



This document is in a non-binding, recommended form and intended to be used as a starting point for negotiation only. Individual parties may depart from its terms and should always satisfy themselves of the regulatory, legal and *Shari 'ah* implications of its use.

In The Name Of Allah, The Beneficent, The Merciful

DATED [•]

[INSERT NAME OF THE MUWAKKIL]  
as *Muwakkil*

and

[INSERT NAME OF THE WAKIL]  
as *Wakil*

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INTERBANK UNRESTRICTED MASTER INVESTMENT WAKALAH AGREEMENT

(ITTIFAQIYAH WAKALAH BIL ISTITHMAAR MUTLAQAH)

اتفاقية وكالة بالاستثمار رئيسية مطلقة بين المصارف

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### *Disclaimer*

This document has been drafted for interbank placements and is not suitable for retail deposits. *Potential users of this document* should always satisfy themselves of the regulatory, legal and *Shari 'ah* implications of its use.

This agreement is supplemented with a set of operational guidance memorandum which will cover the operational procedures to be implemented by the *Wakil* as well as the *Wakil* and *Muwakkil* responsibilities, accounting assessment, regulatory treatment analysis and the IIFM *Shari 'ah* pronouncement.

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This **INTERBANK UNRESTRICTED MASTER INVESTMENT WAKALAH AGREEMENT** (the “**Agreement**”) is dated [●] and made between

- (1) [INSERT NAME OF THE MUWAKKIL] a company incorporated under the laws of [●] with company registration number [●], whose registered office is situated at [●] (as the “**Muwakkil**”); and
- (2) [INSERT NAME OF THE WAKIL] a company incorporated under the laws of [●] with company registration number [●], whose registered office is situated at [●] (as the “**Wakil**”),

each a “**Party**” and together the “**Parties**”.

#### **WHEREAS:**

- (A) The Parties wish, from time to time, to enter into transactions whereby the *Muwakkil* will transfer certain funds to the *Wakil* and appoint the *Wakil* as its investment agent to invest such funds on its behalf in a manner compliant with the principles of *Shari’ah* and in accordance with the terms of this Agreement.
- (B) Each *Wakalah* Investment Transaction shall be governed by the terms set out herein, which includes the Schedules as executed by the Parties.

#### **IT IS AGREED as follows:**

### **1. DEFINITIONS AND CONSTRUCTION**

#### **1.1 Definitions**

In this Agreement:

“**Anticipated Profit Rate**” means, in relation to a *Wakalah* Investment Transaction, the profit rate specified in the *Wakil* Offer Notice, which the *Wakil* expects to achieve during relevant *Wakalah* Transaction Period by investing the Investment Amount for and on behalf of the *Muwakkil* in accordance with the provisions of this Agreement.

“**Actual Profit Rate**” means, in relation to a *Wakalah* Investment Transaction, the profit rate actually achieved by the *Wakil* during and upon the maturity of the relevant *Wakalah* Transaction Period by investing the Investment Amount for and on behalf of the *Muwakkil* in accordance with the provisions of this Agreement.

“**Business Day**” means, a day (other than [a Thursday or Friday]/[a Friday or Saturday]/[a Saturday or Sunday]) on which banks/financial institutions in [●] and [●] are open for general business.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 7 (*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.

“**Early Termination Date**” means a date designated or occurring in accordance with Clause 7.7 (*Termination following an Event of Default*), Clause 8.2 (*Acceptance of Early Termination Request*), Clause 8.4 (*Muwakkil’s right to continue or terminate*) or Clause 8.5 (*Illegality*).

“**Event of Default**” means any event or circumstance specified as such in Clause 7 (*Events of Default*).

“**Indebtedness**” means (i) any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of any debt money to be paid to *Muwakkil* or other, (ii) any amount raised under any transaction (including any financing transaction or arrangement entered into which is expressed to be made in accordance with the principles and rules of *Shari’ah*) having the commercial effect of a borrowing, and/or (iii) any indebtedness arising in relation to any risk mitigation transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

“**Investment Amount**” means, in relation to a *Wakalah* Investment Transaction, the amount specified in the *Wakil* Offer Notice to be transferred by the *Muwakkil* to the *Wakil* on the Investment Date provided that such amount shall be equal or greater than the Minimum Investment Amount.

“**Investment Date**” means, in relation to a *Wakalah* Investment Transaction, the date specified in the *Wakil* Offer Notice, on which the *Muwakkil* shall transfer the relevant Investment Amount to the *Wakil*.

“**Material Adverse Effect**” means an event or circumstance which has or could be reasonably expected to have a material adverse effect on the business or financial condition of a Party, the legality, validity, effectiveness or enforceability of this Agreement and any *Wakalah* Contract, or the ability of a Party to perform its payment and other obligations under this Agreement and any *Wakalah* Contract.

“**Maturity Date**” means, in relation to a *Wakalah* Investment Transaction, the date specified in the *Wakil* Offer Notice, on which the Maturity Proceeds in respect of the relevant *Wakalah* Investment Transaction shall be payable by the *Wakil* to the *Muwakkil*.

“**Maturity Proceeds**” means, in relation to any *Wakalah* Investment Transaction, the sums due (if any) by the *Wakil* to the *Muwakkil* on the Maturity Date of the relevant *Wakalah* Investment Transaction calculated in accordance with Clause 3.4 (*Payment and calculation of Maturity Proceeds*) and Clause 8.6 (*Payments upon early termination*).

“**Minimum Investment Amount**” means the minimum amount required by the *Wakil* for investment into a *Wakalah* Investment Transaction as notified by the *Wakil* to the *Muwakkil* from time to time.

“**Muwakkil Acceptance Notice**” means an acceptance notice to be sent by the *Muwakkil* to the *Wakil* accepting the *Wakil* Offer Notice, substantially in the form set out in Schedule 2 (*Form of Muwakkil Acceptance Notice*).

“**Repeating Representations**” means each of the representations set out in Clauses 5.1 (*Status*), 5.2 (*Binding obligations*), 5.3 (*Power and authority*), 5.5 (*Validity and admissibility in evidence*), 5.8 (*Governing law*), 5.9 (*No default*), 5.12 (*No proceedings pending*) and 5.13 (*Non reliance*).

“**Specified Currency**” means, in relation to a *Wakalah* Investment Transaction, the currency specified in the *Wakil* Offer Notice.

“**Tax**” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature which is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

“**Threshold**” means [●] or its equivalent in any other currency.

“**Wakalah Contract**” means an individual agency contract evidencing the terms of a *Wakalah* Investment Transaction concluded in accordance with Clause 3 (*Wakalah Investment Transactions*) on the terms set out in the relevant *Wakil* Offer Notice and the *Muwakkil* Acceptance Notice.

