**In the Name of Allah, The Beneficent, The Merciful**

**Master Murabaha Agreement for the Sale and Purchase of Commodities**

**Between**

**AL HILAL BANK**

**(as the Seller)**

**and**

**(as the Purchaser)**

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**This Master Murabaha Agreement for the Sale and Purchase of Commodities (the “Agreement”) is made on the latest of the date set forth on the signature page.**

**BETWEEN:**

(1) Al Hilal Bank PJSC, whose registered office is at P.O. Box 63111, Abu Dhabi, United Arab Emirates (the "**Seller**"); and

(2) whose registered office is at , (the "**Purchaser**").

**WHEREAS:**

(a) The Purchaser wishes to avail itself of a Murabaha arrangement to be made available to it by the Seller subject to and upon the terms herein contained.

(b) Pursuant to this Agreement the Seller will, at the request of the Purchaser, purchase Commodities from a Supplier on spotdelivery and payment basis and will sell such Commodities to the Purchaser on spot delivery and deferred payment basisfor specific periods by entering into Murabaha contracts in compliance with the rules and principles of Murabaha as defined by the Fatwa &Shariah Supervisory Board of the Seller.

**IT IS HEREBY AGREEDAS FOLLOWS:**

## **Definitions and Interpretation**

**1.1** In this Agreement and in the Schedules the following terms and expressions shall have the meanings assigned to them herein unless the context requires otherwise:

“**Acceptance Notice**”meansa notice to be sent by the Purchaser to the Seller accepting an Offer Notice to conclude a Murabaha Contract substantially in the form set out in Schedule 2 or in such other form agreed between the Purchaser and the Seller.

“**AED**” or “**Dirhams**”meansthe lawful currency of the United Arab Emirates.

"**Affiliates**” means, with respect to a given person, a person controlling, controlled by or under the common control with such person. For the purposes of this definition, the term “**control**” shall mean the ability to control, direct or materially influence the decisions, actions and/or policies of the given person.

“**Agreement**” means this Agreement including the Schedules hereto.

“**Availability Period**”subject to Clause 3.4.4, means the period stated as such in the Facility Terms, which period shallstart on the FOL Issue Date and end on the earlier to occur of (i) the last day of such periodand (ii) the date of full utilisation of the Facility Limit.

“**Available Facility**”means, at any time, the Facility Limit, less (i) the aggregate of all Cost Price elements of the Deferred Prices outstanding under the Murabaha Contracts then in force and (ii) the aggregate of any voluntary prepayment of the Facility Limit.

“**Business Day**” means a day in which the Seller is open for general business.

“**Change in Circumstances**” means change in the economic or financial conditions in the United Arab Emirates if it will make a significant negative impact or a Material Adverse Effect on the Financial Indebtedness of the Purchaser or its economic activity or its ability to perform its obligations under each Finance Documents or payment of the Financial Indebtedness arising under any contract with any third party when due or any other circumstances of a similar effect.

“**Change of Control**” means a direct or indirect change in any shareholding and/or the ability to control, direct or materially influence the decisions, actions and/or policies of the relevant entity.

“**Commodities**”meansthe Commodities sold onthe London Metal Exchange as specified in Schedule 5or any other, Islamically acceptable, commodities which are the subject of or are intended to form the subject of a Murabaha Contract.

“**Conditions Precedent**”means the documents and conditions specified in section 2 of Schedule 3.

“**Conditions Subsequent**” means the documents and conditions specified in section 3 of Schedule 3 (if any) which shall be provided and fulfilled by the Purchaser on the dates specified in Schedule3 (if any), or on such later date as may be agreed by the Seller.

“**Cost Price**”in relation to any Commodities means all sums payable by the Seller to the Supplier or any other party for the purchase of the Commodities including any value added tax, sales tax or, other similar taxes where applicable.

“**Deferred Payment Date(s)**”in relation to any Murabaha Contract, means the date for payment of the Deferred Price as specified in a Murabaha Contract.

“**Deferred Price**”in relation to any Murabaha Contract, means the Cost Price plus the Murabaha Profit which shall be payable by the Purchaser to the Seller for the purchase of the Commodities on the Deferred Payment Date(s).

“**EIBOR**”means in relation to the MurabahaProfit Period for any Murabaha Contract:

a) the applicable Screen Rate; or

b) (if no such Screen Rate is available) the arithmetic means of the rates (rounded upwards to four decimal places) as supplied to the Seller at its request quoted by the Reference Banks to leading banks in the United Arab Emirates interbank market;

at or about 11.00 am (Abu Dhabi time) 2 Business Day before the TransactionDate for the offering of deposits in Dirhams.

“**Event of Cross Default**” means the occurrence of one or more of the following:

1. Any Financial Indebtedness of the Purchaser is not paid when due or within any originally applicable grace period.
2. Any Financial Indebtedness of the Purchaser 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).
3. Any commitment for any Financial Indebtedness of the Purchaser is cancelled or suspended by a creditor of the Purchaser as a result of an event of default (however described).
4. Any creditor of the Purchaser becomes entitled to declare any Financial Indebtedness of the Purchaser due and payable prior to its specified maturity as a result of an event of default (however described).

