



REFERENCE GUIDE: ISLAMIC FINANCE FOR INFRASTRUCTURE PPP PROJECTS

REPORT 2019

Appendices



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1818 H Street NW
Washington DC 20433
Telephone: 202-473-1000
Internet: www.worldbank.org

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Report and Cover design: Lauren Kaley Johnson, GCSPM, The World Bank Group

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Appendices



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APPENDIX A

Istiṣnā' Based Financing Purchase Istiṣnā' Agreement

.....

dated
[Insert date]

by

[Name of the project company]
as Buyer

and

[Name of banks/financial institutions]
as Seller

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THIS AGREEMENT (the “**Agreement**”) is dated [*Insert date*] and made

BETWEEN:

- (1) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as buyer (the “**Buyer**”); and
- (2) (a) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*], (b) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*], and (c) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] (collectively the “**Seller**”).

RECITALS

- (A) The Seller agrees to sell, and the Buyer agrees to buy, the Works (to be constructed and/or cause to be constructed and delivered by way of *istiṣnāʿ*) in accordance with the terms of this Agreement for the *Istiṣnāʿ* Purchase Price;
- (B) The Buyer has agreed to pay the *Istiṣnāʿ* Purchase Price to the Seller by way of instalment payments in accordance with the terms of this Agreement; and
- (C) This Agreement sets out the terms on which the Seller shall procure and arrange Delivery of the Works to the Buyer on or prior to the Completion Date.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless otherwise defined in this Agreement or unless the context otherwise requires, the following terms shall have the following meanings:

“**Agency Agreement**” means the agency agreement dated on or about the date of this Agreement between the Seller as principal and the Buyer as agent in respect of the transactions contemplated therein.

“**Agent**” means [•] as appointed, or to be appointed, as agent of the Seller pursuant to the Agency Agreement.

“**Applicable Law**” means any law, subordinate legislation, statute, by-law, regulation, treaty, judgment, decision, rule, notice, order, circular, code of practice or guidance note of, or made by, any Competent Authority.

[“**Assignment of Insurance Proceeds**” means the document(s) to be entered into between the Agent and the Seller wherein the Agent assigns in favour of the Seller its right, title and interest in and to the Insurance Proceeds.]

[“**Assignment of Guarantees**” means the documents(s) to be entered into between the Agent and the Seller wherein the Agent assigns in favour of the Seller its right, title and interest in and to the Guarantee Proceeds.]

“**Business Day**” means a day (other than a [Friday]¹, Saturday, [Sunday]² or a public holiday) on which banks are generally open for business in [•], [•] and [New York City / London]³.

“**Certificate of Delivery**” means the certificate substantially in the form set out in Schedule 5 (*Form of Certificate of Delivery*).

“**Certificate of Release**” means the certificate substantially in the form as set out in Schedule 4 (*Form of Certificate of Release*).

“**Competent Authority**” means any local, national or supranational agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of [•] or any agency thereof, or any other jurisdiction which has jurisdiction over the Buyer or all or part of the subject matter of any of the Transaction Documents.

“**Completion**” means the time at which all of the following conditions have been satisfied:

- (a) the Works have been fully completed in accordance with the Specifications and are in compliance with the completion requirements and conditions set out in the EPC Contracts;
- (b) all Consents necessary, and in the form and substance necessary and sufficient, at that time to enable the Buyer to own and exercise its material rights and to perform and comply with its material obligations in relation to the Works and are in full force and effect and it is not likely that the same, or any such future Consents, would not be renewed or granted without imposition of any conditions likely to have, or result in, a Material Adverse Effect;
- (c) the Transaction Documents are in full force and effect; and
- (d) no Event of Default or Potential Event of Default has occurred which is continuing.

“**Completion Date**” means the date on which Completion occurs provided that such date shall not be a later date than the date for completion of the Works pursuant to the EPC Contracts.

“**Consent**” means any approval, authorisation, lease, licence, franchise, permit, consent, exemption, certificate, ruling, order, registration or enrolment which is required by Applicable Law, Environmental Law or any other Consent or which should be obtained in accordance with Good Industry Practice.

“**Construction Documents**” means the contents of which are described in Part A (*Construction Documents*) of Schedule 1 (*Construction Documents and Works*).

“**Default**” means an Event of Default or a Potential Event of Default.

“**Delivery**” means the transfer of possession of the Works on the Completion Date.

[“**Dollars**” or “**US\$**” means the lawful currency of the United States of America.]

“**Environmental Law**” means Applicable Law with regard to the environment and, in each case, any orders, notices, demands, binding codes of practice, binding circulars, binding guidance notes or injunctions pursuant to the same made or issued by any Competent Authority which are binding and enforceable.

“**EPC**” means engineering, procurement and construction.

“**EPC Contractors**” means such EPC contractors which are or will be appointed by [•] as agent pursuant to the EPC Contracts and “**EPC Contractor**” means any of them, as the context requires.

“**EPC Contracts**” means the agreements entered into or to be entered into between [•] as agent and each of the EPC Contractors for the design, engineering, procurement and construction of the Works pursuant to the Construction Documents.

“**Event of Default**” means any event or circumstance specified as such in Clause 19 (*Events of Default*).

“**Execution Drawings**” means the execution drawings included in the Construction Documents.

“**Fee Letter**” means any letter or letters between the Seller and the Buyer setting out any of the fees referred to in Clause 11.1 (*Fees*).

“**Financial Indebtedness**” means, without double counting, any indebtedness for or in respect of:

- (a) moneys borrowed (including the balance of any overdraft facilities or credit account at banks or other financial institutions);
- (b) any amount raised by acceptance under any acceptance credit or bill discounting facility or dematerialized equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement or any financing which is structured and completed on a *shari'ah* compliant basis) having the commercial effect of a borrowing or otherwise classified as borrowings in accordance with GAAP;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of redeemable shares;
- (j) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind entering into such agreement is to raise finance; and
- (k) the amount of any liability in respect of any guarantee, suretyship or indemnity or similar assurance against financial loss in respect of any of the items referred to in paragraphs (a) to (j) above.

“**GAAP**” means generally accepted accounting principles in [*insert the name of the relevant country*] including IFRS.

“**Good Industry Practice**” means standards, practices, methods and procedures complying with Applicable Law, Environmental Law and all Consents required to have been obtained and with that degree of skill, diligence, judgment, prudence and foresight which would ordinarily be expected from an international skilled and experienced developer or, as the case may be, operator engaged in constructing taking into account local conditions.

[“**Guarantees**” means advance payment guarantee(s) and performance guarantee(s) to be provided by the EPC Contractors under the EPC Contracts as the same may be amended or extended from time to time.]

[“**Guarantee Proceeds**” means any and/or all sums which from time to time fall to be paid to or for the benefit of the Agent under or in respect of the Guarantees.]

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Insurance Proceeds**” means the Agent’s present and future right, title, benefit and interest in any book and other debts and monetary claims now or in the future owing to the Agent under the Insurances and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to such Insurances).

“**Insurances**” means the Works Insurances and the Supplemental Insurances.

“**Istiṣnā’ Purchase Price**” has the meaning given to it in Clause 4.1 (*Payment of Istiṣnā’ Purchase Price*).

“**Material Adverse Effect**” means an event or occurrence of whatever nature which in the reasonable opinion of the Seller is or is likely to be materially adverse to:

- (a) the ability of the Buyer to perform its payment or other material obligations under any Transaction Document to which it is or is to be a party in a timely manner;
- (b) the rights and remedies of the Seller under any Transaction Document to which it is party or the validity and enforceability of any Security or support under any Transaction Document; or
- (c) the overall financial condition of the Buyer.

[“**No Objection Letter**” means a no objection letter dated on or about the date of this Agreement and issued by the Buyer in favour of the Seller setting out the Buyer’s no object for the Seller to construct or procure construction of the Works on a piece of land located in [•] and registered under the name of [•] by virtue of title deed number [•].⁴

“**Original Financial Statements**” mean the latest audited financial statements of the Buyer as at the date of this Agreement.

“**Permitted Indebtedness**” means:

- (a) any indebtedness of the Buyer incurred under the Transaction Documents; and

- (b) [provided no Default is continuing, any debt incurred in the ordinary course of the Buyer's business provided that entering into and performing its obligations with respect to such indebtedness would not cause any breach of the financial undertakings set out in Clause 18 (*Financial Undertakings*).]

“Potential Event of Default” means any event or circumstance which would (with the expiry of the grace period, the giving of notice, the making of any determination under the Transaction Documents or any combination of the foregoing), be an Event of Default.

“Project” means [*describe the projects*].

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Security Documents” means:

- (a) [Assignment of Insurance Proceeds];
- (b) [account pledge];
- (c) [Assignment of Guarantees]; and
- (d) [any other document or agreement designated as such by the Seller (and notified by the Seller to the Buyer) for perfecting and completing the security constituted by any of the Security Documents.]

“Specifications” means the specifications of the Project as more particularly described in the Construction Documents.

“Stage Payment” has the meaning given to such term in the Agency Agreement.

“Supplemental Insurances” means any renewal or replacement of the Works Insurances and any additional contract or contracts of insurance which the Agent is required to obtain (where available and to the extent possible in a *shari'ah*-compliant manner) pursuant to or in connection with the Works (excluding any third party liability insurances).

“Tax” means any tax, levy, impost, duty, zakat or other charge or withholding of a similar nature (including any penalty or commission payable in connection with any failure to pay or any delay in paying any of the same).

“Termination Amount” means:

- (a) at any time prior to the date of the Delivery, the amount which is equal to the actual costs incurred by the Seller in relation to construction or procurement of the Works and the other amounts then due and payable from the Buyer to the Seller under any Transaction Documents; or
- (b) at any time after the date of the Delivery, the amount which is the aggregate outstanding of the *Istisnā'* Purchase Price under this Agreement and the other amounts then due and payable from the Buyer to the Seller under any Transaction Documents.

“Transaction Documents” means:

- (a) this Agreement;

- (b) the Agency Agreement;
- (c) [the No Objection Letter;]
- (d) the Fee Letter;
- (e) the Security Documents; and
- (f) any other document or agreement designated as such by the Seller (and notified by the Seller to the Buyer) for implementing and completing the transactions contemplated by any of the Transaction Documents⁵.

“**Works**” means the development and construction of the Project in accordance with the Specifications outlined in the Construction Documents and the details of which are set out in Part B (*Description of the Works*) of Schedule 1 (*Construction Documents and Works*).” **Works Insurances**” means the contracts of insurance (where available and to the extent possible in a *shari’ah*-compliant manner) in respect of the Works (excluding any third party liability insurances).

1.2 Interpretation and Construction

- (a) Unless the context does not so admit, words herein importing the singular include the plural and vice versa.
- (b) References to a “Clause” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement.
- (c) References to this Agreement include its Schedules and references to “Schedules” are to the schedules to this Agreement.
- (d) References to an “asset” include present and future properties, revenues and rights of every description.
- (e) References to the Buyer, the Seller or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees.
- (f) Save where the contrary is indicated, any reference in this Agreement to this Agreement or any other Transaction Document shall be construed as a reference to this Agreement or, as the case may be, such other document as the same may have been, or may from time to time, be amended, restated, varied, novated or supplemented.
- (g) Reference to an “amendment” includes a supplement, novation, restatement or re-enactment and “amended” will be construed accordingly.
- (h) Reference to 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.
- (i) Reference to “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) or two or more of the foregoing.

- (j) Reference to a Default being “continuing” means that it has not been remedied or waived to the satisfaction of the Seller and reference to an Event of Default being “continuing” means that it has not been waived in writing by the Seller.
- (k) Reference to “*shari’ah*” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain].
- (l) References to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation.
- (m) Unless stated otherwise, a reference to a time of day is a reference to [•] time and references to years, months, quarters and the passage of time shall be construed in accordance with the Gregorian calendar.
- (n) Section, Clause and Schedule headings are for ease of reference only.

2. SALE BY WAY OF *ISTIṢNĀ’*

- (a) The Seller hereby sells and the Buyer hereby purchases the Works which are to be constructed by the Seller:
 - (i) in accordance with the Specifications and the terms of the Construction Documents;
 - (ii) for the *Istiṣnā’* Purchase Price to be paid in accordance with Clause 4.1 (*Payment of Istiṣnā’ Purchase Price*) by the Buyer;
 - (iii) with, using reasonable endeavours to cause, Delivery on or before the Completion Date; and
 - (iv) pursuant to the terms and conditions of this Agreement.
- (b) The Buyer hereby acknowledges that it has examined the Specifications in accordance with which the Works will be carried out or procured to be carried out and delivered under this Agreement and the Buyer hereby acknowledges that it is satisfied with the Specifications and declares that the Specifications meet its requirements and expectations.
- (c) The parties agree to use their reasonable endeavours to procure that the relevant Competent Authority consents to the Buyer granting a [no objection or sub-contract], pursuant to the terms of this Agreement, of the rights granted to the Buyer under the [project/concession agreement] in order to enable the Seller to procure, purchase, arrange and deliver the Works in accordance with the terms of this Agreement and the Agency Agreement.

3. DELIVERY AND OTHER CONDITIONS

- (a) Upon the Completion of the Works, the Seller shall deliver or procure the Delivery of the Works to the Buyer or its nominee, free from any Security other than the Security created pursuant to the Security Documents.

- (b) Without prejudice to paragraph (a) above, taking possession of the Works by the Buyer by executing and sending a Certificate of Delivery to the Seller shall constitute valid Delivery.
- (c) Notwithstanding any provisions of this Agreement, the Seller's obligation with regard to the Delivery of the Works to the Buyer is subject to the conditions that:
 - (i) no Default has occurred and is continuing;
 - (ii) all of the representations and warranties which are repeated pursuant to Clause 14.20 (*Repetition*) are true and correct;
 - (iii) no Material Adverse Effect has occurred and is continuing; and
 - (iv) the Seller has received all of the documents and evidence listed in Schedule 2 (*Conditions Precedent*) (or waived the requirement to deliver any such document or evidence (as the case may be)) and has found them to be satisfactory, in its sole and absolute discretion, in both form and substance.
- (d) Provided that the Works comply with the Specifications on the Delivery, the Seller shall not be liable for any loss or damage to, or defect in, the Works or any part thereof including the design, execution, constructions, completion, finishing, and remedying of any defects after the Delivery. However, the Seller shall, to the extent any warranties from any contractors, manufacturers, service providers or suppliers are valid or still in effect on the Delivery with respect to the Works or any part thereof, transfer or assign all such warranties and the rights thereunder to the Buyer together with all documents in relation thereto or evidencing the same.

4. PAYMENT BY THE BUYER

4.1 Payment of *Istiṣnā'* Purchase Price

- (a) The consideration payable by the Buyer for the Works is [•] (the "*Istiṣnā'* Purchase Price").
- (b) The Buyer shall pay the *Istiṣnā'* Purchase Price to the Seller on the date and in the amount as set out in Schedule 3 (*Payment of Istiṣnā' Purchase Price*).

4.2 Early Payments of *Istiṣnā'* Price

- (a) If the Seller declares that all sums payable under this Agreement and any Transaction Documents are immediately due and payable pursuant to the provisions of Clause 19.16 (*Consequences of an Event of Default*), then the Buyer shall immediately pay the same to the Seller.
- (b) The Buyer may offer to prepay the whole or any part of the outstanding *Istiṣnā'* Purchase Price under this Agreement and other amounts then due and payable under any Transaction Documents. Such offer to pay once given shall be irrevocable. The Seller shall have the right to accept or reject such a prepayment offer. In case the Seller accepts such prepayment offer, the Seller is not obligated to return to the Buyer any part of the *Istiṣnā'* Purchase Price, provided that should the Seller fail to reject such prepayment offer within [•] Business Days from the date of receipt of the Buyer's prepayment offer, such prepayment offer shall be deemed to be accepted by the Seller. Upon any such prepayment being made by the Buyer, the outstanding *Istiṣnā'* Purchase Price will automatically be reduced by an amount equal to the amount prepaid and the scheduled mandatory payments as contemplated in Schedule 3 (*Payment of Istiṣnā' Purchase Price*) shall be reduced rateably.

- (c) The Seller is not obligated to return any part of the *Istiṣnā'* Purchase Price to the Buyer on account of any early payment of the outstanding *Istiṣnā'* Purchase Price made by the Buyer.⁶

4.3 Currency and Timing of Payments

- (a) Subject to paragraphs (b) and (c) below, [•] is the currency of account and payment for any sum due from the Buyer under any Transaction Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than [•] shall be paid in that other currency.
- (d) All payments by the Buyer under the Transaction Documents shall be made to the Seller not later than 12:00 noon ([•] time) on the relevant due date in same day funds to such account as the Seller may designate.

4.4 Payment obligations unconditional

The payment and other obligations of the Buyer under or in respect of this Agreement shall not be affected, mitigated or released in any way as a result of any delay of the Delivery of the Works or any deficiency in the Works, any loss or damage to the Works, any failure by the EPC Contractors to comply with any of its undertakings or obligations under the Construction Documents or any other reason whatsoever.

4.5 No set-off by the Buyer

All payments to be made by the Buyer under the Transaction Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

4.6 Business Days

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

4.7 Allocation of Receipts

If any amount received by the Seller in respect of sums payable by the Buyer under the Transaction Documents is less than the full amount due, the Seller shall allocate the amount received towards sums payable under the Transaction Documents as it considers appropriate.

4.8 Evidence of Debt

The Seller shall maintain in accordance with its usual practice accounts recording the amounts from time to time owing by the Buyer hereunder. In any legal proceeding and otherwise for the purposes of the Transaction Documents the entries made in such accounts shall, in the absence of manifest error, be conclusive and binding on the Buyer as to the existence and amounts of the obligations of the Buyer recorded therein.

4.9 Certificate Conclusive and Binding

Any certification or determination by the Seller of a rate or amount under any Transaction Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

5. POSSESSION

On the Completion Date and by executing and sending a Certificate of Delivery to the Seller, the Buyer shall be entitled to the possession of the Works automatically without any additional documents, formalities, actions or steps by any party.

6. INSURANCE OF THE WORKS

6.1 Insurance before Delivery of the Works

- (a) Insurances in respect of the Works and all premia payable in respect of insurances prior to Delivery of the Works will be the responsibility of the Seller.
- (b) The Buyer acknowledges that the Seller may delegate these obligations to the Buyer in accordance with the Agency Agreement.

6.2 Insurance after Delivery of the Works

- (a) After the Delivery of the Works and so long as any sum on account of the *Istiṣnā'* Purchase Price is outstanding under this Agreement, the Buyer undertakes:
 - (i) to procure, renew and maintain comprehensive insurance cover of any kind which is required by any Applicable Law or custom or from time to time required by the Seller in respect of the Works for an amount not less than 120 % (one hundred and twenty per cent.) of the value of the Works with an insurance company acceptable to the Seller (which shall be an Islamic *takāful* company, if possible);
 - (ii) that the Seller shall be named/recorded as the “first loss payee” or additional insured person under all insurances taken out under this Clause 6.2 (*Insurance after Delivery of the Works*) above and the Buyer shall instruct the relevant insurer that the payment of any insurance proceeds shall be made directly to the Seller, and that the Seller is notified when the Buyer fails to make any premium payment in respect of any insurances taken out by the Buyer; and
 - (iii) that the Buyer shall notify the Seller within [7] days of the occurrence of any event or accident that led to the destruction of or a damage to the Works that may affect the entitlement of the Seller to the compensation or insurance proceeds under the any insurances.
- (b) In the event the Buyer fails to take out or maintain insurances required under this Clause 6.2 (*Insurance after Delivery of the Works*), or if it fails to pay any premium on its due date:
 - (i) the Seller may (at its sole discretion but without any obligation) take out such insurance policy or pay such delayed premium on behalf of the Buyer and deduct the insurance value or the premiums from any or all of the Buyer's bank accounts (if any) with the Seller; and/or
 - (ii) the Buyer shall indemnify the Seller to the full extent permitted by any Applicable Law against any loss or damage to the Works where such damage is not covered by insurance policy due to the Buyer's failure to comply with its obligations under this Clause 6.2 (*Insurance after Delivery of the Works*) as to insure or to renew insurances or properly insure the same, or claim insurance

proceeds from the insurer, or where the insurer refuses to pay the insurance amount due to any default on the Buyer's part.

7. SELLER'S UNDERTAKINGS

In reliance upon the representations and warranties of the Buyer as set out in Clause 14 (*Representations and Warranties*), the Seller shall construct (or procure to be constructed) the Works and shall use all reasonable efforts to ensure the Delivery of the Works to the Buyer;

- (a) in accordance with the best industry practices and all Applicable Laws and using only suitable materials which are fit for the purpose for which they are intended;
- (b) in accordance with the Specifications (provided that the Seller shall be deemed to have discharged its obligations under this Clause 7 (*Seller's Undertakings*), if the Works are constructed and delivered in accordance with the Specifications and the terms and conditions of this Agreement); and
- (c) without infringing any covenants or other restrictions affecting title to the Works or any rights or easements benefiting any other assets and, insofar as reasonably possible, without causing damage or nuisance to any other person or property.

8. EXTENSION OF TIME

The Seller shall use all reasonable endeavours to procure the Delivery of the Works, provided that the Seller shall not be liable to the Buyer if the Delivery does not take place for the following reasons:

- (a) If the Seller's failure to fulfil its obligations is due to any breach or other act of prevention on the part of the Buyer under any of the Transaction Documents; and/or
- (b) an extension of time is permitted following the occurrence of a force majeure event (on which the Seller did not have any control) during which the construction in respect of the Works remained suspended.

9. VARIATIONS

- (a) The Buyer may request any change in the Specifications subject to making payment to the Seller of any additional costs the Seller expects to incur as a result of such change in the Specifications.
- (b) Without obtaining the Buyer's prior approval, the Seller shall not make any material change in the Specifications, save for any variations which are required in order to comply with any Applicable Law.

10. DURATION AND TERMINATION

Notwithstanding the Delivery of the Works under this Agreement, this Agreement shall continue in full force and effect until the *Istiṣnā'* Purchase Price and/or any other sums due under this Agreement have been paid in full to the entire satisfaction of the Seller as evidenced by a Certificate of Release issued by the Seller in favour of the Buyer.

11. FEES COSTS AND EXPENSES

11.1 Fees

The Buyer shall pay to the Seller a management and administrative fee specified in the Fee Letter, in the amounts and at the times agreed in the Fee Letter.

11.2 Transaction Expenses

The Buyer shall within [five (5)] Business Days of demand by the Seller, pay or reimburse to the Seller all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Seller in connection with:

- (a) the negotiation, preparation and execution of this Agreement, any other documents referred to in this Agreement and any other Transaction Documents (whether such documents are executed at the same time as executing this Agreement or are executed after the date of this Agreement);
- (b) the completion of the transactions contemplated in this Agreement and/or any other Transaction Document (including any filing, notification, registration or recording in connection with any Security Document); and
- (c) the satisfaction of all conditions referred to in Schedule 2 (*Conditions Precedent*).

11.3 Amendments, waivers and consents

If either party requests an amendment, waiver or consent, the Buyer shall within five (5) Business Days of demand by the Seller, pay or reimburse to the Seller all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Seller in responding to, evaluating, negotiating or complying with that request or requirement.

11.4 Enforcement costs and preservation costs

The Buyer shall within [five (5)] Business Days of demand by the Seller, pay or reimburse to the Seller all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Seller in connection with exercising any of its rights or powers under any of the Transaction Documents, or in suing for or seeking to recover any sums payable by the Buyer under the Transaction Documents, or otherwise preserving or enforcing its rights under the Transaction Documents or any other document required in connection therewith or in defending any claims brought against it in respect of the Transaction Documents.

11.5 Miscellaneous expenses

- (a) The Buyer shall within [five (5)] Business Days of demand by the Seller, pay or reimburse to the Seller all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and

expenses), on a full indemnity basis, incurred by the Seller in connection with the administration or release of any Security created pursuant to any of the Security Documents.

- (b) The Buyer shall promptly pay all present and future stamp and other like duties and taxes and all notarial, registration, translation, recording and other like fees in respect of the Transaction Documents which may be required by any Applicable Law.

12. TAXES AND OTHER DEDUCTIONS

12.1 No Deduction

All sums payable by the Buyer under the Transaction Documents shall be paid in full without set-off or counterclaim or any restriction or condition and, except to the extent required by any law or regulation, free and clear of any deduction or withholding on account of Tax or otherwise.

12.2 Tax Gross up

If the Buyer is required by any law or regulation to make any such deduction or withholding under or in connection with the Transaction Documents, the Buyer shall, together with the relevant payment, pay such additional amount as will ensure that the Seller receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required.

12.3 Tax Indemnity

If the Seller is required to make any payment to any governmental authority on account of any Tax or other levy in relation to any sum received or receivable by the Seller under this Agreement or any other Transaction Document or any liability in respect of such payment is asserted, imposed, levied or assessed against the Seller, the Buyer shall, upon demand of the Seller, promptly pay to the Seller on a full indemnity basis the amount of the payment or liability, together with any charge, penalties and expenses payable or incurred by the Seller in connection therewith.

13. CHANGE OF CIRCUMSTANCES

The Buyer shall, from time to time on demand by the Seller, pay to the Seller such amounts as the Seller may reasonably certify as being required to compensate the Seller for complying with any present or future law, regulation or requirement or request of any governmental authority.

14. REPRESENTATIONS AND WARRANTIES

The Buyer represents and warrants to the Seller that:

14.1 Status

- (a) It is a [•], duly incorporated and validly existing under the laws of [•].
- (b) It has the power to own its assets and carry on its business as it is being conducted.

14.2 Capital

Its paid up share capital is [•] as at [•].

14.3 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Schedule 2 (*Conditions Precedent*), legal, valid, binding and enforceable obligations.

14.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do 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.

14.5 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, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

14.6 Validity and admissibility in evidence

All Consents required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in [•]; and
- (c) to enable it to create any Security expressed to have been created by it by or pursuant to, or, as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document and to ensure that such Security is first ranking Security in favour of the Seller, have been obtained or effected and are in full force and effect.

14.7 Deduction of Tax

It has paid and discharged all Taxes imposed upon it or its assets.

14.8 No filing or stamp taxes

Under the law of [•] it is not necessary that the Transaction Documents 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 the Transaction Documents or the transactions contemplated by the Transaction Documents.

14.9 No default

- (a) No Event of Default or Potential Event of Default is continuing or might reasonably be expected to result from the entering into this Agreement.
- (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.

14.10 No misleading information

All written information supplied by the Buyer is true, complete and accurate in all material respects as at the date it was given and is not untrue or misleading in any respect.

14.11 Pari passu ranking

Its payment obligations under the Transaction Documents 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.

14.12 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings on 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.

14.13 No immunity

It is subject to civil and commercial law and to legal proceedings and in any proceedings taken in [•] in relation to the Transaction Documents it will not be able to claim for itself or its assets immunity from suit, set off, judgment, execution, attachment or other legal process.

14.14 Security Documents

The Security expressed to be created by it under each Security Document is or will be on the date of execution or, if later, registration of such Security Document (where registration is required under any Applicable Law to perfect Security), constitute first ranking legal and valid Security.

14.15 No financial indebtedness

It has no Financial Indebtedness which is not Permitted Indebtedness.

14.16 Insolvency

It has not taken any action nor, so far as it is aware, having made due enquiry, have any other steps been taken or legal proceedings been started against it for its winding-up, bankruptcy, insolvency, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, trustee or similar officer of it or any or all of its assets in any jurisdiction.

14.17 Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition and operations during the relevant financial year.
- (c) There has been no material adverse change in its business or financial condition since the date of its Original Financial Statements.

14.18 Shari'ah compliance

The Buyer has not relied on any representation made by the Seller as to the *shari'ah* compliance of the transaction contemplated by this Agreement or any other Transaction Document and has independently made its own assessment as to whether such transactions are compliant with *shari'ah*.

14.19 Specifications and Construction Documents

The Buyer has examined the Specifications and the Construction Documents and is satisfied with them and hereby declares that the Specifications and the Construction Documents meet its requirements and expectations.

14.20 Repetition

The Buyer undertakes with the Seller that the representations and warranties set out in this Clause 14 (*Representations and Warranties*) will be true and accurate as at the date of this Agreement, and the Buyer

shall be deemed to repeat such representations and warranties (other than (A) each of the representations and warranties set out in Clause 14.7 (*Deduction of Tax*), Clause 14.8 (*No filing or stamp taxes*), Clause 14.12 (*No proceedings pending or threatened*) and Clause 14.16 (*Insolvency*) and (B) the Potential Event of Default under paragraph (a) of Clause 14.9 (*No default*)) on each day throughout the continuation of this Agreement and so long as any sum is or may become payable under any Transaction Document with reference to the facts and circumstances subsisting from time to time (except that those contained in paragraphs (a) to (c) of Clause 14.17 (*Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

14.21 Acknowledgement of reliance

The Buyer acknowledges that the Seller has entered into this Agreement and the other Transaction Documents in reliance upon the representations and warranties contained in this Clause 14 (*Representations and Warranties*).

15. INFORMATION UNDERTAKINGS

The undertakings in this Clause 15 (*Information Undertakings*) remain in full force and effect from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents.

15.1 Financial Statements

The Buyer shall supply to the Seller:

- (a) as soon as the same become available, but in any event within [•] days after the end of each of its financial years its audited financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within [•] days after the end of each quarter of each of its financial years its financial statements for that financial quarter.

15.2 Requirements as to Financial Statements

- (a) Each set of financial statements delivered by the Buyer pursuant to Clause 15.1 (*Financial Statements*) shall be certified by at least [two (2) of directors or senior officers] of the Buyer and in the case of audited financial statements, also by the Buyer's auditors as fairly representing its financial condition as at the date at which those financial statements were drawn up.
- (b) The Buyer shall procure that each set of financial statements delivered pursuant to Clause 15.1 (*Financial Statements*) is prepared using GAAP consistently applied.

15.3 Information: miscellaneous

The Buyer shall supply to the Seller:

- (a) all documents dispatched by the Buyer to its shareholders (or any class of them) or its creditors, to the extent specifically permitted by the Applicable Law and/or the relevant credit documents, generally at the same time as they are dispatched;
- (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;
- (c) promptly on the request of the Seller any documentation or other evidence which is reasonably requested by the Seller to enable the Seller to carry out and be satisfied with the results of all know your customer requirements; and

- (d) promptly, such further information regarding its financial condition, business and operations as the Seller may reasonably request as may be mutually agreed between the parties provided that the Buyer shall not be unreasonable in agreeing and supplying such information.

15.4 Notification of default

- (a) The Buyer shall notify the Seller 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 Seller, the Buyer shall supply to the Seller a certificate signed by [two (2) 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).

16. POSITIVE UNDERTAKINGS

The Buyer undertakes to the Seller that from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents, it shall:

16.1 Corporate existence

Preserve, renew and keep in full force and effect its corporate existence as a duly incorporated [•] validly existing under the laws of [•].

16.2 Consents

Promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Seller of,

any Consent required under any law or regulation in [•] to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in [•] of any Transaction Document.

16.3 Compliance with laws

Comply in all respects with all Applicable Laws (including Environmental Law) to which it may be subject.

16.4 Pari Passu

Ensure its payment obligations under the Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

16.5 Taxes

Pay all Taxes to which it is assessed liable as they fall due (unless the same is being contested in good faith by appropriate means and provided that it has made adequate reserves therefor).

16.6 Books and Records

Consistently prepare and maintain in compliance with [•] law, proper and adequate books and records reflecting fully all transactions entered into by the Buyer.

16.7 Further assurance

- (a) Create and perfect the Security to be conferred on the Seller by or pursuant to the Security Documents and maintain at all times thereafter such Security in full force and effect as a first ranking Security and, to the extent required pursuant to the Transaction Documents and/or the Applicable Law, re-grant, renew and/or replace such Security.
- (b) Take all such action as the Seller may request for the purpose of perfecting any such Security.
- (c) If the Seller lawfully exercises any power or right with respect to any of the assets the subject of any Security under the Security Documents, the Buyer shall do everything within its power to permit the exercise of such power or right by the Seller.

16.8 Conditions

To the extent that any condition required to be satisfied pursuant to Schedule 2 (*Conditions Precedent*) has been waived on the condition that the Buyer shall comply with that and/or any other requirement at or before a particular time, so comply with such requirement.

16.9 Transaction Documents

Comply with its obligations under each Transaction Document to which it is or will be party and ensure that the Transaction Documents to which it is a party are and remain in full force and effect.

16.10 Insurance

Maintain or caused to be maintained such appropriate insurances on and in relation to its business and assets with reputable insurance companies to the extent as is customary for financial institutions carrying on the same or substantially similar business.

17. NEGATIVE UNDERTAKINGS

The Buyer undertakes to the Seller that from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents, it shall not, without first obtaining the written consent of the Seller (such consent shall be exercised by the Seller with due regard to the prevalent market practices at the relevant time):

17.1 Financial indebtedness

Incur, permit or subsist or have outstanding any Financial Indebtedness other than Permitted Indebtedness.

17.2 Disposals

Enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, assign or dispose of all or any of its assets, except:

- (a) as expressly permitted in or contemplated by a Transaction Document;
- (b) any sales or dispositions made on an arms' length commercial basis in the ordinary course of business provided that such sale is not likely to have a Material Adverse Effect;
- (c) any sales or dispositions of surplus, obsolete or worn out equipment; or
- (d) any sales or dispositions to the extent such assets have been replaced with substantially similar assets of equal or greater value.

17.3 Constitutional Documents

Materially amend, or permit any material amendment to, its constitutional documents, nor alter any material right attaching to its shares, or permit the same, which amendment or alteration is likely to have, or result in, a Material Adverse Effect.

17.4 Merger

Enter into any amalgamation, demerger, merger or corporate reconstruction, which is likely to have, or result in, a Material Adverse Effect.

17.5 Change of business

Enter into any business or activity other than the business permitted in accordance with its constitutional documents.

17.6 Agreements

Enter into any agreement or obligation:

- (a) which might reasonably be expected to have a Material Adverse Effect; or
- (b) the performance of which would result in a breach of any provision of this Agreement by it.

17.7 Security

Do or omit to do anything, or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by the Buyer by or pursuant to, or any Security expressed to have been created by the Buyer and to be evidenced in any Security Document.

18. FINANCIAL UNDERTAKINGS

18.1 Financial ratios

The Buyer undertakes to the Seller that, from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents:

- (a) its Current Ratio is not less than [•];
- (b) the ratio of its Debt to Equity does not exceed [•]; and
- (c) its Debt Service Coverage Ratio (“DSCR”) is greater than or equal to [•].

18.2 Calculations

The ratios set out in Clause 18.1 (*Financial ratios*) shall be tested [semi-annually] on the basis of the audited and unaudited financial statements submitted by the Buyer pursuant to Clause 15.1 (*Financial Statements*).

18.3 Definitions

For the purposes of the Finance Documents:

[“**Current Assets**” means, at any date, the balance of the Buyer’s stock, inventory, work in progress, accounts receivable, cash at bank, cash in hand, prepayments and other receivables due within one year of such date.]

[“**Current Liabilities**” means, at any date, the Buyer’s liabilities falling due within one year of such date, including amounts due to trade creditors and accounts payable, accrued expenses, short-term debt

(including overdrafts outstanding), lease rental, and principal and commission, profit or mark-up amounts of long-term debt maturing within twelve (12) months of such date.]

[“**Current Ratio**” means the ratio of Current Assets to Current Liabilities.]

[“**DSCR**” (Debt Service Coverage Ratio) means, at the time the DSCR is to be determined and for the previous twelve (12) Month period ending on the date of determination, the ratio of EBITDA for such twelve (12) Month period, less:

(a) increases (plus decreases) in Net Working Capital during that twelve (12) Month period; and

(b) Permitted Capital Expenditure paid by the Buyer in that twelve (12) Month period,

to Debt Service paid by the Buyer during such twelve (12) Month period.]

[“**EBITDA**” means, for the relevant period, earnings as stated in the income statement of the Buyer (excluding any extraordinary and non operating income), and calculated before the deduction of depreciation, amortization, tax and commission, and other finance and similar charges (net of commission and other similar income).]

[“**Net Working Capital**” means Current Assets minus Current Liabilities.]]

19. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 19 (*Events of Default*) is an Event of Default.

19.1 Non-payment

The Buyer does not pay on the due date any amount payable pursuant to a Transaction Document to which it is a party at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error and payment is made within [three (3)] Business Days of its due date.

19.2 Non satisfaction of conditions

To the extent that any condition required to be satisfied pursuant to Schedule 2 (*Conditions Precedent*) has been waived on the condition that the Buyer shall comply with that and/or any other requirement at or before a particular time, the Buyer fails to so comply.

19.3 Financial Undertakings

The Buyer fails to comply with the financial undertakings contained in Clause 18 (*Financial Undertakings*).

19.4 Other obligations

The Buyer fails to duly and punctually comply with any provision of the Transaction Documents (other than those referred to in Clause 19.1 (*Non-Payment*)) to which it is a party unless failure to comply is capable of remedy and is remedied within [five (5)] Business Days of the Seller giving notice to the Buyer, or the Buyer becoming aware, of the failure to comply.

19.5 Misrepresentation

Any representation or statement made or deemed to be made by the Buyer in any Transaction Document to which it is a party or any other document delivered by or on behalf of the Buyer under or in connection

with such Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

19.6 Cross default

- (a) Any Financial Indebtedness of the Buyer is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Buyer is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Buyer is cancelled or suspended by a creditor of the Buyer as a result of an event of default (however described).
- (d) Any creditor of the Buyer becomes entitled to declare any Financial Indebtedness of the Buyer due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 19.6 (*Cross default*) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than [•] (or its equivalent in any other currency or currencies).

19.7 Insolvency

- (a) The Buyer 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.
- (b) The value of the assets of the Buyer is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Buyer.

19.8 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 or dissolution of the Buyer;
- (b) a composition, compromise or arrangement with any creditor of the Buyer;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Buyer; or
- (d) enforcement of any Security over any assets of the Buyer.

19.9 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Buyer, or the Buyer fails to comply with the requirements of any court or other legal judgement or order made against it.

19.10 Unlawfulness

It is or becomes unlawful for the Buyer to perform any of its obligations under the Transaction Documents to which it is a party.

19.11 Transaction Documents

- (a) Any Transaction Document, or any provision of a Transaction Document is not, or ceases to be, valid and binding, becomes void and unenforceable, or is required by any law or regulation to be waived, amended or modified.
- (b) Any obligation expressed to be assumed by the Buyer under a Transaction Document to which it is a party becomes void and unenforceable.

19.12 Repudiation

The Buyer repudiates a Transaction Document to which is a party or evidences an intention to repudiate a Transaction Document to which it is a party.

19.13 Security

The Buyer otherwise does or fails to do any act or thing within its control which act or failure to act prejudices all or any of the Security constituted by the Security Documents or any Security required by the Transaction Documents or otherwise causes such Security to cease to be effective or fails to maintain in favour of the Seller first ranking perfected Security on substantially all of the collateral described therein.

19.14 Government intervention

Any action is taken by any governmental authority to seize, nationalise, expropriate or compulsorily acquire all or a majority of the issued shares of the Buyer or the whole or any material part of the revenues of the Buyer.

19.15 Material adverse change

Any event or circumstance occurs which the Seller reasonably believes has had or might have a Material Adverse Effect.

19.16 Consequences of an Event of Default

- (a) Event of Default before Delivery of the Works
 - (i) If an Event of Default occurs at any time after the signing of this Agreement and before the Delivery of the Works, the Seller may by notice in writing to the Buyer immediately terminate this Agreement and require the Buyer (provided that the Buyer is solvent and is, in the reasonable opinion of the Seller, able to pay the purchase price) to purchase the incomplete Works as of the date of termination for the purchase price to be an amount equal to the Termination Amount.
 - (ii) The Buyer acknowledges that the Termination Amount payable by the Buyer under paragraph (a) (i) above to be a reasonable pre-estimate of a fair compensation of the losses to be incurred by the Seller if this Agreement is terminated under paragraph (a) (i) of Clause 19.16 (*Consequences of an Event of Default*) prior to Delivery of the Works.
 - (iii) The amounts (if any) paid by the Buyer till the date of termination of this Agreement shall be adjusted against the amounts due from the Buyer on account of the purchase price to be paid in respect of the purchase of the incomplete Works and the Termination Amount under paragraph (a) (i) above.
 - (iv) If in the reasonable opinion of the Seller, the Buyer is not solvent or unable to pay the purchase price in respect of the incomplete Works, the Seller shall be entitled to sell the same to a third party and if the actual purchase price received by the Seller is less than the cost of the Seller incurred in respect of the construction or procurement of the Works till the date of termination

and the Termination Amount, the Seller shall be entitled to claim the difference from the Buyer or recover the same through its claim against the Buyer or its assets.

- (v) The rights and remedies of the Seller under paragraph (a) of this Clause 19.16 (*Consequences of an Event of Default*) shall not prejudice the Seller's right of indemnity under this Agreement, any other Transaction Documents or any Applicable Law.
 - (vi) The Seller shall be entitled to enforce all or any part of the Security constituted by the Security Documents against the Buyer in order to recover any amount due to it from the Buyer under paragraph (a) of this Clause 19.16 (*Consequences of an Event of Default*) or this Agreement or to indemnify itself against the losses and damage sustained by it arising out of, or in connection with, the breach by the Buyer of its obligations under this Agreement.
 - (vii) Upon termination of this Agreement the Seller shall be discharged of its obligations under this Agreement.
- (b) Event of Default after Delivery of the Works
- (i) If an Event of Default occurs after the Delivery of the Works (so long as any sums (including but not limited to the *Istiṣnā'* Purchase Price or any part thereof) payable to the Seller under this Agreement remain due), the Seller may by notice to the Buyer immediately declare that:
 - (A) all sums under this Agreement and any Transaction Documents are immediately due and payable whereupon, the same shall become due and payable and the Buyer shall immediately pay the same to the Seller; and/or
 - (B) the Security Documents (or any of them) have become enforceable, whereupon the same shall become immediately enforceable.
 - (ii) Notwithstanding the termination of this Agreement pursuant to paragraph (b) (i) of this Clause 19.16 (*Consequences of an Event of Default*), the Buyer shall remain obliged in respect of its obligations outstanding at the date of termination.
 - (iii) The Buyer's total liability under this Agreement in the event of termination of this Agreement under paragraph (b) (i) of this Clause 19.16 (*Consequences of an Event of Default*) shall not exceed the amount which the Seller has, at that time, paid, incurred or become liable to pay in respect of the Works and/or performance of its obligations, plus the amount of any actual loss (including but not limited to the legal and enforcement costs) as certified by the Seller as having been incurred by the Seller as a result of termination of this Agreement.
- (c) The right to terminate this Agreement under this Clause 19.16 (*Consequences of an Event of Default*) shall be without prejudice to any other right or remedy of the Seller under any other Transaction Document and/or the Applicable Law.

20. LATE PAYMENTS

- (a) If the Buyer is unable to meet its obligations to make any payment(s) due under any Transaction Document (the "**Overdue Amount**") at the time, in the currency, and in the manner specified in such Transaction

Document, then the Buyer shall [be accorded with a grace period of [three (3)] Business Days (the “**Grace Period**”) within which it shall] pay the Overdue Amount to the Seller.

- (b) Without prejudice to the Seller’s rights and remedies under the Transaction Documents, [if the Buyer fails to pay the Overdue Amount within the Grace Period then] the Buyer hereby undertakes to pay to the Seller the Overdue Amount along with a donation for charitable purposes calculated at the rate of [two per cent. (2%)] per annum of any such Overdue Amount.

21. REIMBURSEMENT AND SET-OFF

21.1 General Losses

The Buyer shall promptly reimburse the Seller in respect of all losses, liabilities, damages, costs and expenses, on a full indemnity basis, which the Seller may incur as a consequence of:

- (a) any Default or any other breach by the Buyer of any of its obligations under any Transaction Document; or
- (b) a failure by the Buyer to pay any amount due under a Transaction Document on its due date.

21.2 Set-Off

- (a) The Buyer hereby authorises the Seller without prior notice or any further authorisation or approval:
- (i) to apply any credit balance, whether or not then due, which is at any time held by the Seller for the account of the Buyer at any office of the Seller, and/or
- (ii) to apply any other indebtedness owing by the Seller to the Buyer (whether or not then due),
- in or towards satisfaction of any monies owing by the Buyer to the Seller under this Agreement or any other Transaction Document.
- (b) The Seller shall not be obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other rights to which the Seller is at any time otherwise entitled.

21.3 Indemnity

- (a) The Buyer will indemnify and keep indemnified the Seller from and against all actions, claims, proceedings, costs, liabilities and expenses whatsoever and howsoever incurred or arising in relation to:
- (i) the Works and/or the procurement of the Works from the EPC Contractors by the Seller;
- (ii) any dispute in relation to the EPC Contracts or any of them,
- except to the extent that any such actions, claims, proceedings, costs, liabilities or expenses result directly from the gross negligence or wilful default of the Seller.
- (b) The Buyer shall within [five (5)] Business Days of demand by the Seller pay to Seller an amount equal to the loss, liability or cost which the Seller determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Seller in respect of a Transaction Document.

22. AMENDMENTS AND WAIVERS

Any amendment or waiver of any provision of any Transaction Document and any waiver of any default under any Transaction Document shall only be effective if made in writing and signed by or on behalf of both the Seller and the Buyer.

23. ASSIGNMENT

23.1 Assignment by Buyer

The Buyer may not assign or transfer any of its rights, benefits and obligations under the Transaction Documents.

23.2 Assignment by Seller

The Seller may at its sole discretion procure or cause to be procured the performance of its obligations under this Agreement through an agent in accordance with the principles of *shari'ah* or subcontractors or external service providers. Accordingly, the Seller may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of the Transaction Documents.

23.3 Ancillary Provisions

The Buyer shall execute and do all such acts and things as the Seller may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to Clause 23.2 (*Assignment by Seller*).

24. NOTICES

24.1 Delivery

- (a) Each notice, demand or other communication to be given or made under any Transaction Document shall be in writing and delivered or sent to the relevant party at its address or fax number set out in its respective place for signature below (or such other address or fax number as the addressee has by not less than five (5) Business Days' prior written notice specified to the other party).
- (b) Any communication or document made or delivered by one person to another under or in connection with the Transaction Documents will only be effective:
 - (i) if by way of fax, when received in legible form (as evidenced by a fax transmission report showing that the entire communication was received); or
 - (ii) if by way of letter, when left at the relevant address,

provided that a communication which is received after 3:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be delivered on the next full working day in that place.

24.2 Electronic communication

- (a) Any communication to be made between the parties in relation to routine and administrative matters under or in connection with the Transaction Documents, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 3:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be effective on the next full working day in that place.

24.3 English language

- (a) Any notice given under or in connection with any Transaction Document must be in English.
- (b) All other documents provided under or in connection with any Transaction Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Seller, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

25. BENEFIT OF THE AGREEMENT

The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

26. PARTIAL INVALIDITY

If, at any time, any provision of a Transaction Document 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.

27. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Seller or the Buyer, any right or remedy under a Transaction Document 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 the Transaction Documents are cumulative and not exclusive of any rights or remedies provided by law.

28. COUNTERPARTS

Each Transaction Document may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery by facsimile or electronic communication of an executed counterpart of a signature page to a Transaction Document shall be effective as delivery of an original executed counterpart of such Transaction Document.

29. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

30. JURISDICTION OF [•] COURTS

30.1 Jurisdiction

Without prejudice to Clause 311 (*Arbitration*), the Buyer irrevocably agrees for the benefit of the Seller that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

30.2 Waiver of objection to jurisdiction

The Buyer irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 30.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

30.3 Process Agent

(c) The Buyer agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 30.3 (*Process Agent*) ceases to be effective in respect of the Buyer, the Buyer shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Seller shall be entitled to appoint such a person by notice to the Buyer.

(d) The Buyer further agrees that failure by a process agent to notify the Buyer of the process will not invalidate the proceedings concerned.]⁸

30.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 30.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Seller to take proceedings against the Buyer in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

30.5 Consent

The Buyer hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

30.6 Waiver of Immunity

To the extent that the Buyer 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 Buyer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

31. ARBITRATION

31.1 Seller's Option

Notwithstanding Clause 300 (*Jurisdiction of [•] Courts*), the Seller may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 31 (*Arbitration*).

31.2 Arbitration

The Buyer irrevocably agrees for the benefit of the Seller that any disputes which may arise out of or in connection with this Agreement or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration ("**LCIA**") in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 31.2 (*Arbitration*).

31.3 Procedure for arbitration

- (e) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (f) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the "**Tribunal**"), one nominated by the Buyer, one nominated by the Seller and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Buyer and the Seller may request the President of the LCIA (or such other person as the Buyer and the Seller may agree) to designate someone to effect such appointment.
- (g) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (h) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Buyer, the Seller or any person that directly or indirectly beneficially owns any share capital of the Buyer or the Seller;
 - (ii) have any political or business ties to the country of establishment of the Buyer or the Seller; or
 - (iii) be a person with familial ties to the Buyer or the Seller.

- (i) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (j) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (k) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (l) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (m) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (n) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

31.4 Waiver of objection to Arbitration

The Buyer irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 31 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

31.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari’ah* 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.

32. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements

hereunder and pursuant to any other Transaction Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the Seller in favour of the Buyer.

33. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the date first written above.

SCHEDULE 1**Construction Documents and Works****Part A****Construction Documents**

The Constructions Documents include the following:

[•]

Part B**Description of the Works**

[•]

SCHEDULE 2

Conditions Precedent

The following are the documents and evidence referred to in Clause 3 (*Delivery and other conditions*). Documents shall be supplied in such number of copies or counterparts as the Seller may require and copy documents shall be certified to be true, complete and up-to-date, in a manner reasonably satisfactory to the Seller by a duly authorised signatory of the Buyer or other party concerned.

1. Transaction Documents

The following Transaction Documents duly executed by all of the parties thereto:

- (a) this Agreement;
- (b) the Agency Agreement;
- (c) [the No Objection Letter;]
- (d) the Fee Letter; and
- (e) the Security Documents.

2. Perfection of Security

- (a) Certified copies of all notices required to be given under the Assignment of Insurance Proceeds and the Assignment of Guarantees;
- (b) Originals of all acknowledgments duly executed by the relevant parties required to be obtained under the Assignment of Insurance Proceeds and the Assignment of Guarantees; and
- (c) Such other documents as the Seller reasonably considers to be necessary in connection with the creation, validity, perfection or priority of the assignments, transfers and Security created by or pursuant to, or, as the case may be, evidenced in, the Security Documents.

3. Corporate Documents

3.1 In relation to the Buyer:

- (a) Certified copies of the Buyer's Memorandum of Association, Articles of Association and any other constitutional documents and all amendments thereto (together with certified English translations);
- (b) A certified copy of the commercial registration certificate of the Buyer;
- (c) A certified copy of the resolution of the board of directors or shareholders (as appropriate) of the Buyer or other corporate authority authorising a specified person or persons to execute the Transaction Documents to which it to be a party on its behalf and authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is to be a party. To the extent that any Transaction Documents have already been entered into by the Buyer, then the relevant resolution or other corporate authority shall ratify the entry into of such Transaction Documents;

- (d) An incumbency certificate or any other document evidencing the position and signature of each person authorised by the resolution or other corporate authority referred to in paragraph (c) above;
- (e) To the extent that a person authorised by the resolutions referred to in paragraph (c) above delegates some or all of his authorities thereunder to another person:
 - (i) a certified copy of the letter or other instrument of delegation; and
 - (ii) an incumbency certificate evidencing the position and signature of such delegate.

With regard to the documents required to be provided by the Buyer pursuant to paragraphs (d) and (e) above, it is the intention of the parties that due regard will be given to substance of such documents as opposed to their forms.

4. Legal Opinions

- (a) A [•] law legal opinion of [•] in relation to power and authority of the Buyer to enter into the Transaction Documents to which it is a party.
- (b) A [•] law legal opinion of [•] in relation to enforceability of the Transaction Documents.

5. Certificates

5.1 A certificate signed by the authorised signatory(ies) of the Buyer, confirming and certifying that:

- (a) Purchasing the Works of an amount equal to the *Istisnā'* Purchase Price would not cause any limit (purchasing or otherwise) binding on the Buyer to be exceeded;
- (b) all the representations and warranties set out in Clause 14 (*Representations and Warranties*) are true and correct;
- (c) no Event of Default or Potential Event of Default has occurred and is continuing;
- (d) each Transaction Document to which it is a party is in full force and effect; and
- (e) there is no circumstance (to the best of its knowledge and belief (having made due and careful enquiry)) existing at the date of signing this Agreement which might reasonably be expected to have a Material Adverse Effect.

6. Financial Statements

Certified copies of the most recently available audited and unaudited financial statements of the Buyer.

7. Miscellaneous

- (a) Evidence that all relevant fees, costs and expenses then due from the Buyer have been paid.
- (b) Such other Consent or other document, opinion or assurance as the Seller may request in relation to the Transaction Documents.

SCHEDULE 3

Payment of *Istiṣnā'* Purchase Price

1. Payment of *Istiṣnā'* Purchase Price prior to the Delivery

Prior to the Delivery of the Works, the Buyer shall pay the following *Istiṣnā'* Purchase Price as advance consideration payment to the Seller on the date and in the amount as set out below:

	Date	Amount (in [·])
1.	[·]	[·]
2.	[·]	[·]
3.	[·]	[·]
4.	[·]	[·]
5.	[·]	[·]
6.	[·]	[·]
7.	[·]	[·]
8.	[·]	[·]

2. Payment of *Istiṣnā'* Purchase Price post Delivery

Upon the occurrence of the Delivery of the Works, the Buyer shall pay the following *Istiṣnā'* Purchase Price to the Seller on the date and in the amount as set out below:

	Date	Amount (in [·])
1.	[·]	[·]
2.	[·]	[·]
3.	[·]	[·]
4.	[·]	[·]
5.	[·]	[·]
6.	[·]	[·]
7.	[·]	[·]
8.	[·]	[·]
9.	[·]	[·]
10.	[·]	[·]
11.	[·]	[·]
12.	[·]	[·]
13.	[·]	[·]
14.	[·]	[·]
15.	[·]	[·]
16.	[·]	[·]
17.	[·]	[·]
18.	[·]	[·]
19.	[·]	[·]
20.	[·]	[·]
21.	[·]	[·]
22.	[·]	[·]
23.	[·]	[·]
24.	[·]	[·]
25.	[·]	[·]
26.	[·]	[·]
27.	[·]	[·]
28.	[·]	[·]
	Total	[·]

SCHEDULE 4**Form of Certificate of Release**

Dated: [•]

From: [•] as the Seller

To: [•] as the Buyer

Dear Sirs,

Purchase *Istiṣnā'* Agreement dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Certificate of Release. Terms defined in the Agreement have the same meaning in this Certificate of Release unless given a different meaning in this Certificate of Release.
2. We hereby confirm that:
 - (a) we have received the *Istiṣnā'* Purchase Price and all other sums due and payable under any other Transaction Documents in full to our entire satisfaction;
 - (b) we have no further claims against [•] as the Buyer under the Agreement and/or any other Transaction Documents;
 - (c) the Security created pursuant to the Security Documents stand released is no longer registered with any governmental authority in [•] and in favour of the Seller; and
 - (d) [•] as the Buyer is released from all obligations under the Agreement and/or any other Transaction Documents.
3. This Certificate of Release is irrevocable.
4. This Certificate of Release is governed by the laws of [•].