“**Wakalah Investment Transaction**” means each investment transaction entered into between the *Muwakkil* and the *Wakil* subject to the terms of this Agreement and the relevant *Wakalah* Contract to which such investment transaction relates.

“**Wakalah Pool**” means the pool of assets in which the *Wakil* shall invest the Investment Amounts which may consist of the *Wakil*'s general treasury pool comprising the [*Wakalah/Mudarabah*] funds held and invested by the *Wakil* from time to time or, at *Wakil*'s discretion, a segregated pool of assets more specifically described in the *Wakil* Offer Notice.

“**Wakil Fee**” means, in relation to a *Wakalah* Investment Transaction, the fee specified in the *Wakil* Offer Notice payable by the *Muwakkil* to the *Wakil* on either the Investment Date or the Maturity Date as agreed between the Parties.

“**Wakil Offer Notice**” means, in relation to a *Wakalah* Investment Transaction, an offer notice to be sent by the *Wakil* to the *Muwakkil*, substantially in the form set out in Schedule 1 (*Form of Wakil Offer Notice*).

“**Wakalah Transaction Period**” means, in relation to a *Wakalah* Investment Transaction, the period commencing on the Investment Date and ending on the earlier of the Maturity Date and the Early Termination Date.

“**Zakat**” means an annual alms payment which must be paid by Muslims - individuals or corporations- in accordance with the principles of *Shari’ah*.

## 1.2 Construction

In this Agreement:

- (a) Unless the context otherwise requires:
  - (i) use of the singular shall include the plural and vice versa;
  - (ii) a “**person**” includes any gender, any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality), joint venture, consortium or other entity;
  - (iii) “**assets**” include present and future properties, revenues and rights of every description;
  - (iv) the “**equivalent**” on any given date in one currency (the “**first currency**”) of an amount denominated in another currency (the “**second currency**”) is a reference to the amount of the first currency which could be purchased with the amount of the second currency at the mid rate of (i) the rate of exchange quoted by a party (“**Party A**”) at or about 11.00 a.m. on such date for the purchase of the first currency with the second currency and (ii) the rate of exchange quoted by Party A at or about 11.00 a.m. on such date for the sale of the first currency for the second currency;
  - (v) a “**law**” includes any 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 and, for the avoidance of doubt, reference to “**law**” does not include reference to principles of *Shari’ah*;
  - (vi) references to this Agreement or any other agreement or instrument is a reference to this Agreement or other agreement or instrument as from time to time amended, restated, novated, or replaced, however fundamentally;
  - (vii) references to Clauses and Schedules are to clauses of, and schedules to, this Agreement;
  - (viii) references to a time of day are to [●] time;
  - (ix) a provision of law is a reference to that provision as amended or re-enacted;
  - (x) “**Wakalah**” means an agency relationship between an agent and a principal whereby the principal appoints the agent to perform a certain task or tasks on its behalf which may or may not be in return for a fee;
  - (xi) “**Muwakkil**”, “**Wakil**” or any other “**Party**” shall be determined so as to include its successors in title, permitted assigns and permitted transferees;
  - (xii) “**Mudarabah**” means a partnership established in accordance with the principles of *Shari’ah* between two or more persons whereby one party provides capital (*rab al-maal*) and the other party provides expertise (*mudarib*) with a view to sharing profits (in a pre-agreed ratio) gained as a result of administration of the capital by the *mudarib*.

- (b) Clause and Schedule headings are included for convenience only and shall not affect the interpretation of this Agreement.

### **1.3 Single agreement**

Each *Wakalah* Contract is entered into in reliance on the fact that this Agreement and each *Wakalah* Contract form a single agreement between the Parties, and the Parties would not otherwise enter into any *Wakalah* Contract.

### **1.4 Third party rights**

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no rights to enforce or to enjoy the benefit of any term of this Agreement [including for the avoidance of doubt under the Contracts (Rights of Third Parties) Act 1999].

## **2. INVESTMENT WAKALAH TERMS AND CONDITIONS**

### **2.1 Appointment of *Wakil* as investment agent**

- (a) The *Muwakkil* appoints the *Wakil* to act as its investment agent in relation to each *Wakalah* Investment Transaction entered into between the *Wakil* and the *Muwakkil* from time to time to invest the relevant Investment Amount on behalf of the *Muwakkil* in accordance with the principles of *Shari'ah* and the terms of this Agreement.
- (b) In relation to each *Wakalah* Investment Transaction the appointment of the *Wakil* shall take effect from the relevant Investment Date and terminate on the earlier of the relevant Maturity Date and the Early Termination Date.
- (c) The *Muwakkil* authorises the *Wakil* to exercise the rights, powers, authorities and discretions specifically given to the *Wakil* under or in connection with this Agreement together with any other incidental rights, powers, authorities and discretions.
- (d) The *Wakil* shall be acting as agent for the *Muwakkil* on a limited agency basis in relation to each *Wakalah* Investment Transaction. Except as expressly provided herein, the *Wakil* shall not have any authority to represent or bind the *Muwakkil* in any other respect and shall not purport to do so.
- (e) The *Muwakkil* is entitled to seek from the *Wakil* information about the *Wakil's* investment strategy and the performance of the *Wakalah* Pool.
- (f) The *Muwakkil* acknowledges and agrees that, by entering into each *Wakalah* Investment Transaction as contemplated in Clause 3 (*Wakalah* Investment Transactions), the *Muwakkil* shall have no any right to retrieve the investment funds other than as described in that Clause 3, during the agreed investment period.

### **2.2 Acceptance of appointment**

In accordance with the offer and acceptance process described in Clause 3 (*Wakalah* Investment Transactions) and in consideration of the payment of the *Wakil* Fee (if any), in accordance with the terms of each *Wakalah* Contract and the incentive payment (if any) pursuant to Clause 3.5 (*Calculation of incentive payment*), the *Wakil* accepts its appointment as investment agent of the *Muwakkil* pursuant to Clause 2.1 (*Appointment of *Wakil* as agent*) and agrees to be bound by the terms of this Agreement and each *Wakalah* Contract.

### **2.3 Duties of the *Wakil***

- (a) In respect of each *Wakalah* Investment Transaction, the *Wakil* shall invest the Investment Amount in the *Wakalah* Pool and ensure that the *Wakalah* Pool is, at all times, invested in accordance with the principles of *Shari'ah*.