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

“**Event of Insolvency**” means the occurrence of one or more of the following (or any equivalent procedure under Abu Dhabi or UAE law):

* 1. the inability of the Purchaser to pay its debts;
  2. any present or future indebtedness of the Purchaser becomes due and payable to creditors of the Purchaser prior to its stated maturity by reason of default or an event of default (howsoever described) under the instrument evidencing the indebtedness;
  3. the Purchaser calling a meeting of its creditors; or making any scheme, compromise, moratorium, composition or arrangement with any of its creditors;
  4. the Purchaser (being a body corporate)passing a resolution for a voluntary arrangement for a composition of its debts or scheme arrangement; or making an application to the Court for the appointment of an administrator of its assets under any applicable law;
  5. the Purchaser having an administrative receiver, receiver or receivers and manager appointed in respect of the Purchaser's property or assets;
  6. a Court of competent jurisdiction passing a final order declaring the Purchaser bankrupt; or, if the Purchaser is a company, ordering the dissolution and winding-up of the Purchaser (except for the purposes of amalgamation or reconstruction);
  7. the Purchaser (being a body corporate)passing a resolution for its voluntary winding-up or appointment of a provisional liquidator or receiver of its business and assets;
  8. the Purchaser having an administrator appointed in respect of it;
  9. the Purchaser having a winding-up petition or petition or application for the making of an administration order presented against it; or passing a winding-up resolution (other than a voluntary winding up whilst solvent for the purposes of an amalgamation or reconstruction in each case which has the prior written approval of the Seller); or calling a meeting of its creditors for the purposes of considering a resolution that it be wound up voluntarily; or resolving to present its own winding-up petition; or being wound-up or having a liquidator or provisional liquidator appointed;
  10. the Purchaser (being a body corporate)ceasing for any reason to maintain its corporate existence; or having its commercial licence cancelled or suspended; or otherwise ceasing to exist;
  11. any person giving notice of that person's intention to appoint an administrator to the Purchaser (the Purchaser being a body corporate or a partnership); or
  12. analogous proceedings or events to those referred to in sub-clauses (i) - (xiii) above being instituted or occurring in relation to the Purchaser elsewhere than in the UAE;

1. “**Facility**”has the meaning given in Clause 2.1.
2. “**Facility Limit**” means theamount stated as such inthe Facility Terms as cancelled, repaid or reduced, in accordance with the relevant provisions of this Agreement.
3. “**Facility Offer Letter**” or “**FOL**” means the facility offer letter identified in the Facility Termsissued by the Seller to the Purchaser in respect to the FacilityLimit as may be amended or superseded from time to time.

“**Facility Terms**” means thefacility termsspecified insection 1 of Schedule 3.

“**Final Maturity Date**”means the date specified as such in Schedule 3 but if such date is not a Business Day, then the Final Maturity Date shall be the preceding Business Day.

“**Finance Documents**”meansthis Agreement, the individual Murabaha Contracts, the Securitiesand any other document designated as such by the Seller and the Purchaser.

1. “**Financial Indebtedness**” means, in relation to a person, its obligation (whether present or future, actual or contingent, as principal or surety) for the payment or repayment of money (whether in respect of deferred payment charges, principal or otherwise) incurred in respect of:
   * 1. moneys advanced or raised;
     2. any bond, sukuk, note, loan stock, debenture or othersimilar instrument;
     3. any acceptance credit, bill discounting, note purchase, factoring or documentary credit facility;
     4. any amount raised under any other transaction (including hire purchase agreement, conditional sale agreement or lease) where that agreement has been entered into primarily as a method of raising finance or financing the acquisition of an asset;
     5. any guarantee, bond, stand by letter of credit or other similar instrument issued in connection with the performance of contracts;
     6. any rate or currency swap agreement or any other hedging or derivatives instrument or agreement; or
     7. any guarantee, indemnity or similar insurance against financial loss given in respect of the obligation of any person.
2. “**FOL Issue Date**” means the date on which the Facility Offer Letter was issued by the Seller as specified in the Facility Terms.
3. “**IFRS**”means International Financial Reporting Standards issued and/or adopted by the International Accounting Standards Board.
4. “**Late Payment Rate**” means the rate specified as such in the Facility Terms.
5. “**Material Adverse Effect**” means a material adverse effect on or a material adverse change in:
   * 1. the Purchaser’s financial standing, situation or business prospects;
     2. the Purchaser’s ability to perform its obligations under any Finance Documents;
     3. the validity or enforceability of any of the Finance Documents;or
     4. the Purchaser’s ability to perform its Financial Indebtedness towards any third party.

“**Murabaha Contract**”means each contract for the sale by the Seller of Commodities and the purchase of those Commodities by the Purchaser pursuant to Clauses 3 and4 of this Agreement.

“**Minimum Amount**”means the amount (if any) specified as such in the Facility Terms.

“**Murabaha Profit**”means in relation to anyMurabaha Contract, the profit specified in the applicable Offer and Acceptance Notice which is to be calculated on the basis of the Cost Price multiplied by the Murabaha Profit Rate for the MurabahaProfit Period (and based on the actual number of days in ayear of 360days).

