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In The Name Of Allah, The Beneficent, The Merciful

DATED []

[INSERT NAME OF DEPOSIT PLACING ENTITY]
as Party A

and

[INSERT NAME OF DEPOSIT TAKING ENTITY]
as Party B

MASTER MURABAHA AGREEMENT

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THIS MASTER MURABAHA AGREEMENT is dated [•] and made between:

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

Background

- (A) The Parties wish, from time to time, to enter into a murabaha arrangement whereby one Party shall offer to purchase, and the other Party shall sell certain Commodities on immediate delivery and deferred payment terms by way of a murabaha contract (a "**Murabaha Contract**").
- (B) Each Murabaha Contract shall be governed by the terms set out herein, which includes the schedules as applied to each Murabaha Contract and executed by the Parties (the "**Schedules**").

IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In this Agreement:

"**Acceptance Notice**" means a notice to be sent by Party B to Party A accepting an Offer Notice, substantially in the form set out in Schedule 3 (*Form of Acceptance Notice*).

"**Acknowledgement**" means the acknowledgement to be sent by Party B to Party A acknowledging that it shall undertake to purchase the Commodities from Party A, substantially in the form set out in Part II of Schedule 1.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**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 an Offer Notice 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 Party A (whether directly or through its buying agent) to the Supplier for the purchase of the

¹ To be agreed commercially on a client specific basis.

² To be agreed commercially on a client specific basis.

Commodities from the Supplier (including any Taxes levied on the Commodities (by the Supplier or otherwise)).

"**Default**" means an Event of Default or any event or circumstance specified in Clause 9 (*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.

"**Deferred Payment Date**" means, the date for payment of the Deferred Payment Price of a Murabaha Contract by Party B to Party A, as set out in the relevant Offer Notice.

"**Deferred Payment Price**" means the sum payable by Party B to Party A on the Deferred Payment Date and shall be the aggregate of the Cost Price and the Murabaha Profit for each Murabaha Contract and shall include all costs and expenses [(other than delivery costs)].

"**Event of Default**" means any event or circumstance specified as such in Clause 9 (*Events of Default*).

"**Material Adverse Effect**" means [●]³.

"**Murabaha Contract**" means an individual contract made pursuant to Clause 2 (*Murabaha Contract*) by the exchange of an Offer Notice and a corresponding Acceptance Notice between Party A and Party B.

"**Murabaha Profit**" means the Deferred Payment Price less the Cost Price, which shall be calculated by Party A with respect to the Murabaha Contract and as set out in the Offer Notice relating to such Murabaha Contract.

"**Offer Notice**" means a notice to be sent by Party A to Party B to conclude a Murabaha Contract, substantially in the form set out in Schedule 2 (*Form of Offer Notice*).

"**Purchase Instruction with Promise to Purchase**" means a notice to be sent by Party A to Party B where Party A notifies Party B that it shall, subject to receiving a duly completed Acknowledgement from Party B, purchase Commodities and requesting an undertaking from Party B that it shall purchase such Commodities from Party A, substantially in the form set out in Schedule 1 (*Form of Purchase Instruction with Promise to Purchase*).

"**Repeating Representations**" means each of the representations set out in Clauses 7.1 (*Status*), 7.2 (*Binding obligations*), 7.3 (*Non-conflict with other obligations*), 7.4 (*Power and authority*), 7.5 (*Validity and admissibility in evidence*), 7.6 (*Governing law and enforcement*), 7.9 (*No default*), 7.12 (*No proceedings pending or threatened*) and 7.13 (*Repetition*).

"**Settlement Date**" means the date on which the Murabaha Contract is concluded between Party A and Party B by the receipt by Party A of a duly executed Acceptance Notice.

³ To be agreed commercially on a client specific basis.

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

"**Supplier**" means the supplier from which the Commodities are purchased by [Party A]/[Party B acting as buying agent for Party A].

"**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.

"**Term**" means the tenor of a Murabaha Contract, which shall for the avoidance of doubt, in each case commence on the Settlement Date and end on the Deferred Payment Date for that Murabaha Contract.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) "**Party A**", "**Party B**" 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, revenues and rights of every description;
 - (iii) 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 Party A at or about 11.00 a.m.⁴ 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;
 - (iv) 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;
 - (v) 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);
 - (vi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (vii) a time of day is a reference to [●]⁵ time unless otherwise specified.
- (b) Section, Clause and Schedule headings are for ease of reference only.