- (b) In performing its duties pursuant to this Agreement, the *Wakil* shall act with professionalism and exercise utmost due care and diligence.
- (c) The Parties agree that the *Wakil* may, but shall be under no obligation to, segregate the Investment Amounts received from the *Muwakkil* from its own funds and the funds of other customers but shall be entitled to commingle any Investment Amounts received from the *Muwakkil* with the general treasury pool of the *Wakil* in its ordinary course of business.
- (d) The *Wakil* shall not propose to enter into a *Wakalah* Investment Transaction unless it reasonably and genuinely believes, after due inquiry with respect to market conditions, past performance and future projections, that the Actual Profit Rate, in relation to the relevant *Wakalah* Investment Transaction, will be equal to or greater than the Anticipated Profit Rate.

#### **2.4 Liability of the Wakil**

- (a) The *Muwakkil* as principal shall bear all the risks associated with the acts of the *Wakil* as its investment agent and the *Wakil* shall have no liability (including any liability relating to any reduction to the Actual Profit Rate) to the *Muwakkil* other than any liability for any genuine actual losses (not to include any opportunity cost or funding costs) arising as a result of the *Wakil's* willful misconduct, negligence, misrepresentation or breach of the terms and conditions of this Agreement.
- (b) The *Wakil* shall, within three (3) Business Days of demand, indemnify the *Muwakkil* against any genuine actual cost, loss or liability incurred by the *Muwakkil* as a result of the *Wakil's* willful misconduct, negligence, misrepresentation or breach of the terms and conditions of this Agreement.

#### **2.5 No fiduciary duties**

Nothing in this Agreement shall be interpreted as constituting the *Wakil* as a trustee or fiduciary of the *Muwakkil* or any other person.

### **3. WAKALAH INVESTMENT TRANSACTIONS**

#### **3.1 No obligation to enter into transactions**

Nothing in this Agreement shall be construed as creating an obligation on the part of the *Wakil* or the *Muwakkil* to enter into any *Wakalah* Investment Transaction prior to a *Wakalah* Contract coming into effect in accordance with Clause 3.3 (*Muwakkil acceptance*).

#### **3.2 Notification and Wakil offer**

On any Business Day during the business hours of both Parties either Party may, by telephone or any other means approved by the Parties, notify the other of its desire to enter into a *Wakalah* Investment Transaction. The *Wakil* shall then send to the *Muwakkil* the *Wakil Offer Notice* setting out the terms of the proposed *Wakalah* Investment Transaction.

#### **3.3 Muwakkil acceptance**

- (a) If the *Muwakkil* is willing to enter into the proposed *Wakalah* Investment Transaction it shall send to the *Wakil* the *Muwakkil Acceptance Notice*. The *Muwakkil Acceptance Notice* must be received by the *Wakil* no later than one (1) Business Day prior to the proposed Investment Date in relation to that *Wakalah* Investment Transaction. Upon receipt by the *Wakil* of the *Muwakkil Acceptance Notice*, a *Wakalah* Contract shall be constituted on the terms specified in the *Wakil Offer Notice* and this Agreement.
- (b) If the *Muwakkil* transfers the Investment Amount to the *Wakil* on the Investment Date in accordance with the terms of the *Wakil Offer Notice*, the *Muwakkil* shall be deemed to have accepted the *Wakil Offer Notice* even in the absence of prior delivery of the *Muwakkil Acceptance Notice* in accordance with Clause 3.3(a) and the *Wakalah* Contract shall be

deemed to have been entered into on the Investment Date. In the event that the *Wakalah* Contract has been entered into without the *Muwakkil* delivering the *Muwakkil* Acceptance Notice to the *Wakil*, the *Muwakkil* shall deliver the *Muwakkil* Acceptance Notice to the *Wakil* as soon as practicable after the Investment Date.

- (c) If the *Muwakkil* fails to transfer the Investment Amount in full to the *Wakil* on the Investment Date, the *Wakalah* Investment Transaction shall, unless otherwise agreed by the Parties, terminate and the *Wakil* shall transfer any amounts received from the *Muwakkil* with respect to that *Wakalah* Investment Transaction back to the *Muwakkil*. Following the return by the *Wakil* of any amounts received in payment of the Investment Amount, the Parties shall have no further obligations pursuant to the relevant *Wakalah* Investment Transaction.

### **3.4 Payment and calculation of Maturity Proceeds**

On the Maturity Date of each *Wakalah* Investment Transaction, the *Wakil* shall pay to the *Muwakkil* the Maturity Proceeds (if any) calculated as follows:

- (a) If the Actual Profit Rate is equal to or greater than the Anticipated Profit Rate, the *Wakil* shall pay to the *Muwakkil* an amount equal to the aggregate of (i) the Investment Amount and (ii) an amount equal to the Investment Amount multiplied by the Anticipated Profit Rate and the number of days in the relevant *Wakalah* Transaction Period and divided by [360/365], less the *Wakil* Fee if unpaid.
- (b) If the Actual Profit Rate is less than the Anticipated Profit Rate, the *Wakil* shall pay to the *Muwakkil* an amount equal to the aggregate of (i) the Investment Amount and (ii) an amount equal to the Investment Amount multiplied by the Actual Profit Rate and the number of days in the relevant *Wakalah* Transaction Period and divided by [360/365], less the *Wakil* Fee if unpaid.
- (c) If the Actual Profit Rate is a negative number, the *Wakil* shall pay to the *Muwakkil* the Investment Amount less an amount equal to (i) the Investment Amount multiplied by (x) one hundred per cent. (100%) minus the absolute value in per cent. of the Actual Profit Rate and (y) the number of days in the relevant *Wakalah* Transaction Period and divided by [360/365], less the *Wakil* Fee if unpaid.

### **3.5 Calculation of incentive payment**

If the Actual Profit Rate is greater than the Anticipated Profit Rate, the *Wakil* shall pay to the *Muwakkil* the Maturity Proceeds in accordance with Clause 3.4(a) and retain the excess as an incentive payment.

### **3.6 Wakil Fee**

The *Muwakkil* shall pay to the *Wakil* a fee agreed in relation to each *Wakalah* Investment Transaction which will be specified in the relevant *Wakil* Offer Notice and payable on the applicable Investment Date or Maturity Date as agreed between the Parties. If the *Wakil* Fee is agreed to be payable on the Maturity Date, the *Wakil* is entitled to deduct the *Wakil* Fee from the applicable Maturity Proceeds.

### **3.7 No withdrawal**

Other than pursuant to Clause 8.1 (*Early termination at the request of the Muwakkil*), the *Muwakkil* irrevocably agrees not to withdraw any Investment Amount prior to the relevant Maturity Date.

