



This Master Collateralized *Murabahah* Agreement has been developed by the International Islamic Financial Market (IIFM) to facilitate interbank *Shari 'ah* compliant transactions among Islamic financial institutions. IIFM encourages the use of this agreement by all industry stakeholders and interested parties across the Globe.

*In The Name Of Allah, The Most Beneficent, The Most Merciful*

DATED [ ]

[INSERT NAME]  
as Seller/Secured Party/*Al-Murtahin*

and

[INSERT NAME]  
as Buyer/Chargor/*Arrahin*

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MASTER COLLATERALIZED *MURABAHAH* AGREEMENT

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اتفاقية مراجعة رئيسة مع الرهن

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***Disclaimer***

The main objective of this IIFM Master Collateralized *Murabahah* Agreement is to facilitate and ease interbank Collateralized *Murabahah* transactions. IIFM hereby authorizes any Islamic financial institution, Islamic financial window and other Islamic financial industry participants to use this Master Collateralized *Murabahah* Agreement and its use shall not be restricted to IIFM members only. This Master Collateralized *Murabahah* is also accompanied by an explanatory memorandum which covers procedures and operational guidance to be implemented by potential users.

This Master Collateralized *Murabahah* Agreement has been approved by the IIFM *Shari 'ah* Board and any potential user who proposes to adopt it, without any fundamental amendments, can obtain on request the IIFM *Shari 'ah* Board Approval Pronouncement. Potential users are requested to register their interest with IIFM in order to complete the IIFM required procedures with regard to obtaining the IIFM *Shari 'ah* Board Approval Pronouncement. The IIFM *Shari 'ah* Board Approval Pronouncement is in relation to this IIFM Master Collateralized *Murabahah* Agreement only and shall not cover any transactions entered into under it.

IIFM is not responsible for the use of this Master Collateralized *Murabahah* Agreement or for any damages or losses resulting from the use of this Master Collateralized *Murabahah* Agreement or any transactions entered into under it. All potential users are urged undertake their own evaluation of this Master Collateralized *Murabahah* Agreement to ensure that it is appropriate for use by them in their particular circumstances or in a particular transaction and to ensure that their interests will be protected by its use. Thus, potential users of this Master Collateralized *Murabahah* Agreement agree that it is the responsibility of such users to ensure that the terms, provisions and conditions of this Master Collateralized *Murabahah* Agreement are appropriate and protect the user's interests in all respects, and to modify any such terms, provisions and conditions as appropriate in the circumstances.

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**THIS MASTER COLLATERALIZED MURABAHAH AGREEMENT** ("this Agreement") is made by way of deed on [•] between:

- (1) [INSERT NAME] (the "Seller/Secured Party/*Al-Murtahin*"); and
  - (2) [INSERT NAME] (the "Buyer/Chargor/*Arrahin*"),
- each a "Party", and together, the "Parties".

## RECITALS

- (A) The Parties wish, from time to time, to enter into collateralized *Murabahah* transactions whereby Buyer/Chargor (or *Arrahin*) shall purchase *Shari'ah* compliant Commodities/Goods from Seller/Secured Party (or Mortgagee/*Al-Murtahin*) on immediate delivery and deferred payment terms by way of a *Murabahah* contract and the Buyer/Chargor shall provide to the Seller/Secured Party collateral by way of a security arrangement in respect of the Buyer/Chargor's deferred payment obligations. Such *Murabahah* contract, together with the associated security arrangements, shall form a "**Collateralized *Murabahah* Transaction**".
- (B) Each Collateralized *Murabahah* Transaction shall be governed by the relevant *Murabahah* contract and the terms set out herein, which includes such of the schedules hereto as are specified to apply to such Collateralized *Murabahah* Transaction in the relevant *Murabahah* contract executed by the Parties.
- (C) The parties intend this Agreement to take effect as a **deed**.

**IT IS AGREED** as follows:

### 1. DEFINITIONS AND CONSTRUCTION

#### 1.1 Definitions

In this Agreement:

"**Acceleration Notice**" means a notice substantially in the form set out in Schedule 7 (*Form of Notice of Acceleration*).

"**Acceptance Notice**" means, in respect of a Collateralized *Murabahah* Transaction, a notice, substantially in the form set out in Schedule 3 (*Form of Acceptance Notice*), sent by the Buyer/Chargor to the Seller/Secured Party accepting an Offer Notice in respect of such Collateralized *Murabahah* Transaction.

"**Acknowledgement**" means in respect of a Collateralized *Murabahah* Transaction an acknowledgement, substantially in the form set out in Part II (*Acknowledgement / Promise to Purchase*) of Schedule 1 (*Form of Purchase Instruction with Promise to Purchase*), sent by the Buyer/Chargor to the Seller/Secured Party on receipt of a Purchase Instruction with Promise to Purchase acknowledging that it undertakes to purchase the Commodities/Goods in respect of such Collateralized *Murabahah* Transaction from the Seller/Secured Party.

"**Aggregate Outstanding Deferred Payment Price**" means the aggregate amount of the Outstanding Deferred Payment Prices of all Outstanding Collateralized *Murabahah* Transactions.

"**Assigned Rights**" means in respect of any Posted Collateral, all rights of the Buyer/Chargor relating to such Posted Collateral, including, without limitation, any rights of the Buyer/Chargor in or to such Posted Collateral while that Posted Collateral is in a clearance system or held through a financial intermediary.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration (in each case, whether governmental or

otherwise and including but not limited to obtaining any declaration, pronouncement, opinion or other attestation).

**"Base Currency"** means [*specify currency*].

**"Base Currency Equivalent"** means, with respect to an amount on a Business Day, in the case of an amount denominated in the Base Currency, such Base Currency amount and, in the case of an amount in a currency other than the Base Currency (the **"Other Currency"**), the amount in the Base Currency required to purchase such amount of the Other Currency at the spot exchange rate determined by the Valuation Agent on such Business Day.

**"Broker/Supplier"** means, in respect of any Collateralized *Murabahah* Transaction a third party who owns the Commodities/Goods and from whom the Seller/Secured Party will purchase Commodities/Goods for on-sale to the Buyer/Chargor.

**"Business Day"** means any day on which banks are open for general business in [•] (other than a Friday, Saturday or Sunday) [and, for the purposes of payments only, New York/London].<sup>1</sup>

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Collateralized *Murabahah* Transaction.

**"Collateral or Mortgage/Arrahn<sup>2</sup>"** means, in respect of a Collateralized *Murabahah* Transaction, such *Shari' ah* compliant assets as are acceptable to the Seller/Secured Party including, without limitation, cash, *Sukuk* and *Shari' ah* compliant securities<sup>3</sup>.

**"Collateral Account"** means, in respect of a Collateralized *Murabahah* Transaction, one or more segregated accounts in the name of the Buyer/Chargor opened and/or maintained at the Seller/Secured Party or the Custodian, as the case may be, into which Collateral is transferred and held and from which Collateral is released in accordance with the terms of this Agreement, any Collateralized *Murabahah* Transactions hereunder and any applicable custody agreement in relation hereto;

**"Collateral Call Notice"** means a notice substantially in the form set out in Schedule 6 (*Form of Collateral Call Notice*).

**"Collateral Conditions"** has the meaning given to such term in paragraph (a) of Clause 3.2 (*Holding Posted Collateral*).

**"Collateral Settlement Day"** means, in relation to a date, (i) with respect to a transfer of cash or other Collateral (other than securities), the next Business Day and (ii) with respect to a transfer of securities, the first Business Day after such date on which settlement of a trade in the relevant securities, if effected on such date, would have been settled in accordance with customary practice when settling through the clearance system agreed between the Parties for delivery of such securities or, otherwise, on the market in which such securities are principally traded (or, in either case, if there is no such customary practice, on the first Business Day after such date on which it is reasonably practicable to deliver such securities).

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<sup>1</sup> To be mutually agreed on a client specific basis.

<sup>2</sup> AAOIFI *Shari' ah* Standard no 39 "Mortgage and its Contemporary Applications", Mortgage /*Arrahn* is defined as: "to make financial asset or the like tied to a debt so that the asset or its value is used for repayment of the debt in case of default". Item 2 "Definition of Mortgage", (2010 edition) p. 697.

<sup>3</sup> *Ibid*, item 4/3 "Mortgage of Financial Papers and *Sukuk*", It is not allowed in *Shari' ah* to mortgage several things of which include, interest based bonds, preference shares, non *Shari' ah* compliant investment certificates, shares of a company if its activities are non *Shari' ah* compliant such as dealing and trading in *Riba*, alcohols, swine etc., (2010 edition) p. 701.

**"Commodities/Goods"** means, with regard to any Collateralized *Murabahah* Transaction, the commodities/goods listed in an Offer Notice and which may comprise any *Shari 'ah* compliant commodities/goods such as base metals, platinum group metals, palm oil, natural gas, crude oil or any other *Shari 'ah* compliant commodities/goods acceptable to both Parties, (excluding gold, silver and currencies) [and, in any event, will include only allocated commodities/goods physically located outside of the United Kingdom]<sup>4</sup>.

**"Conditions Precedent"** means, in respect of a Collateralized *Murabahah* Transaction, any authorisation, opinion, approval or document which the Seller/Secured Party reasonably considers to be necessary or desirable in connection with the entry into and performance of such Collateralized *Murabahah* Transactions contemplated and for the validity and enforceability and admissibility of any Collateralized *Murabahah* Transaction [and the creation and perfection of security interests in the Posted Collateral].

**"Cost Price"** means, in respect of a Collateralized *Murabahah* Transaction, in relation to any Commodities/Goods, all sums payable by the Seller/Secured Party (whether directly or through its buying agent)<sup>5</sup> for the purchase of the Commodities/Goods from the Broker/Supplier (including any Taxes levied on sales or transfer on the Commodities/Goods (by the Broker/Supplier or otherwise)).

**"Custodian"** means with respect to the Seller/Secured Party, the custodian which may be appointed by it in respect of this Agreement pursuant to a custody agreement as agreed between the Seller/Secured Party and that custodian.

**"Deferred Payment Date"** means, in respect of a Collateralized *Murabahah* Transaction, the date for payment by the Buyer/Chargor to the Seller/Secured Party of the Deferred Payment Price as set out in the relevant Offer Notice.

**"Deferred Payment Price"** means, with respect to any Collateralized *Murabahah* Transaction, the purchase price payable by the Buyer/Chargor to the Seller/Secured Party on the Deferred Payment Date, which shall be the aggregate sum of (i) the Cost Price and (ii) the Collateralized *Murabahah* Profit and shall include all incurred costs and expenses (other than delivery costs)<sup>6</sup>.

**"Distributions"** means, with respect to Posted Collateral other than cash, all principal, profit and other payments of cash or other property with respect to that Posted Collateral. For the avoidance of doubt, distributions will not include any item of property acquired by the Seller/Secured Party upon any disposition or liquidation of the Posted Collateral.

**"Event of Default"** means any event or circumstance specified as such in Clause 10.1 (*Failure to Pay or Deliver*) to Clause 10.6 (*Merger without Assumption*) in Clause 10 (*Events of Default*).

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<sup>4</sup> To be mutually agreed on a client specific basis.

<sup>5</sup> Parties to this Collateralized *Murabahah* Transaction may wish to enter into an agency arrangement for the commodity trades. They can do so by using separately the IIFM Master Agency Agreement for the Purchase of Commodities.

<sup>6</sup> AAOIFI *Shari 'ah* Standard No.8, "*Murabahah* to the Purchase Orderer", item 2/4 "Commissions and expenses" and item 4 "conclusion of a *Murabahah* contract". Costs and expenses to be included and disclosed to the client when concluding the contract of sale in *Murabahah* transaction are as follows: cost of the feasibility study institution undertakes, transportation expenses, storage expenses, fees for letters of credit, insurance etc., the institution has the obligation to disclose to the client when concluding the sale contract, the details of any expenses that it would include in determine the selling price. It is also entitled to include any expenses relating to the commodity if the client agreed to this. But if it failed to disclosed any expenses, it will not be entitled to include them unless they are customarily considered to be normal expenses for instance, transportation expenses, storage expenses, fees for letters of credit, insurance etc. in short, the institution is entitled to calculate expenses as part of the purchasing coast which may be subsequently built into the price of the *Murabahah* deal. (2010 edition), pp. 117-123.

**"Illegality"** means after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, this Agreement or any transaction contemplated hereby, due to an event or circumstance (other than any action taken by a Party) occurring after entry into a Collateralized *Murabahah* Transaction it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either Party), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the Party of Clause 9.2 (*Maintain Authorisations*) for the Office through which such Party makes and receives payments or deliveries with respect to such Collateralized *Murabahah* Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Collateralized *Murabahah* Transaction, to receive a payment or delivery in respect of such Collateralized *Murabahah* Transaction or to comply with any other material provision of this Agreement relating to such Collateralized *Murabahah* Transaction.

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement or under any transaction contemplated hereby but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or any transaction contemplated hereby)<sup>7</sup>.

**"Initial Collateral"** means, in respect of a Collateralized *Murabahah* Transaction, such Collateral as the Buyer/Chargor shall provide to the Seller/Secured Party on the Settlement Date in respect of that Collateralized *Murabahah* Transaction in accordance with Clause 3.3 (*Collateralization Obligations*);

**"Material Adverse Effect"** means [•]<sup>8</sup>.

**"Minimum Transfer Amount"** means, in respect of a Collateralized *Murabahah* Transaction, the amount (or value) specified in the relevant Offer Notice in relation to Posted Collateral.