“**Murabaha Profit Period**”in relation to any Murabaha Contract, means the period starting from (and including) the Settlement Date and ending on (but excluding) the Deferred Payment Date as specified in a Murabaha Contract.

“**Murabaha Profit Rate**”means the annual rate specified as such in the Facility Terms.

“**Offer Notice**”meansa notice to be sent by the Seller to the Purchaser offering to conclude a Murabaha Contract substantially in the form set out in Schedule 2 or in such other form agreed between the Purchaser and the Seller.

“**Offer to Sell to the Third Party Purchaser**” means an offer to sell to the Third Party Purchaser the commodities sold pursuant to a Murabaha Contract, substantially in the form set out in Schedule 4 or in such other form as the Purchaser and Seller may agree.

“**Order to Purchase**” means a notice to be sent by the Purchaser to the Seller indicating a promise to purchase Commodities substantially in the form set out in Schedule 5 or in such other form as the Purchaser and the Seller shall agree.

“**Outstandings**”means, at any time, the aggregate amount outstanding under all Murabaha Contracts then in force, any actual fees, costs or expenses and any other amounts then due, owing or outstanding under the Finance Documents.

“**Parties**” means the parties to this Agreement and “**Party”**means either of them, as the context requires.

“**Reference Banks**”means in relation to EIBOR, the principal office in the UAE of National Bank of Abu Dhabi PJSC, Emirates NBD Bank PJSC and MashreqbankPJSCor such other banks as may be appointed by the Seller in consultation with the Purchaser.

“**Repeating Representations**” means at any time the representations and warranties which are then made or deemed to be repeated under Clause 6 (*Representations and Warranties*).

“**Scheduled Reduction Amount**” means, in respect of a Scheduled Reduction Date, the amount set out opposite such Scheduled Reduction Date.

“**Scheduled Reduction Date**” means each date set out in column 1 of Schedule 6.

“**Schedules**”means the schedules to this Agreement, which schedules form a part of this Agreement.

**“Screen Rate”**meansthe United Arab Emirates interbank offered rate for AED for the term of the MurabahaProfit Period displayed on the appropriate page of the Reuters Screen. If the agreed page is replaced or the service ceases to be available, the Seller may specify another page or service displaying the appropriate rate with the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.

“**Securities**” meansthe securities (if any) specified in Schedule 3,in the form required by and executed in favour of the Seller or delivered to the Seller for the purpose of securing all or any of the Purchaser’s obligations under the Finance Documents, and any other securities designated as such by the Purchaser and the Seller.

“**Settlement Date**”meansthe due date for payment of the Cost Price by the Seller to the Supplier in respect of the Commodities.

“**Shariah**” means the rules and principles of Shariah as interpreted by the Fatwa and Shariah Supervisory Board of the Seller.

“**Special Conditions**” means the special conditions (if any) specified in Schedule 3.

“**Supplier**”meansthe original seller of the Commodities.

“**Third Party Purchaser**”means the third party purchaser of Commodities from the Purchaser, as set out in Schedule 4.

“**TransactionDate**” means the date on which a Murabaha Contract is made, being the same date as the Acceptance Notice corresponding to such Murabaha Contract.

“**UAE**”means the United Arab Emirates.

## **1.2 Interpretation**

### Use of the singular shall include the plural and *vice versa* and any one gender includes the other gender and any reference to “persons” includes natural persons, firms, partnerships, companies and corporations.

### The clause headings are included for convenience only and shall not affect the interpretation of this Agreement.

### All dates and periods shall be determined by reference to the Gregorian calendar.

### The words “include” or “including” are deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import.

### If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations then, notwithstanding that it is only in the Definitions clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement.

### References to Clauses and Schedules are references to clauses of and schedules to this Agreement.

# **Facility and**Cancellation

**2.1** **Facility**

Subject to the terms and conditions of the Finance Documents, the Seller may make the Facility Limit available to the Purchaser under a Murabaha facility (the “**Facility**”) in an aggregate amount up to (but not exceeding) the Available Facility.

**2.2** **Utilization**

The Available Facility may not be utilized after the Availability Period. Any unutilized portion of the Facility Limit shall standautomatically cancelled at the end of the Availability Period.

# Conditions of Arrangement

## The Purchaser agrees that the Seller shall not be obliged to issue an Offer Notice to the Purchaser and that the Seller's willingness to enter into a Murabaha Contract is subject to the Seller's absolute discretion. If for any reason whatsoever the Seller refuses to issue an Offer Notice, the Seller shall not be liable for any direct or consequential damage, losses,costs, expenses or claims of whatsoever nature suffered or incurred by the Purchaser as a result of such refusal.

## The Securities, Special Conditions, Conditions Precedent and Conditions Subsequent (if any)are for the benefit of the Seller and the Seller may waive or defer the delivery or fulfilment of any of them by the Purchaser by a written notice to the Purchaser.If any of the Conditions Precedent is deferred, it will be considered as a Condition Subsequent. The Purchaser shall not be entitled to claim that it is not bound by the terms of this Agreement because of any such waiver or deferral.

