction to the third party purchaser of the Commodity; and (b) be required to do all the administrative duties regarding the holding and the sale of the Commodity (c) allow me/us to obtain possession of the Commodity if requested by me/us (provided that the Bank has yet to sell the Commodity to any third party) (d) receive Sale Proceeds on my/our behalf from third party purchasers of the Commodity, to hold the Sale Proceeds on trust for me/us and to remit the Sale Proceeds or any part thereof to me/us into my/our account with the Bank or in the manner mutually agreed by the parties.
- 3) The Bank's appointment shall be subject to me/us purchasing the Commodity from the Bank, failing which, the Bank is deemed not to have acted as my/our agent for that particular sale transaction.
- 4) Notwithstanding any sale for the Commodity by me/us or by the Bank as my/our agent and/or any non-delivery and/or dispute whatsoever in relation to the Commodity that I/we may have with the third party purchaser to whom the Bank sold the Commodity as agent on my/our behalf subsequent to me/us entering into sale transaction with the Bank but prior to the full settlement of the Selling Price of the Commodity and the Indebtedness created under the said sale transaction, it shall not in any way impair or absolve my/our obligations as set out in the Letter of Offer.
- 5) I/We do not deem the Bank's appointment as a partnership or a joint venture, nor does it establish a relationship of principal and agent in any other relationship between us and the appointment shall cease upon expiry of the Facility(ies).
- 6) I/We undertake to indemnify the Bank from any losses, costs, expenses or damages that the Bank may suffer or incur as a result of fulfilling the Bank's agency function as set out above.
- 7) This agency appointment shall continue to be valid so long as the Bank continues to grant the Facility(ies) and shall cease upon request by me/us for cancellation or termination of the Facility(ies) by the Bank.