**"Murabahah Contract"** means, in respect of a Collateralized *Murabahah* Transaction, an individual contract made pursuant to Clause 2 (*Collateralized Murabahah Trading*) by the exchange of an Offer Notice and a corresponding Acceptance Notice between the Seller/Secured Party and the Buyer/Chargor.

**"Murabahah Profit"** means, in respect of a Collateralized *Murabahah* Transaction, an amount calculated by the Seller/Secured Party in the manner set out in the relevant *Murabahah* Contract and specified in the Offer Notice.

**"Obligations"** means any and all obligations of the Buyer/Chargor under this Agreement and any and all obligations of the Buyer/Chargor under any Collateralized *Murabahah* Transaction entered into hereunder.

**"Offer Notice"** means a notice sent by the Seller/Secured Party to the Buyer/Chargor in respect of a Collateralized *Murabahah* Transaction, substantially in the form set out in Schedule 2 (*Form of Offer Notice*).

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<sup>7</sup> Inclusion of FATCA specific provisions should be considered where applicable

<sup>8</sup> To be mutually agreed on a client specific basis.

"**Office**" means a branch or office of a Party, which may be such Party's head or home office.

"**Outstanding Collateralized Murabahah Transactions**" means any Collateralized *Murabahah* Transaction under which any Obligations (including the payment of the Deferred Payment Price) are still outstanding.

"**Outstanding Deferred Payment Price**" means, in respect of a Collateralized *Murabahah* Transaction (in respect of which the Settlement Date has passed), the Base Currency Equivalent of the Deferred Payment Price less the Base Currency Equivalent of any amounts paid by the Buyer/Chargor to the Seller/Secured Party in partial payment of the Deferred Payment Price pursuant to Clause 5 (*Prepayment*).

"**Posted Collateral**" means all Collateral (including the Initial Collateral) and all Distributions, income and all proceeds, redemption or otherwise, of any such Collateral that has been transferred to or received by the Seller/Secured Party under the terms of this Agreement (and that are held in the Collateral Account as security for the Buyer/Chargor's obligations under this Agreement and/or any Collateralized *Murabahah* Transactions), and not returned or transferred to the Buyer/Chargor pursuant to Clause 3.3(b)(iii) (*Subsequent posting of Collateral and returns*) or Clause 3.4 (*Substitution of Collateral*) or realised by the Seller/Secured Party under Clause 11 (*Rights of Enforcement*).

"**Potential Event of Default**" means an Event of Default or any event or circumstance specified in Clause 10.1 (*Failure to Pay or Deliver*) to Clause 10.6 (*Merger Without Assumption*) in Clause 10 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under this Agreement or any combination of the foregoing) be an Event of Default.

"**Purchase Instruction with Promise to Purchase**<sup>9</sup>" means a notice, substantially in the form set out in Schedule 1 (*Form of Purchase Instruction with Promise to Purchase*), from the Seller/Secured Party to the Buyer/Chargor (i) notifying the Buyer/Chargor that the Seller/Secured Party shall, subject to receiving a duly completed Acknowledgement from the Buyer/Chargor, purchase Commodities/Goods from a Broker/Supplier and (ii) requesting an undertaking, in the form of an Acknowledgement, from the Buyer/Chargor that it shall purchase such Commodities/Goods from the Seller/Secured Party.

"**Relevant Jurisdiction**" means, with respect to a Party, the jurisdictions:

- (a) in which the Party is incorporated, organised, managed and controlled or considered to have its seat;
- (b) where an Office through which the Party is acting for purposes of this Agreement is located,
- (c) in which the Party executes this Agreement; and

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<sup>9</sup> AAOIFI *Shari 'ah* Standards No. (8) *Murabahah* to the Purchase Orderer "Procedures prior to the contract of *Murabaha*". Item 2/1 "The customer's expression of his wish to acquire an item through the institution". Item 2/1/1 "It is permissible for the institution to purchase the item (even if it is) only in response to its customer's wish and application, as long as this practice is compatible with the *Shari 'ah* precepts for the contract of sale". Item 2/1/2 "With due consideration to item 2/2/3, it is permissible for the customer to request the institution to purchase the item from a particular source of supply. However, the institution is entitled to decline to carry out the transaction if the customer refuses offers from other sources of supply that are more suitable for the institution". 2/1/3 "The customer's wish to acquire the item does not constitute a promise or commitment except when it has been expressed in due form. It is permissible to prepare a single set of documentation to include both the customer's stated wish that the institution should buy the item from the supplier and a promise to buy the item from the institution, which the customer signs. It is permissible for the customer to prepare such a document, or it may be a standard application form prepared by the institution to be signed by the customer.

(d) in relation to any payment, from or through which such payment is made.

**"Settlement Date"** means, in respect of a Collateralized *Murabahah* Transaction, the date on which the Commodities/Goods are delivered from the Seller/Secured Party to the Buyer/Charger under a *Murabahah* Contract as set out in the relevant Offer Notice.

**"Specified Time"** means a time determined in accordance with Schedule 4 (*Timetables – Specified Times*).

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Substitution Notice"** means a notice from the Buyer/Chargor to the Seller/Secured Party in the form set out in Part I of Schedule 8 (*Form of Substitution Notice*).

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment, fee, deduction or withholding in the nature of tax, whatever called, wherever imposed, levied, collected, withheld or assessed by any government or other taxing authority in respect of any payment under this Agreement and shall include, without limitation, any penalty or late payment amount payable to any government or other taxing authority in connection with any failure to pay or any delay in paying the same.

**"Tax Event"** means due to:

- (a) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after entry into a Collateralized *Murabahah* Transaction (regardless of whether such action is taken or brought with respect to a Party to this Agreement); or
- (b) a Change in Tax Law,
- (c) a Party, in the case of a Collateralized *Murabahah* Transaction will, or there is a substantial likelihood that it will, on the next Deferred Payment Date:
- (d) be required to pay to the other Party an additional amount in respect of an Indemnifiable Tax under Clause 13.1(b)(iv); or
- (e) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax and no additional amount is or would be required to be paid in respect of such Tax under Clause 13.1(b)(iv) (other than by reason of Clause 13.1(b)(iv)(A) or (B));

**"Threshold Percentage"** shall mean [-]%, or such other percentage as agreed between the Parties from time to time.

**"Valuation Agent"** means [Seller/Secured Party]/[Buyer/Chargor]/[ an independent third party, appointed by the Seller/Secured Party and the Buyer/Chargor, acting in its capacity as valuation agent in respect of the Collateral.]

**"Valuation Notice"** shall mean a notice substantially in the form set out in Schedule 5 (*Form of Valuation Notice from Valuation Agent*).

**"Valuation Percentage"** means, for any item of Collateral, the percentage specified in respect of that item of Collateral set out in the definition of Collateral (or any other Valuation Percentage as may be agreed between the Parties in writing in respect of such item of Collateral).

**"Value"** means for any Business Day or other date for which Value is calculated, with respect to:

- (a) Collateral or Posted Collateral that is:



- (i) an amount of cash, the Base Currency Equivalent of such amount [multiplied by the applicable Valuation Percentage, if any]; and
  - (ii) a security, the Base Currency Equivalent of the bid price obtained by the Valuation Agent [multiplied by the applicable Valuation Percentage, if any];
- (b) Posted Collateral that consists of items that are not specified as Collateral, zero.

**"Zakah"** means an annual alms payment which must be paid by Muslims (individuals or corporations) in accordance with the principles of *Shari 'ah* as interpreted by the relevant *Shari 'ah* Supervisory Board and the laws of relevant jurisdiction.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) **"Buyer/Chargor "**, **"Seller/Secured Party"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) **"assets"** includes present and future properties;
  - (iii) a **"law"** includes any law (including common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (iv) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);
  - (v) a provision of law is a reference to that provision as amended or re-enacted;
  - (vi) a reference to any time, day of the week, date or Business Day shall be based on the Gregorian calendar; and
  - (vii) a time of day is a reference to [**•**]<sup>10</sup> time unless otherwise specified.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Potential Event of Default is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.
- (d) [**US\$**] and [**dollars**] denote the lawful currency of the United States of America.]<sup>11</sup>
- (e) "[**•**]" and "[**•**]" denote the lawful currency of [**•**].<sup>12</sup>
- (f) In the event of any inconsistency between this Agreement and any transaction entered into hereunder, the provisions of this agreement will prevail.

<sup>10</sup> To be mutually agreed on a client specific basis.

<sup>11</sup> To be mutually agreed on a client specific basis.

<sup>12</sup> To be mutually agreed on a client specific basis.

### 1.3 Single Agreement

Each *Murabahah* Contract is entered into in reliance on the fact that this Agreement and the Schedules, as applied to each *Murabahah* Contract, form a single agreement between the Parties (collectively referred to as this "**Agreement**"), and the Parties would not otherwise enter into any *Murabahah* Contract.

### 1.4 [Third Party Rights

Unless expressly provided to the contrary in this Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.<sup>13</sup>

## 2. **COLLATERALIZED MURABAHAH TRADING**<sup>14</sup>

### 2.1 Purchase of Commodities/Goods and Purchase Instruction with Promise to Purchase

- (a) Upon and subject to the terms and conditions of this Agreement, either Party may, from time to time initiate discussions (by telephone or otherwise) to agree the terms of a proposed *Murabahah* Contract with the other Party, on conclusion of which pursuant to Clause 2.6 (*Murabahah* Contract), the Seller/Secured Party may sell Commodities/Goods to the Buyer/Chargor on immediate delivery and deferred payment terms and otherwise in accordance with the terms of this Agreement.
- (b) After agreeing the proposed terms of, but prior to entering into, any *Murabahah* Contract, the Seller/Secured Party may submit a Purchase Instruction with Promise to Purchase to the Buyer/Chargor no later than the Specified Time (or such other time as the Seller/Secured Party and the Buyer/Chargor may agree). Such Purchase Instruction with Promise to Purchase shall (i) confirm that the Seller/Secured Party may, subject to receiving a duly completed Acknowledgment from the Buyer/Chargor and the delivery or satisfaction otherwise of any Conditions Precedent, purchase Commodities/Goods from a Broker/Supplier, (ii) request the Buyer/Chargor to undertake to buy such Commodities/Goods once purchased by, or on behalf of, the Secured Party and (iii) specify any Conditions Precedent required by the Seller/Secured Party before entering into the proposed *Murabahah* Contract.

### 2.2 Acknowledgement and Indemnity

- (a) If the Buyer/Chargor agrees to be bound by the promise and other terms of the Purchase Instruction with Promise to Purchase, the Buyer/Chargor shall sign the Acknowledgement attached to the Purchase Instruction with Promise to

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<sup>13</sup> Only to be included where English law is the governing law of this document.

<sup>14</sup> AAOIFI *Shari'ah* Standard No.(8), "*Murabahah* to the Purchase Orderer", Clause 5 "Guarantees and treatment of *Murabahah* receivables". Item 5.2 "The institution should ask the customer to provide lawful security in the contract of *Murabahah* to the purchase orderer. Among other things, the institution may receive a third party guarantee or the pledge of the investment account of the customer or the pledge of any item of real or moveable property, or the pledge of the subject matter of the *Murabahah* contract as a fiduciary pledge (or a registered charge), either without taking possession of the pledged asset or by taking possession of the pledged asset and then releasing the pledge progressively according to the percentage of the total payment received",

Item 5.4 "It is not permissible to stipulate that the ownership of the item will not be transferred to the customer until the full payment of the selling price. However, it is permissible to postpone the registration of the asset in the customer's name as a guarantee of the full payment of the selling price. The institution may receive authority from the customer to sell the asset in case the customer delays payment of the selling price, in which case the institution should issue a counter-deed to the customer to establish the latter's right to ownership. If the institution sells the asset as a result of the customer's failure to make a payment of the selling price on its due date, it must confine itself to recovering the amount due to it and must return the balance to the customer",

Item 5.5 "In the case of the institution receiving a pledge from the customer, the institution is entitled to stipulate that the customer should make an assignment to the institution to enable it to sell the pledged asset for the purpose of recovering the amount due from the customer without recourse to the judiciary".(2010 edition), pp. 123-124.

Purchase and return this to the Seller/Secured Party by no later than the Specified Time (or such other time as the Seller/Secured Party and the Buyer/Chargor may agree).

- (b) By signing the Acknowledgement and promising to purchase the Commodities/Goods detailed in the Purchase Instruction with Promise to Purchase, the Buyer/Chargor will also grant an indemnity, on terms set out in the Acknowledgement, to the Seller/Secured Party in relation to any losses the Seller/Secured Party may incur on any failure of the Buyer/Chargor to fulfil its undertaking to purchase.

### 2.3 Transaction Details<sup>15</sup>

- (a) Prior to entering into any *Murabahah* Contract, the Seller/Secured Party shall, after it has purchased the Commodities/Goods from a Broker/Supplier pursuant to the receipt of an Acknowledgement and has physical or constructive possession of such Commodities/Goods, provide the Buyer/Chargor with details of the relevant Collateralized *Murabahah* Transaction, including details of the Commodities/Goods to be sold to the Buyer/Chargor and the terms of sale attached thereto, by sending an Offer Notice to the Buyer/Chargor no later than the Specified Time (or such other time as the Seller/Secured Party and the Buyer/Chargor may agree).