## Unless the Seller agrees otherwise, the Purchaser may not request the Seller to enter into a Murabaha Contract until the Seller has received in a form and substance satisfactory to it each of the Securities and complied with the Special Conditions andConditions Precedent (if any).

## The entry into of each Murabaha Contract is subject to the following further conditions:

## The aggregate amount of the Cost Price element of the Deferred Price under Murabaha Contracts outstanding under this Agreement at any one time shall not exceed the Available Facility irrespective of the number of Murabaha Contracts concluded;

## The Transaction Date must bea Business Day falling within the Availability Period;

## The Cost Price of the Murabaha Contract must be no greater than the Available Facility or less than the Minimum Amount (if any);

## The Deferred Payment Date of the Murabaha Contract falls on or before the Final Maturity Date.

## NoEvent of Default has occurred or would result from the entry into of the relevant Murabaha Contract;

## The Repeating Representations being correct and continuing to be correct in all material respects on the proposed Transaction Date; and

## The relevant Murabaha Contract will not be entered into if it would be illegal or unlawful to do so.

## Notwithstanding any other provision in this Agreement, the Purchaser shall provide and fulfill the Securities, Special Conditions and Conditions Precedent within sixty (60) calendar days of the FOL Issue Date.

## No amount ofthe Facility Limit that has been cancelled (or prepaid by the Purchaser) may subsequently be re-utilised.

## The Seller:

(a) acknowledges that the Purchaser may at any time (both during and after the Availability Period) submit Orders to Purchase under the Facility in respect of Murabaha Contracts; and

(b) confirms that the Seller will issue Offer Notices in relation to such Orders to Purchase, provided that the Transaction Date specified in the relevant Order to Purchase corresponds to the Deferred Payment Date of any existing Murabaha Contracts under the Facility, and the Cost Price specified in such Order to Purchase Notice is for an amount permitted by this Agreement.

## The Facility Limit shall be reduced (i) on each Scheduled Reduction Date in an amount equal to the relevant Scheduled Reduction Amount and (ii) by the amount of any mandatory or voluntary prepayments made pursuant to and in accordance with the terms of this Agreement.

## Promptly following the end of the Availability Period, the Seller shall prepare and distribute to the Purchaser a schedule in the form of Schedule 6 (but filling in the actual dates and replacing the percentages with actual amounts) setting out the Scheduled Reduction Dates and Scheduled Reduction Amounts for the Facility (“**Reduction Schedule**”).

# Implementation and Performance of each Murabaha Contract

For the avoidance of doubt, the terms of this Clause 4 shall apply with respect to all Murabaha Contracts under this Agreement.

## At any time during the business hours of both parties but at least 4 Business Days before the proposed Settlement Date, the Purchaser may send the Seller an Order to Purchase.

## Subject to the provisions of Clause 3, the Seller shall purchase the Commodities from the Supplier in accordance with the terms agreed with the Purchaser and shall take actual or constructive delivery of the Commodities from the Supplier. Upon such delivery from the Supplier, the Seller shall determine the Murabaha Profit and send the Purchaser, at least 2 Business Days before the Settlement Date, an Offer Notice.

## Upon receipt of the Offer Notice referred to inClause , the Purchaser shall immediately purchase the Commodities from the Seller by sending to the Seller, at least 1 Business Day before the Settlement Date, an Acceptance Notice by fax or email with the original to follow.Non-receipt (for whatever reason) of the original Acceptance Notice shall not in any way affect the relevant Murabaha Contract.

## Upon the receipt of the Acceptance Notice referred to inClause , a Murabaha Contract upon the terms of the Offer Notice and the Acceptance Notice,and incorporating the terms and conditions of this Agreement, shall thereby be created.

## In the event of the Purchaser's failure to purchase the Commodities pursuant to a Murabaha Contract, the Purchaser shall compensate the Seller in respect of all actual costs, claims and expenses of whatsoever nature suffered or incurred by the Seller as a result of such failure including the difference between the Cost Price and the sale price of the Commodities to a third party.

## The Purchaser hereby unconditionally and irrevocably undertakes to pay on the Deferred Payment Date(s) the Deferred Price of each Murabaha Contract to the account of the Seller specified in the Offer Notice, or to such other account as the Seller may from time to time notify to the Purchaser in writing.

## The Seller does not wish to enter into any Murabaha Contract to which any value added tax, sales tax or other similar taxes are applicable and the Purchaser agrees that it will not propose such transactions. In any event, if any such tax is applicable to a Murabaha Contract, it shall be included in the Cost Price.

# Terms Applicable to Purchase and Sale of Commodities

## Except for those terms governing the Cost Price and the Settlement Date, any Commodities forming the subject of a Murabaha Contract shall be sold by the Seller to the Purchaser upon the like terms as are applicable to the sale thereof by the Supplier to the Seller.

## The Seller shall not be deemed to give to the Purchaser 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 and sanctioned by the Shariah.

## The Seller shall, upon written request from the Purchaser, supply the Purchaser with copies of warrants or holding certificates for the Commodities bearing specific numbers thereof.