Yours faithfully

For and on behalf of

[•] as the Seller

Name:

Title:

SCHEDULE 5**Form of Certificate of Delivery**

Dated: [•]

From: [•] as the Buyer

To: [•] as the Seller

Dear Sirs

Purchase *Istiṣnā'* Agreement dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Certificate of Delivery. Terms defined in the Agreement have the same meaning in this Certificate of Delivery unless given a different meaning in this Certificate of Delivery.
2. We hereby confirm that:
 - (a) we have obtained possession of the Works from the relevant EPC Contractors;
 - (b) the Works are in a satisfactory state in accordance with the agreed specifications in the EPC Contracts;
 - (c) the Works are ready for use in connection with the Project;
 - (d) title to the Works has passed to the Buyer.
3. This Certificate of Delivery is irrevocable.
4. This Certificate of Delivery is governed by the laws of [•].

Yours faithfully

For and on behalf of

[•] as the Buyer

Name:

Title:

SIGNATURE PAGE

The Buyer

SIGNED for and on behalf of _____) [•] _____)

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Seller

SIGNED for and on behalf of _____) [•] _____)

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SIGNED for and on behalf of _____) [•] _____)

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 To be mutually agreed by the Parties.
- 2 To be mutually agreed by the Parties.
- 3 To be mutually agreed by the Parties.
- 4 A separate “No Object Letter” may not be required if the Purchase *Istisnā'* Agreement serves as the required “no objection”.
- 5 A new transaction document known as “MoU or Undertaking” may be required to address prepayment, cancellation and discount calculation.
- 6 To the extent relevant, this clause can be reflected in a separate MoU/Undertaking.
- 7 Parties may choose to move this clause in a common terms agreement to the extent there is a common terms agreement in relation to the financing.
- 8 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).



APPENDIX B

Istiṣnā' Based Financing Agency Agreement

.....

dated
[Insert date]

by

[Name of banks/financial institutions]
as principals (Seller)

and

[Name of the project company]
as agent

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS AGREEMENT (the “**Agreement**”) is dated 10 January 2011 and made

BETWEEN:

- (1) (a) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*] [*registered office*] at [*address*], (b) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*], and (c) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as principals (the “**Seller**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as agent (the “**Agent**”).

RECITALS

- (A) The Seller has agreed in accordance with the Purchase *Istiṣnā’* Agreement to procure construction and Delivery of the Works to the Agent.
- (B) The Seller has agreed to appoint the Agent to act as its agent in respect of, inter alios, the procurement of the Works in accordance with the EPC Contracts, subject to the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall have the following meanings. Unless otherwise defined, terms defined in the Purchase *Istiṣnā’* Agreement shall have the same meanings when used herein.

“**Base Amount**” means the *Istiṣnā’* Purchase Price.

“**Construction Period**” means the period commencing on the date of this Agreement and ending on the Completion Date.

“**Partial Loss**” means all losses to the Works excluding Total Loss.

“**Purchase *Istiṣnā’* Agreement**” means a purchase *istiṣnā’* agreement dated on or about the date of this Agreement and entered into between [•] as seller and [•] as buyer in relation to the Works.

“**Site**” means the site designated for the Project.

“**Stage Payment**” means each amount to be paid by the Seller to the Agent for the construction of the Works (the aggregate of all such payments being equal to the Total Stage Payment Amount) on the relevant Stage Payment Date.

“**Stage Payment Date**” means each date for the payment of a Stage Payment in accordance with Schedule 2 (*Stage Payment Schedule*) or, if that date is not a Business Day, the next Business Day.

“**Total Loss**” means the total loss or destruction of, or damage to the whole of the Works or any event or occurrence that renders the whole of those assets permanently unfit for any economic use and (but only after

taking into consideration the proceeds of any insurances received in respect of the Works and the period of time required to reinstate the Works) the repair or remedial work in respect thereof is wholly uneconomical.

“**Total Stage Payment Amount**” means [•] ([•]).

1.2 Interpretation and construction

For the purposes of this Agreement, except as otherwise expressly provided, the rules of interpretation and construction set out in clause 1.2 (*Interpretation and Construction*) of the Purchase *Istiṣnā'* Agreement are hereby incorporated by reference, mutatis mutandis, as if fully set out herein.

2. APPOINTMENT AND FEE

2.1 Appointment

- (a) The Seller hereby appoints the Agent as its agent to enter into contract(s) with an entity or person to carry out the procurement of the design, engineering, supervision, management, construction, testing, commissioning and Delivery of the Works in accordance with the terms and conditions of this Agreement (including entering into any EPC Contracts with other entities or persons, certain other project documents and any other document as may be required or deemed necessary by Agent to complete the Works and to comply with the Agent's obligations under the EPC Contracts) during the Construction Period and for the performance of the other works provided for in this Agreement.
- (b) Subject to Clause 13 (*Expiry*) and the circumstances as set out in Clause 12 (*Events of Default*), the Agent's appointment is irrevocable.
- (c) The Agent hereby accepts its appointment as agent and agrees to act as agent for and on behalf of the Seller in this respect.

2.2 Agent's Fee

In consideration of the Agent acting as the agent of the Seller, the Agent shall receive a fee in the amount of [US\$100 (one hundred Dollars)], payable on the date of this Agreement (the receipt and adequacy of which the Agent acknowledges).

2.3 Agent's Authority

The Agent shall have no authority, express or implied, to act for the Seller or to incur any liability (howsoever arising) for or on behalf of the Seller unless expressly permitted by the terms and conditions of this Agreement.

3. DELIVERY OF WORKS AND TITLE

- (a) The Agent shall notify the Seller by executing and sending a Certificate of Delivery to the Seller as soon as reasonably practicable when it has taken Delivery of the Works.
- (b) The Agent shall take Delivery of the Works on behalf of the Seller in accordance with the EPC Contracts provided that the Agent acknowledges, subject to the provisions of the Transaction Documents and the EPC Contracts, that the Seller shall be entitled to take Delivery of the Works.

- (c) The Agent acknowledges that title to the Works shall pass from the EPC Contractors to the Seller in accordance with the applicable terms and delivery mechanism set out in the EPC Contracts.
- (d) The Agent shall not do anything (or, so far as it is able, permit anything to be done) which may affect or imperil the Seller's right, title and ownership of the Works and its benefits.
- (e) The Agent shall reasonably and to the satisfaction of the Seller take all actions necessary and required under the Applicable Law to protect the right of ownership of the Seller in the Works, including the obtaining of any requisite Consents and, if necessary, the filing of this Agreement and any other Transaction Documents with any competent agency or other instrumentality.
- (f) The Agent shall allow the Seller the right, on the giving of reasonable notice, to view the Works during normal working hours.
- (g) The Agent shall not sell, assign, sub-let, pledge, mortgage, charge, encumber or part with possession of, or otherwise deal with the Works or any of the benefits thereof nor create nor allow to be created any obligation or encumbrance on the Works or to separate the Works except for repairs or otherwise with the prior written consent of the Seller (acting reasonably) or in accordance with the Transaction Documents and, in the event of any breach of this paragraph by the Agent, the Seller shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the Works from any encumbrance and shall be entitled to recover such sum from the Agent forthwith.

4. AGENT'S OBLIGATIONS IN RELATION TO WORKS

4.1 Engineering Procurement and Construction

The Agent undertakes to the Seller that:

- (a) it has undertaken to select qualified firms, persons and contractors that have the ability to design, engineer, construct and commission the Works in accordance with the requirements of the relevant EPC Contracts;
- (b) it shall keep [•] engaged as Agent's representative to assist in the implementation of the Works;
- (c) it shall keep [•] engaged as principal architect designer consultant and to supervise the architectural and interior construction aspects of the EPC Contracts;
- (d) it shall keep [•] engaged as cost management and quantity surveyor in relation to the EPC Contracts;
- (e) it shall keep [•] engaged as engineering design consultant and to supervise the engineering construction of the EPC Contracts;
- (f) it shall keep [•] engaged for design and supervision of the Information Technology and security systems in relation to the Works;
- (g) it shall keep [•] engaged as project manager on the Site to manage the construction aspect of the EPC Contracts;
- (h) it shall keep [•] engaged for supervision of environmental and social safeguard aspects of the Works;

- (i) it shall keep any other persons, firms and contractors in addition to or in substitution (as the case may be) of the persons, firms and contractors as set out in paragraphs (b) to (g) above to ensure adequate and proper management, design, supervision and construction in relation to the Works;
- (j) it shall enable the EPC Contractors to have all necessary and sufficient access to the Site to facilitate the performance of the EPC Contracts;
- (k) it shall conduct regular inspections of the Works during the Construction Period; and
- (l) it shall, at its sole expense, enforce for the Seller's account, all rights and powers of the Seller under any manufacturer's, vendor's or dealer's warranty on any item of the Works.

4.2 Quality of Works

The Agent undertakes to the Seller that it shall ensure that the quality of the Works will materially conform to the Specifications in accordance with the terms and conditions and any and all processes set out in the EPC Contracts.

4.3 Completion and Delivery of Works

The Agent undertakes to the Seller that it shall ensure that Completion and Delivery of the Works will happen on or prior to the date as set out in the Construction Documents as the time for completion of the Works in accordance with the terms and conditions and any and all processes set out in the EPC Contracts.

4.4 Total Stage Payment Amount

- (a) The Agent acknowledges that the maximum amount allocated by the Seller for the procurement of the construction of the Works is the Total Stage Payment Amount.
- (b) The Agent undertakes to the Seller that it shall immediately notify the Seller if the total costs for the procurement of the construction of the Works exceeds or likely to exceed the Total Stage Payment Amount.
- (c) The Agent acknowledges that the Seller is not obligated to pay any amount that exceeds the Total Stage Payment Amount.

4.5 Utilities

The Agent undertakes to the Seller that it shall ensure that at the time of Delivery the Works is capable of being used for the purpose for which it was intended. This requires in particular that the Works is fit to be connected to all necessary live utilities and drainage/sewage networks.

4.6 Insurance

- (a) The Agent irrevocably undertakes with the Seller that during the Construction Period, the Agent shall, for the benefit and account of the Seller:
 - (i) be responsible to procure, renew and maintain comprehensive insurance covers of any kind which are required by any Applicable Law or custom in respect of the Works upon the terms and subject to the conditions set out below;
 - (ii) ensure that any such insurance against Total Loss:
 - (A) shall be for an insured amount, at all times, at least equal to the full reinstatement value of the Works. The Agent shall ensure that the full reinstatement value of the Works is

adequately covered (for the avoidance of doubt the full reinstatement value of the Works shall not be less than an amount equal to the Base Amount) at any time;

- (B) is provided by a reputable insurer and one which is at all times in good financial standing (having full regard to paragraph (A) above);
 - (iii) make such enquiries and obtain such assurances as it deems fit to ensure that paragraph (ii) (B) above is, and shall at all times be, fully complied with;
 - (iv) ensure that such insurance is otherwise satisfactory to ensure compliance with the Agent's obligations under this Clause 4.6 (*Insurance*);
 - (v) diligently make and pursue any claim under such insurance;
 - (vi) ensure that nothing is done or omitted to be done which is contrary to the terms of any such insurance, or which might result in such insurance being restrained, repudiated, vitiated, cancelled, made void or voidable, or otherwise become prejudiced or impaired; and
 - (vii) ensure that in the event of a Total Loss occurring all such insurance proceeds are paid to the Seller no later than the 30th calendar day after Total Loss occurring and the insurer will be directed accordingly. If any such insurance amounts are not paid to the Seller by the 30th calendar day after Total Loss occurring due to any default on the part of the Agent, the Agent shall be responsible for such insurance amounts (unless it proves beyond doubt that the shortfall in the insurance proceeds is not attributable to its negligence or failure to comply with the terms of this Agreement insofar as they relate to insurance); and
 - (viii) be responsible for ensuring that the Works are insured against Partial Loss to the Works as may be normally required by Good Industry Practice. In the event of a Partial Loss, the Agent shall procure that the insurance proceeds of such insurances are to be utilised in repairing any damage to the Works.
- (b) The Agent shall be, and shall at all times remain, fully responsible, if the insurer's failure to pay arises as a result of any failure by the Agent to strictly comply with paragraph (a) of this Clause 4.6 (*Insurance*) above. Subject to paragraph (a)(vii) of this Clause 4.6 (*Insurance*), if, following a Total Loss, paragraph (a) of this Clause 4.6 (*Insurance*) is not strictly complied with and as a result the amount paid (if any) to the Seller pursuant to paragraph (a)(vii) of this Clause 4.6 (*Insurance*) is less than the Base Amount (the difference between the Base Amount and the amount paid to the Seller being the "**Total Loss Shortfall Amount**"), the Agent irrevocably and unconditionally undertakes to pay (in same day, freely transferable, cleared funds) the Total Loss Shortfall Amount directly to the Seller by no later than close of business in [•] on the 31st calendar day after Total Loss has occurred. Thereafter, and subject to the Agent's strict compliance with this paragraph (b) of this Clause 4.6 (*Insurance*), any insurance proceeds received shall be for the Agent's sole account.

5. PAYMENTS

5.1 Calculation

- (a) Subject to Clause 5.2 (*Conditions Precedent for Stage Payments*) below, the Seller undertakes to pay the Stage Payment to the Agent in [•] on each Stage Payment Date for construction of the Works in accordance with the terms of this Agreement.

- (b) The Seller shall be under no obligation to pay any amount in excess of the Total Stage Payment Amount for construction of the Works.
- (c) The Agent shall certify any amount so exceeding the Total Stage Payment Amount and notify the Seller immediately.

5.2 Conditions Precedent for Stage Payments

Notwithstanding any provisions of this Agreement, the obligation of the Seller to pay any Stage Payment to the Agent is subject to the conditions that, as regards the Purchase *Istiṣnā'* Agreement:

- (a) no Default has occurred and is continuing;
- (b) all of the representations and warranties which are repeated pursuant to Clause 7.19 (*Repetition*) are true and correct;
- (c) no Material Adverse Effect has occurred and is continuing; and
- (d) the Seller has received all of the documents and evidence listed in Schedule 1 (*Conditions Precedent for Stage Payments*) (or waived the requirement to deliver any such document or evidence (as the case may be)) and has found them to be reasonably satisfactory in both form and substance.

5.3 Cancellation for Event of Defaults and Illegality

- (a) If the Seller declares that all sums payable under this Agreement are immediately due and payable pursuant to the provisions of Clause 12.16 (*Consequences of an Event of Default*), then the Agent shall immediately pay the same to the Seller if the Agent continues to hold such amounts in its custody.
- (b) If, at any time, it is or will become unlawful in any jurisdiction for the Seller to perform any of its obligations as contemplated by the Transaction Documents:
 - (i) the Seller shall, promptly after becoming aware of the same, send a notice (the “**Notice of Illegality**”) to the Agent notifying it of the same and upon forwarding the Notice of Illegality to the Agent, all unpaid Stage Payments will be immediately cancelled and the Total Stage Payment Amount reduced to zero; and
 - (ii) the Agent shall immediately return to the Seller all unpaid Stage Payments.

6. INDEMNITY

- (a) The Agent shall indemnify and hold the Seller harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred or suffered by the Seller as a result of the breach of any of the Agent's obligations and undertakings under Clause 3 (*Delivery of Works and Title*) and Clause 4 (*Agent's Obligations in Relation to Works*).
- (b) The Agent shall indemnify and keep indemnified the Seller from and against all actions, claims, proceedings, costs, liabilities and expenses whatsoever and howsoever incurred or arising in relation to:
 - (i) the Works and/or the procurement of the Works from any of the EPC Contractors;
 - (ii) any dispute in relation to the EPC Contracts or any of them,

except to the extent that any such actions, claims, proceedings, costs, liabilities or expenses result directly from the gross negligence or wilful default of the Seller.

- (c) The Agent shall within [five (5)] Business Days of demand by the Seller pay to the Seller an amount equal to the loss, liability or cost which the Seller determines will be or has been (directly or indirectly) suffered as a result of the Agent's gross negligence or willful default.

7. REPRESENTATIONS AND WARRANTIES

The Agent represents and warrants to the Seller that:

7.1 Status

- (a) It is a [•] duly incorporated and validly existing under the laws of [•].
- (b) It has the power to own its assets and carry on its business as it is being conducted.

7.2 Capital

Its paid up share capital is [•] as at [•].

7.3 Binding obligations

The obligations expressed to be assumed by it in this Agreement and any other Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Schedule 1 (*Conditions Precedent for Stage Payments*), legal, valid, binding and enforceable obligations.

7.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do 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.

7.5 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, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

7.6 Validity and admissibility in evidence

All Consents required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in [•]; and
- (c) to enable it to create any Security expressed to have been created by it by or pursuant to, or, as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document and to ensure that such Security is first ranking Security in favour of the Seller,

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

7.7 Deduction of Tax

It has paid and discharged all Taxes imposed upon it or its assets.

7.8 No filing or stamp taxes

Under the law of [•] it is not necessary that the Transaction Documents 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 the Transaction Documents or the transactions contemplated by the Transaction Documents.

7.9 No default

- (a) No Event of Default or Potential Event of Default is continuing or might reasonably be expected to result from the entering into this Agreement.
- (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.

7.10 No misleading information

All written information supplied by the Agent is true, complete and accurate in all material respects as at the date it was given and is not untrue or misleading in any respect.

7.11 Pari passu ranking

Its payment obligations under the Transaction Documents 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 on 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 No immunity

It is subject to civil and commercial law and to legal proceedings and in any proceedings taken in [•] in relation to the Transaction Documents it will not be able to claim for itself or its assets immunity from suit, set off, judgment, execution, attachment or other legal process.

7.14 Security Documents

The Security expressed to be created by it under each Security Document is or will be on the date of execution or, if later, registration of such Security Document (where registration is required under any Applicable Law to perfect Security), constitute first ranking legal and valid Security.

7.15 No financial indebtedness

It has no Financial Indebtedness which is not Permitted Indebtedness.

7.16 Insolvency

It has not taken any action nor, so far as it is aware, having made due enquiry, have any other steps been taken or legal proceedings been started against it for its winding-up, bankruptcy, insolvency, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, trustee or similar officer of it or any or all of its assets in any jurisdiction.

7.17 Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition and operations during the relevant financial year.
- (c) There has been no material adverse change in its business or financial condition since the date of its Original Financial Statements.

7.18 **Shari'ah compliance**

The Agent has not relied on any representation made by the Seller as to the *shari'ah* compliance of the transaction contemplated by this Agreement or any other Transaction Document and has independently made its own assessment as to whether such transactions are compliant with *shari'ah*. The Agent agrees that it shall not assert or claim, whether in any court or arbitral proceedings or otherwise, that this Agreement or any other Transaction Document is not *shari'ah* compliant.

7.19 **Repetition**

The Agent undertakes with the Seller that the representations and warranties set out in this Clause 7 (*Representations and Warranties*) will be true and accurate as at the date of this Agreement, and the Agent shall be deemed to repeat such representations and warranties (other than (A) each of the representations and warranties set out in Clause 7.7 (*Deduction of Tax*), Clause 7.8 (*No filing or stamp taxes*), Clause 7.12 (*No proceedings pending or threatened*) and Clause 7.16 (*Insolvency*) and (B) the Potential Event of Default under paragraph (a) of Clause 7.9 (*No default*)) on each day throughout the continuation of this Agreement and so long as any sum is or may become payable under any Transaction Document with reference to the facts and circumstances subsisting from time to time (except that those contained in paragraphs (a) to (c) of Clause 7.17 (*Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

7.20 **Acknowledgement of reliance**

The Agent acknowledges that the Seller has entered into this Agreement and the other Transaction Documents in reliance upon the representations and warranties contained in this Clause 7 (*Representations and Warranties*).

8. INFORMATION UNDERTAKINGS

The undertakings in this Clause 8 (*Information Undertakings*) remain in full force and effect from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents.

8.1 **Financial Statements**

The Agent shall supply to the Seller:

- (a) as soon as the same become available, but in any event within [•] days after the end of each of its financial years its audited financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within [•] days after the end of each quarter of each of its financial years its financial statements for that financial quarter.

8.2 **Requirements as to Financial Statements**

- (a) Each set of financial statements delivered by the Agent pursuant to Clause 8.1 (*Financial Statements*) shall be certified by at least [two (2) of directors or senior officers] of the Agent and in the case of

audited financial statements, also by the Agent's auditors as fairly representing its financial condition as at the date at which those financial statements were drawn up.

- (b) The Agent shall procure that each set of financial statements delivered pursuant to Clause 8.1 (*Financial Statements*) is prepared using GAAP consistently applied.

8.3 Information: miscellaneous

The Agent shall supply to the Seller:

- (a) all documents dispatched by the Agent to its shareholders (or any class of them) or its creditors, to the extent specifically permitted by the Applicable Law and/or the relevant credit documents, generally at the same time as they are dispatched;
- (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;
- (c) promptly on the request of the Seller any documentation or other evidence which is reasonably requested by the Seller to enable the Seller to carry out and be satisfied with the results of all know your customer requirements; and
- (d) promptly, such further information regarding its financial condition, business and operations as the Seller may reasonably request as may be mutually agreed between the parties provided that the Agent shall not be unreasonable in agreeing and supplying such information.

8.4 Notification of default

- (a) The Agent shall notify the Seller 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 Seller, the Agent shall supply to the Seller a certificate signed by [two (2) 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).

9. POSITIVE UNDERTAKINGS

The Agent undertakes to the Seller that from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents, it shall:

9.1 Corporate existence

Preserve, renew and keep in full force and effect its corporate existence as a duly incorporated [•] validly existing under the laws of [•].

9.2 Consents

Promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Seller of,

any Consent required under any law or regulation in [•] to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in [•] of any Transaction Document.

9.3 Compliance with laws

Comply in all respects with all Applicable Laws (including Environmental Law) to which it may be subject.

9.4 Pari Passu

Ensure its payment obligations under the Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

9.5 Taxes

Pay all Taxes to which it is assessed liable as they fall due (unless the same is being contested in good faith by appropriate means and provided that it has made adequate reserves therefor).

9.6 Books and Records

Consistently prepare and maintain in compliance with [•] law, proper and adequate books and records reflecting fully all transactions entered into by the Agent.

9.7 Further assurance

(a) Create and perfect the Security to be conferred on the Seller by or pursuant to the Security Documents and maintain at all times thereafter such Security in full force and effect as a first ranking Security and, to the extent required pursuant to the Transaction Documents and/or the Applicable Law, re-grant, renew and/or replace such Security.

(b) Take all such action as the Seller may request for the purpose of perfecting any such Security.

(c) If the Seller lawfully exercises any power or right with respect to any of the assets the subject of any Security under the Security Documents, the Agent shall do everything within its power to permit the exercise of such power or right by the Seller.

9.8 Conditions

To the extent that any condition required to be satisfied pursuant to Schedule 1 (*Conditions Precedent for Stage Payments*) has been waived on the condition that the Agent shall comply with that and/or any other requirement at or before a particular time, so comply with such requirement.

9.9 Transaction Documents

Comply with its obligations under each Transaction Document to which it is or will be party and ensure that the Transaction Documents to which it is a party are and remain in full force and effect.

9.10 Insurance

Maintain or caused to be maintained such appropriate insurances on and in relation to its business and assets with reputable insurance companies to the extent as is customary for financial institutions carrying on the same or substantially similar business.

10. NEGATIVE UNDERTAKINGS

The Agent undertakes to the Seller that from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents, it shall not, without first obtaining the written consent of the Seller (such consent shall be exercised by the Seller with due regard to the prevalent market practices at the relevant time):

10.1 Financial indebtedness

Incur, permit or subsist or have outstanding any Financial Indebtedness other than Permitted Indebtedness.

10.2 Disposals

Enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, assign or dispose of all or any of its assets, except:

- (a) as expressly permitted in or contemplated by a Transaction Document;
- (b) any sales or dispositions made on an arms' length commercial basis in the ordinary course of business provided that such sale is not likely to have a Material Adverse Effect;
- (c) any sales or dispositions of surplus, obsolete or worn out equipment; or
- (d) any sales or dispositions to the extent such assets have been replaced with substantially similar assets of equal or greater value.

10.3 Constitutional Documents

Materially amend, or permit any material amendment to, its constitutional documents, nor alter any material right attaching to its shares, or permit the same, which amendment or alteration is likely to have, or result in, a Material Adverse Effect.

10.4 Merger

Enter into any amalgamation, demerger, merger or corporate reconstruction, which is likely to have, or result in, a Material Adverse Effect

10.5 Change of business

Enter into any business or activity other than the business permitted in accordance with its constitutional documents.

10.6 Agreements

Enter into any agreement or obligation:

- (a) which might reasonably be expected to have a Material Adverse Effect; or
- (b) the performance of which would result in a breach of any provision of this Agreement by it.

10.7 Security

Do or omit to do anything, or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by the Agent by or pursuant to, or any Security expressed to have been created by the Agent and to be evidenced in any Security Document.

11. FINANCIAL UNDERTAKINGS

11.1 Financial ratios

The Agent undertakes to the Seller that, from the date of this Agreement and so long as any sum is or may become payable under the Transaction Documents:

- (a) its Current Ratio is not less than [•];
- (b) the ratio of its Debt to Equity does not exceed [•]; and
- (c) its Debt Service Coverage Ratio (“DSCR”) is greater than or equal to [•].

11.2 Calculations

The ratios set out in Clause 11.1 (*Financial ratios*) shall be tested [semi-annually] on the basis of the audited and unaudited financial statements submitted by the Agent pursuant to Clause 8.1 (*Financial Statements*).

11.3 Definitions

For the purposes of the Finance Documents:

[“**Current Assets**” means, at any date, the balance of the Agent’s stock, inventory, work in progress, accounts receivable, cash at bank, cash in hand, prepayments and other receivables due within one year of such date.]

[“**Current Liabilities**” means, at any date, the Agent’s liabilities falling due within one year of such date, including amounts due to trade creditors and accounts payable, accrued expenses, short-term debt (including overdrafts outstanding), lease rental, and principal and commission, profit or mark-up amounts of long-term debt maturing within twelve (12) months of such date.]

[“**Current Ratio**” means the ratio of Current Assets to Current Liabilities.]

[“**DSCR**” (Debt Service Coverage Ratio) means, at the time the DSCR is to be determined and for the previous twelve (12) Month period ending on the date of determination, the ratio of EBITDA for such twelve (12) Month period, less:

- (a) increases (plus decreases) in Net Working Capital during that twelve (12) Month period; and
- (b) Permitted Capital Expenditure paid by the Agent in that twelve (12) Month period,

to Debt Service paid by the Agent during such twelve (12) Month period.]

[“**EBITDA**” means, for the relevant period, earnings as stated in the income statement of the Agent (excluding any extraordinary and non operating income), and calculated before the deduction of depreciation, amortization, tax and commission, and other finance and similar charges (net of commission and other similar income).]

[“**Net Working Capital**” means Current Assets minus Current Liabilities.]]

12. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 12 (*Events of Default*) is an Event of Default.

12.1 Non-payment

The Agent does not pay on the due date any amount payable pursuant to a Transaction Document to which it is a party at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error and payment is made within [three (3)] Business Days of its due date.

12.2 Non satisfaction of conditions

To the extent that any condition required to be satisfied pursuant to Schedule 1 (*Conditions Precedent for Stage Payments*) has been waived on the condition that the Agent shall comply with that and/or any other requirement at or before a particular time, the Agent fails to so comply.

12.3 Financial Undertakings

The Agent fails to comply with the financial undertakings contained in Clause 11 (*Financial Undertakings*).

12.4 Other obligations

The Agent fails to duly and punctually comply with any provision of the Transaction Documents (other than those referred to in Clause 12.1 (*Non-Payment*)) to which it is a party unless failure to comply is capable of remedy and is remedied within [five (5)] Business Days of the Seller giving notice to the Agent, or the Agent becoming aware, of the failure to comply.

12.5 Misrepresentation

Any representation or statement made or deemed to be made by the Agent in any Transaction Document to which it is a party or any other document delivered by or on behalf of the Agent under or in connection with such Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

12.6 Cross default

- (a) Any Financial Indebtedness of the Agent is not paid when due nor within any originally applicable grace period.
- (a) Any Financial Indebtedness of the Agent 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).
- (b) Any commitment for any Financial Indebtedness of the Agent is cancelled or suspended by a creditor of the Agent as a result of an event of default (however described).
- (c) Any creditor of the Agent becomes entitled to declare any Financial Indebtedness of the Agent due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) No Event of Default will occur under this Clause 12.6 (*Cross default*) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than [•] (or its equivalent in any other currency or currencies).

12.7 Insolvency

- (a) The Agent 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.
- (b) The value of the assets of the Agent is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Agent.

12.8 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 or dissolution of the Agent;
- (b) a composition, compromise or arrangement with any creditor of the Agent;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Agent; or
- (d) enforcement of any Security over any assets of the Agent.

12.9 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Agent, or the Agent fails to comply with the requirements of any court or other legal judgment or order made against it.

12.10 Unlawfulness

It is or becomes unlawful for the Agent to perform any of its obligations under the Transaction Documents to which it is a party.

12.11 Transaction Documents

- (a) Any Transaction Document, or any provision of a Transaction Document is not, or ceases to be, valid and binding, becomes void and unenforceable, or is required by any law or regulation to be waived, amended or modified.
- (b) Any obligation expressed to be assumed by the Agent under a Transaction Document to which it is a party becomes void and unenforceable.

12.12 Repudiation

The Agent repudiates a Transaction Document to which is a party or evidences an intention to repudiate a Transaction Document to which it is a party.

12.13 Security

The Agent otherwise does or fails to do any act or thing within its control which act or failure to act prejudices all or any of the Security constituted by the Security Documents or any Security required by the Transaction Documents or otherwise causes such Security to cease to be effective or fails to maintain in favour of the Seller first ranking perfected Security on substantially all of the collateral described therein.

12.14 Government intervention

Any action is taken by any governmental authority to seize, nationalise, expropriate or compulsorily acquire all or a majority of the issued shares of the Agent or the whole or any material part of the revenues of the Agent.

12.15 Material adverse change

Any event or circumstance occurs which the Seller reasonably believes has had or might have a Material Adverse Effect.

12.16 Consequences of an Event of Default

On and at any time after the occurrence of an Event of Default the Seller may by notice to the Agent:

- (a) cancel Total Stage Payment Amount whereupon the same shall be immediately cancelled and the obligations of the Seller under this Agreement shall be terminated;

- (b) declare all Stage Payments paid to the Agent to be immediately due and payable together with all other amounts accrued or outstanding under the Transaction Documents, whereupon all paid Stage Payment and such other sums shall become immediately due and payable without further demand or notice or other legal formality of any kind;
- (c) declare all Stage Payments paid to the Agent to be payable immediately upon demand together with all other amounts accrued or outstanding under the Transaction Documents, whereupon all paid Stage Payments and such other sums shall become payable immediately on demand which may be made by the Seller at any time thereafter; and/or
- (d) enforce all or any part of the Security constituted by the Security Documents.

13. EXPIRY

Subject to the provisions of the Transaction Documents and unless this Agreement is otherwise terminated in accordance with this Clause 12.16 (*Consequence of an Event of Default*), this Agreement shall expire upon Delivery of the Works to the Seller as provided in Clause 3 (*Delivery of Works and Title*).

14. ASSIGNMENT

14.1 Assignment by Agent

The Agent shall not be entitled to assign this Agreement without the prior written consent of the Seller.

14.2 Assignment by the Seller

Subject to the provisions of the Transaction Documents, the Seller may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Agreement, provided however that this Agreement shall not be assignable unless required to be assigned along with other Transaction Documents.

15. AMENDMENTS

Subject to the provisions of the Transaction Documents, any term of this Agreement may be amended or waived with the prior written consent of the Seller and the Agent.

16. NOTICES

16.1 Delivery

- (a) Each notice, demand or other communication to be given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or fax number set out in its respective

place for signature below (or such other address or fax number as the addressee has by not less than [five (5)] Business Days' prior written notice specified to the other party).

- (b) 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 (as evidenced by a fax transmission report showing that the entire communication was received); or
 - (ii) if by way of letter, when left at the relevant address,

provided that a communication which is received after 3:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be delivered on the next full working day in that place.

16.2 Electronic communication

- (a) Any communication to be made between the parties in relation to routine and administrative matters under or in connection with this Agreement, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 3:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be effective on the next full working day in that place.

16.3 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Seller, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

17. BENEFIT OF THE AGREEMENT

The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. 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.

19. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Seller or the Agent, 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.

20. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery by facsimile or electronic communication of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

21. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

22. JURISDICTION OF [•] COURTS

22.1 Jurisdiction

Without prejudice to Clause 23 (*Arbitration*), the Agent irrevocably agrees for the benefit of the Seller that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

22.2 Waiver of objection to jurisdiction

The Agent irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 22.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

22.3 [Process Agent]

- (a) The Agent agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 22.3 (*Process Agent*) ceases to be effective in respect of the Agent, the Agent shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Seller shall be entitled to appoint such a person by notice to the Agent.
- (b) The Agent further agrees that failure by a process agent to notify the Agent of the process will not invalidate the proceedings concerned.]¹

22.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 22.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Seller to take proceedings against the Agent in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

22.5 Consent

The Agent hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

22.6 Waiver of Immunity

To the extent that the Agent 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 Agent hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

23. ARBITRATION

23.1 Seller's Option

Notwithstanding Clause 22 (*Jurisdiction of [•] Courts*), the Seller may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 23 (*Arbitration*).

23.2 Arbitration

The Agent irrevocably agrees for the benefit of the Seller that any disputes which may arise out of or in connection with this Agreement or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 23.2 (*Arbitration*).

23.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Agent, one nominated by the Seller and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Agent and the Seller may request the President of the LCIA (or such other person as the Agent and the Seller may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Agent, the Seller or any person that directly or indirectly beneficially owns any share capital of the Agent or the Seller;
 - (ii) have any political or business ties to the country of establishment of the Agent or the Seller;
or
 - (iii) be a person with familial ties to the Agent or the Seller.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the

application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

23.4 Waiver of objection to Arbitration

The Agent irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 23 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

23.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

24. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other Transaction Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the Seller in favour of the Agent.

25. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the date first written above.

SCHEDULE 1

Conditions Precedent for Stage Payments

The following are the documents and evidence referred to in Clause 5.2 (*Conditions Precedent for Stage Payment*). Documents shall be supplied in such number of copies or counterparts as the Seller may require and copy documents shall be certified to be true, complete and up-to-date, in a manner reasonably satisfactory to the Seller by a duly authorised signatory of the Agent or other party concerned.

1. Transaction Documents

The following Transaction Documents duly executed by all of the parties thereto:

- (a) this Agreement;
- (b) the Purchase *Istiṣnā'* Agreement;
- (c) the No Objection Letter;
- (d) the Fee Letter; and
- (e) the Security Documents.

2. Perfection of Security

- (a) Certified copies of all notices required to be given under the Assignment of Insurance Proceeds and the Assignment of Guarantees;
- (b) Originals of all acknowledgements duly executed by the relevant parties required to be obtained under the Assignment of Insurance Proceeds and the Assignment of Guarantees; and
- (c) Such other documents as the Seller reasonably considers to be necessary in connection with the creation, validity, perfection or priority of the assignments, transfers and Security created by or pursuant to, or, as the case may be, evidenced in, the Security Documents.

3. Corporate Documents

3.1 In relation to the Agent:

- (a) Certified copies of the Agent's Memorandum of Association, Articles of Association and any other constitutional documents and all amendments thereto (together with certified English translations);
- (b) A certified copy of the commercial registration certificate of the Agent;
- (c) A certified copy of the resolution of the board of directors or shareholders (as appropriate) of the Agent or other corporate authority authorising a specified person or persons to execute the Transaction Documents to which it to be a party on its behalf and authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is to be a party. To the extent that any Transaction Documents have already been entered into by the Agent, then the relevant resolution or other corporate authority shall ratify the entry into of such Transaction Documents;

- (d) An incumbency certificate or any other document evidencing the position and signature of each person authorised by the resolution or other corporate authority referred to in paragraph (d) above;
- (e) To the extent that a person authorised by the resolutions referred to in paragraph (d) above delegates some or all of his authorities thereunder to another person:
 - (i) a certified copy of the letter or other instrument of delegation; and
 - (ii) an incumbency certificate evidencing the position and signature of such delegate.

With regard to the documents required to be provided by the Agent pursuant to paragraphs (e) and (f) above, it is the intention of the parties that due regard will be given to substance of such documents as opposed to their forms.

4. Legal Opinions

- (a) A [•] law legal opinion of [•] in relation to power and authority of the Agent to enter into the Transaction Documents to which it is a party.
- (b) A [•] law legal opinion of [•] in relation to enforceability of the Transaction Documents.

5. Certificates

- 5.1 A certificate signed by the authorised signatory(ies) of the Agent, confirming and certifying that:
- (a) all the representations and warranties set out in Clause 7 (*Representations and Warranties*) are true and correct;
 - (b) no Event of Default or Potential Event of Default has occurred and is continuing;
 - (c) each Transaction Document to which it is a party is in full force and effect; and
 - (d) there is no circumstance (to the best of its knowledge and belief (having made due and careful enquiry) existing at the date of signing this Agreement which might reasonably be expected to have a Material Adverse Effect.

6. Financial Statements

Certified copies of the most recently available audited and unaudited financial statements of the Agent.

7. Miscellaneous

- (a) Evidence that all relevant fees, costs and expenses then due from the Agent have been paid.
- (b) Such other Consent or other document, opinion or assurance as the Seller may request in relation to the Transaction Documents.

SCHEDULE 2

STAGE PAYMENT SCHEDULE

No	Stage Payment Date	Stage Payment ([•])	Total Stage Payment ([•])
1	[•]	[•]	[•]
2	[•]	[•]	[•]
3	[•]	[•]	[•]
4	[•]	[•]	[•]
5	[•]	[•]	[•]
6	[•]	[•]	[•]
7	[•]	[•]	[•]
8	[•]	[•]	[•]
9	[•]	[•]	[•]
10	[•]	[•]	[•]
11	[•]	[•]	[•]
12	[•]	[•]	[•]
13	[•]	[•]	[•]
14	[•]	[•]	[•]
15	[•]	[•]	[•]
16	[•]	[•]	[•]
17	[•]	[•]	[•]
18	[•]	[•]	[•]

SIGNATURE PAGE**The Principal (the Seller)**

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Agent

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

¹ Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).



APPENDIX C

Istiṣnā'-Ijārah Based Financing Istiṣnā' Agreement

.....

dated

[•]

by

[Name of the project company]

as Seller

and

[Name of banks/financial institutions]

as Buyer

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THIS AGREEMENT (this “**Agreement**”) is made on this [●],

BETWEEN:

- (1) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as seller (the “**Seller**”); and
- (2) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as buyer (the “**Buyer**”).

RECITALS:

- (A) **WHEREAS**, the Seller agrees to sell, and the Buyer agrees to buy, the Assets (to be constructed and/or caused to be constructed and delivered by way of *istiṣnā'*) in accordance with the terms of this Agreement.
- (B) **WHEREAS**, the Buyer has agreed to pay the Total Consideration to the Seller by way of instalment payments in accordance with the terms of this Agreement.
- (C) **WHEREAS**, this Agreement sets out the terms on which the Seller shall procure and arrange Delivery of the Assets to the Buyer.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Except as otherwise expressly provided for in this Agreement, capitalised terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Forward Lease Agreement. In addition, the following terms shall have the meanings given below:

“**Advance Rental Payment**” has the meaning given to this expression in the Forward Lease Agreement.

“**Assets**” means the *shari'ah*-compliant assets to be constructed and/or procured by the Seller in accordance with the description and Specifications as more particularly described in Schedule 1 (*Description and Specifications of the Assets*).

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

“**Availability Period**” means the period commencing on the Signing Date and ending on that date falling [●] ([●]) months from the Signing Date.

“**Balance Outstanding**” has the meaning given to this expression in the Forward Lease Agreement.

“**Base Rental Payment**” has the meaning given to this expression in the Forward Lease Agreement.

“**Business Day**” means a day other than [Friday], [Saturday] or [Sunday] on which banks are generally open for business in [●].

“**Certificate of Delivery**” means the certificate substantially in the form set out in Schedule 5 (*Form of Certificate of Delivery*).

“**Completion Date**” means [●].

“**Default**” has the meaning given to this expression in the Forward Lease Agreement.

“**Delivery**” means the transfer of possession of the Assets on or prior to the Completion Date in accordance with Clause 7 (*Delivery and Assumption of Title*).

“**Delivery Date**” means the date upon which Delivery occurs.

“**Effective Date**” means the date on which the Buyer has received all of the documents and other evidence listed in Schedule 4 (*Conditions Precedent*) in form and substance satisfactory to the Buyer unless delivery of such documents and other evidence has been waived by the Buyer.

“**EPC Contract(s)**” means [●].

“**EPC Contractor[s]**” means [●].

“**Event of Default**” has the meaning given to this expression in the Forward Lease Agreement.

“**Final Maturity Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Finance Documents**” has the meaning given to this expression in the Forward Lease Agreement.

“**First Lease Rental Period**” has the meaning given to this expression in the Forward Lease Agreement.

“**First Refund Date**” means [●].

“**Forward Lease Agreement**” means the forward lease agreement of even date herewith entered into between (a) [●] as lessor and (b) [●] as lessee.

“**Lease Commencement Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Lease Payment Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Lease Rental Payment**” has the meaning given to this expression in the Forward Lease Agreement.

“**Lessee**” means the Seller in its capacity as lessee under the Forward Lease Agreement.

“**Material Adverse Effect**” has the meaning given to this expression in the Forward Lease Agreement.

“**Net Stage Payment Amount**” means, at the relevant time, the aggregate of all Stage Payment Amounts paid to the Seller less the aggregate amount of any refunds of one or more Stage Payment Amounts (or any part thereof) made by the Buyer in accordance with Clause 8 (*Refund of Stage Payment Amounts*).

“**Prepayment Amount**” has the meaning given to this expression in the Forward Lease Agreement.

“**Refund Date**” means each date as specified in the column headed “Refund Date” in the table set out in Schedule 3 (*Refund of Stage Payment Amounts*).

“**Renewal Notice**” has the meaning given to this expression in the Forward Lease Agreement.

“**Scheduled Refund**” means, in respect of each Schedule Stage Payment Refund, the amount calculated in accordance with paragraph 2 (*Calculation of Scheduled Refund*) of Schedule 3 (*Refund of Stage Payment Amounts*).

“**Schedule Stage Payment Refund**” has the meaning given to it in Clause 8.2.

“**Security**” means mortgage, charge, pledge, lien or other security interest securing any obligations of any person or any other agreement or arrangement having a similar effect.

“**Signing Date**” means the date on which all of the Finance Documents are signed.

“**Specifications**” means the specifications, plans, drawings, design, engineering, development, procurement, installation, construction and completion of the Assets as more particularly described in Schedule 1 (*Description and Specifications of the Assets*) [and/or in the EPC Contract(s)].

“**Stage Payment**” means the stage payment to be made available by the Buyer to the Seller under this Agreement.

“**Stage Payment Amount**” means, in respect of a Stage Payment Request, the amount of the relevant Stage Payment (as specified in the Stage Payment Request) paid, or to be paid, to the Buyer by the Seller pursuant to that Stage Payment Request.

“**Stage Payment Date**” means a date on which a Stage Payment Amount is to be made under this Agreement (as specified in the relevant Stage Payment Request).

“**Stage Payment Request**” means a notice from the Seller to the Buyer substantially in the form of Schedule 2 (*Form of Stage Payment Request*).

“**Tax**” has the meaning given to this expression in the Forward Lease Agreement.

“**Termination Sum**” has the meaning given to this expression in the Forward Lease Agreement.

“**Total Consideration**” has the meaning given to it in Clause 3.1.

“**Variable Element**” has the meaning given to this expression in the Forward Lease Agreement.

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

- (a) the “**Buyer**”, the “**Seller**” the “**Lessor**” or the “**Lessee**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” includes present and future properties, revenues and rights of every description;
- (c) a “**Clause**” or “**Schedule**” is to a Clause or Schedule to this Agreement;
- (d) a “**month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (i) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month,

provided that the above rules will only apply to the last month of any period;

- (e) 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) or two or more of the foregoing, and shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (f) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self regulatory or other authority or organisation;
- (g) “**Shari‘ah**” shall be interpreted in accordance with the *Shari‘ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (h) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
- (i) provision or law is a reference to that provision as amended or re-enacted; and
- (j) a time of day is a reference to [●] time.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Words denoting the singular shall include plural and vice versa.

1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Agreement has the same meaning as in this Agreement.

1.6 All reference to dates and time periods in this Agreement will be construed in accordance with the Gregorian calendar.

2. SALE BY WAY OF *ISTIṢNĀ‘*

2.1 The Seller hereby sells and the Buyer hereby purchases the Assets, which are to be constructed or procured by the Seller:

- (a) in accordance with the Specifications;
- (b) for the Total Consideration to be paid in accordance with Clause 3 (*Consideration*);

- (c) with Delivery on or before the Completion Date; and
 - (d) pursuant to the terms and conditions of this Agreement.
- 2.2 The Seller acknowledges that the Buyer is entitled to take possession of the Assets after Delivery.
- 2.3 The Seller shall notify the Buyer as soon as possible that Delivery has occurred and shall transfer possession of the Assets to the Buyer on or before the Completion Date.
- 2.4 The Seller shall give the Buyer an opportunity to view the Assets before Delivery occurs.
- 2.5 Delivery can only apply in respect of all the Assets. Partial Delivery of the Assets is not permitted.
- 2.6 Notwithstanding any other entitlement that the Buyer may have whether under contract or law, the remedy available to the Buyer under this Agreement for any failure on the part of the Seller to cause Delivery by the Completion Date shall be:
- (a) a refund of Stage Payment Amounts in accordance with Clause 8 (*Refund of Stage Payment Amounts*); and
 - (b) where applicable, the exercise of their rights under Clause 9 (*Termination*).

3. CONSIDERATION

- 3.1 The consideration payable by the Buyer to the Seller for the Assets is in an aggregate amount of [●] (the “**Total Consideration**”). The Buyer is under no obligation to pay any amount in excess of the Total Consideration for the Assets. The Total Consideration shall be paid to the Seller by way of Stage Payments on each Stage Payment Date in accordance with Clause 5 (*Stage Payments*).

4. CONDITIONS TO RECEIVING STAGE PAYMENTS

- 4.1 On the date of this Agreement or promptly thereafter, the Seller undertakes to provide copies of the documents and other evidence contemplated by Schedule 4 (*Conditions Precedent*) hereto to the Buyer in a form and substance satisfactory to the Buyer.
- 4.2 The obligations of the Buyer to make any Stage Payment is subject to the further conditions precedent that on a Stage Payment Date for that Stage Payment:
- (a) the representations in clause 12 (*Representations and Warranties*) of the Forward Lease Agreement to be repeated on those dates are correct and will be correct immediately after the relevant Stage Payment is made by references to the facts and circumstances then subsisting; and
 - (b) No Default is resulting or would result from the making of the relevant Stage Payment.

5. STAGE PAYMENTS

- 5.1 On or after the occurrence of the Effective Date, the Seller may request, in accordance with the provisions of this Clause 5, that a Stage Payment be made by delivering a duly completed Stage Payment Request not later than five (5) Business Days before the proposed Stage Payment Date stated therein.
- 5.2 A Stage Payment Request is irrevocable and will not be regarded as having been duly completed unless:
- (a) the proposed Stage Payment Date is a Business Day within the Availability Period; and
 - (b) the currency specified in the Stage Payment Request is [●].
- 5.3 [In relation to the disbursement of the Total Consideration, the Seller may only deliver [●] Stage Payment Requests during any calendar month.]
- 5.4 The Buyer will not be obliged to pay a Stage Payment if on the date of the Stage Payment Request or on the proposed Stage Payment Date a Default under this Agreement is continuing or would result from the proposed payment of the Stage Payment.

6. PAYMENT OF STAGE PAYMENT AMOUNT

Subject to the provisions of Clause 4 (*Conditions to Receiving Stage Payments*), the Buyer shall, after receipt of a duly completed Stage Payment Request pay the amount of the Stage Payment Amount specified in the Stage Payment Request to the Seller.

7. DELIVERY AND ASSUMPTION OF TITLE

- (a) The Seller shall deliver the Assets to the Buyer by executing and sending the Certificate of Delivery to the Buyer on the Delivery Date. Upon receipt of the Certificate of Delivery, the Buyer shall automatically accept delivery of, and automatically assume title to, the Assets and shall hold such title in accordance with, and subject to, the provisions of the Finance Documents.
- (b) Notwithstanding paragraph (a) of this Clause 7, the Seller acknowledges that, subject to the terms of the Finance Documents, the Buyer shall be entitled to take possession of the Assets.
- (c) The Seller shall not do anything (or, so far as it is able, permit anything to be done) which may affect or imperil the right, title and ownership interest of the Buyer in the Assets or any part thereof.
- (d) The Seller shall, to the satisfaction of the Buyer, take all reasonable actions necessary and required under the laws of [●] to protect the right of ownership of the Buyer in the Assets, including obtaining any requisite Authorisations and, if necessary, the filing of this Agreement with any competent agency in [●].
- (e) The Seller shall allow the Buyer the right, on the giving of reasonable notice, to view the Assets prior to Delivery during normal working hours.

- (f) The Seller shall not permit any Security to be created over or dispose of the Assets except:
 - (i) for the purposes of maintenance, modification, replacement or repair undertaken in accordance with the Finance Documents;
 - (ii) as permitted in accordance with the Finance Documents; or
 - (iii) otherwise with the prior written consent of the Buyer (acting reasonably),
- (g) and, in the event of any breach of the foregoing by the Seller, the Buyer shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the Assets from any Security and shall be entitled to recover such sum from the Seller forthwith subject to the terms of the Finance Documents.

8. REFUND OF STAGE PAYMENT AMOUNTS

8.1 On the earlier to occur of:

- (a) the Delivery Date; and
- (b) the Final Maturity Date,

the Seller may refund one or more Stage Payment Amounts (or any part thereof) paid to it in accordance with clause 6 (*Prepayment*) of the Forward Lease Agreement.

8.2 If Delivery has not occurred by the First Refund Date and this Agreement has not been terminated in accordance with Clause 9 (*Termination*), then the Seller shall be obliged to refund the Net Stage Payment Amount on each Refund Date in each case in the aggregate amount (a “**Schedule Stage Payment Refund**”) as calculated in accordance with Schedule 3 (*Refund of Stage Payment Amounts*) and otherwise in accordance with this Agreement as compensation for the delayed Delivery of the Assets.

8.3 The Seller shall, on demand, indemnify the Buyer to the fullest extent permitted by law, and hold the Buyer harmless, against any and all costs, losses or liabilities whatsoever incurred (directly or indirectly) by the Buyer (except to the extent caused by the gross negligence or wilful misconduct of the Buyer):

- (a) relating to the procurement and construction by the Seller of the Assets (or any part thereof) under this Agreement, including any costs, losses or liabilities incurred by Buyers in respect of:
 - (i) the Seller not having the ability to direct the transfer of title to the Assets (or any part thereof) to the Buyer free from any claims, encumbrances, security interests, and liens or legal processes;
 - (ii) any infringement or alleged infringement by the Seller of any laws or regulations, or any infringement or alleged infringement of any intellectual property in respect of the Assets (or any part thereof);
 - (iii) any claims against the Buyer based on liability arising under applicable laws (including but not limited to environmental laws or regulations); or
 - (iv) any claim or dispute relating to the EPC Contracts;

- (b) arising out of the direct or indirect damage to persons or property as a result of the performance or non-performance by the Seller of its obligations under this Agreement; or
- (c) as a consequence of any default in the performance of the Seller's obligations under this Agreement.

8.4 The Seller shall give the Buyer prompt notice of any occurrence or condition known to the Seller as a consequence of which the Buyer is or is reasonably likely to be entitled to indemnification pursuant to Clause 8.3 above.

9. TERMINATION

9.1 Prior to the Delivery Date, this Agreement (and the Forward Lease Agreement in accordance with clause 2.4 (*Termination of the Istiṣnā'Agreement*) of the Forward Lease Agreement) may be terminated by the Buyer if a Default occurs and is continuing.

9.2 Upon the termination of this Agreement, the Seller shall:

- (a) refund the Net Stage Payment Amount to the Buyer as at the date of such termination; and
- (b) if this Agreement is terminated prior to the Delivery Date, then subject to clause 22.3 (*Set-Off*) of the Forward Lease Agreement, pay liquidated damages for failing to deliver the Assets to the Buyer (pursuant to, and in accordance with, the terms of this Agreement) in an amount equal to the aggregate Advance Rental Payments paid by the Lessee pursuant to the terms of the Forward Lease Agreement (the "**Termination Liquidated Damages Amount**").

9.3 Upon the termination of this Agreement prior to Delivery, and without prejudice to the Lessor's obligations to refund the aggregate amount of Advance Rental Payments contemplated under clause 3.3 (*Refund of Advance Rental Payments*) of the Forward Lease Agreement and to the Buyer's obligations to make the other payments contemplated hereunder, the Seller shall waive all of its rights and claims as to the ownership of, and title (if any) to, the Assets and all rights and claims as owner under this Agreement.

9.4 The provisions of Clause 9.2 shall apply from the date of this Agreement and shall survive the termination of this Agreement.

10. TAXES

10.1 The payment of any Stage Payment Amount by the Buyer to the Seller shall be inclusive of any Tax or value added tax which might be chargeable in connection with such payment.

10.2 Notwithstanding Clause 10.1, the Seller shall promptly indemnify against all costs, losses or liabilities which the Buyer may incur in an amount equal to the amount of Tax or any other fees or duties which it may be required to pay in connection with the payment of any Stage Payment Amount to the Seller.

11. ASSIGNMENT AND TRANSFER

- 11.1 The Buyer may assign its rights or transfer its rights and obligations under this Agreement. The Seller shall execute and do all such transfers, assignments, assurances, acts and things as the Buyer may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to this Clause.
- 11.2 The Seller may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Buyer.