⁴ To be agreed commercially on a client specific basis.

⁵ To be agreed commercially on a client specific basis.

- (c) A Default (other than an 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.]⁶
- (e) "[•]" and "[•]" denote the lawful currency of [•].⁷

1.3 **Single Agreement**

Each Murabaha Contract is entered into in reliance on the fact that this Master Murabaha Agreement and the Schedules applied to each Murabaha Contract form a single agreement between the Parties (collectively referred to as this "**Agreement**"), and the Parties would not otherwise enter into any Murabaha 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.]⁸

2. **MURABAHA CONTRACT**

2.1 **Purchase of Commodities and Purchase Instruction with Promise to Purchase**

Upon and subject to the terms and conditions of this Master Murabaha Agreement, the Parties may, from time to time initiate discussions (by telephone or otherwise) to agree the terms of a proposed Murabaha Contract, whereby Party A shall sell Commodities to Party B on immediate delivery and deferred payment terms. Prior to entering into any Murabaha Contract, Party A shall submit a Purchase Instruction with Promise to Purchase to Party B no later than the Specified Time (or such other time as Party A and Party B may agree), confirming that it shall, subject to receiving a duly completed Acknowledgment from Party B, purchase Commodities and requesting Party B to undertake to buy such Commodities once purchased by (or on behalf of) Party A. If Party B agrees to be bound by the terms of the Purchase Instruction with Promise to Purchase, Party B shall sign the Acknowledgment and return this to Party A no later than the Specified Time (or such other time as Party A and Party B may agree).

2.2 **Transaction Details**

Prior to entering into any Murabaha Contract, Party A shall, after it has purchased the Commodities and has physical or constructive possession of such Commodities, provide Party B with details of the relevant transaction, including details of the Commodities to be sold and the terms of sale attached thereto by sending an Offer Notice to Party B no later than the Specified Time (or such other time as Party A and Party B may agree). The Offer Notice shall include the following details:

- (a) a general description of the Commodities;

⁶ To be agreed commercially on a client specific basis.

⁷ To be agreed commercially on a client specific basis.

⁸ Only to be included where English law is the governing law of this document.

- (b) the Cost Price;
- (c) the proposed Deferred Payment Price; and
- (d) the proposed Deferred Payment Date.

For the avoidance of doubt, the proposed Deferred Payment Price and the proposed Deferred Payment Date will have been verbally discussed between Party A and Party B before the Purchase Instruction with Promise to Purchase is sent.

2.3 **No Obligation**

For the avoidance of doubt, Party A shall be under no obligation to provide an Offer Notice to Party B and Party A's willingness to enter into a Murabaha Contract is subject to its absolute discretion.

2.4 **Acceptance Notice**

- (a) Notwithstanding Clause 2.1 (*Purchase of Commodities and Purchase Instruction with Promise to Purchase*), if Party B wishes to enter into a Murabaha Contract with Party A, it shall provide Party A with an executed Acceptance Notice no later than the Specified Time (or such other time as Party A and Party B may agree).
- (b) Subject to Clause 2.4(a), the Parties agree that the Offer Notice and Acceptance Notice shall be exchanged on the same day.

2.5 **Murabaha Contract**

As soon as Party A has received the Acceptance Notice in accordance with Clause 2.4 (*Acceptance Notice*), a Murabaha Contract shall be concluded between Party A and Party B 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 4 (*Terms Applicable to Purchase and Sale of Commodities*). Upon conclusion of a Murabaha Contract ownership of the Commodities shall immediately pass to and be vested in Party B, together with all rights and obligations relating thereto. The Parties agree that if Party B requests physical delivery of the Commodities, Party A will use reasonable endeavours to facilitate the delivery, provided that any delivery costs incurred in respect of such Commodities shall be payable by Party B.

2.6 **Time of the Essence**

Each Party acknowledges and agrees that time is of the essence in the consummation of any Murabaha Contract. Each Party further agrees that a failure by Party B to provide an Acceptance Notice to Party A by the Specified Time on the Settlement Date shall result in the Offer Notice for such Murabaha Contract being declared void as at the time it was submitted and Party A shall be indemnified by Party B in accordance with the terms of the Acknowledgement.