## **4. PAYMENTS**

### **4.1 Transfer of the Investment Amount**

Upon a *Wakalah* Contract being constituted in accordance with Clause 3.3 (*Muwakkil acceptance*), the *Muwakkil* shall transfer, on the Investment Date, the Investment Amount into the *Wakil*'s account specified in the *Wakil* Offer Notice.

#### 4.2 Payment of Maturity Proceeds

On the Maturity Date of a *Wakalah* Investment Transaction, the *Wakil* shall pay the Maturity Proceeds to the *Muwakkil* by crediting the *Muwakkil*'s account specified in the *Muwakkil* Acceptance Notice.

#### 4.3 Currency

All payments pursuant to a *Wakalah* Investment Transaction shall be made in the Specified Currency without any set-off, counterclaim or other deduction whatsoever in cleared, immediately available funds for value on the date on which a payment pursuant to a *Wakalah* Investment Transaction shall be made.

#### 4.4 Currency indemnity

If any sum due from one Party to the other Party (a "**Sum**") pursuant to this Agreement, or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or a proof against a Party before a court of competent jurisdiction; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the paying Party owing such Sum shall, as an independent obligation, indemnify the Party to whom that Sum is due against any actual cost, loss, or liability arising out of or as a result of the conversion including any discrepancy between the rate of exchange used to convert that Sum from the First Currency into the Second Currency and the rate of exchange available to that person at the time of its receipt of that Sum provided that if, such conversion results in a gain for the party to which the Sum is due, such gain shall be returned to the Party paying the Sum.

#### 4.5 Tax gross up

- (a) All payment pursuant to this Agreement and any *Wakalah* Investment Transaction shall be made without any deduction or withholding for or on account of any Tax or *Zakat*, unless any such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect.
- (b) If a Party (the "**Withholding Party**") is required to make any deduction or withholding pursuant to paragraph (a) above, the Withholding Party shall ensure that such deduction or withholding is made within the time allowed and in the minimum amount required by law, and shall supply evidence reasonably satisfactory to the other Party as soon as possible (and in any event within thirty (30) days of such deduction or withholding or any payment required in connection with that deduction or withholding).
- (c) Where the *Muwakkil* is the Withholding Party, it shall, in addition to the payment to which the *Wakil* is otherwise entitled pursuant to this Agreement, pay such further amounts as may be necessary in order to ensure that the net amounts actually received by the *Wakil* after such deduction or withholding are equal to the amount which would have been received by the *Wakil* in the absence of such deduction or withholding.
- (d) For the avoidance of doubt, where the *Wakil* is the Withholding Party, any payment to the *Muwakkil* shall be made less any deduction or withholding and the *Wakil* shall be under no obligation to pay any further amounts to the *Muwakkil* to compensate the *Muwakkil* for any deduction or withholding made.

#### **4.6 Business Days**

If a payment falls due on a day which is not a Business Day the payment shall be made on the next following Business Day, save where the next following Business Day falls in the next calendar month in which event the payment shall be due on the Business Day immediately preceding the original due date.

### **5. REPRESENTATIONS**

Each Party hereby makes the representations and warranties set out in this Clause 5 (*Representations*) to the other Party on the date of this Agreement.

#### **5.1 Status**

It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted.

#### **5.2 Binding obligations**

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations (subject to general principles of law limiting its obligations).

#### **5.3 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the *Wakalah* Investment Transactions contemplated by this Agreement.

#### **5.4 Non-conflict with other obligations**

The entry into and performance by it of this Agreement, and the *Wakalah* Investment Transactions contemplated by this Agreement, does not and will not conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets.

#### **5.5 Validity and admissibility in evidence**

All authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement, and also to make this Agreement admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.

#### **5.6 No misleading information**

Any factual information provided by it in connection with this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

#### **5.7 Compliance with *Shari'ah***

Insofar as a Party wishes or is required, for any reason, to enter into transactions, agreements and arrangements which comply or are consistent with the principles of *Shari'ah* ("***Shari'ah* compliant**" or "***Shari'ah* compliance**"):

- (a) it has entered into this Agreement and each *Wakalah* Investment Transaction after having reviewed them for the purpose of their compliance with the principles of *Shari'ah* and, to the extent it has considered this necessary, taken independent advice from a *Shari'ah* adviser;
- (b) it is satisfied that the provisions of this Agreement and each *Wakalah* Investment Transaction do not contravene the principles of *Shari'ah*;
- (c) it has made its own investigation into and satisfied itself as to the *Shari'ah* compliance of this Agreement and each *Wakalah* Investment Transaction to be entered into under this Agreement;

- (d) all necessary action to confirm that this Agreement and each *Wakalah* Investment Transaction to be entered into pursuant to this Agreement are *Shari'ah* compliant has been taken (including the obtaining of an opinion or other attestation of the *Shari'ah* adviser, board or panel relevant to it where required);
- (e) it has not relied, directly or indirectly, on the other Party or any opinion or other attestation or document prepared by, on behalf or at the request of the other Party for the purposes of a determination or confirmation that this Agreement and each *Wakalah* Investment Transaction are *Shari'ah* compliant; and
- (f) it confirms that it does not have any objections, nor will it raise any objections as to matters of *Shari'ah* compliance in respect of, or otherwise in relation to any of the provisions of this Agreement and each *Wakalah* Investment Transaction to be entered into pursuant to this Agreement.

#### **5.8 Governing law**

The choice of [●] as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation [and any judgment obtained in [●] in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation].

#### **5.9 No Default**

No Event of Default is continuing or might be expected to result from the entry into of any *Wakalah* Contract and no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject and which may materially impair a Party's ability to perform its obligations under this Agreement.

#### **5.10 No deduction of Tax or Zakat**

It is not required to make any deduction for or on account of Tax or *Zakat* from any payment it may make under this Agreement.

#### **5.11 [Pari passu ranking]**

Its payment obligations under this Agreement rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.]<sup>1</sup>

#### **5.12 No proceedings pending**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

#### **5.13 Non reliance**

It is acting for its own account, it has made its own independent decisions to enter into each *Wakalah* Investment Transaction based upon its own judgment and upon advice from such advisers as it has deemed necessary and it is not relying on any communications of the other Party as investment advice or a recommendation to enter into the relevant *Wakalah* Investment Transaction.

#### **5.14 Repetition**

The Repeating Representations shall be deemed to be made by:

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<sup>1</sup> To be confirmed in light of the jurisdiction of incorporation of the Parties.

- (a) the *Wakil* each time a *Wakil* Offer Notice is sent to the *Muwakkil*; and
- (b) the *Muwakkil* each time a *Muwakkil* Acceptance Notice is sent to the *Wakil*.