- (b) Offer Notice

The **Offer Notice** shall include the following details:

- (i) a general description of the Commodities/Goods correlating to the Commodities/Goods which were the subject of the relevant Purchase Instruction with Promise to Purchase;
- (ii) Holding Certificate Number;
- (iii) Commodities/Goods location<sup>16</sup>;
- (iv) Cost Price;
- (v) Settlement Date;
- (vi) *Murabahah* Profit;
- (vii) Deferred Payment Price;

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<sup>15</sup> AAOIFI *Shari 'ah* Standard No. (20) "Sale of Commodities in Organised Markets", Clause 3 "The *Shari 'ah* basis of international commodity sales" item 3/1 "Spot contracts", Conclusion of spot contracts in the commodity markets is permitted with the following conditions:

- That the commodity sold must be in existence and owned by the seller;
- That the commodity sold must be ascertained in a manner that distinguishes it from others;
- The documents that establish the existence of the commodity, its ownership and distinguish it from others by its identification Number etc. are sufficient proof of the realization of the two previous conditions.
- That the contract should not include a condition that prevents the buyer from taking delivery of the commodity sold and obliges him to accept a set-off for value;
- That the price be paid on a spot basis. Delay, without the stipulation of delay, in the delivery of an existing and ascertained commodity, or delay in the acceptance of spot price, does not affect the validity of the contract. (2010 edition), p.364.

<sup>16</sup> AAOIFI *Shari 'ah* Standard No. (8) "*Murabahah* to the Purchase Orderer", Clause 3 "Acquisition of title to, and possession of the asset by the institution or its agent", item 3/2/5 In principle the institution itself must receive the item from the premises of the supplier or from a location that is specified in the delivery conditions. The responsibility for the risk attached to the commodity is transferred to the institution upon its taking possession of the commodity. However, it is permissible for the institution to authorize another party to take delivery of the item on its behalf. (2010 edition), p.121.

- (viii) Deferred Payment Date;
- (ix) if applicable, place of delivery; and
- (x) if applicable, delivery costs.

For the avoidance of doubt, the Deferred Payment Price and the Deferred Payment Date of the proposed Collateralized *Murabahah* Contract will have been discussed and agreed between the Seller/Secured Party and the Buyer/Chargor before the relevant Purchase Instruction with Promise to Purchase is delivered pursuant to paragraph (b) of Clause 2.1 (*Purchase of Commodities/Goods and Purchase Instruction with Promise to Purchase*).

- (c) The Offer Notice shall also detail any Initial Collateral required to be charged by the Buyer/Chargor in favour of the Seller/Secured Party, the details of the Collateral Account into which it is to be delivered and any Minimum Transfer Amount.

#### 2.4 No Obligation and Conditions Precedent

- (a) For the avoidance of doubt, the Seller/Secured Party shall be under no obligation to provide an Offer Notice to the Buyer/Chargor after receipt of an Acknowledgement in accordance with paragraph 2.2 of Clause 2.1 (*Purchase of Commodities/Goods and Purchase Instruction with Promise to Purchase*) and the Seller/Secured Party shall enter into a *Murabahah* Contract in its absolute discretion.
- (b) The delivery of an Offer Notice will be subject to the delivery of any Conditions Precedent, requested by the Seller/Secured Party in the relevant Purchase Instruction with Promise to Purchase, in respect of the *Murabahah* Contract which are in form and substance satisfactory to the Seller/Secured Party, acting in a commercially reasonable manner.

#### 2.5 Acceptance Notice

- (a) Notwithstanding Clause 2.1 (*Purchase of Commodities/Goods and Purchase Instruction with Promise to Purchase*) and without prejudice to Clause 2.7 (*Time of the Essence*) and the indemnity set out in the relevant Acknowledgement, upon delivery of an Offer Notice by the Seller/Secured Party, if the Buyer/Chargor wishes to enter into a *Murabahah* Contract with the Seller/Secured Party, it shall:
  - (i) deliver to the Seller/Secured Party an executed Acceptance Notice no later than the Specified Time (or such other time as the Seller/Secured Party and the Buyer/Chargor may agree); and
  - (ii) provide the Initial Collateral to the Seller/Secured Party in accordance with Clause 3.3 (*Collateralization Obligations*).
- (b) The Parties agree that the Offer Notice and the Acceptance Notice shall be exchanged on the same day which shall be a Business Day (or any other day otherwise agreed between the Parties). The Seller/Secured Party shall, however, have the discretion to accept an Acceptance Notice delivered after the Specified Time on the relevant day.

#### 2.6 *Murabahah* Contract

- (a) As soon as the Buyer/Chargor has delivered the Acceptance Notice and the Initial Collateral to the Seller/Secured Party in accordance with Clause 2.5 (*Acceptance Notice*), a Collateralized *Murabahah* Transaction shall be effected

between the Seller/Secured Party and the Buyer/Chargor upon the terms of the Offer Notice, the Acceptance Notice and incorporating the terms and conditions set out herein, in particular, the terms set out in Clause 3.3 (*Collateralization Obligations*) and Clause 4 (*Terms Applicable to the Purchase and Sale of Commodities/Goods*), and accordingly:

- (i) the Seller/Secured Party shall constructively (or physically if requested by the Buyer/Chargor) deliver the Commodities/Goods to, or to the order of (in accordance with paragraph (b)(ii) below), the Buyer/Chargor on the Settlement Date; and
- (ii) the Buyer/Chargor shall pay the Deferred Payment Price on the Deferred Payment Date.

Upon constructive [or physical] delivery of Commodities/Goods from the Seller/Secured Party to the Buyer/Chargor, ownership of the Commodities/Goods shall immediately pass to and be vested in the Buyer/Chargor, together with all rights and obligations relating thereto.

- (b) The Parties hereby acknowledge that:
  - (i) the Commodities/Goods comprised in the *Murabahah* Contract are capable of delivery; and
  - (ii) [the Buyer/Chargor shall be entitled to demand physical delivery. If the Buyer/Chargor demands physical delivery it shall bear the costs of such delivery, shall ensure that it has first put in place reasonable arrangements in the country where the Seller/Secured Party has the power, authority and ability to deliver the Commodities/Goods in accordance with the laws and regulations that apply to the delivery of Commodities in that country, including, where appropriate with the relevant Broker/Supplier and it shall notify the Seller/Secured Party of such demand no later than one (1) Business Day prior to the Settlement Date of the Collateralized *Murabahah* Transaction]
- (c) The Buyer/Chargor acknowledges that any requirements to be fulfilled for the transportation of the Commodities/Goods from the Seller/Secured Party to the Buyer/Chargor's chosen place of delivery will be undertaken directly between the Seller/Secured Party and the Broker/Supplier. [All costs associated with transportation, delivery, storage and *Takaful*<sup>17</sup>/insurance, shall be borne by the Buyer/Chargor].

## 2.7 Time of the Essence<sup>18</sup>

Each Party acknowledges and agrees that time is of the essence in respect of agreeing to the terms of a Collateralized *Murabahah* Transaction. Each Party further agrees that, unless agreed otherwise, a failure by the Buyer/Chargor to provide an Acceptance Notice or the Initial Collateral to the Seller/Secured Party by the Specified Time on the Settlement Date shall result in the Offer Notice for such Collateralized *Murabahah* Transaction being declared void as at the time it was [sent/delivered] and the Seller/Secured Party shall be indemnified by the Buyer/Chargor for its actual losses, which it has incurred on selling the relevant Commodities/Goods to a third party, in

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<sup>17</sup> *Takaful* means Islamic insurance.

<sup>18</sup> AAOIFI *Shari 'ah* Standard No. (8) "*Murabahah* to the Purchase Orderer", Clause 2 "Procedures prior to the contract of *Murabahah*", item 2/5 "Guarantees related to the commencement of the transaction", 2/5/4 In the case of the customer's breach of his binding promise, the institution is not permitted to retain *hamish jiddiyah* as such. Instead, the institution's rights are limited to deducting the amount of the actual damage incurred as a result of the breach, which is the difference between the cost of the commodity and its selling price to a third party. The compensation of the actual damage should not include the so-called opportunity loss.

accordance with the terms of the of the Acknowledgement.

### 3. COLLATERAL

#### 3.1 Security Interest<sup>19</sup>

(a) Covenant to Perform

The Buyer/Chargor covenants with the Seller/Secured Party that it will perform its Obligations in the manner provided in the Agreement, and any Collateralized *Murabahah* Transaction entered into hereunder.

(b) Security / Assurance

The Buyer/Chargor, as security for the performance of its Obligations: (i) mortgages, with full title guarantee, in favour of the Seller/Secured Party by way of first fixed legal mortgage all Posted Collateral (other than Posted Collateral in the form of cash), (ii) to the fullest extent permitted by law, charges, with full title guarantee, in favour of the Seller/Secured Party by way of first fixed charge all Posted Collateral in the form of cash; and (iii) assigns, with full title guarantee, the Assigned Rights to the Seller/Secured Party absolutely.

(c) Release of Security Interest

Upon the transfer by the Seller/Secured Party to the Buyer/Chargor of Posted Collateral in accordance with the terms of this Agreement, the security interest granted under this Agreement on that Posted Collateral will be released on the next Collateral Settlement Date, and the Assigned Rights relating to that Posted Collateral will be re-assigned to the Buyer/Chargor, in each case without any further action by either Party.

(d) Preservation of Security Interest

The security constituted by this Agreement shall be a continuing security and shall not be satisfied by any intermediate payment or satisfaction of the whole or any part of the Obligations but shall secure the ultimate balance of the Obligations. If for any reason this security ceases to be a continuing security, the Seller/Secured Party may open a new account with or continue any existing account with the Buyer/Chargor and the liability of the Buyer/Chargor in respect of the Obligations at the date of such cessation shall remain regardless of any payments into or out of such account. The security constituted by this Agreement shall be in addition to and shall not be affected by any other security now or subsequently held by the Seller/Secured Party for all or any of the Obligations.

(e) Waiver of Defences

The obligations of the Buyer/Chargor under this Agreement shall not be affected by any act, omission or circumstance which, but for this provision, might operate to release or otherwise exonerate the Buyer/Chargor from its Obligations or affect such Obligations including (but without limitation) and whether or not known to the Buyer/Chargor or the Seller/Secured Party:

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<sup>19</sup> Security interest: This is a general term for the rights of a financier by virtue of its security to look to the secured asset to discharge the secured obligation owed to the financier. Hence, it is an affirmation of interest i.e. rights in an asset that secures the payment of the secured obligation. The term interest in this context means a right or a claim. Literally, it means protection of self- interest i.e. *Al-Maslahah Al-thatiyyah* or *Al-Zatiyyah*. Therefore, this term here does not mean at all the known prohibited *Riba/Interest* in *Shari 'ah* but the interest (i.e. rights) of the Secured Party in the asset over which security is created.

- (i) any time or indulgence granted to or composition with the Buyer/Chargor or any other person;
- (ii) the variation, extension, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any terms of the Agreement or any rights or remedies against, or any security granted by, the Buyer/Chargor or any other person;
- (iii) any irregularity, invalidity or unenforceability of any Obligations of the Buyer/Chargor or any present or future law or order of any government or authority (whether of right or in fact) purporting to reduce or otherwise affect any of such Obligations to the intent that the Buyer/Chargor's Obligations shall remain in full force and this Agreement shall be construed accordingly as if there were no such irregularity, unenforceability, invalidity, law or order;
- (iv) any legal limitation, disability, incapacity or other circumstance relating to the Buyer/Chargor, any guarantor or any other person or any amendment to or variation of the terms of the Agreement or any other document or security.

(f) Immediate Recourse

The Buyer/Chargor waives any right it may have of first requiring the Seller/Secured Party to proceed against or claim payment from any other person or enforce any guarantee or security before enforcing this Agreement.

(g) Reinstatement

Where any discharge (whether in respect of the security constituted by this Agreement, any other security or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or any amount paid pursuant to any such discharge or arrangement must be repaid on bankruptcy, liquidation or otherwise without limitation, the security constituted by this Agreement and the liability of the Buyer/Chargor under this Agreement shall continue as if there had been no such discharge or arrangement.

(h) Calculations

All calculations under this Clause 3 shall be made by the Valuation Agent and, save in the event of fraud or manifest error, such calculations shall be final and binding on the Buyer/Chargor. The Valuation Agent will notify the Seller/Secured Party and the Buyer/Chargor of its calculations as soon as practicable after being made and not later than the close of business on the next following Business Day after being made.

### 3.2 Holding Posted Collateral

(a) Collateral Conditions

The Seller/Secured Party and the Buyer/Chargor may agree in writing any conditions for the holding of any Posted Collateral prior to the delivery of any Initial Collateral (the "**Collateral Conditions**").

(b) Care of Posted Collateral

The Seller/Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral (with the exception of cash) to the extent required by applicable law and any Collateral Conditions. Except as specified in the preceding sentence, the Seller/Secured Party will have no duty with

respect to Posted Collateral, including, without limitation, any duty to enforce or preserve any rights pertaining to the Posted Collateral.

(c) Eligibility to Hold Posted Collateral; Custodians.