12. NOTICES

- 12.1 Any communication to be made under or in connection with this Agreement shall be made in writing and may be made by fax, letter or courier.
- 12.2 The address and fax number (and the department and officer (if any) for whose attention the communication is to be made) of each party to this Agreement for any communication to be made or delivered under or in connection with this Agreement is that which is identified with its name in the signature page below or any substitute address or fax number or department or officer as each such party may notify to the others by not less than five (5) Business Days' prior notice.
- 12.3 Any communication or document made or delivered by one of the parties to this Agreement to the other under or in connection with this Agreement will only be effective:
- (a) if by way of fax, when received in legible form; or
 - (b) if by way of letter or courier, when it has been left at the relevant address or received by the addressee thereof,
- and, if a particular department or officer is specified as part of its address details provided under Clause 12.2, if addressed to that department or officer.
- 12.4 Any notice given under or in connection with this Agreement must be in English.

13. AMENDMENTS AND WAIVERS

Neither this Agreement nor any terms or conditions hereof may be amended, changed, waived, discharged, terminated or otherwise modified unless such amendment, change, waiver, discharge, termination or modification is in writing and consented to by each of the parties and is otherwise in accordance with the terms of the Forward Lease Agreement, subject to the proviso that no amendment shall contravene the principles of *shari'ah*.

14. MISCELLANEOUS

- 14.1 No failure to exercise, nor any delay in exercising, on the part of the Buyer, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 14.2 This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 14.3 If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 14.4 This Agreement shall be binding upon and inure to the benefit of each party to this Agreement and its respective successors, transferees and assigns.

15. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [●].

16. JURISDICTION OF [●] COURTS

16.1 Jurisdiction

Without prejudice to Clause 17 (*Arbitration*), the Seller irrevocably agrees for the benefit of the Buyer that the courts of [●] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

16.2 Waiver of objection to jurisdiction

The Seller irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 16.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that any such court is not a convenient or appropriate forum.

16.3 [Process Agent]

- (a) The Seller agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [●], to [●]. If the appointment of the person mentioned in this Clause 16.3 (*Process Agent*) ceases to be effective in respect of the Seller, the Seller shall immediately appoint a further person in [●] to accept service of

process on its behalf in [●] and, failing such appointment within [fifteen (15)] days, the Buyer shall be entitled to appoint such a person by notice to the Seller.

- (b) The Seller further agrees that failure by a process agent to notify the Seller of the process will not invalidate the proceedings concerned.]¹

16.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 16.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Buyer to take proceedings against the Seller in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

16.5 Consent

The Seller hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

16.6 Waiver of Immunity

To the extent that the Seller 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 Seller hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

17. ARBITRATION

17.1 Buyer's Option

Notwithstanding Clause 16 (*Jurisdiction of [●] Courts*), the Buyer may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 17 (*Arbitration*).

17.2 Arbitration

The Seller irrevocably agrees for the benefit of the Buyer that any disputes which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 17.2 (*Arbitration*).

17.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.

- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Seller, one nominated by the Buyer and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Seller and the Buyer may request the President of the LCIA (or such other person as the Seller and the Buyer may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Seller, the Buyer or any person that directly or indirectly beneficially owns any share capital of the Seller or the Buyer;
 - (ii) have any political or business ties to the country of establishment of the Seller or the Buyer; or
 - (iii) be a person with familial ties to the Seller or the Buyer.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the *Wakālah* Facility Finance Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

17.4 Waiver of objection to Arbitration

The Seller irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 17 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may

arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that such forum is not a convenient or appropriate forum.

17.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

18. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other *Wakālah* Facility Finance Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the Buyer in favour of the Seller.

19. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1**Description and Specifications of the Assets**

[Insert detailed description of the Assets, the Specifications, plans, design, drawings, engineering, development, procurement, installation, construction and completion of the Assets.]

SCHEDULE 2

Form of Stage Payment Request

To: [●] as Buyer

Dated: [●]

Dear Sirs,

Istiṣnā' Agreement dated [●] (the "Agreement")

1. We refer to the Agreement. This is a Stage Payment Request referenced therein. Unless the context requires otherwise, terms and expressions used in this Stage Payment Request and not defined herein shall have the same meanings as in the Agreement (whether as set out therein or by reference to another document).
2. We request that you advance the Stage Payment Amount as follows:

Proposed Stage Payment Date: [●] (or, if that is not a Business Day, the next Business Day)

Stage Payment Amount: [●]
3. We hereby certify that:
 - (a) [the Stage Payment Amount is required for (i) [the payment of the cost of construction and for acquisition of the Assets and any other costs related the project, estimated by the Seller to fall due in the [thirty (30)] day period after such Stage Payment Amount and such costs are in accordance with the approved project budget], and/or (ii) [the reimbursement to the Seller for the payment of the cost of construction and for acquisition of the Assets by the Seller made prior to first Stage Payment Amount], and/or (iii) [the reimbursement to the Seller for the payment of the cost of construction and for acquisition of the Assets by the Seller made during a period when Stage Payment Amounts cannot be requested or made], and/or (iv) [payment in respect of financing costs and all amounts required to meet Advance Rental Payments, development costs and expenses, all amounts necessary to fund the [debt service reserve account and/or debt service reserve account]]];²
 - (b) no Default has occurred and is continuing or would result from the proposed payment of the Stage Payment;
 - (c) each representation and warranty in clause 12 (*Representations and Warranties*) of the Forward Lease Agreement remains true and correct in all material respects on the date of this Stage Payment Request.
4. The amount of the Stage Payment should be credited to [insert account details].
5. This Stage Payment Request is irrevocable.
6. This Stage Payment Request is governed by, and shall be construed in accordance with, [●].

Yours faithfully,

For and on behalf of [●] as Seller

SCHEDULE 3

Refund of Stage Payment Amounts

1. Schedule Stage Payment Refund

Each Schedule Stage Payment Refund is payable on each Refund Date in an amount equal to the relevant Scheduled Refund (as calculated in accordance with paragraph 2 below).

2. Calculation of Scheduled Refund

Subject to paragraph 4 (*Schedule Stage Payment Refund Adjustment*) below, the Scheduled Refund payable on a Refund Date is the amount equal to the product of:

- (a) the percentage specified in the second column opposite the relevant Refund Date under the heading “Scheduled Refund (%)” of the table set out in paragraph 3 (*Schedule Stage Payment Refund Table*) below; and
- (b) the Net Stage Payment Amount immediately prior to the First Refund Date.

3. Schedule Stage Payment Refund Table

Refund Date	Scheduled Refund (%)
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Completion Date + [·]	[·]%
Total	100%

4. Schedule Stage Payment Refund Adjustment

- (a) For the avoidance of doubt, amounts payable as Schedule Stage Payment Refunds shall be adjusted:
 - (i) to take into account any refunds or payments made pursuant to clause 6 (*Prepayment*) of the Forward Lease Agreement;
 - (ii) to take into account any change to the Refund Dates (set out in the table under paragraph 3 (*Schedule Stage Payment Refund Table*) above; or
 - (iii) At any time following an adjustment to the Refund Dates and/or the percentage of Schedule Stage Payment Refunds in the manner prescribed herein, the Buyer shall, in consultation with the Seller, prepare and deliver to the Seller an updated "Schedule Stage Payment Refund Table" setting forth the (revised) Refund Dates and percentages of Refund Schedule Stage Payment Refunds.

SCHEDULE 4

Conditions Precedent

1. Execution of Finance Documents

Duly executed originals of each Finance Document.

2. Corporate Documents

- (a) A copy of the constitutional documents of the Seller.
- (b) A copy of a resolution of the shareholders / board of directors of the Seller which resolves, among other things, to:
 - (i) approve the terms of, and the transactions contemplated by, the Finance Documents (in all of its capacities);
 - (ii) authorise a specified person or persons to execute the Finance Documents on its behalf; and
 - (iii) authorise a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant any Purchase Price Request or Renewal Notice) to be signed and/or despatched by it under or in connection with the Finance Documents (in whatever capacity).
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of an authorised signatory of the Seller certifying that each copy document relating to it and specified in this Schedule 4 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (e) A certificate of an authorised signatory of the Seller certifying that no Default has occurred and is continuing.

3. Financial Statements

- (a) A copy of the audited financial statements of the Seller for the financial year ending [●].
- (b) The most recent interim financial statements of the Seller.

4. Legal opinion

A legal opinion of a [●] counsel, legal advisers to the Seller in [●], as to the power and capacity of the Seller to enter into each of the Finance Documents substantially in the form distributed to the Buyer prior to signing this Agreement.

5. Other documents and evidence

- (a) A copy of the EPC Contract(s).
- (b) [A copy of the schedule/milestone of the construction progress of the Assets.]

- (c) A copy of any other document, opinion or assurance which the Buyer considers to be reasonably necessary or desirable (if it has notified the Seller accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (d) Evidence that all of the fees, costs and expenses then due from the Seller (in whatever capacity) pursuant to the Finance Documents have been paid.
- (e) [A group structure chart certified by the Seller as being true at the date of this Agreement.]
- (f) All “know your customer” documentation required by the Buyer in form and substance satisfactory to the Buyer.

SCHEDULE 5

Form of Certificate of Delivery

From: [●]

To: [●]

Dated:

Dear Sirs

Istiṣnā' Agreement dated [●] (the "Agreement")

1. **We refer to the Agreement. This is a Certificate of Delivery. Terms defined in the Agreement have the same meaning in this Certificate of Delivery unless given a different meaning in this Certificate of Delivery.**
2. **We hereby confirm that:**
 - (a) we have taken possession of the Assets [from the EPC Contractors];
 - (b) the Assets are in a satisfactory state in accordance with the Specifications;
 - (c) the Assets have been delivered to the Buyer the in accordance with Clause 7 (*Delivery and Assumption of Title*) of the Agreement;
 - (d) we have taken delivery of the same in our capacity as Lessee under the Forward Lease Agreement; and
 - (e) the Lease Commencement Date will be [●].
3. **[The Lease Rental Payment for the relevant Lease Rental Period shall be [●] and the same has been calculated as follows:**
 - (a) Base Rental Payment [●]; and
 - (b) Variable Element [●].³
4. **[The Lease Payment Date for the relevant Lease Rental Period shall be: [●]]⁴**
5. **This Certificate of Delivery is irrevocable.**
6. **This Certificate of Delivery is governed by the laws and regulations of [●].**

Yours faithfully
Authorised signatory
 [●]

SIGNATURE PAGE

SELLER

SIGNED for and on behalf of)

[•])

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

BUYER

SIGNED for and on behalf of)

[•])

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 2 To the extent relevant, the purpose and application of Stage Payment Amount should be specified.
- 3 To be included for the first stage payment only.
- 4 To be included for the first stage payment only.



APPENDIX D

Istiṣnā'-Ijārah Based Financing Forward Lease Agreement

.....

dated

[Insert date]

by

[Name of bank/financial institution]

as Lessor

and

[Name of the project company]

as Lessee

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS AGREEMENT (this “**Agreement**”) is made on this [•],

BETWEEN:

- (1) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as lessor (the “**Lessor**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as lessee (the “**Lessee**”).

RECITALS:

- (A) **WHEREAS**, pursuant to the *Istiṣnā'* Agreement, the Lessee (as Seller) has agreed to procure the construction, development and delivery of the Assets (which will also be the Leased Assets) upon the terms and conditions set out therein.
- (B) **WHEREAS**, the Lessor intends to lease the Leased Assets to the Lessee and the Lessee intends to lease the Leased Assets from the Lessor pursuant to the terms and conditions of this Agreement.

NOW THEREFORE IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Advance Rental Payment Notice**” means a notice substantially in the form set out in Schedule 3 (*Form of Advance Rental Payment Notice*) given in accordance with paragraph 1 (*Advance Rental Payments*) of Schedule 2 (*Advance Rental Payments*).

“**Advance Rental Payment**” means an advance rental payment calculated in accordance with Schedule 2 (*Advance Rental Payments*).

“**Advance Rental Payment Date**” means, in relation to an Advance Rental Payment Period, the last day of such Advance Rental Payment Period or any other date which may be mutually agreed between the Lessee and the Lessor, provided that if an Advance Rental Payment Date falls on a day which is not a Business Day, that Advance Rental Payment Date will instead fall on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

“**Advance Rental Payment Period**” means, in respect of each Stage Payment Amount:

- (a) the First Advance Rental Payment Period; and
- (b) thereafter, each Subsequent Advance Rental Payment Period,

for the avoidance of doubt a First Advance Rental Payment Period or a Subsequent Advance Rental Payment Period may be a period of [one (1), three (3), six (6), twelve (12)] months] or any other period as determined by the Lessor.

“**Assets**” has the meaning given to this expression in the *Istiṣnā'* Agreement.

["**Assignment of Performance Bonds and Guarantees**" means the assignment agreement of even date herewith entered into between [•] as assignor and [•] as assignee in relation to the assignment of certain performance bonds and/or guarantees provided by the Subcontract(s) pursuant to any Subcontract(s).]

["**Assignment of Secured EPC Contract(s)**" means the assignment agreement of even date herewith entered into between [•] as assignor and [•] as assignee pursuant to which the Lessee has assigned all of its rights, benefits and entitlements under the EPC Contract(s) to the Lessor.]

["**Assignment of Takāful Policies / [Insurances]**" means the assignment agreement of even date herewith entered into between [•] as assignor and [•] as assignee pursuant to which the Lessee has assigned all of its rights, benefits and entitlements of takāful *takāful* policies / [insurance] and *takāful*/[insurance] proceeds under the EPC Contract(s) to the Lessor.]

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

"**Balance Outstanding**" means:

- (a) prior to the Lease Commencement Date, the Net Stage Payment Amount; and
- (b) upon the Lease Commencement Date and thereafter, the Net Stage Payment Amount as at the Lease Commencement Date less:
 - (i) the aggregate amount of all Base Rental Payments paid by the Lessee as part of any Lease Rental Payments; and
 - (ii) Prepayment Amounts.

"**Base Rental Payment**" means the amount calculated in accordance with paragraph. (*Base Rental Payment*) of Schedule 1 (*Lease Rental Payments*).

"**Business Day**" means a day other than [Friday], [Saturday] or [Sunday] on which banks are generally open for business in [•].

"**Buyer**" means [•] in its capacity as buyer under the *Istiṣnā'* Agreement.

"**Certificate of Delivery**" has the meaning given to such term in the *Istiṣnā'* Agreement.

"**Completion Date**" has the meaning given to such term in the *Istiṣnā'* Agreement.

"**Compliance Certificate**" means a certificate substantially in the form set out in 0 (*Form of Compliance Certificate*).

"**Default**" means an Event of Default or any event or circumstance which would or might reasonably be expected to be (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) an Event of Default.

"**Delivery**" has the meaning given to such term in the *Istiṣnā'* Agreement.

"**Delivery Date**" has the meaning given to such term in the *Istiṣnā'* Agreement.

"**Effective Date**" has the meaning given to such term in the *Istiṣnā'* Agreement.

“**Environment**” means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

“**Environmental Claim**” means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

“**Environmental Law**” means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

“**Environmental Permits**” means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Lessee conducted on or from the properties owned or used by the Lessee.

“**EPC Contract(s)**” has the meaning given to such term in the *Istiṣnā‘* Agreement.

“**EPC Contractor[s]**” has the meaning given to such term in the *Istiṣnā‘* Agreement.

“**Event of Default**” means any of the events or circumstances described in Clause 19 (*Events of Default*).

“**Final Maturity Date**” means the date on which all of the Lessee’s liabilities under the Finance Documents have been irrevocably paid or discharged (whether as a result of enforcement or otherwise) and the Lessee is not under any further obligation to any person under any of the Finance Documents.

“**Final Service Cost Period**” has the meaning given to this expression in the Service Agency Agreement.

“**Final Advance Rental Payment Period**” means the Advance Rental Payment Period ending on the earlier to occur of:

- (a) the Delivery Date; and
- (b) the date on which the Lessor requires this Agreement and the *Istiṣnā‘* Agreement to be terminated in accordance with clause 9 (*Termination*) of the *Istiṣnā‘* Agreement.

“**Final Lease Payment Date**” means the date on which the earlier of the following occurs:

- (a) the date on which the Leased Assets are no longer owned by the Lessor; or
- (b) the Lease Expiry Date.

“**Final Lease Rental Period**” means the Lease Rental Period ending on the Final Lease Payment Date.

“**Finance Documents**” means:

- (a) this Agreement;
- (b) the *Istisnā’* Agreement;
- (c) the Service Agency Agreement;
- (d) the Purchase Undertaking;
- (e) the Sale Undertaking;
- (f) [the Assignment of Secured EPC Contract(s)];
- (g) [the Assignment of *Takāful* Policies / [Insurances]];
- (h) [the Assignment of Performance Bonds and Guarantees]; and
- (i) any other document designated as such by the Lessor and Lessee.

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would be treated as a finance or capital lease in accordance with GAAP;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement or any Islamic financing arrangement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**First Advance Rental Payment Date**” means in relation to a First Advance Rental Payment Period, the last day of such First Advance Rental Payment Period, provided that if such First Advance Rental Payment Date falls on a day which is not a Business Day that First Advance Rental Payment Date will fall on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

“First Advance Rental Payment Period” means:

- (a) for the first Stage Payment Amount, the period beginning with the Stage Payment Date for such Stage Payment Amount and ending [one (1), three (3), six (6), twelve (12)] months or any other period as determined by the Lessor; and
- (b) for each Stage Payment Amount other than the first Stage Payment Amount, the period beginning with the Stage Payment Date for such Stage Payment Amount and ending on the last day of the then existing Advance Rental Payment Period,

unless, in either case, such First Advance Rental Payment Period is also a Final Advance Rental Payment Period, in such case it shall end in accordance with the provisions in the definition of “Final Advance Rental Payment Period”.

“First Lease Rental Period” means the period commencing on the Lease Commencement Date and ending on the date on which the then subsisting Advance Rental Payment Period would have ended but for the occurrence of the Delivery Date.

“GAAP” means generally accepted accounting principles in [•] including IFRS.

“Group” means the Lessee and each of its Subsidiaries from time to time.]

“Holding Company” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.]

“IFRS” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“Istiṣnā’ Agreement” means the *istiṣnā’* agreement dated on or about the date of this Agreement and entered into between [•] as seller and [•] as buyer.

“Late Payment Amount” has the meaning given to this expression in Clause 8.1.

“Lease Commencement Date” means the Delivery Date.

“Lease Expiry Date” means the date falling [•] ([•]) years from the Lease Commencement Date.

“Lease Takāful Policies / [Insurances]” has the meaning given to this expression in the Service Agency Agreement.

“Lease Takāful / [Insurance] Proceeds” has the meaning given to this expression in the Service Agency Agreement.

“Lease Payment Date” means the last day of a Lease Rental Period provided that if a Lease Payment Date falls on a day which is not a Business Day, the Lease Payment Date will instead fall on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

“Lease Rental Payment” means the lease rental payment payable in respect of each Lease Rental Period as calculated in accordance with Schedule 1 (*Lease Rental Payments*).

“Lease Rental Period” means:

- (a) the First Lease Rental Period; and
- (b) each Successive Lease Rental Period up to (and including) the Final Lease Rental Period.

“**Lease Term**” means the period from and including the Lease Commencement Date to the earlier to the occur of:

- (a) the Final Maturity Date; and
- (b) the date on which the title to the Leased Assets is transferred in full to the Lessee pursuant to the Sale Undertaking or the Purchase Undertaking (as the case may be).

“**Leased Assets**” means the Assets leased to the Lessee in accordance with Clause 2.1 (*Agreement to Lease*), and includes any repairs, modifications, improvements, additions, substitutions or alterations to such Leased Assets or changes to the working order, functions or quality of the Leased Assets during the term of this Agreement but excluding any beneficial ownership interest in the Leased Assets which has been sold to the Lessee pursuant to, and in accordance with the terms of the Purchase Undertaking or the Sale Undertaking.

“**Legal Reservations**” means any general principles of law, reservations and qualifications which are referred to in the legal opinions delivered to the Buyer under paragraph 4 of Schedule 4 (*Conditions Precedent*) of the *Istisnā’* Agreement.

“**Margin**” means the rate of [•] per cent. ([•]%) per annum.

“**Market Disruption Event**” means on or before the first day of any Advance Rental Payment Period or Lease Rental Period, the Lessor determines that:

- (a) the applicable Reference Rate for such Advance Rental Payment Period or Lease Rental Period cannot be adequately and reasonably determined due to the unavailability of funds in, or other circumstances affecting, the Relevant Interbank Market;
- (b) the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of the Reference Rate for the relevant period; or
- (c) deposits in [•] in the Relevant Interbank Market are not available to it in the ordinary course of business.

“**Material Adverse Effect**” means in the reasonable opinion of the Lessor a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Lessee; or
- (b) the ability of the Lessee to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Lessor under any of the Finance Documents.

“**Net Stage Payment Amount**” has the meaning given to this expression in the *Istisnā’* Agreement.

[“**Permitted Financial Indebtedness**” means:

- (a) Financial Indebtedness arising under the Finance Documents;
- (b) Financial Indebtedness arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of the Finance Documents, but not a foreign exchange transaction for investment or speculative purposes; and
- (c) any trade credit extended by the Lessee to its customers on normal commercial terms and in the ordinary course of its business activities.]

“**Prepayment Amount**” has the meaning given to this expression in Clause 6 (*Prepayment*).

“**Purchase Undertaking**” means the purchase undertaking of even date herewith executed by [•] as lessee in favour of [•] as lessor.

“**Quotation Date**” means, in relation to any period, two (2) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Date will be determined by the Lessor in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one (1) day, the Quotation Date will be the last of those days).

“**Reference Rate**” means, in relation to any relevant sum for a relevant period, the rate determined by the Lessor to be the arithmetic mean (rounded up if necessary to four decimal places) of the [•] interbank offered rates for deposits of [•] which are displayed on the appropriate page of the Reuters Screen at approximately 11:00am ([•] time) on the Quotation Date. If the agreed page is replaced or service ceases to be available, the Lessor may specify another page or service displaying the appropriate rate after consultation with the Lessee.

“**Relevant Interbank Market**” means the [•] interbank market.

“**Renewal Notice**” means a notice substantially in the form set out in Schedule 4 (*Form of Renewal Notice*) given in accordance with paragraph (c) of Clause 5.2 (*Determination of Lease Rental Payments*).

“**Sale Undertaking**” means the sale undertaking of even date herewith executed by [•] as lessor in favour of [•] as lessee.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Seller**” means [•] in its capacity as seller under the *Istiṣnā'* Agreement.

“**Service Agency Agreement**” means the service agency agreement of even date herewith entered into between (a) [•] as service agent, and (b) [•] as lessor.

“**Service Agency Costs**” has the meaning given to this expression in the Service Agency Agreement.

“**Service Agent**” means [•] in its capacity as service agent under the Service Agency Agreement.

“**Service Cost Payment**” means in relation to a Lease Rental Period, the amount equal to the Service Agency Costs incurred by the Service Agent during the Service Cost Period ending during the previous Rental Period.

“**Service Cost Period**” has the meaning given to this expression in the Service Agency Agreement.

“**Signing Date**” has the meaning given to this expression in the *Istiṣnā’* Agreement.

“**Specifications**” has the meaning given to this expression in the *Istiṣnā’* Agreement.

“**Stage Payment**” has the meaning given to this expression in the *Istiṣnā’* Agreement.

“**Stage Payment Amount**” has the meaning to this expression in the *Istiṣnā’* Agreement.

“**Stage Payment Date**” has the meaning to this expression in the *Istiṣnā’* Agreement.

“**Structural Maintenance and Repair**” means any maintenance or repair carried out on the Leased Assets other than routine maintenance and repair related to the use and operation of the Leased Assets.

[“**Subcontract(s)**” means [•].]

[“**Subcontractor**” means any party to a Subcontract other than the Lessee (including, without limitation, any person that subsequently becomes a party to a Subcontract).]

“**Subsequent Advance Rental Payment Period**” means each period beginning on the last day of the preceding Advance Rental Payment Period for a Stage Payment Amount and ending [one (1), three (3), six (6), twelve (12)] months or any other period as determined by the Lessor thereafter unless such Subsequent Advance Rental Payment Period is also the Final Advance Rental Payment Period, in such case it shall end in accordance with the provisions in the definition of “Final Advance Rental Payment Period”.

“**Subsequent Rental Payment**” means, in relation to each applicable Lease Rental Period, the amount comprising the aggregate of (a) increased costs (if any) and (b) the Service Cost Payment.

[“**Subsidiary**” means in relation to any company or entity, any other company or other entity (a) which is directly or indirectly under the control of the first mentioned company or entity and (b) any company or entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that company; and for the purpose of this definition only, “control” of a company or entity means ownership of more than 50% of the voting share capital or equivalent right of ownership of such company or entity or of its Holding Company or power to direct its affairs or power to control the composition of its board of directors or equivalent body, in each case, whether by contract or otherwise.]

“**Successive Lease Rental Period**” means the date commencing on the date which the First Lease Rental Period ends and ending on the date falling [•one (1)/ three (3)] month[s] thereafter. Each subsequent Lease Rental Period shall commence on the expiry of the previous Lease Rental Period and shall end on the date falling [•one (1)/ three (3)] month[s] thereafter, provided that the Final Lease Rental Period shall end on the Final Lease Payment Date.

“**Tax**” means any tax, *zakat*, levy, impost, duty or other charge or withholding of a similar nature, including any penalty, fine or commission payable in connection with any failure to pay or any delay in paying any of the same.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from any payment under a Finance Document.

“**Termination Sum**” has the meaning given to this expression in the Purchase Undertaking.

“**Total Consideration**” has the meaning given to this expression in the *Istiṣnā’* Agreement.

“**Total Loss**” means:

- (a) any event which results in the Leased Assets being destroyed or damaged beyond economic repair, or permanently rendered unfit for normal use for any reason whatsoever; or
- (b) the compulsory acquisition, confiscation, seizure or expropriation of all, or substantially all, of the Leased Assets (as may be determined by the Lessor in its absolute discretion) whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration) which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority, in circumstances where such Leased Assets cannot be replaced or reinstated in accordance with the Service Agency Agreement.

“**Variable Element**” means the amount calculated in accordance with paragraph 3 (*Variable Element*) of Schedule 1 (*Lease Rental Payments*).

1.2 Unless a contrary indication appears, any reference in this Agreement or any other Finance Document to:

- (a) the “**Buyer**”, the “**Lessee**”, the “**Lessor**”, the “**Seller**” or the “**Service Agent**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” means *shari’ah*-compliant assets including present and future properties, revenues and rights of every description;
- (c) a “**Clause**” or “**Schedule**” is to a Clause of or Schedule to the document in which the reference appears;
- (d) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a “**month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
 - (i) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
 - (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month,

provided that the above rules will only apply to the last month of any period;

- (f) 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) or two or more of the foregoing, and shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (g) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (h) “**Shari’ah**” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;

- (i) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
 - (j) provision of law is a reference to that provision as amended or re-enacted; and
 - (k) a time of day is a reference to [•] time.
- 1.3 Clause and Schedule headings are for ease of reference only.**
- 1.4 Words denoting the singular shall include the plural and vice versa.**
- 1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Agreement has the same meaning in that notice as in this Agreement.**
- 1.6 A Default or an Event of Default is “continuing” if it has not been remedied or waived.**
- 1.7 All references to dates and time periods in this Agreement will be construed in accordance with the Gregorian calendar.**

2. LEASE

2.1 Agreement to Lease

- (a) Subject to the terms of this Agreement and the other Finance Documents, the Lessor agrees to lease to the Lessee, and the Lessee agrees to accept on lease, the Leased Assets (on an “as is, where is” basis) upon the terms of this Agreement and the other Finance Documents.
- (b) Subject to the terms of this Agreement and/or any other Finance Document, the obligations of the Lessor and the Lessee under this Agreement shall commence on the date of this Agreement and remain in full force and effect until expiry of the Lease Term.

2.2 Delay in Lease Commencement Date

If the Lease Commencement Date does not occur by the Completion Date for any reason, the Lessee shall not have any right to terminate this Agreement, and except as otherwise provided in this Agreement the Lessor shall not be liable to the Lessee for any such delay.

2.3 Payments

In consideration for the Lessor agreeing to lease the Leased Assets under this Agreement, the Lessee agrees to make Advance Rental Payments in respect of the Leased Assets and, following the Lease Commencement Date, Lease Rental Payments in respect of the Leased Assets on each Payment Date during the Lease Term in accordance with Clause 3 (*Advance Rental Payments*) and Clause 5 (*Lease Rental Payments*) (as appropriate).

2.4 Termination of the *Istiṣnāʿ* Agreement

This Agreement shall terminate automatically if the *Istiṣnāʿ* Agreement is terminated prior to Delivery and, without prejudice to:

- (a) the Lessor’s obligations to refund the aggregate amount of any Advance Rental Payments as contemplated pursuant to Clause 3.3 (*Refund of Advance Rental Payments*);

- (b) the Lessee's obligations to make the payments contemplated under this Agreement and
- (c) the Lessee's obligations in its capacity as Seller to make the payments contemplated under the *Istiṣnā'* Agreement,

upon such termination:

- (i) the Lessee and the Lessor shall have no further obligations to each other under this Agreement;
- (ii) the Lessee shall have no right to request any replacement or substitute assets for leasing; and
- (iii) the Lessor shall waive all of its rights and claims under this Agreement.

3. ADVANCE RENTAL PAYMENTS

3.1 Advance Rental Payments

The Lessee will make Advance Rental Payments to the Lessor on the Advance Rental Payment Date for the corresponding Advance Rental Payment Period (for the avoidance of doubt an Advance Rental Payment Period may be a period of [one (1), three (3), six (6), twelve (12)] months or any other period as determined by the Lessor) in each case, in accordance with paragraph 1 (*Advance Rental Payments*) of Schedule 2 (*Advance Rental Payments*).

3.2 Selection of Advance Rental Payment Period

- (a) The First Advance Rental Payment Period shall start on the date on which the first Stage Payment Amount is made and each Subsequent Advance Rental Payment Period shall start on the last day of the preceding Advance Rental Payment Period. For the avoidance of doubt, there shall be only one Subsequent Advance Rental Payment Period at any given time.
- (b) Any Advance Rental Payment Period which would otherwise extend beyond the Lease Commencement Date shall end on such date.

3.3 Refund of Advance Rental Payments

Subject to Clause 21.3 (*Set-Off*), on the date on which the *Istiṣnā'* Agreement is terminated in accordance with clause 9 (*Termination*) of the *Istiṣnā'* Agreement the aggregate amount of Advance Rental Payments paid by the Lessee prior to such date shall be refunded by the Lessor to the Lessee.

4. TERMS OF THE LEASE

4.1 Acknowledgement by Lessee

The Lessee acknowledges that the Leased Assets have been selected and approved by the Lessee and confirms that the Specifications of the Leased Assets are in accordance with the requirements of the Lessee and satisfactory for its purposes under the Finance Documents.

4.2 Leased Assets

Upon Delivery, the Assets will become (and thereafter be referred to as) the Leased Assets. The Lessee is not liable to pay any Lease Rental Payments until the Lease Commencement Date has occurred.

4.3 Lease Term

Subject to the terms of this Agreement and the other Finance Documents, the Lessor undertakes to lease the Leased Assets to the Lessee and the Lessee undertakes to accept the lease of the Leased Assets for the Lease Term.

5. LEASE RENTAL PAYMENTS

5.1 Lease Rental Payments

Subject to Clause 21.3 (*Set-Off*), the Lessee shall pay the applicable Lease Rental Payments on each of the Lease Payment Dates to the Lessor in accordance with Schedule 1 (*Lease Rental Payments*).

5.2 Determination of Lease Rental Payments

The Lease Rental Payment payable in respect of each Lease Rental Period shall be determined in accordance with the following procedure:

- (a) Each Lease Rental Payment shall comprise the following:
 - (i) the applicable Base Rental Payment;
 - (ii) the applicable Variable Element; and
 - (iii) the applicable Service Cost Payment.
- (b) In the case of the First Lease Rental Period, the Lease Rental Payment shall be set out in the Certificate of Delivery.
- (c) In the case of each Successive Lease Rental Period and the Final Lease Rental Period, no later than [two (2)] Business Days prior to the end of the then current Lease Rental Period, the Lessor shall send a Renewal Notice to the Lessee offering to enter into the next Lease Rental Period in relation to the Leased Assets and setting out the amount of the Lease Rental Payment payable in respect of such Lease Rental Period.
- (d) All Renewal Notices shall be irrevocable once sent.

6. PREPAYMENT

The Lessee may, but only on any Lease Payment Date by giving at least [five (5)] Business Days prior written notice to the Lessor and in a minimum amount of [•] ([•]) and integral multiples of [•] ([•]) thereafter, make an additional payment to the Lessor for the purpose of reducing the Total Consideration (such additional amount to be referred to as the “**Prepayment Amount**”).

7. LESSEE'S PAYMENT OBLIGATIONS

Except as otherwise provided in this Agreement, the Lessee shall pay the Lease Rental Payments in accordance with this Agreement notwithstanding:

- (a) any right to set-off or counterclaim that the Lessee may have against the Lessor for any reason;
- (b) any defect in the Lessor's title to the Leased Assets;
- (c) any defect in the quality of the Leased Assets or their merchantability, design, operation or compliance with Specifications approved by the Lessee or the fitness for the purpose of the Leased Assets;
- (d) the Lessee ceasing to use, operate or possess the Leased Assets or any part of the Leased Assets for whatever reason or cause, unless such is caused by the wilful misconduct or gross negligence of the Lessor;
- (e) any loss, damage or destruction of the Leased Assets, except where a Total Loss has occurred;
- (f) any Default occurring; or
- (g) any other matter or circumstance howsoever arising including any defect in execution of this Agreement or the Finance Documents or any provision of this Agreement or the Finance Documents being held to be unenforceable unless such is caused by the gross negligence or wilful misconduct of the Lessor.

8. LATE PAYMENT AMOUNT

- 8.1 If the Lessee fails to pay any sum on its due date for payment under this Agreement, then in addition to paying the overdue amount it shall be liable to pay to Lessor a late payment amount (the "**Late Payment Amount**") in respect of such overdue amount from and including the due date to the actual date of payment at the rate per annum from time to time determined by the Lessor to be the aggregate of:
- (a) [two per cent. (2%)] per annum;
 - (b) the Reference Rate; and
 - (c) Margin.
- 8.2 Any Late Payment Amount payable pursuant to Clause 8.1, shall be immediately payable by the Lessee on demand by the Lessor and the amount of any Late Payment Amount received by the Lessor will be paid by it, firstly, to pay any claims, costs and expenses (not to include any opportunity costs or funding costs) incurred by the Lessor as a result of the failure of the Lessee to pay any sum on its due date for payment under any Finance Document (such amount not to exceed the Balance Outstanding) and secondly, to donate the remaining amount, on behalf of the Lessee, to a registered charity or charities selected by the *shari'ah* advisory board of the Lessor.

9. FEES, COSTS AND EXPENSES

9.1 Fees¹

- (a) The Lessee shall pay to the Lessor a [*•identify fees*] [computed at the rate of [*•*] per cent. (*([•])%*) per annum on the Balance Outstanding] / [for an amount of [*•*] (*([•])*)].
- (b) The [*•identify fees*] are payable on [*•identify frequency of paying fees*].

9.2 Transaction Expenses

The Lessee shall within [three (3)] Business Days of demand by the Lessor, pay or reimburse to the Lessor all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Lessor in connection with:

- (a) the negotiation, preparation and execution of this Agreement, any other documents referred to in this Agreement and any other Finance Documents (whether such documents are executed at the same time as executing this Agreement or are executed after the date of this Agreement);
- (b) the completion of the transactions contemplated in this Agreement and/or any other Finance Document; and
- (c) the declaration of the Effective Date.

9.3 Amendments, waivers and consents

If the Lessee requests an amendment, waiver or consent, the Lessee shall within [three (3)] Business Days of demand by the Lessor, pay or reimburse to the Lessor all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Lessor in responding to, evaluating, negotiating or complying with that request or requirement, subject to the proviso that no amendment shall contravene the principles of *shari'ah*.

9.4 Enforcement costs and preservation costs

The Lessee shall within [three (3)] Business Days of demand by the Lessor pay or reimburse to the Lessor all costs, charges and expenses (including legal and other fees and all other out-of-pocket costs and expenses), on a full indemnity basis, incurred by the Lessor in connection with exercising any of its rights or powers under any of the Finance Documents, or in suing for or seeking to recover any sums payable by the Lessee under the Finance Documents, or otherwise preserving or enforcing its rights under the Finance Documents or any other document required in connection therewith or in defending any claims brought against it in respect of the Finance Documents.

9.5 Miscellaneous expenses

The Lessee shall promptly pay all present and future stamp and other like duties and taxes and all notarial, registration, translation, recording and other like fees in respect of the Finance Documents which may be required by applicable law.

10. TAXES AND OTHER DEDUCTIONS

10.1 No Deduction

All sums payable by the Lessee under the Finance Documents shall be paid in full without set-off or counterclaim or any restriction or condition and, except to the extent required by any law or regulation, free and clear of any deduction or withholding on account of Tax or otherwise.

10.2 Tax Gross up

If the Lessee is required by any law or regulation to make any such deduction or withholding under or in connection with the Finance Documents, the Lessee shall, together with the relevant payment, pay such additional amount as will ensure that the Lessor receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required.

10.3 Tax Indemnity

If the Lessor is required to make any payment to any governmental authority on account of any Tax or other levy in relation to any sum received or receivable by the Seller under this Agreement or any other Finance Document or any liability in respect of such payment is asserted, imposed, levied or assessed against the Lessor, the Lessee shall, upon demand of the Lessor, promptly pay to the Lessor on a full indemnity basis the amount of the payment or liability, together with any commission, penalties and expenses payable or incurred by the Lessor in connection therewith.

11. CHANGE OF CIRCUMSTANCES

The Lessee shall, from time to time on demand by the Lessor, pay to the Lessor such amounts as the Lessor may reasonably certify as being required to compensate the Lessor for complying with any present or future law, regulation or requirement or request of any governmental authority which has the effect of increasing the cost to the Lessor or reducing the Lessor's effective return under the Finance Documents.

12. REPRESENTATIONS AND WARRANTIES

12.1 The Lessee represents and warrants to the Lessor that as at the date of this Agreement:

- (a) it is a [*insert type of company*] company, duly incorporated and validly existing under the law of [•];
- (b) as at the Signing Date, [•] aggregately owns, directly and indirectly through its subsidiaries, [•]% of the share capital of the Lessee;
- (c) it has the power to own its assets and carry on its business as it is being conducted;
- (d) it has the power and capacity to own its assets and carry on its business as it is being conducted;
- (e) it has the power and capacity to enter into, perform and deliver each Finance Document;
- (f) it has made its own independent appraisal and investigation of all the risks and benefits arising under or in connection with each Finance Document;
- (g) the obligations expressed to be assumed by it under this Agreement and any other agreement or document to which it is a party, are legal, valid, binding and, [subject to the Legal Reservations,] enforceable obligations;
- (h) the entry into and performance by it of, and the transactions contemplated by, this Agreement and any other agreement or document to which it is a party, does not and will not conflict with:
 - (i) any law or regulation applicable to it; and

- (ii) any agreement or instrument binding upon it or any of its assets;
- (i) all Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement and any other agreement or document to which it is a party;
 - (ii) to make each Finance Document admissible in evidence in [•]; and
 - (iii) to take the Leased Assets, except where failure to do so could not reasonably be expected to have a Material Adverse Effect on the use of the Leased Assets for its intended purpose, have been obtained or effected and are in full force and effect;
- (j) it is not required under the laws and regulations of [•] to make any deduction for or on account of Tax from any payment it may make under any Finance Document to any person who is resident in [•];
- (k) under the laws and regulations of [•] it is not necessary that any Finance Document be filed, recorded or enrolled with any court or other authority in [•] or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated hereunder;
- (l) Environmental laws
 - (i) it is in compliance with paragraph (m) of Clause 15 (*General Undertakings*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect; and
 - (ii) no Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim has or is reasonably likely, if determined against it, to have a Material Adverse Effect;
- (m) except as notified to the Lessor pursuant to paragraph (f) of Clause 13.1, no Event of Default is continuing;
- (n) no other event or circumstance is outstanding which constitutes a default under any other judgment, order, agreement or instrument which is binding on it or to which any of its assets are subject;
- (o) all information provided by it to the Lessor was, to the best of its knowledge, true and accurate in all material respects as at the date on which it was provided;
- (p) it has not omitted to disclose or withheld any information from the Lessor which if disclosed to the Lessor might have a Material Adverse Effect on:
 - (i) any credit appraisals conducted by the Lessor with respect to the Lessee; and/or
 - (ii) the Lessor's decision to enter into the applicable Finance Documents;
- (q) it has no Financial Indebtedness outstanding [other than the Permitted Financial Indebtedness];
- (r) its payment obligations under each Finance Document rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law;

- (s) no litigation, arbitration or proceedings of or before any court, arbitral body or agency which, if adversely determined, may or will have a Material Adverse Effect, have been started or, threatened or are pending against it;
- (t) neither it nor any of its assets is entitled to immunity on grounds of sovereignty or otherwise from any legal action or proceeding; and
- (u) each of its financial statements delivered to the Lessor in accordance with paragraphs (a), (b) and (c) of Clause 13.1 were prepared in accordance with GAAP, in each case, applied consistently and that each such statement fairly represents its financial condition and operations during the relevant period and that there has been no material adverse change in its business or financial condition since the date of the relevant financial statement.

12.2 The Lessee further represents and warrants to the Lessor at the relevant time that:

- (a) it has inspected the Leased Assets to its satisfaction on the Signing Date and accepts to take on lease the Leased Assets based on such inspection;
- (b) it is wholly satisfied that the Leased Assets are in good and adequate condition and fit for use by the Lessee for the entire term of the lease contemplated under this Agreement; and
- (c) the Leased Assets are not subject to Security in favour of any person.

12.3 The Lessee shall be deemed to repeat each of the representations and warranties set out in Clause 12.1 (other than those which are set out in paragraphs (k) and (l) of Clause 12.1) on each Stage Payment Date by reference to the facts and circumstances then existing.

12.4 The Lessee acknowledges that the Lessor has entered into this Agreement in reliance of the representations and warranties referred to in this Clause 12.

13. INFORMATION UNDERTAKINGS

13.1 The Lessee covenants with and undertakes to the Lessor that until the Final Maturity Date, it will:

- (a) supply to the Lessor as soon as they become available, but in any event within [ninety (90)] days from the end of each of its financial year, audited financial statements for that financial year;
- (b) supply to the Lessor as soon as they become available, but in any event within [forty five (45)] days from the end of each half of each of its financial years, its financial statements for that financial half year;
- (c) supply to the Lessor as soon as they become available, but in any event within [thirty (30)] days from the end of each quarter of each of its financial years, its financial statements for that financial quarter;
- (d) promptly upon becoming aware of them, inform the Lessor of 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;
- (e) promptly provide to the Lessor such financial or other information relating to it and all of its businesses as the Lessor may reasonably request;

- (f) notify the Lessor of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence; and
 - (g) [provide to the Lessor a certificate signed by at least [two (2) directors/authorised signatories] of the Lessee 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) with each set of financial statements delivered pursuant to paragraphs (a), (b) and (c) above and shall also provide such a certificate at any other time if so requested by the Lessor promptly upon its request.]
- 13.2 The Lessee shall procure that each set of financial statements delivered pursuant to paragraphs (a), (b) and (c) of Clause 13.1 is prepared in accordance with GAAP, in each case, applied consistently. The Lessee shall also procure that each set of financial statements delivered pursuant to paragraphs (a), (b) and (c) of Clause 13.1 is certified by at least [two (2) directors/authorised signatories] of the Lessee and in the case of audited financial statements, also by its auditors as fairly representing its financial condition as at the date at which those financial statements were drawn up.
- 13.3 The Lessee shall supply to the Lessor with each set of financial statements delivered pursuant to paragraphs (a), (b) and (c) of Clause 13.1, a Compliance Certificate signed by the [chief financial officer and one (1) of the Lessee's directors], setting out in reasonable detail computations as to compliance with Clause 14 (*Financial Undertakings*) as at the date those financial statements were drawn up.
- 13.4 The Lessee shall promptly on the request of the Lessor supply to the Lessor any documentation or other evidence which is reasonably requested by the Lessor to enable it to carry out and be satisfied with the results of all “know your customer” requirements.

14. FINANCIAL UNDERTAKINGS

14.1 Financial ratios

The Lessee undertakes to the Lessor that, from the Signing Date until the Final Maturity Date and so long as any sum is or may become payable under the Finance Documents:

- (a) [its Tangible Net Worth is not less than [•] ([•])];
- (b) [its Debt Service Coverage Ratio (“DSCR”) does not fall below [•]x,].
- (c) [the ratio of its Debt to Equity does not exceed [•]x at the Group level]; and
- (d) [its Profit Coverage Ratio does not fall below [•]x at the Group level].

14.2 Calculations

The ratios set out in Clause 14.1 shall be tested [quarterly] on the basis of the audited and unaudited financial statements submitted by the Lessee pursuant to paragraphs (a), (b) and (c) of Clause 13.1.

14.3 Definitions

In this Clause 14 the following terms shall have the following meanings:

[“**Current Assets**” means, at any date, the balance of the Lessee's stock, inventory, work in progress, accounts receivable, cash at bank, cash in hand, prepayments and other receivables due within one year of such date.]

["**Current Liabilities**"] means, at any date, the Lessee's liabilities falling due within one year of such date, including amounts due to trade creditors and accounts payable, accrued expenses, short-term debt (including overdrafts outstanding), lease rental, and principal and commission, profit or mark-up amounts of long-term debt maturing within [twelve (12) months] of such date.]

["**Debt**"] means all Financial Indebtedness of the Lessee to the extent it comprises indebtedness for principal incurred in respect of (a) moneys borrowed or raised, (b) any bond, note, loan stock, debenture or similar instrument, or (c) any acceptance, bill discounting, trade payable, note purchase, factoring (to the extent that there is recourse to the Lessee) facility other than any loans from its shareholders, which are subordinated to bank debts and minority interests.]

["**DSCR**"] (Debt Service Coverage Ratio) means, at the time the DSCR is to be determined and for the previous twelve (12) month period ending on the date of determination, the ratio of EBITDA for such twelve (12) month period, less:

- (a) increases (plus decreases) in Net Working Capital during that twelve (12) month period; and
- (b) Permitted Capital Expenditure paid by the Lessee in that twelve (12) month period,

to Debt Service paid by the Lessee during such twelve (12) month period.]

["**EBITDA**"] means, for the relevant period, earnings as stated in the income statement of the Lessee (excluding any extraordinary and non-operating income), and calculated before the deduction of depreciation, amortization, tax and commission, and other finance and similar charges (net of commission and other similar income).]

["**Equity**"] means the sum of the amount for the time being paid up on the Lessee's issued share capital and the amount standing to the credit of the Lessee's statutory reserve, special reserve and retained earnings, after excluding any dividend or other distribution declared or made.]

["**Finance Lease**"] means any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease.]

["**Financings**"] means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of [members of the Group/the Lessee] for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity [which is not a member of the Group] which liability would fall within one of the other paragraphs of this definition;

- (g) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than thirty (30) days after the date of supply;
- (h) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.]

[“**Net Working Capital**” means Current Assets minus Current Liabilities.]

[“**Permitted Capital Expenditure**” means any expenditure or obligation in respect of expenditure which, in accordance with GAAP, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease).]

[“**Profit Coverage Ratio**” means the ratio of EBITDA to Profit Payment.]

[“**Profit Payment**” means, for any Relevant Period, the aggregate amount of the accrued profit, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financings paid or payable by [the Lessee/any member of the Group] (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period:

- (a) including any upfront fees or costs;
- (b) including the profit or commission (but not the capital) element of payments in respect of Finance Leases; and
- (c) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) [the Lessee/any member of the Group] under any commission rate hedging arrangement.]

[“**Relevant Period**” means each period of [three (3) months] ending on or about the last day of each financial quarter.]

[“**Tangible Net Worth**” means, at any time, the aggregate of:

- (a) the amounts paid up or credited as paid up on the issued share capital of the Lessee;
- (b) the amount standing to the credit of the consolidated capital and revenue reserves of the Lessee; and
- (c) based on the latest audited balance sheet of the Lessee (the “**latest balance sheet**”) but adjusted by:
 - (i) adding any amount standing to the credit of the profit and loss account of the Lessee for the period ending on the date of the latest balance sheet to the extent not included in paragraph (b) above;
 - (ii) any revaluation reserves (to the extent required in accordance with GAAP);

- (iii) reflecting any variation in the amount of the issued share capital of the Lessee and the consolidated capital and revenue reserves of the Lessee after the date of the latest balance sheet;
- (iv) deducting any amount standing to the debit of the profit and loss account of the Lessee for the period ending on the date of the latest balance sheet;
- (v) deducting any amount attributable to goodwill (including goodwill arising only on consolidation) or any other intangible asset of the Lessee;
- (vi) [deducting any amount attributable to interests of any other Group members in the Lessee];
- (vii) deducting any reserves set aside for taxation, deferred taxation or bad debts;
- (viii) deducting any amount attributable to an upward revaluation of assets made at any time after the date of the latest balance sheet; and
- (ix) deducting any dividend or other distribution declared, recommended or made by the Lessee.]

15. GENERAL UNDERTAKINGS

The Lessee covenants with and undertakes to the Lessor that until the Final Maturity Date, it shall:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of [•] to enable it to perform its obligations under this Agreement and to ensure the legality, validity, [subject to the Legal Reservations,] enforceability or admissibility in evidence in [•] of this Agreement (subject to this Agreement being translated into Arabic by a duly licensed and certified translator);
- (b) comply with all laws and regulations to which it may be subject;
- (c) comply with all of its obligations under each Finance Document;
- (d) maintain its existence in the same form and substance as that at the date of this Agreement;
- (e) ensure that its obligations under each Finance Document will at all times rank at least *pari passu* with the claims of all its other unsecured creditors, except for obligations mandatorily preferred by law;
- (f) 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 any of its assets, except for any sale, lease, transfer or other disposal:
 - (i) made pursuant to the Finance Documents;
 - (ii) in the ordinary course of trading of the Lessee;
 - (iii) of assets in exchange for other assets comparable or superior as to type, value and quality; and
 - (iv) the disposal of obsolete assets which have no economic value to the Lessee;

- (g) procure that no substantial change is made to the general nature of its businesses from that carried on at the date of this Agreement;
- (h) not enter into any amalgamation, demerger or merger;
- (i) not purchase, establish or otherwise acquire or commence to carry on any business not carried on by it or directly related to the business carried on by it at the date of this Agreement, in each case, without the prior written consent of the Lessor;
- (j) consistently prepare and maintain proper and adequate books and records reflecting fully all transactions entered into by it;
- (k) not sell, convey or otherwise dispose or attempt to sell, convey or otherwise dispose of the Leased Assets; and
- (l) not create or permit to subsist any Security over the Leased Assets or any part thereof except any Security created pursuant to the terms of the Finance Documents.
- (m) The Lessee shall:
 - (i) comply with all Environmental Law;
 - (ii) obtain, maintain and ensure compliance with all requisite Environmental Permits;
 - (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.
- (n) The Lessee shall, promptly upon becoming aware of the same, inform the Lessor in writing of:
 - (i) any Environmental Claim against it which is current, pending or threatened; and
 - (ii) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against it,

where the claim[, if determined against that member of the Group,] has or is reasonably likely to have a Material Adverse Effect.

16. UNDERTAKINGS RELATED TO THE LEASED ASSETS

The Lessee covenants with and undertakes to the Lessor that until the Final Maturity Date, it will:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect all Authorisations (including, without limitation, from the competent municipal and civil defence authorities in [•]) related to the use and operation of the Leased Assets except where failure to do so could not reasonably be expected to materially adversely effect the use of the Leased Assets for its intended purpose;
- (b) ensure that the Leased Assets are used solely for licensed or authorised purposes;

- (c) carry out all routine maintenance and repairs on the Leased Assets related to the operation and use of the Leased Assets in accordance with the applicable laws and regulations to ensure that they fit for the purpose which they are intended to be used;
- (d) [not use any of the Leased Assets for any purpose for which they were not designed or reasonably suited or outside the tolerances and limitations for which the Leased Assets were designed so as not to invalidate any applicable manufacturer's warranties related thereto;]
- (e) not use any of the Leased Assets for any purpose or in any manner not fully covered by the Lease Insurances;
- (f) comply with the terms and conditions of the Lease Insurances and not do, consent to, or permit any act or omission which might invalidate or render unenforceable the whole or any part of the Lease Insurances;
- (g) promptly provide the Lessor with any and all such information as the Lessor may reasonably require regarding the operation, maintenance and physical condition of the Leased Assets;
- (h) not do or omit to do, or permit to be done or not done, any act which might jeopardise the title, rights and interest of the Lessor in the Leased Assets and/or omit or permit to be omitted to be done any act which might prevent that title and interest and those rights from being jeopardised;
- (i) not at any time challenge, deny or repudiate the Lessor's right to the Leased Assets;
- (j) permit the Lessor or its authorised representatives upon the Lessor giving the Lessee five (5) Business Day's advance notification thereof, to inspect the Leased Assets during the normal business hours of the Lessee and provide them all necessary assistance in this respect (provided that any such visit shall be subject to normal safety requirements of the Lessee applicable at the relevant time and shall not interfere with, or interrupt, the operations of the Lessee); and
- (k) promptly settle all costs, fees, charges and other expenses (including, without limitation, any utility charges) payable in relation to the use and operation of the Leased Assets save to the extent that any payment is being disputed in good faith and immediate notice thereof has been given to the Lessor and adequate provision (including without limitation for reasonably likely fines and penalties in the event such dispute is adversely determined) has been made.

17. TAKĀFUL / [INSURANCE] UNDERTAKINGS

The Lessee shall obtain and maintain such additional *takāful* cover / [insurances] as may be specified by the Lessor (acting on the advice of any *takāful* / [insurance] consultant and to the extent available on commercially reasonable terms, *takāful* (*shari'ah*-compliant cooperative insurance) basis) from time to time in order to provide adequate cover against risks related to the use and operation of the Leased Assets by the Lessee, such cover to include (without limitation) third party liability cover against any risk of injury, loss or death to any person visiting the Leased Assets.

18. STRUCTURAL MAINTENANCE, LOSS INSURANCES, AUTHORISATIONS

Subject to the provisions of the Service Agency Agreement, the Lessor shall be primarily liable for:

- (a) carrying out all Structural Maintenance and Repair on the Leased Assets;
- (b) obtaining and maintaining Lease *Takāful* / [Insurances] in respect of the Leased Assets; and
- (c) obtaining and maintaining any Authorisations needed in connection with the Lessor's right to the Leased Assets and their use and operation by the Lessee.