## Following the conclusion of a Murabaha Contract, the Purchaser may choose to appoint the Seller to act as the Purchaser's messenger for the purposes of selling the Commodities to theThird Party Purchaser on the Settlement Date. The responsibility of the Seller in this respect shall only be that of a messenger and the Seller shall have no authority or liability to enforce or to guarantee the Third Party Purchaser's payment of the sale price to the Purchaser. The execution of any transactions in accordance with this sub-clause shall not constitute any obligation on any party to execute any future transaction in the same manner regardless of how often such execution might have recurred.

## The Purchaser hereby authorizes the Seller to perform all necessary acts to implement the duties provided for in Clause .

## The Seller shall not be entitled to a fee or other remuneration in connection with its appointment as messenger under this Agreement.

## On the Deferred Payment Date of a Murabaha Contract, the Seller may set-off its obligation to pay any amounts due to the Purchaser against the Purchaser's obligation to pay to the Seller on that Deferred Payment Date the Deferred Price in respect of any other outstanding Murabaha Contract.

# Representations and Warranties

The Purchaser makes the representations and warranties set out in this Clause 6to the Seller on the date of this Agreementand, at all times during the term of this Agreement, shall be deemed to represent and warrant to the Seller that:

## It has the power to own its assets and carry on its business as it is being conducted;

## If the Purchaser is a corporate entity, it isa duly incorporatedand validly existing corporation under the laws of the place of its incorporation;

## The Purchaser has full legal capacity to enter into and perform its obligations under each of the Finance Documents and that the execution of each of theFinance Documents and the exercise of the Purchaser’s rights and performance of its obligations thereunder have been duly authorized by all necessary corporate and other actions;

## The obligations expressed to be assumed by it in each of the Finance Documentsare legal, valid, binding and enforceable obligations;

## The entry into and performance by it of the transactions contemplated by the Finance Documents do not and will not conflict with any law or regulation applicable to it, itsconstitutional documents (if any) or any agreement or instrument binding upon it or any of its assets;

## The Purchaser is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets and which breach or default could be likely to have a Material Adverse Effect, as reasonably determined by the Seller, on its business or condition (financial or otherwise) or the results of its operations or its ability to perform its obligations under each of theFinance Documents;

## All relevant consents, approvals or authorizations of the concerned governmental authorities, local or federal ministries or departments required in connection with the execution, validity or enforceability of each of the Finance Documents have been obtained and are valid and will continue to be valid, and each of its obligations in the Finance Documents constitutes legally binding and enforceable obligations on the Purchaser, and arewithin the Purchaser’s powers and duly authorized;

## It is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in the United Arab Emirates or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by such Finance Documents;

## No Event of Default is continuing or might reasonably be expected to result from the entering into, or the performance of the transaction contemplated by any Murabaha Contractand there is nocontinuing circumstance 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;

## All authorisations required or desirable to enable it to lawfully enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party and/or to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation have been obtained or effected and are in full force and effect;

## Any financial projections prepared by it for the purposes of the Seller’s assessment of its financial condition and affairs have been prepared on the basis of recent historical information and on the basis of reasonable assumptions;

## No Event of Insolvency has been started, threatened or occurred;

## 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 the Purchaser;

## It is in compliance with all material relevant applicable laws and regulations;

## To the best of the Purchaser's knowledge, information and belief all information given to the Seller by the Purchaser in connection with any of the Finance Documents is true and correct at the time the information is given;

## There are no governmental or administrative licenses or consents required on the part of the Purchaser to permit the entering into and due performance of each of the Finance Documents in accordance with their terms and that any filing or registration requirements on the part of the Purchaser have been complied with;

## Neither the entering into nor the performance of any of the Finance Documents shall constitute or give rise to any breach of or default under any agreement by which the Purchaser is bound;

## There are no withholding taxes, stamp taxes, registration taxes, value added taxes, sales taxes or other similar taxes, duties or charges applicable to any of the Finance Documents or to any payment to be made by the Purchaser pursuant to the terms thereof;

## The claims of the Seller against the Purchaser under each of the Finance Documents will rank at least paripassu with the claims of all of its other unsecured and unsubordinated creditors in respect of its other present and future unsecured obligations, except for obligations mandatorily preferred by law;

## The Purchaser is not entitled to claim for itself or any of its assetsimmunity from any proceedings, suit, execution, attachment or other legal process in its jurisdiction of incorporation or any other country and the execution of the Finance Documents by the Purchaser and the Purchaser's exercise of its rights and performance of its obligations thereunder will constitute private and commercial acts done and performed for private and commercial purposes and the Purchaser acknowledges that the transactions contemplated by this Agreement are commercial transactions and to the extent that the Purchaser may claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that such immunity (whether or not claimed) may be attributed to the Purchaser or its assets or revenues, the Purchaser agrees not to claim and irrevocably and unconditionally waives such immunity in relation to any proceedings. Further the Purchaser irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any proceedings;

## All proceeds gained from transactions contemplated under this Agreement will be used for purposes that are Shariah compliant. For this purpose, the Purchaser undertakes to provide the Seller with such documents that the Seller may request from time to time; and

## The Purchaser, in entering into this Agreement, is acting for its own account and not on behalf of any other person.

## **Financial Statements**

* + 1. The audited financial statements (if any), most recently delivered to the Seller pursuant to this Agreement, were prepared in accordance with IFRS consistently applied (unless expressly disclosed to the Seller in writing to the contrary before the date of this Agreement).
    2. The audited financial statements (if any), most recently delivered to the Seller pursuant to this Agreement, fairly represent its financial condition and operations as at the date they were prepared (unless expressly disclosed to the Seller in writing to the contrary before the date of this Agreement).
    3. There has been no material adverse change in the Purchaser’s business or financial condition since the date of the audited financial statements most recently delivered to the Seller pursuant to this Agreement.