(i) General

Subject to the satisfaction of the Collateral Conditions for holding Posted Collateral, the Seller/Secured Party will be entitled to hold Posted Collateral or to appoint a Custodian to hold Posted Collateral for the Seller/Secured Party. Upon notice by the Seller/Secured Party to the Buyer/Chargor of the appointment of a Custodian, the Buyer/Chargor's obligations to make any transfer will be discharged by making the transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Seller/Secured Party.

(ii) Failure to Satisfy Conditions

If the Seller/Secured Party or its Custodian fails to satisfy any Collateral Conditions for holding Posted Collateral, then upon a demand made by the Buyer/Chargor, the Seller/Secured Party will, not later than [5] Business Days after the demand, transfer or cause its Custodian to transfer all Posted Collateral held by it to a Custodian that satisfies those Collateral Conditions or to the Seller/Secured Party if it satisfies those Collateral Conditions.

(iii) Liability

The Seller/Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Seller/Secured Party would be liable under this Agreement for its own acts or omissions.

(d) Segregated Collateral Accounts

The Seller/Secured Party shall, and shall cause any Custodian to, open and/or maintain one or more segregated Collateral Accounts, as appropriate, in which to hold Posted Collateral (other than Posted Collateral in the form of cash) under this Agreement. The Seller/Secured Party and any Custodian shall each hold, record and/or identify in the relevant Collateral Accounts all Posted Collateral (other than Posted Collateral in the form of cash) held in relation to the Buyer/Chargor [and, except as provided otherwise, such Posted Collateral shall at all times be and remain the property of the Buyer/Chargor and segregated from the property of the Seller/Secured Party or the relevant Custodian, as the case may be, and shall at no time constitute the property of, or be commingled with the property of, the Seller/Secured Party or such Custodian].<sup>20</sup>

(e) No Use of Collateral<sup>21</sup>

Without prejudice to the rights of the Seller/Secured Party upon the security executed hereby becoming enforceable, the Seller/Secured Party will not have the right to use in its business any Posted Collateral it holds under this Agreement.

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<sup>20</sup> In the case of Posted Collateral in the form of cash, the Buyer/Chargor shall determine under the supervision of its *Shari 'ah* Supervisory Board whether such cash is to be posted on a current account or an investment account basis and agree the details with the Seller/Secured Party.

<sup>21</sup> AAOIFI *Shari 'ah* Standard No.5, "Guarantees", it is permissible for Buyer/Chargor to use the collateral with the consent and permission of the Seller/ Secured Party, whereas it's not permitted for the Seller/ Secured Party to use the collateral at all even if the Buyer/Chargor has permitted him to do so. Item 4/6 "utilization of a pledged asset", (2010 edition) p 64.



(f) Rights Accompanying Posted Collateral

(i) [Voting Rights

Unless and until the occurrence of an Event of Default, the Buyer/Chargor shall be entitled to exercise, or to direct the Seller/Secured Party to exercise, any voting rights attached to any of the Posted Collateral (but only in a manner consistent with the terms of this Agreement) and, if any expense would be incurred by the Seller/Secured Party in doing so, only to the extent that the Buyer/Chargor paid to the Seller/Secured Party in advance of any such exercise an amount sufficient to cover that expense.]

(ii) [Exercise by Seller/Secured Party

At any time after the occurrence of an Event of Default and without any further consent or authority on the part of the Buyer/Chargor, the Seller/Secured Party may exercise at its discretion (in the name of the Buyer/Chargor or otherwise) any voting rights and any other powers or rights in respect of any of the Posted Collateral which may be exercised by the person or persons in whose name or names the Posted Collateral is registered or who is the holder or bearer of them [including (but without limitation) all the powers given to trustees by sections 10(3) and (4) of the Trustee Act 1925 (as amended by section 9 of the Trustee Investments Act 1961)]<sup>22</sup> in respect of securities or property subject to a trust. If the Seller/Secured Party exercises any such rights or powers, it will give notice of the same to the Buyer/Chargor as soon as practicable.]

(g) Calls and Other Obligations

(i) Payment of Calls

The Buyer/Chargor will pay all calls or other payments<sup>23</sup> which may become due in respect of any of the Posted Collateral and if it fails to do so the Seller/Secured Party may elect to make such payments on behalf of the Buyer/Chargor. Any sums so paid by the Seller/Secured Party shall be repayable by the Buyer/Chargor to the Seller/Secured Party on demand and pending such repayment shall form part of the Obligations.

(ii) Requests for Information

The Buyer/Chargor shall promptly copy to the Seller/Secured Party and comply with all requests for information which is within its knowledge and which are made under any statutory provision or any provision contained in any articles of association or other constitutional document relating to any of the Posted Collateral and, if it fails to do so, the Seller/Secured Party may elect to provide such information as it may have on behalf of the Buyer/Chargor.

(iii) Continuing Liability of Buyer/Chargor

The Buyer/Chargor shall remain liable to observe and perform all of the other conditions and obligations assumed by it in respect of any of the Posted Collateral.

(iv) No Liability of Seller/Secured Party

The Seller/Secured Party shall not be required to perform or fulfil any obligation of the Buyer/Chargor in respect of the Posted Collateral or to make any payment, or to make any enquiry as to the nature or sufficiency of any

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<sup>22</sup> English law only

<sup>23</sup> Payments to be made to third parties in respect of Collateral (i.e. registration fees etc).

payment received by it or the Buyer/Chargor, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may have been or to which it may be entitled under this Agreement at any time.

### 3.3 Collateralization Obligations

(a) Initial posting of Collateral

On or prior to the Settlement Date under a Collateralized *Murabahah* Transaction, the Buyer/Chargor shall provide such Initial Collateral as is specified in the relevant Offer Notice to such Collateral Account as the Seller/Secured Party shall designate in the relevant Offer Notice, and, in respect of each Collateralized *Murabahah* Transaction, the Seller/Secured Party shall be under no obligation to sell any Commodities/Goods to the Buyer/Chargor, until the Buyer/Chargor has transferred such Initial Collateral to the Collateral Account.

(b) Subsequent posting of Collateral and returns

(i) On each Business Day in respect of any Collateralized *Murabahah* Transaction, the Valuation Agent shall calculate:

(A) the Aggregate Outstanding Deferred Payment Price; and

(B) the aggregate Value of all Posted Collateral held by the Seller/Secured Party,

and shall send a Valuation Notice to the Buyer/Chargor (and the Seller/Secured Party), and if:

(ii) on such Business Day, the aggregate Value of such Posted Collateral is less than the Threshold Percentage of the Aggregate Outstanding Deferred Payment Price by an amount no less than the Minimum Transfer Amount (the "**Required Minimum**"), then the Secured Party may send a Collateral Call Notice to the Buyer/Chargor, following which the Buyer/Chargor shall transfer to the Seller/Secured Party (by way of the relevant Collateral Account notified to it in writing by the Seller/Secured Party) additional Collateral such that the aggregate Value of the Posted Collateral immediately following such transfer shall be at least equal to the Required Minimum; or

(iii) on such Business Day, the aggregate Value of such Posted Collateral is more than Threshold Percentage of the Aggregate Outstanding Deferred Purchase Price by no less than the Minimum Transfer Amount, then, if the Buyer/Chargor so requests in writing, the Seller/Secured Party shall promptly transfer to the Buyer/Chargor Posted Collateral with an aggregate Value such that the aggregate Value of the Posted Collateral immediately following such transfer shall be at least equal to the [Required Minimum] [ $\bullet$ ]<sup>24</sup>% of the Aggregate Outstanding Deferred Purchase Price] to such account as may be notified in writing to the Seller/Secured Party by the Buyer/Chargor.

(c) Timing of Requests

If a Collateral Call Notice from the Seller/Secured Party or request by the Chargor pursuant to Clause 3.3(b)(iii) is received by the Other Party:

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<sup>24</sup> To be mutually agreed on a client specific basis.

- (i) by [12noon] ([ ] time) on any Business Day, then the relevant transfer will be made not later than the close of business on the [next] Business Day (in relation to cash) and the [second] Business Day (in relation to *Shari 'ah* compliant securities) after the date on which such demand is received; and
- (ii) after [12noon] ([ ] time) on any Business Day, then the relevant transfer will be made not later than the close of business on the [second] Business Day (in relation to cash) and the [second] Business Day (in relation to *Shari 'ah* compliant securities) after the date on which such demand is received.

### 3.4 Substitution of Collateral

- (a) The Buyer/Chargor may on any Business Day by Substitution Notice inform the Seller/Secured Party that it wishes to transfer to the Seller/Secured Party Collateral (the "**Substitute Collateral**") specified in that Substitution Notice in substitution for certain Posted Collateral (the "**Original Collateral**") specified in the Substitution Notice.
- (b) If the Seller/Secured Party notifies the Buyer/Chargor in writing that it has consented to the proposed substitution (in the form set out in Part II of Schedule 8 (*Form of Consent/Acknowledgement of Substitution Notice*) of this Agreement, (A) the Buyer/Chargor will be obliged to transfer the Substitute Collateral to the Seller/Secured Party on the first Collateral Settlement Day following the date on which it receives notice (which may be oral telephonic notice) from the Seller/Secured Party of its consent and (B) the Seller/Secured Party will be obliged to transfer to the Buyer/Chargor the Original Collateral not later than the Collateral Settlement Day following the date on which the Seller/Secured Party receives the Substitute Collateral (the "**Substitution Date**"); *provided* that the Seller/Secured Party will only be obliged to transfer Original Collateral with a Value as of the date of transfer as close as practicable to, but in any event not more than, the Value of the Substitute Collateral as of that date.

### 3.5 No Release

Each transfer obligation of the Seller/Secured Party under Clauses 3.3(b) (*Subsequent posting of Collateral and returns*) and 3.4 (*Substitution of Collateral*) is subject to the conditions that:

- (a) no Event of Default or Potential Event of Default has occurred or is continuing with respect to the Buyer/Chargor; and
- (b) no notice has been sent pursuant to Clause 10.7 (*Consequences of Event of Default*) as a result of an Event of Default with respect to the Buyer/Chargor.

### 3.6 Delivery

All deliveries under this Agreement of any Collateral shall be made in accordance with the instructions of the Seller/Secured Party, Buyer/Chargor or Custodian, as applicable, and shall be made:

- (a) in the case of cash, by transfer into one or more bank accounts specified by the recipient;
- (b) in the case of certificated *Shari 'ah* compliant securities which cannot or which the parties have agreed will not be delivered by book-entry, by delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps

and any other documents necessary to constitute a legally valid transfer to the recipient; and

- (c) in the case of *Shari 'ah* compliant securities which the parties have agreed will be delivered by book-entry, by the giving of written instructions (including, for the avoidance of doubt, instructions given by fax or electronic messaging system) to the relevant depository institution or other entity specified by the recipient, together with a written copy of the instructions to the recipient, sufficient, if complied with, to result in a legally effective transfer of the relevant interest to the recipient.

### 3.7 Currency

On each date on which an amount is due from the Buyer/Chargor pursuant to this Agreement, the Buyer/Chargor shall make the same available to the Seller/Secured Party by payment in the Base Currency (or any currency specified in the relevant Offer Notice) in immediately available funds to such account of the Seller/Secured Party as the Seller/Secured Party may specify.

## 4. TERMS APPLICABLE TO THE PURCHASE AND SALE OF COMMODITIES/GOODS

### 4.1 Terms of Sale

The Commodities/Goods specified in the *Murabahah* Contract in relation to a Collateralized *Murabahah* Transaction shall be sold by the Seller/Secured Party to the Buyer/Chargor upon terms identical to those applicable to the sale of the same Commodities/Goods by the relevant Broker/Supplier to the Seller/Secured Party, other than with respect to the payment of the sale price, which shall be on a deferred basis.

### 4.2 No Warranty or Representation<sup>25</sup>

The Seller/Secured Party shall not be deemed to give to the Buyer/Chargor any warranty or representation whatsoever relating to the Commodities/Goods whether arising by implication, by law or otherwise and without prejudice to the generality of the foregoing any such warranty or representation is hereby expressly excluded to the extent permitted by applicable law.

### 4.3 Commodities/Goods Documentation<sup>26</sup>

Prior to the Buyer/Chargor submitting an Acceptance Notice to the Seller/Secured Party, the Buyer/Chargor may in writing request the Seller/Secured Party to supply the Buyer/Chargor with copies of any documentation evidencing the fact that the Seller/Secured Party has purchased, and become owner of such Commodities/Goods.

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<sup>25</sup> AAIOFI Shari'ah Standard No.8 "Murabahah to the Purchase Orderer", it's permissible for the institution to stipulate in the contract of Murabahah to the purchase orderer a condition that the institution is not a responsible for all or some of the defects of the commodity based on (sale 'as is basis") this is known in Islamic transaction as Ba 'i al-Bara'ah in the case of stipulating such a condition, it's preferable that the institution should assign to the customer the right of recourse to the supplier for any compensation related to defects in the commodity. Item 4, "Conclusion of a Murabahah contract", item 4/9, (2010 edition) pp. 122-123.

<sup>26</sup> AAIOFI Shari'ah Standard No.8 "Murabahah to the Purchase Orderer", it's obligatory that the institution's actual or constructive possession of a commodity be ascertained before it sales it to a client on Murabahah to purchase orderer basis. The purpose of this condition is that the institution must assume the risk of the commodity it intends to sale. This means the responsibility of the commodity must be shifted from the supplier and passed to the institution. Hence, the point when the risk of the commodity is passed by the institution to the client must be clearly identified trough the known stages in which the commodity is usually transferred from one party to another. Item 3/2 "the institution's taking possession of the asset or good, prior to its sale by Murabahah to the purchase orderer", (2010 edition) p.120.