19. EVENTS OF DEFAULT

19.1 Each of the following events and circumstances shall constitute an Event of Default for the purposes of the Finance Documents:

- (a) The Lessee (in all of its capacities) does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:
 - (i) its failure to pay is caused by administrative or technical error; and
 - (ii) payment is made within [three] ([3]) Business Days of its due date.
- (b) The Lessee (in all of its capacities) fails to comply with or is in breach of any provision of any Finance Document (other than as contemplated in paragraph (a) above) provided that no Event of Default will occur if such breach in the opinion of the Lessor is capable of remedy and is remedied within [ten] ([10]) Business Days of the earlier of notice of such breach from the Lessor to the Lessee or the date on which the Lessee became aware of such breach.
- (c) Any representation or statement made or deemed to be made by the Lessee (in all of its capacities) in any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (d) The Lessee 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 its creditors.
- (e) [The value of the assets of the Lessee is less than its liabilities as reflected in its financial statements.]
- (f) Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Lessee which the Lessor reasonably believe has or is reasonably likely to have a Material Adverse Effect.
- (g) The Lessee (in all of its capacities) repudiates a Finance Document or any other document under which the Lessee has incurred any Financial Indebtedness or evidences an intention to repudiate a Finance Document or any other document under which the Lessee has incurred any Financial Indebtedness.
- (h) The Lessee ceases to carry on its businesses substantially in the manner which it carried on at the date of this Agreement.

- (i) Any litigation, arbitration or proceedings of or before any court, arbitral body or agency are threatened or commenced against the Lessee and which, if adversely determined, could have a Material Adverse Effect and such litigation, arbitration or proceedings are not withdrawn within [thirty] ([30]) days of being threatened or dismissed within [thirty] ([30]) days of being commenced.
- (j) Unlawfulness and invalidity
 - (i) It is or becomes unlawful for the Lessee (in all of its capacities) to perform any of its obligations under the Finance Documents.
 - (ii) Any obligation or obligations of the Lessee (in all of its capacities) under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lessor under the Finance Documents.
 - (iii) Any Finance Document ceases to be in full force and effect or is alleged by a party to it to be ineffective.
- (k) [[•] ceases to own at least [•] per cent. ([•]%) of the issued shares in the Lessee until the Final Maturity Date.]
- (l) Any Financial Indebtedness or any commitment for Financial Indebtedness of the Lessee (as the case may be), [other than a Permitted Financial Indebtedness]:
 - (i) is not paid when due nor within any originally applicable grace period;
 - (ii) is declared (or is capable of being declared) to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
 - (iii) is cancelled or suspended by a creditor of the Lessee as a result of an event of default (however described).
- (m) Save for claims that are discharged or dismissed within [thirty] ([30]) days of commencement, any action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness of the Lessee or the winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lessee's business;
 - (ii) a composition, assignment or arrangement with any creditor of the Lessee;
 - (iii) the appointment of a liquidator, receiver, administrator, receiver, compulsory manager or other similar officer in respect of any of the Lessee's; or
 - (iv) the enforcement of any Security over any assets of the Lessee,or any analogous procedure or step is taken in any jurisdiction.
- (n) By or under the authority of any government agency, the Lessee's assets or property are seized or compulsorily acquired where such seizure or compulsory acquisition could have a Material Adverse Effect.

- (o) By or under the authority of any government agency, the Leased Assets are seized or compulsorily acquired.
- (p) Any situation occurs which in the opinion of the Lessor gives grounds for belief that the ability of the Lessee (in all of its capacities) to meet its obligations under any of the Finance Documents has been or will have a Material Adverse Effect.

19.2 On and any time after the occurrence of an Event of Default the Lessor may exercise its rights under the Purchase Undertaking and require the Lessee to purchase the Leased Assets pursuant to the terms of the Purchase Undertaking, whereupon the Lessee shall pay to the Lessor the Termination Sum in accordance with the terms of the Purchase Undertaking and title to the Leased Assets shall pass to the Lessee in accordance with the terms of the Purchase Undertaking.

20. LOSS OR DAMAGE TO THE LEASED ASSETS

- 20.1 If the Leased Assets suffer any loss or damage (including, without limitation, a Total Loss) then, the Lessee shall give prompt notice thereof to the Lessor.
- 20.2 If any loss or damage sustained by the Leased Assets is the result of any negligence or misconduct on the part of the Lessee, then the Lessee shall procure the repair of such loss or damage at its own expense or from any relevant insurance proceeds (other than Lease Insurance Proceeds) to the satisfaction of the Lessor.
- 20.3 If the Total Loss is caused by any negligence or misconduct on the part of the Lessee, then the Lessee shall pay to the Lessor compensation for such Total Loss in an amount equal to the Balance Outstanding and all other amounts due and payable at such relevant time.
- 20.4 In the event of a Total Loss, the lease will terminate and the Lessor will be entitled to all Lease Insurance Proceeds received in accordance with clause 6.3 of the Service Agency Agreement.

21. REIMBURSEMENT AND SET-OFF

21.1 General Losses

- (a) The Lessee shall promptly reimburse the Lessor in respect of all losses, liabilities, damages, costs and expenses, on a full indemnity basis, which the Lessor may incur as a consequence of:
- (i) any Event of Default or any other breach by the Lessee of any of its obligations under any Finance Document;
 - (ii) a failure by the Lessee to pay any amount due under a Finance Document on its due date;
 - (iii) a Termination Sum not being paid in accordance with the provisions of the Purchase Undertaking; and

- (iv) any inability to recover under any of the Lease Insurances as a result of the non-disclosure of any material information or the breach of any other condition by the Lessee or any other person (other than the Lessor).
- (b) The Lessee shall promptly indemnify the Lessor against all costs, losses or liabilities incurred by it (acting reasonably) as a result of:
 - (i) any Tax Deduction from a payment due to the Lessor;
 - (ii) investigating any event which it reasonably believes is a Default; or
 - (iii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.
- (c) The Lessee shall indemnify the Lessor on demand from, and guarantee to it the payment of, all damages, claims, liabilities or costs which may be sustained by the Lessor in connection with the use and operation of the Leased Assets as a result of any negligence or misconduct by the Lessee or its agents, authorised representatives.

21.2 Currency indemnity

- (a) If any sum due from the Lessee under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against the Lessee; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Lessee shall as an independent obligation, within three (3) Business Days of demand, indemnify the Lessor against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Lessee waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

8.3 Set-Off

- (a) The Lessee hereby authorises the Lessor without prior notice or any further authorisation or approval:
 - (i) to apply any credit balance, whether or not then due, which is at any time held by the Lessor for the account of the Lessee at any office of the Lessor, and/or
 - (ii) to apply any other indebtedness owing by the Lessor to the Lessee (whether or not then due),

in or towards satisfaction of any monies owing by the Lessee to the Lessor under this Agreement or any other Finance Document.

- (b) The Lessor shall not be obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other rights to which the Lessor is at any time otherwise entitled.

22. ASSIGNMENT

22.1 Lessee

The Lessee may not assign or transfer any of its rights, benefits and obligations under this Agreement without the prior written consent of the Lessor.

22.2 Assignment by Lessor

The Lessor may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Agreement.

22.3 Ancillary Provisions

The Lessee shall execute and do all such transfers, assignments, assurances, acts and things as the Lessor may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to Clause 22.2 (*Assignment by Lessor*).

23. NOTICES

23.1 Any communication to be made under or in connection with this Agreement shall be made in writing and may be made by fax, letter or courier.

23.2 The address and fax number (and the department and officer (if any) for whose attention the communication is to be made) of each party to this Agreement for any communication to be made or delivered under or in connection with this Agreement is that which is identified with its name in the signature page below or any substitute address or fax number or department or officer as each such party may notify to the others by not less than five (5) Business Days' prior notice.

23.3 Any communication or document made or delivered by one of the parties to this Agreement to the other under or in connection with this Agreement will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter or courier, when it has been left at the relevant address or received by the addressee thereof;

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2, if addressed to that department or officer.

23.4 Any notice given under or in connection with this Agreement must be in English.

23.5 Any communication to be made (i) between the parties under or in connection with the Finance Documents, and (ii) between the Lessee and the Lessor in relation to routine and administrative matters under or in connection with the Finance Documents, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(b) notify each other of any change to their address or any other such information supplied by them.

23.6 Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. in the place of receipt shall be deemed to be effective on the next full working day in that place, and in the case of any electronic communication made by the Lessee to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

24. CALCULATIONS AND CERTIFICATES

24.1 In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lessor are prima facie evidence of the matters to which they relate.

24.2 Any certification or determination by the Lessor of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24.3 Any Variable Element or Late Payment Amount accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

25. AMENDMENTS AND WAIVERS

Any amendment or waiver of any provision of any Finance Document and any waiver of any default under any Finance Document shall only be effective if made in writing and signed by or on behalf of the Lessor.

26. MISCELLANEOUS

26.1 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under this Agreement shall operate as a waiver thereof, 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.

26.2 The indemnities contained in this Agreement are continuing obligations of the Lessee, separate and independent from the other obligations of the Lessee and shall survive until all obligations of the Lessee arising under any provision of the Finance Documents (including the indemnities) are irrevocably paid and discharged in full.

26.3 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.

26.4 If, at any time, any provision of any Finance Document 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.

- 26.5 The indemnities contained in this Agreement are continuing obligations of the Lessee, separate and independent from the other obligations of the Lessee and shall survive until all obligations of the Lessee arising under any provision of the Finance Documents (including the indemnities) are irrevocably paid and discharged in full.
- 26.6 Any Variable Element or Late Payment Amount accruing under this Agreement will accrue from day to day and will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.
- 26.7 To the fullest extent permitted by law, the provisions of all existing or future laws and regulations which operate or may operate directly or indirectly to lessen or otherwise vary the Lessee's obligations under the Finance Documents or to delay, curtail or otherwise prevent or prejudicially affect the exercise by the Lessor of any of its rights, remedies or powers under the Finance Documents are expressly negated or excluded.

27. TRANSFER OF ASSETS

In accordance with the Sale Undertaking and, provided that no Event of Default shall have occurred, the Lessor shall transfer its ownership of the Leased Assets upon the Final Maturity Date to the Lessee in exchange for the payment by the Lessee of an amount equal to the Service Agency Costs incurred in the Final Service Cost Period. Promptly following the payment of this amount by the Lessee, the Lessor shall enter into a sale agreement in the form set out in schedule 2 (*Form of Sale Agreement*) of the Sale Undertaking with the Lessee and title to the Leased Assets shall pass to the Lessee exclusive of any warranties (whether express or implied) of any kind upon the execution of the sale agreement by the Lessor and the Lessee.

28. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

29. JURISDICTION OF [•] COURTS

29.1 Jurisdiction

Without prejudice to Clause 30 (*Arbitration*), the Lessee irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

29.2 Waiver of objection to jurisdiction

The Lessee irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 29.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that any such court is not a convenient or appropriate forum.

29.3 [Process Agent

- (a) The Lessee agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 29.3 (*Process Agent*) ceases to be effective in respect of the Lessee, the Lessee shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Lessee.
- (b) The Lessee further agrees that failure by a process agent to notify the Lessee of the process will not invalidate the proceedings concerned.]²

29.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 29.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Lessee in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

29.5 Consent

The Lessee hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

29.6 Waiver of Immunity

To the extent that the Lessee 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 Lessee hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

30. ARBITRATION

30.1 Lessor's Option

Notwithstanding Clause 29 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 30 (*Arbitration*).

30.2 Arbitration

The Lessee irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document (including a dispute

regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”) in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 30.2 (*Arbitration*).

30.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (a) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Lessee, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Lessee and the Lessor may request the President of the LCIA (or such other person as the Lessee and the Lessor may agree) to designate someone to effect such appointment.
- (b) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (c) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Lessee, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Lessee or the Lessor;
 - (ii) have any political or business ties to the country of establishment of the Lessee or the Lessor;
or
 - (iii) be a person with familial ties to the Lessee or the Lessor.
- (d) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (e) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (f) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (g) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the *Wakālah* Facility Finance Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (h) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a

single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.

- (i) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

30.4 Waiver of objection to Arbitration

The Lessee irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 19 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that such forum is not a convenient or appropriate forum.

30.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

31. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other *Wakālah* Facility Finance Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the Lessor in favour of the Lessee.

32. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

Lease Rental Payments

1. Lease Rental Payments

Each Lease Rental Payment is payable on the relevant Lease Payment Date in an amount equal to the aggregate of:

$$A + B + C$$

Where:

A means the relevant Base Rental Payment (as calculated in accordance with [paragraph 2](#) below);

B means the relevant Variable Element (as calculated in accordance with [paragraph 3\(a\)](#) below);

C means the relevant Service Cost Payment (if any).

2. Base Rental Payment

Pursuant to [Clause 5.2](#) (*Determination of Lease Rental Payments*), The Base Rental Payment payable on a Lease Payment Date is the amount specified:

- (i) with respect to the First Lease Rental Period, in the Certificate of Delivery; and
- (ii) with respect to each Successive Lease Rental Period and the Final Lease Rental Period, in the Renewal Notice.

3. Variable Element

(a) The Variable Element payable in respect of each Lease Rental Period shall be equal to the product of:

- (i) the Balance Outstanding as at the beginning of such Lease Rental Period; and
- (ii) the aggregate of:
 - (A) the Margin; and
 - (B) the Reference Rate expressed as a percentage per annum, as determined by the Lessor for such Lease Rental Period; and
- (iii) the number of days in such Lease Rental Period, divided by 360.

4. Alternative Basis

- (a) If a Market Disruption Event occurs and the Lessor or the Lessee so requires, the Lessor and the Lessee shall enter into good faith negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the amount of the Variable Element.
- (b) Any alternative basis agreed pursuant to [paragraph 4\(a\)](#) above shall, with the prior consent of the Lessee, be binding on all parties.
- (c) Until an, or if no, alternative basis is agreed under [paragraph 4\(b\)](#) above, then the Lessee shall continue to paying the Variable Element in accordance with the calculations set out in [paragraph 3](#) (*Variable Element*) above.
- (d) In the case of the occurrence of a Market Disruption Event, the new rate as may be agreed in accordance with [paragraph 4](#) above shall only apply with respect to any future Lease Rental Period and for the avoidance of doubt, such new rate shall not retrospectively apply to any existing Lease Rental Period commenced prior to the occurrence of the Market Disruption Event.

SCHEDULE 2

Advance Rental Payments

1. Advance Rental Payments

Advance Rental Payments shall be payable in accordance with the following principles:

- (a) Each Advance Rental Payment shall be paid on each Advance Rental Payment Date for the corresponding Advance Rental Payment Period.
- (b) The amount of each Advance Rental Payment shall be notified by the Lessor to the Lessee no later than the date of commencement of the relevant Advance Rental Payment Period (which, in the case of the First Advance Rental Payment Period relating to a Stage Payment Amount, shall be the relevant Stage Payment Date) by the delivery of an Advance Rental Payment Notice to the Lessee by the Lessor and shall be an amount equal to:
 - (i) for the First Advance Rental Payment Period for each Stage Payment Amount, an amount calculated in accordance with the following formula, payable on the First Advance Rental Payment Date:

$$W \times (L + M) \times N/360$$

- (ii) for each Subsequent Advance Rental Payment Period, an amount calculated (without double-counting) in accordance with the following formula:

$$A \times (L + M) \times N/360$$

Where:

- W = the Stage Payment Amount;
- A = the total consolidated amount of the Balance Outstanding on the first day of that Subsequent Advance Rental Payment Period;
- L = the relevant Reference Rate for the relevant Advance Rental Payment Period, expressed as a percentage per annum;
- M = the applicable Margin expressed as a percentage per annum;
- N = the total number of days in the relevant Advance Rental Payment Period.

2. Alternative Basis for Advance Rental Payments

- (a) If a Market Disruption Event occurs and the Lessor or the Lessee so requires, the Lessor and the Lessee shall enter into good faith negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the amount of the Advance Rental Payment.
- (b) Any alternative basis agreed pursuant to paragraph 2(a) above shall, with the prior consent of the Lessee, be binding on all parties.
- (c) Until an, or if no, alternative basis is agreed under paragraph 2(b) above, then the Lessee shall continue to pay the Advance Rental Payment in accordance with the calculations set out in paragraph 1(b) above.
- (d) In the case of the occurrence of a Market Disruption Event, the new rate as may be agreed in accordance with paragraph 2(a) above shall only apply with respect to any future Advance Rental Payment Period and for the avoidance of doubt, such new rate shall not retrospectively apply to any existing Advance Rental Payment Period commenced prior to the occurrence of the Market Disruption Event

SCHEDULE 3

Form of Advance Rental Payment Notice

From: [•] as Lessor

To: [•] as Lessee

Dated:

Dear Sirs

Forward Lease Agreement dated [•] (the “Agreement”)

We refer to the Agreement. This is an Advance Rental Payment Notice. Terms defined in the Agreement have the same meaning in this Advance Rental Payment Notice unless given a different meaning in this Advance Rental Payment Notice.

In accordance with paragraph 1 (*Advance Rental Payments*) of Schedule 2 (*Advance Rental Payments*) of the Agreement, we hereby notify you that the following are payments that fall due in respect of the current Advance Rental Payment Period on the Advance Rental Payment Date as specified below:

Advance Rental Payment Date : [•]

Advance Rental Payment : [•]

In the event that you fail to make a full payment of the Advance Rental Payment by the Advance Rental Payment Date, then in addition to paying the overdue Advance Rental Payment, you will pay a daily late payment amount in respect of such overdue amount, which shall be calculated as follows:

$$\frac{OA \times (\text{Reference Rate} + \text{Margin} + 2\%)}{360}$$

Where OA = the overdue amount of the Advance Rental Payment

Yours faithfully

.....

For and on behalf of
[•] (as Lessor)

SCHEDULE 4

**Form of Renewal Notice
[Letterhead of Lessor]**

Date:

To: [•] as Lessee

From: [•] as Lessor

Dear Sirs:

Forward Lease Agreement dated [•] (the “Agreement”)

We refer to the abovementioned Agreement. Terms and expressions defined in the Agreement shall have the same meanings when used herein unless the context requires otherwise.

In accordance with paragraph (c) of Clause 5.2 (*Determination of Lease Rental Payments*) of the Agreement, we hereby notify you that the following are payments that fall due in respect of the next Lease Rental Period on the Lease Payment Date as specified below:

- 1. Lease Payment Date:** [•]
- 2. Lease Rental Payment:** [•] calculated pursuant to Clause 5.2 (*Determination of Lease Rental Payments*) of the Agreement. We set out below the calculation of the Lease Rental Payments:
 - (a) Base Rental Payment: _____
 - (b) Variable Element: _____
 - (c) Service Cost Payment: _____³

In the event that you fail to pay the Lease Rental Payment in full on its due date, then in addition to paying the overdue amount, you will pay a daily late payment amount in respect of such overdue amount, which shall be calculated as follows:

$$\frac{OA \times (\text{Reference Rate} + \text{Margin} + 2\%)}{360}$$

Where OA = the overdue amount of the Lease Rental Payment

Unless you notify us within 1 (one) Business Day from the date of this notice that you do not wish to enter into the next Lease Rental Period, then you will be deemed to have agreed to the renewal and the terms stated above.

Yours faithfully,

.....

For and on behalf of
[•] (as Lessor)

SCHEDULE 5

Form of Compliance Certificate

To: [•] (as Lessor)

From: [•]

Date: [To be completed]

Lease Agreement dated [•] (the “Agreement”)

We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement shall have the same meaning when used in this Compliance Certificate.

1. We confirm that as at [relevant testing date]:

- (a) [Tangible Net Worth is [•] and, therefore, not less than [•] ([•]);
- (b) [the ratio of Debt Service Coverage Ratio was [•] and, therefore, was in excess of [•]x];
- (c) [the ratio of Debt to Equity was [•] at the Group level and, therefore, was not in excess of [•]x at the Group level]; and
- (d) [Profit Coverage Ratio was [•] at the Group level and, therefore, was in excess of [•]x at the Group level].

2. We confirm that no Default is outstanding as at [insert relevant calculation date] or, if it is, the details of the Default and the remedial action proposed or being taken are as follows:

For and on behalf of [•]

By:

Name:

Position:

By:

Name:

Position:

SIGNATURE PAGE

LESSOR

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

LESSEE

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 The types and basis of fees chargeable are subject to the approval of the relevant financial institution's *shari'ah* board.
- 2 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 3 To be included to the extent applicable.



APPENDIX E

Istiṣnā'-Ijārah Based Financing Service Agency Agreement

.....

dated

[•]

by

[Name of bank/financial institution]
as Lessor

and

[Name of the project company]
as Service Agent

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS AGREEMENT (this “**Agreement**”) is dated _____ and made

BETWEEN:

- (1) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as lessor (the “**Lessor**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as service agent (the “**Service Agent**”).

RECITAL:

WHEREAS the Lessor and the Service Agent (as lessee) have entered into the Forward Lease Agreement.

NOW THEREFORE IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

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

“**Business Day**” means a day other than [Friday], [Saturday] or [Sunday] on which banks are generally open for business in [•].

“**Final Service Cost Period**” has the meaning given to this expression in the definition of “**Service Cost Period**”.

“**First Rental Period**” has the meaning given to this expression in the Forward Lease Agreement.

“**Forward Lease Agreement**” means the forward lease agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as lessee.

“**[Lease Insurance Proceeds]/ Takāful Policies**” means any book and other debts and monetary claims now or in the future owing or arising under the [Lease Insurances]/*Takāful* Policies (other than in respect of third party liability cover) and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to such [Lease Insurances]/*Takāful* Policies).

“**[Lease Insurances]/ Takāful Policies**” has the meaning given to this expression in Clause 5.1.

“**Lessee**” means [•] in its capacity as lessee under the Forward Lease Agreement.

“**Lease Commencement Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Leased Assets**” has the meaning given to this expression in the Forward Lease Agreement.

“**Ownership Taxes**” means any taxes (including *zakat*) assessed in respect of the Leased Assets by reason of the Lessor’s ownership of the Leased Assets (but for the avoidance of doubt, excluding any taxes arising in connection with any payment by the Lessee under the Forward Lease Agreement).¹

“**Project Company**” means [•] in its capacity as company under the Sale Undertaking.

“**Purchase Undertaking**” means the purchase undertaking of even date herewith executed by [•] in favour of [•] as lessor.

“**Rental Payment Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Rental Period**” has the meaning given to this expression in the Forward Lease Agreement.

“**Sale Undertaking**” has the meaning given to this expression in the Forward Lease Agreement.

“**Service Agency Costs**” means, in respect of a Service Cost Period for the Leased Assets, the aggregate of:

- (a) the costs and expenses incurred by the Service Agent during such Service Cost Period in connection with performing and discharging the Service Agent's Services in connection with the Leased Assets during such period; and
- (b) any fee payable to the Service Agent in respect of such Service Cost Period.

“**Service Agent's Services**” means the following services to be performed by the Service Agent in relation to the Leased Assets:

- (a) carrying out all Structural Maintenance and Repair;
- (b) obtaining and maintaining the [Lease Insurances]/*Takāful* Policies;
- (c) obtaining and maintaining any Authorisations required in connection with the Lessor's ownership of the Leased Assets and its use and operation by the Lessee; and
- (d) [settling any Ownership Taxes that may be assessed in respect of the Leased Assets.]

“**Service Cost Payment**” means in relation to a Rental Period, the amount equal to the Service Agency Costs incurred by the Service Agent during the Service Cost Period ending during the previous Rental Period.

“**Service Cost Period**” means in relation to the Leased Assets, the period commencing on the first day of the First Rental Period and ending on the date falling [four (4)] Business Days prior to the end of the First Rental Period and thereafter each period commencing upon the expiry of the previous period and ending on the date falling [four (4)] Business Days prior to end of the then current Rental Period, provided that the final Service Cost Period (the “**Final Service Cost Period**”) shall end on the earlier to occur of:

- (a) the date on which the Leased Assets are no longer owned by the Lessor; or
- (b) the last Rental Payment Date.

“**Structural Maintenance and Repair**” means any maintenance or repair carried out on the Leased Assets other than routine maintenance and repair related to the use and operation of the Leased Assets.

“**Termination Sum**” has the meaning given to this expression in the Purchase Undertaking.

“**Total Loss**” means:

- (a) any event which results in the Leased Assets being destroyed or damaged beyond economic repair, or permanently rendered unfit for normal use for any reason whatsoever; or
- (b) the compulsory acquisition, confiscation, seizure or expropriation of all, or substantially all, of the Leased Assets (as may be determined by the Lessor in its absolute discretion) whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration) which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority, in circumstances where such Leased Assets cannot be replaced or reinstated in accordance with this Agreement.

“**Transaction Documents**” has the meaning given to this expression in the Forward Lease Agreement.

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

- (a) the “**Lessee**”, the “**Lessor**” or the “**Service Agent**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) a “**Clause**” or “**Schedule**” is to a Clause of or Schedule to the document in which the reference appears;
- (c) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing, and shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (d) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (e) “**Shari’ah**” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (f) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
- (g) provision of law is a reference to that provision as amended or re-enacted; and
- (h) a time of day is a reference to [•] time.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Words denoting the singular shall include the plural and vice versa.

1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Agreement has the same meaning in that notice as in this Agreement.

1.6 All references to dates and time periods in this Agreement will be construed in accordance with the Gregorian calendar.

2. APPOINTMENT AND FEE

- 2.1 The Lessor hereby appoints the Service Agent as its agent and the Service Agent hereby agrees to act as agent for and on behalf of the Lessor to perform and discharge the Service Agent's Services during the term of the Forward Lease Agreement and/or for so long as the Lessor has title to the Leased Assets.
- 2.2 In consideration of the Service Agent acting as agent of the Lessor, the Service Agent shall receive from the Lessor a one-time fee in the amount of [•] ([•]), payable upon the signing of this Agreement (the receipt and adequacy of which the Service Agent hereby acknowledges).

3. STRUCTURAL MAINTENANCE AND REPAIR

- 3.1 The Service Agent undertakes to the Lessor that, during the term of the Forward Lease Agreement and/or for so long as the Lessor has title to the Leased Assets, the Service Agent shall carry out all Structural Maintenance and Repair on behalf of the Lessor on the Leased Assets and in doing so, the Service Agent shall ensure that accurate and current records are kept of any and all such Structural Maintenance and Repair undertaken by the Service Agent in accordance with the Service Agent's internal procedures and any applicable rules and regulations.
- 3.2 The Service Agent undertakes to carry out any Structural Maintenance and Repair in accordance with the construction contractor's or relevant manufacturer's specifications and recommendations (as appropriate), any applicable laws and regulations and the best international industry standards and practices as applied locally related to the use and operation of property and assets similar to the Leased Assets in order to safeguard and preserve the Leased Assets of the Lessor.

4. AUTHORISATIONS

The Service Agent irrevocably undertakes to the Lessor that, during the term of the Forward Lease Agreement and/or for so long as the Lessor has title to the Leased Assets, the Service Agent shall obtain and maintain all Authorisations required under applicable law in connection with the ownership by the Lessor of the Leased Assets.

5. [LEASE INSURANCES]/TAKĀFUL POLICIES

- 5.1 The Service Agent shall maintain [insurances]/*takāful* policies (through [insurance brokers and/or insurers]/*takāful* providers of sound financial standing and reputation licenced in [•]) in respect of the Leased Assets to provide comprehensive [insurance]/ *takāful* cover against any loss or damage (including, without limitation, Total Loss) to the Leased Assets on terms which are acceptable to the Lessor and its [insurance]/*takāful* consultant (if any) in all respects (the “[**Lease Insurances**]/ **Takāful Policies**”).
- 5.2 The Service Agent irrevocably undertakes to the Lessor that, during the term of the Forward Lease Agreement and/or for so long as the Lessor has title to any of the Leased Assets, the Service Agent shall:

- (a) maintain at all times following the Lease Commencement Date [Lease Insurances]/*Takāful* Policies on such terms as appropriate from time to time (through [insurance brokers and/or insurers]/*takāful* providers of sound financial standing and reputation licenced in [•]) in respect of the Leased Assets;
- (b) ensure that the total amount of the cover under the [Lease Insurances]/*Takāful* Policies in relation to the Leased Assets shall at all times be at least equal to the Termination Sum in respect of the Leased Assets;
- (c) ²ensure that the Lessor is at all times named as primary [insured]/[beneficiary] and first loss payee under the [Lease Insurances]/ *Takāful* Policies (except for any proceeds arising in respect of a claim for third party liability which are to be paid directly to the third party in question);
- (d) ensure that nothing is done or omitted to be done which is contrary to the terms of any [Lease Insurances]/*Takāful* Policies or which might entitle the relevant [insurers]/*takāful* providers to cancel the relevant policy or reduce or avoid any liability thereunder;
- (e) procure that each [insurance broker or insurer]/ *takāful* provider through whom it effects or renews any [Lease Insurances]/*Takāful* Policies delivers, as soon as practicable after such [Lease Insurances]/ *Takāful* Policies are effected or renewed, a certificate to the Lessor confirming that the [Lease Insurances]/ *Takāful* Policies are in full force and effect and that all [premiums]/contributions have been paid in respect of such [Lease Insurances]/*Takāful* Policies;
- (f) pay in a timely fashion any [premium]/contributions, commission and any other amount necessary for effecting and maintaining in force all of the [Lease Insurances]/ *Takāful* Policies;
- (g) procure that the relevant [insurers]/*takāful* providers who have underwritten the [Lease Insurances]/ *Takāful* Policies are of excellent standing and creditworthiness so that any and all amounts claimed under the relevant [Lease Insurances]/*Takāful* Policies in respect of any loss or damage (including, without limitation, Total Loss) suffered by the Leased Assets are settled promptly;
- (h) not do or omit to do, or permit to be done or not done, any act which might prejudice the Lessor's right to claim or recover under any [Lease Insurances]/*Takāful* Policies;
- (i) promptly and in any event within [thirty (30)] days notify the Lessor of any lapse or cancellation of any [Lease Insurances]/*Takāful* Policies;
- (j) promptly make and diligently pursue claims under the [Lease Insurances]/ *Takāful* Policies if requested to do so by the Lessor;
- (k) deliver to the Lessor:
 - (i) promptly after any [Lease Insurances]/*Takāful* Policies are issued to and received by it, a confirmation of coverage and copies of the relevant policies as soon as they become available; and
 - (ii) prior to the expiry date of any [Lease Insurances]/*Takāful* Policies, a certificate of renewal from the relevant [insurance broker or insurer]/ *takāful* provider confirming the renewal of the relevant policy or policies; and
- (l) any other information or documents related to the [Lease Insurances]/*Takāful* Policies that the Lessor or its [insurance]/*takāful* consultant (if any) may request.

- 5.3 In the event that the Service Agent fails to effect the [Lease Insurances]/*Takāful* Policies in the manner specified in Clauses 5.1 and 5.2 above in respect of the Leased Assets and the Lessor suffers or incurs any liability, loss, cost, damage, penalty or expense as a result of such failure, then the Service Agent shall be considered in breach of its obligations under this Agreement and shall indemnify the Lessor in accordance with Clause 9 (*Indemnity*) for such breach.
- 5.4 The Service Agent shall provide to the Lessor within [five (5)] Business Days of the Lease Commencement Date and thereafter on each anniversary of the Lease Commencement Date, a certificate evidencing that the terms of the coverage and the minimum amount of coverage under the [Lease Insurances]/*Takāful* Policies which have been effected by the Service Agent are consistent with the terms and amount approved or specified by the Lessor and its [insurance]/*takāful* consultant (if any).
- 5.5 The Service Agent's obligations under this Clause 5 shall not in any way be limited by the Lessor not monitoring its compliance with the same or checking the terms of any [Lease Insurances]/*Takāful* Policies obtained by the Service Agent.

6. USE OF [LEASE INSURANCE PROCEEDS]/TAKĀFUL POLICIES PROCEEDS

- 6.1 The Service Agent acknowledges that the Lessor, in its capacity as owner of the Leased Assets, is entitled to receive and retain any [Lease Insurance Proceeds]/*Takāful* Policies Proceeds arising under the [Lease Insurances]/*Takāful* Policies in respect of any loss or damage (including, without limitation, Total Loss) suffered by the Leased Assets. If the Service Agent receives any [Lease Insurance Proceeds]/*Takāful* Policies Proceeds then it will promptly remit them to the Lessor and will hold them on behalf of and for the benefit of the Lessor until such remittance takes place.
- 6.2 Any [Lease Insurance Proceeds]/*Takāful* Policies Proceeds relating to any one claim or occurrence in respect of any loss or damage (other than a Total Loss) suffered by the Leased Assets shall be applied towards remedying such loss or damage if:
- (a) an independent consultant certifies to the Lessor that it is technically feasible for such loss or damage to be remedied; and
 - (b) the amount of the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds received do not exceed [•] ([•]).

If any of the foregoing conditions is not satisfied, then the Lessor will be entitled to retain the relevant [Lease Insurance Proceeds]/*Takāful* Policies Proceeds and may, in its absolute discretion, apply them in and towards the settlement of any amounts due and payable by the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party and pay the balance after such application (if any) to the Service Agent (in any of its relevant capacities).

- 6.3 Any [Lease Insurance Proceeds]/*Takāful* Policies Proceeds received in respect of a Total Loss sustained by the Leased Assets and/or any compensation for such Total Loss paid by the Lessee shall be retained by the Lessor. The Lessor may apply such amounts in and towards the settlement of any amounts due and payable by the Service Agent (in all of its relevant capacities) and shall pay the balance after such application (if any) to the Service Agent (in any of its relevant capacities) as incentive payment.

- 6.4 If the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds received in respect of a Total Loss by the Lessor is less than the Termination Sum (the difference between the Termination Sum and the amount paid under the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds being the “**Total Loss Shortfall Amount**”), the Lessor shall promptly notify the Service Agent and the Service Agent irrevocably and unconditionally:
- (a) agrees that the existence of the Total Loss Shortfall Amount shall be conclusive evidence that it has failed to discharge its obligations under Clauses 5.1 and 5.2 to insure the Leased Assets, unless it proves to the satisfaction of the Lessor that any Total Loss Shortfall Amount is not attributable to its failure to comply with its obligations under Clauses 5.1 and 5.2 to insure the Leased Assets due to its negligence or misconduct; and
 - (b) if the Service Agent fails to prove to the satisfaction of the Lessor that the Total Loss Shortfall Amount is not attributable to its failure to comply with its obligations under Clauses 5.1 and 5.2 to insure the Leased Assets due to its negligence or misconduct, it undertakes to pay, within [three (3)] Business Days of demand, the Total Loss Shortfall Amount to the Lessor.

7. UNDERTAKINGS

- 7.1 The Service Agent covenants with and undertakes to the Lessor that it will:
- (a) diligently perform and discharge the Service Agent’s Services in a timely fashion;
 - (b) provide the Lessor with copies of all Authorisations (including, without limitation, any renewals of Authorisations) related to the Lessor’s ownership of the Leased Assets; and
 - (c) [provide the Lessor with receipts (or any other evidence of payment) in respect of Ownership Taxes settled by the Service Agent on behalf of the Lessor.]

8. COSTS AND EXPENSES

- 8.1 The Service Agent undertakes to pay in a timely fashion, on behalf of the Lessor, any and all costs, fees and expenses related to, and necessary for, its due and punctual performance and discharge of the Service Agent’s Services.
- 8.2 Subject always to Clause 8.4 below, the Lessor shall:
- (a) be liable to pay to the Service Agent the Service Agency Costs (if any) incurred by the Service Agent in respect of the Leased Assets during a Service Cost Period (except for the Final Service Cost Period) on the Rental Payment Date relating to the Rental Period commencing immediately after the end of such Service Cost Period; and
 - (b) be liable to pay to the Service Agent the Service Agency Costs (if any) incurred by the Service Agent in respect of the Leased Assets during its Final Service Cost Period after the end of such Final Service Cost Period on the date on which ownership of the Leased Assets is transferred to the Project Company in accordance with the provisions of the Sale Undertaking.
- 8.3 The Service Agent shall evidence its entitlement to receive the Service Agency Costs by providing the Lessor as soon as practicable with copies of commercial invoices and premium notes, and other evidence

of payments and expenses, for the expenditures incurred by the Service Agent (if any) in performing and discharging the Service Agent's Services.

8.4 Notwithstanding the foregoing, the parties further acknowledge and agree that:

- (a) in respect of each Rental Period (except the last Rental Period), the obligation of the Lessor to pay the relevant Service Agent Costs to the Service Agent shall be netted off against the obligation of the Service Agent (in its capacity as Lessee) to pay the Service Cost Payment component of the Rental Payment for such Rental Period; and
- (b) the obligation of the Lessor to pay to the Service Agent the Service Agency Costs (if any) incurred by the Service Agent in respect of the Leased Assets during its Final Service Cost Period shall be netted off against the obligation of the Service Agent (in its capacity as Project Company) to pay an amount equal to such Service Agency Costs as part of the Termination Sum or for the transfer of the ownership of Leased Assets to the Project Company in accordance with the provisions of the Sale Undertaking, as the case may be.

8.5 The obligation of the Service Agent to provide the Service Agent's Services shall terminate at the same time as the leasing of the Leased Assets terminates under the Forward Lease Agreement for whatsoever reason and title to the Leased Assets is transferred to the Project Company.

9. INDEMNITY

9.1 The Service Agent shall promptly indemnify and keep indemnified and hold harmless the Lessor on a full indemnity basis against any and all obligations, fees, liabilities, losses, costs (excluding cost of funding), damages, penalties, demands, actions, judgements and expenses, including without limitation all reasonable legal fees and expenses (including, without limitation, such legal fees and expenses incurred in connection with the enforcement of this Agreement), of every kind and nature whatsoever imposed on, incurred directly by, or asserted against the Lessor arising out of any failure whatsoever on the part of the Service Agent in performing any of its obligations hereunder (except where such failure is caused by the Lessor's negligence or wilful misconduct) including without limitation any failure on the part of the Service Agent in procuring and/or maintaining the [Lease Insurances]/*Takāful* Policies in accordance with the provisions of Clause 5 ([*Lease Insurances*]/*Takāful Policies*).

9.2 The provisions of Clause 9.1 shall apply from the date of this Agreement and shall survive the expiry or earlier termination of this Agreement and the other Transaction Documents.

10. ASSIGNMENT AND TRANSFER

10.1 The Lessor may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Agreement. The Service Agent shall execute and do all such transfers, assignments, assurances, acts and things as the Lessor may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to this Clause.

10.2 The Service Agent may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Lessor, provided that the Service Agent may sub-contract the

performance of all or part of any Structural Maintenance and Repair on the Leased Assets to any other person (the “**Sub-Contractor**”) subject to the following conditions:

- (a) the Service Agent shall procure that any Sub-Contractor appointed by it shall comply with the provisions of Clause 3 (*Structural Maintenance and Repair*) when carrying out any Structural Maintenance and Repair on the Leased Assets and the Service Agent shall be liable to the Lessor for any failure by the Sub-Contractor to comply with such provisions; and
- (b) notwithstanding the appointment of any Sub-Contractor, the Service Agent shall continue to be primarily liable to the Lessor for the performance of all Structural Maintenance and Repair on the Leased Assets, it being understood that any Structural Maintenance and Repair carried out by the Sub-Contractor in compliance with the provisions of Clause 3 (*Structural Maintenance and Repair*) shall discharge *pro tanto* the obligation of the Service Agent to carry out the same.

11. NOTICES

11.1 Any communication to be made under or in connection with this Agreement shall be made in writing and may be made by fax, letter or courier.

11.2 The address and fax number (and the department and officer (if any) for whose attention the communication is to be made) of each party to this Agreement for any communication to be made or delivered under or in connection with this Agreement is that which is identified with its name in the signature page below or any substitute address or fax number or department or officer as each such party may notify to the others by not less than [five (5)] Business Days’ prior notice.

11.3 Any communication or document made or delivered by one of the parties to this Agreement to the other under or in connection with this Agreement will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter or courier, when it has been left at the relevant address or received by the addressee thereof;

and, if a particular department or officer is specified as part of its address details provided under Clause 11.2, if addressed to that department or officer.

11.4 Any notice given under or in connection with this Agreement must be in English.

11.5 Any communication to be made between the parties under or in connection with this Agreement in relation to routine and administrative matters under or in connection with this Agreement, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them.

- 11.6 Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. in the place of receipt shall be deemed to be effective on the next full working day in that place, and in the case of any electronic communication made by the Service Agent to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

12. MISCELLANEOUS

- 12.1 Within [five (5)] Business Days from the Lease Commencement Date, the Service Agent shall execute an assignment in respect of the relevant [Lease Insurances]/*Takāful* Policies in favour of the Lessor substantially in the form set out in Schedule 1 (*Form of Assignment of [Lease Insurances]/Takāful Policies*) or such other form as the Lessor may require.
- 12.2 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under this Agreement shall operate as a waiver thereof, 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.
- 12.3 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.
- 12.4 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.
- 12.5 The indemnities contained in this Agreement are continuing obligations of the Service Agent, separate and independent from the other obligations of the Service Agent and shall survive until all obligations of the Service Agent arising under any provision of the Transaction Documents (including the indemnities) are irrevocably paid and discharged in full.

13. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

14. JURISDICTION OF [•] COURTS

14.1 Jurisdiction

Without prejudice to Clause 15 (*Arbitration*), the Service Agent irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

14.2 [Waiver of objection to jurisdiction]

The Service Agent irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 14.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

14.3 Process Agent

- (a) The Service Agent agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 14.3 (*Process Agent*) ceases to be effective in respect of the Service Agent, the Service Agent shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Service Agent.
- (b) The Service Agent further agrees that failure by a process agent to notify the Service Agent of the process will not invalidate the proceedings concerned.]³

14.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 14.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Service Agent in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

14.5 Consent

The Service Agent hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

14.6 Waiver of Immunity

To the extent that the Service Agent 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 Service Agent hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

15. ARBITRATION

15.1 Lessor's Option

Notwithstanding Clause 14 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 15 (*Arbitration*).

15.2 Arbitration

The Service Agent irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Agreement or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved

by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“LCIA”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 15.2 (*Arbitration*).

15.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Service Agent, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Service Agent and the Lessor may request the President of the LCIA (or such other person as the Service Agent and the Lessor may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Service Agent, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Service Agent or the Lessor;
 - (ii) have any political or business ties to the country of establishment of the Service Agent or the Lessor; or
 - (iii) be a person with familial ties to the Service Agent or the Lessor.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and

may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.

- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

15.4 Waiver of objection to Arbitration

The Service Agent irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 15 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

15.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

Form of Assignment of [Lease Insurances]/*Takāful* Policies

ASSIGNMENT OF [LEASE INSURANCES]/*TAKĀFUL* POLICIES

DATED [•]

[Name of the project company]
as Service Agent

and

[Name of bank/financial institution]
as Lessor

THIS ASSIGNMENT OF [LEASE INSURANCES]/TAKĀFUL POLICIES (this “Assignment”) is dated _____ and made

BETWEEN:

- (1) [Name of the project company], [a limited liability company] incorporated in [name of country] having its registered office at [address] as service agent (the “Service Agent”); and
- (3) [Name of a bank/financial institution] incorporated in [name of country], having its [head office] [registered office] at [address] as lessor (the “Lessor”).

RECITAL:

WHEREAS it is an obligation of the Service Agent under the Transaction Documents that the Service Agent assigns all of its right, title, benefit and interest in and to the [Lease Insurances]/Takāful Policies and [Lease Insurance Proceeds]/Takāful Policies Proceeds upon the terms and conditions set out herein.

NOW THEREFORE IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Assignment:

“**Business Day**” means a day other than [Friday], [Saturday] or [Sunday] on which banks are generally open for business in [•].

“**Final Maturity Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Forward Lease Agreement**” means the lease agreement dated [•] entered into between (a) [•] (c) as lessor and (b) [•] as lessee.

“**[Lease Insurance Proceeds]/Takāful Policies Proceeds**” means any book and other debts and monetary claims now or in the future owing to the Service Agent under the [Lease Insurances]/Takāful Policies (other than in respect of third party liability cover) and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to such [Lease Insurances]/Takāful Policies).

“**[Lease Insurances]/Takāful Policies**” means the contracts of [insurance]/takāful policies, more specifically described in Schedule 3 ([Lease Insurances]/Takāful Policies), which are effected by or on behalf of the Service Agent (and any Supplemental [Lease Insurances]/Takāful Policies effected from time to time) in respect of the Leased Assets or any part of the Leased Assets as the same may be amended or renewed from time to time.

“**Leased Assets**” has the meaning given to this expression in the Forward Lease Agreement.

“**Secured Insurances**” means the [Lease Insurances]/ Takāful Policies and the [Lease Insurance Proceeds]/ Takāful Policies Proceeds and all rights, benefits and proceeds thereof.

“**Security**” means mortgage, charge, pledge, lien or other security interest securing any obligations of any person or any other agreement or arrangement having a similar effect.

“**Service Agency Agreement**” means the service agency agreement dated [•] entered into between (a) [•] as lessor and (b) [•] as service agent.

“**Supplemental [Lease Insurances]/Takāful Policies**” means any additional contracts of [insurance]/*takāful* policies in respect of the Leased Assets or any part of the Leased Assets, effected by or on behalf of the Service Agent after the date of this Assignment which supplement, replace or renew the [Lease Insurances]/*Takāful* Policies.

“**Total Loss**” has the meaning given to this expression in the Service Agency Agreement.

“**Transaction Documents**” has the meaning given to this expression in the Forward Lease Agreement.

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

- (a) the “**Lessor**” or the “**Service Agent**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” means *shari’ah*-compliant assets including present and future properties, revenues and rights of every description;
- (c) a “**Clause**” or “**Schedule**” is to a Clause of or Schedule to this Assignment;
- (d) 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) or two or more of the foregoing;
- (e) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
- (f) provision of law is a reference to that provision as amended or re-enacted; and
- (g) a time of day is a reference to [•] time.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Words denoting the singular shall include the plural and vice versa.

1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Assignment has the same meaning in that notice as in the Assignment.

1.6 All references to dates and time periods in this Assignment will be construed in accordance with the Gregorian calendar.

2. COVENANT TO PAY

The Service Agent covenants with the Lessor to pay and discharge in full all of the obligations of the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party payable or to be performed by it when due, and if applicable, when payable, in accordance with the terms and conditions of such Transaction Documents.

3. ASSIGNMENTS AND PLEDGES

- 3.1 Subject to Clause 4 (*Release and Re-assignment*), in consideration of the Lessor entering into the Transaction Documents in accordance with the terms and conditions therein, the Service Agent hereby irrevocably and unconditionally:
- (a) assigns to the Lessor all of its right, title and interest, present and future, in and to the Secured Insurances as continuing security for the due and punctual payment and discharge of all of the obligations of the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party; and
 - (b) to the extent not effectively assigned under paragraph (a) above, pledges to the Lessor all of its right, title and interest, present and future, in and to the Secured Insurances.
- 3.2 The assignments and pledges contemplated by Clause 3.1 shall be deemed to be repeated and reaffirmed by the Service Agent on:
- (a) each day when [Lease Insurance Proceeds]/*Takāful* Policies Proceeds are paid by the relevant [insurers and/or insurance brokers]/*takāful* providers with or through whom the [Lease Insurances]/*Takāful* Policies are effected; and
 - (b) each day on which a payment obligation of the Service Agent (in all of its capacities) falls due under any of the Transaction Documents to which it is a party.
- 3.3 The Service Agent agrees to promptly (and in any event within [five (5)] Business Days of the date hereof) inform all relevant [insurers or insurance brokers]/*takāful* providers with or through whom the [Lease Insurances]/ *Takāful* Policies are effected of this Assignment by providing to each of them a notice in the form set out in Schedule 1 (*Form of Notice of Assignment*) duly signed by the Service Agent and will to procure that the relevant [insurers] and/or [insurance brokers]/*takāful* providers shall acknowledge and agree to such assignment by promptly providing to the Lessor an acknowledgement of this Assignment substantially in the form set out in Schedule 2 (*Form of Acknowledgement of Assignment*).

4. RELEASE AND RE-ASSIGNMENT

At any time after the Final Maturity Date, the Lessor shall, at the request and cost of the Service Agent promptly, release and re-assign to the Service Agent or any other person entitled thereto the Secured Insurances assigned and pledged pursuant to this Assignment to the extent that the same shall not have been applied by the Lessor in or towards the satisfaction of all or any of the obligations of the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party.

5. UNDERTAKINGS

- 5.1 The Service Agent undertakes to and agrees with the Lessor that, until the Final Maturity Date, the Service Agent will, unless the Lessor otherwise agrees in writing:
- (a) duly perform and observe all of its obligations under the [Lease Insurances]/ *Takāful* Policies in a timely manner and not to do or permit to be done or omit to do or permit the omission of any act or thing as a result of which the [Lease Insurances]/ *Takāful* Policies are or may be frustrated or may lawfully be terminated by the relevant [insurers and/or brokers]/*takāful* providers;
 - (b) warrant and defend the right, title and interest of the Lessor in and to all of the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds against the claims and demands of all persons whosoever;
 - (c) not create or attempt or agree to create or permit to arise or exist any Security over all or any part of the [Lease Insurances]/*Takāful* Policies, the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds or any interest therein (except as permitted under or pursuant to this Assignment and/or any Transaction Document); and
 - (d) promptly upon effecting any Supplemental [Lease Insurances]/*Takāful* Policies:
 - (i) assign to the Lessor all of its right, title and interest, present and future, in and to the Supplemental [Lease Insurances]/*Takāful* Policies and the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds relating to such Supplemental [Lease Insurances]/*Takāful* Policies by sending to the Lessor a letter in the form set out in Part I (*Form of Assignment of Supplemental [Lease Insurances]/Takāful Policies*) of Schedule 4 (*Supplemental [Lease Insurances]/Takāful Policies*); and
 - (ii) inform all relevant [insurers or insurance brokers]/*takāful* providers with or through whom such Supplemental [Lease Insurances]/ *Takāful* Policies are effected of such assignment by providing to each of them a notice in the form of Part II (*Form of Notice of Assignment in relation to Certain Supplemental [Lease Insurances]/Takāful Policies*) of Schedule 4 (*Supplemental [Lease Insurances]/Takāful Policies*) and will ensure that the relevant [insurers or insurance brokers]/*takāful* providers acknowledge and agree to such assignment by providing the Lessor with an acknowledgement of such assignment in substantially the form of Part III (*Form of Acknowledgement of Assignment*) of Schedule 4 (*Supplemental [Lease Insurances]/Takāful Policies*).
- 5.2 The Service Agent shall not agree to any material variation to any of the [Lease Insurances]/*Takāful* Policies which would have the effect of reducing the extent or levels of cover or increasing the level of any applicable deductible thereunder without giving [thirty (30)] days prior written notice to the Lessor.

6. APPLICATION OF [LEASE INSURANCE PROCEEDS]/TAKĀFUL POLICIES PROCEEDS AND ENFORCEMENT

The Service Agent acknowledges that the Lessor, in its capacity as owner of the Leased Assets, is entitled to receive and retain any [Lease Insurance Proceeds]/*Takāful* Policies Proceeds arising under the [Lease Insurances]/*Takāful* Policies in respect of any loss or damage (including, without limitation, Total Loss) suffered by the Leased

Assets and any such [Lease Insurance Proceeds]/*Takāful* Policies Proceeds shall be disposed of and applied in accordance with the provisions of Clause 6 (*Use of [Lease Insurance Proceeds]/ Takāful Policies Proceeds*) of the Service Agency Agreement.

7. NATURE OF SECURITY AND PRESERVATION OF RIGHTS

- 7.1 This Assignment is a continuing security and will extend to all of the obligations of the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party regardless of any intermediate payment or discharge thereof in whole or in part.
- 7.2 If any payment by the Service Agent or any discharge given by the Lessor (whether in respect of the obligations of the Service Agent or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event, the liability of the Service Agent shall continue as if the payment, discharge, avoidance or reduction had not occurred and the Lessor shall be entitled to recover the value or amount of that security or payment from the Service Agent, as if the payment, discharge, avoidance or reduction had not occurred.
- 7.3 The obligations of the Service Agent under this Assignment will not be affected by an act, omission, matter or thing which, but for this Clause 7, would reduce, release or prejudice any of its obligations under this Assignment (without limitation and whether or not known to it or the Lessor) including:
- (a) any time, waiver or consent granted to, or composition with, the Service Agent or other person;
 - (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over the assets of, the Service Agent or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the shareholders or status of the Service Agent or any other person;
 - (d) any amendment (however fundamental) or replacement of any Transaction Document or any other document or security;
 - (e) any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or security;
 - (f) any change in the name or constitution of the Service Agent; or
 - (g) any insolvency or similar proceedings.
- 7.4 The Service Agent waives any right it may have of first requiring the Lessor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Service Agent under this Clause 7.
- 7.5 This Assignment is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lessor.

- 7.6 The Service Agent undertakes forthwith upon demand by the Lessor to do all such acts and things and execute and sign all such documents as may be considered by the Lessor to be requisite or expedient for perfecting, protecting or realising the Security constituted by this Assignment.
- 7.7 If the Lessor at any time receives notice of any subsequent assignment or other interest affecting all or any part of the Secured Insurances, all payments thereafter made by the Service Agent to the Lessor shall be treated as having been credited to a new account of the Service Agent and not as having been applied in reduction of the obligations of the Service Agent (in all of its capacities) under the Transaction Documents to which it is a party as at the time when the Lessor received notice.

8. NOTICES

- 8.1 Any communication to be made under or in connection with this Assignment shall be in writing and may be made by fax, letter or courier.
- 8.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Assignment for any communication or document to be made or delivered under or in connection with this Assignment is that identified with its name in the signature page below or any substitute address, fax number or department or officer as each such party may notify to the other by not less than five (5) Business Days' prior notice.
- 8.3 Any communication or document made or delivered by one party to the other under or in connection with this Assignment shall only be effective:
- (a) if by way of fax, when received in legible form; or
 - (b) if by way of letter, when left at the relevant address,
- if a particular department or officer is specified as part of its address details provided under Clause 8.2 if addressed to that department or officer.
- 8.4 Any notice given under or in connection with this Assignment must be in English.
- 8.5 Any communication to be made between the parties under or in connection with this Assignment in relation to routine and administrative matters under or in connection with this Assignment, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (b) notify each other of any change to their address or any other such information supplied by them.
- 8.6 Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. in the place of receipt shall be deemed to be effective on the next full working day in that place, and in the case of any electronic communication made by the Service Agent to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

9. NEW LESSOR

- 9.1 The Lessor may assign its rights or transfer its rights and obligations under this Assignment. The Service Agent shall execute and do all such transfers, assignments, assurances, acts and things as the Lessor may reasonably request for perfecting and completing any assignment of rights, benefits and obligations. If it is proposed that the Lessor resign or be removed (the “**Outgoing Lessor**”) and a new lessor (the “**New Lessor**”) be appointed, then:
- (a) the Outgoing Lessor shall be discharged from any further obligation hereunder; and
 - (b) the New Lessor and the Service Agent shall have the same rights and obligations among themselves as they would have had if such New Lessor had originally been a party hereto.
- 9.2 The Service Agent may not assign or otherwise transfer any of its rights or obligations under this Assignment without the prior written consent of the Lessor.