## **6. UNDERTAKINGS**

Unless otherwise specified, the undertakings in this Clause 6 (*Undertakings*) remain in force from the date of this Agreement until all amounts outstanding under this Agreement or a *Wakalah* Investment Transaction have been paid in full.

### **6.1 Constitutional documents**

On or prior to entering into any *Wakalah* Investment Transaction, each Party shall provide to the other Party:

- (a) a certified copy of its constitutional documents;
- (b) a certified copy of the resolutions of its board of directors or equivalent management body, approving the execution, delivery and performance of this Agreement and the *Wakalah* Investment Transactions contemplated hereunder; and
- (c) specimen signatures of its authorised signatories who have the authority to sign this Agreement and any *Wakalah* Contract on its behalf.

### **6.2 Authorisations**

Each Party shall obtain, comply with and do all that is necessary to maintain in full force and effect and, if requested by the other Party, supply certified copies to the other Party of any authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Agreement and each *Wakalah* Investment Transaction and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Agreement and each *Wakalah* Investment Transaction.

### **6.3 Compliance with laws**

Each Party shall comply in all respects with all laws and regulations to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement and each *Wakalah* Investment Transaction.

### **6.4 Information: miscellaneous**

Each Party shall supply to the other Party:

- (a) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as, or as soon as practicable after, the documents are dispatched; and
- (b) promptly upon becoming aware thereof, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it and which may, if adversely determined, have a Material Adverse Effect.

### **6.5 Notification of Default**

A defaulting Party shall notify the non-defaulting Party of any Default and the steps, if any, being taken to remedy it promptly upon becoming aware of its occurrence. Upon a request by the non-defaulting Party, the defaulting Party shall supply to the non-defaulting Party a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it.

## 6.6 “Know your customer” checks

If:

- (a) the introduction of, or any change in, any law or regulation (or in the interpretation, administration or application thereof) after the date of this Agreement; or
- (b) any change in the status of a Party after the date of this Agreement,

obliges the other Party to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, such Party shall, promptly upon request of the other Party, supply, or procure the supply of, such documentation and other evidence reasonably requested by the other Party to carry out and be satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations applicable to the transactions contemplated by this Agreement and each *Wakalah* Investment Transaction.

## 7. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 7.1 (*Non-payment*) to Clause 7.6 (*Insolvency proceedings*) inclusive constitutes an Event of Default.

### 7.1 Non-payment

The *Wakil* does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable.

### 7.2 Other obligations

- (a) A Party does not comply with any provision of this Agreement (other than the obligation referred to in Clause 7.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above in relation to Clause [\_\_\_\_] will occur if the failure to comply is capable of remedy and is remedied within:
  - (i) (in relation to Clause [\_\_\_\_]) [●] Business Days; or
  - (ii) (in relation to Clause [\_\_\_\_]) [●] Business Days,

of the earlier of the non-defaulting Party giving notice to the defaulting Party and the defaulting Party becoming aware of the failure to comply.

### 7.3 Misrepresentation

Any representation or statement made 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 deemed to be made.

### 7.4 Cross-default

Any Indebtedness of the *Wakil*:

- (a) is not paid when due nor within any originally applicable grace period;
- (b) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);
- (c) becomes capable of being declared due and payable by a creditor prior to its specified maturity as a result of an event of default (however described); or

- (d) any commitment for any Indebtedness of the *Wakil* is cancelled or suspended as a result of an event of default (however described),

provided that no Event of Default will occur under this Clause 7.4 (*Cross-default*) if the aggregate amount of Indebtedness falling within paragraphs (a) to (d) above is less than the Threshold.

## 7.5 Insolvency

The *Wakil* is unable or admits its inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Indebtedness.

## 7.6 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any Indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the *Wakil*;
- (b) a composition, compromise, assignment or arrangement with any creditor of the *Wakil*;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of the *Wakil* or any of its assets; or
- (d) enforcement of any security over any assets of the *Wakil* (where the aggregate value of such asset is in excess of the Threshold or its equivalent in another currency or currencies),

or any analogous procedure or step is taken in any jurisdiction.

## 7.7 Termination following an Event of Default

On and at any time after the occurrence of an Event of Default which is continuing, the non-defaulting Party it may, by notice to the other party, declare that all *Wakalah* Investment Transactions entered into pursuant to this Agreement are terminated and designate a day not earlier than the day such notice is effective as an Early Termination Date with respect to all the *Wakalah* Investment Transactions.

## 7.8 Payments on early termination following an Event of Default

Following the designation of an Early Termination Date in accordance with Clause 7.7 (*Termination following an Event of Default*), the Maturity Date with respect to all *Wakalah* Investment Transactions shall fall on the Early Termination Date. The *Wakil* shall on, or as soon as practicable after, such Early Termination Date pay the Maturity Proceeds calculated in accordance with Clause 3.4 (*Payment and calculation of Maturity Proceeds*) in relation to each *Wakalah* Investment Transaction to the *Muwakkil*, as if the Early Termination Date was the Maturity Date in relation to each *Wakalah* Investment Transaction.

## 7.9 Set off

- (a) Any matured amounts due from the *Wakil* to the *Muwakkil* pursuant to Clause 7.8 (*Payments on early termination following an Event of Default*) may, at the option of the *Muwakkil*, be set-off against any other matured amounts (the “**Other Amounts**”) payable from the *Muwakkil* to the *Wakil* whether or not arising under this Agreement and irrespective of the currency, place of payment or place of booking of the obligation. (At the time of payment, the payment must be in accordance with the prevailing exchange rate in the case of different currency/ currency differences).

- (b) If the *Wakil* has not notified the *Muwakkil* of the amounts due and payable pursuant to Clause 7.8 (*Payments on early termination following an Event of Default*) within seven (7)

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Business Days of the designation of an Early Termination Date by the *Muwakkil* in accordance with Clause 7.7 (*Termination following an Event of Default*), the *Muwakkil* shall assume (based on the principle of profit under account) that the Actual Profit Rate is equal to the Anticipated Profit Rate and estimate the Maturity Proceeds in relation to each *Wakalah* Investment Transaction on that basis, provided that following the notification by the *Wakil* of the Actual Profit Rate in relation to the relevant *Wakalah* Investment Transaction, the *Muwakkil* shall either repay to or claim from the *Wakil* the amount corresponding to the difference (if any) between the Anticipated Profit Rate and the Actual Profit Rate so notified.