#### 4.4 United Nations Convention on Contracts for the International Sale of Goods

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and or any *Murabahah* Contract in relation to a Collateralized *Murabahah* Transaction.

### 5. PREPAYMENT

#### 5.1 Prepayment Request

(a) The Seller/Secured Party may, in relation to an Outstanding Collateralized *Murabahah* Transaction, request the Buyer/Chargor to prepay the whole or any part of any Outstanding Deferred Payment Price (a "**Seller/Secured Party Prepayment Request**") provided always that the Buyer/Chargor shall not be under any obligation whatsoever to take any action in relation to such Seller/Secured Party Prepayment Request.

(b) The Buyer/Chargor may, in relation to an Outstanding Collateralized *Murabahah* Transaction, elect with the consent of the Seller/Secured Party to prepay any Outstanding Deferred Payment Price (a "**Buyer/Chargor Prepayment Request**") provided always that the Seller/Secured Party shall not be under any obligation whatsoever to take any action in relation to such Buyer/Chargor Prepayment Request,

(a Seller/Secured Party Prepayment Request and a Buyer/Chargor Prepayment Request, each a "**Prepayment Request**").

#### 5.2 Acceptance of Prepayment Request

(a) Upon receiving a Seller/Secured Party Prepayment Request, the Buyer/Chargor may elect, in its sole discretion, whether to prepay the whole or any part of an Outstanding Deferred Payment Price and shall, in any event, notify the Seller/Secured Party of its decision within five (5) Business Days of receiving a Prepayment Request (failing which the Seller/Secured Party Prepayment Request shall be deemed to have been rejected by the Buyer/Chargor.

(b) Upon receiving a Buyer/Chargor Prepayment Request, the Seller/Secured Party may elect, in its sole discretion, whether to consent to the prepayment of the whole or any part of an Outstanding Deferred Payment Price and shall, in any event, notify the Buyer/Chargor of its decision within five (5) Business Days of receiving a Buyer/Chargor Prepayment Request (failing which the Prepayment Request shall be deemed to have been rejected by the Buyer/Chargor. If consent is granted, the Buyer/Chargor shall prepay the Deferred Payment Price within five (5) Business Day of notice of such consent.

#### 5.3 Rebate Grant<sup>27</sup>

The Parties may negotiate, at the time of any Prepayment Request, whether any rebate of Collateralized *Murabahah* Profit (relating to the relevant Collateralized *Murabahah* Transaction) shall be applicable in relation to a Deferred Payment Price to be prepaid pursuant to the Prepayment Request, provided always that any rebate shall be at the sole discretion of the Seller/Secured Party subject to any applicable regulations.<sup>28</sup>

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<sup>27</sup> AAOIFI *Shari'ah* Standard No.8 "*Murabahah* to the Purchase Orderer", it is permissible for the institution to give up part of the selling price if the client pays the debt early, provided this was not part of the contractual agreement. Item 5 "Guarantees and treatment of *Murabahah* receivables" item 5/9, (2010 edition) p. 124.

<sup>28</sup> It is recommended that (a) the number of times a rebate is made in relation to any Collateralized *Murabahah* Transaction is limited and (b) any rebate, or the circumstances in which a rebate is made, is approved by a *Shari'ah* Board.

## 6. LATE PAYMENT AMOUNT

### 6.1 Late Payment Amount

- (a) If any sum due and payable by a Party (the "**Paying Party**") under the terms of this Agreement is not paid to the other Party (the "**Affected Party**") on the due date (the "**Due Date**"), the Paying Party undertakes to pay a late payment amount (the "**Late Payment Amount**") [on request of the Affected Party] on such amount as calculated in accordance with Clause 6.2 (*Calculation of Late Payment Amount*) below.
- (b) For the purposes of Clause 6.2 (*Calculation of Late Payment Amount*) below the unpaid amount due from the Paying Party shall be called the "**Unpaid Sum**"; and
- (c) the period beginning on the Due Date and ending on the date upon which the obligation of the Paying Party to pay the Unpaid Sum is discharged in full shall be called the "**Applicable Period**".

### 6.2 Calculation of Late Payment Amount

The Late Payment Amount shall be an amount equal to the Unpaid Sum multiplied by the sum of:

- (a) [LIBOR] for the Applicable Period expressed as a percentage per annum; plus
- (b) [•]<sup>29</sup> per cent.,
- (c) multiplied further by the number of days in such Applicable Period and divided by 360.

### 6.3 Payment of Late Payment Amount

The Affected Party may apply up to one half of any Late Payment Amount so received by it in reimbursement of any actual direct costs<sup>30</sup> incurred by it as a result of the late payment of the Unpaid Sum and the Affected Party shall donate an amount equal to the remainder of the Late Payment Amount so received by it to [such registered charitable foundations as the Affected Party may select under the supervision of its *Shari'ah* board] [such registered charitable foundations that do not violate Islamic principles] [*specify registered charitable foundation*] and shall not in any circumstances be retained by the Affected Party. The Paying Party shall be entitled to request the Affected Party to provide the Paying Party with documentation evidencing (A) the calculation of actual costs and (B) any relevant donation.

## 7. REPRESENTATIONS<sup>31</sup>

Each Party makes the representations set out in this Clause 7 to the other Party on the date of this Agreement (which representations will be deemed to be repeated by each Party on each date on which a Collateralized *Murabahah* Transaction is entered into and, in the case of the representations in Clause 7.10 (*Payee Tax Representation*), at all times until the termination of this Agreement).

### 7.1 Status

It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing.

<sup>29</sup> To be mutually agreed on a client specific basis.

<sup>30</sup> i.e. Actual expenses incurred by the Affected Party directly attributable to the late payment of the relevant unpaid sum and not including any opportunity costs or funding costs or other indirect costs incurred by the Affected Party.

<sup>31</sup> Further representations may be included if required (to be commercially agreed/determined on a client specific basis).

## 7.2 Powers and authority

It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement (including, but not limited to the power to own its assets and carry on its business as it is being conducted), and the transactions contemplated hereby, and has taken all necessary action to authorise such execution, delivery and performance.

## 7.3 No Violation and Non-conflict with other obligations

Such execution, delivery and performance do not and will not violate or conflict with:

- (a) any law or regulation applicable to it;
- (b) any provision of its constitutional documents;
- (c) any order or judgment of any court or other agency of government applicable to it; or
- (d) any of its assets or any contractual restriction, any agreement or any instrument binding on or affecting it or any of its assets.

## 7.4 Consents

All governmental and other consents (including obtaining any declaration, pronouncement, opinion or other attestation referred to in Clause 7.12 (*Satisfaction as to compliance with Shari 'ah*) below) that are required to have been obtained by it with respect to this Agreement, and the transactions contemplated hereby, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

## 7.5 Obligations Binding

The obligations, including those in respect of the Collateral, expressed to be assumed by it in this Agreement, and in each transaction contemplated hereby constitute its legal, valid, binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

## 7.6 Absence of Certain Events

No Event of Default or Potential Event of Default or, to its knowledge, Illegality or Tax Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under Agreement or the transactions contemplated hereby.

## 7.7 Absence of Litigation

There is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or the transactions contemplated hereby or its ability to perform its obligations under this Agreement the transactions contemplated hereby.

7.8 Accuracy of Specified Information

All applicable information that is furnished in writing by or on behalf of it to the other Party in accordance with Clause 9 (*Agreements*), as a Condition Precedent or otherwise as of the date of the information, true, accurate and complete in every material respect.

7.9 Payer Tax Representation

[Seller/Secured Party and Buyer/Chargor do not make any representations.]

[[a)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the other Party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other Party pursuant to Clause 7.10 (*Payee Tax Representations*) of this Agreement, (ii) the satisfaction of the agreement contained in Clauses 9.1(a) or 9.1(c) (*Furnish Specified Information*) or Clause 9.4 (*Tax Agreement*) of this Agreement and the accuracy and effectiveness of any document provided by the other Party pursuant to Clauses 9.1(a) or 9.1(c) (*Furnish Specified Information*) of this Agreement and (iii) the satisfaction of the agreement of the other Party contained in Clause 9.4 (*Tax Agreement*) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other Party does not deliver a form or document under Clause 9.1(c) (*Furnish Specified Information*) by reason of material prejudice to its legal or commercial position.]

[[b)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation[s]:

.....  
.....  
.....  
..... ]?]

7.10 Payee Tax Representations

[Seller/Secured Party] and [Buyer/Chargor] do not make any representations.]

[[a)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "compensation" provision or the "Other Income" provision, if any, of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

"Specified Treaty" means with respect to [Seller/Secured Party]

"Specified Jurisdiction" means with respect to [Seller/Secured Party]

"Specified Treaty" means with respect to [Buyer/Chargor]

"Specified Jurisdiction" means with respect to [Buyer/Chargor]

[[b)] [Seller/Secured Party] [and] Buyer/Chargor] [each] make[s] the following representation:

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.



"Specified Jurisdiction" means with respect to [Seller/Secured Party]

"Specified Jurisdiction" means with respect to [Buyer/Chargor]

[[c)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

It is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]

[[d)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

It is a "non-U.S. branch of a foreign person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]\*

[[e)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

With respect to payments made to an address outside the United States or made by a transfer of funds to an account outside the United States, it is a "non-U.S. branch of a foreign person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]

[[f)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation:

It is a "foreign person" (as that term is used in section 1.6041-4(a)(4) of United States Treasury Regulations) for United States federal income tax purposes.]

[[g)] [Seller/Secured Party] [and] [Buyer/Chargor] [each] make[s] the following representation[s]:

.....  
.....  
.....  
.....]]

7.11 [Principal

It is, except where expressly indicated otherwise, entering into this Agreement including each transaction contemplated hereby, as principal and not as agent of any person or entity, and where it (the relevant Party) enters into this Agreement, or a transaction through an agent, the obligations arising under this Agreement, in respect of that transaction, are nevertheless the obligations of the relevant party itself, and not obligations of the agent through which the relevant Party enters into this Agreement, or such transaction.]

7.12 Satisfaction as to compliance with *Shari 'ah*

Insofar as it wishes or is required for any reason to enter into transactions, agreements and arrangements which comply or are consistent with the principles of the *Shari 'ah* ("**Shari 'ah compliant**" or "**Shari 'ah compliance**"), it has made its own investigation into and satisfied itself as to the *Shari 'ah* compliance of this Agreement, and each transaction entered into or to be entered into under or pursuant to this Agreement, and all necessary action to confirm that this Agreement, and each such transaction is a *Shari 'ah* compliant Agreement, or transaction, which it may enter into has been taken.

7.13 Non-reliance

It has made its own independent decisions to enter into each Collateralized *Murabahah* Transaction based upon its own judgment and it is not relying, directly or indirectly, on any communication, recommendation, confirmation or document prepared by, on behalf or at the request of the other Party to enter into any relevant Collateralized *Murabahah* Transaction.

**8. COLLATERAL REPRESENTATIONS**

The Buyer/Chargor represents to the Seller/Secured Party (which representations will be deemed to be repeated as of each date on which it, as the Buyer/Chargor, transfers Collateral) that:

- (a) it has the power to grant a security interest in any Collateral it transfers as the Buyer/Chargor to the Seller/Secured Party under this Agreement and has taken all necessary actions to authorise the granting of that security interest;
- (b) it is the beneficial owner of all Collateral it transfers as the Buyer/Chargor to the Seller/Secured Party under this Agreement, free and clear of any security interest, lien, encumbrance or other interest or restriction other than the security interest granted under Clause 3 (*Collateral*) and other than a lien routinely imposed on all securities including *Shari 'ah* compliant securities in a clearing system or Collateral Account in which any such Collateral may be held;
- (c) upon the transfer of any Collateral by it as the Buyer/Chargor to the Seller/Secured Party under the terms of this Agreement, the Seller/Secured Party will have a valid first ranking security interest in such Collateral; and
- (d) the performance by it as the Buyer/Chargor of its obligations under this Agreement will not result in the creation of any security interest, lien or other interest or encumbrance in or on any Posted Collateral other than the security interest created under this Agreement or any other arrangements executed in accordance with Clause 14.2 (*Further Assurances*) (other than any lien routinely imposed on all securities including *Shari 'ah* compliant securities in a clearing system or Collateral Account in which any such Posted Collateral may be held).

**9. AGREEMENTS**

Each Party agrees with the other that, so long as either Party has or may have any Obligations under this Agreement or any Collateralized *Murabahah* Transaction:

9.1 Furnish Specified Information

It will deliver to the other Party or, in certain cases under paragraph (c) below, to such government or taxing authority as the other Party reasonably directs:

- (a) any forms, documents or certificates relating to taxation specified in an Offer Notice;
- (b) any other documents specified an Offer Notice; and
- (c) upon reasonable demand by such other Party, any form or document that may be required or reasonably requested in writing in order to allow such other Party make a payment under this Agreement or transaction contemplated hereby without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Party in receipt of such demand), with any such form or document to be accurate and completed

in a manner reasonably satisfactory to such other Party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Offer Notice or, if none is specified, as soon as reasonably practicable.

9.2 Maintain Authorisations

It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any transaction contemplated hereby and will use all reasonable efforts to obtain any that may become necessary in the future.

9.3 Comply With Laws

It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any transaction contemplated hereby.

