



السوق المالية
الإسلامية الدولية
International Islamic
Financial Market

Dated: 14th August 2008
As approved by Shari'ah (pursuant to the Fatwa signed
on 7th September 2008)

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.

[INSERT NAME OF DEPOSIT PLACING ENTITY/PARTY A]

as Principal

and

[INSERT NAME OF DEPOSIT TAKING ENTITY/PARTY B]

as Agent

MASTER AGENCY AGREEMENT
FOR THE PURCHASE OF COMMODITIES

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THIS AGREEMENT is dated [•] and made **BETWEEN**:

- (1) [INSERT NAME OF DEPOSIT PLACING ENTITY/Party A] of [•] (the "**Principal**"); and
 - (2) [INSERT NAME OF DEPOSIT TAKING ENTITY/Party B] of [•] (the "**Agent**"),
- each a "**Party**" and together the "**Parties**".

Background

Pursuant to the terms of this Agreement, the Principal has agreed to appoint the Agent, and the Agent has agreed to act, as the Principal's agent to purchase Commodities on the Principal's behalf under the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In this Agreement:

"**Business Day**" means a 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];¹

"**Commodities**" means, the commodities listed in a Purchase Instruction and which may comprise any Shari'ah compliant metals, platinum group metals, palm oil, natural gas, crude oil or other Shari'ah compliant commodities acceptable to both Parties [and, in any event, will only include allocated commodities physically located outside of the United Kingdom];²

"**Cost Price**" means in relation to any Commodities, all sums payable by the Principal for the purchase of the Commodities from the Supplier (including any Taxes levied on the Commodities (by the Supplier or otherwise)).

"**Purchase Confirmation**" means a confirmation substantially in the form set out in Annex 2 to this Agreement;

"**Purchase Instruction**" means an instruction substantially in the form set out in Annex 1 to this Agreement;

"**Settlement Date**" means, in relation to any transaction, the date on which payment for the Commodities is required to be made by the Agent to the Supplier;

"**Supplier**" means the supplier from which the Commodities are purchased by the Agent; and

¹ To be agreed commercially on a client specific basis.

² To be agreed commercially on a client specific basis.

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

1.2 Construction

Unless a contrary indication appears, any reference in this Agreement to:

- (a) "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) 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;
- (c) 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);
- (d) a provision of law is a reference to that provision as amended or re-enacted; and
- (e) a time of day is a reference to [•]³ time unless otherwise specified.

1.3 Headings

Section, Clause and Schedule headings are for ease of reference only.

1.4 Currency Symbols and Definitions

- (a) ["**US\$**" and "**dollars**" denote the lawful currency of the United States of America.]⁴
- (b) "[•]" and "[•]" denote the lawful currency of [•].⁵

2. AGENCY

2.1 Appointment

The Principal hereby appoints the Agent as its agent to purchase on the Principal's behalf Commodities as set out in a Purchase Instruction.

2.2 Transfer

³ To be agreed commercially on a client specific basis.

⁴ To be agreed commercially on a client specific basis.

⁵ To be agreed commercially on a client specific basis.

The Principal will transfer to such account as the Agent shall have notified to the Principal by fax, for value not later than the Settlement Date set out in the relevant Purchase Instruction, such funds as may be necessary for the Agent to complete the agreed purchase on behalf of the Principal and to enable the Agent to effect payment of the purchase price due to the Supplier on the payment date (as communicated by the Supplier) provided always that the Agent shall not be required to pay any amounts to the Supplier or conclude any purchase of Commodities as Agent unless it is satisfied that it has received cleared funds from the Principal.

2.3 **Confirmation**

As soon as the Agent has bought Commodities pursuant to a Purchase Instruction, the Agent shall confirm such purchase by sending to the Principal a Purchase Confirmation.

2.4 **Fee**

The Agent hereby acknowledges receipt of a fee of [●]⁶ as consideration for acting as agent pursuant to this Agreement.

2.5 **[Commodities]**

The Agent shall ensure that the Commodities bought on behalf of the Principal are allocated and are located either outside the European Union or, if located within the European Union, are in a bonded warehouse.]⁷

2.6 **Indemnity**

In performing its obligations under this Agreement and the transactions hereunder, the Agent shall be acting on behalf of the Principal and shall take all measures which are reasonably necessary in good faith in order to protect the Principal's rights and interests and will not do or omit to do anything which would be inconsistent with the Agent's obligations and responsibilities under this Agreement and the transactions hereunder, provided always that the Agent shall not be liable for any loss, damage, costs or expenses, suffered or incurred by the Principal as a result of anything done or omitted to be done (as the case may be) by the Agent in the course of performing its obligations under this Agreement and the transactions hereunder, unless such loss, damage, costs or expense arose directly as a result of wilful default or gross negligence on the part of the Agent.

The Principal hereby undertakes to hold harmless and indemnify the Agent, its officers, employees, agents and nominees from and against all actions, proceedings, claims, costs, demands and expenses which may be brought against, suffered or incurred by the Agent by reason of the exercise by the Agent of its powers, discretion and duties hereunder and the transactions hereunder in its capacity as the Principal's agent.

⁶ To be agreed commercially on a client specific basis.

⁷ To be agreed commercially on a client specific basis.

2.7 **Delivery of Information**

The Agent shall provide the Principal with any information or details reasonably requested by the Principal in relation to the Commodities (or purchase thereof), provided always that the Agent shall only be obliged to provide such information or details to the extent the same have been made available to it.