- (c) For this purpose, the *Muwakkil* may convert, either the amounts due from the *Wakil* or the Other Amounts (or the relevant portion thereof), from one currency into the currency in which the other is denominated at the prevailing rate of exchange at which the *Muwakkil* would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

## 8. EARLY TERMINATION

### 8.1 Early termination at the request of *Muwakkil*

Notwithstanding Clause 3.7 (*No withdrawal*), the *Muwakkil* may, during a *Wakalah* Transaction Period, send a notice to the *Wakil* requesting that one or more *Wakalah* Investment Transactions be terminated early prior to the Maturity Date (an “**Early Termination Request**”), provided that the *Wakil* shall not be under any obligation to accept or to take any action whatsoever in relation to such Early Termination Request.

### 8.2 Acceptance of Early Termination Request

- (a) The *Wakil* may elect, in its sole discretion, whether or not to accept the Early Termination Request and shall notify the *Muwakkil* of its acceptance within five (5) Business Days of receipt of the Early Termination Request, failing which the Early Termination Request shall be deemed to have been rejected by the *Wakil*.
- (b) If the *Wakil*, in its sole discretion, accepts the Early Termination Request, the date on which it notifies the *Muwakkil* of its acceptance shall be the Early Termination Date in respect of the relevant *Wakalah* Investment Transaction, and the *Wakil* shall make the payments to the *Muwakkil* pursuant to Clause 8.6 (*Payments upon early termination*).

### 8.3 Revised profit rate notice

If the *Wakil*, at any time during the *Wakalah* Transaction Period, determines that the Actual Profit Rate in relation to a *Wakalah* Investment Transaction, may be lower than the Anticipated Profit Rate, the *Wakil* shall as soon as practicable notify the *Muwakkil* thereof in writing and indicate the revised Anticipated Profit Rate which the *Wakil* estimates that it will be able to achieve in relation to the remaining period of the relevant *Wakalah* Investment Transaction (the “**Revised Anticipated Profit Rate**”).

### 8.4 *Muwakkil*'s right to continue or terminate

The *Muwakkil* shall, no later than three (3) Business Days following the receipt of a notice in accordance with Clause 8.3 (*Revised profit rate notice*), have the right to notify the *Wakil* that:

- (a) it accepts the Revised Anticipated Profit Rate, in which case the relevant *Wakalah* Investment Transaction shall continue until the Maturity Date thereof and the amount of the Maturity Proceeds shall be calculated by reference to (i) the Actual Profit Rate from the date of the relevant *Wakalah* Investment Transaction until the date on which the *Muwakkil* sends a notice to the *Wakil* accepting the Revised Anticipated Profit Rate and (ii) the Revised Anticipated Profit Rate (instead of the Anticipated Profit Rate) from the date the *Wakil* notifies the *Muwakkil* of the Revised Anticipated Profit Rate until the Maturity Date of the relevant *Wakalah* Investment Transaction; or

- (b) it wishes to terminate the relevant *Wakalah* Investment Transaction in which case the day on which such notice is delivered to the *Wakil* shall be the Early Termination Date in relation to the relevant *Wakalah* Investment Transaction and the *Wakil* shall make the payment to the *Muwakkil* in accordance with Clause 8.6 (*Payments upon early termination*).

If the *Muwakkil* fails to notify the *Wakil* within three (3) Business Days from the receipt of the notice pursuant to Clause 8.3 (*Revised profit rate notice*) in accordance with paragraph (a) or (b) above, the *Muwakkil* shall be deemed to have served a notice pursuant to paragraph (a) above on the third Business Day from the receipt of such notice.

## 8.5 Illegality

If it becomes unlawful in any jurisdiction for a Party (the "**Affected Party**") to perform any of its obligations under one or more *Wakalah* Investment Transactions (the "**Affected Transactions**"),

- (a) the Affected Party shall promptly notify the other Party upon becoming aware of that event;
- (b) the Affected Party shall take reasonable steps to mitigate or remove the circumstances giving rise to such event; and
- (c) if, after taking the steps pursuant to paragraph (b) above, the event giving rise to the illegality is continuing, the Affected Party may, upon three (3) Business Days notice, designate an Early Termination Date with respect to the Affected Transactions.

## 8.6 Payments upon early termination

Upon the designation of an Early Termination Date pursuant to Clause 8.2 (*Acceptance of Early Termination Request*), Clause 8.4 (*Muwakkil's right to terminate*) or Clause 8.5 (*Illegality*) the Maturity Date with respect to the relevant *Wakalah* Investment Transaction shall, irrespective of other provisions of this Agreement, fall on the Early Termination Date and the *Wakil* shall, within two (2) Business Days of the Early Termination Date, pay the Maturity Proceeds calculated in accordance with Clause 3.4 (*Payment and calculation of Maturity Proceeds*) as if the Early Termination Date was the Maturity Date in relation to the relevant *Wakalah* Investment Transaction, provided that if the Early Termination Date has been settled pursuant to Clause 8.2 (*Acceptance of Early Termination Request*), the *Wakil* shall be entitled to retain from the Maturity Proceeds an amount which would compensate it for any actual administrative and out-of-pocket costs and expenses (excluding any opportunity cost or funding costs) which it has incurred as a result of the exercise by the *Muwakkil* of its right granted under Clause 8.4 (*Muwakkil's right to continue or terminate*).

## 9. LATE PAYMENT AMOUNT

### 9.1 Late Payment Amount

If any sum due and payable by a Party (the "**Paying Party**") under the terms of this Agreement, except any sum due pursuant to Clause 2.4(a) (*Liability of the Wakil*) with respect to losses not resulting from the *Wakil's* willful misconduct or negligence, is not paid to the other Party (the "**Affected Party**") on the due date (the "**Due Date**"), a late payment amount (the "**Late Payment Amount**") shall be payable on such amount as calculated in accordance with Clause 9.2 (*Calculation of Late Payment Amount*) and for the purposes of Clause 9.2 (*Calculation of Late Payment Amount*) the unpaid amount due from the Paying Party shall be referred to as the "**Unpaid Sum**" and 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 referred to as the "**Applicable Period**".

### 9.2 Calculation of Late Payment Amount

The Late Payment Amount shall be an amount equal to the sum of:

- (a) the:

(i) Unpaid Sum; multiplied by

(ii) [●] per cent.,

multiplied further by the number of days in such Applicable Period and divided by [360/365]; and

(b) the actual costs (not to include any opportunity cost or funding costs) incurred by the Affected Party as a result of the late payment of the Unpaid Sum.

If the Applicable Period exceeds one week it shall be deemed to be divided into successive sub-periods, each of which (other than the first, which shall be for a period of seven (7) days commencing on the Due Date) shall start on the last day of the preceding such period and the duration of which shall be selected by the Affected Party. The Late Payment Amount shall be calculated for each such sub-period as if the references to Applicable Period above were references to such sub-period and shall be payable at the end of each such sub-period.