9.4 Tax Agreement

It will give notice of any failure of a representation made by it under Clause 7.10 (*Payee Tax Representations*) to be accurate and true promptly (and in any case within five (5) Business Days) upon learning of such failure.

9.5 Payment of Stamp Tax

It will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("**Stamp Tax Jurisdiction**"), and will indemnify the other Party against any Stamp Tax levied or imposed upon the other Party or in respect of the other Party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other Party.

**10. EVENTS OF DEFAULT<sup>32</sup>**

The occurrence at any time with respect to a Party of any of the following events constitutes an event of default (an "**Event of Default**") with respect to such Party:

10.1 Failure to Pay or Deliver

Failure by the Party to make, when due, any payment under this Agreement or delivery under Clause 2.6 (*Murabahah Contract*) required to be made by it if such failure is not remedied on or before the first Business after notice of such failure is given to the Party.

10.2 Failure to Post Collateral

Failure by the Party to transfer Collateral in accordance with Clause 3.3(b)(ii) (*Subsequent posting of Collateral and returns*).

10.3 Breach of Agreement; Repudiation of Agreement

- (a) Failure by the Party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or make any delivery under Clause 2.6 (*Murabahah Contract*) or an obligation to transfer Collateral under Clause 3.3(b)(ii) (*Subsequent posting of Collateral and returns*) or any agreement or obligation under Clauses 9.1(a) or 9.1(c)

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<sup>32</sup> Further events of default may be included if required (to be mutually agreed/determined on a client specific basis).

(*Furnish Specified Information*) or Clause 9.4 (*Tax Agreement*)) required to be complied with or performed by the Party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the Party;

- (b) A Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Agreement, or any transaction entered into hereunder, (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

#### 10.4 Misrepresentation

Any representation (other than a representation under Clause 7.9 (*Payer Tax Representation*) or 7.10 (*Payee Tax Representation*)) or statement made or repeated or deemed to be made by a Party in this Agreement or any other document delivered by or on behalf of a Party under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or repeated or deemed to be made or repeated.

#### 10.5 Bankruptcy

The Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d)
  - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or
  - (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (i) above and either:
    - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
    - (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;

- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) above (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

#### 10.6 Merger Without Assumption

The Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:

- (a) the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement or any transaction contemplated hereby to which it or its predecessor was a Party; or
- (b) the benefits of any security created hereunder fail to extend (without the consent of the other Party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement or any transaction contemplated hereby.

#### 10.7 Consequences of Event of Default

On and at any time after the occurrence of an Event of Default which is continuing in respect to the Buyer/Chargor, the Seller/Secured Party may, by delivering an Acceleration Notice to the Buyer/Chargor:

- (a) declare all or part of any Outstanding Deferred Payment Price together with any amounts accrued or outstanding under this Agreement payable to it to be immediately due and payable, whereupon all or such amounts shall become immediately due and payable; and
- (b) declare that all or part of any Outstanding Deferred Payment Price together with amounts accrued or outstanding under this Agreement be payable on demand, whereupon they shall immediately become payable on demand by the Seller/Secured Party.

### 11. RIGHTS OF ENFORCEMENT

#### 11.1 Seller/Secured Party's<sup>33</sup>

If at any time a Acceleration Notice has been sent pursuant to Clause 10.7 (*Consequences of Event of Default*) and is continuing with respect to the Buyer/Chargor, then:

- (a) the Seller/Secured Party shall [without prior notice to the Buyer/Chargor ] be entitled to put into force and to exercise immediately or as and when it may see fit any and every power possessed by the Seller/Secured Party by virtue of this Agreement or available to a secured creditor [(so that section 93 and section

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<sup>33</sup> This section may need to be reviewed if the governing law chosen by the parties has notice requirements for the enforcement of security.

103 of the Law of Property Act 1925 shall not apply to this Agreement)]<sup>34</sup> and in particular (but without limitation) the Seller/Secured Party shall have power in respect of Posted Collateral other than in the form of cash:<sup>35</sup>

- (i) to sell all or any of the Posted Collateral in any manner permitted by law upon such terms as the Seller/Secured Party shall in its absolute discretion determine; and
  - (ii) to collect, recover or compromise and to give a good discharge for any moneys payable to the Buyer/Chargor in respect of any of the Posted Collateral;
- (b) to the extent permitted by law, the Seller/Secured Party shall have the right to appropriate all or any part of the Posted Collateral in or towards discharge of the Obligations<sup>36</sup> and may exercise such right to appropriate upon giving written notice to the Buyer/Chargor. For this purpose, the Parties agree that the value of such Posted Collateral so appropriated shall be the market price of the Posted Collateral determined by the Seller/Secured Party by reference to a public index or by such other process as the Seller/Secured Party may reasonably select, including independent valuation. The Parties agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of any applicable law;
- (c) the Seller/Secured Party may in respect of Posted Collateral in the form of cash immediately or at any subsequent time, without prior notice to the Buyer/Chargor:
- (i) apply or appropriate the Posted Collateral in or towards the payment or discharge of any amounts payable by the Buyer/Chargor with respect to any Obligation in such order as the Seller/Secured Party sees fit; or
  - (ii) set off all or any part of any amounts payable by the Buyer/Chargor with respect to any Obligation against any obligation of the Seller/Secured Party to repay any amount to the Buyer/Chargor in respect of the Posted Collateral; or
  - (iii) debit any account of the Buyer/Chargor (whether sole or joint) with the Seller/Secured Party at any of its offices anywhere (including an account opened specially for that purpose) with all or any part of any amounts payable by the Buyer/Chargor with respect to any Obligation from time to time; or
  - (iv) combine or consolidate any account in the name of the Buyer/Chargor (whether sole or joint) in any currency at any of the Seller/Secured Party's offices anywhere with the account relating to the Posted Collateral,

and for the purposes of this Clause 11.1(c), the Seller/Secured Party shall be entitled:

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<sup>34</sup> Applicable to English law only

<sup>35</sup> Any surplus in respect of Posted Collateral remaining after enforcement is payable to the Buyer/Chargor: see Clause 11.4.

<sup>36</sup> Any surplus in respect of Posted Collateral remaining after enforcement is payable to the Buyer/Chargor: see Clause 11.4.

- (A) to make any currency conversions or effect any transaction in currencies which it thinks fit, and to do so at such times and rates as it thinks proper<sup>37</sup>; and
- (B) to effect any transfers between, or entries on, any of the Buyer/Chargor's accounts with the Seller/Secured Party as it thinks proper.

## 11.2 Power of Attorney

The Buyer/Chargor, by way of security and for the purpose of more fully securing the performance of the Obligations, irrevocably appoints the Seller/Secured Party the attorney of the Buyer/Chargor on its behalf and in the name of the Buyer/Chargor or the Seller/Secured Party (as the attorney may decide) to do all acts, and execute all documents which the Buyer/Chargor could itself execute, in relation to any of the Posted Collateral or in connection with any of the matters provided for in this Agreement, including (but without limitation), to execute any transfer, bill of sale or other assurance in respect of the Posted Collateral; to exercise all the rights and powers of the Buyer/Chargor in respect of the Posted Collateral; to ask, require, demand, receive, compound and give a good discharge for any and all moneys and claims for moneys due and to become due under or arising out of any of the Posted Collateral; to endorse any cheques or other instruments or orders in connection with any of the Posted Collateral; and to make any claims or to take any action or to institute any proceedings which the Seller/Secured Party considers to be necessary or advisable to protect or enforce the security interest created by this Agreement.

## 11.3 Protection of Purchaser

- (a) No purchaser or other person dealing with the Seller/Secured Party or with its attorney or agent shall be concerned to enquire (1) whether any power exercised or purported to be exercised by the Seller/Secured Party has become exercisable, (2) whether any Obligation remains due, (3) as to the propriety or regularity of any of the actions of the Seller/Secured Party or (4) as to the application of any money paid to the Seller/Secured Party.
- (b) In the absence of bad faith on the part of such purchaser or other person, such dealings shall be deemed, so far as regards the safety and protection of such purchaser or other person, to be within the powers conferred by this Agreement and to be valid accordingly. The remedy of the Buyer/Chargor in respect of any impropriety or irregularity whatever in the exercise of such powers shall be limited to reasonable damages only, the amount of such damages to be fully supported by documentary evidence.

## 11.4 Deficiencies and Excess Proceeds<sup>38</sup>

The Seller/Secured Party will transfer to the Buyer/Chargor any proceeds and Posted Collateral remaining after liquidation, set-off and/or application under Clause 11.1 (*Seller/Secured Party's*) and after satisfaction in full of all amounts payable by the

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<sup>37</sup> AAOIFI *Shari 'ah* Standard No.8 "*Murabahah* to the Purchase Orderer", it is permissible for the institution and the customer to agree that the differed payment amount can be paid in a currency different from that in which the debt is denominated with the condition that any such payment should be based on the exchange rate of the day of the settlement. The amount must be paid in full so that there remains no balance owing in that different currency. Item 5 "Guarantees and treatment of *Murabahah* receivables" paragraph 5/10, (2010 edition) p. 124.

<sup>38</sup> AAOIFI *Shari 'ah* Standard No. (5) Guarantees). PLEDGES, "4/4 Enforcement of a Pledge/collateral". 4/4/1 "The effect of the pledge of security is that the creditor is entitled, if the debtor fail to pay the debt on time, to demand the sale of the pledged asset in order to recover the amount of the debt from the sale proceeds, and to return any surplus proceeds to the debtor. Where the proceeds fail to cover the amount of the debt, the remaining balance is treated as an ordinary unsecured debt. If the debtor is declared bankrupt, the creditor possessing a pledge of security has a prior claim over other creditors to the pledged asset, and in case of a shortfall, the pledgee merely ranks as an ordinary unsecured creditor in respect to the remaining balance of his debt. 2010 edition, p 64.

Buyer/Chargor with respect to any Obligations; the Buyer/Chargor in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under Clause 11.1 (*Seller/Secured Party's*).

#### 11.5 Final Returns

When all Obligations of the Buyer/Chargor have been discharged, the Secured Party will transfer to the Buyer/Chargor all Posted Collateral and release any security over such transferred Collateral pursuant to Clause 3.1(c) (*Release of Security*).

### 12. EARLY TERMINATION, ILLEGALITY AND TAX EVENT

#### 12.1 Early Termination

- (a) Subject to Clause 14.6(b) (*Costs and Expenses*), if at any time during the term of this Agreement, a Party wishes to terminate this Agreement, it may do so by giving the other Party written notice of not less than [ $\bullet$ ]<sup>39</sup> Business Days, following which this Agreement shall terminate.
- (b) A Party shall only be entitled to serve a notice under paragraph (a) above if no Obligation is outstanding under any *Murabahah* Contract at the date of such notice.

#### 12.2 Illegality or Tax Event

If the case of an Illegality or Tax Event:

- (a) the affected Party shall promptly notify the other Party upon becoming aware of that event; and
- (b) the Buyer/Chargor shall pay to the Seller/Secured Party the Deferred Payment Price of the affected Collateralized *Murabahah* Transactions as may be agreed between the Parties at such time (provided always that such amount shall be no less than the Cost Price portion of the Deferred Payment Price) on the date specified by the Seller/Secured Party (being no earlier than the last day of any applicable grace period permitted by law).

### 13. TAX

#### 13.1 Tax

- (a) VAT

[No Party wishes to enter into any *Murabahah* Contract to which any value added tax or other similar tax ("**VAT**") is applicable and the Parties will not propose such transactions.]

- (b) Gross-Up.

All payments under this Agreement and any Collateralized *Murabahah* Transaction contemplated hereby will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a Party is so required to deduct or withhold, then that Party ("**X**") will:

- (i) promptly notify the other Party ("**Y**") of such requirement;
- (ii) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld

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<sup>39</sup> To be mutually agreed on a client specific basis.



from any additional amount paid by X to Y under this Clause 13.1 (*Tax*) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

- (iii) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (iv) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:
  - (A) the failure by Y to comply with or perform any agreement contained in Clauses 9.1(a) or 9.1(c) (*Furnish Specified Information*) or Clause 9.4 (*Tax Agreement*); or
  - (B) the failure of a representation made by Y pursuant to Clause 7.10 (*Payee Tax Representations*) to be accurate and true unless such failure would not have occurred but for
    - (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Collateralized *Murabahah* Transaction is entered (regardless of whether such action is taken or brought with respect to a Party to this Agreement); or
    - (2) a Change in Tax Law.

(c) **Liability**

If:

- (i) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Clause 13.1(b)(iv) (*Gross-Up*);
- (ii) X does not so deduct or withhold; and
- (iii) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Clauses 9.1(a) or 9.1(c) (*Furnish Specified Information*) or Clause 9.4 (*Tax Agreement*)).

## 14. MISCELLANEOUS

### Commodity/Good Indemnity<sup>40</sup>

The Buyer/Chargor will, within five (5) Business Days of demand, indemnify and keep indemnified (without double counting) the Seller/Secured Party from and against all actions, claims, proceedings, actual costs, liabilities and expenses whatsoever, brought or

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<sup>40</sup> To be mutually agreed on a client specific basis as to which Party should be indemnified and for which losses.

claimed by any person against the Seller/Secured Party in connection with the Commodities/Goods and howsoever arising under or in connection with this Agreement or any Murabahah Contract including, but not limited to, the purchase, sale, delivery, non-delivery, handling, storage, use, occupancy, possession, seizure, beneficiary of insurance proceeds of, forfeiture of, or in relation to, the Commodities/Goods (the "Losses") except to the extent such Losses are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the Seller/Secured Party's gross negligence, fraud or wilful misconduct.