10. MISCELLANEOUS

- 10.1 Any certification or determination by the Lessor of an amount under this Assignment is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 10.2 If, at any time, any provision of this Assignment is or becomes illegal, invalid or unenforceable in any respect under the 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.
- 10.3 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under this Assignment shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of such right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Assignment are cumulative and not exclusive of any rights or remedies provided by law.
- 10.4 This Assignment may only be amended in writing by all parties hereto. Any waiver of any provision of this Assignment or any waiver of any default under this Assignment shall only be effective if made in writing and signed by the Lessor.
- 10.5 This Assignment 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 Assignment.
- 10.6 The Service Agent by way of Security for the performance of its obligations under this Assignment hereby irrevocably appoints the Lessor to be its attorney and in its name on its behalf and as its act and deed to execute, deliver and perfect all documents and do all acts, deeds or things that the attorney may reasonably consider requisite or desirable for:
- (a) carrying out any obligation imposed on the Service Agent by or pursuant to this Assignment; or

- (b) exercising any of the rights conferred on the Lessor by this Assignment or applicable law (including, after the security hereby constituted has become enforceable, the exercise of any right of a legal owner of the Secured Insurances).

The Service Agent shall ratify and confirm all acts, deeds or things done and all documents executed by any attorney or any of its delegates in the proper exercise or purported proper exercise of the powers conferred on it by this Clause 10.6.

11. GOVERNING LAW

This Assignment and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

12. JURISDICTION OF [•] COURTS

12.1 Jurisdiction

Without prejudice to Clause 13 (*Arbitration*), the Service Agent irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Assignment or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

12.2 Waiver of objection to jurisdiction

The Service Agent irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 12.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Assignment or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

12.3 [Process Agent

(a) The Service Agent agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 12.3 (*Process Agent*) ceases to be effective in respect of the Service Agent, the Service Agent shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Service Agent.

(b) The Service Agent further agrees that failure by a process agent to notify the Service Agent of the process will not invalidate the proceedings concerned.]⁴

12.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 12.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Service Agent in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

12.5 Consent

The Service Agent hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Assignment or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

12.6 Waiver of Immunity

To the extent that the Service Agent 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 Service Agent hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

13. ARBITRATION

13.1 Lessor's Option

Notwithstanding Clause 12 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 13 (*Arbitration*).

13.2 Arbitration

The Service Agent irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Assignment or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Assignment) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 13.2 (*Arbitration*).

13.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Service Agent, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Service Agent and the Lessor may request the President of the LCIA (or such other person as the Service Agent and the Lessor may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Service Agent, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Service Agent or the Lessor;

- (ii) have any political or business ties to the country of establishment of the Service Agent or the Lessor; or
 - (iii) be a person with familial ties to the Service Agent or the Lessor.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Assignment (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Assignment which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Assignment to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

13.4 Waiver of objection to Arbitration

The Service Agent irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 13 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Assignment or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

13.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

THIS ASSIGNMENT has been entered into on the date stated at the beginning of this Assignment.

SCHEDULE A

Form of Notice of Assignment

[Letterhead of Service Agent]

Date: [•]

To: [•*name of [insurer]/takāful provider*]

Dear Sirs,

Assignment of [Lease Insurances]/*Takāful* Policies dated [•] (the “Assignment”)

We refer to the [•*name and number of policy*] dated [•] between yourselves and ourselves (the “Policy”). The following words and expressions shall have the following meaning in this notice:

“[Lease Insurance Proceeds]/*Takāful* Policies Proceeds” means any book and other debts and monetary claims now or in the future owing to us under the Policy (other than in respect of third party liability cover) and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to the Policy).

We hereby give you notice that pursuant to the Assignment executed by us in favour of [•] (the “Lessor”) we have irrevocably and unconditionally assigned to the Lessor all of our rights, title and interest, present and future, in and to the Policy and the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds. Notwithstanding the foregoing assignment we retain all rights to make and conduct all claims in relation to the Policy unless the Lessor should provide you with written notice to the contrary, in which case the Lessor shall be entitled to make and conduct all such claims.

Any amount of [Lease Insurance Proceeds]/*Takāful* Policies Proceeds payable by you pursuant to the Policy should be paid as directed by the Lessor. This notice of assignment may only be amended or varied upon the written consent of the Lessor.

Please acknowledge receipt of this notice by signing and returning to the Lessor an acknowledgement of assignment in the form attached.

Yours faithfully,

[*Service Agent*]

By:

Its:

SCHEDULE B**Form of Acknowledgment of Assignment***[Letterhead of [Insurer]/Takāful Provider]*

Date: [•]

To: [•]

Attention:

Dear Sirs,

We acknowledge receipt of a notice of assignment dated [•] (the “**Notice**”) which gave us notice of the assignment by [•] (the “**Service Agent**”) in favour of [•] (the “**Lessor**”) all of the Service Agent’s rights, title and interest in and to the Policy and the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds (as defined in the Notice) and:

- (a) consent to the Assignment of [Lease Insurances]/*Takāful* Policies dated [•] referred to in the Notice in favour of the Lessor and acknowledge that such assignment shall be considered as forming part of Policy No. [•];
- (b) confirm that we have not received any other notice of the interest of any third party in and to the Policy;
- (c) agree to pay any amount of the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds payable by us to the Lessor under the Policy to such account as the Lessor may specify from time to time; and
- (d) agree that we shall not exercise any right to terminate the Policy without first giving the Lessor at least thirty (30) days written notice thereof.

Yours faithfully,

[•Name of [insurer]/takāful provider

By:

Its:

SCHEDULE C

[Lease Insurances]/*Takāful* Policies

Policy No.: [•]

Policy No.: [•]

SCHEDULE D

Supplemental [Lease Insurances]/*Takāful* Policies

Part I

Form of Assignment of Supplemental [Lease Insurances]/ *Takāful* Policies
[Letterhead of Service Agent]

Date: [•]

To: [•]

Attention:

Dear Sirs,

Assignment of [Lease Insurances]/*Takāful* Policies dated [•]

We refer to the assignment of [lease insurances]/*takāful* policies dated [•] between ourselves and yourselves (the “**Assignment of [Lease Insurances]/*Takāful* Policies**”) whereby we, irrevocably and unconditionally, assigned to you all of our right, title and interest (present and future) in and to the proceeds of certain [Lease Insurances]/*Takāful* Policies and [Lease Insurance Proceeds]/*Takāful* Policies Proceeds (defined therein).

We wish to inform you that we have effected the following additional insurance policies (“**Supplemental [Lease Insurances]/*Takāful* Policies**”) which constitute “[Lease Insurances]/*Takāful* Policies” for all purposes of the Assignment of [Lease Insurances]/ *Takāful* Policies]:

[•*list of [insurance]/takāful policies and numbers*]

The following words and expressions shall have the following meaning in this assignment:

“**Supplemental [Lease Insurance Proceeds]/*Takāful* Policies Proceeds**” means any book and other debts and monetary claims now or in the future owing to us under the Supplemental [Lease Insurances]/*Takāful* Policies (other than in respect of third party liability cover) and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to the Supplemental [Lease Insurances]/*Takāful* Policies).

We hereby irrevocably and unconditionally assign to you all of our right, title and interest, present and future, in and to the Supplemental [Lease Insurances]/*Takāful* Policies and the Supplemental [Lease Insurance Proceeds]/*Takāful* Policies Proceeds (other than any Supplemental [Lease Insurance Proceeds]/*Takāful* Policies Proceeds in respect of third party liability cover) on and subject to the terms and conditions set forth in the Assignment of [Lease Insurances]/*Takāful* Policies.

We agree that we shall promptly (and in any event within [five (5)] Business Days (as defined by incorporation in the Assignment of [Lease Insurances]/*Takāful* Policies) from the date hereof) submit notice to and obtain an acknowledgement from the relevant [insurers]/*takāful* providers, each of such notice and acknowledgement to be in the forms attached to this letter.

Please sign the copy of this letter enclosed herein and return it to us, indicating your acceptance and acknowledgement of the matters set forth in this letter.

Yours faithfully,

[*Service Agent*]

By:

Its:

To: [•]

We accept and acknowledge the foregoing:

[*Lessor*]

By:

Its:

Part II
Form of Notice of Assignment in Relation to Certain Supplemental
[Lease Insurances]/*Takāful* Policies
[Letterhead of Service Agent]

Date: [•]

To: [•insert name of [insurers]/*takāful* providers

Dear Sirs,

We refer to the [•insert name and number of additional policy] dated [•] between yourselves and ourselves (the “**Policy**”).

The following words and expressions shall have the following meaning in this notice:

“**[Lease Insurance Proceeds]/*Takāful* Policies Proceeds**” means any book and other debts and monetary claims now or in the future owing to us under the Policy (other than in respect of third party liability cover) and any proceeds thereof (including any claims or sums of money deriving from or in relation to any court order or judgment in respect of or in relation to the Policy).

We hereby give you notice that pursuant to (1) an Assignment of [Lease Insurances]/ *Takāful* Policies dated [•] between ourselves and [•] (the “**Lessor**”) and (2) a letter dated [•] between ourselves and the Lessor we have irrevocably and unconditionally assigned to the Lessor all of our rights, title and interest, present and future in and to the Policy and the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds. Notwithstanding the foregoing assignment we retain all rights to make and conduct all claims in relation to the Policy unless the Lessor should provide you with written notice to the contrary, in which case the Lessor shall be entitled to make and conduct all such claims.

Any amount of [Lease Insurance Proceeds]/*Takāful* Policies Proceeds payable by you pursuant to the Policy should be paid as directed by the Lessor. This notice of assignment may only be amended or varied upon the written consent of the Lessor.

Please acknowledge receipt of this notice by signing and returning to the Lessor an acknowledgement of the assignment in the form attached.

Yours faithfully,

[*Service Agent*]

By:

Its:

Part III
Form of Acknowledgement of Assignment
[Letterhead of [Insurer]/Takāful Provider]

Date: [•]

To: [•]

Attention:

Dear Sirs,

We acknowledge receipt of the notice of assignment dated [•] (the “**Notice**”) which gave us notice of the assignment by [•] (the “**Service Agent**”) in your favour of all of the Service Agent’s rights, title and interest in and to the Policy and the [Lease Insurance Proceeds]/*Takāful* Policies Proceeds (as defined in the Notice) and:

- (a) consent to the Assignment of [Lease Insurances]/*Takāful* Policies dated [•] and the letter dated [•] referred to in the Notice in favour of the Lessor and acknowledge that such assignment shall be considered as forming part of Policy No. [•]
- (b) confirm that we have not received any other notice of the interest of any third party in and to the Policy;
- (c) agree to pay any amount of [Lease Insurance Proceeds]/*Takāful* Policies Proceeds payable by us under the Policy to such account as the Lessor may specify from time to time; and
- (d) agree that we shall not exercise any right to terminate the Policy without first giving the Lessor at least thirty (30) days written notice thereof.

Yours faithfully,

[•Name of [insurer]/*takāful* provider

By:

Its:

SIGNATURE
ASSIGNMENT OF [LEASE INSURANCES]/TAKĀFUL POLICIES

LESSOR

SIGNED for and on behalf of)
[•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SERVICE AGENT

SIGNED for and on behalf of)
[•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SIGNATURE PAGE**LESSOR**

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SERVICE AGENT

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 Include as is necessary.
- 2 Parties may choose to move this clause in a common terms agreement to the extent there is a common terms agreement in relation to the financing.
- 3 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 4 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).



APPENDIX F

Istiṣnā'-ijārah based financing purchase undertaking

.....

dated

[●]

Provided by

[Name of the project company]

as Project Company

in favour of

[Name of banks/financial institutions]

as Lessor

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS UNDERTAKING (this “**Undertaking**”) is dated _____ and made

BY:

- (1) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as lessee (the “**Project Company**”).

IN FAVOUR OF:

- (2) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as lessor (the “**Lessor**”).

RECITAL:

WHEREAS, the Lessor owns the Leased Assets and the Project Company undertakes to purchase the Leased Assets from the Lessor as provided for in this Undertaking.

NOW THEREFORE IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking:

“**Event of Default**” has the meaning given to this expression in the Forward Lease Agreement.

“**Exercise Notice**” means a notice from the Lessor to the Project Company substantially in the form set out in Schedule 1 (*Form of Exercise Notice*).

“**Forward Lease Agreement**” means the forward lease agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as lessee.

“**Late Payment Amount**” has the meaning given to this expression in Clause .

“**Leased Assets**” has the meaning given to this expression in the Forward Lease Agreement.

“**Outstanding Facility Amount**” has the meaning given to this expression in the Forward Lease Agreement.

“**Rental Payment**” has the meaning given to this expression in the Forward Lease Agreement.

“**Sale Agreement**” means the sale agreement to be entered into between the Lessor and the Project Company substantially in the form set out in Schedule 2 (*Form of Sale Agreement*).

“**Service Agency Agreement**” means the service agency agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as service agent.

“**Service Agent**” means [•] in its capacity as service agent under the Service Agency Agreement.

“**Termination Sum**” means at the relevant time, in relation to the Leased Assets, the aggregate of:

- (a) the Outstanding Facility Amount;
- (b) without double counting, the Rental Payments accrued but not paid; and

- (c) any other amounts due and payable by the Project Company under the Transaction Documents (in all of its capacities thereunder) to which it is a party.

“**Transaction Documents**” has the meaning given to this expression in the Forward Lease Agreement.

“**Variable Element Rate**” has the meaning given to this expression in the Forward Lease Agreement.

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

- (a) the “**Project Company**”, the “**Lessor**” or the “**Service Agent**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” means *shari’ah*-compliant assets including present and future properties, revenues and rights of every description;
- (c) a “**Clause**” or “**Schedule**” is to a Clause of or Schedule to the document in which the reference appears;
- (d) 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) or two or more of the foregoing, and shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (e) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
- (f) “**Shari’ah**” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (g) provision of law is a reference to that provision as amended or re-enacted; and
- (h) a time of day is a reference to [•] time.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Words denoting the singular shall include the plural and vice versa.

1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Undertaking has the same meaning in that notice as in this Undertaking.

1.6 An Event of Default is “**continuing**” if it has not been remedied or waived.

1.7 All references to dates and time periods in this Undertaking will be construed in accordance with the Gregorian calendar.

2. UNDERTAKING

- 2.1 Subject to the terms and conditions of the Forward Lease Agreement and this Undertaking, and in consideration of the execution of the Forward Lease Agreement, the Lessee hereby irrevocably undertakes to the Lessor that upon the Lessor exercising its right in accordance with Clause (*Exercise of Purchase Undertaking*) to require the Lessee to purchase the Leased Assets, the Lessee shall purchase the Leased Assets on an “as is where is” basis, exclusive of any warranties (whether express or implied) of any kind, from the Lessor and pay to the Lessor the Termination Sum in respect of the Leased Assets.
- 2.2 The Project Company expressly declares and agrees that:
- (a) the applicable Termination Sum represents a fair price for the purchase of all of the Lessor’s interests, rights and title, present and future, in and to the Leased Assets;
 - (b) upon due exercise of this Undertaking, it shall irrevocably and unconditionally fully accept all or any interest the Lessor may have in the Leased Assets and, accordingly, shall not dispute or challenge all or any interest the Lessor may have in any way; and
 - (c) if it breaches any declaration or undertaking in this Clause (*Undertaking*) or if it or any regulator or any administrator, liquidator or receiver of it disputes or challenges any of the interests, rights and title, present and future, of the Lessor in and to the Leased Assets, the Project Company shall (as an independent, severable and separately enforceable obligation) fully indemnify the Lessor in an amount equal to the applicable Termination Sum (less an amount equal to the applicable Termination Sum that the Lessor has irrevocably received pursuant to the other provisions of this Undertaking or a Sale Agreement).
- 2.3 The Project Company shall execute and do (or procure to be executed and done by any other necessary party) all such deeds, documents, acts and things as may be required in order to vest all of the Lessor’s interests, rights and title in and to Leased Assets in the Project Company as may be necessary to give full effect to this Undertaking.

3. EXERCISE OF PURCHASE UNDERTAKING

- 3.1 Subject to the terms and conditions of the Forward Lease Agreement and this Undertaking, the Lessor may exercise its right under this Undertaking by sending a completed Exercise Notice to the Project Company following the occurrence and continuance of an Event of Default.
- 3.2 Upon the sending of a completed Exercise Notice by the Lessor, the Project Company shall be obliged to purchase the Leased Assets on an “as is where is” basis and exclusive of any warranties (whether express or implied) of any kind in exchange for the payment of the Termination Sum by the Project Company to the Lessor.
- 3.3 The Project Company and the Lessor agree that immediately following the exercise of the Lessor’s right under this Undertaking and on the same day that such right is exercised the Project Company shall pay the Termination Sum to the Lessor.
- 3.4 Upon payment of the Termination Sum in full by the Project Company:

- (a) the Lessor and the Project Company shall enter into a Sale Agreement and title to the Leased Assets shall pass to the Project Company exclusive of any warranties (whether express or implied) of any kind upon the execution of the Sale Agreement by the Lessor and the Project Company; and
 - (b) the provisions of each of the Service Agency Agreement and the Forward Lease Agreement shall terminate with respect to the Leased Assets.
- 3.5 If the Project Company fails to pay the Termination Sum (or any part thereof) when it is due in accordance with Clause above, then in addition to paying the overdue Termination Sum, the Project Company shall be liable to pay to the Lessor a late payment amount (the “**Late Payment Amount**”) in respect of the overdue Termination Sum (or any part thereof which is overdue for payment) from and including the due date to the actual date of payment at the rate per annum from time to time determined by the Lessor to be the aggregate of:
- (a) [two per cent. (2%)] per annum; and
 - (b) the applicable Variable Element Rate.
- 3.6 Any Late Payment Amount payable by the Project Company pursuant to Clause shall be:
- (a) calculated on the basis of the actual number of days elapsed in the relevant period and a three hundred and sixty (360) day year and shall accrue from day to day; and
 - (b) immediately payable by the Project Company on demand by the Lessor and the amount of any Late Payment Amount received by the Lessor will be paid by it, firstly, to pay any actual claims, costs and expenses (not to include any opportunity costs or funding costs) incurred by the Lessor as a result of the failure of the Project Company to pay any sum on its due date for payment under any Transaction Document (such amount not to exceed the Outstanding Facility Amount) and secondly, to donate the remaining amount, on behalf of the Project Company, to a registered charity or charities [selected by the *shari’ah* advisory board of the Lessor].

4. REPRESENTATIONS AND WARRANTIES

The Project Company makes each representation and warranty set out in clause [12] (*Representations and warranties*) of the Forward Lease Agreement as if the same were set out, *mutatis mutandis*, in full in this Undertaking on the date of this Undertaking by reference to the facts and circumstances then existing.

5. ASSIGNMENT AND TRANSFER

- 5.1 The Lessor may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Undertaking. The Project Company shall execute and do all such transfers, assignments, assurances, acts and things as the Lessor may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to this Clause.
- 5.2 The Project Company may not assign or otherwise transfer any of its rights or obligations under this Undertaking, without the prior written consent of the Lessor.

6. NOTICES

- 6.1 Any communication to be made under or in connection with this Undertaking shall be made in writing and may be made by fax, letter or courier.
- 6.2 The address and fax number (and the department and officer (if any) for whose attention the communication is to be made) of each party to this Undertaking for any communication to be made or delivered under or in connection with this Undertaking is that which is identified with its name in the signature page below or any substitute address or fax number or department or officer as each such party may notify to the others by not less than five (5) Business Days' prior notice.
- 6.3 Any communication or document made or delivered by one of the parties to this Undertaking under or in connection with this Undertaking will only be effective:
- (a) if by way of fax, when received in legible form; or
 - (b) if by way of letter or courier, when it has been left at the relevant address or received by the addressee thereof;
- and, if a particular department or officer is specified as part of its address details provided under Clause , if addressed to that department or officer.
- 6.4 Any notice given under or in connection with this Undertaking must be in English.
- 6.5 Any communication to be made between the parties under or in connection with this Undertaking in relation to routine and administrative matters under or in connection with this Undertaking, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (b) notify each other of any change to their address or any other such information supplied by them.
- 6.6 Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. in the place of receipt shall be deemed to be effective on the next full working day in that place, and in the case of any electronic communication made by the Project Company to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

7. MISCELLANEOUS

- 7.1 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under this Undertaking shall operate as a waiver thereof, 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 Undertaking are cumulative and not exclusive of any rights or remedies provided by law.

- 7.2 This Undertaking 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 Undertaking.
- 7.3 If, at any time, any provision of this Undertaking 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.

8. GOVERNING LAW

This Undertaking and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

9. JURISDICTION OF [•] COURTS

9.1 **Jurisdiction**

Without prejudice to Clause 10 (*Arbitration*), the Project Company irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Undertaking or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

9.2 **Waiver of objection to jurisdiction**

The Project Company irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 9.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Undertaking or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

9.3 **[Process Agent**

- (a) The Project Company agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 9.3 (*Process Agent*) ceases to be effective in respect of the Project Company, the Project Company shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Project Company.
- (b) The Project Company further agrees that failure by a process agent to notify the Project Company of the process will not invalidate the proceedings concerned.]¹

9.4 **No limitation**

The submission to the jurisdiction of the courts referred to in Clause 9.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Project Company in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

9.5 **Consent**

The Project Company hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Undertaking or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

9.6 **Waiver of Immunity**

To the extent that the Project Company 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 Project Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

10. ARBITRATION

10.1 **Lessor's Option**

Notwithstanding Clause 9 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 10 (*Arbitration*).

10.2 **Arbitration**

The Project Company irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Undertaking or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Undertaking) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration ("**LCIA**") in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 10.2 (*Arbitration*).

10.3 **Procedure for arbitration**

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the "**Tribunal**"), one nominated by the Project Company, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Project Company and the Lessor may request the President of the LCIA (or such other person as the Project Company and the Lessor may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Project Company, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Project Company or the Lessor;

- (ii) have any political or business ties to the country of establishment of the Project Company or the Lessor; or
- (iii) be a person with familial ties to the Project Company or the Lessor.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Undertaking (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Undertaking which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Undertaking to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

10.4 **Waiver of objection to Arbitration**

The Project Company irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 10 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Undertaking or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

10.5 **Payment of Interest**

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari’ah* 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.

IN WITNESS WHEREOF the Project Company has executed this Undertaking on the date stated at the beginning of this Undertaking.

SCHEDULE 1**Form of Exercise Notice**

[Letterhead of [Lessor]]

To: [•] [•]

Date:

Dear Sirs:

We refer to the purchase undertaking dated [insert date •] executed by yourselves in our favour (the "Purchase Undertaking"). The undersigned, a duly authorised representative of [•] hereby certifies to you that (i) the aggregate amount of the Termination Sum payable hereunder is _____, and (ii) we are hereby exercising our right under the Purchase Undertaking to require you to purchase the Leased Assets.

You should make payment of the Termination Sum to the Lessor in accordance with the terms of the Purchase Undertaking by paying the Termination Sum into the following account:

[The Lessor to specify account details •]

Unless the context requires otherwise, terms and expressions used in this Exercise Notice and not defined herein shall have the same meanings as in the Purchase Undertaking (whether as set out therein or by reference to another document).

The provisions of Clause (Governing Law) to Clause 10 (Arbitration) of the Purchase Undertaking shall apply, *mutatis mutandis*, to this Exercise Notice.

For and on behalf of [Lessor]

SCHEDULE 2

Form of Sale Agreement

SALE AGREEMENT

THIS SALE AGREEMENT (this “**Sale Agreement**”) is dated _____ and made

BETWEEN:

- (1) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as lessee (the “**Project Company**”); and
- (2) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*] [*registered office*] at [*address*] as lessor (the “**Bank**”).

AGREED TERMS:

1. In exchange for the payment of the amount of [*insert amount of Termination Sum paid by the Project Company* •] by the Project Company to the Bank, the Bank hereby sells the assets described in the Appendix to this Sale Agreement (the “**Assets**”) to the Project Company on an “*as is where is*” basis and exclusive of any warranties (whether express or implied) of any kind whatsoever. The Project Company hereby purchases the Assets on the foregoing basis.
2. The Bank hereby transfers its ownership of and title to the Assets to the Project Company exclusive of any warranties (whether express or implied) of any kind whatsoever.
3. This Sale Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between them relating to the subject matter of this Sale Agreement.
4. The parties shall complete all formalities and do all such other acts and things necessary to complete and effect the sale as contemplated hereunder.
5. This Sale 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 Sale Agreement.
6. This Sale Agreement shall be governed by and construed in accordance with the laws of [•].

THIS SALE AGREEMENT has been entered into on the date stated at the beginning of this Sale Agreement.

PROJECT COMPANY

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address: _____ [•]

Fax No.: _____ [•]

Attention: _____ [•]

BANK

SIGNED for and on behalf of _____) _____

[•] _____)

Name: _____

Title: _____

Address: _____ [•]

Fax No.: _____ [•]

Attention: _____ [•]

APPENDIX TO THE SALE AGREEMENT

[insert description of the Assets including its shari'ah-compliant use •]

SIGNATURE PAGE

EXECUTED BY

PROJECT COMPANY

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

ACKNOWLEDGED BY

LESSOR

SIGNED for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTE

¹ Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).



APPENDIX G

Istiṣnāʾ-Ijārah Based Financing Sale Undertaking

.....

dated

[•]

provided by

[Name of bank/financial institution]

as Lessor

in favour of

[Name of the project company]

as Project Company

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS UNDERTAKING (this “**Undertaking**”) is dated _____ and made

BY:

- (1) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as lessor (the “**Lessor**”).

IN FAVOUR OF:

- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as lessee (the “**Project Company**”).

RECITAL:

WHEREAS, the Lessor owns the Leased Assets and the Lessor undertakes to sell the Leased Assets to the Project Company in accordance with this Undertaking.

NOW THEREFORE IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking:

“**Exercise Price**” means:

- (a) in respect of a sale of the Leased Assets pursuant to paragraph (a) of Clause 3.1 of this Undertaking, the amount equal to the Service Agency Costs incurred by the Service Agent in the Final Service Cost Period; and
- (b) in respect of a sale of the Leased Assets pursuant to paragraph (b) of Clause 3.1 of this Undertaking, at the relevant time, the aggregate of:
 - (i) the Outstanding Facility Amount;
 - (ii) the Rental Payments accrued but not paid;
 - (iii) the Service Agency Costs incurred by the Service Agent in the Final Service Cost Period; and
 - (iv) any other amounts due and payable by the Project Company under the Transaction Documents (in all of its capacities thereunder) to which it is a party.

“**Final Maturity Date**” has the meaning given to this expression in the Forward Lease Agreement.

“**Final Service Cost Period**” has the meaning given to this expression in the Service Agency Agreement.

“**Forward Lease Agreement**” means the forward lease agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as lessee.

“**Late Payment Amount**” has the meaning given to this expression in Clause 3.5.

“**Leased Assets**” has the meaning given to this expression in the Forward Lease Agreement.

“**Outstanding Facility Amount**” has the meaning given to this expression in the Forward Lease Agreement.

“**Rental Payment**” has the meaning given to this expression in the Forward Lease Agreement.

“**Sale Agreement**” means the sale agreement to be entered into between the Lessor and the Project Company substantially in the form set out in Schedule 2 (*Form of Sale Agreement*).

“**Sale Notice**” means a notice from the Project Company to the Lessor substantially in the form set out in Schedule 1 (*Form of Sale Notice*).

“**Service Agency Agreement**” means the service agency agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as service agent.

“**Service Agency Costs**” has the meaning given to this expression in the Service Agency Agreement.

“**Service Agent**” means [•] in its capacity as service agent under the Service Agency Agreement.

“**Transaction Documents**” has the meaning given to this expression in the Forward Lease Agreement.

“**Variable Element Rate**” has the meaning given to this expression in the Forward Lease Agreement.

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

- (a) the “**Project Company**”, the “**Lessor**” or the “**Service Agent**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” means *shari’ah*-compliant assets including present and future properties, revenues and rights of every description;
- (c) a “**Clause**” or “**Schedule**” is to a Clause of or Schedule to the document in which the reference appears;
- (d) 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) or two or more of the foregoing, and shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (e) an agreement, document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been or may from time to time be amended, novated, varied, or supplemented and an agreement, document or instrument includes its annexes and schedules;
- (f) “*Shari’ah*” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (g) provision of law is a reference to that provision as amended or re-enacted; and
- (h) a time of day is a reference to [•] time.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Words denoting the singular shall include the plural and vice versa.

- 1.5 Unless a contrary indication appears, a term used in any notice given under or in connection with this Undertaking has the same meaning in that notice as in this Undertaking.
- 1.6 All references to dates and time periods in this Undertaking will be construed in accordance with the Gregorian calendar.

2. UNDERTAKING

- 2.1 Subject to the terms and conditions of the Forward Lease Agreement and this Undertaking, and in consideration of the execution of the Forward Lease Agreement, the Lessor hereby irrevocably undertakes to the Project Company that upon the Project Company exercising its right in accordance with Clause 3 (*Exercise of Sale Undertaking*) to require the Lessor to sell the Leased Assets, the Lessor shall sell the Leased Assets on an “as is where is” basis, exclusive of any warranties (whether express or implied) of any kind, to the Project Company and the Project Company shall pay to the Lessor the relevant Exercise Price in respect of the Leased Assets.
- 2.2 The Project Company expressly declares that the relevant Exercise Price represents a fair price for the sale of all of the Lessor’s interests, rights and title, benefits and entitlements, present and future, in and to the Leased Assets pursuant to Clause 2.1 above.

3. EXERCISE OF SALE UNDERTAKING

- 3.1 Subject to the terms and conditions of the Forward Lease Agreement and this Undertaking, the Project Company may:
 - (a) on or after the Final Maturity Date, exercise its right under this Undertaking by sending a completed Sale Notice to the Lessor; or
 - (b) at any time prior to the Final Maturity Date, exercise its right under this Undertaking by sending not less than thirty (30) days written notice in the form of a completed Sale Notice to the Lessor.
- 3.2 Upon the sending of a completed Sale Notice by the Project Company, the Lessor shall be obliged to sell the Leased Assets to the Project Company on an “as is where is” basis and exclusive of any warranties (whether express or implied) of any kind in exchange for the payment of the relevant Exercise Price by the Project Company to the Lessor.
- 3.3 The Project Company and the Lessor agree that immediately following the exercise of the Project Company’s right under this Undertaking and on the same day that such right is exercised the Project Company shall pay the relevant Exercise Price to the Lessor.
- 3.4 Upon payment of the Exercise Price in full by the Project Company:
 - (a) the Lessor and the Project Company shall enter into a Sale Agreement and title to the Leased Assets shall pass to the Project Company exclusive of any warranties (whether express or implied) of any kind upon the execution of the Sale Agreement by the Lessor and the Project Company; and

- (b) the provisions of each of the Service Agency Agreement and the Forward Lease Agreement shall terminate with respect to the Leased Assets.
- 3.5 If the Project Company fails to pay the Exercise Price (or any part thereof) when it is due in accordance with Clause 3.3 above, then in addition to paying the overdue Exercise Price, the Project Company shall be liable to pay to the Lessor a late payment amount (the “**Late Payment Amount**”) in respect of the overdue Exercise Price (or any part thereof which is overdue for payment) from and including the due date to the actual date of payment at the rate per annum from time to time determined by the Lessor to be the aggregate of:
- (a) two per cent. (2%) per annum; and
 - (b) the applicable Variable Element Rate.
- 3.6 Any Late Payment Amount payable by the Project Company pursuant to Clause 3.5 shall be:
- (a) calculated on the basis of the actual number of days elapsed in the relevant period and a three hundred and sixty (360) day year and shall accrue from day to day; and
 - (b) immediately payable by the Project Company on demand by the Lessor and the amount of any Late Payment Amount received by the Lessor will be paid by it, firstly, to pay any actual claims, costs and expenses (not to include any opportunity costs or funding costs) incurred by the Lessor as a result of the failure of the Project Company to pay any sum on its due date for payment under any Transaction Document (such amount not to exceed the Outstanding Facility Amount) and secondly, to donate the remaining amount, on behalf of the Project Company, to a registered charity or charities [selected by the *shari'ah* advisory board of the Lessor].

4. REPRESENTATIONS AND WARRANTIES

The Project Company makes each representation and warranty set out in clause 10 (*Representations and warranties*) of the Forward Lease Agreement as if the same were set out, *mutatis mutandis*, in full in this Undertaking on the date of this Undertaking and a Sale Notice by reference to the facts and circumstances then existing.

5. ASSIGNMENT AND TRANSFER

- 5.1 The Lessor may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Undertaking. The Project Company shall execute and do all such transfers, assignments, assurances, acts and things as the Lessor may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to this Clause.
- 5.2 The Project Company may not assign or otherwise transfer any of its rights or obligations under this Undertaking, without the prior written consent of the Lessor.

6. NOTICES

- 6.1 Any communication to be made under or in connection with this Undertaking shall be made in writing and may be made by fax, letter or courier.
- 6.2 The address and fax number (and the department and officer (if any) for whose attention the communication is to be made) of each party to this Undertaking for any communication to be made or delivered under or in connection with this Undertaking is that which is identified with its name in the signature page below or any substitute address or fax number or department or officer as each such party may notify to the others by not less than five (5) Business Days' prior notice.
- 6.3 Any communication or document made or delivered by one of the parties to this Undertaking under or in connection with this Undertaking will only be effective:
- (a) if by way of fax, when received in legible form; or
 - (b) if by way of letter or courier, when it has been left at the relevant address or received by the addressee thereof;
- and, if a particular department or officer is specified as part of its address details provided under Clause 6.2, if addressed to that department or officer.
- 6.4 Any notice given under or in connection with this Undertaking must be in English.
- 6.5 Any communication to be made between the parties under or in connection with this Undertaking in relation to routine and administrative matters under or in connection with this Undertaking, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (b) notify each other of any change to their address or any other such information supplied by them.
- 6.6 Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. in the place of receipt shall be deemed to be effective on the next full working day in that place, and in the case of any electronic communication made by the Project Company to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

7. MISCELLANEOUS

- 7.1 No failure to exercise, nor any delay in exercising, on the part of the Lessor, any right or remedy under this Undertaking shall operate as a waiver thereof, 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 Undertaking are cumulative and not exclusive of any rights or remedies provided by law.

- 7.2 This Undertaking 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 Undertaking.
- 7.3 If, at any time, any provision of this Undertaking 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.

8. GOVERNING LAW

This Undertaking and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

9. JURISDICTION OF [•] COURTS

9.1 Jurisdiction

Without prejudice to Clause 10 (*Arbitration*), the Project Company irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Undertaking or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

9.2 Waiver of objection to jurisdiction

The Project Company irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 9.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Undertaking or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

9.3 [Process Agent

- (a) The Project Company agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 9.3 (*Process Agent*) ceases to be effective in respect of the Project Company, the Project Company shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Project Company.
- (b) The Project Company further agrees that failure by a process agent to notify the Project Company of the process will not invalidate the proceedings concerned.]¹

9.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 9.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Project Company in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

9.5 Consent

The Project Company hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Undertaking or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

9.6 Waiver of Immunity

To the extent that the Project Company 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 Project Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

10. ARBITRATION

10.1 Lessor's Option

Notwithstanding Clause 9 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 10 (*Arbitration*).

10.2 Arbitration

The Project Company irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Undertaking or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Undertaking) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 10.2 (*Arbitration*).

10.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Project Company, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Project Company and the Lessor may request the President of the LCIA (or such other person as the Project Company and the Lessor may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Project Company, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Project Company or the Lessor;

- (ii) have any political or business ties to the country of establishment of the Project Company or the Lessor; or
 - (iii) be a person with familial ties to the Project Company or the Lessor.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
 - (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
 - (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
 - (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Undertaking (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
 - (i) The Tribunal, upon the request of a party to a Dispute or a party to this Undertaking which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Undertaking to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
 - (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

10.4 Waiver of objection to Arbitration

The Project Company irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 10 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Undertaking or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

10.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

IN WITNESS WHEREOF the Lessor has executed this Undertaking on the date stated at the beginning of this Undertaking.

SCHEDULE 1

Form of Sale Notice

[Letterhead of [•]]

To: [Lessor]

Date:

Dear Sirs:

We refer to the sale undertaking dated [insert date •] executed by yourselves in our favour (the “**Sale Undertaking**”). The undersigned, a duly authorised representative of [•] hereby certifies to you that we are hereby exercising our right under the Sale Undertaking to require you to sell the Leased Assets.

[We irrevocably agree that we are exercising the option granted by you to us under paragraph (a) of Clause 3.1 of the Sale Undertaking and the Exercise Price is [100].]²

[We irrevocably agree that we are exercising the option granted by you to us under paragraph (b) of Clause 3.1 of the Sale Undertaking and the Exercise Price is the aggregate of the following:

- (a) the Outstanding Facility Amount;
- (b) the Rental Payments accrued but not paid;
- (c) the Service Agency Costs incurred by the Service Agent in the Final Service Cost Period; and
- (d) any other amounts due and payable by the Project Company under the Transaction Documents (in all of its capacities thereunder) to which it is a party.

We confirm that that the Exercise Price is _____].³

We shall make payment of the Exercise Price into the following account as instructed by you on the value date of [•]:

[The Lessor to advise account details •]

Unless the context requires otherwise, terms and expressions used in this Sale Notice and not defined herein shall have the same meanings as in the Sale Undertaking (whether as set out therein or by reference to another document).

The provisions of Clause 8 (*Governing Law*) to Clause 10 (*Arbitration*) of the Sale Undertaking shall apply, *mutatis mutandis*, to this Sale Notice.

For and on behalf of [•]

SCHEDULE 2

Form of Sale Agreement

SALE AGREEMENT

THIS SALE AGREEMENT (this “**Sale Agreement**”) is dated _____ and made

BETWEEN:

- (1) [Name of the project company], [a limited liability company] incorporated in [name of country] having its registered office at [address] as lessee (the “**Project Company**”); and
- (2) [Name of a bank/financial institution] incorporated in [name of country], having its [head office] [registered office] at [address] as lessor (the “**Bank**”).

AGREED TERMS:

- 1. In exchange for the payment of the amount of [insert amount of Exercise Price paid by the Project Company •] by the Project Company to the Bank, the Bank hereby sells the assets described in the Appendix to this Sale Agreement (the “**Assets**”) to the Project Company on an “as is where is” basis and exclusive of any warranties (whether express or implied) of any kind whatsoever. The Project Company hereby purchases the Assets on the foregoing basis.
- 2. The Bank hereby transfers its ownership of and title to the Assets to the Project Company exclusive of any warranties (whether express or implied) of any kind whatsoever.
- 3. This Sale Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between them relating to the subject matter of this Sale Agreement.
- 4. The parties shall complete all formalities and do all such other acts and things necessary to complete and effect the sale as contemplated hereunder.
- 5. This Sale 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 Sale Agreement.
- 6. This Sale Agreement shall be governed by and construed in accordance with the laws of [•].

THIS SALE AGREEMENT has been entered into on the date stated at the beginning of this Sale Agreement.

PROJECT COMPANY

SIGNED for and on behalf of _____)
 [•] _____)

Name: _____

Title: _____

Address: [•]

Fax No.: [•]

Attention: [•]

BANK

SIGNED for and on behalf of)

[•]) _____

Name: _____

Title: _____

Address: [•]

Fax No.: [•]

Attention: [•]

APPENDIX TO THE SALE AGREEMENT

[insert description of the Assets including its shari'ah-compliant use •]

SIGNATURE PAGE**EXECUTED BY****LESSOR****SIGNED** for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

ACKNOWLEDGED BY**PROJECT COMPANY****SIGNED** for and on behalf of _____)

[•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 2 Delete as appropriate.
- 3 Delete as appropriate.



APPENDIX H

Wakālah-Ijārah Based Financing Wakālah Agreement

.....

dated

by

[Name of bank/financial institution]

as *Wakālah* Facility Agent on behalf of the *Wakālah* Facility Participants

[Name of the project company]

as *Wakil*

and

CERTAIN FINANCIAL INSTITUTIONS

as Original *Wakālah* Facility Participants

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THIS WAKĀLAH AGREEMENT (this “**Agreement**”) is dated _____,

BETWEEN:

- (1) [•], for and on behalf of each *Wakālah* Facility Participant (the “**Wakālah Facility Agent**”);
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as agent (the “**wakil**”); and
- (3) **CERTAIN FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Wakālah Facility Participants*) (the “**Original Wakālah Facility Participants**”).

BACKGROUND:

- (A) The Parties agree that this Agreement shall set out the detailed terms pursuant to which the *Wakālah* Facility Participants shall appoint the *wakil* as their agent to design, engineer, procure and construct the *Wakālah* Assets in [•] of [•] and related infrastructure in accordance with the terms of the EPC Contracts and the *Wakālah* Facility Finance Documents (the “**Project**”).
- (B) The *Wakālah* Facility Participants:
 - (i) have, on the date of this Agreement, entered into an Asset Participation Agreement pursuant to which the *Wakālah* Facility Participants have agreed to participate in this Agreement in connection with the *Wakālah* Assets as part of the Project; and
 - (ii) have, on the date of this Agreement, entered into a *Wakālah* Facility Agency Agreement pursuant to which the *Wakālah* Facility Participants have agreed to participate in this *Wakālah* Agreement in connection with the *Wakālah* Assets as part of the Project and appointed the *Wakālah* Facility Agent to act on their behalf in connection with the *Wakālah* Assets.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Advance Rental Payment**” has the meaning given to such term in the Lease Agreement.

“**Advance Rental Payment Period**” has the meaning given to such term in the Lease Agreement.

“**Asset Participation Agreement**” means the agreement dated on or about the date of this Agreement between each of the *Wakālah* Facility Participants and the *Wakālah* Facility Agent.

“**Availability Period**” means the period commencing on the first Stage Payment Date and ending on the earlier to occur of:

- (a) the date on which the Available *Wakālah* Facility is zero;

- (b) close of business on the business day immediately prior to the First Lease Rental Payment Date;
- (c) termination of this Agreement in accordance with Clause 6 (*Termination*);
- (d) the date of Delivery; and
- (e) the date falling [•] ([•]) months from the first Stage Payment Date.

“**Available Participation**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

“**Available Wakālah Facility**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

“**Certificate of Delivery**” means the certificate substantially in the form set out in Schedule 4 (*Form of Certificate of Delivery*).

[“**Common Terms Agreement**” means the agreement dated on or about the date of this Agreement between (amongst others) the Project Company, the *Wakālah* Facility Agent and the *Wakālah* Facility Participants.]

“**Construction Period**” means the period commencing on the date of this Agreement and ending on the Lease Commencement Date (as defined in the Lease Agreement).

“**Debt**” has the meaning given to such term in the Common Terms Agreement.

“**Default**” has the meaning given to such term in the Lease Agreement.

“**Delivery**” means delivery of the *Wakālah* Assets pursuant to paragraph of Clause (*Delivery*).

“**Delivery Conditions**” means that the *wakil* has notified the *Wakālah* Facility Agent that:

- (a) possession of the *Wakālah* Assets has been obtained by the *wakil*;
- (b) the *Wakālah* Assets are in a satisfactory state in accordance with the agreed specifications in the EPC Contracts; and
- (c) the *Wakālah* Assets are ready for use in connection with the Project.

“**EPC Contract**” means the lump sum turnkey construction contract dated on or about the date of this Agreement and entered into between the Company and the EPC Contractor in respect of the Project, as may be amended from time to time.

“**EPC Contractor**” means [•].

“**Equity**” has the meaning given to such term in the Common Terms Agreement.

“**Event of Default**” has the meaning given to such term in the Lease Agreement.

“**First Lease Rental Payment Date**” has the meaning given to such term in the Lease Agreement.

“**Late Delivery Compensation Payment**” means each amount, payable on each Late Delivery Compensation Payment Date, as calculated in accordance with Schedule 5 (*Late Delivery Compensation Payment*).

“**Late Delivery Compensation Payment Date**” means each date for the payment of a Late Delivery Compensation Payment in accordance with Schedule 5 (*Late Delivery Compensation Payments*).

“**Lease Agreement**” means the agreement dated on or about the date of this Agreement between [•] (as lessee) and the *Wakālah* Facility Agent (as agent or lessee) for the *Wakālah* Facility Participants.

“**Lessee**” has the meaning given to such term in the Lease Agreement.

“**Lessor**” has the meaning given to such term in the Lease Agreement.

“**Net Stage Payment Amount**” means, at any time prior to Delivery, the aggregate amount of all Stage Payments paid to the *wakil* less the aggregate amount of:

- (a) the Late Delivery Compensation Payments paid by the *wakil* in accordance with Clause (*Consequences of Late Delivery*); and
- (b) any refunds of Stage Payments (or any part thereof) made by the *wakil* in accordance with Clause 3.4 (*Voluntary and Mandatory refunds of Stage Payments*).

“**Party**” means a party to this Agreement and “**Parties**” shall be construed accordingly.

“**Project Company**” means [•].

“**Relevant Proportion**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

“**Service Agency Agreement**” means the agreement dated on or about the date of this Agreement between the Services Agent and the *Wakālah* Facility Agent.

“**Services Agent**” means the Project Company in its capacity as services agent under the Service Agency Agreement.

“**Stage Payment**” means each amount paid in [•] by the *wakil* (on behalf of the *Wakālah* Facility Participants) to the EPC Contractor for the construction of the *Wakālah* Assets.

“**Stage Payment Date**” means each date on which a Stage Payment is made following the receipt of a duly completed Stage Payment Request in accordance with Clause 4.4 (*Delivery of Stage Payment Requests*).

“**Stage Payment Request**” means a request substantially in the form set out in Schedule 3 (*Form of Stage Payment Request*).

“**Technical Consultant**” means [•].

“**Total Wakālah Participations**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

“**Wakālah Assets**” means the assets listed in Schedule 2 (*Wakālah Assets*), details of the technical specifications of which are set out in part B (*Technical Specifications*) of schedule 1 (*Lease Assets*) of the Lease Agreement.

“**Wakālah Facility Agency Agreement**” means the agreement dated on or about the date of this Agreement between the Original *Wakālah* Facility Participants and the *Wakālah* Facility Agent under which the *Wakālah* Facility Participants agree to appoint the *Wakālah* Facility Agent as their agent in relation to, and agree to participate in, the financing of the construction of, and ownership of, the *Wakālah* Assets.

“**Wakālah Facility Finance Documents**” means:

- (a) this Agreement;
- (b) [the Asset Participation Agreement;]
- (c) the Lease Agreement;
- (d) [the *Wakālah* Facility Agency Agreement;]
- (e) the Service Agency Agreement;
- (f) [the Common Terms Agreement;] and
- (g) such other documents designated as such by the *Wakālah* Facility Agent, **provided that** they do not contravene Islamic *shari'ah*, with the prior consent of the Project Company (such consent not to be unreasonably withheld or delayed).

“*Wakālah* Facility Participants” has the meaning given to such term in the Asset Participation Agreement.

1.2 Interpretation

Any reference in this Agreement to:

- (a) any *Wakālah* Facility Participant or any other person shall be construed so as to include its (and any subsequent) successors, transferees and permitted assigns in accordance with their respective interests;
- (b) a “**business day**” shall be construed as a reference to:
 - (i) with respect to any period of notice relating to, or any day on which, a payment denominated in, or a fixing of any rate in, [•] is required, a day (other than a [Friday], [Saturday] or [Sunday]) on which commercial banks are open for business in [•] for interbank transactions; or:
 - (ii) in respect of any other obligation, a day (other than a [Friday], [Saturday] or [Sunday]) on which banks are open for business in [•];
- (c) a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement;
- (d) the term “**including**” shall be construed to mean “including without limitation”;
- (e) a “**person**” shall be construed as a reference to any person, firm, company, corporation, government, state, agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (f) a “**Schedule**” shall, subject to any contrary indication, be construed as a reference to a schedule to this Agreement;
- (g) the term “*Shari'ah*” shall be interpreted in accordance with the *Shari'ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (h) [•] denote the lawful currency of [•];

- (i) save where the contrary is indicated, any reference in this Agreement to this Agreement, any *Wakālah* Facility Finance Document or any other agreement or document shall be construed as a reference to the same as it may have been, or may from time to time be, amended, restated, varied, novated, replaced or supplemented; and
- (j) Clause and Schedule headings are for ease of reference only.

1.3 Third Party Rights

Except for the *Wakālah* Facility Participants (by virtue of their entry into the *Wakālah* Facility Agency Agreement), a person who is not a Party has no right to enforce or enjoy the benefit of any term of this Agreement.

2. APPOINTMENT AND FEE

2.1 Appointment

- (a) The *Wakālah* Facility Agent, for and on behalf of the *Wakālah* Facility Participants, appoints the *wakil* as its agent to enter into contract(s) with an entity or person to carry out the procurement of the design, engineering, construction, testing, commissioning and delivery of the *Wakālah* Assets in accordance with the terms and conditions of this Agreement (including entering into the relevant EPC Contracts with other entities or persons, certain other project documents and any other document as may be required to comply with the *wakil's* obligations under those EPC Contracts) during the Construction Period and for the performance of the other works provided for in this Agreement.
- (b) The *wakil* agrees to act as agent for and on behalf of the *Wakālah* Facility Participants in this respect.

2.2 *Wakil's* Fee

In consideration of the *wakil* acting as the agent of the *Wakālah* Facility Agent (acting for and on behalf of the *Wakālah* Facility Participants), the *wakil* shall receive a fee in the amount of [•] ([•]) in its capacity as agent for and on behalf of the *Wakālah* Facility Participants, payable on the date of the first Advance Rental Payment payable under the Lease Agreement.

3. TITLE AND DELIVERY

3.1 Title to the *Wakālah* Assets

- (a) The *wakil* shall notify the *Wakālah* Facility Agent as soon as reasonably practicable when it has taken possession of the *Wakālah* Assets.
- (b) The *wakil* shall take possession of the *Wakālah* Assets on behalf of the *Wakālah* Facility Participants in accordance with the EPC Contracts.
- (c) The *wakil* acknowledges that title to the *Wakālah* Assets shall pass from the EPC Contractor to the *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants) in accordance with the applicable terms and delivery mechanism set out in the EPC Contracts and the *Wakālah* Facility Agent shall hold such title in accordance with, and subject to, the provisions of the *Wakālah* Facility Finance Documents.

- (d) The *wakil* shall not do anything (or, so far as it is able, permit anything to be done) which may affect or imperil the *Wakālah* Facility Participants' right, title and ownership of any of the *Wakālah* Assets and their benefits.
- (e) The *wakil* shall reasonably and to the satisfaction of the *Wakālah* Facility Agent take all actions necessary and required under the laws of [•] to protect the right of ownership of the *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants) in the *Wakālah* Assets, including the obtaining of any requisite licence or permit and, if necessary, the filing of this Agreement with any competent agency or other instrumentality. If required by the *Wakālah* Facility Agent and to the extent it is practicable and assuming title has passed, the *wakil* will affix a notice to the *Wakālah* Assets stating that the *Wakālah* Assets are owned by the *Wakālah* Facility Participants.
- (f) The *wakil* shall allow the *Wakālah* Facility Agent the right, on the giving of reasonable notice, to view the *Wakālah* Assets during normal working hours.
- (g) The *wakil* shall not sell, assign, sub-let, pledge, mortgage, charge, encumber or part with possession of, or otherwise deal with the *Wakālah* Assets or any of the benefits thereof nor create nor allow to be created any obligation or encumbrance on the *Wakālah* Assets or to separate the *Wakālah* Assets except for repairs or otherwise with the prior written consent of the *Wakālah* Facility Agent (acting on the instructions of the *Wakālah* Facility Participants) or in accordance with the *Wakālah* Facility Finance Documents and, in the event of any breach of this paragraph by the *wakil*, the *Wakālah* Facility Agent shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the *Wakālah* Assets from any encumbrance and shall be entitled to recover such sum from the *wakil* forthwith.

3.2 Delivery

- (a) Subject to paragraph and, in particular, paragraph below:
 - (i) the *wakil* has undertaken to ensure that the EPC Contracts include sufficient provisions to require that Delivery occurs on or prior to [•] and to make the EPC Contractors liable for the Late Delivery Compensation Payments; and
 - (ii) the *wakil* undertakes to procure financial protection from the relevant EPC Contractor or under a relevant insurance policy with an authorised insurer with respect to the failure to procure Delivery on or prior to [•] in an amount not less than the Late Delivery Compensation Payments payable from time to time under Clause (*Consequences of Late Delivery*).
- (b) Without prejudice to the rights and remedies available to the *Wakālah* Facility Agent and the *Wakālah* Facility Participants under Clause (*Consequences of Late Delivery*) and other *Wakālah* Facility Finance Documents, the Parties agree that:
 - (i) failure by the *wakil* to comply with its obligations under paragraph (a) above or paragraph of Clause (*Consequences of Late Delivery*) shall not constitute a breach of this Agreement or an Event of Default, **provided that** the *wakil* is in compliance with its obligations under the other *Wakālah* Facility Finance Documents and makes payment of the Late Delivery Compensation Payments in accordance with Clause (*Consequences of Late Delivery*); and
 - (ii) the sole remedy available to the *Wakālah* Facility Participants for any failure on the part of the *wakil* to comply with its obligations under paragraph above shall be the payment of Late Delivery Compensation Payments in accordance with Clause (*Consequences of Late Delivery*).

- (c) Upon satisfaction of the Delivery Conditions, the *wakil* shall deliver the *Wakālah* Assets to the *Wakālah* Facility Agent (acting as agent for and on behalf of the *Wakālah* Facility Participants) by executing and sending the Certificate of Delivery to the *Wakālah* Facility Agent.

3.3 Consequences of Late Delivery

- (a) If Delivery has not occurred by [•] and the *Wakālah* Agreement has not been terminated in accordance with Clause 6 (*Termination*), then the *wakil* shall:
 - (i) Subject to paragraph of Clause (*Delivery*) above, ensure that prior to each Late Delivery Compensation Payment Date, a claim is made against the relevant EPC Contractor or insurer with respect to the amount of the Late Delivery Compensation Payment payable on that Late Delivery Compensation Payment Date to be applied in accordance with the terms of the *Wakālah* Facility Finance Documents; and
 - (ii) to the extent that the amount (if any) credited to the *Wakālah* Facility Agent (for the benefit of the *Wakālah* Facility Participants) pursuant to paragraph (a)(i) above on or prior to each Late Delivery Compensation Payment Date is less than the Late Delivery Compensation Payment on that date, then the *wakil*, as a result of its failure to comply with its obligations under paragraph(a) of Clause (*Delivery*) to make the EPC Contractor liable for the Late Delivery Compensation Payment or, if it did not fail to do so, irrevocably and unconditionally undertakes to indemnify the *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants) in an amount and currency equal to the shortfall between the relevant Late Delivery Compensation Payment and the amount (if any) credited to the *Wakālah* Facility Agent (for the benefit of the *Wakālah* Facility Participants) pursuant to paragraph (a)(i) above,

in each case, until the earlier of:

- (A) such time as Delivery occurs; and
 - (B) this Agreement is terminated in accordance with Clause (*Termination*).
- (b) The indemnity contained in paragraph above shall survive termination of this Agreement to the extent that a Late Delivery Compensation Payment fell due prior to termination of this Agreement.
 - (c) The Parties agree that any payments made by the *wakil* under this Clause (*Consequences of Late Delivery*) are compensatory and a reasonable pre-estimate of the losses to the *Wakālah* Facility Participants as a result of the late Delivery of the *Wakālah* Assets.