3. **PAYMENTS TO PARTY A**

3.1 **Payment of Deferred Payment Price**

Following the Settlement Date and subject to the terms of this Agreement, Party B hereby irrevocably undertakes to pay to Party A on the Deferred Payment Date the Deferred Payment Price applicable to that Murabaha Contract.

3.2 **Currency**

On each date on which an amount is due from Party B pursuant to this Agreement, Party B shall make the same available to Party A by payment in the currency specified in the relevant Offer Notice in immediately available funds to such account of Party A as Party A may specify.

4. **TERMS APPLICABLE TO THE PURCHASE AND SALE OF COMMODITIES**

4.1 **Terms of Sale**

The Commodities comprised in the Murabaha Contract shall, other than the payment of the purchase price which shall be on a deferred basis, be sold by Party A to Party B upon terms identical to those applicable to the sale of the same Commodities by the relevant Supplier to Party A.

4.2 **No Warranty or Representation**

Party A shall not be deemed to give to Party B any warranty or representation whatsoever relating to the Commodities 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 law.

4.3 **Documentation**

[Prior to Party B submitting an Acceptance Notice to Party A, Party B may request Party A in writing to] / [Party A shall, upon the written request of Party B within [•]⁹ months of the Settlement Date,]¹⁰ supply Party B with copies of any documentation evidencing the fact that Party A has purchased and become owner of such Commodities.

5. **PREPAYMENT**

5.1 **Prepayment Request**

Party A may, at any time during which a Deferred Payment Price is outstanding, request Party B to prepay any outstanding Deferred Payment (a "**Prepayment Request**"), provided always that Party B shall not be under any obligation whatsoever to take any action in relation to such Prepayment Request.

5.2 **Acceptance of Prepayment Request**

Upon receiving a Prepayment Request, Party B may elect, in its sole discretion, whether to prepay a Deferred Payment Price and shall, in any event, notify Party A of its decision within five (5) Business Days of receiving a Prepayment Request (failing which the Prepayment Request shall be deemed to have been rejected by Party B).

5.3 **Rebate Grant**

The Parties may agree, at the time of any Prepayment Request, whether any rebate of Murabaha Profit (relating to the relevant Murabaha Contract) is applicable in relation to a Deferred Payment Price to be prepaid pursuant to a Prepayment Request, provided always that the amount of any rebate shall be at the sole discretion of Party A.

⁹ To be agreed commercially on a client specific basis.

¹⁰ To be agreed commercially on a client specific basis.

6. **LATE PAYMENT AMOUNT**

6.1 **Calculation of 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**"), a late payment amount (the "**Late Payment Amount**") shall be payable on such amount as calculated in accordance with Clause 6.1(b) (*Calculation of Late Payment Amount*) below.

(i) For the purposes of Clause 6.1(b) (*Calculation of Late Payment Amount*) below the unpaid amount due from the Paying Party shall be called the "**Unpaid Sum**"; and

(ii) 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**".

(b) **Calculation of Late Payment Amount**

(i) 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) [•]¹¹ per cent.,

multiplied further by the number of days in such Applicable Period and divided by 360.

(ii) 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.

(c) **Payment of Late Payment Amount**

Any Late Payment Amount received by the Affected Party shall be used to 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 and the remaining amount (if any) shall be donated by the Affected Party (on behalf of the Paying

¹¹ To be agreed commercially on a client specific basis.

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.

7. **REPRESENTATIONS¹²**

Each Party makes the representations and warranties set out in this Clause 7 to the other Party on the date of this Agreement.

7.1 **Status**

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

7.2 **Binding obligations**

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

7.3 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

7.4 **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 to which it is a party and the transactions contemplated by this Agreement.

7.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement; and
- (b) to make this Agreement admissible in evidence in its jurisdiction of incorporation [(other than translations into [•]¹³ by a certified translator)],¹⁴

have been obtained or effected and are in full force and effect.

¹² Further representations may be included if required (to be commercially agreed/determined on a client specific basis).

¹³ Insert language as appropriate.

¹⁴ Delete if not applicable.