#### 14.1 Currency of Payment

Each payment in respect of actual costs, expenses or taxes shall be made in the currency in which such costs, expenses or taxes are incurred. Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency to an account of the relevant Party, in the principal financial centre of such currency.

#### 14.2 Further Assurances

Promptly following a demand made by a Party, the other Party will execute, deliver, file and record any financing statement, specific assignment or other document (including without limitation, with the Custodian) and take any other action that may be necessary or desirable and reasonably requested by that Party (i) to create, preserve, perfect or validate any security interest granted under Clause 3 (*Collateral*), (ii) to vest all or part of the Assigned Rights and Posted Collateral in its name or in the name(s) of its nominee(s), agent or any purchaser(s) (iii) to enable that Party to exercise or enforce its rights under this Agreement with respect to the Assigned Rights and to the Posted Collateral or (iv) to effect or document a release of a security interest on Assigned Rights and the Posted Collateral.

#### 14.3 Further Protection

The Buyer/Chargor will promptly give notice to the Seller/Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Collateral transferred by the Buyer/Chargor or that could adversely affect the security interest granted by it under Clause 3 (*Collateral*).

#### 14.4 Good Faith and Commercially Reasonable Manner

Performance of all obligations under this Agreement, including, but not limited to, all calculations, valuations and determinations made by either Party [and the Valuation Agent], will be made in good faith and in a commercially reasonable manner.

#### 14.5 Payments

If any payment due from a Party falls on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day except where the next succeeding Business Day falls in the next calendar month, in which event the payment shall be due and shall be made on the immediately preceding Business Day.

#### 14.6 Costs and Expenses

- (a) Each Party acknowledges and accepts that it shall bear its own costs and expenses incurred in connection with the preparation of this Agreement and in connection with performing its obligations under this Agreement and, subject to sub-clause 14.6(b), neither Party will be liable for any such costs and expenses incurred by the other Party.
- (b) the Buyer/Chargor further acknowledges and accepts that the Deferred Payment Price shall not include costs associated with delivery of the Commodities/Goods (including any stamp, transfer or similar transaction tax or duty payable on any such delivery) where the Buyer/Chargor has requested

physical delivery in accordance with Clause 2.6 (*Murabahah Contract*) and, for the avoidance of doubt, any costs associated with such delivery, properly incurred by the Seller/Secured Party, shall be for the account of the Buyer/Chargor.

- (c) The Buyer/Chargor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Collateral held by the Seller/Secured Party upon becoming aware of the same.
- (d) All reasonable costs and expenses incurred by the Seller/Secured Party in connection with the liquidation and/or application of any Posted Collateral under Clause 11 (*Rights of Enforcement*) will be payable, on demand, by the Buyer/Chargor.

#### 14.7 Mitigation

If circumstances arise which would, or would upon the giving of notice, result in:

- (a) the Buyer/Chargor being required to prepay the Deferred Payment Price pursuant to Clause 12.2 (*Illegality or Tax Event*); or
- (b) the Buyer/Chargor being required to make a deduction or withholding pursuant to Clause 13.1 (*Tax*),

then, without in any way limiting, reducing or otherwise qualifying the obligations of the Buyer/Chargor under Clauses 12.2 (*Illegality or Tax Event*) and 13.1 (*Tax*), the Buyer/Chargor shall endeavour to take such reasonable steps as may be open to it to mitigate or remove such circumstances.

#### 14.8 Assignments

No Party shall be entitled to transfer or assign any of its rights or transfer any of its rights and obligations under this Agreement without the prior written consent of the other Party.

#### 14.9 Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

#### 14.10 Entire Agreement

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Each of the Parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud or negligence.

#### 14.11 Remedies And Waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.12 Amendments

Any amendment to any of the terms or conditions of this Agreement shall be in writing and signed by both Parties.

14.13 Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

14.14 Notices

- (a) Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, e-mail or letter.
- (b) The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name below or any substitute address or fax number or department or officer as the Party may notify to the other by not less than 5 Business Days' notice.

**Secured Party/  
Al-Murtahin:**

Address: [•]  
Fax: [•]  
Email: [•]  
Attention: [•]

**Buyer/Chargor:**

Address: [•]  
Fax: [•]  
Email: [•]  
Attention: [•]

- (c) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form [provided that such communication is made from the fax number specified in Clause 14.14(b) above of the relevant Party or, if made from a different fax number, upon receipt of an email confirmation from the Party delivering such communication to the other Party that such communication has been sent by fax]<sup>41</sup>;
  - (ii) if way by email, when actually received in readable form; or

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<sup>41</sup> To be mutually agreed on a client specific basis.

- (iii) if by way of letter, when it has been left at the relevant address provided such delivery was by way of an internationally reputable courier company which retains proof of delivery,

and, if a particular department or officer is specified as part of its address details provided under this Clause 14.14, if addressed to that department or officer.

#### 14.15 [•]<sup>42</sup> and English language

- (a) This Agreement has been executed in the [English] language. The Parties agree that this Agreement may be translated into the [•]<sup>43</sup> language and executed in such language upon translation. The Parties agree that the [English] language shall prevail over the [•]<sup>44</sup> language in the event of any dispute or difference.
- (b) Any notice given or documents provided under or in connection with this Agreement must be in [•]<sup>45</sup> and [English]. In case of conflict, the [English] version will prevail unless the document is a constitutional, statutory or other official document.

#### 14.16 Reliance on Communication

A Party (the "**Receiving Party**") is authorised to act without further enquiry upon any instruction or communication received by email, fax or telephone which it reasonably believes in good faith to be an instruction or communication given or made by the other Party (the "**Delivering Party**") or any person authorised by the Delivering Party to give instructions or make other communications by email, fax or telephone on its behalf and is entitled to treat any such instruction or communication as fully authorised by and binding upon the Delivering Party. The Delivering Party shall indemnify the Receiving Party and its officers, directors, employees, representatives and agents from and against any cost, claim, loss expense (including legal fees) or liability together with any value added tax thereon which any of them may reasonably incur or sustain by reason of having acted upon any such instruction or communication.

### 15. GOVERNING LAW

#### 15.1 Governing Law

This Agreement is governed by and construed in accordance with [•] law.<sup>46</sup>

#### 15.2 Waiver of Interest

Notwithstanding the provisions of Clause [15.1 (*Governing Law*)] hereof, the Parties recognise and agree that the principle of the payment of interest/usury is repugnant to *Shari 'ah* and accordingly to the extent that [•] law would but for the provisions of this clause, impose whether by contract or by statute an obligation to pay interest/usury or a sum in the nature of interest/usury, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover from the other interest/usury or sum in the nature of interest/usury.

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<sup>42</sup> Insert language as appropriate.

<sup>43</sup> Insert language as appropriate.

<sup>44</sup> Insert language as appropriate.

<sup>45</sup> Insert language as appropriate.

<sup>46</sup> To be mutually agreed on a client specific basis. Where both Parties are located within the GCC region, the Parties may wish to adopt local law as the governing law (in such cases the 'Waiver of Interest' provision may not be required).

## 16. FORUM FOR DISPUTE RESOLUTION

### 16.1 Jurisdiction

- (a) [Subject to Clause 16.2 (*Arbitration*),] the courts of [•] have non-exclusive jurisdiction to settle any suit, action or proceedings arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of [•] are the most appropriate and convenient courts to settle Disputes and, accordingly, no Party will argue to the contrary.

### 16.2 [Arbitration<sup>47</sup>

- (a) [Subject to Clause 16.2(e) below, any dispute, controversy or claim arising out of or in connection with this Agreement (including any question regarding its existence, validity, breach or termination) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the Rules of Dubai International Islamic Centre for Reconciliation and Arbitration Rule or under the Rules of Arbitration of the London Court of International Arbitration (the "**Rules**"), which Rules are deemed incorporated by reference into this Clause 16.2(a).
- (b) The arbitral tribunal shall consist of [one or three]<sup>48</sup> arbitrator[s] to be nominated in accordance with the Rules.
- (c) The seat of the arbitration shall be [•]<sup>49</sup>. The language of the arbitration shall be [•]<sup>50</sup>.
- (d) The arbitral award shall be final, binding and capable of being enforced as if it had been issued by a court of competent jurisdiction and the parties hereby waive any right to refer any question of law and any right of appeal on the law and/or merits to any court.
- (e) Notwithstanding sub-clauses 16.2(a) to 16.2(d) above, before an arbitrator has been appointed to determine a Dispute, [the Seller/Secured Party/the Buyer/Chargor]<sup>51</sup> may by notice in writing to all the other parties to the Dispute require that a specific Dispute be heard by a court of law. If the Seller/Secured Party gives such notice, the Dispute to which that notice refers shall be determined in accordance with Clause 16.1 (*Jurisdiction*) of this Agreement.]

### 16.3 Service of Process<sup>52</sup>

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) the Seller/Secured Party irrevocably appoints [•] (or its replacement registered office from time to time) as its agent for service of process in relation to any proceedings before the English courts in connection with a Dispute;

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<sup>47</sup> Arbitral body and arbitration provisions to be considered on a transaction specific basis.

<sup>48</sup> To be mutually agreed on a client specific basis.

<sup>49</sup> To be mutually agreed on a client specific basis.

<sup>50</sup> To be mutually agreed on a client specific basis.

<sup>51</sup> To be mutually agreed on a client specific basis.

<sup>52</sup> Please note that a process agent appointment is only required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).

- (ii) the Buyer/Chargor irrevocably appoints [•] (or its replacement registered office from time to time) as its agent for service of process in relation to any proceedings before the English courts in connection with a Dispute; and
  - (iii) both Parties agree that failure by a process agent to notify the relevant Party of the process will not invalidate the proceedings concerned.
- (b) If the appointment of an agent for service of process pursuant to sub-clauses
- (c) (a)(i) and/or (a)(ii) above ceases, for any reason, to be effective, such Party (the "**Affected Party**") shall immediately (and in any event no later than [24 hours]<sup>53</sup> thereafter) appoint another person in England to accept service on its behalf in England. If the Affected Party fails to do so (and such failure continues for a period of not less than [fourteen days]<sup>54</sup>, the other Party shall be entitled to appoint such a person by notice to the Affected Party.]

#### 17. SET-OFF

The Seller/Secured Party may set off any matured obligation due from the Buyer/Chargor to the Seller/Secured Party under this Agreement or any Transaction against any matured obligation owed by the Seller/Secured Party to the Buyer/Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Seller/Secured Party may convert either obligation at a market rate of exchange<sup>55</sup> in its usual course of business for the purpose of the set-off.

**THIS AGREEMENT** has been **executed as a deed** by the Parties hereto and is intended to be and is hereby **delivered by it as a deed** on the date specified above.

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<sup>53</sup> To be mutually agreed on a client specific basis.

<sup>54</sup> To be mutually agreed on a client specific basis.

<sup>55</sup> Any payment in different currency must be based on the exchange rate of the day of the settlement.

**SCHEDULE 1**

**FORM OF PURCHASE INSTRUCTION WITH PROMISE TO PURCHASE**

**PART I  
PURCHASE INSTRUCTION WITH PROMISE TO PURCHASE**

Date: [•]  
From: [•] as [the Seller/Secured Party]  
To: [•] as [the Buyer/Chargor]  
Attention: [•]

**Master Collateralized *Murabahah* Agreement dated [ ] (the "MCM Agreement")**

**Purchase Instruction with Promise to Purchase**

Dear Sirs

1. We refer to the above MCM Agreement (expressions defined in which have the same meanings herein).
2. Subject to receiving a duly completed Acknowledgement from you in the form attached as Part II hereof (and delivery of the Conditions Precedent detailed below), we hereby write to inform you that we shall [purchase from the Broker/Supplier/instruct our Agent to purchase] the following Commodities/Goods:
  - (a) Quantity and General Description of Commodities/Goods: [•]
  - (b) Cost Price: [•]<sup>56</sup>
  - (c) Settlement Date: [•]
  - (d) *Murabahah* Profit: [•]
  - (e) Deferred Payment Price: [•]
  - (f) Deferred Payment Date: [•]
3. Conditions Precedent: [•]<sup>57</sup>
4. By signing the Acknowledgement attached to this Purchase Instruction with Promise to Purchase, you undertake to purchase the Commodities/Goods from us pursuant to a Collateralized *Murabahah* Transaction to be entered into in accordance with Clauses 2.3 (*Transaction Details*), 2.5 (*Acceptance Notice*) and 2.6 (*Murabahah Contract*) of the MCM Agreement.

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<sup>56</sup> Insert currency and amount as applicable.

<sup>57</sup> Examples include: Board Resolutions, Constitutional Documents, Accounts and Opinions.



Yours faithfully

.....  
authorised signatory for  
[*Seller/Secured Party name*]

**Part II**  
**ACKNOWLEDGEMENT/PROMISE TO PURCHASE**

**Acknowledgement / Promise to Purchase<sup>58</sup>**

We hereby undertake to purchase the Commodities/Goods from you under a Collateralized *Murabahah* Transaction pursuant to a *Murabahah* Contract to be entered into in accordance with Clause 2 (*Collateralized Murabahah Trading*) of the MCM Agreement.