# Undertakings

The undertakings in this Clause ‎remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any commitment is in force:

## The Purchaser shall supply to the Seller within 180 days (or such other period agreed by the Seller) of the end of each financial year of the Purchaser, its audited financial statements for that financial year.

## The Purchaser shall supply to the Seller:

###### all documents dispatched by the Purchaser to its creditors generally at the same time as they are dispatched; and

###### promptly, upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Purchaser and which might reasonably be expected to have a Material Adverse Effect.

## The Purchaser shall notify the Seller of any Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

## The Purchaser shall, upon the written request of the Seller, supply to the Seller a certificate (and if it is a body corporate, signed by two of its directors or senior officers on its behalf) certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps being taken to remedy it).

## If:

###### 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;

###### any change in the status of the Purchaser after the date of this Agreement; or

###### a proposed assignment or transfer by the Seller of any of its rights and obligations under this Agreement,

obliges the Seller (or, in the case of paragraph c) above, any prospective assignee or transferee) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Purchaser shall promptly upon the request of the Seller supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Seller, in order for the Seller (or any prospective assignee or transferee)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 the Finance Documents.

## **General Undertakings**

The undertakings in this clause ‎remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any commitment is in force:

### The Purchaser shall promptly:

###### obtain, comply with and do all that is necessary to maintain in full force and effect; and

###### supply certified copies to the Seller of,

any authorisation required under any law or regulation of the United Arab Emirates or any other applicable jurisdiction to enable it to perform its obligations under the Finance Documents or to ensure the legality, validity, enforceability or admissibility in evidence in the United Arab Emirates of any Finance Document;

### The Purchaser 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 the Finance Documents;

### The Purchaser (if it is a body corporate) shall remain duly incorporated and validly existing under the law of its incorporation; and

### The Purchaser shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of all or substantially all of its assets.

# Events of Default

## Each of the following events or circumstances is an Event of Default:

#### The Purchaser fails to pay any sum due under any of the Finance Documents at the time, in the currency and in the manner specified herein or therein;

#### Any representation or warranty made or repeated by the Purchaser in this Agreement or in connection with any Finance Document or in any notice or other document delivered on behalf of the Purchaser in connection herewith proves to have been incorrect or inaccurate or misleading in any respect when made or repeated or deemed to be made or at any time during the continuation of this Agreement;

#### The Purchaser is unable or admits inability to pay its Financial Indebtedness as they fall due, suspends making payments on any of its Financial Indebtedness or commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors or a moratorium is declared in respect of any indebtedness of the Purchaser;

#### The occurrence of an Event of Insolvency or Change in Circumstances or Event of Cross Default;

#### The Purchaser defaults in the due performance of any other obligation under any of the Finance Documents or fails to pay any final judgment or court order when due;

#### There is a material and adverse change in the financial condition of the Purchaser which gives reasonable grounds in the opinion of the Seller to believe that the Purchaser may not (or may be unable to) perform its obligations under any Finance Document;

#### Any attachment, execution or distress is levied against the whole or a major part of the Purchaser’s assets or it becomes unlawful for the Purchaser to perform or comply with any or all of its obligations under the Finance Documents or if any of the obligations of the Purchaser thereunder are not or cease to be legal, valid and binding;

#### The Purchaser (if a physical person) is declared incompetent or passes away.

#### There is any Change in Control of the Purchaser (if it is a body corporate) or the value of the assets of the Purchaser is less than its liabilities (taking into account contingent and prospective liabilities);

#### The Purchaser or any other person commences proceedings or takes any other action challenging the validity of any of its obligations or any of the Seller‘s rights under the Finance Documents due to the Purchaser’s default;

#### The Purchaser fails to provide and/or fulfill the Securities, Special Conditions and Conditions Precedent (if any)within 60calendar days of the FOL Issue Date(or such other date as the Seller may agree in writing) or fails to provide and/or fulfill the Conditions Subsequent on the dates specified in Schedule 3;

#### If the Securities are diminished either due to the Purchaser’s own action, or for another reason to which it did not contribute;

#### The trade license of the Purchaser is withdrawn, cancelled or assigned to another party;

#### Any other event occurs which is reasonably deemed by the Seller to be a sufficient reason to believe that the Purchaser may not discharge any of its obligations under any Finance Document;

#### At any time it is unlawful for the Seller to make, fund or allow to remain outstanding any amount owing to the Seller under any Finance Document; and

#### The Purchaser issues a voluntary reduction notice pursuant to clause 10.2.2 but fails to pay the amount determined in the notice on the agreed payment date (but default in this case shall be deemed to be only in respect of the amount specified in such notice).