### **9.3 Payment of Late Payment Amount**

Any Late Payment Amount received by the Affected Party shall be used to:

(a) pay any actual costs (not to include any opportunity cost or funding costs) incurred by it as a result of the late payment of the Unpaid Sum in accordance with Clause 9.2(b) (*Calculation of Late Payment Amount*); and

(b) the remaining amount (if any) calculated in accordance with Clause 9.2(a) (*Calculation of Late Payment Amount*) shall be donated by the Affected Party (on behalf of the Paying Party) to such registered charitable foundations as the Affected Party may select under the supervision of its *Shari'ah* board. The Paying Party shall be entitled to request the Affected Party to provide the Paying Party with documentation evidencing any such donation.

## **10. MISCELLANEOUS**

### **10.1 Termination**

Without prejudice to the rights and obligations of the Parties pursuant to any existing *Wakalah* Investment Transaction and any other right or remedy of either Party arising as a result of a breach of any term of this Agreement, either Party shall be entitled to terminate this Agreement by giving the other Party written notice, such notice to be effective no sooner than fifteen (15) Business Days from its receipt.

### **10.2 Effect of termination**

(a) Following the receipt, by either Party, of the termination notice pursuant to Clause 10.1 (*Termination*), the Parties shall not enter into any new *Wakalah* Investment Transactions.

(b) Following the receipt, by either Party, of the termination notice pursuant to Clause 10.1 (*Termination*), any *Wakil* Offer Notice delivered but not accepted by the *Muwakkil* shall be cancelled and any purported *Muwakkil* Acceptance Notice of that *Wakil* Offer Notice shall be ineffective.

(c) The Parties shall remain obliged to fulfill their respective obligations in respect of *Wakalah* Investment Transactions that have been accepted pursuant to Clause 3 (*Wakalah Investment Transactions*) and which are outstanding at the date of the written notice of termination.

### **10.3 Assignments**

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

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#### **10.4 Unenforceability/Partial invalidity**

The illegality, invalidity, or unenforceability of any provision of this Agreement under the laws of any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions of this Agreement, or the documents to be delivered or entered into pursuant to this Agreement.

#### **10.5 Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the Parties with regard 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.

#### **10.6 Amendments**

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

#### **10.7 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.

#### **10.8 Remedies**

No failure by a Party to exercise any right under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right by the Party preclude its further exercise. The rights and remedies provided in this agreement are cumulative and not exclusive of any rights or remedies provided by law.

#### **10.9 Notices**

- (a) Any notice to be given or communication to be made in connection with this Agreement shall, unless otherwise agreed, be made in writing and may be made by letter, fax or email, SWIFT message or other electronic communication system agreed between the Parties.
- (b) The address and fax number of each Party for any communication or document to be made or delivered in connection with this Agreement shall be as set out in Schedule 3 (*Particulars*) or any substitute address or fax number or department or officer as the Party may notify to the other by not less than five (5) Business Days' notice.
- (c) Any communication or notice made or delivered by one person to another in relation to this Agreement will only be effective:
  - (i) if sent by way of fax, when received in legible form and the transmission has been successfully completed as confirmed by a transmission report generated by the sender's fax machine or, upon receipt of an email confirmation from the Party delivering such communication to the other Party that such communication has been sent by fax;
  - (ii) if sent 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; or
  - (iii) if sent by email, SWIFT message or other electronic messaging system on the date that the message is received.

## **10.10 Reliance on communications**

- (a) The Parties hereby acknowledge that they are fully aware of the risk associated with communications via telephone, facsimile, email or other electronic messaging systems.
- (b) A Party (the “**Receiving Party**”) is authorised, but not obliged, to act without further enquiry upon any instruction or communication received by fax or telephone or any other electronic mode of communication which it reasonably believes in good faith to be an instruction given or communication made by the other Party (the “**Delivering Party**”) or any person authorised by the Delivering Party to give instructions or make other communications by fax or telephone, email or other electronic messaging system on its behalf and is entitled to treat any such instruction as fully authorised by and binding upon the Delivering Party.
- (c) The Delivering Party acknowledges that the Receiving Party shall have no liability for accepting, relying or acting upon such communication and shall have no liability in the event any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorised or delayed for any reason.

## **10.11 Communications indemnity**

The Delivering Party shall indemnify the Receiving Party and its officers, directors, employees, representatives and agents against all actual losses, claims, actions, proceedings, damages, costs and expenses (including reasonable legal fees) incurred or sustained by the Receiving Party as a result of acting in accordance with Clause 10.10 (*Reliance on communications*).

## **10.12 Recording of telephone conversations**

Each Party consents to the recording of the telephone conversations of trading, marketing or other personnel of the Parties and their officers, employees, agents and affiliates in connection with this Agreement or any potential *Wakalah* Investment Transaction and agrees to give notice to and obtain any necessary consent of such personnel and each Party agrees that recordings may be submitted in evidence in any proceedings relating to this Agreement.

## **10.13 [English language**

This Agreement has been executed in the English language. The Parties agree that this Agreement may be translated into the [●] language and executed in such language upon translation. The Parties agree that the English language shall prevail over the [●] language in the event of any difference or dispute. The Parties agree that any notice given or documents provided under or in connection with this Agreement must be in English and [●]. In case of dispute, the English version will prevail unless the document is a constitutional, statutory or other official document.]

## **10.14 Cost and expenses**

Each Party acknowledges and accepts that it shall bear its own costs incurred in relation to the preparation of this Agreement and each *Wakalah* Investment Transaction.

# **11. GOVERNING LAW AND JURISDICTION**

## **11.1 Governing law**

This Agreement and any non-contractual obligations arising in relation thereto shall be governed by [●] law.

## **11.2 Waiver of interest**

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 any law or legal system would, but for the provisions of this clause, impose, whether by contract, by statute or otherwise, an obligation to pay interest/usury or a sum in the nature of interest/usury, each Party hereby expressly, irrevocably and unconditionally waives

and rejects any entitlement to recover from the other Party interest/usury or sum in the nature of interest/usury.

### 11.3 [Jurisdiction]

- (a) Each Party irrevocably agrees that the courts of [●] have non-exclusive jurisdiction to settle 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”).
- (b) The Parties hereby irrevocably agree that the courts of [●] are the most appropriate and convenient forum to settle a Dispute and accordingly each Party waives any objection which it may have to the bringing of proceedings in relation to a Dispute in the courts referred to in paragraph (a) above and waives any claim that proceedings have been brought in an inconvenient forum and further waives the right to object that such courts do not have any jurisdiction over the relevant Dispute.]