2.8 **Information and Records**

The Agent shall only be obliged to retain records, copies or other information relating to any transaction carried out pursuant to its appointment hereunder for a maximum period of [1] calendar year from [receipt of such information, records or copies (as applicable)/the date that such transaction is concluded]⁸.

3. **MISCELLANEOUS**

3.1 **[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.]⁹

3.2 **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.

3.3 **Termination**

This Agreement shall terminate [upon [•]/on [•]]¹⁰ and without prejudice to this, either Party may terminate this Agreement by giving the other at least [1]¹¹ month prior written notice.

3.4 **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.

⁸ To be agreed commercially on a client specific basis.

⁹ Only to be included where English law is the governing law of this document.

¹⁰ To be agreed commercially on a client specific basis.

¹¹ To be agreed commercially on a client specific basis.

3.5 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.

3.6 Amendments

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

3.7 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.

3.8 Notices

(a) Communications in writing

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) Addresses

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 five (5) Business Days' notice.

Principal:

Address: [•]
Fax: [•]
Attention: [•]

Agent:

Address: [•]
Fax: [•]
Attention: [•]

(c) Delivery

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 3.8(b)]

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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]¹²; or

- (ii) 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 Clause 3.8 (*Notices*), if addressed to that department or officer.

3.9 [•]¹³ and English language

- (a) This Agreement has been executed in the [English] language. The Parties agree that this Agreement may be translated into the [•]¹⁴ language and executed in such language upon translation. The Parties agree that the [English] language shall prevail over the [•]¹⁵ 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 [•]¹⁶ and [English]. In case of conflict, the [English] version will prevail unless the document is a constitutional, statutory or other official document.

3.10 Reliance on Communication

A Party (the "**Receiving Party**") is authorised to act without further enquiry upon any instruction or communication received by 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 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.

¹² Refer Commodity Purchase Letter of Understanding.

¹³ Insert language as appropriate.

¹⁴ Insert language as appropriate.

¹⁵ Insert language as appropriate.

¹⁶ Insert language as appropriate.

4. GOVERNING LAW

4.1 [•]¹⁷ Law

This Agreement is governed by [•] law.

4.2 Waiver of Interest

Notwithstanding the provisions of Clause 4.1 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.

5. ENFORCEMENT

5.1 Jurisdiction

(a) [Subject to Clause 5.2 (*Arbitration*),] the courts of [•] have non-exclusive jurisdiction to settle any dispute 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.

5.2 [Arbitration]¹⁸

(a) [Subject to Clause 5.2(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 Arbitration of the London Court of International Arbitration (the "**Rules**"), which Rules are deemed incorporated by reference into this Clause 5.2(a).

(b) The Tribunal shall consist of three arbitrators to be nominated in accordance with the Rules.

(c) The seat of the arbitration shall be [•]¹⁹. The language of the arbitration shall be [•]²⁰.

(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

¹⁷ To be agreed commercially on a client specific basis.

¹⁸ Arbitral body and arbitration provisions to be considered on a transaction specific basis. Another alternative would be to use the Islamic Arbitration Centre.

¹⁹ To be commercially agreed on a client specific basis.

²⁰ To be commercially agreed on a client specific basis.

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 5.2(a) to 5.2(d) above, before an arbitrator has been appointed to determine a Dispute, [the Principal/Agent]²¹ 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 Principal/Agent]²² gives such notice, the Dispute to which that notice refers shall be determined in accordance with Clause 5.1 of this Agreement.]

5.3 [Service of Process]²³

- (a) Without prejudice to any other mode of service allowed under any relevant law:
- (i) the Principal 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 Agent 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 Clauses 5.3(a)(i) and/or 5.3(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]²⁴ 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]²⁵, the other Party shall be entitled to appoint such a person by notice to the Affected Party.]

AS WITNESS WHEREOF the Parties have caused this Agreement to be duly executed on the day and year first above written.

²¹ To be commercially agreed on a client specific basis.

²² To be commercially agreed on a client specific basis.

²³ Please note that a process agent appointment is only required the relevant Party does not have a registered place of business in England or Wales.

²⁴ To be agreed commercially on a client specific basis.

²⁵ To be agreed commercially on a client specific basis.

ANNEX 1

Form of Purchase Instruction

Date: [•]

From: [Principal]

To: [Agent]

Agency Agreement between us dated [•] (the "Agreement")

1. We refer to the Agreement (terms defined in which have the same meanings herein).
2. We hereby instruct you as our agent, pursuant to the terms of the Agreement, to purchase on our behalf from the Supplier the following Commodities and on the following basis:
 - (a) Description of Commodities: [•]
 - (b) Cost Price: [•]
 - (c) Settlement Date: [•]
3. To give effect to this Purchase Instruction, we shall transfer to your account [insert account details] today the Cost Price as set out above.
4. Please send us your Purchase Confirmation immediately upon purchase of the Commodities from the Supplier.

Signature

By or on behalf of [Principal]

ANNEX 2

Form of Purchase Confirmation

Date: [•]

From: [Agent]

To: [Principal]

Agency Agreement between us dated [•] (the "Agreement")

1. We refer to the Agreement (terms defined in which have the same meanings herein) and your Purchase Instruction dated [•].
2. We confirm that we have purchased the Commodities on your behalf in accordance with the terms of the above Purchase Instruction and as follows:
 - (a) Description of Commodities: [•]
 - (b) Quantity: [•]
 - (c) Cost Price: [•]
 - (d) Settlement Date: [•]

Signature

By or on behalf of [Agent]

SIGNATURES

For and on behalf of **[Principal/Party A]**

Authorised Signature:

For and on behalf of **[Agent/Party B]**

Authorised Signature: