

**EXECUTION VERSION**

**NEPTUNE PROJECT HOLDING 3 LIMITED  
AS PURCHASER**

**DUBAI ISLAMIC BANK PJSC  
AS INVESTMENT AGENT**

**DUBAI ISLAMIC BANK PJSC  
AS MANDATED LEAD ARRANGER AND BOOKRUNNER**

**DUBAI ISLAMIC BANK PJSC  
AS THE ORIGINAL FACILITY B1 LONG PARTICIPANT**

**DUBAI ISLAMIC BANK PJSC  
AS THE ORIGINAL FACILITY B1 SHORT PARTICIPANT**

**DUBAI ISLAMIC BANK PJSC  
AS THE ORIGINAL FACILITY B2 LONG PARTICIPANT**

**AND**

**DUBAI ISLAMIC BANK PJSC  
AS THE ORIGINAL FACILITY B2 SHORT PARTICIPANT**

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**INVESTMENT AGENCY AGREEMENT**

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**THIS INVESTMENT AGENCY AGREEMENT** (the "**Agreement**") is dated 29 December 2023 and made

**BETWEEN:**

- (1) **NEPTUNE PROJECT HOLDING 3 LIMITED** (in this capacity, the "**Purchaser**");
- (2) **DUBAI ISLAMIC BANK PJSC** as investment agent for the Participants (in this capacity, the "**Investment Agent**");
- (3) **DUBAI ISLAMIC BANK PJSC** as mandated lead arranger and bookrunner (in this capacity, the "**Mandated Lead Arranger**");
- (4) **DUBAI ISLAMIC BANK PJSC** (in this capacity, the "**Original Facility B1 Long Participant**");
- (5) **DUBAI ISLAMIC BANK PJSC** (in this capacity, the "**Original Facility B1 Short Participant**");
- (6) **DUBAI ISLAMIC BANK PJSC** (in this capacity, the "**Original Facility B2 Long Participant**"); and
- (7) **DUBAI ISLAMIC BANK PJSC** (in this capacity, the "**Original Facility B2 Short Participant**").

**WHEREAS:**

- (A) The Purchaser proposes to enter into the Master Murabaha Agreement pursuant to which the Investment Agent shall make available to the Purchaser murabaha facilities on the terms set out therein.
- (B) The Participants hereby appoint the Investment Agent to act for them and on their behalf in respect of the Murabaha Finance Documents.
- (C) The Purchaser hereby acknowledges and agrees to the terms of appointment of the Investment Agent set out in this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**"Available B1 Long Commitment"** means, at any time in relation to a Participant, the Murabaha B1 Long Facility Commitment of that Participant:

- (a) minus the aggregate amount of its Participations in relation to the Murabaha B1 Long Facility Contracts then outstanding; and

- (b) in relation to a proposed Murabaha B1 Long Facility Contract, minus the amount of its Participation in any Murabaha B1 Long Facility Contract that is due to be made on or before the proposed Value Date.

**"Available B1 Short Commitment"** means, at any time in relation to a Participant, the Murabaha B1 Short Facility Commitment of that Participant:

- (a) minus the aggregate amount of its Participations in relation to the Murabaha B1 Short Facility Contracts then outstanding; and
- (b) in relation to any proposed Murabaha B1 Short Facility Contract:
  - (i) minus the amount of its Participation in any Murabaha B1 Short Facility Contract that is due to be made on or before the proposed Value Date; and
  - (ii) plus the amount of its *Pro Rata* Share in the Purchase Price component of any Deferred Payment Price for any Murabaha B1 Short Facility Contract in dollars due to be paid or prepaid on or before the proposed Value Date.

**"Available B2 Long Commitment"** means, at any time in relation to a Participant, the Murabaha B2 Long Facility Commitment of that Participant:

- (a) minus the aggregate amount of its Participations in relation to the Murabaha B2 Long Facility Contracts then outstanding; and
- (b) in relation to a proposed Murabaha B2 Long Facility Contract, minus the amount of its Participation in any Murabaha B2 Long Facility Contract that is due to be made on or before the proposed Value Date.

**"Available B2 Short Commitment"** means, at any time in relation to a Participant, the Murabaha B2 Short Facility Commitment of that Participant:

- (a) minus the aggregate amount of its Participations in relation to the Murabaha B2 Short Facility Contracts then outstanding; and
- (b) in relation to any proposed Murabaha B2 Short Facility Contract:
  - (i) minus the amount of its Participation in any Murabaha B2 Short Facility Contract that is due to be made on or before the proposed Value Date; and
  - (ii) plus the amount of its *Pro Rata* Share in the Purchase Price component of any Deferred Payment Price for any Murabaha B2 Short Facility Contract in dollars due to be paid or prepaid on or before the proposed Value Date.

**"Available Commitment"** means the Available B1 Long Commitment, the Available B1 Short Commitments, the Available B2 Long Commitment and the Available B2 Short Commitments.

**"Available Facility"** means, in relation to a Murabaha Facility, the aggregate for the time being of each Participant's Available Commitment in respect of that Murabaha Facility.

**"Common Terms Agreement"** means the common terms agreement dated on or about the date of this agreement between, among others, the Purchaser and the Investment Agent.

**"Defaulting Participant"** means any Participant:

- (a) which has failed to make its Participation available or has notified the Investment Agent that it will not make its Participation available by the Value Date;
- (b) which has disaffirmed, rescinded, repudiated or has failed to carry out its obligations under or in connection with a Murabaha Finance Document or any term thereof (or in each case has evidenced an intention to do so);
- (c) which is a Sanctioned Entity; or
- (d) with respect to which (or any Holding Company of which) an Insolvency Event has occurred and is continuing.

**"Existing Participant"** means an Existing Financier which is a Participant.

**"Facility B1 Long Participant"** means:

- (a) an Original Facility B1 Long Participant; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Facility B1 Long Participant in accordance with Clause 14 (*Assignments and transfers by Participants*),

in each case, which has not ceased to be a Party as a Participant in accordance with the terms of this Agreement.

**"Facility B1 Short Participant"** means:

- (a) an Original Facility B1 Short Participant; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Facility B1 Short Participant in accordance with Clause 14 (*Assignments and transfers by Participants*),

in each case, which has not ceased to be a Party as a Participant in accordance with the terms of this Agreement.

**"Facility B2 Long Participant"** means:

- (a) an Original Facility B2 Long Participant; and

- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Facility B2 Long Participant in accordance with Clause 14 (*Assignments and transfers by Participants*),

in each case, which has not ceased to be a Party as a Participant in accordance with the terms of this Agreement.

**"Facility B2 Short Participant"** means:

- (a) an Original Facility B2 Short Participant; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Facility B2 Short Participant in accordance with Clause 14 (*Assignments and transfers by Participants*),

in each case, which has not ceased to be a Party as a Participant in accordance with the terms of this Agreement.

**"Facility Office"** means the office(s) notified by a Participant to the Investment Agent:

- (a) on or before the date it becomes a Participant; or
- (a) following that date, by not less than five Business Days' notice,

as the office(s) through which it will perform its obligations under the Murabaha Finance Documents.

**"Impaired Agent"** means the Investment Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Murabaha Finance Documents by the due date for payment;
- (b) the Investment Agent otherwise rescinds or repudiates a Murabaha Finance Document;
- (c) (if the Investment Agent is also a Participant) it is a Defaulting Participant under paragraph (a) or (b) of the definition of Defaulting Participant; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Investment Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; and
- payment is made within three Business Days of its due date; or

- (ii) the Investment Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

**"Majority Participants"** means, at any time, Participants:

- (a) whose share in the aggregate of the outstanding Murabaha Contracts and whose undrawn Murabaha Commitments then aggregate 66  $\frac{2}{3}$  per cent. or more of the aggregate of the outstanding Murabaha Contracts and all the undrawn Murabaha Commitments of all the Participants;
- (b) if there is no Murabaha Contract then outstanding, whose undrawn Murabaha Commitments then aggregate 66  $\frac{2}{3}$  per cent. or more of the Total Murabaha Commitments; or
- (c) if there is no Murabaha Contract then outstanding and the Total Murabaha Commitments have been reduced to zero, whose Murabaha Commitments aggregated 66  $\frac{2}{3}$  per cent. or more of the Total Murabaha Commitments immediately before the reduction.

**"Master Murabaha Agreement"** means the master murabaha agreement dated on or about the date of this Agreement between the Purchaser and the Investment Agent.

**"Murabaha B1 Long Facility Commitment"** means:

- (a) in relation to an Original Facility B1 Long Participant, the amount set out in Schedule 2 (*The Original Participant*) as its Murabaha B1 Long Facility Commitment and the amount of any other Murabaha B1 Long Facility Commitment it acquires; and
- (b) for any other Participant, the amount of any Murabaha B1 Long Facility Commitment it acquires,

to the extent not cancelled, transferred or reduced under the Murabaha Finance Documents.

**"Murabaha B1 Short Facility Commitment"** means:

- (a) in relation to an Original Facility B1 Short Participant, the amount set out in Schedule 2 (*The Original Participant*) as its Murabaha B1 Short Facility Commitment and the amount of any other Murabaha B1 Short Facility Commitment it acquires; and
- (b) for any other Participant, the amount of any Murabaha B1 Short Facility Commitment it acquires,

to the extent not cancelled, transferred or reduced under the Murabaha Finance Documents.

**"Murabaha B2 Long Facility Commitment"** means:

- (a) in relation to an Original Facility B2 Long Participant, the amount set out in Schedule 2 (*The Original Participant*) as its Murabaha B2 Long Facility

Commitment and the amount of any other Murabaha B2 Long Facility Commitment it acquires; and

- (b) for any other Participant, the amount of any Murabaha B2 Long Facility Commitment it acquires,

to the extent not cancelled, transferred or reduced under the Murabaha Finance Documents.

**"Murabaha B2 Short Facility Commitment"** means:

- (a) in relation to an Original Facility B2 Short Participant, the amount set out in Schedule 2 (*The Original Participant*) as its Murabaha B2 Short Facility Commitment and the amount of any other Murabaha B2 Short Facility Commitment it acquires; and
- (b) for any other Participant, the amount of any Murabaha B2 Short Facility Commitment it acquires,

to the extent not cancelled, transferred or reduced under the Murabaha Finance Documents.

**"Murabaha Commitment"** means the Murabaha B1 Long Facility Commitment, the Murabaha B1 Short Facility Commitment, Murabaha B2 Long Facility Commitment or the Murabaha B2 Short Facility Commitment.

**"Murabaha Finance Party"** means any of:

- (a) the Investment Agent;
- (b) the Security Agent; and
- (c) a Participant.

**"Participant"** means a Facility B1 Long Participant, a Facility B1 Short Participant, a Facility B2 Long Participant or a Facility B2 Short Participant.

**"Participation"** means, in relation to a Participant, the aggregate of the amounts actually contributed by the Participant to the Purchase Price of a Murabaha Contract minus the aggregate amount of its *Pro Rata* Share of the Purchase Price component of any Deferred Payment Price for a Murabaha Contract paid to it as part of a Remittance, to the extent not cancelled, transferred or reduced under the provisions of the Murabaha Finance Documents.

**"Party"** means a party to this Agreement.

**"Pro Rata Share"** means, in relation to a Participant:

- (a) for the purpose of determining its share in a Purchase Price for a Murabaha Contract under a Murabaha Facility, the proportion which its Available Commitment for the relevant Murabaha Facility bears to the Available Facility for the relevant Murabaha Facility;



- (b) for any other purpose at any time, as between the Participants:
  - (i) the proportion which its outstanding Participations (if any) then bear to all the outstanding Participations;
  - (ii) if there are no Participations then outstanding, the proportion which its Murabaha Commitment then bears to the Total Murabaha Commitments; or
  - (iii) if there are no Participations then outstanding and the Total Murabaha Commitments have been reduced to zero, the proportion which its Murabaha Commitment bore to the Total Murabaha Commitments immediately before the reduction.

**"Reimbursement Pro Rata Share"** means for the purpose of determining a Participant's share in a payment to be made to the Investment Agent on a particular date:

- (a) the proportion which a Participant's share of the outstanding Murabaha Contracts (if any) bears to the aggregate amount of all outstanding Murabaha Contracts;
- (b) if there are no Murabaha Contracts outstanding on that date, the proportion which its Murabaha Commitment bears to all the Total Murabaha Commitments on that date; or
- (c) if all the Total Murabaha Commitments have been cancelled, the proportion which its Murabaha Commitment bore to all the Total Murabaha Commitments immediately before being cancelled.

**"Remittance"** means any payment made or owing under any Murabaha Finance Document by the Purchaser due and payable to, and for the account of, the Participants excluding for the avoidance of doubt:

- (a) those payments referred to in Clause 8 (*Payments*); and
- (b) any other amounts received by the Investment Agent as reimbursement for its costs and expenses, save to the extent that the Investment Agent has been reimbursed for such costs and expenses by the Participants in accordance with Clause 8 (*Payments*).

## 1.2 Construction

In this Agreement:

- (a) unless defined otherwise or the context otherwise requires, terms defined in the Master Murabaha Agreement and the Common Terms Agreement have the same meaning in this Agreement;
- (b) unless expressly provided to the contrary, clauses 1.2 (*Construction*) and 1.3 (*Currency Symbols and Definitions*) of the Common Terms Agreement apply to this Agreement as if set out in full in this Agreement, except that references

in those provisions of the Common Terms Agreement to "this Agreement" are construed as references to this Agreement; and

- (c) certain provisions relating to the transactions contemplated by this Agreement are to be found in the Master Murabaha Agreement and the Common Terms Agreement and this Agreement should be read in conjunction with the Master Murabaha Agreement and Common Terms Agreement.

### 1.3 **Conflict**

The provisions of the Common Terms Agreement and the Intercreditor Agreement take precedence over and override any conflicting provision in this Agreement provided that no provision of the Common Terms Agreement (or any amendment to the Common Terms Agreement) or the Intercreditor Agreement (or any amendment to the Intercreditor Agreement) shall under any circumstances oblige any Murabaha Finance Party to:

- (a) receive, claim or demand the payment of any interest or any other amounts which are prohibited under *Shari'a* principles (as determined by the Fatwa and *Shari'a* Supervisory Board of the Investment Agent); or
- (b) undertake or perform any activity or participate in or benefit from any right which is prohibited under *Shari'a* principles (as determined by the Fatwa and *Shari'a* Supervisory Board of the Investment Agent).

### 1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in a Murabaha Finance Document, a person who is not a Party may not enforce or enjoy the benefit of any term of this Agreement or any Murabaha Contract under the Contracts (Rights of Third Parties) Act 1999.
- (b) Notwithstanding any term of this Agreement or any Murabaha Contract, no consent of any third party is required for any variation (including any release or compromise of any liability) or termination of this Agreement or any Murabaha Contract.

## 2. **MURABAHA FINANCE PARTIES' RIGHTS AND OBLIGATIONS**

The Purchaser acknowledges that:

- (a) the Investment Agent is acting under the Murabaha Finance Documents for and on behalf of the Participants as agent only and not as principal;
- (b) the obligations of each Murabaha Finance Party under the Murabaha Finance Documents are several;
- (c) the obligation of the Investment Agent to fund the Purchase Price for payment for Commodities the subject of a Murabaha Contract is conditional upon the Investment Agent first receiving the corresponding amount from the Participants;

- (d) no Murabaha Finance Party is responsible for the obligations of any other Murabaha Finance Party under the Murabaha Finance Documents;
- (e) failure by a Murabaha Finance Party to perform its obligations under the Murabaha Finance Documents does not:
  - (i) affect the obligations of any other Party under the Murabaha Finance Documents; or
  - (ii) render the Investment Agent responsible for either the obligations of a defaulting Participant or for the payment of the Purchase Price in full;
- (f) the rights of a Murabaha Finance Party under or in connection with the Murabaha Finance Documents are separate and independent rights;
- (g) a payment obligation arising under the Murabaha Finance Documents to a Murabaha Finance Party is a separate and independent payment obligation in respect of which a Murabaha Finance Party shall be entitled to enforce its rights in accordance with paragraph (h) below. The rights of each Murabaha Finance Party include any payment obligation owing to that Murabaha Finance Party under the Murabaha Finance Documents and, for the avoidance of doubt, any part of a Murabaha Contract or any other amount owed by the Purchaser which relates to a Murabaha Finance Party's participation in the Murabaha Facility or its role under a Murabaha Finance Document (including any such amount payable to the Investment Agent on its behalf) is a payment obligation owing to that Murabaha Finance Party by the Purchaser; and
- (h) a Murabaha Finance Party may, except as specifically provided in the Murabaha Finance Documents, separately enforce its rights under or in connection with the Murabaha Finance Documents.

### **3. ROLE OF THE INVESTMENT AGENT**

#### **3.1 Appointment of the Investment Agent**

- (a) In consideration for the Investment Agent agreeing to so act and the payment by the Participants of a fee in the amount of USD100 (the receipt and adequacy of which the Investment Agent hereby acknowledges), each Participant irrevocably:
  - (i) appoints the Investment Agent to act as its agent under and in connection with the Murabaha Finance Documents; and
  - (ii) irrevocably authorises the Investment Agent to:
    - (A) enter into and deliver on its behalf each Murabaha Finance Document expressed to be entered into by the Investment Agent; and
    - (B) perform the duties and to exercise the rights, powers, authorities and discretions under or in connection with the Murabaha Finance Documents that are specifically given to the Investment

Agent by this Agreement, together with any other rights, powers, authorities and discretions as are reasonably incidental thereto.

- (b) By its signature to this Agreement, the Investment Agent accepts its appointment as set out in this Clause 3.

### 3.2 **Extent of duties**

The Investment Agent has no duties, obligations or liabilities (whether fiduciary or otherwise) to the Participants beyond those expressly specified in this Agreement. Those duties are solely mechanical and administrative in nature.

### 3.3 **Rights of Participants**

The Purchaser agrees that, as between the Purchaser and the Participants, each Participant is as principal entitled to all the rights, benefits, entitlements and discretions which are expressed to be given in favour of, or vested in, the Investment Agent as agent for and on behalf of the Participants under the Master Murabaha Agreement and each other Murabaha Finance Document.

## 4. **MURABAHA CONTRACTS**

### 4.1 **Participants' participation**

- (a) Upon delivery by the Purchaser to the Investment Agent of a duly completed Notice of Request to Purchase in accordance with clauses 4.1 (*Delivery of a Notice of Request to Purchase*) and 4.2 (*Completion of a Notice of Request to Purchase*) of the Master Murabaha Agreement, the Investment Agent must notify (in substantially the same form set out in Schedule 1 (*Form of Participation Request*)) each Participant of the details of the proposed Murabaha Contract and the amount of its required Participation in the Purchase Price for the proposed Murabaha Contract.
- (b) The amount of each Participant's Participation in the Purchase Price of the proposed Murabaha Contract will be its *Pro Rata* Share on the proposed Value Date.
- (c) Each Participant must make available its Participation in the Purchase Price of the proposed Murabaha Contract denominated by the proposed Value Date to the Investment Agent through its Facility Office, in accordance with Clause 8 (*Payments*).
- (d) Subject to clause 4.10 (*Time of the essence*) of the Master Murabaha Agreement, each Participant's obligation to pay its Participation is unconditional in circumstances where the Investment Agent has submitted a Transaction Confirmation and Offer Notice.
- (e) No Participant is obliged to make available a Participation if, as a result:
  - (i) its Participations would exceed its Murabaha Commitments;

- (ii) the Participations of all Participants would exceed the Total Murabaha Commitments.
- (f) Upon payment of its Participation as and when it is due from time to time, each Participant shall be entitled to receive its *Pro Rata* Share of any corresponding Remittances.

#### 4.2 **Commodities**

Upon receipt by the Investment Agent of the certificate or other documents evidencing title transfer, the Investment Agent shall hold its interest in the relevant Commodities for and on behalf of the Participants in accordance with their *Pro Rata* Shares.

#### 4.3 **Murabaha Finance Parties' rights and obligations**

- (a) If a Participant fails to make available all or any part of its Participation in accordance with Clause 4.1 (*Participants' participation*), the Purchaser and each Participant irrevocably and unconditionally agree that:
  - (i) the Investment Agent shall be entitled on the Value Date to purchase a reduced amount of Commodities from Supplier A for an amount equal to the portion of the Purchase Price actually received from the Participants (such amount being the "**Received Amount**") and shall accordingly only be obliged to transfer proceeds to the Purchaser in an amount equal to the Received Amount;
  - (ii) the Purchaser shall have no recourse to the Investment Agent or any non-defaulting Participant for such failure by a Participant; and
  - (iii) the Purchaser shall have recourse only to the defaulting Participant in respect of such failure.

### 5. **INDEMNITIES**

#### 5.1 **Increased Costs**

The Purchaser must indemnify:

- (a) an Existing Participant on a Transfer Date for the amount of any Increased Costs incurred by the Existing Participant in respect of any Murabaha Contract Period ending on the Transfer Date or otherwise which have not formed a component of any Deferred Payment Price on or before the Transfer Date; and
- (b) a Participant on the Termination Date for the amount of any Increased Costs incurred by the Participant in respect of any Murabaha Contract Period ending on the Termination Date.

#### 5.2 **Commodities indemnity**

The Purchaser must indemnify each Murabaha Finance Party against any actual cost (excluding any opportunity cost or cost of funding), loss or liability which that Murabaha Finance Party incurs in connection with the Commodities including, without

limitation, any cost, loss or liability arising out of or resulting from the purchase, sale of, or in relation to, the Commodities or, in the event a Transaction Confirmation and Offer Notice is deemed to be void in accordance with clause 4.10 (*Time of the Essence*) of the Master Murabaha Agreement, the deemed purchase, sale, delivery, non-delivery, handling, storage, use, occupancy, ownership, possession, seizure, beneficiary of insurance proceeds of, forfeiture of, or in relation to, the Commodities, except to the extent that:

- (a) that Murabaha Finance Party has been compensated for such cost, loss or liability pursuant to any other provision of a Murabaha Finance Document;
- (b) such cost, loss or liability is expressly prohibited from being recovered by a Murabaha Finance Party pursuant to any other provision of the Murabaha Finance Documents;
- (c) such cost, loss or liability arises as a result of ownership of the Commodities by any Participant; or
- (d) such cost, loss or liability arises as a result of the gross negligence or wilful misconduct of that Murabaha Finance Party.

## 6. SUPPLIER COSTS

The Purchaser must pay to the Investment Agent, all reasonable fees, expenses and other costs payable by the Investment Agent to Supplier A incurred in connection with any of the transactions contemplated by the Murabaha Finance Documents provided that such fees, expenses or costs were agreed in writing by the Purchaser prior to being incurred.

## 7. THE ADMINISTRATIVE PARTIES

### 7.1 No Partnership

None of the Murabaha Finance Documents or the Participations constitute, nor may be construed so as to constitute, a partnership between the Investment Agent and the Participants or an assignment (at law or in equity) of all or any part of the Deferred Payment Prices or of all or any part of the Investment Agent's rights under the Murabaha Finance Documents.

### 7.2 Majority Participants' instructions

- (a) Unless a contrary indication appears in a Murabaha Finance Document, the Investment Agent:
  - (i) must exercise any right, power, authority or discretion vested in it as Investment Agent in accordance with any instructions given to it by the Majority Participants (or, if so instructed by the Majority Participants, refrain from exercising any right, power, authority or discretion vested in it as Investment Agent), **provided that** such instructions do not violate any rules and principles of Shari'a as interpreted by the Shari'a Board of the Investment Agent; and

- (ii) will not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Participants.
- (b) Unless a contrary indication appears in a Murabaha Finance Document, any instructions given by the Majority Participants (or, if applicable, the Participants) will be binding on all the Murabaha Finance Parties other than the Security Agent.
- (c) The Investment Agent may refrain from acting in accordance with the instructions of the Majority Participants (or, if appropriate, the Participants) until it has received security satisfactory to it, whether by way of payment in advance or otherwise, against any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Participants (or, if applicable, the Participants), the Investment Agent may act (or refrain from taking action) as it considers to be in the best interests of the Participants.
- (e) The Investment Agent is not authorised to act on behalf of a Participant (without first obtaining that Participant's consent) in any legal or arbitration proceedings in connection with any Murabaha Finance Document. . This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
- (f) The Investment Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Participants (or, if a Murabaha Finance Document stipulates the matter is a decision for any other Participant or group of Participants, from that Participant or group of Participant s) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Investment Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (g) If the Investment Agent is requested to act by the Majority Participants on instructions or directions delivered by email, the Investment Agent shall have:
  - (i) no duty or obligation to verify or confirm that the person who sent such instruction or directions is, in fact a person authorised to give instructions or directions on behalf of the Majority Participants; and
  - (ii) no liability for any losses, liabilities, costs or expenses incurred or sustained by the Majority Participants, as a result of such reliance upon compliance with such instructions or directions.

### 7.3 Duties of the Investment Agent

- (a) The Investment Agent's duties under the Murabaha Finance Documents are solely mechanical and administrative in nature.

- (b) Subject to paragraph (c) below, the Investment Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Investment Agent for that Party by any other Party.
- (c) Paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Murabaha Finance Document specifically provides otherwise, the Investment Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Investment Agent receives notice from a Party referring to this Agreement or any other Murabaha Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Murabaha Finance Parties.
- (f) If the Investment Agent is aware of the non-payment of any Deferred Payment Price (or part thereof) or any fee payable to a Murabaha Finance Party (other than an Agent, the Mandated Lead Arrangers or the Security Agent) under this Agreement or any other Murabaha Finance Document it shall promptly notify the other Murabaha Finance Parties.
- (g) The Investment Agent shall provide to the Purchaser, within five Business Days of a request by the Purchaser (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Participants as at the date of that request, their respective Murabaha Commitments, the address and electronic mail address (and the department or officer, if any, for whose attention any communication is to be made) of each Participant for any communication to be made or document to be delivered under or in connection with the Murabaha Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Participant to whom any communication under or in connection with the Murabaha Finance Documents may be made by that means and the account details of each Participant for any payment to be distributed by the Investment Agent to that Participant under the Murabaha Finance Documents.
- (h) The Investment Agent shall provide to the Purchaser, within one (1) Business Day of a request by the Purchaser, details of any responses received from Participants to any amendment or other consent request made by the Purchaser and each Participant hereby consents to the disclosure of such information by the Investment Agent to the Purchaser.
- (i) The Investment Agent shall have only those duties, obligations and responsibilities expressly specified in the Murabaha Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (j) The Investment Agent is authorised (without any further consent, instruction, direction or other confirmation from any Party) to and shall provide to the Purchaser upon its request such information as may be required to assess the progress of any amendment, consent or waiver request from time to time



pursuant to the terms of the Murabaha Finance Documents (including the identity and votes of Participants that have approved, rejected or not responded to any such request).

#### 7.4 **Business with the Group**

The Investment Agent may accept deposits from and generally engage in any kind of banking or other business with any member of the Group.

#### 7.5 **Rights and discretions**

- (a) The Investment Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) rely on any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
  - (iii) assume that:
    - (A) any instructions received by it from the Majority Participants, any Participants or any group of Participants are duly given in accordance with the terms of the Murabaha Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked and no revocation of any such instructions shall affect any actions taken by the Investment Agent in reliance on such instructions prior to actual receipt of a written notice of revocation; and
  - (iv) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Investment Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Participants) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 24.2 (*Non-payment*) of the Common Terms Agreement);

- (ii) any right, power, authority or discretion vested in any Party or any group of Participants has not been exercised;
- (iii) any notice or request made by the Purchaser (other than a Request) is made on behalf of and with the consent and knowledge of all the Obligors; and
- (iv) no Notifiable Debt Purchase Transaction:
  - (A) has been entered into;
  - (B) has been terminated; or
  - (C) has ceased to be,with an Investor or a member of the Group.
- (c) The Investment Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Investment Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Investment Agent (and so separate from any lawyers instructed by the Participants) if the Investment Agent in its reasonable opinion deems this to be necessary.
- (e) The Investment Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Investment Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Investment Agent may act in relation to the Murabaha Finance Documents through its officers, employees and agents.
- (g) Unless a Murabaha Finance Document expressly provides otherwise the Investment Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement or the other Murabaha Finance Documents.
- (h) Without prejudice to the generality of paragraph (g) above, the Investment Agent may disclose the identity of a Defaulting Participant to the other Murabaha Finance Parties and the Purchaser and shall disclose the same upon the written request of the Purchaser or the Majority Participants.
- (i) Notwithstanding any other provision of any Murabaha Finance Document to the contrary, the Investment Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (j) The Investment Agent is not obliged to disclose to any Murabaha Finance Party any details of the rate notified to the Investment Agent by any Participant or the identity of any such Participant for the purpose of paragraph (a) of clause 8.3 (*Matching deposit rate*) of the Master Murabaha Agreement.
- (k) Notwithstanding any provision of any Murabaha Finance Document to the contrary, the Investment Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## 7.6 Responsibility for documentation

The Investment Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Investment Agent, a Mandated Lead Arranger, an Obligor or any other person in or in connection with any Murabaha Finance Document or the Reports or the transactions contemplated in the Murabaha Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Murabaha Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Murabaha Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Murabaha Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Murabaha Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## 7.7 No duty to monitor

The Investment Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Murabaha Finance Document; or
- (c) whether any other event specified in any Murabaha Finance Document has occurred.

## 7.8 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of clause 31.11 (*Disruption to Payment Systems*) of the

Common Terms Agreement and any other provision of any Murabaha Finance Document excluding or limiting the liability of the Investment Agent), the Investment Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Murabaha Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Murabaha Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Murabaha Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Investment Agent) arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Investment Agent) may take any proceedings against any officer, employee or agent of the Investment Agent in respect of any claim it might have against the Investment Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Murabaha Finance Document or any Transaction Security and any officer, employee or agent of the Investment Agent may rely on this paragraph (b) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Investment Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Murabaha Finance Documents to be paid by the Agent if the Agent has taken

all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Investment Agent for that purpose.

- (d) Nothing in this Agreement or any other Murabaha Finance Document shall oblige the Investment Agent to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement or any other Murabaha Finance Document might be unlawful for any Participant or for any Affiliate of any Participant,

on behalf of any Participant and each Participant confirms to the Investment Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Investment Agent.

- (e) Without prejudice to any provision of any Murabaha Finance Document excluding or limiting the Investment Agent's liability, any liability of the Investment Agent arising under or in connection with any Murabaha Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Investment Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Investment Agent at any time which increase the amount of that loss. In no event shall the Investment Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Investment Agent has been advised of the possibility of such loss or damages.

## 7.9 Participants' indemnity to the Investment Agent

- (a) Without limiting the liability of the Purchaser under the Murabaha Finance Documents, each Participant must indemnify the Investment Agent for that Participant's *Pro Rata* Share of any actual cost (excluding any opportunity cost or cost of funding), loss or liability (whether arising in contract, tort or otherwise) incurred by the Investment Agent, in acting as Investment Agent under the Murabaha Finance Documents, except to the extent that the cost, loss or liability is caused by the Investment Agent's gross negligence, wilful misconduct or fraud (or, in the case of any cost, loss or liability pursuant to Clause 8.6 (*Disruption to payment systems*) notwithstanding the Investment Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Investment Agent) and unless the Investment Agent has been reimbursed by the Purchaser pursuant to an Murabaha Finance Document.
- (b) Subject to paragraph (c) below, the Purchaser must on written demand reimburse the Participants for any amount paid to the Investment Agent under this Clause 7.9.

- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which a Participant claims reimbursement relates to a liability of the Investment Agent to the Purchaser.

#### **7.10 Resignation of the Investment Agent**

- (a) The Investment Agent may resign and appoint any of its Affiliates, acting through an office in the UAE, as successor Investment Agent by giving notice to the other Murabaha Finance Parties and the Purchaser.
- (b) Alternatively, the Investment Agent may resign by giving 30 days' notice to the other Murabaha Finance Parties and the Purchaser, in which case the Majority Participants (after consultation with the Purchaser) may appoint a successor Investment Agent acting through an office in the UAE.
- (c) Any successor Investment Agent appointed under this Clause 7.10 must be a reputable financial institution.
- (d) If the Majority Participants have not appointed a successor Investment Agent under paragraph (b) above within 20 days after notice of resignation was given, the retiring Investment Agent (after consultation with the Purchaser) may appoint a successor Investment Agent, acting through an office in the UAE.
- (e) The retiring Investment Agent must, at its own cost:
  - (i) make available to the successor Investment Agent those documents and records and provide any assistance as the successor Investment Agent may reasonably request for the purposes of performing its functions as the Investment Agent under the Murabaha Finance Documents; and
  - (ii) enter into and deliver to the successor Investment Agent those documents and effect any registrations as may be reasonably required for the transfer or assignment of all of its rights and benefits under the Murabaha Finance Documents to the successor Investment Agent.
- (f) The resignation of the Investment Agent and the appointment of any successor Investment Agent will both become effective only when:
  - (i) the successor Investment Agent notifies all the Parties that it accepts its appointment;
  - (ii) the successor Investment Agent confirms that the rights under the Murabaha Finance Documents (and any related documentation) have been transferred or assigned to it; and
  - (iii) no Murabaha Finance Party (other than the Investment Agent) or the Purchaser has notified the Investment Agent that it is not satisfied with the credit worthiness of the proposed successor Investment Agent within seven days of the Investment Agent's notification under paragraph (a) above.

On satisfaction of the above conditions the successor Investment Agent will succeed to the position of the Investment Agent and the term Investment Agent will mean the successor Investment Agent.

- (g) Upon its resignation becoming effective, the retiring Investment Agent will be discharged from any further obligations in respect of the Murabaha Finance Documents but will remain entitled to the benefit of this Clause 7. Any successor Investment Agent and each of the other Parties will have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Purchaser, the Majority Participants may, by notice to the Investment Agent, require it to resign under paragraph (b) above, in which case the Investment Agent must so resign.
- (i) The Investment Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Investment Agent pursuant to paragraph (c) above) if on or after the date which is three Months before the earliest FATCA Application Date relating to any payment to the Investment Agent under any Murabaha Finance Document, either:
  - (i) the Investment Agent fails to respond to a request under clause 14.9 (*FATCA Information*) of the Common Terms Agreement and the Purchaser or a Participant reasonably believes that the Investment Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Investment Agent pursuant to clause 14.9 (*FATCA Information*) of the Common Terms Agreement indicates that the Investment Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Investment Agent notifies the Purchaser and the Participants that the Investment Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Purchaser or a Participant reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Investment Agent were a FATCA Exempt Party, and the Purchaser or that Participant, by notice to the Investment Agent, requires it to resign.

#### **7.11 Replacement of the Investment Agent**

- (a) After consultation with the Purchaser, the Majority Participants may, by giving 30 days' notice to the Investment Agent (or, at any time the Investment Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Participants) replace the Investment Agent by appointing a successor Investment Agent.

- (b) The retiring Investment Agent must, at its own cost if it is an Impaired Agent and otherwise at the expense of the Participants:
  - (i) make available to the successor Investment Agent those documents and records and provide any assistance as the successor Investment Agent may reasonably request for the purposes of performing its functions as the Investment Agent under the Murabaha Finance Documents; and
  - (ii) enter into and deliver to the successor Investment Agent those documents and effect any registrations as may be required for the transfer or assignment of all of its rights and benefits under the Murabaha Finance Documents to the successor Investment Agent.
- (c) The appointment of the successor Investment Agent will take effect on the date specified in the notice from the Majority Participants to the retiring Investment Agent. As from this date, the retiring Investment Agent will be discharged from any further obligation in respect of the Murabaha Finance Documents but will remain entitled to the benefit of this Clause 7 (and any agency fees for the account of the retiring Investment Agent will cease to accrue from (and will be payable on) that date).
- (d) Any successor Investment Agent and each of the other Parties will have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### **7.12 Replacement of Impaired Agent**

- (a) If the Investment Agent is an Impaired Agent, after consultation with the Purchaser, the Majority Participants may, by giving 30 days' notice (or any shorter notice the Majority Participants may agree) replace the Investment Agent with a successor Investment Agent, acting through an office in the UAE.
- (b) The replacement of the Investment Agent and appointment of a successor Investment Agent under this Clause 7.12 will take effect on the date specified in that notice.
- (c) Other than as set out in this Clause 7.12, the provisions of Clause 7.10 (*Resignation of the Investment Agent*) apply to any replacement of the Investment Agent under this Clause 7.12.

#### **7.13 Other agency matters**

- (a) The Investment Agent may disclose the identity of a Defaulting Participant to the other Participants and the Purchaser and must disclose the identity on request by the Purchaser or the Majority Participants.
- (b) The Investment Agent must provide to the Purchaser within 10 Business Days of a request by the Purchaser (but no more frequently than once per calendar month) a list (which may be in electronic form) setting out the names of the Participants as at the date of that request, their respective Murabaha Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Participant



for any communication to be made or document to be delivered under or in connection with the Murabaha Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Participant to whom any communication under or in connection with the Murabaha Finance Documents may be made by that means and the account details of each Participant for any payment to be distributed by the Investment Agent to that Participant under the Murabaha Finance Documents.

#### **7.14 Communication when Investment Agent is Impaired Agent**

If the Investment Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Investment Agent, communicate with each other directly and (while the Investment Agent is an Impaired Agent) all the provisions of the Murabaha Finance Documents which require communications to be made or notices to be given to or by the Investment Agent will be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision will not operate after a replacement Investment Agent has been appointed.

#### **7.15 Confidentiality**

- (a) In acting as agent for the Murabaha Finance Parties, the Investment Agent will be regarded as acting through its agency division which will be treated as a separate entity from any other of its divisions and departments. If information is (in the opinion of the Investment Agent) received by another division or department of the Investment Agent, it may be treated as confidential to that division or department and the Investment Agent will not be deemed to have notice of it.
- (b) The Investment Agent is not obliged to disclose to any person any confidential information supplied to it by or on behalf of the Purchaser or any other Purchaser's Affiliate solely for the purpose of evaluating whether any waiver or amendment is required in respect of any term of the Murabaha Finance Documents.

#### **7.16 Relationship with the Participants**

- (a) The Investment Agent may treat the person shown in its records as Participant at the opening of business (in the place of the Investment Agent's principal office as notified to the Murabaha Finance Parties from time to time) as the Participant acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Murabaha Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Murabaha Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Participant to the contrary in accordance with the terms of this Agreement.

- (b) The Investment Agent may at any time, and must if requested to do so by the Majority Participants, convene a meeting of the Participants.
- (c)
  - (i) Any Participant may by notice to the Investment Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Participant under the Murabaha Finance Documents.
  - (ii) Any such notice:
    - (A) must contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under a Murabaha Finance Document) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made); and
    - (B) will be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Participant for the purposes of the Murabaha Finance Documents.
  - (iii) The Investment Agent is entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Participant.
- (d) Each Participant shall supply the Investment Agent with any information that the Security Agent may reasonably specify (through the Investment Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Participant shall deal with the Security Agent exclusively through the Investment Agent and shall not deal directly with the Security Agent.

#### 7.17 **Credit appraisal by the Participants**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Murabaha Finance Document, each Participant confirms to the Investment Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Murabaha Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group and its Holding Companies;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Murabaha Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Murabaha Finance Document and the Transaction Security;

- (c) whether that Participant has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Murabaha Finance Document, the Transaction Security, the transactions contemplated by the Murabaha Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Murabaha Finance Document;
- (d) the adequacy, accuracy or completeness of the Reports and any other information provided by the Investment Agent, any Party or by any other person under or in connection with any Murabaha Finance Document, the transactions contemplated by any Murabaha Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Murabaha Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property

#### **7.18 Deduction from amounts payable by the Investment Agent**

If any Party owes an amount to the Investment Agent under the Murabaha Finance Documents, the Investment Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Investment Agent would otherwise be obliged to make under the Murabaha Finance Documents and apply that amount deducted in or towards satisfaction of the amount owed. For the purposes of the Murabaha Finance Documents that Party will be regarded as having received the amount so deducted.

#### **7.19 Notice period**

Where any Murabaha Finance Document specifies a minimum period of notice to be given to the Investment Agent, the Investment Agent may, at its discretion, accept a shorter notice period.

#### **7.20 Role of the Mandated Lead Arranger**

Except as specifically provided in the Murabaha Finance Documents, no Mandated Lead Arranger has any obligations of any kind to any other Party in connection with any Murabaha Finance Document.

### **8. PAYMENTS**

#### **8.1 Funds**

Payments under the Murabaha Finance Documents to the Investment Agent must be made for value on the due date at such times and in such funds as the Investment Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in that currency in the place for payment.

## 8.2 Payments by Participants

- (a) No later than 11:00 a.m. Dubai time on each date on which a Murabaha Contract is to be made, each Participant shall make its participation in that Murabaha Contract available to the Investment Agent in the place for payment to the Purchaser by payment in the currency of that Murabaha Contract and in immediately available cleared funds to such account as the Investment Agent shall specify.
- (b) The Investment Agent shall make the amounts made available to it pursuant to paragraph (a) above available to the Purchaser before 2:00 p.m. Dubai time on the relevant date on which a Murabaha Contract is to be made by payment in the same currency and funds as received by the Investment Agent to such account of the Purchaser as shall have been specified in the applicable Notice of Request to Purchase. If any Participant makes its participation in a Murabaha Contract available to the Investment Agent later than required by paragraph (a) above, the Investment Agent shall make that share available to the Purchaser as soon as practicable after receipt of such funds. The Investment Agent shall promptly make available to the Purchaser an MT202 cover message with respect to each transfer of funds to the Purchaser under this paragraph (b).

## 8.3 Place

- (a) Unless a Murabaha Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Investment Agent) in respect of the Murabaha Facility must be made to the Investment Agent in respect of the Murabaha Facility to its account at such office or bank as it may notify to that Party for this purpose by not less than five Business Days' prior notice.
- (b) The Purchaser must pay any amounts payable to the Investment Agent under the Murabaha Finance Documents directly to the Investment Agent.

## 8.4 Partial payments

- (a) If the Investment Agent receives a payment insufficient to discharge all the amounts then due and payable by the Purchaser under the Murabaha Facilities, the Investment Agent must apply that payment towards the obligations of the Purchaser under the Murabaha Finance Documents in the following order:
  - (i) *first*, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Administrative Parties under the Murabaha Finance Documents;
  - (ii) *secondly*, in or towards payment *pro rata* of the Profit Amount element of the Deferred Payment Price of any Murabaha Contract or any fees in respect of the Facilities due but unpaid under this Agreement or the Murabaha Finance Documents;

- (iii) *thirdly*, in or towards payment *pro rata* of the Purchase Price element of the Deferred Payment Price of any Murabaha Contract due but unpaid under this Agreement or the Murabaha Finance Documents; and
  - (iv) *fourthly*, in or towards payment *pro rata* of any sum due but unpaid under the Murabaha Finance Documents.
- (b) The Investment Agent must, if so directed by all the Participants vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
  - (c) This paragraph will override any appropriation made by the Purchaser.

## 8.5 Impaired Agent

- (a) If, at any time, the Investment Agent becomes an Impaired Agent, the Purchaser or a Murabaha Finance Party which is required to make a payment under the Murabaha Finance Documents to the Investment Agent in accordance with clause 31 (*Payment mechanics*) of the Common Terms Agreement may instead either pay that amount direct to the required recipient or pay that amount to a non-interest bearing account held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Purchaser or the Murabaha Finance Party making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Murabaha Finance Documents. In each case such payments must be made on the due date for payment under the Murabaha Finance Documents.
- (b) All profit calculated on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 8.5 shall be discharged of the relevant payment obligation under the Murabaha Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Investment Agent in accordance Clause 7.11 (*Replacement of the Investment Agent*), each Party which has made a payment to a trust account in accordance with this Clause 8.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any profit calculated in relation to the amount standing to the credit of that trust account) to the successor Investment Agent for distribution in accordance with clause 31 (*Payment mechanics*) of the Common Terms Agreement.

## 8.6 Disruption to payment systems

- (a) If the Investment Agent makes any payment to any person in respect of a liability incurred as a result of taking or not taking any action under clause 31.11 (*Disruption to Payment Systems*) of the Common Terms Agreement, the amount of that payment is an amount in respect of which each Participant under the

Murabaha Facility must indemnify the Investment Agent for that Participant's Reimbursement *Pro Rata* Share of any loss or liability incurred by the Investment Agent under this Clause 8.6 (unless the Investment Agent has been reimbursed by the Purchaser under a Murabaha Finance Document).

- (b) Paragraph (a) above applies:
  - (i) notwithstanding any other term of any Murabaha Finance Document (including any term in clause 28 (*Role of the Global Agent, the Mandated Lead Arrangers, the Issuing Bank and Others*) of the Common Terms Agreement); and
  - (ii) irrespective of whether the payment was made as a result of actual or alleged negligence or gross negligence or wilful misconduct of the Investment Agent but so that the Investment Agent has no indemnity for claims against it which arise as a result of fraud by the Investment Agent.

## 8.7 **Timing of payments**

If a Murabaha Finance Document does not provide for when a particular payment is due, that payment will be due within five Business Days of demand by the relevant Murabaha Finance Party.

## 9. **PAYMENTS – LIMITED RECOURSE**

### 9.1 **Limited recourse**

Each Participant acknowledges and agrees that:

- (a) the obligation of the Investment Agent to pay a Participant its *Pro Rata* Share of a Remittance is conditional upon the Investment Agent first receiving the corresponding payment from the Purchaser pursuant to the Murabaha Finance Documents;
- (b) if the Purchaser fails to make any payment to the Investment Agent pursuant to the Murabaha Finance Documents, no Participant has any recourse to the Investment Agent unless such a failure by the Purchaser is caused by fraud on the part of, or the gross negligence or wilful default of, the Investment Agent; and
- (c) the credit risk assumed by each Participant in relation to its Participation (and its entry into this Agreement) is that of the Purchaser.

### 9.2 **Assumed receipt**

- (a) The Investment Agent may, in relation to a proposed Murabaha Contract and a Participant:
  - (i) assume that, on the Value Date for the Murabaha Contract, the Participant has provided its Participation in cleared funds pursuant to paragraph (c) of Clause 4.1 (*Participants' participation*); and

- (ii) in reliance upon its assumption under paragraph (i) above, disburse (but is not obliged to disburse) an amount equal to the Participation of the Participant towards the payment of the Purchase Price for the Murabaha Contract.
- (b) To the extent that, in relation to a proposed Murabaha Contract and a Participant:
- (i) the Participant fails to provide its Participation in cleared funds pursuant to paragraph (c) of Clause 4.1 (*Participants' participation*); and
  - (ii) the Investment Agent disburses an amount equal to the Participation of the Participant towards the payment of the Purchase Price for the Murabaha Contract in reliance upon its assumption under paragraph (a)(i) above,
- the Investment Agent may, at its sole discretion:
- (A) cancel that Participant's right to participate in the Purchase Price of the Murabaha Contract; and
  - (B) treat the amount disbursed under paragraph (ii) above as its Participation in the Murabaha Contract and take for itself all Remittances relating thereto.

### 9.3 Distribution of Deferred Payment Price to Participants

- (a) Subject to Clause 9.1 (*Limited recourse*), whenever the Investment Agent is satisfied that:
  - (i) it has actually received a payment in respect of a Deferred Payment Price; and
  - (ii) it is entitled to apply the amount received as a Remittance,

the Investment Agent shall promptly pay to each Participant its *Pro Rata* Share of such payment.
- (b) The Participants agree that for any day on which a Participant is a Defaulting Participant, its Available Commitment will not be counted for the purposes of the definition of "Additional Profit Amount" in clause 1.1 (*Definitions*) of the Master Murabaha Agreement and such Participant will not be entitled to any part of an Additional Profit Amount payable in respect of any such day.

### 9.4 Application of moneys

- (a) If, in respect of any amount due (the "**Due Amount**") from the Purchaser in respect of any Remittance, the Investment Agent:
  - (i) obtains a partial or total payment (a "**Due Payment**") of the Due Amount by virtue of it being entitled to a set-off, banker's lien, counterclaim or any security or other payment; and

- (ii) applies all or part of the amount of the Due Payment in or towards satisfaction of the Due Amount,

without prejudice to the provisions of Clause 10 (*Refund of Payments and Payments by the Participants*), the amount of such Due Payment so applied will be treated as if an actual payment of the Due Amount had been received from the Purchaser. For the purposes of any set-off referred to in this paragraph (a), if the obligations are in different currencies, the Investment Agent may convert either obligation at the Investment Agent's spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market at or about 11.00 a.m. on the day of conversion.

- (b) Any Due Payments received by the Investment Agent for application in accordance with this Clause 9.4 shall:
  - (i) be credited to a suspense account and held by the Investment Agent for the benefit of the Participants in accordance with their *Pro Rata* Shares; and
  - (ii) not be treated as having been received by the Investment Agent for the purposes of this Clause 9.4 unless and until such sums are appropriated by the Investment Agent in or towards payment in respect of that Remittance.

#### **9.5 Payment to a single Participant other than the Investment Agent**

If any payment made under the Murabaha Finance Documents is only attributable to a particular Participant other than the Investment Agent, the Investment Agent shall pay that amount to such Participant.

#### **9.6 Payment to Investment Agent**

If any payment under the Murabaha Finance Documents is attributable only to:

- (a) the Investment Agent in its capacity as Investment Agent, the Investment Agent shall, in its capacity as Investment Agent, retain that amount; and
- (b) the Investment Agent in its capacity as Participant, the Investment Agent shall, in its capacity as Participant, retain that amount.

### **10. REFUND OF PAYMENTS AND PAYMENTS BY THE PARTICIPANTS**

#### **10.1 Refund of payments**

If at any time the Investment Agent becomes obliged:

- (a) to repay to any liquidator, administrator, administrative receiver, trustee or other person all or part of an amount previously paid to the Investment Agent (the "**Relevant Receipt**") by the Purchaser; or
- (b) to indemnify any liquidator, administrator, administrative receiver, trustee or other person in respect of a Relevant Receipt,



being in any such case an amount which the Investment Agent shall have paid or, but for the provisions of this Clause 10.1, would become liable to pay to the Participants pursuant to this Agreement, then:

- (i) the Investment Agent shall promptly notify each Participant of the relevant circumstances and of the amount (the "**Excess Amount**") to be repaid by the Investment Agent or, as the case may be, to be paid by way of indemnity by the Investment Agent;
- (ii) each Participant shall on demand pay to the Investment Agent an amount equal to its *Pro Rata* Share of the Excess Amount together with an amount equal to its *Pro Rata* Share of any compensation, costs (excluding any opportunity costs or costs of funding), charges or expenses which the Investment Agent shall have become liable to pay in respect of such Excess Amount; and
- (iii) any amount subsequently payable to a Participant pursuant to this Agreement on the basis of the Relevant Receipt shall be adjusted accordingly.

The Purchaser shall promptly indemnify each Participant against any payment made by a Participant to the Investment Agent in connection with an Excess Amount payable pursuant to this Clause 10.1.

## 10.2 **Insolvency**

If, in connection with any moratorium, administration, liquidation, rescheduling, refinancing, suspension of payments or other similar arrangement or circumstance affecting any Remittance:

- (a) the Remittance (or equivalent amount) is paid in whole or in part but the obligation of the Purchaser in respect of the amount paid is substituted by any other payment obligation; and/or
- (b) any sum is paid into a blocked account or in non-convertible currency in or towards discharge or purported discharge of the Remittance or any part thereof; and/or
- (c) the Investment Agent is obliged to provide funds in addition to the amount of the Remittance, whether to the Purchaser or any other person,

then:

- (i) any payment obligation referred to in paragraph (a) above shall be treated as between the Participants and the Investment Agent in the same way as the relevant Remittance as if such obligation had been originally contained in the relevant Murabaha Finance Document for the purpose of ascertaining the right (if any) of the Participants to receive subsequent payments under Clause 9 (*Payments – Limited Recourse*);
- (ii) the Investment Agent will (at the request and cost of a Participant) assign to the Participants the *Pro Rata* Share of the Investment Agent's rights

to any such blocked account or non-convertible currency as is referred to in paragraph (b) above; and/or

- (iii) in the case of paragraph (c) above, each Participant shall be obliged to pay to the Investment Agent on demand an amount equal to its *Pro Rata Share* of such additional funds by way of further deposits in accordance with the provisions, *mutatis mutandis*, of Clause 4.1 (*Participants' participation*) and Clause 8 (*Payments*).

## 11. INDEMNITY TO INVESTMENT AGENT

The Purchaser must indemnify the Investment Agent against any actual cost, loss or liability incurred by the Investment Agent (acting reasonably) as a result of:

- (a) investigating any event which the Investment Agent reasonably believes to be a Default; or
- (b) acting or relying on any notice, request or instruction which the Investment Agent reasonably believes to be genuine, correct and appropriately authorised.

## 12. INVESTMENT AGENT'S FEE

The Purchaser must pay to the Investment Agent for its own account an agency fee in the manner agreed in the Murabaha Fee Letter between the Investment Agent and the Purchaser.

## 13. AMENDMENTS AND WAIVERS

### 13.1 Required consents

- (a) This Clause 13 is subject to the terms of the Intercreditor Agreement.
- (b) Subject to clause 37 (*Amendments and waivers*) of the Common Terms Agreement, any term of the Murabaha Finance Documents may (other than the Fee Letters which may be amended or waived in accordance with their terms) be amended or waived with the agreement of the Purchaser and the Majority Participants and any such amendment or waiver will be binding on all Parties.
- (c) The Investment Agent may effect, on behalf of any Murabaha Finance Party, any amendment or waiver allowed under this Clause 13 or the terms of the Common Terms Agreement.

### 13.2 Changes to reference rates

- (a) Subject to paragraph (d) of clause 37.4 (*Other exceptions*) of the Common Terms Agreement, if a Published Rate Replacement Event has occurred in relation to any Published Rate, any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of that Published Rate; and
  - (ii)

- (A) aligning any provision of any Murabaha Finance Document to the use of that Replacement Reference Rate;
- (B) enabling that Replacement Reference Rate to be used for the calculation of profit under the Murabaha Finance Documents (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
- (C) implementing market conventions applicable to that Replacement Reference Rate;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Investment Agent (acting on the instructions of the Majority Participants) and the Purchaser.

- (b) If any Participant fails to respond to a request for an amendment or waiver described in paragraph (a) above within 15 Business Days (or such longer time period in relation to any request which the Purchaser and the Investment Agent may agree) of that request being made:
  - (i) its Participations shall not be included for the purpose of calculating the Total Murabaha Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Murabaha Commitments has been obtained to approve that request; and
  - (ii) its status as a Participant shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Participants has been obtained to approve that request.

- (c) In this Clause 13.2:

**"Published Rate"** means Term SOFR for any Quoted Tenor.

**"Published Rate Replacement Event"** means, in relation to a Published Rate:

- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Participants and the Purchaser, materially changed:

- (b)
  - (i)
    - (A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

**provided that**, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;

- (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (c) the administrator of that Published Rate (or the administrator of a rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
    - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Participants and the Purchaser) temporary; or
    - (ii) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than one month; or
  - (d) in the opinion of the Majority Participants and the Purchaser, that Published Rate is otherwise no longer appropriate for the purposes of calculating profit under the Murabaha Documents.

**"Quoted Tenor"** means, in relation to Term SOFR, any period for which that rate is customarily displayed on the relevant page or screen of an information service.

**"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**"Replacement Reference Rate"** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (i) the administrator of that Published Rate (**provided that** the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or
  - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Participants and the Purchaser, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or
- (c) in the opinion of the Majority Participants and the Purchaser, an appropriate successor to a Published Rate.

## 14. ASSIGNMENT AND TRANSFERS

### 14.1 Assignments and transfers by the Purchaser

The Purchaser may not assign or transfer any of its rights and obligations under the Murabaha Finance Documents without the prior consent of all the Participants.

### 14.2 Assignments and transfers by Participants

- (a) Subject to the other provisions of this Clause 14.2, clause 25 (*Changes to the Financiers*) of the Common Term Agreement shall apply to this Agreement. In the event of an inconsistency between the provisions of this Clause 14.2 and clause 25 (*Changes to the Financiers*) of the Common Term Agreement, the provisions of this Clause 14.2 shall prevail.
- (b) The Investment Agent is not obliged to execute a Transfer Certificate or otherwise give effect to an assignment or transfer until it has completed, to its satisfaction, all "*know your customer*" requirements or other similar checks under all applicable laws and regulations relating to any person that the Investment Agent is required to carry out in relation to such assignment or transfer (the "**KYC Requirements**"). The Investment Agent must promptly:
  - (i) notify the Existing Participant and the New Participant if there are any such KYC Requirements; and

- (ii) complete such KYC Requirements.
- (c) The completion of the Investment Agent's KYC Requirements will be evidenced by the Investment Agent delivering to the Existing Participant and the New Participant a Transfer Certificate countersigned by the Investment Agent.
- (d) In respect of an assignment or a transfer in relation to the Murabaha Facilities only, the "**Transfer Date**" is the date on which the Global Agent and the Investment Agent executes the relevant Assignment Agreement or Transfer Certificate.
- (e) On the Transfer Date:
  - (i) the New Participant will assume the rights and obligations of the Existing Participant expressed to be the subject of the novation in the Transfer Certificate in substitution for the Existing Participant (including in respect of the Murabaha Finance Documents and the Transaction Security);
  - (ii) the Global Agent, the Investment Agent, the Mandated Lead Arrangers, the Security Agent, the New Participant and other Participants shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Participant been an Original Participant with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Global Agent, the Investment Agent, the Mandated Lead Arrangers, the Security Agent and the Existing Participant shall each be released from further obligations to each other under the Murabaha Finance Documents; and
  - (iii) the New Participant shall become a Party as a "Participant".
- (f) Unless the Investment Agent otherwise agrees:
  - (i) a New Participant must pay to the Investment Agent for its own account, on or before the date any assignment or transfer occurs, a fee of US\$ 5,000; and
  - (ii) in the event of a change in the Facility Office of a Participant, the relevant Participant must pay to the Investment Agent for its own account, on or before the date any such change in the Facility Office occurs, a fee of US\$ 5,000.
- (g) Any assignment or transfer pursuant to this Clause 14 is required to be in accordance with Shari'a principles of debt trading (including the principle that debt is to be traded against tangible assets and/or eligible commodities on a spot settlement basis).