We acknowledge that [you/your Agent will (on your behalf)] purchase the Commodities/Goods in reliance upon such undertaking and that you may incur losses, damages and other liabilities if we fail to purchase such Commodities/Goods from you in accordance with this undertaking and the terms of the MCM Agreement and we undertake to indemnify you against any such actual losses, damages and other actual liabilities.

.....

authorised signatory for  
[Buyer/Chargor name]

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<sup>58</sup> AAOIFI *Shari'ah* Standards No. (8) Murabaha to the Purchase Orderer “**2. Procedures prior to the contract of *Murabahah*”**. 2./3 The promise from the customer”. Item 2/3/2 “The customer’s promise to purchase, and the related contractual framework, are not integral to a Murabaha transaction, but are intended to provide assurance that the customer will complete the transaction after the item has been acquired by the institution. If the institution has other opportunities to see the item, then it may not need such a promise or contractual framework”. Item 2/1/3 “The customer’s wish to acquire the item does not constitute a promise or commitment except when it has been expressed in due form. It is permissible to prepare a single set of documentation to include both the customer’s stated wish that the institution should buy the item from the supplier and a promise to buy the item from the institution, which the customer signs. It is permissible for the customer to prepare such a document, or it may be a standard application form prepared by the institution to be signed by the customer”.

**SCHEDULE 2**  
**FORM OF OFFER NOTICE**

Date: [•]  
From: [•] as [the Seller/Secured Party]  
To: [•] as [the Buyer/Chargor]  
Attention: [•]

**Master Collateralized *Murabahah* Agreement dated [ ] (the "MCM Agreement")**

**Offer Notice**

1. We refer to the above MCM Agreement (expressions defined in which have the same meanings herein).
2. We hereby offer to sell to you the Commodities/Goods we have purchased from [the Broker/Supplier]<sup>59</sup> on the following terms:
  - (a) Quantity and General Description of Commodities/Goods: [•]
  - (b) Holding Certificate Number: [•]
  - (c) Cost Price: [•]<sup>60</sup>
  - (d) Settlement Date: [•]
  - (e) *Murabahah* Profit: [•]<sup>61</sup>
  - (f) Deferred Payment Price: [•]<sup>62</sup>
  - (g) Deferred Payment Date: [•]
  - (h) [Delivery Date and Place of Delivery: [•]<sup>63</sup>
  - (i) [Delivery costs]: [•]
3. The Commodities/Goods will be sold to you by us without any representation or warranty and any representation or warranty is expressly excluded to the extent permitted by law.
4. We hereby represent that no Potential Event of Default has occurred or is continuing and each Repeating Representation is true as of the date hereof and shall continue to be true on the proposed Settlement Date.
5. [We hereby acknowledge that delivery of the Commodities/Goods on the Delivery Date specified above shall incur a delivery charge (to be notified to us in due course).]<sup>64</sup>

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<sup>59</sup> Delete as applicable.

<sup>60</sup> Insert currency and amount as applicable.

<sup>61</sup> Insert currency and amount as applicable.

<sup>62</sup> Insert currency and amount as applicable.

<sup>63</sup> To be used where physical delivery is required.

6. In accordance with Clause 2.5 (*Acceptance Notice*) and 3.3(a) (*Initial posting of Collateral*) of the MCM Agreement, this offer to sell is conditional on us or our agent receiving the following Initial Collateral into the following Collateral Account:

(a) Initial Collateral

(i) If cash, [Insert amount of cash]

(ii) If *Shari 'ah* compliant securities, [Insert value of [description of other assets]]

(b) Collateral Account:

(i) Account Number: [ ]

(ii) Account Name: [ ]

(iii) SWIFT: [ ]

(c) Threshold Percentage: [•]

(d) Minimum Transfer Amount: [•]

7. If you accept this offer, please send us a duly executed copy of the Acceptance Notice.

8. This letter is governed by [•]<sup>65</sup> law.

Yours faithfully

.....  
Authorised Signatory for  
**[the Seller/Secured Party name]**

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<sup>64</sup> To be used where physical delivery is required and should not be included in the Cost Price.

<sup>65</sup> To be mutually agreed on a client specific basis.

**SCHEDULE 3**  
**FORM OF ACCEPTANCE NOTICE**

Date: [•]  
From: [•] as [the Buyer/Chargor]  
To: [•] as [the Seller/Secured Party]  
Attention: [•]

**Master Collateralized *Murabahah* Agreement dated [ ] (the "MCM Agreement")  
and Offer Notice dated [•]**

**Acceptance Notice**

1. We refer to the above MCM Agreement (expressions defined in which have the same meanings herein) and the Offer Notice issued by you pursuant thereto.
2. We hereby accept your offer to sell the Commodities/Goods to us and hereby conclude with you a *Murabahah* Contract, upon the terms set out in your Offer Notice.
3. We irrevocably and unconditionally confirm that the Commodities/Goods are sold by you to us without any representation or warranty and any representation or warranty is expressly excluded to the extent permitted by law.
4. [We hereby confirm that the delivery charges for physical delivery of the Commodities/Goods shall be [•] and payable on [•].]<sup>66</sup>
5. This letter is governed by [•]<sup>67</sup> law.

Yours faithfully

.....  
Authorised Signatory for  
[Buyer/Chargor's name]

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<sup>66</sup> To be used where physical delivery of the Commodities is required.

<sup>67</sup> To be mutually agreed on a client specific basis.

## SCHEDULE 4

### TIMETABLES – SPECIFIED TIMES<sup>68</sup>

Delivery of a duly completed Purchase Instruction with Promise to Purchase from the Seller/Secured Party to the Buyer/Chargor (as set out in Part I of Schedule 1 ( <i>Form of Purchase Instruction with Promise to Purchase</i> ))	[S- [•]] <sup>69</sup> at [•] <sup>70</sup>
Delivery of an Acknowledgement from the Buyer/Chargor to the Seller/Secured Party (as set out in Part II of Schedule 1 ( <i>Form of Purchase Instruction with Promise to Purchase</i> ))	[S] at [•] <sup>71</sup>
Satisfaction of Conditions Precedent	[S] at [•] <sup>72</sup>
Purchase of Commodities/Goods by Seller/Secured Party from Broker/Supplier	[S] at [•] <sup>73</sup>
Delivery of a duly completed Offer Notice from the Seller/Secured Party to the Buyer/Chargor	[S] at [•] <sup>74</sup>
Delivery of duly completed Acceptance Notice from the Buyer/Chargor to the Seller/Secured Party.	[S] at [•] <sup>75</sup>
Delivery of Initial Collateral to the Collateral Account of Commodities/Goods from Seller/Secured Party to the Buyer/Chargor	[S] at [•] <sup>76</sup>
Sale of Commodities/Goods from Seller/Secured Party to the Buyer/Chargor	[S] at [•] <sup>77</sup>

S = Settlement Date

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<sup>68</sup> Please see Clause 2.7 (*Time of the Essence*)

<sup>69</sup> Number of days to be mutually agreed on a client specific basis.

<sup>70</sup> Insert relevant time of day.

<sup>71</sup> Insert relevant time of day.

<sup>72</sup> Insert relevant time of day.

<sup>73</sup> Insert relevant time of day.

<sup>74</sup> Insert relevant time of day.

<sup>75</sup> Insert relevant time of day.

<sup>76</sup> Insert relevant time of day.

<sup>77</sup> Insert relevant time of day.

**SCHEDULE 5**

**FORM OF VALUATION NOTICE FROM VALUATION AGENT**

Date: [•]  
From: [Valuation Agent]  
To: [Buyer/Chargor]  
and  
[Seller/Secured Party]  
Attention: [•]

Dear Sirs,

**Master Collateralized *Murabahah* Agreement dated [•] (the "MCM Agreement")**

**Valuation Notice relating to [date]**

1. Any capitalised terms used in this notice but not defined herein shall have the meaning given to them in the MCM Agreement.
2. This notice is given pursuant to Clause 3.3(b) (*Subsequent posting of Collateral and returns*) of the MCM Agreement.
3. The Aggregate Outstanding Deferred Payment Price as of [date] is [currency][amount].
4. The aggregate Value of all Posted Collateral held by the Seller/Secured Party in the Collateral Account for value as of [date] is [currency][amount].
5. [The aggregate Value of the Posted Collateral is less than the Required Minimum.] OR  
[The aggregate Value of the Posted Collateral is more than the Required Minimum.]

Yours Faithfully  
For and on behalf of

[Valuation Agent]

Authorized Signatory

Authorized Signatory

**SCHEDULE 6**

**FORM OF COLLATERAL CALL NOTICE**

Date: [•]  
From: [Seller/Secured Party]  
To: [Buyer/Chargor]  
Attention: [•]

Dear Sirs,

**Master Collateralized *Murabahah* Agreement dated [•] (the "MCM Agreement")**

**Collateral Call Notice**

1. Any capitalised terms used in this notice but not defined herein shall have the meaning given to them in the MCM Agreement.
2. We hereby notify you that the aggregate Value of the Posted Collateral is less than the Required Minimum.
3. Pursuant to Clause 3.3(b)(i) (*Subsequent posting of Collateral and returns*) we request that you immediately transfer to the following Collateral Account sufficient Collateral to rectify this position [being in an amount no less than the Minimum Transfer Amount]:

Account Number: [•]

Account Name: [•]

SWIFT: [•]

Yours Faithfully  
For and on behalf of

[*Seller/Secured Party*]

Authorized Signatory

Authorized Signatory



**SCHEDULE 7**

**FORM OF NOTICE OF ACCELERATION**

Date: [•]  
From: [Seller/Secured Party]  
To: [Buyer/Chargor (i.e. Party in respect of which an Event of Default has occurred)]  
Attention: [•]

Dear Sirs,

**Master Collateralized *Murabahah* Agreement dated [•] (the "MCM Agreement")**

**Notice of Acceleration**

1. Any capitalised terms used in this notice but not defined herein shall have the meaning given to them in the MCM Agreement.
2. Pursuant to Clause 10.7 (*Consequences of Event of Default*) of the MCM Agreement, we hereby notify you that an Event of Default has occurred in relation to your obligations under Clause [•]([•]) of the MCM Agreement.
3. Accordingly, we hereby notify you that:
  - 3.1 [the entire] / [*insert amount if part*] [of the] Deferred Payment Price in respect of [the following Collateralized *Murabahah* Transactions/in respect of all Collateralized *Murabahah* Transactions] in respect of which we are Seller/Secured Party entered into pursuant to the MCM Agreement is [immediately due and payable] [on demand].  
  
[*list relevant Collateralized Murabahah Transactions*].
  - 3.2 the following amounts in respect of the MCM Agreement is [immediately due and payable] [on demand].  
  
[*list relevant Collateralized Murabahah Transactions*].

Yours Faithfully  
For and on behalf of  
  
[*Seller/Secured Party*]

Authorized Signatory

Authorized Signatory

**SCHEDULE 8**

**FORM OF SUBSTITUTION NOTICE**

**PART I  
SUBSTITUTION NOTICE**

Date: [•]  
From: [Buyer/Chargor]  
To: [Seller/Secured Party]  
Attention: [•]

Dear Sirs,

**Master Collateralized *Murabahah* Agreement dated [•] (the "MCM Agreement")**

**Request for Substitution of Collateral**

1. This notice is given pursuant to Clause 3.4 (*Substitution of Collateral*).
2. We hereby request that the Collateral (the "**Original Collateral**") described in paragraph 2(a) below be transferred to us, as Buyer/Chargor, in substitution for the Collateral (the "**Substitute Credit Support**") described in paragraph 2(b) below (the "**Substitution**"):
  - (a) [*Description of Original Collateral to be returned to Buyer/Chargor*]
  - (b) [*Description of Substitute Credit Support?/Collateral to be transferred to Seller/Secured Party*].
3. Please acknowledge receipt of this notice and we request that you consent to this Substitution by signing and returning the Consent/Acknowledgement of Substitution Notice set out in Part II of Schedule 8 of the MCM Agreement.

Yours Faithfully  
For and on behalf of

[*Buyer/Chargor*]

Authorized Signatory

Authorized Signatory

**SCHEDULE 8**

**PART II  
CONSENT/ACKNOWLEDGEMENT OF SUBSTITUTION NOTICE**

Date: [•]  
From: [Seller/Secured Party]  
To: [Buyer/Chargor]  
Attention: [•]

Dear Sirs,

**Master Collateralized *Murabah* Agreement dated [•] (the "MCM Agreement")  
Consent to Substitution of Collateral**

We acknowledge receipt of your notice dated [•] (the "**Substitution Notice**") in respect of your request to substitute the Original Collateral for the Substitute Credit Support/Collateral (as such terms are defined in the Substitution Notice) (the "**Substitution**").

By signing this Acknowledgement we hereby consent to such Substitution.

Yours Faithfully  
For and on behalf of

[*Seller/Secured Party*]

Authorized Signatory

Authorized Signatory

**EXECUTION PAGE**

*[amend execution blocks as appropriate]*

**EXECUTED** as a **DEED** by Seller/Secured Party acting by its duly authorised [attorney/signatory]:

By: .....

Name: .....

Title: .....

in the presence of:

Witness name: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation \_\_\_\_\_

**EXECUTED** as a **DEED** by Buyer/Chargor [two directors]:

By: .....

Name: .....

Title: Director

By: .....

Name: .....

Title: Director