## On the occurrence of any Event of Default, the Seller shall be entitled by written notice to the Purchaser:

#### to declare that the Available Facility shall be reduced to zero forthwith;

#### to declare in respect of any Offer Notice that such Offer Notice is void (in which event the Purchaser may not issue an Acceptance Notice in relation to such Offer Notice);

#### to require the Purchaser to make immediate payment to the Seller of the Deferred Price in respect of all or any of the Murabaha Contracts then subsisting together with any and all other Outstandings; and/or

#### to terminate this Agreement and exercise all other rights and remedies available to the Seller pursuant to the Finance Documents or applicable law.

## The Purchaser shall promptly notify the Seller of the occurrence of any Event of Default.

# Costs and Payment

## The Purchaser shall indemnify the Seller in respect of all actual claims, costs and expenses suffered or incurred by the Seller as a consequence of the Purchaser's failure to comply with any of the terms and conditions of the Finance Documents.

## The Purchaser shall, within 21 days of the first written demand, pay all actual legal fees, out-of-pocket expenses and other costs of the Seller in connection with the enforcement by action or otherwise of any of the Finance Documents, or the recovery of any sum due hereunder or there under to the extent that such enforcement or action was caused by the Purchaser being in breach of a Finance Document.

## The Purchaser shall pay all stamp, registration or other taxes (if any) to which this Agreement or any Murabaha Contract is or at any time may be subject to and shall indemnify the Seller against any liability now or hereafter imposed upon the Seller to make any payment of any value added tax, sales tax or other similar tax in relation to the transactions carried out under this Agreement or anyMurabaha Contract.

## If the Purchaser fails to pay any amount due under any Finance Document or any part thereof at the time, in the currency, and in the manner specified herein or therein, then the Purchaser hereby irrevocably and unconditionally undertakes to donate to charity, if the Seller demands, a sum at the Late Payment Rate on the overdue amount which shall be handed over to the Seller to be donated on the Purchaser's behalf to such charitable foundations or scientific or medical institutions or for any other charitable cause as the Seller may select under the supervision of its Fatwa and ShariahSupervisory Board.

## All payments to be made by the Purchaser to the Seller pursuant to any Finance Document shall be made without counterclaim or deduction and in immediately available and transferable funds for good value on the due date to the account specified in the Offer Notice or to such account at such bank as the Seller shall from time to time notify the Purchaser.

## All payments shall be made by the Purchaser to the Seller 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.

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

## The Purchaser authorizes the Seller to apply any credit balance in any currency to which the Purchaser is entitled on any account of the Purchaser with the Seller or any of its branches or subsidiaries in satisfaction of any sum due and payable from the Purchaser under any Finance Document; for this purpose the Seller is authorized to purchase with the monies standing to the credit of any such account such other currencies as may be necessary to effect such application at the Seller’s prevailing market spot rate at that time. The Seller shall not be obliged to exercise any right given to it by this Clause.

# Illegality; Voluntary Reduction of Facility Limit

* 1. **Illegality**

If it becomes unlawful in any applicable jurisdiction for the Seller to perform any of its obligations as contemplated by the Finance Documents, then:

* + 1. the Seller shall promptly notify the Purchaser;
    2. any undrawn and available portion of the Facility Limit shall be immediately cancelled and the Facility Limit shall be reduced to zero; and

the Purchaser shall pay to the Seller the Outstandings due and owing to the Seller on the date specified by the Seller in the notification under Clause 10.1(a) above.

* 1. **Voluntary Reduction of Facility Limit**
     1. On any Deferred Payment Date the Purchaser may reduce the Facility Limit.
     2. Any reduction of the Facility Limit pursuant to Clause 10.2.1 above shall be notified by the Purchaser to the Seller with not less than ten (10) Business Days’ written notice (which notice, once given, shall be irrevocable) prior to the applicable Deferred Payment Date and an adjusted Reduction Schedule shall be issued to the Purchaser.
  2. **Notification**

Any notification by the Seller concerning any of the matters referred to in this clause 10 shall, save for any manifest error, be conclusive and binding on the Purchaser.

* 1. Restrictions
     1. Any notice given under this Clause 10 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant reduction to the Facility Limit shall apply.
     2. The Purchaser shall not settle any Deferred Sale Price (or any part thereof) except at the times and in the manner expressly provided for in this Agreement or otherwise agreed by the Seller.
     3. No amount under the Facility Limit that has been prepaid by the Purchaser may subsequently be reutilised.

# Law and Jurisdiction

## This Agreement and every Murabaha Contract made hereunder and the construction, performance and validity hereof and thereof shall be governed in all respects in accordance with the laws of the United Arab Emirates save to the extent these conflict with the rules and principles of the Islamic Shariah, when the latter shall prevail. The Parties hereto agree to be bound by the exclusive determination of the Fatwa and Shariah Supervisory Board of the Seller as to whether any such conflict exists, and if it does the appropriate provision of the Islamic Shariah to be applied.