- 7.6 **Governing law and enforcement¹⁵**
- (a) The choice of [•] as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation; and
- (b) Any judgment obtained in [•] in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation.
- 7.7 **Deduction of Tax**
- It is not required to make any deduction for or on account of Tax from any payment it may make under this Agreement.
- 7.8 **No filing or stamp taxes**
- Under the law of its jurisdiction of incorporation it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.
- 7.9 **No default**
- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Murabaha Contract.
- (b) 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 which might have a Material Adverse Effect.
- 7.10 **No misleading information**
- Any factual information provided 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.
- 7.11 **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.
- 7.12 **No proceedings pending or threatened**
- 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.
- 7.13 **Repetition**
- The Repeating Representations are deemed to be made by each Party by reference to the facts and circumstances then existing on the date of each Acceptance Notice.
8. **UNDERTAKINGS¹⁶**
- The undertakings in this Clause 8 remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement.

¹⁵ To be amended according to governing law of Agreement. See also Clause 12 (*Enforcement*).

¹⁶ Further undertakings may be included if required (to be commercially agreed/determined on a client specific basis).

8.1 Authorisations

Each Party shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) 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 to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Agreement.

8.2 Compliance with laws

Each Party shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

8.3 Information: miscellaneous

Each Party shall supply to the other Party:

- (a) [all documents dispatched by to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched; and
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect.]¹⁷

8.4 Notification of default

- (a) 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.
- (b) Promptly 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).

8.5 "Know your customer" checks

If:

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

obliges the other Party (the "**Second Party**") to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not

¹⁷ To be commercially agreed on a client specific basis.

already available to it, the First Party shall promptly upon the request of the Second Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by such the Second Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

9. **EVENTS OF DEFAULT¹⁸**

Each of the events or circumstances set out in this Clause 9 is an Event of Default.

9.1 **Non-payment**

Party B 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.

9.2 **Other obligations**

(a) A Party does not comply with any provision of this Agreement (other than the obligation referred to in Clause 9.1 (*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 non-defaulting Party giving notice to the defaulting Party or the defaulting Party becoming aware of the failure to comply.

9.3 **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.

9.4 **Insolvency**

Party B is unable or admits 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.

9.5 **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 Party B;

¹⁸ Further events of default may be included if required (to be commercially agreed/determined on a client specific basis).

- (b) a composition, compromise, assignment or arrangement with any creditor of Party B;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of Party B or any of its assets; or
- (d) [enforcement of any security over any assets of Party B (where the aggregate value of such asset is in excess of [•] or its equivalent in another currency or currencies),]¹⁹

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

9.6 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing, where Party A is the non-defaulting Party it may, by notice to the other Party, declare that all or part of the Deferred Payment Price be immediately due and payable, whereupon it shall become immediately due and payable.

10. **MISCELLANEOUS**

10.1 **Early Termination**

- (a) Subject to paragraph (b), 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 [•]²⁰ Business Days, following which this Agreement shall terminate.
- (b) A Party shall only be entitled to serve a notice under paragraph (a) if no payment is outstanding under any Murabaha Contract at the date of such notice.

10.2 **Illegality**

If it becomes unlawful in any jurisdiction for a Party to perform any of its obligations as contemplated by this Agreement:

- (a) that Party shall promptly notify the other Party upon becoming aware of that event; and
- (b) Party B shall pay to Party A such proportion of the Deferred Payment Price 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 Party A (being no earlier than the last day of any applicable grace period permitted by law).

10.3 **Tax**

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

¹⁹ Threshold to be discussed on a client specific basis.

²⁰ To be commercially agreed on a client specific basis.

- (b) All payments to be made by a Party to another Party shall be made without deduction for and free from any present or future taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature imposed, levied, collected or assessed by any taxing authority (other than taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions on the transfer of the Commodities from the Supplier to Party A or, as the case may be, from Party A to Party B) unless a Party (the "**Withholding Party**") is compelled by law to make any such deduction or withholding. In that event, 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 any such deduction or withholding or any payment required in connection with that deduction or withholding). Where the Withholding Party is Party A, it shall in addition pay such further amounts as may be necessary in order that the net amounts received by Party B after such deduction or withholding shall equal the amounts which would have been received by Party B in the absence of such deduction or withholding. For the avoidance of doubt, where Party B is the Withholding Party, any payment to Party A shall be made less any deduction or withholding and Party B shall be under no obligation to pay any further amounts to Party A to compensate Party A for any deduction or withholding made.
- (c) All amounts payable under this Agreement by a Party which (in whole or in part) constitute the consideration for the purposes of VAT shall be deemed to be exclusive of any VAT which is chargeable on such supply, and such Party shall pay (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (if any) charged thereon.