### 11.4 [Arbitration]

Any Dispute shall be referred to and finally resolved by arbitration under the rules of [the London Court of International Arbitration/Dubai International Islamic Centre for Reconciliation and Arbitration Rule (the “Rules”)]<sup>2</sup> which Rules are deemed incorporated by reference into this Clause 11.4.

- (a) The tribunal shall consist of three arbitrators to be nominated in accordance with the Rules.<sup>3</sup>
- (b) The seat of the arbitration shall be [●]. The language of the arbitration shall be [●].
- (c) 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.
- (d) The arbitration and all matters related thereto, including any awards, shall be confidential, unless otherwise agreed in writing by both Parties or to the extent disclosure is required under any applicable law.]

### 11.5 [Service of process]

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) The *Muwakkil* 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;
  - (ii) The *Wakil* 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 irrevocably agree that failure by a process agent to notify the relevant Party of the process will not invalidate the proceedings concerned.

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<sup>2</sup> NR: The option to choose the rules of alternative arbitration bodies to be discussed. Such alternatives may include, for example, the rules of the London Court of International Arbitration, DIFC-LCIA Arbitration Court, s, the International Chamber of Commerce Arbitration Rules, The Bahrain Chamber for Dispute Resolution Arbitration Rules, the Dubai International Arbitration Centre Rules and/or a number of other alternative options.

<sup>3</sup> NR: If this wording is used, the arbitrators will be appointed by LCIA. If the Parties want the ability to nominate their own arbitrators, the following clause should be used instead: “The Parties agree that one arbitrator shall be nominated by each Party for appointment by the London Court of International Arbitration (“LCIA”) in accordance with the Rules. The third arbitrator, who shall act as Chairman of the arbitral tribunal, shall be nominated by agreement of the two arbitrators nominated by the Parties within [14] days of the confirmation of the appointment of the second arbitrator or, in default of such agreement, the third arbitrator shall be appointed by the LCIA Court.”

- (b) If the appointment of an agent for service of process pursuant to sub-clauses (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 twenty four (24) hours 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 (14) days, the other Party shall be entitled to appoint such a person by notice to the Affected Party.)

#### **11.6 Waiver of immunities**

Each Party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (i) any suit, (ii) jurisdiction of any court or arbitral tribunal, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment or award) and (v) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be entitled and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity.

**AS WITNESS WHEREOF**, the Parties or their respective duly authorised representatives have caused this Agreement to be duly executed as of the day, date and year first above written.

## SCHEDULE 1

### Form of *Wakil* Offer Notice (Offer)

Date: [●]  
To: [●] (the "*Muwakkil*")  
From: [●] (the "*Wakil*")

#### Interbank Unrestricted Master *Wakalah* Agreement dated (the "Agreement")

1. We refer to the Agreement between ourselves and yourselves.
2. Capitalised terms not otherwise defined in this notice shall have the meaning attributed to them in the Agreement.
3. This is a *Wakil* Offer Notice pursuant to Clause 3.2 (*Notification / Wakil offer*) of the Agreement.
4. You indicated your wish to place an amount with us for investment by us in accordance with the terms of the Agreement. We hereby offer to enter into a *Wakalah* Investment Transaction with you on the following terms:

- (a) Investment Amount : [●]
- (b) Specified Currency : [●]
- (c) Anticipated Profit Rate : [●]
- (d) Investment Date : [●]
- (e) Maturity Date : [●]
- (f) *Wakil* Fee : [●] payable on [Investment Date/Maturity Date]
- (g) *Wakil* reference number : [●]
- (h) *Wakalah* Pool : [Investment Amount will be placed in and commingled with the *Wakil*'s general treasury pool]/[*Insert description of the specific asset pool in which the Investment Amount will be invested*]

We will invest the Investment Amount in transactions expected to generate for you in aggregate the Anticipated Profit Rate but there is no guarantee that the Anticipated Profit Rate will effectively be achieved.

Please credit the Investment Amount for value on the Investment Date to the following account:

Bank Name : [●]  
Branch : [●]  
Address : [●]  
Account Number : [●]  
Sort Code : [●]  
Swift Code: : [●]

or alternatively confirm your instruction to debit the Investment Amount from your account with us.

If you accept this offer, please send us a duly executed copy of the *Muwakkil* Acceptance Notice to [*insert address*] for the attention of [●].

This letter is governed by the laws governing the Agreement.

IIFM Interbank Unrestricted Master *Wakalah* Agreement 2013 (Revised on September 2015)

Yours Sincerely

.....

Authorised signatory for (*Wakil*)

Name.....

Title.....

## SCHEDULE 2

### Form of *Muwakkil* Acceptance Notice

Date: [●]  
To: [●] (the “*Wakil*”)  
From: [●] (the “*Muwakkil*”)

#### Interbank Unrestricted Master *Wakalah* Agreement dated (the “Agreement”)

1. We refer to the Agreement between ourselves and yourselves and the *Wakil* Offer Notice dated [●].
2. Capitalised terms not otherwise defined in this notice shall have the meaning attributed to them in the Agreement.
3. This is a *Muwakkil* Acceptance Notice pursuant to Clause 3.3 (*Muwakkil acceptance*) of the Agreement.
4. We hereby accept your offer set out in the *Wakil* Offer Notice dated [●] to enter into a *Wakalah* Investment Transaction with you upon the terms set out in the Agreement and your *Wakil* Offer Notice dated [●].
5. We hereby confirm your appointment as our agent to act on our behalf, in accordance with the Agreement, in relation to the *Wakalah* Investment Transaction.
6. [We hereby confirm that you can debit the Investment Amount from our account with you.]
7. [Please transfer any Maturity Proceeds on Maturity Date to the following Account:

Bank Name : [●]  
Branch : [●]  
Address : [●]  
Account Number : [●]  
Sort Code : [●]  
Swift Code: : [●]

8. This letter is governed by the laws governing the Agreement.

Yours Sincerely

.....

Authorised signatory for (*Muwakkil*)

Name

Title

**SCHEDULE 3**

**Particulars**

**MUWAKKIL**

Name:

Registration number:

Registered office:

Address for notices:

For the attention of:

Tel:

Fax:

Email:

**WAKIL**

Name:

Registration number:

Registered office:

Address for notices:

For the attention of:

Tel:

Fax:

Email:

**SIGNATURE PAGE**

For and on behalf of [●]

(as *Muwakkil*)

.....  
Name..... Name.....  
Title..... Title.....

For and on behalf of [●]

(as *Wakil*)

.....  
Name..... Name.....  
Title..... Title.....