## The Parties hereto recognise and agree that the principle of the payment of interest is repugnant to the Shariah and accordingly, to the extent that any legal system would (but for the provisions of this clause) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereto hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

* 1. In the case of a dispute between the Parties on interpreting or execution of this Agreement, such dispute shall be referred to arbitration before of the International Islamic Centre for Reconciliation and Arbitration –Dubai (“IICRA”) for a final and binding decision in accordance with the rules and procedures specified in the statute of the International Islamic Centre for Reconciliation and Arbitration –Dubaiwithout prejudice to the Bank’s right to send any dispute to the relevant legal court.
  2. The Arbitration Tribunal shall consist of three (3) arbitrators. Within ten (10) days of service of notice by any one Party to the other of its demand for arbitration, which demand shall also set forth the name of its arbitrator, the other Party shall select its arbitrator and so notify the demanding Party, and within ten (10) days thereafter the two arbitrators so selected shall select a third arbitrator. In the event of the selected arbitrator’s failure to agree upon and select a third arbitrator within such ten (10) days, the International Islamic Centre for Reconciliation and Arbitration –Dubai shall appoint the third arbitrator. In the event of a default by either Party to name its arbitrator, the arbitrator appointed by the non-defaulting party shall have the power to proceed to arbitrate and determine the matters of disagreement as if he or she was an arbitrator appointed by both Parties for that purpose. The place of arbitration shall be Dubai City. The arbitration proceedings and award shall be conducted and written in the Arabic language. All arbitration awards shall be final and binding on both Parties and not subject to any appeal. Any monetary award shall be made payable in UAE Dirhams, free of any tax or any other deduction. The award shall include actual costs and expenses of the prevailing Party, including actual legal fees.

## To the extent that the Purchaser may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed) the Purchaser hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity in respect of its obligations under this Agreement.

## The Purchaser agrees that the process by which any suit, action, or proceeding in the United Arab Emirates which may arise out of or in connection with any Finance Document is begun may be served on the Purchaser by being delivered at the address specified in this Agreement. Nothing contained herein shall affect the right to serve process in any other manner permitted by law.

# General Provisions

## **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties. Each Party confirms that it has not relied upon any representation not recorded in this document inducing it to enter into this Agreement.

## **Severability**

If any of the provisions of this Agreement are found to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced unless the substantive purpose of this Agreement is then frustrated, in which case either party may terminate this Agreement forthwith on written notice.

## **Waiver**

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

## **Set-off**

The Seller shall have the right, at any time and without notice to the Purchaser, to set off and apply any credit balance on any account of the Purchaser with the Seller, and any other indebtedness owing to the Purchaser by the Selleror any of its branches or subsidiaries (in each case, whether or not subject to notice, matured or owing by a different branch or office and in whatever currency) against the liabilities of the Purchaser under this Agreement. The Seller may convert the currency or any credit balance as may be necessary for this purpose at the spot rate prevailing on the market at that time.

## **Joint Accounts**

If there is more than one Purchaser, the terms of this Agreement apply to each one of them jointly and severally. Each Purchaser will be held liable jointly and severally for the full amounts due and owing and all other obligations under this Agreement, and if any one Purchaser breaches any of the obligations under this Agreement, the Seller may enforce any remedies that it may have on account of such breach against all or any one of the Purchasers.

## **Assignment**

The Seller may at any time assign or transfer all or any of its rights and/or obligations under this Agreement. The Purchaser shall not assign or transfer any of its rights or obligations under this Agreement without having obtained the prior written consent of the Seller.

## **Amendments**

This Agreement may be amended in writing with the written consent of both Parties.

## **Notices**

### Any notices or other documents to be given, served or sent hereunder or in connection herewith shall be in writing and given in accordance with Clause 12.8.4 in person, by post, fax or e-mail or other electronic communication and shall be deemed to have been served when received.

### Any notice received on a day which is not a Business Day for the addressee shall be deemed to have been given at its opening on the next succeeding Business Day.

### The Purchaser hereby agrees to indemnify and hold the Seller harmless against all liabilities, costs, claims, losses, damages or expenses which the Seller may suffer or incur as a result of acting upon any instructions received by fax under the signature of or e-mail or other electronic communicationreceived from the Purchaser or a purportedly authorised officer or representative of the Purchaser.

## **12.8.4** The contact details of the Seller and the Purchaser are set out in Schedule 7, as may be amended by a Party by written notice to the other in accordance with this Clause.

## **Disclosure of Information**

## The Seller may disclose to any potential assignee or to any person who may otherwise enter into contractual relations with the Seller in relation to this Agreement, such information about the Purchaserand/or any Finance Document as the Seller shall consider appropriate, provided that such potential assignee or any other person shall agree to maintain such information as confidential and not disclose such information to any third party.

## **12.10** **Counterparts**

This Agreement may be entered into in the form of one or more counterparts, each executed by one of the Parties, and, provided the Parties shall so execute this Agreement, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original but, taken together, they shall constitute one instrument.

## **Termination**

Notwithstanding any other provision in the Finance Documents, andwhether or not the Available Facility has been utilized and/or the Availability Period has expired and without prejudice to the other rights and remedies of the Seller under this Agreement, the Seller shall be entitled at any time to terminate this Agreement by giving the Purchaser not less than 15 days prior written notice. Such termination shall not affect the rights and obligations of anyParty hereunder in relation to any outstanding Murabaha Contract then subsisting.