3.4 Voluntary and Mandatory refunds of Stage Payments

At any time prior to the date of Delivery, the *wakil* may, in accordance with the terms of the *Wakālah* Facility Finance Documents, or shall, if so required under the terms of the *Wakālah* Facility Finance Documents, refund any one or more Stage Payments (or any part thereof) paid to it.

4. PAYMENTS

4.1 Calculation

- (a) Subject to Clause (*Documentary Conditions Precedent for Stage Payments*) and Clause (*Delivery of Stage Payment Requests*), the *Wakālah* Facility Participants (through the *Wakālah* Facility Agent)

severally undertake to pay the *wakil* on each Stage Payment Date, their Relevant Proportions in accordance with clause 3.1 (*Participation*) of the Asset Participation Agreement.

- (b) The *Wakālah* Facility Participants shall be under no obligation to pay any amount in excess of [•] ([•]) for construction of the *Wakālah* Assets. The amount due shall, in turn, be paid by the *wakil* to the EPC Contractor by way of Stage Payments.

4.2 Documentary Conditions Precedent for Stage Payments

- (a) The obligation of each *Wakālah* Facility Participant to participate in any Stage Payment is subject to each of the conditions listed in Schedule 6 (*Conditions Precedent*) of this Agreement and such other condition precedent that the *Wakālah* Facility Agent has notified the *wakil* and the *Wakālah* Facility Participants that all of the documents, evidence and other matters required under the *Wakālah* Facility Finance Documents have been received, in such form and substance as required by the *Wakālah* Facility Finance Documents. The *Wakālah* Facility Agent shall give the notification referred to above as soon as reasonably practicable.
- (b) If a Stage Payment has not been made by reason of the operation of paragraph above and/or the other provisions of the *Wakālah* Facility Finance Documents, such Stage Payment shall be made on the Stage Payment Date following satisfaction of the conditions referred to in paragraph above.

4.3 Reduction of the Total *Wakālah* Participations

The *wakil* may, from time to time, by notice to the *Wakālah* Facility Agent in accordance with the terms of the *Wakālah* Facility Finance Documents, reduce the Total *Wakālah* Participations of the *Wakālah* Facility Participants, **provided that** any such reduction is made in accordance with the *Wakālah* Facility Finance Documents, such reduction will be deemed to be accepted by each *Wakālah* Facility Participant and the *Wakālah* Facility Agent.

4.4 Delivery of Stage Payment Requests

- (a) The *wakil* may request that a Stage Payment be made by delivering to the *Wakālah* Facility Agent a duly completed Stage Payment Request at least [five (5)] business days (or such shorter period as the *Wakālah* Facility Agent may agree) prior to the proposed Stage Payment Date.
- (b) Each Stage Payment Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the conditions referred to in paragraph of Clause (*Documentary Conditions Precedent for Stage Payments*) have been satisfied or waived;
 - (ii) the Stage Payment is required:
 - (A) for the payment of the cost of construction and for acquisition of the *Wakālah* Assets and any other costs related the Project, estimated by the *wakil* and confirmed in writing by the Technical Consultant to fall due in the [fifteen (15)] day period after such Stage Payment and there are no disputes in relation to such sums; and/or
 - (B) for the reimbursement to the *wakil* for the payment of the cost of construction and for acquisition of the *Wakālah* Assets by the *wakil* made prior to first Stage Payment (to the extent such reimbursable amount are confirmed in writing by the Technical Consultant (acting reasonably)); and/or

- (C) for the reimbursement to the *wakil* for the payment of the cost of construction and for acquisition of the *Wakālah* Assets by the *wakil* made during a period when Stage Payments cannot be requested or made; and/or
 - (D) for payment in respect of financing costs and all amounts required to meet Advance Rental Payments, development costs and expenses, all amounts necessary to fund the [debt service reserve account and/or debt service reserve account];
- (iii) the proposed Stage Payment Date is:
- (A) in respect of a Stage Payment for the reimbursement to the *wakil* pursuant to paragraph above, a business day prior to the close of business ([•] time) on the date falling [thirty (30)] business days after the date of Delivery;
 - (B) in respect of any other Stage Payment, a business day during the Availability Period.
- (iv) the currency of the proposed Stage Payment is [•];
- (v) the amount of the requested Stage Payment does not exceed the Available *Wakālah* Facility;
- (vi) the amount is in a minimum of [•] (or if less, the amount of the Available *Wakālah* Facility);
- (vii) no Default or breach of the *Wakālah* Facility Finance Documents has occurred and is continuing or would result from the proposed Stage Payment;
- (viii) each representation and warranty made or deemed to be repeated at the date of the Stage Payment Request is true and correct in all material respects;
- (ix) once the Stage Payment has been made, the ratio of Debt to Equity will not be greater than [•]:[•];
- (x) it specifies the correct Advance Rental Payment Period; and
- (xi) it is executed by a person duly authorised to do so on behalf of the *wakil*.

4.5 *Wakālah* Facility Participants' Rights and Obligations

- (a) The obligations of each *Wakālah* Facility Participant under the *Wakālah* Facility Finance Documents are several. Failure by a *Wakālah* Facility Participant to perform its obligations under the *Wakālah* Facility Finance Documents does not affect the obligations of any other party under the *Wakālah* Facility Finance Documents. No *Wakālah* Facility Participant is responsible for the obligations of any other *Wakālah* Facility Participant under the *Wakālah* Facility Finance Documents.
- (b) The rights of each *Wakālah* Facility Participant under or in connection with the *Wakālah* Facility Finance Documents are separate and independent rights and any obligation arising under the *Wakālah* Facility Finance Documents to a *Wakālah* Facility Participant from the Project Company shall be a separate and independent obligation.
- (c) A *Wakālah* Facility Participant may, except as otherwise stated in the *Wakālah* Facility Finance Documents, separately enforce its rights under the *Wakālah* Facility Finance Documents.

5. UNDERTAKINGS

5.1 Engineering, Procurement and Construction

The *wakil* undertakes to the *Wakālah* Facility Participants that:

- (a) in its capacity as *wakil*, in compliance with Islamic *shari'ah*, it shall not engage in usury or cheating; or other *shari'ah* non-compliant activities;
- (b) it has undertaken to select qualified contractors that have the ability to design, engineer, construct and commission the *Wakālah* Assets in accordance with the requirements of the relevant EPC Contracts;
- (c) it shall appoint [•] as project management consultant to assist in the supervision of performance of the EPC Contracts and the management of the Project;
- (d) it shall enable the EPC Contractors to have all necessary and sufficient access to the Project site to facilitate the performance of the EPC Contracts; and
- (e) it shall conduct regular inspections of the *Wakālah* Assets during the Construction Period.

5.2 Indemnity

The *wakil* shall indemnify and hold the *Wakālah* Facility Agent and the *Wakālah* Facility Participants harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred or suffered by the *Wakālah* Facility Agent and the *Wakālah* Facility Participants as a result of the gross negligence, wilful misconduct or fraud of the *wakil* in connection with or arising from the arrangements contemplated in this Agreement except to the extent resulting from the gross negligence, wilful misconduct or fraud of the *Wakālah* Facility Agent or a *Wakālah* Facility Participant. This indemnity shall survive termination of this Agreement with respect to any acts or omissions which occurred prior to the date of such termination.

6. TERMINATION

6.1 Expiry

Subject to the provisions of the *Wakālah* Facility Finance Documents, this Agreement shall expire when Delivery occurs or this Agreement is otherwise terminated in accordance with Clause (*Right to terminate*).

6.2 Right to terminate

- (a) The *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants) may, subject to the provisions of the *Wakālah* Facility Finance Documents, terminate this Agreement, by notice to the *wakil*, if the *wakil* is in default under, or in breach of, the terms of this Agreement or an Event of Default is continuing under any *Wakālah* Facility Finance Document.
- (b) Subject to and in accordance with this Agreement and the other *Wakālah* Facility Finance Documents, upon the termination of this Agreement under paragraph (a) above:
 - (i) the *Wakālah* Facility Participants shall not be bound to make any further Stage Payments to the *wakil*;

- (ii) the *wakil* shall reimburse the *Wakālah* Facility Agent (for the account of the *Wakālah* Facility Participants) for an amount equal to the Net Stage Payment Amount as at the date on which the *Wakālah* Agreement is terminated; and
- (iii) the *wakil* shall, subject to clause 3.8 (*Set-Off*) of the Lease Agreement, pay to the *Wakālah* Facility Agent (for the account of the *Wakālah* Facility Participants) liquidated damages for failing to deliver the *Wakālah* Assets to the *Wakālah* Facility Agent in an amount equal to the aggregate of the Advance Rental Payments paid by the Lessee as at the date of such termination.

The *wakil* acknowledges and agrees that the liquidated damaged referred to in paragraph (iii) above are fair and reasonable and are a genuine pre-estimate of loss suffered by the *Wakālah* Facility Participants for such failure by the *wakil* to deliver the *Wakālah* Assets.

7. SET-OFF

The *Wakālah* Facility Agent shall be entitled to set-off against its obligations to pay the **wakil's** fee under Clause (*Wakil's Fee*), its right to receive certain sums from the Lessee under clause 3.2 (*Advance Rental Payments*) of the Lease Agreement (regardless of whether such sums are actually received in whole or in part).

8. ASSIGNMENT

8.1 Parties to this Agreement

This Agreement shall be binding upon the *Wakālah* Facility Agent, the *Wakālah* Facility Participants, the *wakil* and their respective successors and assigns and shall enure to their benefit. The *wakil* shall not be entitled to assign this Agreement without the prior written consent of the *Wakālah* Facility Agent.

8.2 Assignment by the *Wakālah* Facility Agent

Subject to the provisions of the *Wakālah* Facility Finance Documents, the *Wakālah* Facility Agent shall be entitled to assign or transfer all of its rights, benefits and obligations under this Agreement to any person who accedes to the *Wakālah* Facility Agency Agreement as *Wakālah* Facility Agent.

8.3 *Wakālah* Facility Participants

The *Wakālah* Facility Agent shall notify the *wakil* of any assignment, novation or transfer of rights and/or obligations by any *Wakālah* Facility Participant to another financial institution and which has been made in accordance with paragraph (a) of clause 5.1 (*Transfers by Wakālah Facility Participants*) of the Asset Participation Agreement.

9. AMENDMENTS

Subject to the provisions of the *Wakālah* Facility Finance Documents, any term of this Agreement may be amended or waived with the prior written consent of the *Wakālah* Facility Agent and the *wakil*. Subject to the preceding sentence, the *Wakālah* Facility Agent may effect, for and on behalf of the *Wakālah* Facility Participants, an amendment or waiver to which they have agreed in accordance with the *Wakālah* Facility Agency Agreement and/or the Common Terms Agreement.

10. BUSINESS DAYS

- (a) Any payment under this Agreement which is due to be made on a day that is not a business day shall be made on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).
- (b) For the avoidance of doubt and notwithstanding any provision under any of the *Wakālah* Facility Finance Documents, any payment under any of the *Wakālah* Facility Finance Documents which is due to be made to a *Wakālah* Facility Participant or by a *Wakālah* Facility Participant on [31 December] shall be made on the preceding business day.

11. WAIVER OF USURIOUS INTEREST

This Agreement does not include or contain any provision relating to usurious interest and no provision of this Agreement shall be interpreted to mean or denote the same. The Parties undertake to waive any usurious interest that may be approved or awarded by virtue of a judgment or interpretation or otherwise.

12. NOTICES

12.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter or, if Clause *(Electronic communication)* applies, electronic mail.

12.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

For the *Wakālah* Facility Participants:

Name: [•]

Address: [•]

Fax: [•]

Email: [•]

Attention: [•]

For the *Wakālah* Facility Agent:

Name: [•]

Address: [•]

Fax: [•]

Email: [•]

Attention: [•]

For the Wakil:

Name: [•]

Address: [•]

Fax No.: [•]

E-mail: [•]

Attention: [•]

or any substitute address, fax number or department or officer as the Parties may notify to each other by not less than five (5) business days' notice.

12.3 Delivery

- (a) 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; or
 - (ii) if by way of letter, when it has been left at the relevant address or [five (5)] business days after being deposited with a courier service, postage prepaid, in an envelope addressed to it at that address, and, if a particular department or officer is as part of its address details provided under Clause (Addresses), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the *Wakālah* Facility Agent will be effective only when actually received by the *Wakālah* Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the *Wakālah* Facility Agent's notice details in Clause (Addresses) above (or any substitute department or officer as the *Wakālah* Facility Agent shall specify for this purpose).

12.4 Electronic communication

- (a) Any communication to be made between any Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the relevant Parties:
- (i) agree that, unless and until notified to the contrary, this is to be an acceptable form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Electronic communications made by a Party to the other Party or notices sent by a Party to the other Party that are generated electronically under or in connection with this Agreement do not require signature by the sending Party.

- (c) Any electronic communication made between such Parties will be effective only when actually received in readable form and in the case of any electronic communication to the *Wakālah* Facility Agent only if it is addressed in such a manner as the *Wakālah* Facility Agent shall specify for this purpose.

12.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
- (i) in English; or
 - (ii) if not in English, and if so required by the *Wakālah* Facility Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

13. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

14. JURISDICTION OF [•] COURTS

14.1 Jurisdiction

Without prejudice to Clause 15 (*Arbitration*), the *wakil* irrevocably agrees for the benefit of the *Wakālah* Facility Agent that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

14.2 Waiver of objection to jurisdiction

The *wakil* irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 14.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that any such court is not a convenient or appropriate forum.

14.3 [Process Agent

- (a) The *wakil* agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 14.3 (*Process Agent*) ceases to be effective in respect of the *wakil*, the *wakil* shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the *wakil*.
- (b) The *wakil* further agrees that failure by a process agent to notify the *wakil* of the process will not invalidate the proceedings concerned.]¹

14.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 14.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the *wakil* in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

14.5 Consent

The *wakil* hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

14.6 Waiver of Immunity

To the extent that the *wakil* 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 *wakil* hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

15. ARBITRATION

15.1 Wakālah Facility Agent's Option

Notwithstanding Clause 14 (*Jurisdiction of [•] Courts*), the *Wakālah* Facility Agent may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 15 (*Arbitration*).

15.2 Arbitration

The *wakil* irrevocably agrees for the benefit of the *Wakālah* Facility Agent that any disputes which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 15.2 (*Arbitration*).

15.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the *wakil*, one nominated by the *Wakālah* Facility Agent and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within [thirty (30)] days after the appointment of the second arbitrator, the *wakil* and the *Wakālah* Facility Agent may request the President of the LCIA (or such other person as the *wakil* and the *Wakālah* Facility Agent may agree) to designate someone to effect such appointment.

- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the *wakil*, the *Wakālah* Facility Agent or any person that directly or indirectly beneficially owns any share capital of the *wakil* or the *Wakālah* Facility Agent;
 - (ii) have any political or business ties to the country of establishment of the *wakil* or the *Wakālah* Facility Agent; or
 - (iii) be a person with familial ties to the *wakil* or the *Wakālah* Facility Agent.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the *Wakālah* Facility Finance Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

15.4 Waiver of objection to Arbitration

The *wakil* irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 15 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that such forum is not a convenient or appropriate forum.

15.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

16. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other *Wakālah* Facility Finance Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the *Wakālah* Facility Agent in favour of the *wakil*.

17. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

18. COUNTERPARTS

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

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

Original *Wakālah* Facility Participants

Original <i>Wakālah</i> Facility Participant	Participation ([•])
[•]	[•]
TOTAL	[•]

SCHEDULE 2***Wakālah Assets***

	Value
<i>Wakālah Assets</i>	[•]
[•] and related infrastructure.	[•]
Total	[•]

SCHEDULE 3

Form of Stage Payment Request

From: [•] (as “*Wakil*”)

To: [•] (the “*Wakālah Facility Agent*”)

Dated: [•]

Dear Sirs

***Wakālah Agreement* dated _____ (the Agreement)**

1. We refer to the Agreement.
2. This is a Stage Payment Request.
3. Terms defined in the Agreement have the same meaning in this Stage Payment Request unless given a different meaning in this Stage Payment Request.
4. We request you to advance a Stage Payment upon the following terms:
 - (a) proposed Stage Payment Date: [•] (or, if that is not a business day, the next business day);
 - (b) proposed amount of Stage Payment: [•] (or, if less, the Available Participation); and
 - (c) Advance Rental Payment Period: [[•] months]² / [Period ending on the last day of the current Advance Rental Payment Period]³ or any other period (not to exceed [[•] months]) agreed between the *wakil* and the *Wakālah Facility Agent* in relation to the relevant Stage Payment
5. We hereby certify that:
 - (a) no Default or breach of the *Wakālah Facility Finance Documents* has occurred and is continuing or would result from the proposed Stage Payment;
 - (b) the Stage Payment is required for (i) ⁴[the payment of the cost of construction and for acquisition of the *Wakālah Assets* and any other costs related the Project, estimated by the *wakil* to fall due in the [fifteen (15)] day period after such Stage Payment and such costs are in accordance with the approved project budget], and/or (ii) ⁵[the reimbursement to the *wakil* for the payment of the cost of construction and for acquisition of the *Wakālah Assets* by the *wakil* made prior to first Stage Payment], and/or (iii) ⁶[the reimbursement to the *wakil* for the payment of the cost of construction and for acquisition of the *Wakālah Assets* by the *wakil* made during a period when Stage Payments cannot be requested or made], and/or (iv) ⁷[payment in respect of financing costs and all amounts required to meet Advance Rental Payments, development costs and expenses, all amounts necessary to fund the [debt service reserve account and/or debt service reserve account]];
 - (c) each representation and warranty made or deemed to be repeated at the date of this Stage Payment Request is true and correct in all material respects; and
 - (d) once the Stage Payment has been made, the ratio of Debt to Equity will not be greater than [•]:[•].

6. The amount of the Stage Payment should be credited to [*insert details of the relevant disbursement account*].
7. This Stage Payment Request is irrevocable.
8. This Stage Payment Request is governed by the laws and regulations of[•] and any disputes that may arise in connection with this Stage Payment Request shall be heard and adjudicated by the competent judicial authorities in [•] applying the provisions of Islamic *shari'ah* .

Yours faithfully

Authorised Signatory for and on behalf of
[•]

.....
Name: [•]

Title: [•]

SCHEDULE 4

Form of Certificate of Delivery

From: [•] (as “*Wakil*”)

To: [•] (the “*Wakālah Facility Agent*”)

Dated: [•]

Dear Sirs

***Wakālah Agreement* dated _____ (the Agreement)**

1. We refer to the Agreement.
2. This is a Certificate of Delivery.
3. Terms defined in the Agreement have the same meaning in this Certificate of Delivery unless given a different meaning in this Certificate of Delivery.
4. We hereby confirm that:
 - (a) we have obtained possession of the *Wakālah Assets* from the relevant EPC Contractors;
 - (b) the *Wakālah Assets* are in a satisfactory state in accordance with the agreed specifications in the EPC Contracts;
 - (c) the *Wakālah Assets* are ready for use in connection with the Project;
 - (d) title to the *Wakālah Assets* has passed to the *Wakālah Facility Agent* (acting as agent for and on behalf of the *Wakālah Facility Participants*) in accordance with paragraph _____ of Clause (*Title to the Wakālah Assets*) of the Agreement; and
 - (e) in our capacity as Lessee under the Lease Agreement, we have taken delivery of the *Wakālah Assets* being the Lease Assets (as defined in the Lease Agreement).
5. This Certificate of Delivery is irrevocable.
6. This Certificate of Delivery is governed by the laws and regulations of [•] and any disputes that may arise in connection with this Certificate of Delivery shall be heard and adjudicated by the competent judicial authorities in [•] applying the provisions of Islamic *shari'ah*.

Yours faithfully

Authorised Signatory for and on behalf of
[•]

.....
Name: [•]

Title: [•]

SCHEDULE 5

Late Delivery Compensation Payments

Each Late Delivery Compensation Payment is payable on each Late Delivery Compensation Payment Date in the amounts and on the dates set out in the table below:

Late Delivery Compensation Payment	Late Delivery Compensation Payment ([·])
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
Total	[·]

The compensation amount (the “**Compensation**”) payable on any Late Delivery Compensation Payment Date shall be the amount equal to the product of:

- (i) the percentage set opposite the relevant Late Delivery Compensation Payment in the second column in the table above (the “**Compensation Table**”); and
- (ii) the Net Stage Payment Amount as at the day immediately prior to the first Late Delivery Compensation Payment Date.

For the avoidance of doubt, amounts payable as Compensations shall be adjusted:

- (i) to take into account any refunds or payments made pursuant to Clause (Consequences of Late Delivery); or
- (ii) to take into account any change to the Late Delivery Compensation Payment Date (set out in the Compensation Table) in accordance with the terms of the *Wakālah* Facility Finance Documents.

At any time following an adjustment to the Late Delivery Compensation Payment Dates and/or the percentage of Compensations in the manner prescribed herein, the *Wakālah* Facility Agent shall, in consultation with the *wakil*, prepare and deliver to the *wakil* an updated Compensation Table setting forth the (revised) Late Delivery Compensation Payment Dates and percentages of Compensations.

SCHEDULE 6

Conditions Precedent

1. [•]

SIGNATURE PAGE

Wakālah Facility Agent

SIGNED for and on behalf of)
[•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The *Wakil*

SIGNED for and on behalf of)
[•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The terms of this Agreement are acknowledged by:

Original *Wakālah* Facility Participants

SIGNED for and on behalf of _____)
 [•] _____) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 2 Only applicable to the first Stage Payment Request. Delete as appropriate.
- 3 To be used for each Stage Payment Request other than the first Stage Payment Request.
- 4 Delete as appropriate.
- 5 Delete as appropriate.
- 6 Delete as appropriate.
- 7 Delete as appropriate.



APPENDIX I

Wakālah-Ijārah Based Financing Lease Agreement (Ijārah Mawsufah Fi Al Dhimmah)

.....

dated

by

[Name of bank/financial institution]

as Lessor

(for and on behalf of the Wakālah Facility Participants)

[Name of the project company]

as Lessee

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS LEASE AGREEMENT (this “**Agreement**”) is dated _____,

BETWEEN:

- (1) [•], for and on behalf of each *Wakālah* Facility Participant as lessor (the “**Lessor**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as lessee (the “**Lessee**”).

BACKGROUND:

- (A) The Project Company (as *Wakil*) will enter into a number of contracts with various contractors to design, construct, operate and maintain [•] and related infrastructure (the “**Project**”).
- (B) On or about the date of this Agreement, the *Wakālah* Facility Participants have entered into:
 - (i) [an asset participation agreement (the “**Asset Participation Agreement**”) pursuant to which, *inter alia*, the *Wakālah* Facility Participants agree to participate in financing the construction and ownership of the Lease Assets;]
 - (ii) [a *Wakālah* facility agency agreement (the “**Wakālah Facility Agency Agreement**”) pursuant to which, *inter alia*, the *Wakālah* Facility Participants have appointed the *Wakālah* Facility Agent to be the *Wakālah* Facility Participants’ agent in respect of the Lease Assets; and]
 - (iii) a *Wakālah* agreement (the “**Wakālah Agreement**”) pursuant to which, *inter alia*, the *Wakālah* Facility Participants have appointed the Project Company (as *Wakil*) as their agent to facilitate arrangements with contracts for the construction and delivery of the Lease Assets.
- (C) This Agreement sets out the terms on which the Lessor, as agent for and on behalf of the *Wakālah* Facility Participants, will lease the Lease Assets to the Lessee.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Additional Lease Rental Amount**” has the meaning given to such term in paragraph 4 of Schedule 4 (*Lease Rental Payments*).

“**Advance Rental Payment**” means the advance rental payment payable on each Advance Rental Payment Date as calculated in accordance with Schedule 3 (*Advance Rental Payments*), such amounts to be paid to the Lessor by the Lessee in accordance with Clause 3.2 (*Advance Rental Payments*).

“**Advance Rental Payment Date**” means the last day of an Advance Rental Payment Period, provided that if an Advance Rental Payment Date falls:

- (a) on [31st December], that Advance Rental Payment Date will instead fall on the immediately preceding business day; and
- (b) on a day which is not a business day, that Advance Rental Payment Date will instead fall on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).

“**Advance Rental Payment Period**” means, in respect of each Stage Payment:

- (a) the First Advance Rental Payment Period; and
- (b) thereafter, each Subsequent Advance Rental Payment Period.

[“**Asset Participation Agreement**” has the meaning given to such term in Recital (B).]

“**Available Wakālah Facility**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

[“**Common Terms Agreement**” means the agreement dated on or about the date of this Agreement between (amongst others) the Project Company, the *Wakālah* Facility Agent and the *Wakālah* Facility Participants.]

“**Default**” means an Event of Default or any event or circumstance which would or might reasonably be expected to be (with the expiry of a grace period, the giving of notice, the making of any determination under the *Wakālah* Facility Finance Documents or any combination of any of the foregoing) an Event of Default.

“**Delivery**” has the meaning given to such term in the *Wakālah* Agreement.

“**Early Payment**” means, as the context requires:

- (a) any refund of a Stage Payment pursuant to clause 3.4 (*Voluntary and Mandatory Refunds of Stage Payments*) of the *Wakālah* Agreement made in advance of the due date for payment to which that refund of Stage Payments relates; and/or
- (b) any Early Lease Rental Payment.

“**Early Lease Rental Payment**” means any payment of a Lease Fixed Element in advance of the due date for payment of that Lease Fixed Element pursuant to Clause 5 (*Early Lease Rental Payments and Adjustments to Schedules*).

“**Event of Default**” means any of the events or circumstances described in Clause 8.1 (Events of Default).

“**Final Advance Rental Payment Period**” means the Advance Rental Payment Period ending on the earlier to occur of:

- (a) the date of Delivery; and
- (b) the date on which this Agreement and the *Wakālah* Agreement are terminated.

“**Final Lease Rental Payment**” means:

- (a) the Lease Rental Payments to be made on the Final Lease Rental Payment Date; or

- (b) if the Lease Rental Payments referred to in paragraph (a) above have been paid in full in advance of the Final Lease Rental Payment Date in accordance with Clause 5 (*Early Lease Rental Payments and Adjustments to Schedules*), the last outstanding Lease Rental Payment.

“**Final Lease Rental Payment Date**” means [•].

“**Final Maturity Date**” means the date on which all of the Lessee’s liabilities under the *Wakālah* Facility Finance Documents have been irrevocably paid or discharged (whether as a result of enforcement or otherwise) and the Lessee is not under any further obligation to any person under any of the *Wakālah* Facility Finance Documents.

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would be treated as a finance or capital lease in accordance with GAAP;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement or any Islamic financing arrangement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**First Advance Rental Payment Date**” means, in relation to a First Advance Rental Payment Period, the last day of such First Advance Rental Payment Period, provided that if such First Advance Rental Payment Date falls on a day which is not a business day that First Advance Rental Payment Date will fall on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).

“**First Advance Rental Payment Period**” means:

- (a) for the first Stage Payment, the period beginning with the Stage Payment Date for such Stage Payment and ending [•] months or such other period (not to exceed [•] months) as may be agreed between the *Wakil* and the *Wakālah* Facility Agent thereafter as selected by the *Wakil* in accordance with the Stage Payment Request; and

- (b) for each Stage Payment other than the first Stage Payment, the period beginning with the Stage Payment Date for such Stage Payment and ending on the last day of the then existing Advance Rental Payment Period,

unless, in either case, such First Advance Rental Payment Period is also a Final Advance Rental Payment Period, in such case it shall end in accordance with the provisions in the definition of “**Final Advance Rental Payment Period**”.

“**GAAP**” means generally accepted accounting principles in [•] including IFRS.

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Interpolated Screen Rate**” means, in relation to [SAIBOR] for any particular period (such period being a “**relevant period**”), the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the relevant period; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the relevant period,

each as at or about 11 a.m. ([•] time) on the Rate Fixing Date.

“**Lease Assets**” means the assets set out in Part A (*Lease Assets*) of Schedule 1 (*Lease Assets*), and includes any improvements, substitutions or alterations to such Lease Assets or changes to the working order, functions or quality of the Lease Assets during the term of this Agreement.

“**Lease Base Amount**” means,

- (a) at the Lease Commencement Date, the Net Stage Payment Amount on such date; and
- (b) at all other times, the aggregate of the Lease Fixed Elements not yet paid at that time.

“**Lease Commencement Date**” means the date of Delivery.

“**Lease Fixed Element**” means, in relation to each Lease Rental Payment, the relevant amount set out in the column headed “Lease Fixed Element ([•])” in the table under paragraph 2 of Schedule 4 (*Lease Rental Payments*), as adjusted from time to time pursuant to the terms of the *Wakālah* Facility Finance Documents.

“**Lease Period**” means the period from the Lease Commencement Date until (unless this Agreement is terminated earlier in accordance with its terms) the Final Lease Rental Payment Date.

“**Lease Rental Payments**” means, subject to the provisions of the *Wakālah* Facility Finance Documents, each amount to be paid to the Lessor (for the account of the *Wakālah* Facility Participants) by the Lessee in accordance with paragraph (b) of Clause 3.1 (*Components of Lease Payments*).

“**Lease Rental Payment Date**” means the last day of a Lease Rental Period, provided that if a Lease Rental Payment Date falls:

- (a) on [31st December], that Lease Rental Payment Date will instead fall on the immediately preceding business day; and
- (b) on a day which is not a business day, that Lease Rental Payment Date will instead fall on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).

“**Lease Rental Period**” means:

- (a) in the case of the first Lease Rental Period, the period beginning on (and including) the Lease Commencement Date and ending on (but excluding) the next following Lease Rental Payment Date; and
- (b) subsequently, each period beginning on (and including) the expiry of the previous Lease Rental Period and ending on (but excluding) the next Lease Rental Payment Date.

“**Lease Rental Review Date**” means the day that is [two (2)] business days before the commencement of the relevant Lease Rental Period.

“**Lease Termination Payment**” means the amount payable by the Lessee to the Lessor (for the account of the *Wakālah* Facility Participants) on termination of this Agreement and determined in accordance with Schedule 6 (*Lease Termination Payment*).

“**Lease Variable Element**” means the amount calculated in accordance with paragraph 3 of Schedule 4 (*Lease Rental Payments*).

“**Major Loss**” has the meaning given to such term in the Service Agency Agreement.

“**Major Maintenance**” means all repair, replacement and maintenance required by the Lease Assets and without which the Lease Assets could not reasonably and properly be used by the Lessee in the ordinary course of its business.

“**Margin**” means:

- (a) [for the period up to and including the Lease Commencement Date, [•] per cent. ([•]%) per annum;
- (b) for the period from the Lease Commencement Date until and including the date falling on the [•] anniversary of the Lease Commencement Date, [•] per cent. ([•]%) per annum; and
- (c) for the period from the date falling on the [•] anniversary of the Lease Commencement Date, [•] per cent. ([•]%) per annum.]

“**Market Disruption Event**” means:

- (a) at or about noon on the Rate Fixing Date for the relevant Lease Rental Period or Advance Rental Payment Period as the case may be, [SAIBOR] is not available and none or only one of the Reference Banks supplies a rate to the *Wakālah* Facility Agent to determine [SAIBOR] for [•] for the relevant Lease Rental Period or Advance Rental Payment Period as the case may be; or
- (b) before close of business in [•] on the Rate Fixing Date for the relevant Lease Rental Period or Advance Rental Payment Period as the case may be, the *Wakālah* Facility Agent receives notification from a *Wakālah* Facility Participant or *Wakālah* Facility Participants (whose Relevant Proportion in relation

to the Available *Wakālah* Facility exceed [•] per cent. ([•]%) of the Available *Wakālah* Facility) that the cost to it (or them) of funding that participation in the Available *Wakālah* Facility from the [•] interbank market would be in excess of its (or their) original funding costs.

“**Material Adverse Effect**” means in the reasonable opinion of the Lessor a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Lessee; or
- (b) the ability of the Lessee to perform its obligations under the *Wakālah* Facility Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the *Wakālah* Facility Finance Documents or the rights or remedies of the Lessor under any of the *Wakālah* Facility Finance Documents.

“**Net Stage Payment Amount**” has the meaning given to such term in the *Wakālah* Agreement.

“**Ordinary Maintenance and Repair**” means all repair, replacement and maintenance (other than Major Maintenance) required to keep, repair, maintain and preserve the Lease Assets in good order and operating condition, and in compliance with such maintenance and repair standards and procedures generally expected from a prudent company carrying on a business similar to that of the Lessee and in compliance with all requirements of law applicable to the maintenance and condition of the Lease Assets.

“**Party**” means a party to this Agreement and “**Parties**” shall be construed accordingly.

[“**Permitted Financial Indebtedness**” means:

- (a) Financial Indebtedness arising under the *Wakālah* Facility Finance Documents;
- (b) Financial Indebtedness arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade or in respect of the *Wakālah* Facility Finance Documents, but not a foreign exchange transaction for investment or speculative purposes; and
- (c) any trade credit extended by the Lessee to its customers on normal commercial terms and in the ordinary course of its business activities.]

“**Project Company**” means [•].

“**Rate Fixing Date**” means, in the case of:

- (a) an Advance Rental Payment Date, the date that is [two (2)] business days before the commencement of the relevant Advance Rental Period; and
- (b) a Lease Rental Period, the Lease Rental Review Date.

“**Reference Banks**” means: the [•] offices of [•], [•], [•], [•], and [•] or such other banks as may be appointed by the *Wakālah* Facility Agent in consultation with the Lessee.

“**Relevant Proportion**” has the meaning given to such term in the *Wakālah* Facility Agency Agreement.

“**SAIBOR**” means, in relation to a particular period:

- (a) the applicable Screen Rate at or about 11 a.m. ([•] time) on the Rate Fixing Date;
- (b) (if no Screen Rate is available for that period) the Interpolated Screen Rate for that period; or
- (c) if no Screen Rate is available for:
 - (i) [•]; or
 - (ii) the relevant period and it is not possible to calculate the relevant Interpolated Screen Rate;

the arithmetic mean (rounded upwards, if necessary, to five decimal places) as supplied to the *Wakālah* Facility Agent at its request quoted by the Reference Banks to leading banks in the [•] interbank market,

as at or about 11 a.m. ([•] time) on the Rate Fixing Date for the offering of deposits in [•] and for the period comparable to the relevant period, and, if any such rate is below zero, [SAIBOR] will be deemed to be zero.]

“**Screen Rate**” means the rate per annum determined by the *Wakālah* Facility Agent to be equal to the arithmetic mean (rounded upwards, if necessary, to five decimal places) of the [•] interbank offered rates for deposits in [•] which are displayed on the relevant page of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the *Wakālah* Facility Agent may specify another page or service displaying the relevant rate after consultation with the Lessee.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Selection Notice**” means a notice substantially in the form set out in Schedule 7 (*Form of Selection Notice*) given in accordance with Clause 3.7 (*Selection Notice*).

“**Service Agency Agreement**” means the agreement dated on or about the date of this Agreement between the Services Agent and the *Wakālah* Facility Agent.

“**Services Agent**” means the Project Company in its capacity as services agent under the Service Agency Agreement.

“**Services Charge Amount**” has the meaning given to such term in the Service Agency Agreement.

“**Stage Payment**” has the meaning given to such term in the *Wakālah* Agreement.

“**Stage Payment Date**” has the meaning given to such term in the *Wakālah* Agreement.

“**Stage Payment Request**” has the meaning given to such term in the *Wakālah* Agreement.

“**Subsequent Advance Rental Payment Period**” means each period beginning on the last day of the preceding Advance Rental Payment Period for a Stage Payment and ending [•] months or such other period (not to exceed [•] months) as may be agreed between the Lessee and the Lessor thereafter as selected by the Lessee in accordance with a Selection Notice unless such Subsequent Advance Rental Payment Period is also the Final Advance Rental Payment Period, in such case it shall end in accordance with the provisions in the definition of “**Final Advance Rental Payment Period**”.

“**Wakālah Facility Agent**” means [•], in its capacity as agent for and on behalf of the *Wakālah* Facility Participants in accordance with the *Wakālah* Facility Agency Agreement.

“**Wakālah Agreement**” has the meaning given to such term in Recital (B).

[“**Wakālah Facility Agency Agreement**” has the meaning given to such term in Recital (B).]

“**Wakālah Facility Finance Documents**” means:

- (a) this Agreement;
- (b) [the Asset Participation Agreement;]
- (c) [the *Wakālah* Facility Agency Agreement;]
- (d) the *Wakālah* Agreement;
- (e) the Service Agency Agreement;
- (f) [the Common Terms Agreement]; and
- (g) such other documents designated as such by the *Wakālah* Facility Agent, **provided that** they do not contravene Islamic *Shari’ah*, with the prior consent of the Project Company (such consent not to be unreasonably withheld or delayed).

“**Wakālah Facility Participants**” means certain banks and financial institutions participating in leasing the Lease Assets as listed in Schedule 2 (*Wakālah Facility Participants*) and such other banks and financial institutions as may, from time to time, become *Wakālah* Facility Participants in accordance with the [Common Terms Agreement].

“Wakil” means the Project Company as *wakil* under the *Wakālah* Agreement.

1.2 Interpretation

Any reference in this Agreement to:

- (a) the Lessor, any *Wakālah* Facility Participant or any other person shall be construed so as to include its (and any subsequent) successors, transferees and permitted assigns in accordance with their respective interests;
- (b) a “**business day**” shall be construed as a reference to:
 - (i) with respect to any period of notice relating to, or any day on which, a payment denominated in, or a fixing of any rate in, [•] is required, a day (other than a [Friday], [Saturday] or [Sunday]) on which commercial banks are open for business in [•] for interbank transactions; or
 - (ii) in respect of any other obligation, a day (other than a [Friday], [Saturday] or [Sunday]) on which banks are open for business in [•];
- (c) a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement;
- (d) the term “**including**” shall be construed to mean “including without limitation”;

- (e) a “**person**” shall be construed as a reference to any person, firm, company, corporation, government, state, agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (f) a “**Schedule**” or “**Part**” shall, subject to any contrary indication, be construed as a reference to a schedule to, or a part of, this Agreement;
- (g) “**Shari’ah**” shall be interpreted in accordance with the Shari’ah Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (h) “[•]” and “[•]” denote the lawful currency of [•];
- (i) save where the contrary is indicated, any reference in this Agreement to this Agreement, any *Wakālah* Facility Finance Document or any other agreement or document shall be construed as a reference to the same as it may have been, or may from time to time be, amended, restated, varied, novated, replaced or supplemented; and
- (j) Clause, Part and Schedule headings are for ease of reference only.

1.3 Third Party Rights

Except for the *Wakālah* Facility Participants (by virtue of their entry into the *Wakālah* Facility Agency Agreement), a person who is not a Party has no right to enforce or enjoy the benefit of any term of this Agreement.

2. LEASE

The Lessor agrees to lease to the Lessee, and the Lessee agrees to accept, the lease of the Lease Assets listed in Part A of Schedule 1 (*Lease Assets*) upon the terms of this Agreement for the Lease Period. The Lessee confirms that the design and specifications for the Lease Assets are suitable for the purposes contemplated by this Agreement.

3. LEASE PAYMENTS

3.1 Components of Lease Payments

The relevant lease payments payable by the Lessee to the Lessor (for the account of the *Wakālah* Facility Participants) shall comprise the following:

- (a) prior to the Lease Commencement Date, the Advance Rental Payments as calculated in accordance with Schedule 3 (*Advance Rental Payments*); and
- (b) the Lease Rental Payments payable during the Lease Period, which shall comprise the aggregate of:
 - (i) the Lease Fixed Element as set out in paragraph 2 of Schedule 4 (*Lease Rental Payments*);
 - (ii) the Lease Variable Element as determined in accordance with paragraph 3 of Schedule 4 (*Lease Rental Payments*); and

- (iii) the Additional Lease Rental Amounts as set out in paragraph 4 of Schedule 4 (*Lease Rental Payments*).

3.2 Advance Rental Payments

The Lessee shall pay to the Lessor the Advance Rental Payments on each Advance Rental Payment Date.

3.3 Delay in Lease Commencement Date

- (a) If, for any reason, the Lease Commencement Date has not occurred by [•], the Lessee agrees with the Lessor that the latter shall extend time of delivery of the Lease Assets by a period equal to the period of delay in delivery, and in case of failure to deliver on modified date for delivery of the Lease Assets the Lessee and the Lessor shall consult in order to agree on another new date for delivering the Lease Assets, or in the event of failure to reach an agreement thereon, this Agreement, along with the *Wakālah* Agreement, shall be terminated.
- (b) No Lease Fixed Element or Lease Rental Payment shall be due on a date that falls prior to the Lease Commencement Date.

3.4 Termination of the *Wakālah* Agreement

If the *Wakālah* Agreement is terminated prior to the Lease Commencement Date and, without prejudice to the Lessor's obligations to refund the aggregate amount of Advance Rental Payments contemplated under Clause 3.5 (*Refund of Advance Rental Payments*) and to the Lessee's obligations as *Wakil* to make the payments contemplated under the *Wakālah* Agreement, upon such termination:

- (a) this Agreement shall terminate automatically;
- (b) the Lessee and the Lessor shall have no further obligations to each other under this Agreement;
- (c) the Lessee shall have no right to request any replacement assets for lease; and
- (d) the Lessor (as agent for and on behalf of the *Wakālah* Facility Participants) shall waive all of its and the *Wakālah* Facility Participants' rights and claims as to the ownership of and title (if any) to the Lease Assets.

3.5 Refund of Advance Rental Payments

On the date on which the *Wakālah* Agreement is terminated in accordance with clause 6.2 (*Right to terminate*) of the *Wakālah* Agreement, the aggregate amount of Advance Rental Payments paid by the Lessee prior to such date shall, subject to Clause 3.8 (*Set-Off*), be refunded by the Lessor to the Lessee.

3.6 Lease Rental Payments during the Lease Period

During the Lease Period, which shall start from the Lease Commencement Date, the Lessee shall pay to the Lessor the Lease Rental Payments on each Lease Rental Payment Date as provided in Schedule 4 (*Lease Rental Payments*).

3.7 Selection Notice

- (a) Subject at all times to paragraph (c) of this Clause 3.7, the Lessee may select the duration of any Subsequent Advance Rental Payment Period in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the *Wakālah* Facility Agent and the Lessor by the Lessee not later than [five (5)] business days (or such shorter period as the *Wakālah* Facility Agent may agree) prior to the first day of the relevant Advance Rental Payment Period.

- (c) If the Lessee fails to deliver a Selection Notice to the *Wakālah* Facility Agent in accordance with paragraph (b) of this Clause 3.7 the relevant Advance Rental Payment Period will be of [•] months duration.
- (d) Subject to the rest of this Clause 3.7 (*Selection Notice*), the Lessee may select an Advance Rental Payment Period of [•] months duration or such other period (not to exceed [•] months) as may be agreed between the Lessee and the Lessor.
- (e) The First Advance Rental Payment Period shall start on the date on which the first Stage Payment is made and each Subsequent Advance Rental Payment Period shall start on the last day of the preceding Advance Rental Payment Period. For the avoidance of doubt, there shall be only one Subsequent Advance Rental Payment Period at any given time.
- (f) Any Advance Rental Payment Period which would otherwise extend beyond the Lease Commencement Date shall end on such date.

3.8 Set-Off

The Lessee and the Lessor shall be entitled to set-off the Lessor's obligation to refund Advance Rental Payments under Clause 3.5 (*Refund of Advance Rental Payments*) against the Lessee's obligation (in its capacity as *Wakil* under the *Wakālah* Agreement) to pay liquidated damages under paragraph (b) (iii) of clause 6.2 (*Right to terminate*) of the *Wakālah* Agreement.

4. OBLIGATION TO PAY

In the light of the Lessee's confirmation as to the suitability of the Lease Assets in Clause 2 (*Lease*) and approval of the Lease Assets in paragraph (a) of Clause 6.1 (*Condition of Lease Assets*), the obligation of the Lessee to pay Lease Rental Payments and all other amounts under the *Wakālah* Facility Finance Documents is absolute and unconditional.

5. EARLY LEASE RENTAL PAYMENTS AND ADJUSTMENTS TO SCHEDULES

- (a) Subject to the terms of the *Wakālah* Facility Finance Documents, the Lessee may make Early Payments or Early Lease Rental Payments (as the case may be) in whole or in part, but if in part subject to a minimum amount of [•], on any Advance Rental Payment Date or any Lease Rental Payment Date, by giving not less than [•] days' prior notice to the Lessor.
- (b) Any Early Lease Rental Payment made under this Clause 5 (*Early Lease Rental Payments and Adjustments to Schedules*) shall be applied against the outstanding Lease Fixed Elements *pro rata*.
- (c) All Early Payments under the *Wakālah* Facility Finance Documents shall be made together with any unpaid Lease Variable Element and any unpaid Advance Rental Payments. If an Early Payment is not made on a Lease Rental Payment Date or Advance Rental Payment Date (as the case may be), then the amount of the Lease Variable Element or Advance Rental Payment (as the case may be) that would otherwise have been due on the next Lease Rental Payment Date or Advance Rental Payment Date (as the case may be) with respect to such Early Payment shall be adjusted on a *pro-rata* basis.

- (d) No Early Lease Rental Payment is permitted except in accordance with the express terms of this Agreement and the *Wakālah* Facility Finance Documents unless otherwise agreed in writing between the Lessee and the Lessor.

6. TERMS OF THE LEASE

6.1 Condition of Lease Assets

- (a) The Lessee expressly acknowledges that the Lease Assets are specifically required and approved by it and will be procured by the Lessor at its request from the relevant manufacturer or contractor, as the case may be.
- (b) If the Lease Assets have been constructed and delivered in accordance with the specifications provided by the Lessee (in any capacity under the *Wakālah* Facility Finance Documents), then the Lessee shall be deemed to have approved the Lease Assets.
- (c) **Provided that** no Default by the Lessee (in any capacity) under any *Wakālah* Facility Finance Document has occurred and is continuing and further **provided that** the Lessee is entitled to the usufruct benefits of the Lease Assets, the Lessor authorises the Lessee, at the Lessee's sole cost and expense, to assert all rights and powers of the Lessor (on behalf of the *Wakālah* Facility Participants) under any manufacturer's, vendor's or dealer's warranty on any item of the Lease Assets.

6.2 Lessor covenants

- (a) Without prejudice to Clause 6.4 (*Use of Lease Assets*), and except as permitted pursuant to the *Wakālah* Facility Finance Documents, the Lessor will not interfere with the quiet use, possession and enjoyment of the Lease Assets by the Lessee. The exercise by the Lessor of its rights under or in connection with the *Wakālah* Facility Finance Documents will not constitute such an interference.
- (b) Except as permitted by the *Wakālah* Facility Finance Documents, the Lessor will not dispose of, or encumber its right, title or interest in and to the Lease Assets in any way without the prior written agreement of the Lessee.

6.3 Right of ownership

- (a) Subject to the terms of the *Wakālah* Facility Finance Documents:
- (i) each Lease Asset (including any replacement part, alteration, addition or modification made to it during the term of the Lease) remains the property of the *Wakālah* Facility Participants at all times until the ownership of the Lease Assets is transferred to the Lessee pursuant to Clause 7 (*Transfers of the Lease Assets to the Lessee*) or Clause 8 (*Event of Default*); and
 - (ii) the Lessee shall not do anything (or, so far as it is able, permit anything to be done) which may affect or imperil the *Wakālah* Facility Participants' right, title and interest in and to any Lease Asset.
- (b) The Lessee shall, to the satisfaction of the Lessor (acting reasonably), do all things required by law and requested by the Lessor to maintain and protect the Lease Assets in its possession in accordance with good industry practice, including the obtaining of any requisite material license or permit and, if necessary, the filing of this Agreement with any competent agency or other instrumentality.

- (c) The Lessee shall allow the Lessor the right, on the giving of reasonable notice, to view the Lease Assets during normal working hours.

6.4 Use of Lease Assets

The Lessee shall:

- (a) promptly upon request by the Lessor, notify the Lessor of the location of any of the Lease Assets not located at the Project site; and
- (b) ensure that the Lease Assets are operated in accordance with the arrangements which will be agreed upon in the Service Agency Agreement.

6.5 Maintenance of the Lease Assets

- (a) The Lessee agrees, at its own cost and expense, to be responsible for the performance of all Ordinary Maintenance and Repair required with respect to the Lease Assets.
- (b) All Major Maintenance shall be performed by the Services Agent for and on behalf of the Lessor pursuant to the Service Agency Agreement at the cost and expense of the Lessor.
- (c) In performing Ordinary Maintenance and Repair, the Lessee shall at all times:
 - (i) conduct regular and proper inspections of the Lease Assets;
 - (ii) keep the Lease Assets in good and serviceable repair and condition (fair wear and tear excepted), in accordance with the degree of skill, care and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as the Lessee, and replace all missing, damaged or broken parts with parts supplied or recommended by the original manufacturers of the Lease Assets or with parts of a quality and value such that the performance and condition of the Lease Assets would not be materially and adversely affected, **provided that** if a Default is outstanding and the Lessee fails to effect such repairs or replacements, the Lessor shall be entitled, subject to the terms of the *Wakālah* Facility Finance Documents, but shall not be bound upon reasonable notice to the Lessee to take possession of the Lease Assets for the purpose of having those repairs or replacements effected and the Lessee shall repay to the Lessor the full cost of those repairs and replacements;
 - (iii) ensure that the Lease Assets are maintained by persons who are competent to maintain the same and that no person who is prohibited by law from so doing shall carry out work involving the management or operation of, or attendance in proximity to, the Lease Assets; and
 - (iv) ensure that to the extent practicable accurate, complete and current records are kept of all maintenance activities on the Lease Assets, and shall provide copies of those records to the Lessor upon reasonable request.
- (d) Notwithstanding Clause 6.4 (*Use of Lease Assets*) and paragraphs (a) to (c) above and without prejudice to the Lessee's obligations under this Agreement, the Lessor acknowledges that the Lessee may subcontract or delegate some or all of its obligations in respect of the operation, maintenance and repair of the Lease Assets to an appropriately qualified third party, **provided that** neither the Lessor nor the *Wakālah* Facility Agent shall be required to make any payments to third parties in respect of any such operation, maintenance and repair.

6.6 Insurance

- (a) The Lessor agrees to insure the Lease Assets with an authorised insurance company or companies and will procure that the Lease Assets are insured by the Services Agent, against property damage, business interruption and third party liability during the Lease Period, in accordance with the terms and conditions set out in the Service Agency Agreement.
- (b) The Lessee agrees, at the cost and expense of the Lessor, to insure the Lease Assets as contemplated in the *Wakālah* Facility Finance Documents, to the extent not covered in paragraph (a) above.
- (c) If the proceeds of any insurance are not sufficient due to the failure by the Lessee (in any capacity under the *Wakālah* Facility Finance Documents) to perform its obligations under any *Wakālah* Facility Finance Document, then the Lessee shall be responsible for any losses or damages incurred by the Lessor.

6.7 Alterations to the Lease Assets

- (a) The Lessee shall be permitted to make any improvements, substitutions or alterations to the Lease Assets or changes of the working order, function and quality of the Lease Assets, but only if the alteration, modification, substitution or addition does not cause the Lessee to be in breach of any covenant in or provision of a *Wakālah* Facility Finance Document.
- (b) If the Lessee does make substitutions or alterations to the Lease Assets in breach of the provisions of paragraph (a) above, the Lessee shall, promptly upon being required to do so by the Lessor, remove the same and reinstate the Lease Assets to their original state at the Lessee's cost and expense.
- (c) Any improvements, substitutions or alterations made to the Lease Assets shall be deemed to form part of the Lease Assets. However, the Lessee may at its cost remove any such improvements or alterations and return the Lease Assets to their original condition if, in the reasonable opinion of the Lessor, the removal does not materially affect the operation or materially diminish the value or utility of the Lease Assets.

6.8 Disposal

- (a) Subject to the Lessee's rights under Clause 6.7 (*Alterations to the Lease Assets*) and except as permitted by the *Wakālah* Facility Finance Documents, the Lessee shall not sell, assign, sub-let, pledge, mortgage, charge, encumber or part with possession of or otherwise deal with the Lease Assets or any interest in them nor create nor allow to be created any security interest or other encumbrance on the Lease Assets except for repairs or otherwise with the prior written agreement of the Lessor and, in the event of any breach of this paragraph by the Lessee, the Lessor shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the Lease Assets from any security interest or other encumbrance and shall be entitled to recover such sum from the Lessee forthwith.
- (b) If any land or building on or in which the Lease Assets are kept is to be sold, mortgaged, charged, or sublet (other than to the Lessee or as otherwise agreed by the Lessor in writing), the Lessee shall notify the Lessor promptly upon it becoming aware of it. In this event, the Lessor shall have the right to repossess the Lease Assets at any time to the extent permitted by law (whether or not the Lease Assets or any part of the Lease Assets shall have become affixed to that land or building) and, for that purpose, to enter upon that land or building and sever any Lease Assets affixed to it.

6.9 Disclaimer of Warranties

Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the supply or performance of the Lease Assets is given or assumed by

the Lessor or any of the *Wakālah* Facility Participants, and all such warranties, conditions, undertakings and terms are hereby excluded to the fullest extent permitted by law.

6.10 Exclusion of Liability

Except to the extent due to the fraud, wilful misconduct or the gross negligence of the Lessor or a *Wakālah* Facility Participant:

- (a) the Lessee waives any right to a claim (including claims in respect of incidental or consequential damage) or expense caused by the Lease Assets or by loss of use of the Lease Assets by the Lessee for any reason; and
- (b) the Lessee accepts the standards and specifications of the Lease Assets and neither the Lessor nor a *Wakālah* Facility Participant shall be liable for:
 - (i) any defects in the Lease Assets or any part thereof; or
 - (ii) any direct or indirect damage to person or property resulting from a failure of the Lease Assets to meet any such standards or specifications.

6.11 Indemnity

The Lessee shall indemnify and hold the *Wakālah* Facility Agent and each *Wakālah* Facility Participant harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred or suffered by the *Wakālah* Facility Agent or each *Wakālah* Facility Participant (as the case may be) that in any way relate to or arise out of ownership or use of the Lease Assets except to the extent resulting from the gross negligence, wilful misconduct or fraud of the *Wakālah* Facility Agent or a *Wakālah* Facility Participant. This indemnity shall survive termination of this Agreement with respect to acts or omissions which occurred prior to the date of such termination.

7. TRANSFERS OF THE LEASE ASSETS TO THE LESSEE

7.1 Transfer following Final Lease Rental Payment

Following the Final Lease Rental Payment and if all amounts due and payable under the *Wakālah* Facility Finance Documents have been paid, then the Lessor shall assign the Lease Assets to the Lessee and shall transfer its ownership in the Lease Assets to the Lessee in accordance with the terms of Clause 7.3 (*Conditions of Transfer*).

7.2 Transfer following Voluntary Early Termination

- (a) If the Lessee wishes to purchase the Lease Assets within the Lease Period, the Lessee shall give to the Lessor at least [•] days' written notice. In this event, subject to the approval of the Lessor, the Lessee shall pay to the *Wakālah* Facility Agent (for the account of the *Wakālah* Facility Participants) an amount in [•] equal to the Lease Termination Payment determined in accordance with Schedule 6 (*Lease Termination Payment*) on the date of purchase.
- (b) If the Lessee pays an amount equal to the Lease Termination Payments to the Lessor in accordance with paragraph (a) of this Clause 7.2 (*Transfer following Voluntary Early Termination*), the Lessor shall assign the Lease Assets to the Lessee and transfer its ownership in the Lease Assets to the Lessee under Clause 7.3 (*Conditions of Transfer*).

- (c) Upon the receipt by the Lessor in full of the Lease Termination Payments and **provided that** all amounts due and owing by the Project Company (in whatever capacity) to the *Wakālah* Facility Participants under the *Wakālah* Facility Finance Documents shall have been paid in full, this Agreement shall be terminated and no further Lease Rental Payment shall be payable by the Lessee under this Agreement.

7.3 Conditions of Transfer

- (a) If the Lessor transfers the Lease Assets to the Lessee under Clause 7.1 (*Transfer following Final Lease Rental Payment*), Clause 7.2 (*Transfer following Voluntary Early Termination*) or Clause 8.3 (*Transfer or return upon Default*), the Lessor shall deliver to the Lessee, at the Lessee's request and expense, a duly executed transfer of ownership instrument substantially in the form set out in Schedule 8 (*Form of Sale Agreement*), transferring all of the Lessor's right, title and interest in and to the Lease Assets, free and clear (subject to any subsisting security interests or other encumbrances permitted under the *Wakālah* Facility Finance Documents) of any security interest or other encumbrance created by or through the Lessor, but otherwise as is, where is, without any warranties as to condition, merchantability, fitness for purpose, adequacy or use of whatever nature.
- (b) The Lessor shall take all reasonable steps to obtain and furnish such other documents and take such other action in connection with the transfer of the Lease Assets, as the Lessee may reasonably request, at the Lessee's risk and expense, in order to facilitate the transfer of the Lease Assets.

8. EVENT OF DEFAULT

8.1 Event of Default

Each of the following events and circumstances shall constitute an Event of Default for the purposes of the *Wakālah* Facility Finance Documents:

- (a) The Lessee (in all of its capacities) does not pay on the due date any amount payable pursuant to a *Wakālah* Facility Finance Document at the place and in the currency in which it is expressed to be payable unless:
- (i) its failure to pay is caused by administrative or technical error; and
 - (ii) payment is made within [three] ([3]) business days of its due date.
- (b) The Lessee (in all of its capacities) fails to comply with or is in breach of any provision of any *Wakālah* Facility Finance Document (other than as contemplated in paragraph (a) above) provided that no Event of Default will occur if such breach in the opinion of the Lessor is capable of remedy and is remedied within [ten] ([10]) business days of the earlier of notice of such breach from the Lessor to the Lessee or the date on which the Lessee became aware of such breach.
- (c) Any representation or statement made or deemed to be made by the Lessee (in all of its capacities) in any *Wakālah* Facility Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (d) The Lessee 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 its creditors.
- (e) [The value of the assets of the Lessee is less than its liabilities as reflected in its financial statements.]

- (f) Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Lessee which the Lessor reasonably believe has or is reasonably likely to have a Material Adverse Effect.
- (g) The Lessee (in all of its capacities) repudiates a *Wakālah* Facility Finance Document or any other document under which the Lessee has incurred any Financial Indebtedness or evidences an intention to repudiate a *Wakālah* Facility Finance Document or any other document under which the Lessee has incurred any Financial Indebtedness.
- (h) The Lessee ceases to carry on its businesses substantially in the manner which it carried on at the date of this Agreement.
- (i) Any litigation, arbitration or proceedings of or before any court, arbitral body or agency are threatened or commenced against the Lessee and which, if adversely determined, could have a Material Adverse Effect and such litigation, arbitration or proceedings are not withdrawn within [thirty] ([30]) days of being threatened or dismissed within [thirty] ([30]) days of being commenced.
- (j) Unlawfulness and invalidity
 - (i) It is or becomes unlawful for the Lessee (in all of its capacities) to perform any of its obligations under the *Wakālah* Facility Finance Documents.
 - (ii) Any obligation or obligations of the Lessee (in all of its capacities) under any *Wakālah* Facility Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lessor under the *Wakālah* Facility Finance Documents.
 - (iii) Any *Wakālah* Facility Finance Document ceases to be in full force and effect or is alleged by a party to it to be ineffective.
- (k) [[•] ceases to own at least [•] per cent. ([•]%) of the issued shares in the Lessee until the Final Maturity Date.]
- (l) Any Financial Indebtedness or any commitment for Financial Indebtedness of the Lessee (as the case may be), [other than a Permitted Financial Indebtedness]:
 - (i) is not paid when due nor within any originally applicable grace period;
 - (ii) is declared (or is capable of being declared) to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
 - (iii) is cancelled or suspended by a creditor of the Lessee as a result of an event of default (however described).
- (m) Save for claims that are discharged or dismissed within [thirty] ([30]) days of commencement, any action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness of the Lessee or the winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lessee's business;
 - (ii) a composition, assignment or arrangement with any creditor of the Lessee;

- (iii) the appointment of a liquidator, receiver, administrator, receiver, compulsory manager or other similar officer in respect of any of the Lessee's; or
- (iv) the enforcement of any Security over any assets of the Lessee,

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

- (n) By or under the authority of any government agency, the Lessee's assets or property are seized or compulsorily acquired where such seizure or compulsory acquisition could have a Material Adverse Effect.
- (o) By or under the authority of any government agency, the Lease Assets are seized or compulsorily acquired.
- (p) Any situation occurs which in the opinion of the Lessor gives grounds for belief that the ability of the Lessee (in all of its capacities) to meet its obligations under any of the *Wakālah* Facility Finance Documents has been or will have a Material Adverse Effect.

8.2 Termination upon Default

Subject to the terms of the *Wakālah* Facility Finance Documents, on and after the occurrence of a Default under the *Wakālah* Facility Finance Documents, the Lessor may declare by notice to the Lessee that the Lessee is in Default under this Agreement and may:

- (a) terminate, by notice to the Lessee, this Agreement and the leasing of the Lease Assets under this Agreement;
- (b) seek any remedy available to it in respect of such termination under any relevant law; and
- (c) require the Lessee to pay to the Lessor a sum equal to the Lease Termination Payments.

8.3 Transfer or return upon Default

- (a) If the Lessor exercises its rights and the Lessee complies with its obligations under paragraph (c) of Clause 8.1 (*Termination upon Default*), the Lessor shall waive all its rights and claims as to the ownership of and title (if any) to the Lease Assets and shall transfer the Lease Assets to the Lessee in accordance with Clause 7.3 (*Conditions of Transfer*).
- (b) Following termination of the lease of the Lease Assets under Clause 8.1 (*Termination upon Default*) and subject to paragraph (a) above, and if the Lessee does not pay the Lease Termination Payments, then the Lessee shall hold the Lease Assets available for collection by the Lessor or its agents and the Lessor or its agents may for that purpose enter upon any land or building on or in which the Lease Assets are, or are believed by the Lessor or its agents to be, situated. If the Lease Assets or any part of the Lease Assets are affixed to that land or building, the Lessor or its agents shall be entitled to sever the Lease Assets and to remove the severed Lease Assets from that land or building. The Lessee shall be responsible for all damage to that building or land caused by the severance or removal, but the Lessor shall use its reasonable endeavours to keep such damage to a minimum and shall be responsible for any damage to that building or land caused by its failure to use reasonable endeavours.
- (c) No termination notice will be effective until either: (i) the Lease Termination Payments are made in accordance with paragraph (a) of Clause 7.2 (*Transfer following Voluntary Early Termination*) or paragraph (c) of Clause 8.1 (*Termination upon Default*) (as applicable); or (ii) handover of the Lease Assets in accordance with paragraph (b) above has occurred. The Lessor is entitled to receive from the Lessee, the

Lease Rental Payments (including the Lease Variable Element) for the period from the date the Lessor gives notice of termination until the receipt of the Lease Termination Payments.

- (d) If the Lessee fails to comply with its obligations under paragraph (c) of Clause 8.1 (*Termination upon Default*), the Lessor may dispose of the Lease Assets as permitted by the *Wakālah* Facility Finance Documents.
- (e) Subject to the terms of the *Wakālah* Facility Finance Documents, following the transfer in ownership of the Lease Assets by the Lessor to the Lessee in accordance with paragraph (a) above and subject to the payment in full by the Lessee of all amounts payable to the *Wakālah* Facility Participants and the *Wakālah* Facility Agent under the *Wakālah* Facility Finance Documents, this Agreement shall be terminated.

8.4 Declaration by Lessee

- (a) The Lessee expressly declares that:
 - (i) the Lease Termination Payments to be paid pursuant to Clause 7 (*Transfers of the Lease Assets to the Lessee*) or this Clause 8 (*Event of Default*) represents a fair price for the Lease Assets;
 - (ii) in the event that the *Wakālah* Facility Participants transfer the Lease Assets to the Lessee in accordance with the terms of Clause 7 (*Transfers of the Lease Assets to the Lessee*) or this Clause 8 (*Event of Default*) the Lessee irrevocably and unconditionally accepts title to the Lease Assets on the basis of the ownership interest which the relevant *Wakālah* Facility Participants may have in the same and accordingly shall not dispute or challenge all or any ownership interest the relevant *Wakālah* Facility Participants may have in any manner whatsoever; and
 - (iii) if the Lessee breaches any declaration or undertaking in this Clause 8.4 (*Declaration by Lessee*) or any administrator, liquidator or receiver of the Lessee disputes or challenges the ownership interest of any *Wakālah* Facility Participant in the Lease Assets, the Lessee shall fully indemnify the Lessor and each *Wakālah* Facility Participant and accordingly the amount payable under any such indemnity claim will equal the relevant Lease Termination Payments.
- (b) The indemnity given by the Lessee in paragraph (a)(iii) of this Clause 8.4 (*Declaration by Lessee*) shall survive the termination of this Agreement.

9. DAMAGE TO OR DESTRUCTION OF THE LEASE ASSETS

9.1 Notice of Damage

The Lessee must give notice to the *Wakālah* Facility Agent of any material damage to, or destruction of, any of the Lease Assets.

9.2 Termination of Lease

If the Lease Assets suffer a Major Loss:

- (a) the lease of the Lease Assets shall automatically terminate; and
- (b) the Lessee shall have no further obligation to pay any Lease Rental Payments under this Agreement from the date on which such Major Loss occurred.

9.3 Other Damage

If the Lease Assets suffer damage other than that described in Clause 9.2 (*Termination of Lease*), the Lessee must continue to pay Lease Rental Payments in accordance with Clause 3 (*Lease Payments*).

10. COSTS AND EXPENSES

- (a) The Lessee shall, from time to time on demand of the Lessor, reimburse the Lessor for all reasonable costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation and execution of this Agreement and the completion of the transactions contemplated by this Agreement.
- (b) The Lessee shall, from time to time on demand by the Lessor, reimburse the Lessor for all reasonable costs and expenses (including legal fees) incurred in or in connection with the preservation and/or enforcement of any of its rights under this Agreement.

11. COMPLIANCE ON BEHALF OF THE LESSEE

If the Lessee fails to comply with any provision of the *Wakālah* Facility Finance Documents relating to the Lease Assets, the Lessor shall have the right, but not the obligation, to effect compliance on behalf of the Lessee. In that event, the Lessee shall on demand reimburse the Lessor for all costs and expenses (including legal fees) incurred by the Lessor in effecting such compliance and indemnify and keep indemnified the Lessor against any and all claims, demands, losses, penalties, actions, suits, damages and liabilities of whatsoever nature arising out of or in connection with any such failure or omission except to the extent that the claim demand, loss, action, suit, damages or liability was the result of the gross negligence or wilful misconduct of the Lessor. This indemnity shall survive termination of this Agreement.

12. BUSINESS DAYS

- (a) Any payment under this Agreement which is due to be made on a day that is not a business day shall be made on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).
- (b) For the avoidance of doubt and notwithstanding any provision under any of the *Wakālah* Facility Finance Documents, any payment under any of the *Wakālah* Facility Finance Documents which is due to be made to a *Wakālah* Facility Participant or by a *Wakālah* Facility Participant on [31 December] shall be made on the preceding business day.

13. ASSIGNMENT

The Lessor shall be entitled to assign or transfer all or any of its rights, benefits and obligations under this Agreement to any person who agrees to become an owner of the Lease Assets in accordance with the *Wakālah* Facility Finance Documents.

14. AMENDMENTS

Subject to the provisions of the *Wakālah* Facility Finance Documents, any term of this Agreement may be amended or waived with the prior written consent of the Lessor and the Lessee. Subject to the preceding sentence, the Lessor may effect, for and on behalf of the *Wakālah* Facility Participants, an amendment or waiver to which they have agreed in accordance with the provisions of the [Common Terms Agreement].

15. WAIVER OF USURIOUS INTEREST

This Agreement does not include or contain any provision relating to usurious interest and no provision of this Agreement shall be interpreted to mean or denote the same. The parties to this Agreement undertake to waive any usurious interest that may be approved or awarded by virtue of a judgment or interpretation or otherwise.

16. NOTICES

16.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter or, if Clause 16.4 (*Electronic communication*) applies, electronic mail.

16.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

For the Lessor:

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

For the Lessee:

Name: [•]
 Address: [•]
 Fax No.: [•]
 E-mail: [•]
 Attention: [•]

or any substitute address, fax number or department or officer as the Parties may notify to each other by not less than [five (5)] business days' notice.

16.3 Delivery

- (a) 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; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) business days after being deposited with a courier service, postage prepaid, in an envelope addressed to it at that address, and, if a particular department or officer is as part of its address details provided under Clause 16.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lessor will be effective only when actually received by the Lessor and then only if it is expressly marked for the attention of the department or officer identified with the Lessor's notice details in Clause 16.2 (*Addresses*) above (or any substitute department or officer as the *Wakālah* Facility Agent shall specify for this purpose).

16.4 Electronic communication

- (a) Any communication to be made between any Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the relevant parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an acceptable form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Electronic communications made by a Party to the other Party or notices sent by a Party to the other Party that are generated electronically under or in connection with this Agreement do not require signature by the sending Party.
- (c) Any electronic communication made between such Parties will be effective only when actually received in readable form and in the case of any electronic communication made to the Lessor only if it is addressed in such a manner as the Lessor shall specify for this purpose.

16.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

17. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

18. JURISDICTION OF [•] COURTS

18.1 Jurisdiction

Without prejudice to Clause 19 (*Arbitration*), the Lessee irrevocably agrees for the benefit of the Lessor that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

18.2 Waiver of objection to jurisdiction

The Lessee irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 18.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that any such court is not a convenient or appropriate forum.

18.3 [Process Agent

- (a) The Lessee agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 18.3 (*Process Agent*) ceases to be effective in respect of the Lessee, the Lessee shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Lessor shall be entitled to appoint such a person by notice to the Lessee.
- (b) The Lessee further agrees that failure by a process agent to notify the Lessee of the process will not invalidate the proceedings concerned.]¹

18.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 18.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Lessor to take proceedings against the Lessee in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

18.5 Consent

The Lessee hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

18.6 Waiver of Immunity

To the extent that the Lessee 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 Lessee hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

19. ARBITRATION

19.1 Lessor's Option

Notwithstanding Clause 18 (*Jurisdiction of [•] Courts*), the Lessor may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 19 (Arbitration).

19.2 Arbitration

The Lessee irrevocably agrees for the benefit of the Lessor that any disputes which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 19.2 (*Arbitration*).

19.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Lessee, one nominated by the Lessor and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Lessee and the Lessor may request the President of the LCIA (or such other person as the Lessee and the Lessor may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Lessee, the Lessor or any person that directly or indirectly beneficially owns any share capital of the Lessee or the Lessor;
 - (ii) have any political or business ties to the country of establishment of the Lessee or the Lessor;
or
 - (iii) be a person with familial ties to the Lessee or the Lessor.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.

- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the *Wakālah* Facility Finance Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

19.4 Waiver of objection to Arbitration

The Lessee irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 19 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that such forum is not a convenient or appropriate forum.

19.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of Shari’ah 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.

20. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other *Wakālah* Facility Finance Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the Lessor in favour of the Lessee.

21. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1**Lease Assets****Part A
Lease Assets**

	Value
Lease Assets	[•]
[•] and related infrastructure.	[•]
Total	[•]

Part B
Technical Specifications

The Project includes [•].

SCHEDULE 2

Wakālah Facility Participants

1. [•]

SCHEDULE 3

Advance Rental Payments

1. The Advance Rental Payments to be paid by the Lessee on the relevant Advance Rental Payment Date shall be as follows:

- (a) for the First Advance Rental Payment Period for each Stage Payment, an amount calculated in accordance with the following formula, payable on the First Advance Rental Payment Date:

$$W \times (L + M) \times N/360$$

plus:

in relation to the First Advance Rental Payment Date only, a one time payment of an amount of [•] ([•]) (which amount the Lessor shall be entitled to set-off against its obligation to pay: (A) the *Wakil's* fee under clause 2.2 (*Wakil's Fee*) of the *Wakālah* Agreement, and (B) the Services Agent's fee under clause 2.2 (*Fee*) of the Service Agency Agreement); and

- (b) for each Subsequent Advance Rental Payment Period, an amount calculated (without double-counting) in accordance with the following formula:

$$A \times (L + M) \times N/360$$

Where:

W = the amount of the Stage Payment;

A = the Net Stage Payment Amount on the first day of that Subsequent Advance Rental Payment Period;

L = the relevant [SAIBOR] for the relevant Advance Rental Payment Period subject to a minimum of [zero-point one per cent. (0.1%)] per annum and a maximum of [thirty per cent. (30%)] per annum;

M = the applicable Margin;

N = the total number of days in the relevant Advance Rental Payment Period.

2. If a Market Disruption Event occurs then the Advance Rental Payment due to each *Wakālah* Facility Participant shall be calculated by using the percentage rate per annum which shall be calculated by using the percentage rate per annum which is the aggregate of:

- (a) the applicable Margin; and
- (b) the rate notified to the *Wakālah* Facility Agent by each *Wakālah* Facility Participant as soon as practicable and in any event before such Advance Rental Payment Date, to be that which expresses as a percentage rate per annum the cost to that *Wakālah* Facility Participant of funding its participation from whatever source it may reasonably select.

3. Alternative Basis:

- (a) If a Market Disruption Event occurs and the *Wakālah* Facility Agent or the Lessee so requires, the *Wakālah* Facility Agent and the Lessee shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the amount of the Advance Rental Payment.
- (b) Any alternative basis agreed pursuant to paragraph 3(a) above shall, with the prior consent of all the *Wakālah* Facility Participants and the Lessee, be binding on the *Wakālah* Facility Participants, the *Wakālah* Facility Agent and the Lessee.

SCHEDULE 4

Lease Rental Payments

1. Lease Rental Payment Components

Each Lease Rental Payment to be paid after the Lease Commencement Date, shall consist of the aggregate of:

- (a) the Lease Fixed Element (being the amount equal to the product of the percentage set out opposite the relevant Lease Rental Payment Date in the second column of the table in paragraph 2 below and the Lease Base Amount as at the Lease Commencement Date);
- (b) the Lease Variable Element (as calculated in accordance with paragraph 3 below); and
- (c) the Additional Lease Rental Amount as referred to in paragraph 4 below.

2. Lease Rental Payment Dates and Lease Fixed Elements

Lease Rental Payment Date	Lease Fixed Element ([·])
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
Total	[·]

There should be no Lease Rental Payment Date prior to the Lease Commencement Date and the Lease Fixed Element prior to the Lease Commencement Date shall be zero (and no Lease Fixed Element is due on any date that falls prior to the Lease Commencement Date).

3. Lease Variable Element

- (a) The Lease Variable Element to be paid by the Lessee on each of the Lease Rental Payment Dates, shall be an amount equal to:

Lease Rental Payment Date	Additional Lease Rental Amount ([·])
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]
[·]	[·]

5. Notice

The Lessor shall notify the Lessee, no later than [two (2)] business days prior to the relevant Lease Rental Period, the amount of the Lease Rental Payment after calculating it. Any notice will be substantially in the form of Schedule 5 (*Form of Notice of Lease Rental Payments*).

6. Acknowledgement

- (a) The Lessee shall acknowledge each notice of Lease Rental Payments by countersigning a duplicate of such notice and returning it to the Lessor no later than one (1) business day prior to the relevant Lease Rental Period.
- (b) If the Lessee does not send an acknowledgement to a notice of Lease Rental Payments within the stipulated time period, then the Lessee shall be deemed to have accepted the Lessor's offer to enter into the relevant next Lease Rental Period and the Lease Rental Payment in such notice.
- (c) All notices of Lease Rental Payments and the Lessee's acknowledgements thereto shall be irrevocable once sent.

SCHEDULE 5

Form of Notice of Lease Rental Payments

To: [•] as the Lessee

From: [•] as the *Wakālah* Facility Agent for the *Wakālah* Facility Participants

Date:

Dear Sirs,

Lease Agreement dated [•] (the Agreement)

- (a) We refer to the Agreement.
- (b) This is a notice of Lease Rental Payments.
- (c) We confirm that the [SAIBOR] rate applicable for the Lease Rental Payment due on [DATE] is [•] per cent. per annum. Accordingly, the Lease Rental Payment due on [DATE] will be the aggregate of:
 - (i) Lease Fixed Element – [•]; and
 - (ii) Lease Variable Element – [•] (calculated pursuant to paragraph 3 of Schedule 4 (*Lease Rental Payments*)),
 totalling to an amount of [•].
- (d) Please indicate your acknowledgement of the above by signing the enclosed copy and returning it to us within two days of receipt.

[•]
as the *Wakālah* Facility Agent for the *Wakālah* Facility Participants

By: _____

Acknowledged by

[•]

Authorised Signatory

Name:

Title:

Date:

SCHEDULE 6**Lease Termination Payments**

The Lease Termination Payment payable on any date after the Lease Commencement Date is the aggregate of:

- (a) the Lease Base Amount on that date;
- (b) the Lease Variable Element accrued up to that date; and
- (c) any other amount due but unpaid to (or on behalf of) the *Wakālah* Facility Participants.

SCHEDULE 7**Form of Selection Notice**

To: [•] as the *Wakālah* Facility Agent for the *Wakālah* Facility Participants

From: [•] as the Lessee

Date:

Dear Sirs,

Lease Agreement dated [•] (the Agreement)

- (a) We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
- (b) We refer to the Advance Rental Payment Period ending on [•].
- (c) We hereby request that the length of the next Advance Rental Payment Period is [•].
- (d) This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for
[•]

SCHEDULE 8**Form of Sale Agreement**

THIS SALE AGREEMENT (this “Agreement”) is dated _____ and made

BETWEEN:

- (1) [•] acting as the *Wakālah* Facility Agent for and on behalf the *Wakālah* Facility Participants (the “Seller”); and**
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] (the “Purchaser”).**

RECITALS:

- (A) The Seller and the Purchaser have entered into, amongst others, a lease agreement dated [•] as amended from time to time (the “Lease Agreement”).**
- (B) Pursuant to the terms of the Lease Agreement, the Purchaser has given an early payment notice on [•] (the “Early Payment Notice”) to the Seller to make an Early Payment of the Lease Base Amount and unpaid Lease Variable Element on the Settlement Date.**
- (C) The Parties are entering into this Agreement to complete the transfer of ownership contemplated in clause 7.3 (*Conditions of Transfer*) of the Lease Agreement.**

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless defined in this Agreement or the context otherwise requires, terms defined in the Lease Agreement have the same meaning when used in this Agreement and, in addition:

“Assets” means the Lease Assets pursuant to the terms of the Lease Agreement.

“Party” means each party to this Agreement and the term “Parties” shall be construed accordingly.

“Sale Price” means [•].

“Settlement Date” means [•].

1.2 Construction

- (a) Unless a contrary indication appears or the context does not so admit, any reference in this Agreement to:**
 - (i) any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;**

- (ii) a person includes (A) any individual, company, unincorporated association, government, state agency, international organisation or other entity and (B) its successors and assigns; and
 - (iii) references to a date or any period of time is by reference to the Gregorian calendar.
- (b) Clause headings are for ease of reference only.

2. SALE

- (a) **Pursuant to the terms of the Early Payment Notice, the Seller hereby sells and transfers to the Purchaser and the Purchaser hereby buys all of the Seller's rights, title and interest in and to the Assets on "as is, where is" basis, without any warranties as to condition, merchantability, fitness for purpose, adequacy or use of whatever nature for the Sale Price on the Settlement Date, which the Purchaser has settled in accordance with the Early Payment Notice.**
- (b) The Parties shall, at the cost and expense of the Purchaser, complete all formalities and do all such other acts and things necessary to complete and effect the sale as contemplated hereunder.
 - (c) The sale hereunder is on an "as is, where is" basis without any warranty express or implied as to condition, fitness for purpose, suitability for use or otherwise, and if any warranty is implied by law, it shall be excluded to the full extent permitted by law.

3. MISCELLANEOUS

- (a) **No amendment, modification or termination of any provision of this Agreement shall be effective unless the same shall be in writing and signed or executed by the Seller and the Purchaser.**
- (b) **The Purchaser shall bear all applicable taxes, stamp duties, fees, costs and expenses incurred in connection with or incidental to the execution, delivery, performance, release, discharge, amendment or otherwise of this Agreement.**
- (c) **Any provision of this Agreement which is invalid, unenforceable or prohibited shall not affect the validity or enforceability of the other provisions of this Agreement.**
- (d) **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.**

4. NOTICES

All notices or other communications under or in connection with this Agreement shall be given by letter or facsimile in the English language. Any such notice will be deemed to be given as follows:

- (a) if by letter, when delivered; and
- (b) if by facsimile, when received in legible form.

However, a notice given in accordance with the above but received on a non-business day or after business hours in the place of receipt will only be deemed to be given on the next business day. Any notice to either Party shall be effective only on actual receipt, and, in the case of facsimile, when a transmission report showing the successful transmission of the facsimile is received by the sender.

The address and facsimile number of the Purchaser for all notices under or in connection with this Agreement are:

Address: [•]
Fax: [•]
Attention: [•]

The address and facsimile number of the Seller for all notices under or in connection with this Agreement are:

Address: [•]
Fax: [•]
Attention: [•]

or such other address or facsimile number as a Party may notify to the other Party by not less than five (5) business days' notice.

5. GOVERNING LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

6. BENEFIT OF AGREEMENT

This Agreement shall be binding upon and enure to the benefit of each party to this Agreement and its respective successors, transferees and assigns.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

The Seller

Signed for and on behalf of

[•]

By:

Name:

Title:

The Purchaser

Signed for and on behalf of

[•]

By:

Name:

Title:

SIGNATURE PAGE**The Lessor**

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Lessee

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

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

2 in respect of the service agency expenses.



APPENDIX J

Wakālah-Ijārah Based Financing Service Agency Agreement

.....

dated

by

[Name of bank/financial institution]
as *Wakālah* Facility Agent
(for and on behalf of the *Wakālah* Facility Participants)

and

[Name of the project company]
as Services Agent

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS SERVICE AGENCY AGREEMENT (this “**Agreement**”) is dated _____,

BETWEEN:

- (1) [•], for and on behalf of each *Wakālah* Facility Participant (the “**Wakālah Facility Agent**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as service agent (the “**Services Agent**”).

BACKGROUND:

- (A) Pursuant to a *Wakālah* agreement (the “**Wakālah Agreement**”) dated on or about the date of this Agreement between the *Wakālah* Facility Agent, the *Wakālah* Facility Participants and the Project Company (as *Wakil*), the *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants) has employed the Project Company as its *wakil* to design, engineer, procure, construct and deliver the *Wakālah* Assets in accordance with the terms and conditions set out in the *Wakālah* Agreement.
- (B) Pursuant to a lease agreement (the “**Lease Agreement**”) dated on or about the date of this Agreement between the *Wakālah* Facility Agent (in its capacity as lessor on behalf of the *Wakālah* Facility Participants under the Lease Agreement, the “**Lessor**”) and the Project Company (in its capacity as lessee under the Lease Agreement, the “**Lessee**”), the Lessor has agreed to lease the Lease Assets to the Lessee upon the terms and conditions of the Lease Agreement.
- (C) The Services Agent has, among other things, agreed to maintain and insure the Assets on behalf of the *Wakālah* Facility Agent (as Lessor) in accordance with the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Advance Rental Payment**” has the meaning given to such term in the Lease Agreement.

“**Advance Rental Payment Date**” has the meaning given to such term in the Lease Agreement.

[“**Asset Participation Agreement**” means the agreement dated on or about the date of this Agreement between each of the *Wakālah* Facility Participants and the *Wakālah* Facility Agent, pursuant to which the *Wakālah* Facility Participants agree to participate in financing the construction and ownership of the Assets.]

“**Assets**” means, as the context requires, the *Wakālah* Assets and/or the Lease Assets, the technical specifications for which are detailed in part B (*Technical Specifications*) of schedule 1 (*Lease Assets*) of the Lease Agreement.

“**Authorisation**” includes any material authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation.

[“**Common Terms Agreement**” means the agreement dated on or about the date of this Agreement between (amongst others) the Project Company, the *Wakālah* Facility Agent and the *Wakālah* Facility Participants.]

“**Construction Period**” has the meaning given to such term in the *Wakālah* Agreement.

“**Lease Agreement**” has the meaning given to such term in Recital (B).

“**Lease Assets**” has the meaning given to such term in the Lease Agreement.

“**Lease Base Amount**” has the meaning given to such term in the Lease Agreement.

“**Lease Variable Element**” has the meaning given to such term in the Lease Agreement.

“**Lease Commencement Date**” has the meaning given to such term in the Lease Agreement.

“**Lease Period**” has the meaning given to such term in the Lease Agreement.

“**Lease Rental Payment**” has the meaning given to such term in the Lease Agreement.

“**Lease Rental Payment Date**” has the meaning given to such term in the Lease Agreement.

“**Lease Rental Period**” has the meaning given to such term in the Lease Agreement.

“**Lessee**” has the meaning given to such term in Recital (B).

“**Lessor**” has the meaning given to such term in Recital (B).

“**Major Loss**” means:

- (a) any event which results in all of the Assets being lost, destroyed, damaged beyond economic repair, expropriated, nationalised or confiscated (or subject to any analogous event); and/or
- (b) as a result of any loss, destruction, damage, expropriation, nationalisation or confiscation (or analogous event) affecting all or part of the Assets, the Lease Agreement is deemed to be terminated or unenforceable under the laws of [•],

provided however that no Major Loss will occur if, in the opinion of the *Wakālah* Facility Agent (acting reasonably):

- (i) it would, taking into consideration the circumstances at that time, be commercially viable for the Project Company to restore, repair, re-build or replace such Assets; or
- (ii) the production, capacity and efficiency of the wider operations of the Project in connection with such Assets has not been (and will not be) materially reduced or impaired.

“**Major Loss Termination Sum**” means, at the relevant time, the aggregate of:

- (a) the Lease Base Amount;
- (b) the Lease Variable Elements accrued but unpaid; and

- (c) any other amounts due and payable by the Services Agent (in any capacity under the *Wakālah* Facility Finance Documents) to (or on behalf of) the *Wakālah* Facility Participants pursuant to the terms of the *Wakālah* Facility Finance Documents.

“**Major Maintenance**” means all repair, replacement and maintenance required in respect of the Assets and without which the Assets could not reasonably and properly be used by the Lessee in the ordinary course of its business.

“**Ownership Taxes**” has the meaning given to such term in Clause 4.2 (*Ownership Taxes*).

“**Party**” means a party to this Agreement and “**Parties**” shall be construed accordingly.

“**Project Company**” means [•].

“**Services**” means the following services to be undertaken by the Services Agent in respect of the Assets, pursuant to the terms and conditions of this Agreement:

- (a) carrying out (or procuring the carrying out of) any major maintenance in accordance with Clause 3 (*Major Maintenance*);
- (b) obtaining and maintaining the requisite insurances in accordance with Clause 5 (*Insurances*);
- (c) obtaining and maintaining the requisite Authorisations in accordance with Clause 4.1 (*Authorisations*); and
- (d) the settlement of any Ownership Taxes in accordance with Clause 4.2 (*Ownership Taxes*).

“**Services Charge Amount**” means expenses incurred by the Services Agent in the course of providing the Services to the *Wakālah* Facility Agent (acting on behalf of the *Wakālah* Facility Participants), which expenses shall be charged to the *Wakālah* Facility Agent (acting on behalf of the *Wakālah* Facility Participants) in accordance with Clause 7 (*Expenses*) and Schedule 1 (*Services Charge*).

“**Services Charge Amount Payment Date**” means each date corresponding to a Lease Rental Payment Date or the date of termination of the leasing of the Assets on which the Services Charge Amount shall be payable by the *Wakālah* Facility Agent to the Services Agent under this Agreement.

“**Stage Payment**” has the meaning given to such term in the *Wakālah* Agreement.

“**Wakālah Agreement**” has the meaning given to such term in Recital (A).

“**Wakālah Assets**” has the meaning given to such term in the *Wakālah* Agreement.

“**Wakālah Facility Agency Agreement**” means the agreement dated on or about the date of this Agreement between the *Wakālah* Facility Participants and the *Wakālah* Facility Agent, pursuant to which the *Wakālah* Facility Participants agree to appoint the *Wakālah* Facility Agent as their agent in relation to the financing of the construction and ownership of the Assets.

“**Wakālah Facility Finance Documents**” means:

- (a) this Agreement;

- (b) [the Asset Participation Agreement;]
- (c) [the *Wakālah* Facility Agency Agreement;]
- (d) the *Wakālah* Agreement;
- (e) the Lease Agreement;
- (f) [the Common Terms Agreement;] and
- (g) such other documents designated as such by the *Wakālah* Facility Agent, **provided that** they do not contravene Islamic *shari'ah*, with the prior consent of the Project Company (such consent not to be unreasonably withheld or delayed).

“*Wakālah* Facility Participants” has the meaning given to such term in the Asset Participation Agreement.

1.2 Interpretation

Any reference in this Agreement to:

- (a) the *Wakālah* Facility Agent, any *Wakālah* Facility Participant or any other person shall be construed so as to include its (and any subsequent) successors, transferees and permitted assigns in accordance with their respective interests;
- (b) a “**business day**” shall be construed as a reference to:
 - (i) with respect to any period of notice relating to, or any day on which, a payment denominated in, or a fixing of any rate in, [•] is required, a day (other than a [Friday], [Saturday] or [Sunday]) on which commercial banks are open for business in [•] for interbank transactions; or
 - (ii) in respect of any other obligation, a day (other than a [Friday], [Saturday] or [Sunday]) on which banks are open for business in [•];
- (c) a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement;
- (d) the term “**including**” shall be construed to mean “including without limitation”;
- (e) a “**person**” shall be construed as a reference to any person, firm, company, corporation, government, state, agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (f) a “**Schedule**” shall, subject to any contrary indication be construed as a reference to a schedule to this Agreement;
- (g) “**Shari'ah**” shall be interpreted in accordance with the *Shari'ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (h) [•] denote the lawful currency of [•];
- (i) save where the contrary is indicated, any reference in this Agreement to this Agreement, any *Wakālah* Facility Finance Document or any other agreement or document shall be construed as a reference

to the same as it may have been, or may from time to time be, amended, restated, varied, novated, replaced or supplemented; and

- (j) Clause and Schedule headings are for ease of reference only.

1.3 Third Party Rights

Except for the *Wakālah* Facility Participants (by virtue of their entry into the *Wakālah* Facility Agency Agreement), a person who is not a Party has no right to enforce or enjoy the benefit of any term of this Agreement.

2. APPOINTMENT AND FEE

2.1 Appointment

- (a) The *Wakālah* Facility Agent (as Lessor) appoints the Services Agent as its agent and the Services Agent agrees to act as agent for the *Wakālah* Facility Agent (as Lessor) to carry out the Services until the end of the Lease Period.
- (b) The Services Agent undertakes that in its capacity as Services Agent, in compliance with Islamic *shari'ah*, it shall not engage in usury or cheating or other *shari'ah* non-compliant activities.

2.2 Fee

Subject to Clause 7.3 (*Set-off*), in consideration of the Services Agent acting as agent of the *Wakālah* Facility Agent, the Services Agent shall receive a fee in the amount of [•] ([•]) payable by the *Wakālah* Facility Agent (for and on behalf of the *Wakālah* Facility Participants), in each case on the same date as the first Advance Rental Payment Date.

3. MAJOR MAINTENANCE

3.1 Maintenance of the Assets

The Services Agent undertakes with the *Wakālah* Facility Agent that, until the end of the Lease Period and so long as any moneys are or may become payable to the *Wakālah* Facility Agent or any *Wakālah* Facility Participant under the *Wakālah* Facility Finance Documents by the Services Agent (in any capacity), it shall contract with relevant parties to carry out all Major Maintenance, at the cost and expense of the *Wakālah* Facility Agent (as Lessor) in accordance with Clause 7 (*Expenses*), and in doing so shall:

- (a) ensure that the maintenance of the Assets shall be in accordance with the general standards expected from a prudent company carrying on a business similar to that of the Services Agent;
- (b) conduct regular and proper inspections of the Assets;
- (c) contract with relevant parties to replace all missing, damaged or broken parts with parts supplied or recommended by the original manufacturers of the Assets or with parts of a quality and value such that the performance and condition of the Assets would not be materially and adversely affected, and pay, on behalf of the *Wakālah* Facility Agent (as Lessor), all repair and operation expenses, including, where applicable, the cost of replacement of parts or otherwise;

- (d) ensure that the Assets are maintained by specialised persons who are competent to maintain the same and that no person who is prohibited by law from so doing shall carry out work involving the management or operation of, or attendance in proximity to, the Assets;
- (e) ensure that to the extent practicable and in accordance with its customary practice accurate, complete and current records are kept of all maintenance activities on the Assets, and shall provide copies of those records to the *Wakālah* Facility Agent upon reasonable request; and
- (f) the Services Agent shall not:
 - (i) pledge the *Wakālah* Facility Agent's or the Lessor's credit; or
 - (ii) except as permitted under a *Wakālah* Facility Finance Document, create any security interest or other encumbrance upon the Assets.

3.2 Acknowledgement

- (a) Notwithstanding Clause 3.1 (*Maintenance of the Assets*), but without prejudice to the Services Agent's obligations under this Agreement and subject at all times to paragraph (b) of this Clause 3.2 (*Acknowledgement*), the *Wakālah* Facility Agent acknowledges that the Services Agent may sub-contract or delegate some or all of the maintenance and repair of the Assets to third parties in the manner permitted pursuant to the *Wakālah* Facility Finance Documents, **provided that** neither the Lessor nor the *Wakālah* Facility Agent shall be required to make any payments to third parties in respect of any such maintenance and repair.
- (b) The Services Agent shall use its reasonable endeavours to procure that any delegate or sub-contractor appointed by it in accordance with paragraph (a) of this Clause 3.2 (*Acknowledgement*) shall comply with the maintenance and repair obligations set out in Clause 3.1 (*Maintenance of the Assets*). For the avoidance of doubt, the Services Agent's entry into any sub-contractual arrangements shall not of itself discharge any obligation which the Services Agent has under this Agreement.

3.3 Replacement of Services Agent for Default

If the Services Agent fails to effect such repairs or replacements in the manner contemplated by this Agreement, the *Wakālah* Facility Agent shall be entitled, but shall not be bound, upon reasonable notice to the Services Agent, to terminate this Agreement and appoint another party for the purpose of having those repairs or replacements effected and the Services Agent shall pay to the *Wakālah* Facility Agent the full reasonable cost and damages incurred as a result of the termination of this Agreement.

4. AUTHORISATIONS AND OWNERSHIP TAXES

4.1 Authorisations

The Services Agent undertakes to the *Wakālah* Facility Agent (as Lessor) that, for so long as the *Wakālah* Facility Agent has title to the Assets, the Services Agent shall obtain, maintain and provide all reasonable assistance to assist the *Wakālah* Facility Agent (as Lessor) to comply with the material terms of all Authorisations required from time to time in connection with the ownership by the *Wakālah* Facility Agent of the Assets. The *Wakālah* Facility Agent shall, at the request of the Services Agent and at the Services Agent's cost and expense, provide all reasonable assistance to the Services Agent in connection with its obligations under this Clause 4.1 (*Authorisations*).

4.2 Ownership Taxes

The Services Agent shall be responsible for the settlement of any ownership taxes assessed in respect of the *Wakālah* Facility Agent's ownership of the Assets in [•] ("**Ownership Taxes**") (but, for the avoidance of doubt, the Services Agent shall not be responsible for any taxes arising in connection with any payments by the Lessee under the Lease Agreement (save as expressly provided for in the *Wakālah* Facility Finance Documents)).

5. INSURANCES

- (a) The Services Agent shall enter into contracts with relevant parties to insure the Assets in a permissible insurance (with authorised insurers) against property damage, business interruption, third party liability and any Major Loss during the Construction Period and during the Lease Period, in accordance with the terms and conditions set out in the *Wakālah* Facility Finance Documents.
- (b) The Services Agent irrevocably undertakes with the *Wakālah* Facility Agent that, so long as any moneys are or may become payable under the *Wakālah* Facility Finance Documents by the Services Agent (in any capacity under the *Wakālah* Facility Finance Documents), it shall maintain permissible insurance in respect of an appropriate amount (and, in any event, to ensure that any insurance amount received is not less than the Major Loss Termination Sum) through relevant parties in accordance with paragraph (a) above on terms no less favourable than the insurances it maintains for its similar assets as required under the *Wakālah* Facility Finance Documents. The Services Agent (in any capacity under the *Wakālah* Facility Finance Documents) shall ensure that, to the extent possible, the *Wakālah* Facility Participants (in any capacity under the *Wakālah* Facility Finance Documents) are named as insured parties under such insurances.
- (c) Without prejudice to the rights and remedies available to the *Wakālah* Facility Agent and the *Wakālah* Facility Participants under the *Wakālah* Facility Finance Documents and **provided that** no Major Loss has occurred, the Parties agree that so long as the Services Agent (in any capacity under the *Wakālah* Facility Finance Documents) is otherwise in compliance with its insurance obligations in the other *Wakālah* Facility Finance Documents, failure by the Services Agent to comply with its obligations under paragraph (b) above shall not constitute a breach of this Agreement.

6. NOTIFICATION, REPAIR AND REPLACEMENT OF ASSETS

6.1 Partial Loss

If a loss of Assets occurs which does not constitute a Major Loss, the Services Agent shall ensure that a claim in respect of that loss is made promptly in accordance with the terms of the relevant insurance policy, and ensure that all applicable insurance proceeds are applied in the repair or replacement of those Assets subject to the terms of the *Wakālah* Facility Finance Documents.

6.2 Major Loss

- (a) Following the occurrence of a Major Loss, if the proceeds of any insurance are insufficient, due to the failure by the Services Agent to perform its obligations to insure and maintain insurance under this Agreement, the Services Agent shall assume liability for any such losses, damages and expenses suffered by the *Wakālah* Facility Participants (in any capacity under the *Wakālah* Facility Finance Documents) as a consequence in accordance with the provisions of paragraphs (b) and (c) below. For

the avoidance of doubt, the liability of the Services Agent, arising from, or in connection with, the occurrence of a Major Loss shall be limited to the amounts calculated in accordance with paragraphs (b) and (c) below and subject to the terms of the other *Wakālah* Facility Finance Documents.

- (b) In the event of a Major Loss occurring, the Services Agent shall ensure that a claim in respect of that Major Loss is made promptly in accordance with the terms of the relevant insurance policy and the terms of the *Wakālah* Facility Finance Documents. The Services Agent irrevocably undertakes to procure that all insurance proceeds in respect of a claim for a Major Loss shall be paid in accordance with the *Wakālah* Facility Finance Documents. The Services Agent shall (for and on behalf of the *Wakālah* Facility Agent) apply such insurance proceeds in accordance with the terms of the *Wakālah* Facility Finance Documents.
- (c) Without prejudice to the Services Agent's other obligations under this Agreement or any other *Wakālah* Facility Finance Document, following a Major Loss, if the amount (if any) credited to the *Wakālah* Facility Agent and/or the *Wakālah* Facility Participants (in any capacity under the *Wakālah* Facility Finance Documents) pursuant to paragraphs (a) and (b) above and the terms of the *Wakālah* Facility Finance Documents is less than the applicable Major Loss Termination Sum due to the Services Agent's failure to comply with its obligations under this Agreement or any other *Wakālah* Facility Finance Document, then the Services Agent, accordingly, irrevocably and unconditionally undertakes, upon notice of demand from the *Wakālah* Facility Agent (acting for and on behalf of the *Wakālah* Facility Participants) to immediately indemnify the *Wakālah* Facility Participants in an amount equal to the shortfall between the applicable Major Loss Termination Sum and the amount credited to the *Wakālah* Facility Participants pursuant to paragraph (b) above and the indemnity contained in this paragraph (c) shall apply from the date of this Agreement and shall survive the termination of this Agreement or any other *Wakālah* Facility Finance Document to the extent that the relevant event giving rise to such Major Loss occurred on or prior to termination of this Agreement.
- (d) Subject to the Services Agent's compliance with its obligations in the other *Wakālah* Facility Finance Documents and paragraph (c) above, the Parties agree that the occurrence of a Major Loss shall not otherwise constitute a breach of this Agreement **provided that** the Services Agent (in its capacity as Project Company or otherwise) is in compliance with all of its obligations under the relevant insurance provisions set out in the other *Wakālah* Facility Finance Documents.

7. EXPENSES

7.1 Calculation

Subject to Clause 7.3 (*Set-off*), and if no default has occurred and is continuing under the *Wakālah* Facility Finance Documents, the *Wakālah* Facility Agent hereby undertakes and agrees to pay the Services Agent on each Services Charge Amount Payment Date, on behalf of the *Wakālah* Facility Participants, the Services Charge Amount in arrears in the amounts set out in Schedule 1 (*Services Charge*).

7.2 Evidence

The Services Agent shall evidence its entitlement to receive the Services Charge Amount relating to a Lease Rental Period by providing the *Wakālah* Facility Agent (as Lessor), as soon as practicable, with an invoice supported by copies of commercial invoices and premium notes for any expenditure incurred by the Services Agent.

7.3 Set-off

The *Wakālah* Facility Agent shall be entitled to set-off:

- (a) against its obligation to pay the Services Charge Amount under this Clause 7 (*Expenses*), its right to receive certain sums from the Lessee under clause 3 (*Lease Payments*) of the Lease Agreement; and
- (b) against its obligation to pay the appointment fee under Clause 2.1 (*Appointment*), its right to receive certain sums from the Lessee with respect to the first Advance Rental Payment under clause 3 (*Lease Payments*) of the Lease Agreement,

in each case, regardless of whether such sums are actually received (in whole or in part).

8. ASSIGNMENT

Subject to the provisions of the *Wakālah* Facility Finance Documents, the *Wakālah* Facility Agent shall be entitled to assign or transfer all or any of its rights, benefits and obligations under this Agreement to any person who accedes to the *Wakālah* Facility Agency Agreement as *Wakālah* Facility Agent.

9. AMENDMENTS

Subject to the provisions of the *Wakālah* Facility Finance Documents, any term of this Agreement may be amended or waived with the prior written consent of the Services Agent and the *Wakālah* Facility Agent. Subject to the preceding sentence, the *Wakālah* Facility Agent may effect, on behalf of the *Wakālah* Facility Participants, an amendment or waiver to which they have agreed in accordance with the provisions of the *Wakālah* Facility Agency Agreement and/or the Common Terms Agreement.

10. BUSINESS DAYS

Any payment under this Agreement which is due to be made on a day that is not a business day shall be made on the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).

11. WAIVER OF USURIOUS INTEREST

This Agreement does not include or contain any provision relating to usurious interest and no provision of this Agreement shall be interpreted to mean or denote the same. The Parties undertake to waive any usurious interest that may be approved or awarded by virtue of a judgment or interpretation or otherwise.

12. NOTICES

12.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter or, if Clause 12.4 (*Electronic communication*) applies, electronic mail.

12.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

For the *Wakālah* Facility Agent:

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

For the Services Agent:

Name: [•]
 Address: [•]
 Fax No.: [•]
 E-mail: [•]
 Attention: [•]

or any substitute address, fax number or department or officer as the parties may notify to each other by not less than five (5) business days' notice.

12.3 Delivery

- (a) 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; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) business days after being deposited with a courier service, postage prepaid, in an envelope addressed to it at that address, and, if a particular department or officer is as part of its address details provided under Clause 12.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the *Wakālah* Facility Agent will be effective only when actually received by the *Wakālah* Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the *Wakālah* Facility Agent's notice details in Clause 12.2 (*Addresses*) above (or any substitute department or officer as the *Wakālah* Facility Agent shall specify for this purpose).

12.4 Electronic communication

- (a) Any communication to be made between any Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the relevant parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an acceptable form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Electronic communications made by the *Wakālah* Facility Agent or notices sent by the *Wakālah* Facility Agent that are generated electronically under or in connection with this Agreement do not require signature by the *Wakālah* Facility Agent.
- (c) Any electronic communication made between the Parties will be effective only when actually received in readable form and in the case of any electronic communication made to the *Wakālah* Facility Agent only if it is addressed in such a manner as the *Wakālah* Facility Agent shall specify for this purpose.

12.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

13. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

14. JURISDICTION OF [•] COURTS

14.1 Jurisdiction

Without prejudice to Clause 15 (*Arbitration*), the Services Agent irrevocably agrees for the benefit of the *Wakālah* Facility Agent that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

14.2 Waiver of objection to jurisdiction

The Services Agent irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 14.1 (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that any such court is not a convenient or appropriate forum.

14.3 Process Agent

- (a) The Services Agent agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause 14.3 (*Process Agent*) ceases to be effective in respect of the Services Agent, the Services Agent shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the *Wakālah* Facility Agent shall be entitled to appoint such a person by notice to the Services Agent.
- (b) The Services Agent further agrees that failure by a process agent to notify the Services Agent of the process will not invalidate the proceedings concerned.]¹

14.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause 14.1 (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the *Wakālah* Facility Agent to take proceedings against the Services Agent in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

14.5 Consent

The Services Agent hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

14.6 Waiver of Immunity

To the extent that the Services Agent 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 Services Agent hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

15. ARBITRATION

15.1 *Wakālah* Facility Agent's Option

Notwithstanding Clause 14 (*Jurisdiction of [•] Courts*), the *Wakālah* Facility Agent may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause 155 (*Arbitration*).

15.2 Arbitration

The Services Agent irrevocably agrees for the benefit of the *Wakālah* Facility Agent that any disputes which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause 15.2 (*Arbitration*).

15.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Services Agent, one nominated by the *Wakālah* Facility Agent and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Services Agent and the *Wakālah* Facility Agent may request the President of the LCIA (or such other person as the Services Agent and the *Wakālah* Facility Agent may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Services Agent, the *Wakālah* Facility Agent or any person that directly or indirectly beneficially owns any share capital of the Services Agent or the *Wakālah* Facility Agent;
 - (ii) have any political or business ties to the country of establishment of the Services Agent or the *Wakālah* Facility Agent; or
 - (iii) be a person with familial ties to the Services Agent or the *Wakālah* Facility Agent.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the *Wakālah* Facility Finance Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed

or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.

- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

15.4 Waiver of objection to Arbitration

The Services Agent irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 15 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other *Wakālah* Facility Finance Document and agrees not to claim that such forum is not a convenient or appropriate forum.

15.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

16. CONFIDENTIALITY

Save for announcements in terms agreed between the parties to this Agreement (and except as required by any Applicable Law or as required or requested by any regulatory or governmental body or authority or required for use of professional advisers) no announcement or information concerning this Agreement and the arrangements hereunder and pursuant to any other *Wakālah* Facility Finance Documents shall be released by any party to the public or the press prior to the issuance of a Certificate of Release by the *Wakālah* Facility Agent in favour of the Services Agent.

17. ENTIRE AGREEMENT

This Agreement and any documents referred to in this Agreement constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter of this Agreement.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SIGNATURE PAGE**The *Wakālah* Facility Agent**

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Services Agent

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTE

¹ Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).



APPENDIX K

Mushārahah Based Financing Mushārahah Agreement

.....

dated

[•]

by

[Name of bank/financial institution]

as a *mushārahah* partner

and

[Name of the project company]

as a *mushārahah* partner

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS AGREEMENT (the “**Agreement**”) is dated _____ and made

BETWEEN:

- (1) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as a *mushārah* partner (the “**Bank**”); and
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as a *mushārah* partner (the “**Customer**”).

RECITAL

The Partners have agreed to enter into the *Mushārah* on the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including its Recital), unless otherwise defined in this Agreement or unless the context otherwise requires, the following terms shall have the following meanings:

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

“**Availability Period**” means the period commencing on the Signing Date and ending on that date falling [•] ([•]) months from the Signing Date.

“**Bank Contribution**” has the meaning given to it in Clause (*Contribution to Mushārah Capital*).

“**Bank Contribution Payment Date**” means, in relation to a Bank Contribution Request, the date specified therein for the payment of the Bank Contribution.

“**Bank Contribution Request**” means a notice from the Customer to be sent to the Bank substantially in the form set out in Schedule 2 (*Form of Bank Contribution Request*).

“**Business Day**” means a day other than [Friday], [Saturday] or [Sunday] on which banks are generally open for business in [•].

“**Contribution**” has the meaning given to it in Clause (*Contribution to Mushārah Capital*).

“**Customer Contribution**” has the meaning given to it in Clause (*Contribution to Mushārah Capital*).

“**Default**” has the meaning given to this expression in the Forward Lease Agreement.

“**Effective Date**” means the date on which the Bank has received all of the documents and other evidence listed in Schedule 3 (*Conditions Precedent*) in form and substance satisfactory to the Bank unless delivery of such documents and other evidence has been waived by the Bank.

“**Encumbrance**” means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect and the verb “Encumber” shall be construed accordingly.

“**Event of Default**” has the meaning given to this expression in the Forward Lease Agreement.

“**Forward Lease Agreement**” means the Forward Lease Agreement of even date herewith entered into between (a) [•] as lessor and (b) [•] as lessee.

“**GAAP**” means generally accepted accounting principles in [•] including IFRS.

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Managing Agent**” means [•] in its capacity as managing agent under the *Mushārah* Management Agreement.

“**Material Adverse Effect**” has the meaning given to this expression in the Forward Lease Agreement.

“**Mushārah**” means the *mushārah* arrangement established by the Partners in accordance with the terms of this Agreement.

“**Mushārah Account**” means the bank account(s) in the name of the Customer to be opened and maintained at the Bank and to be designated as the *mushārah* account.

“**Mushārah Assets**” has the meaning given to it in paragraph (a) of Clause (*Mushārah Assets*) and shall include both tangible and intangible assets.

“**Mushārah Business Plan**” means the business plan for the *Mushārah* as set out in Schedule 1 (*Mushārah Business Plan*).

“**Mushārah Capital**” has the meaning given to it in Clause (*Contribution to Mushārah Capital*).

“**Mushārah Documents**” means:

- (a) this Agreement;
- (b) the *Mushārah* Management Agreement; and
- (h) any other document designated as such by the Partners.

“**Mushārah Expenses**” means the costs, expenses and liabilities that are incurred by or arise out of the operation and activities of the *Mushārah*, as determined by the Managing Agent and approved by the Bank; but not including the Partner Expenses and such other costs as may be agreed by the Partners.

“**Mushārah Interest**” has the meaning given to it in paragraph (b) of Clause (*Mushārah Assets*).

“**Mushārah Management Agreement**” means the management agreement dated on or about the date of this Agreement and entered into between the Managing Agent and the Partners in relation to the management of the *Mushārah*.

“**Mushārah Period**” has the meaning given to it in Clause (*Term of the Mushārah*).

“**Mushārahah Project**” has the meaning given to it in paragraph 1(a) of Schedule 1 (*Mushārahah Business Plan*).

“**Original Financial Statements**” means the latest audited financial statements of the Customer as at the date of this Agreement.

“**Projected Mushārahah Profit**” has the meaning given to it in paragraph 2 of Schedule 1 (*Mushārahah Business Plan*).

“**Partners**” means the Customer and the Bank and Partner means any of the two.

“**Partner Expenses**” means the costs and expenses incurred by the Partners and the Managing Agent in providing for their respective normal operating overhead, including salaries of their respective employees, rent and other expenses incurred in maintaining their respective places of business, but not including the *Mushārahah Expenses*.

“**Proportionate Share**” means, with respect to a Partner, the proportion which its Contribution bears to the *Mushārahah Capital*.

“**Purchase Undertaking**” means the purchase undertaking dated on or about the date of this Agreement and provided by the Customer as lessee in favour of the Bank as lessor.

“**Rights**” means but is not limited to tangible and intangible rights (both legal and beneficial), titles, interests and benefits and includes all present and future rights (both legal and beneficial), titles, interests and benefits.

“**Signing Date**” means the date on which all of the Transaction Documents are signed.

“**Tax**” has the meaning given to this expression in the Forward Lease Agreement.

“**Transaction Documents**” has the meaning given to this expression in the Forward Lease Agreement.

1.2 Interpretation and Construction

- (a) Unless a contrary indication appears or the context does not so admit, any reference in this Agreement to:
- (i) any Partner shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) this Agreement or any other agreement or instrument is a reference to any such agreement or instrument as amended;
 - (iii) 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) or two or more of the foregoing;
 - (iv) a date or any period of time is by reference to the Gregorian calendar and to [•] time respectively;
 - (v) “*Shari’ah*” shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;

- (vi) the singular includes the plural and vice versa; and
 - (vii) “[•]” denotes the lawful currency for the time being of [•].
- (b) Clause and Schedule headings are for ease of reference only.

2. MUSHĀRAKAH

- (a) Subject to the terms and conditions of this Agreement, the Partners agree to enter into the *Mushārah*.
- (b) The purpose of the *Mushārah* will be to procure and construct the *Mushārah* Assets as set out in more detail in the *Mushārah* Business Plan.
- (c) The Partners agree that the purpose of the *Mushārah* shall be to share the proceeds generated from the application of the *Mushārah* Capital in accordance with the *Mushārah* Business Plan.
- (d) If any provision of the *Mushārah* Business Plan is inconsistent with any provision of this Agreement, the provision of this Agreement shall prevail unless expressly agreed to the contrary by the Partners.
- (e) Unless expressly otherwise provided under this Agreement or the *Mushārah* Management Agreement, the management of the *Mushārah* Assets shall be carried out solely by the Managing Agent in accordance with the terms of this Agreement and the *Mushārah* Management Agreement.

3. TERM OF THE MUSHĀRAKAH

The *Mushārah* shall commence on the date of this Agreement and will continue until the earlier to occur of the date (such term being referred to as the “**Mushārah Period**”) as set out below:

- (a) [actual lease expiry date as set out in the lease agreement to be inserted]; and
- (b) the date when all of the *Mushārah* Interests are vested in any single Partner.

4. MUSHĀRAKAH CAPITAL

4.1 Contribution to *Mushārah* Capital

- (a) Subject to the terms and conditions of this Agreement, the Partners shall contribute to the *Mushārah* as follows:
 - (i) the Customer shall contribute in kind and/or in cash an amount equal to [•] ([•]) (the “**Customer Contribution**”) and the Customer Contribution shall not be increased or decreased without the prior written consent of the Bank; and
 - (ii) the Bank shall contribute in cash an amount up to the extent of [•] ([•]) (the “**Bank Contribution**”) by crediting such amount to the *Mushārah* Account,

each a “**Contribution**” and together the “**Contributions**” or the “*Mushārahah Capital*”, as the case may be.

- (b) The Partners hereby agree that, unless expressly agreed to in writing by both the Partners, there shall be no additional contributions to the *Mushārahah* made hereunder.
- (c) The *Mushārahah Capital* shall be managed by the Managing Agent in accordance with the terms of the *Mushārahah Management Agreement* and this Agreement.

4.2 Conditions Precedent

On the date of this Agreement or promptly thereafter, the Customer undertakes to provide copies of the documents and other evidence contemplated by Schedule 3 (*Conditions Precedent*) hereto to the Bank in a form and substance satisfactory to the Bank.

5. PAYMENT OF BANK CONTRIBUTION

- (a) On or after the occurrence of the Effective Date, the Customer may request, in accordance with the provisions of this Clause (*Payment of Bank Contribution*), the Bank to disburse the Bank Contribution by delivering a duly completed Bank Contribution Request not later than [five (5)] Business Days before the proposed Bank Contribution Payment Date stated therein.
- (b) A Bank Contribution Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Bank Contribution Payment Date is a Business Day within the Availability Period; and
 - (ii) the currency specified in the Bank Contribution Request is [•].
- (c) In relation to the disbursement of the Bank Contribution, the Customer may only deliver one Bank Contribution Request.
- (d) The Bank will not be obliged to pay the Bank Contribution if on the date of the Bank Contribution Request or on the proposed Bank Contribution Payment Date a Default under this Agreement is continuing or would result from the proposed payment of the Bank Contribution.

6. MUSHĀRAKAH ASSETS

- (a) Whether directly or indirectly, the following shall be assets of the *Mushārahah* (hereunder the “*Mushārahah Assets*”):
 - (i) the *Mushārahah Project*;
 - (ii) the *Mushārahah Capital*; and
 - (iii) without limiting the foregoing, the Rights of the Partners arising from and attaching to:
 - (A) all monies standing to the credit of the *Mushārahah Account*;

- (B) the proceeds derived from any of the *Mushārah* Assets;
 - (C) any of the *Mushārah* Documents are a party; and
 - (D) all [insurance/*takāful* proceeds], if any, in respect of the *Mushārah* Assets.
- (b) Each Partner shall have an undivided entitlement to its Proportionate Share of the *Mushārah* Assets (being, in relation to each Partner, the “***Mushārah Interest***”).
 - (c) As at the date of this Agreement, the Proportionate Share of each Partner is:
 - (i) in the case of the Customer, [•] per cent. ([•]%) of the value of the *Mushārah* Assets; and
 - (ii) in the case of the Bank, [•] per cent. ([•]%) of the value of the *Mushārah* Assets.
 - (d) No Partner may withdraw, increase, decrease or replace its Contribution and/or Encumber any or all of its *Mushārah* Interest except by entering into a sale and purchase agreement with another Partner in accordance with the Purchase Undertaking.
 - (e) [Profits and losses in respect of the *Mushārah* shall be borne by each Partner in accordance with its Proportionate Share].
 - (f) Each Partner undertakes that it shall not enter, or permit on its behalf to be entered into, any agreements or arrangement in connection with the purchase, sale, transfer, lease or licence of, or creation of any Encumbrance over, its *Mushārah* Interest.

7. LIQUIDATION OF THE MUSHĀRAH

- (a) Provided that the Bank has not exercised its rights under the Purchase Undertaking or the Customer has not exercised its rights under the Sale Undertaking or the Bank’s share in the *Mushārah* Assets has not been disposed of otherwise, the *Mushārah* will be liquidated at the end of the *Mushārah* Period.
- (b) Both Partners agree that, at the end of the *Mushārah* Period, the Managing Agent shall be under obligation to dispose of the *Mushārah* Assets and distribute the proceeds thereof along with all accrued and unpaid profits in accordance with each Partner’s Contribution to the *Mushārah* Capital.
- (c) Upon the termination of the *Mushārah*, the Managing Agent shall return the outstanding *Mushārah* Capital to the Partners, along with each Partner’s share of the profit generated from the *Mushārah*, supported by a statement of account to be submitted by the Managing Agent to each Partner at that time.
- (d) For the avoidance of doubt, the Managing Agent shall apply the proceeds of the liquidation referred to in paragraphs (a) and (b) above and any remaining *Mushārah* Assets and shall distribute any such proceeds and assets, to the Partners in the following order of priority:¹
 - (i) [firstly, the payment to the Bank in full of all outstanding amounts comprising the Bank Contribution, its share in the Projected *Mushārah* Profit or otherwise payable, to the extent that such amount remained outstanding after off-setting the aggregate Base Rental Payment;]

- (ii) [secondly, once the Bank has been paid in full, the payment to the Customer of its Contribution to the *Mushārah* and its share in the Projected *Mushārah* Profit, to the extent that such amount remained outstanding after off-setting the aggregate of the Base Rental Payment; and]
- (iii) [thirdly, once the Bank and the Customer have been paid in full under paragraphs (i) and (ii) above, the remaining balance shall be distributed between the Partners in proportion to each Partner's Contribution to the *Mushārah* Capital.]

8. APPOINTMENT OF MANAGING AGENT

The Partners hereby expressly undertake to appoint [•] to act as Managing Agent by entering into the *Mushārah* Management Agreement.

9. MUSHĀRAKAH EXPENSES

All *Mushārah* Expenses shall be borne by the *Mushārah*. For the avoidance of doubt, the Partner Expenses shall not be borne by the *Mushārah*.

10. REPRESENTATIONS AND WARRANTIES

The Customer makes the representations and warranties set out in this Clause (*Representations and Warranties*) to the Bank on the date of this Agreement:

10.1 Status

- (a) It is a [*insert type of company*] company, duly incorporated and validly existing under the law of [•];
- (b) It has the power to own its assets and carry on its business as it is being conducted.

10.2 Binding obligations

The obligations expressed to be assumed by it in each *Mushārah* Document are legal, valid, binding and enforceable obligations.

10.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the *Mushārah* Documents do not and will not conflict with:

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

10.4 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, the *Mushārah* Documents and the transactions contemplated by the *Mushārah* Documents.

10.5 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the *Mushārah* Documents; and
- (b) to make the *Mushārah* Documents admissible in evidence in [•],

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

10.6 No Material Defaults

It is not in breach of or in default under any agreement to which it or he, as the case may be, is a party or which is binding on it, as the case may be, or any of its assets to an extent or in a manner which could reasonably be expected to have a Material Adverse Effect.

10.7 No Misleading Information

- (a) Any factual information provided by it in connection with this Agreement was, to the best of its knowledge, 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.
- (b) All financial projections provided to the Bank have been prepared in good faith, on the basis of recent historical information and on the basis of reasonable assumptions.

10.8 Financial statements

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements fairly represent its financial condition and operations during the relevant financial year.
- (c) There has been no material adverse change in the business or financial condition of the Customer since the date of the Original Financial Statements.

10.9 Deduction of tax

It is not required, as at the date of this Agreement, under the laws of [•] to make any deduction for or on account of Tax from any payment it may make under any *Mushārah* Document.

10.10 No filing or stamp taxes

Under the laws of [•], as at the date of this Agreement, it is not necessary that the *Mushārah* Documents 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 the *Mushārah* Documents or the transactions contemplated by the *Mushārah* Documents.

10.11 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started which could reasonably be expected to have a Material Adverse Effect.

10.12 *Pari passu* ranking

Its payment obligations under the *Mushārah* Documents 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.

10.13 No Insolvency

No corporate action, legal proceedings or other procedures or steps have been taken or, to the best of its knowledge and belief, are threatened against it for its winding-up dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or any of its assets or revenues and the entry into and performance by the Customer of its obligations under the *Mushārah* Documents will not cause any of the aforementioned procedures or steps to occur.

10.14 Private and commercial acts

Its execution of the *Mushārah* Documents constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes and in any proceedings taken in its jurisdiction of incorporation in relation to any *Mushārah* Document, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

10.15 *Mushārah* Business Plan

The *Mushārah* Business Plan has been prepared by it with due care and that the *Mushārah* Business Plan is fair and accurate in all material respects as at the date of this Agreement.

10.16 *Shari'ah* compliance

It has not relied on any representation made by the Bank as to the *shari'ah* compliance of the transaction contemplated by this Agreement or any other *Mushārah* Document and has independently made its own assessment as to whether such transactions are compliant with *shari'ah*.

10.17 Repetition

It undertakes with the Bank that the representations and warranties set out in this Clause (*Representations and Warranties*) will be true and accurate as at the date of this Agreement, and it shall be deemed to repeat such representations and warranties on each day throughout the continuation of the *Mushārah* Period and so long as any sum is or may become payable under any *Mushārah* Document or with respect to the *Mushārah* with reference to the facts and circumstances subsisting from time to time.

10.18 Acknowledgment of reliance

It acknowledges that the Bank has entered into this Agreement and the other *Mushārah* Documents in reliance upon the representations and warranties contained in this Clause (*Representations and Warranties*).

11. EVENTS OF DEFAULT

- (a) If any of the representations and warranties set forth herein by the Customer is or proves to be incorrect or misleading in any respect when made or deemed to have been made, such event, if occurring prior to the payment of the Bank Contribution, shall be a Default.
- (b) If any Event of Default occurs prior to the payment of the Bank Contribution, then such event shall be a Default under this Agreement.

12. INDEMNITY

12.1 Reimbursement and Compensation

The Customer shall (for the avoidance of doubt, without recourse to the *Mushārah* Assets) fully reimburse, compensate and hold harmless the Bank and its officers and duly appointed agent and representatives (the “**Compensated Persons**”) for any and all obligations, liabilities, losses, costs, expenses, fees (including legal fees and expenses incurred in connection with any enforcement of this Agreement), damages, penalties, demands, actions and judgments of every kind and nature imposed on, incurred by, or asserted against any of the Compensated Persons arising out of (in each case, without duplication and excluding gross negligence or wilful default of the Compensated Persons):

- (a) any failure resulting from its negligence, default or breach of obligation on the part of the Customer to perform or comply with any term of this Agreement or any other *Mushārah* Document; or
- (b) any breach by the Customer of any representation or warranty contained in this Agreement.

12.2 Indemnity Notice

- (a) The Customer shall give each Compensated Person prompt notice of any occurrence or condition actually known to it as a consequence of which any Compensated Person is entitled to reimbursement or compensation.
- (b) The Customer shall within three (3) Business Days of demand by any Compensated Person reimburse such Compensated Person for all amounts reimbursable to that Compensated Person under paragraph (a) above, or pay the relevant amount to such person as the Compensated Person may direct.

13. CONFIDENTIALITY

- (a) The Partners shall not disclose or divulge any information received during the performance of this Agreement relating to the business of the *Mushārah* or another Partner and shall procure that every person connected with or associated with them shall keep confidential and shall not disclose without the prior written consent of the Partners any information with respect to the *Mushārah* or the Partners.
- (b) Paragraph (a) above shall not prevent the disclosure of information by any Partner to its auditors or legal or other professional advisers where reasonably required for the proper performance of their duties, or where required by compulsion of law or pursuant to the requirements of any competent regulatory, tax or other authority.
- (c) Paragraph (a) shall not apply to information which is in the public domain otherwise than due to a breach of this Clause (*Confidentiality*).

14. AMENDMENTS AND WAIVERS

Any amendment or waiver of any provision of any *Mushārah* Document and any waiver of any default under any *Mushārah* Document shall only be effective if made in writing and signed by the Partners.

15. ASSIGNMENT

15.1 Assignment by the Customer

The Customer may not assign or transfer any of its rights, benefits and obligations under the *Mushārah* Documents.

15.2 Assignment by Bank

The Bank may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of the *Mushārah* Documents.

15.3 Ancillary Provisions

The Customer shall execute and do all such transfers, assignments, assurances, acts and things as the Bank may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to Clause (*Assignment by Bank*).

16. NOTICES

16.1 Delivery

- (a) Each notice, demand or other communication to be given or made under any *Mushārah* Document shall be in writing and delivered or sent to the relevant party at its address or fax number set out in its respective place for signature below (or such other address or fax number as the addressee has by not less than three (3) Business Days' prior written notice specified to the other party).
- (b) Any communication or document made or delivered by one person to another under or in connection with the *Mushārah* Documents will only be effective:
 - (i) if by way of fax, when received in legible form (as evidenced by a fax transmission report showing that the entire communication was received); or
 - (ii) if by way of letter, when left at the relevant address,

provided that a communication which is received after 5:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be delivered on the next full working day in that place.

16.2 Fax Indemnity

- (a) Subject to the terms of Clause (*Delivery*), the Bank is authorised to act without further enquiry upon any instruction or communication received by facsimile which it reasonably believes in good faith to be an instruction or communication given or made by the Customer or any person authorised by the Customer to give instructions or make other communications by facsimile

on its behalf and is entitled to treat any such instruction or communication as fully authorised by and binding upon the Customer regardless of the circumstances prevailing at the time such instruction or communication is given or made. the Customer shall indemnify the Bank and its officers, directors, employees, representatives and agents from and against any cost, claim, loss, expense (including legal fees) or liability which any of them may reasonably incur or sustain by reason of having acted upon any such instruction or communication.

- (b) The Customer shall from time to time or at the request of the Bank provide a list of its authorised signatories to the Bank.

16.3 Electronic communication

- (a) Any communication to be made between the parties in relation to routine and administrative matters under or in connection with the *Mushārah* Documents, may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be effective on the next full working day in that place.

16.4 English language

- (a) Any notice given under or in connection with any *Mushārah* Document must be in English.
- (b) All other documents (other than the Customer's constitutional documents) provided under or in connection with any *Mushārah* Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

17. BENEFIT OF THE AGREEMENT

The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. ENTIRE AGREEMENT

This Agreement and the documents referred to herein constitute the entire obligation of the Bank and supersede any previous expressions of intent or understandings in respect of the matters contemplated by this Agreement.

19. PARTIAL INVALIDITY

If, at any time, any provision of a *Mushārahah* Document 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.

20. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under a *Mushārahah* Document 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 the *Mushārahah* Documents are cumulative and not exclusive of any rights or remedies provided by law.

21. COUNTERPARTS

Each *Mushārahah* Document may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery by facsimile or electronic communication of an executed counterpart of a signature page to a *Mushārahah* Document shall be effective as delivery of an original executed counterpart of such *Mushārahah* Document.

22. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

23. JURISDICTION OF [•] COURTS

23.1 Jurisdiction

Without prejudice to Clause 24 (*Arbitration*), the Customer irrevocably agrees for the benefit of the Bank that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

23.2 Waiver of objection to jurisdiction

The Customer irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

23.3 [Process Agent]

- (a) The Customer agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause (*Process Agent*) ceases to be effective in respect of the Customer, the Customer shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Bank shall be entitled to appoint such a person by notice to the Customer.
- (b) The Customer further agrees that failure by a process agent to notify the Customer of the process will not invalidate the proceedings concerned.]²

23.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Customer in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

23.5 Consent

The Customer hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

23.6 Waiver of Immunity

To the extent that the Customer 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 Customer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

24. ARBITRATION

24.1 Bank's Option

Notwithstanding Clause 23 (*Jurisdiction of [•] Courts*), the Bank may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause (*Arbitration*).

24.2 Arbitration

The Customer irrevocably agrees for the benefit of the Bank that any disputes which may arise out of or in connection with this Agreement or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”)] in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause (*Arbitration*).

24.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Customer, one nominated by the Bank and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Customer and the Bank may request the President of the LCIA (or such other person as the Customer and the Bank may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Customer, the Bank or any person that directly or indirectly beneficially owns any share capital of the Customer or the Bank;
 - (ii) have any political or business ties to the country of establishment of the Customer or the Bank;
or
 - (iii) be a person with familial ties to the Customer or the Bank.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.
- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.

- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

24.4 Waiver of objection to Arbitration

The Customer irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 24 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

24.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *shari'ah* 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.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the date first written above.

SCHEDULE 1***Mushārahah Business Plan*****1. Objective of *Mushārahah***

- (a) The business activity that shall be the subject matter of the *Mushārahah* is for the restricted purpose of the procurement of the following asset(s) by the Managing Agent for and on behalf of the *Mushārahah* and the Partners (the “***Mushārahah Project***”):

Specifications and description of the asset(s): [•]³

- (b) The Customer will ensure that the Managing Agent shall invest the *Mushārahah* Capital solely for the purpose of the *Mushārahah* Project and to the extent provided for in the Agreement and in this *Mushārahah* Business Plan.

2. Expected *Mushārahah* Profit

The Customer represents that the value of the *Mushārahah* Assets will appreciate upon completion of the *Mushārahah* Project and the *Mushārahah* is expected to generate the net profit of at least [•] per cent. ([•] %) per annum on the *Mushārahah* Capital (the “**Projected *Mushārahah* Profit**”).

3. Undertaking on the *Mushārahah* Business Plan

The Customer represents that it has prepared the *Mushārahah* Business Plan using all due care and diligence and owns the contents of this *Mushārahah* Business Plan. The Customer warrants that the Bank can enter into the *Mushārahah* solely relying on the contents of this *Mushārahah* Business Plan and that the Customer shall be solely responsible for the consequences for any loss incurred or suffered by the Bank due to any misrepresentations, negligence, breach, fraud and misconduct of the Customer.

SCHEDULE 2

Form of Bank Contribution Request

To: [•] as a partner

Dated: [•]

Dear Sirs,

Mushārah Agreement dated [•] (the “Agreement”)

1. We refer to the Agreement. This is a Bank Contribution Request referenced therein. Unless the context requires otherwise, terms and expressions used in this Bank Contribution Request and not defined herein shall have the same meanings as in the Agreement (whether as set out therein or by reference to another document).
2. We request that you advance the Bank Contribution as follows:

Proposed Bank Contribution Payment Date:	[•] (or, if that is not a Business Day, the next Business Day)
Bank Contribution:	[•]
3. We hereby confirm as follows:
 - (a) The Lease Commencement Date will be [•]; and
 - (b) The Rental Payments for the First Rental Period shall be [•]; and the same has been calculated as follows:
 - (i) Base Rental Payment: _____
 - (ii) Variable Element: _____
 - (c) The Rental Payment Date for the First Rental Period shall be [•].
4. We hereby certify that:
 - (a) no Default has occurred and is continuing or would result from the proposed payment of the Bank Contribution;
 - (b) each representation and warranty in the Agreement remains true and correct in all material respects on the date of this Bank Contribution Request.
5. The amount of the Bank Contribution should be credited to [*insert account details*].
6. This Bank Contribution Request is irrevocable.
7. This Bank Contribution Request is governed by, and shall be construed in accordance with the laws of [•].

Yours faithfully,

For and on behalf of [•]

SCHEDULE 3**[Conditions Precedent]****1. Execution of Transaction Documents**

Duly executed originals of each Transaction Document.

2. Corporate Documents

(a) A copy of the constitutional documents of the Customer.

(b) A copy of a resolution of the shareholders / board of directors of the Customer which resolves, among other things, to:

(i) approve the terms of, and the transactions contemplated by, the Transaction Documents (in all of its capacities);

(ii) authorise a specified person or persons to execute the Transaction Documents on its behalf; and

(iii) authorise a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant any Bank Contribution Request or Renewal Notice) to be signed and/or despatched by it under or in connection with the Transaction Documents (in whatever capacity).

(c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.

(d) A certificate of an authorised signatory of the Customer certifying that each copy document relating to it and specified in this Schedule 3 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

(e) A certificate of an authorised signatory of the Customer certifying that no Default has occurred and is continuing.

3. Financial Statements

(a) Certified copies of the Original Financial Statements.

(b) The most recently available unaudited financial statements of the Customer.

4. Legal opinion

(a) A legal opinion of a [•] counsel, legal advisers to the Customer in [•], as to the power and capacity of the Customer to enter into each of the Transaction Documents substantially in the form distributed to the Bank prior to signing this Agreement.

(b) A legal opinion of a [•] counsel, legal advisers to the Bank in [•], as to the enforceability of the Transaction Documents substantially in the form distributed to the Bank prior to signing this Agreement.

5. *Mushārah* Project-related documents

[•]

6. Other documents and evidence

(a) Evidence of the payment of the Customer Contribution to the *Mushārah* Capital.

- (b) A copy of any other document, opinion or assurance which the Bank considers to be reasonably necessary or desirable (if it has notified the Customer accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
- (c) Evidence that all of the fees, costs and expenses then due from the Customer (in whatever capacity) pursuant to the Transaction Documents have been paid.
- (d) [A group structure chart certified by the Customer as being true at the date of this Agreement.]
- (e) All “know your customer” documentation required by the Bank in form and substance satisfactory to the Bank.]

SIGNATURE PAGE**The Customer**

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Bank

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTES

- 1 This payment waterfall needs to comply with the principles of *shari'ah*.
- 2 Please note that a process agent appointment is required where the relevant Party does not have a registered place of business in England or Wales (if governed under English law).
- 3 A detailed description of the assets and all key contracts entered into or to be entered into in relation to the project (such as EPC contract, O&M contract and other supply or procurement contracts) are to be inserted.



APPENDIX L

Mushārahah based financing mushārahah management agreement



dated

[●]

by

[Name of bank/financial institution]

as a *mushārahah* partner

[Name of the project company]

as a *mushārahah* partner

and

[Name of the project company]

as managing agent

[Disclaimer: This is a sample template document for reference purpose. The World Bank Group and any of its advisors jointly or severally are not responsible for the use of this document or for any damages or losses resulting from the use of this document or any transactions entered into under or in connection with this document.]

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THIS AGREEMENT (the “**Agreement**”) is dated _____ and made

BETWEEN:

- (1) [*Name of a bank/financial institution*] incorporated in [*name of country*], having its [*head office*][*registered office*] at [*address*] as a *mushārah* partner (the “**Bank**”);
- (2) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as a *mushārah* partner (the “**Customer**”); and
- (3) [*Name of the project company*], [a limited liability company] incorporated in [*name of country*] having its registered office at [*address*] as *mushārah* managing agent (the “**Managing Agent**”).

RECITALS:

- (A) The Customer and the Bank (each a “**Partner**” and together the “**Partners**”) have entered into a *mushārah* agreement (the “**Mushārah Agreement**”) on the same date as the date of this Agreement.
- (B) The Partners hereby appoint the Managing Agent to act as manager of the *Mushārah* in accordance with the terms of this Agreement and the Managing Agent accepts such appointment.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise does not so admit, terms defined in the *Mushārah* Agreement have the same meaning when used in this Agreement (including its Recitals). In addition:

“**Approved [Insurer/Takāful] Provider**” means an independent third party which is an international and recognised [*insurance/takāful*] broker approved by the Partners.

“**[Insurance/Takāful]**” means the [*insurance/takāful*] policies approved by the Partners and taken out with an Approved [*Insurer/Takāful*] Provider and relating to the *Mushārah* Assets.

“**Liabilities**” means any amount due or owed by the Managing Agent (whether actual or contingent).

“**Management Services**” means the services to be provided by the Managing Agent to the *Mushārah* in accordance with Clause (*Management Services*).

“**Managing Agent’s Account**” means the bank account(s) in the name of the Managing Agent held with the Bank.

“**Partial Loss**” means the partial loss, destruction of, or damage to, one or more of the *Mushārah* Assets, including any event or occurrence that renders one or more of the *Mushārah* Assets unfit for any economic use, whether permanently or not, and (but only after taking into consideration the proceeds of any [*insurance/ takāful*] received and the period of time required to reinstate the assets) the repair or remedial work in respect thereof is uneconomical.

“**Policyholder**” means a beneficiary under an [Insurance/*Takāful*].

“**Termination Event**” means an event referred to in Clause 9.1 (*Termination Events*).

“**Total Loss**” means the total loss, destruction of, or damage to, the whole (or substantially the whole) of the *Mushārah* Assets or any event or occurrence that renders the whole (or substantially the whole) of the *Mushārah* Assets permanently unfit for any economic use and (but only after taking into consideration the proceeds of any [insurances/*takāful*] received and the period of time required to reinstate the assets) the repair or remedial work in respect thereof is wholly uneconomical.

1.2 Interpretation and Construction

(a) Unless a contrary indication appears or the context does not so admit, any reference in this Agreement to:

- (i) any Partner shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) this Agreement or any other agreement or instrument is a reference to any such agreement or instrument as amended;
- (iii) 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) or two or more of the foregoing;
- (iv) a date or any period of time is by reference to the Gregorian calendar and to Riyadh time respectively;
- (v) *Shari’ah* shall be interpreted in accordance with the *Shari’ah* Standards for Islamic financial institutions issued by the Accounting and Auditing Organisation for Islamic Financial Institutions, Bahrain;
- (vi) the singular includes the plural and vice versa; and
- (vii) “[•]” denotes the lawful currency for the time being of [•].

(b) Clause and Schedule headings are for ease of reference only.

2. APPOINTMENT OF THE MANAGING AGENT

(a) The Partners hereby appoint the Managing Agent to:

- (i) act as manager of the *Mushārah* in accordance with the terms of this Agreement, subject to the overall control and supervision of the Partners; and
- (ii) invest and manage the *Mushārah* Capital in accordance with the investment objective and approach and subject to the *Mushārah* Business Plan and the *Mushārah* Agreement or as otherwise stipulated by the Partners from time to time.

- (b) The Managing Agent hereby accepts the appointment referred to in paragraph (a) above in consideration for the payment of the amount of [•] ([•]) by the Partners (the receipt and adequacy of which the Managing Agent hereby acknowledges) and agrees to assume the obligations set forth in this Agreement.

3. MANAGEMENT SERVICES

- (a) Subject to the *Mushārah* Business Plan and the terms and conditions set out in the *Mushārah* Agreement and this Agreement, the Managing Agent shall act as the agent of the *Mushārah* to carry out, and not omit to carry out, all reasonable actions necessary for the proper implementation of the *Mushārah* Business Plan.
- (b) Except as expressly provided in this Agreement, or as the Managing Agent may be otherwise expressly authorised, the Managing Agent has no authority, whether implied or otherwise, to act for or represent any or all of the Partners and the Managing Agent shall not be deemed an agent of any or all of the Partners.
- (c) The Managing Agent shall, without prejudice to any of the foregoing, also provide the following services in accordance with the *Mushārah* Business Plan:
 - (i) pay all Taxes as and when they fall due, are charged, levied or claimed in respect of the *Mushārah* Assets by any relevant taxing authority and provide full evidence of such payments to the Partners;
 - (ii) obtain and maintain all necessary authorisations, consents, licences or approvals, in connection with the *Mushārah* Business Plan or otherwise required for the purpose of carrying out its obligations under the Transaction Documents;
 - (iii) take out and maintain the [Insurances/*Takāful*] in accordance with the provisions of Clause 4 ([*Insurance/Takāful*]) hereof;
 - (iv) operate the *Mushārah* Account on behalf of the *Mushārah*; and
 - (v) carry out all other actions which may, in the Partners' opinion, reasonably be expected of the Managing Agent for the implementation of the *Mushārah* Business Plan.
- (d) At the end of the *Mushārah* Period, the Managing Agent shall make such distributions as are required in accordance with clause 7 (*Liquidation of the Mushārah*) of the *Mushārah* Agreement.
- (e) The Managing Agent shall provide the Management Services:
 - (i) in accordance with all applicable laws and regulations; and
 - (ii) with due skill, care and diligence, being no less than that which it would exercise in respect of its own assets of value.
- (f) In carrying out its duties under this Agreement, the Managing Agent may appoint agents and/or employees subject to notice being to such authorities as may be required under any applicable laws, rules or regulations having the force of law and provided that the Managing Agent shall remain liable to the Partners under this Agreement in relation to the conduct, acts or omissions of any such agents and/or employees.

4. [INSURANCE/TAKĀFUL]

- (a) The Managing Agent shall:
- (i) ensure that the [Insurances/*Takāful*] are taken out and maintained at all times with an insurer acceptable to the Partners;
 - (ii) assume full responsibility for ensuring that:
 - (A) in the event of Total Loss, all [insurance/*takāful*] proceeds shall be applied in the purchase of new assets which are identical or substantially similar to the affected *Mushārah* Assets (for the avoidance of doubt such new assets shall become *Mushārah* Assets);
 - (B) in the event of Partial Loss, all [insurance/*takāful*] proceeds shall be applied in the re-instatement of the affected *Mushārah* Assets; and
 - (C) in the event where [insurance/*takāful*] proceeds are payable before the end of the *Mushārah* Period but are paid after the end of the *Mushārah* Period, share such proceeds among the Partners on a pro-rata basis of their Proportionate Share at the end of the *Mushārah* Period.
- (b) In carrying out its duties under this Agreement, the Managing Agent shall:
- (i) not do anything, and shall not permit anything to be done, that may, in the Partners' reasonable opinion, render void or voidable any [Insurances/*Takāful*];
 - (ii) pay promptly all premiums or equivalent payments relating to [Insurances/*Takāful*] as and when they fall due and do all things necessary to keep all [Insurances/*Takāful*] in full force and effect;
 - (iii) ensure that any [Insurances/*Takāful*] cannot be terminated by the Approved [Insurer/*Takāful*] Provider for any reason whatsoever including failure to pay the premium or any other amount under such [Insurances/*Takāful*], without less than 30 days' prior written notification to the Managing Agent, such modification to be then sent by the Managing Agent to the Partners;
 - (iv) do, omit to do or permit to be done or not be done, anything that might prejudice any right to claim or recover under any [Insurances/*Takāful*] that a Policyholder may have;
 - (v) procure that no reductions in limits or coverage including those relating to renewal or extension, or increases in deductibles, exclusions or exceptions, will be made to any of the [Insurances/*Takāful*] without the prior written consent of the Partners;
 - (vi) notify the Partners immediately of any event entitling a Policyholder to claim for an aggregate amount (without taking into account any deductibles) exceeding [•] (or its equivalent in any other currency or currencies) under any one or more of the [Insurances/*Takāful*];
 - (vii) in the event of any loss or damage to any *Mushārah* Assets, for which no [insurance/*takāful*] is available or no [insurance/*takāful*] proceeds are received due to the fraud, negligence, wilful default or gross misconduct of the Managing Agent and/or its failure to comply with its obligations under this Agreement or any [Insurances/*Takāful*], procure, at its own cost and expense, that all necessary repairs and rebuilding are made which are, in the Partners' reasonable opinion, required to restore the affected *Mushārah* Assets, to good operating condition;

- (viii) promptly make and pursue any and all claims under the [Insurances/*Takāful*]; and
- (ix) ensure that, in the event of Partial Loss or Total Loss, all monies received or recoverable by the Managing Agent from such Partial Loss or Total Loss are immediately paid into the *Mushārah* Account.

5. TITLE AGENT AND UNDERTAKING

- (a) The Partners hereby appoints the Managing Agent as their agent to hold the title to, and ownership of, the *Mushārah* Assets for and on behalf of the *Mushārah* and/or each Partner.
- (b) The Managing Agent hereby accepts such appointment and irrevocably and unconditionally undertakes to hold the title to, and ownership of, the *Mushārah* Assets for and on behalf of the *Mushārah* and/or each Partner until such time the Partners or the Bank instruct the Managing Agent to transfer the title to, and ownership of, the *Mushārah* Assets in the name of the Partners, any of them or any of their nominee.
- (c) If any person succeeds the Managing Agent by succession or inheritance (if the Managing Agent is an individual) or operation of law or merger or acquisition or consolidation or other corporate changes, then such person shall succeed the Managing Agent as agent (of the *Mushārah* and/or the Partners) hereunder without any further act on the part of the *Mushārah* and/or the Partners or such person, as the case may be. Without prejudice to the foregoing, the Managing Agent undertakes to procure that such person takes such steps as may be necessary to give effect to such succession. Any costs arising as a result of such succession shall be borne by the *Mushārah* and/or the Partners. In the case of any such succession, the Managing Agent shall give prompt notice to the Bank.
- (d) Upon receipt of notice, at any time, from the Bank, the Managing Agent shall, [at the costs and expenses of the *Mushārah*], immediately transfer or cause to be transferred to the Bank or its nominee the title to, and ownership of, the Bank's Proportionate Share in the *Mushārah* Assets.

6. DEPOSIT AND DISBURSEMENT OF FUNDS

All receipts and monies arising from the day-to-day operations of the *Mushārah* Assets shall be deposited in the Managing Agent's Account. The Managing Agent, acting on behalf of the *Mushārah*, shall, with such funds as are available, make such disbursements and payments from the Managing Agent's Account as are necessary in connection with the *Mushārah* Expenses.

7. REPRESENTATIONS AND WARRANTIES

The Managing Agent makes the representations and warranties set out in this Clause (*Representations and Warranties*) to the Partners on the date of this Agreement:

7.1 Status

- (a) It is a [*insert type of company*] company, duly incorporated and validly existing under the law of [•];
- (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.

7.3 Non-conflict with other obligations

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

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

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 and the transactions contemplated by this Agreement.

7.5 Validity and admissibility in evidence

All Authorisations required:

- (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 [•], have been obtained or effected and are in full force and effect.

7.6 No Material Defaults

It is not in breach of or in default under any agreement to which it, as the case may be, is a party or which is binding on it, as the case may be, or any of its assets to an extent or in a manner which could reasonably be expected to have a Material Adverse Effect.

7.7 No Misleading Information

- (a) Any factual information provided by it in connection with this Agreement was, to the best of its knowledge, 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.
- (b) All financial projections provided to the Bank have been prepared in good faith, on the basis of recent historical information and on the basis of reasonable assumptions.

7.8 Financial statements

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements fairly represent its financial condition and operations during the relevant financial year.
- (c) There has been no material adverse change in the business or financial condition of the Managing Agent since the date of the Original Financial Statements.

7.9 Deduction of tax

It is not required, as at the date of this Agreement, under the laws of [•] to make any deduction for or on account of Tax from any payment it may make under this Agreement.

7.10 No filing or stamp taxes

Under the laws of [•], as at the date of this Agreement, 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.

7.11 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started which could reasonably be expected to have a Material Adverse Effect.

7.12 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.

7.13 No Insolvency

No corporate action, legal proceedings or other procedures or steps have been taken or, to the best of its knowledge and belief, are threatened against it for its winding-up dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or any of its assets or revenues and the entry into and performance by the Managing Agent of its obligations under this Agreement will not cause any of the aforementioned procedures or steps to occur.

7.14 Private and commercial acts

Its execution of this Agreement constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes and in any proceedings taken in its jurisdiction of incorporation in relation to this Agreement, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

7.15 Shari'ah compliance

It has not relied on any representation made by the Bank as to the *shari'ah* compliance of the transaction contemplated by this Agreement or any other *Musharakah* Document and has independently made its own assessment as to whether such transactions are compliant with *shari'ah*.

7.16 Repetition

It undertakes with the Bank that the representations and warranties set out in this Clause 7 (*Representations and Warranties*) will be true and accurate as at the date of this Agreement, and it shall be deemed to repeat such representations and warranties on each day throughout the continuation of the *Mushārahah* Period and so long as any sum is or may become payable under any *Mushārahah* Document or with respect to the *Mushārahah* with reference to the facts and circumstances subsisting from time to time.

7.17 Acknowledgement of reliance

It acknowledges that the Bank has entered into this Agreement and the other *Mushārahah* Documents in reliance upon the representations and warranties contained in this Clause (*Representations and Warranties*).

8. LIQUIDATION OF THE MUSHĀRAKAH

The Managing Agent shall liquidate the *Mushārahah* and distribute the *Mushārahah* Assets in accordance with clause 7 (*Liquidation of the Mushārahah*) of the *Mushārahah* Agreement.

9. TERMINATION EVENTS AND TERMINATION

9.1 Termination Events

The events described in this Clause (*Termination Events*) shall be referred to as the “**Termination Events**”.

- (a) The Managing Agent suspends or ceases to carry on or, in the opinion of the Partners, is likely to suspend or cease to carry on, all or a material part of its business.
- (b) The Managing Agent does not pay on the due date any amount payable by it pursuant to a Transaction Document at the place and in the currency in which it is expressed to be payable, unless its failure to pay is: (i) caused by an administrative or technical error, (ii) any such amount was available in clear funds on such due date and (iii) payment is made within [five (5)] Business Days of its due date.
- (c) The Managing Agent does not comply with a provision of the Transaction Documents and such non-compliance has a Material Adverse Effect.
- (d) Any material representation or statement made or deemed to be made by the Managing Agent in this Agreement or any other document delivered by or on behalf of the Managing Agent under or in connection with any Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (e) The Managing Agent:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its Liabilities or fails or admits in writing its inability generally to pay its Liabilities as they become due;

- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
 - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
 - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (vii) (inclusive) above; or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- (f) By or under the authority of any government:
- (i) the [board of directors] of the Managing Agent is displaced or the authority of the Managing Agent in the conduct of its business is curtailed, in each case in any material respect; or
 - (ii) all or substantially all of the issued share capital of the Managing Agent or the whole or a substantial part of its revenues or assets is nationalised or expropriated.
- (g) It becomes unlawful for the Managing Agent to perform any of its material obligations under any Transaction Document.
- (h) The Managing Agent repudiates a Transaction Document or evidences an intention to repudiate a Transaction Document.
- (i) There is an event or circumstance which, in the Partners' opinion, is likely to have a Material Adverse Effect.
- (j) A Total Loss occurs and no assets are further acquired with the [Insurance/*Takāful*] proceeds arising from such Total Loss.

9.2 Termination

- (a) Upon the occurrence of a Termination Event under Clause (*Termination Events*) and without prejudice to any other right or remedy any Partner may have, the Partners shall each have the right to terminate immediately this Agreement.
- (b) This Agreement shall continue to remain in force unless and until terminated by the Partners giving to the Managing Agent not less than [30] days' written notice (or on such shorter notice as the Parties may agree), provided that, where applicable, such termination shall only become effective as from the moment a new managing agent, acceptable to the Partners and capable of providing at least the same or substantially similar services as the Managing Agent and at standards at least equal to applicable to the Managing Agent under this Agreement, has been appointed on terms that are the same or substantially the same as the terms of this Agreement.
- (c) If applicable, the parties hereby agree to use all reasonable endeavours to procure that the appointment of a new managing agent as referred to in paragraph (b) above shall not unreasonably be delayed.
- (d) This Agreement may be terminated forthwith by notice in writing by a party (the "notifying party"), if any other party shall:
 - (i) commit any material breach of its obligations under this Agreement and, if such breach is capable of being made good, shall fail to make good such breach within [30] days of receipt of written notice from the notifying party requiring it so to do; or
 - (ii) be liquidated or dissolved (except a voluntary liquidation or a voluntary dissolution for the purposes of consolidation, amalgamation or merger upon terms previously approved in writing by the notifying party) or be unable to pay its Liabilities as they fall due or commit any act of bankruptcy under the laws of any jurisdiction to which that party may be subject or if a receiver is appointed over any of its assets.
- (e) Termination of this Agreement shall be without prejudice to the completion of transactions already initiated in accordance with the Transaction Documents. The Managing Agent shall complete such transactions as soon as reasonably practicable.

10. INDEMNITY

Without any recourse to the *Mushārahah* Assets, the Managing Agent agrees to indemnify and keep indemnified the Partners, their associates, employees, directors or agents from and against any actual cost, loss, liability, claim or damage (including all legal fees and expenses on a full indemnity basis) which the Partners, their associates, employees, directors or agents, incur or suffer as a consequence of, or would not have arisen but for of any default by the Managing Agent in the due and punctual performance of any of its obligations under this Agreement or as a result of the Managing Agent's negligence, fraud or wilful misconduct.

11. CONFIDENTIALITY

- (a) The Managing Agent shall not disclose or divulge any information received during the performance of this Agreement relating to the business of the *Mushārah* or a Partner and shall procure that every person connected with or associated with them shall keep confidential and shall not disclose without the prior written consent of the Partners any information with respect to the *Mushārah* or the Partners.
- (b) Paragraph (a) above shall not prevent the disclosure of information by the Managing Agent to its auditors or legal or other professional advisers where reasonably required for the proper performance of their duties, or where required by compulsion of law or pursuant to the requirements of any competent regulatory, tax or other authority.
- (c) Paragraph (a) shall not apply to information which is in the public domain otherwise than due to a breach of this Clause (*Confidentiality*).

12. AMENDMENTS AND WAIVERS

Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall only be effective if made in writing and signed by all parties to this Agreement.

13. ASSIGNMENT

13.1 Assignment by the Customer or Managing Agent

Neither the Customer nor the Managing Agent may assign or transfer any of its rights, benefits and obligations under this Agreement.

13.2 Assignment by the Bank

The Bank may at any time assign to any one or more persons all or any part of its rights, benefits and obligations under or arising out of this Agreement.

13.3 Ancillary Provisions

The Customer and the Managing Agent shall execute and do all such transfers, assignments, assurances, acts and things as the Bank may reasonably request for perfecting and completing any assignment of rights, benefits and obligations pursuant to Clause (*Assignment by the Bank*).

14. NOTICES

14.1 Delivery

- (a) Each notice, demand or other communication to be given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or fax number set out in its respective place for signature below (or such other address or fax number as the addressee has by not less than three (3) Business Days' prior written notice specified to the other party).

- (b) 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 (as evidenced by a fax transmission report showing that the entire communication was received); or
 - (ii) if by way of letter, when left at the relevant address, provided that a communication which is received after 5:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be delivered on the next full working day in that place.

14.2 Fax Indemnity

- (a) Subject to the terms of Clause (*Delivery*), the Bank is authorised to act without further enquiry upon any instruction or communication received by facsimile which it reasonably believes in good faith to be an instruction or communication given or made by the Customer, the Managing Agent or any person authorised by the Customer or the Managing Agent to give instructions or make other communications by facsimile on their behalf and is entitled to treat any such instruction or communication as fully authorised by and binding upon the Customer and/or the Managing Agent regardless of the circumstances prevailing at the time such instruction or communication is given or made. the Customer and/or the Managing Agent shall indemnify the Bank and its officers, directors, employees, representatives and agents from and against any cost, claim, loss, expense (including legal fees) or liability which any of them may reasonably incur or sustain by reason of having acted upon any such instruction or communication.
- (b) The Customer and the Managing Agent shall from time to time or on the request of the Bank provide a list of authorised signatories to the Customer and the Managing Agent.

14.3 Electronic communication

- (a) Any communication to be made between the parties in relation to routine and administrative matters under or in connection with the Transaction Documents may be made by electronic mail or other electronic means, unless and until notified to the contrary by a party, if the parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form, provided that a communication which is received after 5:00 p.m. on a working day, or on a day which is not a full working day, in the place of receipt shall be deemed to be effective on the next full working day in that place.

14.4 English language

- (a) Any notice given under or in connection with any Transaction Document must be in English.
- (b) All other documents (other than the Managing Agent's constitutional documents) provided under or in connection with any Transaction Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

15. BENEFIT OF THE AGREEMENT

The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. PARTIAL INVALIDITY

If, at any time, any provision of a Transaction Document 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.

17. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under a Transaction Document 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 the Transaction Documents are cumulative and not exclusive of any rights or remedies provided by law.

18. COUNTERPARTS

Each Transaction Document may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery by facsimile or electronic communication of an executed counterpart of a signature page to a Transaction Document shall be effective as delivery of an original executed counterpart of such Transaction Document.

19. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, [•].

20. JURISDICTION OF [•] COURTS

20.1 Jurisdiction

Without prejudice to Clause 21 (*Arbitration*), each of the Customer and the Managing Agent irrevocably agrees for the benefit of the Bank that the courts of [•] shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement or any other Transaction Document and, for such purposes, irrevocably submits to the jurisdiction of such courts.

20.2 Waiver of objection to jurisdiction

Each of the Customer and the Managing Agent irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause (*Jurisdiction*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that any such court is not a convenient or appropriate forum.

20.3 [Process Agent

- (a) Each of the Customer and the Managing Agent agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered, in connection with any dispute, suit, action or proceeding in [•], to [•]. If the appointment of the person mentioned in this Clause (*Process Agent*) ceases to be effective in respect of the Customer and/or the Managing Agent, each of the Customer and the Managing Agent shall immediately appoint a further person in [•] to accept service of process on its behalf in [•] and, failing such appointment within [fifteen (15)] days, the Bank shall be entitled to appoint such a person by notice to the Customer and the Managing Agent.
- (b) Each of the Customer and the Managing Agent further agrees that failure by a process agent to notify the Customer and/or the Managing Agent of the process will not invalidate the proceedings concerned.]¹

20.4 No limitation

The submission to the jurisdiction of the courts referred to in Clause (*Jurisdiction*) shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Customer and/or the Managing Agent in any other forum or court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other forum or jurisdiction (whether concurrently or not) to the extent permitted by applicable law.

20.5 Consent

The Customer hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement or any other Transaction Document to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

20.6 Waiver of Immunity

To the extent that the Customer or the Managing Agent 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), each of the Customer and the Managing Agent hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

21. ARBITRATION

21.1 Bank's Option

Notwithstanding Clause 20 (*Jurisdiction of [•] Courts*), the Bank may, at their sole discretion, require that all disputes or any specific dispute be heard by arbitration pursuant to this Clause (*Arbitration*).

21.2 Arbitration

Each of the Customer and the Managing Agent irrevocably agrees for the benefit of the Bank that any disputes which may arise out of or in connection with this Agreement or any other Transaction Document (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”) shall be referred to and finally resolved by arbitration under the [Rules of Arbitration of the London Court of International Arbitration (“**LCIA**”) in force at the time the arbitration commences, which rules are deemed incorporated by reference into this Clause (*Arbitration*).

21.3 Procedure for arbitration

- (a) Unless otherwise agreed by the parties to a Dispute, the arbitration shall take place in [Dubai] / [Dubai International Financial Center (DIFC)] and shall be conducted in the [English] language.
- (b) Unless otherwise agreed by the parties, Disputes shall be arbitrated by a panel of three (3) arbitrators (the “**Tribunal**”), one nominated by the Customer and the Managing Agent, one nominated by the Bank and the third (who shall act as the presiding arbitrator) nominated by the two party appointed arbitrators. If no presiding arbitrator has been nominated within thirty (30) days after the appointment of the second arbitrator, the Customer and/or the Managing Agent and the Bank may request the President of the LCIA (or such other person as the Customer and/or the Managing Agent and the Bank may agree) to designate someone to effect such appointment.
- (c) It is expressly agreed that, if there is more than one claimant party and/or more than one respondent party, the President of the LCIA shall appoint the three arbitrators of the Tribunal on their behalf.
- (d) None of the arbitrators shall:
 - (i) be an employee or agent or former employee or agent of the Customer and the Managing Agent, the Bank or any person that directly or indirectly beneficially owns any share capital of the Customer and/or the Managing Agent or the Bank;
 - (ii) have any political or business ties to the country of establishment of the Customer and/or the Managing Agent or the Bank; or
 - (iii) be a person with familial ties to the Customer and/or the Managing Agent or the Bank.
- (e) The award of the Tribunal in relation to a Dispute shall be final and binding on the parties. The parties hereby waive any right to apply to any court of law and/or other judicial authority to determine a preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may be validly made.
- (f) The parties agree that any arbitral award may be enforced against the parties to an arbitration and their respective assets.
- (g) The arbitral tribunal shall have the power to award the costs of the arbitral award against the losing party to such arbitration or as between the parties to such arbitration as the arbitral tribunal in its discretion deems appropriate.
- (h) If any Dispute raises issues which are substantially the same as or connected with issues raised in another Dispute which has already been referred to arbitration under any of the Transaction Documents including this Agreement (an “**Existing Dispute**”), or arises out of substantially the same facts as are the subject of any Existing Dispute (a “**Related Dispute**”), the Tribunal appointed or to be appointed

in respect of any such Existing Dispute shall also be appointed as the Tribunal in respect of any Related Dispute.

- (i) The Tribunal, upon the request of a party to a Dispute or a party to this Agreement which itself wishes to be joined in any reference to arbitration proceedings in relation to a Dispute, may join any party to this Agreement to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between them. Each of the parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute at the request of a party to that Dispute.
- (j) Where, pursuant to the above provisions, the same Tribunal has been appointed in relation to two or more Disputes, the Tribunal may, with the agreement of all the parties concerned or upon the application of one of the parties, being a party to each of the Disputes, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Tribunal thinks fit. The Tribunal shall have power to make such directions and any interim or partial award as it considers just and desirable.

21.4 Waiver of objection to Arbitration

Each of the Customer and the Managing Agent irrevocably waives any objection which it might now or hereafter have to the arbitration referred to in Clause 21 (*Arbitration*) being nominated as the forum to hear and determine any Dispute, which may arise out of or in connection with this Agreement or any other Transaction Document and agrees not to claim that such forum is not a convenient or appropriate forum.

21.5 Payment of Interest

The parties hereto recognise and agree that payment of interest is repugnant to the principles of *Shari'ah* 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.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the date first written above.

SIGNATURE PAGES**The Partners**

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

The Managing Agent

SIGNED for and on behalf of)
 [•]) _____

Name: _____

Title: _____

Address for notices: [•]

Fax No: [•]

Email: [•]

For the attention of: [•]

NOTE

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



The World Bank Group provides assistance to governments in developing countries to improve access to infrastructure and basic services through public-private partnerships (PPP). When designed well and implemented in a balanced regulatory environment, PPPs can bring greater efficiency and sustainability to the provision of such public services as water, sanitation, energy, transport, telecommunications, health care and education.

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