## 15. SEVERABILITY

If, at any time, any term of a Murabaha Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Murabaha Finance Document; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Murabaha Finance Document.

## 16. COUNTERPARTS

Each Murabaha Finance Document may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Murabaha Finance Document.

## 17. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of, or in connection with it, are governed by English law.

## 18. ENFORCEMENT

### 18.1 Arbitration

Subject to Clause 18.5 (*Investment Agent's option*), any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).

### 18.2 Formation of arbitral tribunal, seat (or legal place) and language of arbitration

- (a) The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as presiding arbitrator) shall be nominated by the arbitrators nominated by or on behalf of the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, the third arbitrator shall be chosen by the LCIA Court (as defined in the Arbitration Rules of the LCIA).
- (b) The seat (or legal place) of arbitration shall be London, England.
- (c) The language of the arbitration shall be English.

### 18.3 Recourse to courts

For the purposes of arbitration pursuant to this Clause 18, the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.

### 18.4 Consolidation of arbitrations

- (a) The following shall apply to any disputes arising out of or in connection with this Agreement and out of or in connection with any other Murabaha Finance Document in respect of which a request for Arbitration has been delivered (or, where impossible, effectively notified) to all other parties to the arbitration. In relation to any such disputes if, in the absolute discretion of the first arbitral tribunal to be appointed in any of the disputes, they are so closely connected that it is expedient for them to be resolved in the same proceedings, that arbitral tribunal shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes, provided that no date for the final hearing of the first arbitration has been fixed. If that arbitral tribunal so orders, the parties to each dispute which is a subject of its order shall be treated as having consented to that dispute being finally decided:
- (i) by the arbitral tribunal that ordered the consolidation unless the LCIA decides that that arbitral tribunal would not be suitable or impartial; and
  - (ii) in accordance with the procedure, at the seat (or legal place) and in the language specified in the relevant Murabaha Finance Document under which the arbitral tribunal that ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of any such agreement, ordered by the arbitral tribunal in the consolidated proceedings.
- (b) Any dispute which is subject to a contractual option to litigate shall only be capable of consolidation pursuant to this paragraph (a) if:
- (i) exercise of the option to which the dispute is subject is no longer permitted pursuant to the terms upon which the option was granted; or
  - (ii) the right of the option-holder to exercise the option has otherwise been validly waived.
- (c) Paragraph (a) above shall apply even where powers to consolidate proceedings exist under any applicable arbitration rules (including those of an arbitral institution) and, in such circumstances, the provisions of paragraph (a) above shall apply in addition to those powers.

### 18.5 Investment Agent's option

Before the Murabaha Finance Parties have delivered to the Registrar of the LCIA Court a Request for Arbitration or Response as defined in the Arbitration Rules of the LCIA (as the case may be), the Investment Agent may (and shall, if so instructed by the Majority Participants) by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law. If the Investment Agent gives such



notice, the Dispute to which such notice refers shall be determined in accordance with Clause 18.7 (*Jurisdiction of English Courts and the Abu Dhabi Global Markets Courts*).

#### 18.6 **English law**

This Clause 18 shall be governed by English law.

#### 18.7 **Jurisdiction of English courts and the Abu Dhabi Global Market Courts**

- (a) If the Investment Agent issues a notice pursuant to Clause 18.5 (*Investment Agent's option*), the provisions of this Clause 18.7 shall apply.
- (b) The courts of England and the courts the Abu Dhabi Global Markets have jurisdiction to settle any Dispute.
- (c) The Parties agree that the courts of England and/ or the courts of the Abu Dhabi Global Markets are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary.
- (d) Notwithstanding paragraphs (a) and (b) above, no Murabaha Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Murabaha Finance Parties may take concurrent proceedings in any number of jurisdictions.

#### 19. **WAIVER OF INTEREST**

- (a) The Parties recognise that the receipt and payment of interest is not permitted under Shari'a and accordingly agree that if any claims for amounts due under any Murabaha Finance Document are made in a court of law and that court, by applying the laws and regulations of its legal system, imposes an obligation to pay interest on the amounts being claimed, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover such interest.
- (b) For the avoidance of doubt, nothing in this Clause 19 shall be construed as a waiver of rights in respect of any Profit Amount or profit of any kind howsoever described payable by the Purchaser pursuant to any Murabaha Finance Document, howsoever such amounts may be described or re-characterised by any court or Arbitral Tribunal. To the extent that any other amount (other than Profit Amount) payable by the Purchaser pursuant to any Murabaha Finance Document is described or re-characterised as interest, under any applicable law, by any court or Arbitral Tribunal, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover such amount.
- (c) The Purchaser acknowledges that the Murabaha Finance Documents and the transactions contemplated by the Murabaha Finance Documents, including the payment of Profit Amount, have been pronounced compliant with the principles of Shari'a by a Shari'a board approved by the Investment Agent and it does not dispute or contest, nor will it dispute or contest, that pronouncement or seek otherwise to challenge the validity or enforceability of any Murabaha Finance Document on the basis of non-compliance with the principles of Shari'a.

20. **WAIVER OF IMMUNITY**

- (a) The Purchaser waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
  - (i) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
  - (ii) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.
- (b) The Purchaser agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.

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

**SCHEDULE 1  
FORM OF PARTICIPATION REQUEST**

To: [Participant]

From: DUBAI ISLAMIC BANK PJSC, as Investment Agent

[date]

Dear Sirs,

**Investment Agency Agreement entered into between, amongst others, ourselves (as Investment Agent) and certain financial institution(s) as Participants dated [•] 2023 (the "Agreement").**

1. We refer to the Agreement. Terms defined in the Agreement have the same meaning herein.
2. This is a Participation Request.
3. Pursuant to Clause 4.1 (*Participants' participation*) of the Agreement, please make your Participation as follows:

Facility: [Murabaha B1 Long Facility]/ [Murabaha B1 Short Facility]/ [Murabaha B2 Long Facility]/ [Murabaha B2 Short Facility]

Purchase Price: USD [•]

Required Participation: USD [•]

Value Date: [•].

Payment instructions:

[insert details]

.....  
DUBAI ISLAMIC BANK PJSC  
as Investment Agent


**SCHEDULE 2  
THE ORIGINAL PARTICIPANT**

<b>Name of Original Participant</b>	<b>Murabaha B1 Long Facility Commitment (USD)</b>	<b>Murabaha B1 Short Facility Commitment (USD)</b>	<b>Murabaha B2 Long Facility Commitment (USD)</b>	<b>Murabaha B2 Short Facility Commitment (USD)</b>
Dubai Islamic Bank PJSC	199,317,073.50	22,146,341.50	52,682,926.50	5,853,658.50

**SIGNATORIES TO THE INVESTMENT AGENCY AGREEMENT**

**Purchaser**

**NEPTUNE PROJECT HOLDING 3 LIMITED**

By:  .....

Name:

By: .....

Name:

**Investment Agent**

Muhammad Arif Sultan  
Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory

**Mandated Lead Arranger and Bookrunner**

Muhammad Arif Sultan  
Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory

**Original Facility B1 Long Participant**

Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory

**Original Facility B1 Short Participant**

Muhammad Arif Sultan  
Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory

**Original Facility B2 Long Participant**

Muhammad Arif Sultan  
Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory

**Original Facility B2 Short Participant**



Muhammad Arif Sultan  
Authorised Signatory

Abdul Sattar Qureshi  
Authorised Signatory