10.4 **Commodity Indemnity**²¹

[•]

10.5 **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.

10.6 **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.

10.7 **Cost and Expenses**

- (a) Each Party acknowledges and accepts that it shall bear its own costs incurred in connection with the preparation of this Agreement.

²¹ To be commercially agreed on a client specific basis as to which Party should be indemnified and for which losses.

- (b) Party B further acknowledges and accepts that the Deferred Payment Price shall not include costs associated with delivery of the Commodities where Party B has requested physical delivery in accordance with Clause 2.5 (*Murabaha Contract*) and, for the avoidance of doubt, any such delivery costs properly incurred by Party A shall be for the account of Party B.

10.8 **Mitigation**

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

- (a) Party B being required to prepay the Deferred Payment Price pursuant to Clause 10.2 (*Illegality*); or
- (b) Party B being required to make a deduction or withholding pursuant to Clause 10.3 (*Tax*),

then, without in any way limiting, reducing or otherwise qualifying the obligations of Party B under Clauses 10.2 (*Illegality*) and 10.3 (*Tax*), Party B shall endeavour to take such reasonable steps as may be open to it to mitigate or remove such circumstances.

10.9 **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.

10.10 **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.

10.11 **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.

10.12 **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.

10.13 **Amendments**

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

10.14 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.

10.15 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 five (5) Business Days' notice.

Party A:

Address: [•]
Fax: [•]
Attention: [•]

Party B:

Address: [•]
Fax: [•]
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 10.15(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]²²; 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,

²² To be commercially agreed on a client specific basis.

and, if a particular department or officer is specified as part of its address details provided under Clause 10.15 (*Notices*), if addressed to that department or officer.

10.16 **[•]²³ and English language**

- (a) This Agreement has been executed in the [English] language. The Parties agree that this Agreement may be translated into the [•]²⁴ language and executed in such language upon translation. The Parties agree that the [English] language shall prevail over the [•]²⁵ 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 [•]²⁶ and [English]. In case of conflict, the [English] version will prevail unless the document is a constitutional, statutory or other official document.

10.17 **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.

11. **GOVERNING LAW**

11.1 **[•] Law²⁷**

This Agreement is governed by [•] law.

11.2 **Waiver of Interest**

Notwithstanding the provisions of Clause 11.1 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.

²³ Insert language as appropriate.

²⁴ Insert language as appropriate.

²⁵ Insert language as appropriate.

²⁶ Insert language as appropriate.

²⁷ To be agreed commercially 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).

12. ENFORCEMENT

12.1 Jurisdiction

- (a) [Subject to Clause 12.2 (*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.

12.2 [Arbitration]²⁸

- (a) [Subject to Clause 12.2(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 12.2(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 [•]²⁹. The language of the arbitration shall be [•]³⁰.
- (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 12.2(a) to 12.2(d) above, before an arbitrator has been appointed to determine a Dispute, [Party A/Party B]³¹ 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 Party A gives such notice, the Dispute to which that notice refers shall be determined in accordance with Clause 12.1 of this Agreement.]

12.3 [Service of Process]³²

- (a) Without prejudice to any other mode of service allowed under any relevant law:

²⁸ Arbitral body and arbitration provisions to be considered on a transaction specific basis. Another alternative would be to use the Islamic Arbitration Centre.

²⁹ To be commercially agreed on a client specific basis.

³⁰ To be commercially agreed on a client specific basis.

³¹ To be commercially agreed on a client specific basis.

³² 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.

- (i) Party A 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) Party B 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 (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]³³ 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]³⁴, 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.

³³ To be agreed commercially on a client specific basis.

³⁴ To be agreed commercially on a client specific basis.

SCHEDULE 1 FORM OF PURCHASE INSTRUCTION WITH PROMISE TO PURCHASE

Part I

Date: [•]
From: [•] as [Party A]
To: [•] as [Party B]

Master Murabaha Agreement dated (the "Murabaha Agreement")

1. We refer to the above Murabaha 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, we hereby write to inform you that we shall [purchase from the Supplier/instruct our Agent to purchase] the following Commodities:
 - (a) Quantity and General Description of Commodities: [•]
 - (b) Cost Price: [•]³⁵
3. By signing the acknowledgement attached to this Purchase Instruction with Promise to Purchase, you undertake to purchase the Commodities from us pursuant to a Murabaha Contract to be entered into in accordance with Clauses 2.2 (*Transaction Details*), 2.4 (*Acceptance Notice*) and 2.5 (*Murabaha Contract*) of the Murabaha Agreement.

Yours faithfully

.....
authorised signatory for
[Party A]

³⁵ Insert currency and amount as applicable.

Part II

We hereby undertake to purchase the Commodities from you pursuant to a Murabaha Contract to be entered into in accordance with Clauses 2.2 (*Transaction Details*), 2.4 (*Acceptance Notice*) and 2.5 (*Murabaha Contract*) of the Murabaha Agreement.

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

.....
authorised signatory for
[Party B]

SCHEDULE 2
FORM OF OFFER NOTICE

Date: [•]
From: [•] as [Party A]
To: [•] as [Party B]

Master Murabaha Agreement dated (the "Murabaha Agreement")

1. We refer to the above Murabaha Agreement (expressions defined in which have the same meanings herein).
2. We hereby offer to sell to you the Commodities [which you have purchased from the Supplier as our buying agent/we have purchased from the Supplier]³⁶ on the following terms:
 - (a) Quantity and General Description of Commodities: [•]
 - (b) Cost Price: [•]³⁷
 - (c) Settlement Date: [•]
 - (d) Murabaha Profit: [•]³⁸
 - (e) Deferred Payment Price: [•]³⁹
 - (f) Deferred Payment Date: [•]
 - (g) [Delivery Date and Place of Delivery: [•]⁴⁰]
3. The Commodities 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 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 on the Delivery Date specified above shall incur a charge (to be notified to us in due course).]⁴¹

³⁶ Delete as applicable.

³⁷ Insert currency and amount as applicable.

³⁸ Insert currency and amount as applicable.

³⁹ Insert currency and amount as applicable.

⁴⁰ To be used where physical delivery is required.

⁴¹ To be used where physical delivery is required and should not be included in the Cost Price.

6. If you accept this offer, please send us a duly executed copy of the Acceptance Notice.
7. This letter is governed by [•]⁴² law.

Yours faithfully

.....
authorised signatory for
[Party A]

⁴² To be agreed commercially on a client specific basis.

SCHEDULE 3 FORM OF ACCEPTANCE NOTICE

Date: [•]
From: [•] as [Party B]
To: [•] as [Party A]

Master Murabaha Agreement dated [•] (the "Murabaha Agreement") and Offer Notice dated [•]

1. We refer to the above Murabaha 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 to us and hereby conclude with you a Murabaha Contract, upon the terms set out in your Offer Notice.
3. We irrevocably and unconditionally confirm that the Commodities 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 shall be [•] and payable on [•].]⁴³
5. This letter is governed by [•]⁴⁴ law.

Yours faithfully

.....
authorised signatory for
[Party B]

⁴³ To be used where physical delivery of the Commodities is required.

⁴⁴ To be agreed commercially on a client specific basis.

SCHEDULE 4

TIMETABLES

Delivery of a duly completed Purchase Instruction with Promise to Purchase from Party A to Party B (as set out in Part I of Schedule 1 (<i>Purchase Instruction with Promise to Purchase</i>))	[S- [●]] ⁴⁵ [●] ⁴⁶
Delivery of an Acknowledgement from Party B to Party A (as set out in Part II of Schedule 1 (<i>Purchase Instruction with Promise to Purchase</i>))	[S] [●] ⁴⁷
Delivery of a duly completed Offer Notice from Party A to Party B	[S] [●] ⁴⁸
Delivery of duly completed Acceptance Notice from Party B to Party A	[S] [●] ⁴⁹

S = Settlement Date

⁴⁵ Number of days to be commercially agreed on a client specific basis.

⁴⁶ Insert relevant time of day.

⁴⁷ Insert relevant time of day.

⁴⁸ Insert relevant time of day.

⁴⁹ Insert relevant time of day.

SIGNATURES

For and on behalf of **[Deposit Placing Entity/Party A]**

Authorised Signature:

For and on behalf of **[Deposit Taking Entity/Party B]**

Authorised Signature: