

TERMS AND CONDITIONS INVESTMENT WAKALA

1. Purpose and Status of these Terms & Conditions

The Customer wishes to appoint the Bank to act as his agent and to invest the Customer's funds in the Wakala Pool on an unrestricted Wakala basis in accordance to the Principles of Sharia and the Bank is willing to accept such appointment on the terms of the Wakala Deposit Form and these Terms & Conditions (which shall be read and construed together and shall together constitute the "Agreement").

2. Definitions

- 2.1. In the Agreement, unless the context otherwise requires, or unless defined elsewhere in the Agreement, the following words shall have the following meanings:

"Agreement" has the meaning given to that term in condition 1;

"Anticipated Profit" means the profit that is expected to be generated from the Investment as specified in the Wakala Deposit Form;

"Bank" means Commercial Bank of Dubai, Attijari Al Islami;

"Business Day" means a day, other than a Friday, Saturday or any public holiday, on which the Bank is open for business in the United Arab Emirates;

"Customer" means the customer whose details are set out in the Wakala Deposit Form;

"Investment" means the investment of the Customer's funds by the Bank on an unrestricted Wakala basis in the Wakala Pool of the Bank with the expectation of generating the Anticipated Profit as further detailed in the Wakala Deposit Form;

"Investment Amount" means the amount invested by the Bank (on behalf of the Customer) in the Investment pursuant to the Agreement as specified in the Wakala Deposit Form;

"Investment Currency" in relation to the Investment, means the currency in which the Investment is made as specified in the Wakala Deposit Form;

"Investment Date" means the date on which the Investment Amount is payable by the Customer to the Bank as specified in the Wakala Deposit Form;

"Investment Maturity Date(s)" means the date or dates on which the Bank shall liquidate (on actual or constructive liquidation basis, at its discretion) and pay the Investment Maturity Proceeds (or any part of the Investment Maturity Proceeds which has been reinvested pursuant to condition 4.7) to the Customer as specified in the Wakala Deposit Form;

"Investment Maturity Proceeds" means an amount equal to the liquidation proceeds of the Investment (following actual or constructive liquidation of the Investment, as the case may be) payable by the Bank to the Customer for the Investment on the Investment Maturity Date(s) and which may be an amount equal to the aggregate of the Investment Amount then outstanding and the Investment Profit after deduction of any amounts owing to the Bank in accordance with the Agreement, including, if applicable, any Performance Incentive;

"Investment Period" means, unless the Investment is terminated earlier in accordance with the Agreement, the period from and including the Investment Date to but excluding the Investment Maturity Date;

"Investment Profit" means in relation to the Investment the actual realised profit derived from the Investment;

"Notice" has the meaning provided to such term in Clause 5.3;

"Performance Incentive" means the Investment Profit amount which is in excess of the Anticipated Profit for the Investment and which is payable to the Bank as a performance incentive for the Investment;

"Principles of Sharia" means the set of the rules and principles derived from *Quran*, *Sunnah* (sayings, actions, approvals and traditions of Prophet Muhammad PBUH) *Ijma'* (consensus of qualified Muslim jurists) and *Qiyas* (analogy and juristic inference from the *Quran* and *Sunnah*) applicable to the financial transactions and as set out in the Sharia Standards published by AAOIFI (Accounting and Auditing Organization for Islamic Financial), relevant

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resolutions of International Fiqh Academy and Sharia pronouncements of the Sharia Board.

“Sharia Board” means the Sharia supervisory board of the Bank from time to time.

“Wakala” An agency contract where the Customer (in his capacity as principal) appoints the Bank as his undisclosed agent to carry out an investment on his behalf or invest his fund in the Wakala Pool of the Bank either for a fixed fee and/or Performance Incentive.

“Wakala Deposit Form” means the form to which these Terms & Conditions are attached and which, amongst other things, details the commercial terms of the Investment.

“Wakala Pool” means the separate independent pool of the assets and investments constituted by the Bank for the purpose of investing the Investment Amounts.

2.2. Unless the contrary intention appears:

- (a) a reference to a gender includes the other gender and vice versa;
- (b) a reference to singular includes plural
- (c) a person includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture, government, state, agency, organization or other entity whether or not have a separate legal personality).

3. Appointment of Bank

- 3.1. By executing the Wakala Deposit Form, the Customer appoints the Bank to be his agent for investment of the Customer's funds in the Wakala Pool on an unrestricted Wakala basis in accordance with the Principles of Sharia on the terms set out in the Wakala Deposit Form and in connection therewith and authorises the Bank to:
- (a) invest the Investment Amount by entering only into Shariah compliant transactions on behalf of the Customer and for the Customer's account. The Customer authorizes the Bank to invest the invested amount in all financing and investment activities of the Wakala Pool;

- (b) do all acts as fully as the Customer could do himself with respect to such transactions;

- (c) negotiate on behalf of the Customer in relation thereto; and

- (d) exercise on the Customer's behalf all other related powers necessary to enable it to fulfil its obligations under the Agreement.

3.2. The Bank, by accepting a duly executed and completed Wakala Deposit Form, will agree to act as agent for the Customer with respect to executing the Investment as contemplated in the Agreement. Except as expressly provided for in the Agreement or where required by law, the Bank shall have no authority to represent or bind the Customer, or purport to do so. The Customer acknowledges and agrees that he shall be solely responsible for assessing, approving and accepting the Investment on the terms set out in the Agreement.

3.3. The Bank shall have only those duties which are expressly set out in the Agreement. Nothing in the Agreement implies any additional duties on the Bank or constitutes the Bank as the trustee or fiduciary of the Customer or any other person.

3.4. The Bank hereby undertakes that it shall, in performing its obligations under the Agreement, act in good faith and shall administer the Investment with the same degree of care as it would exercise if the Investment had been made and administered on its own account.

3.5. The Bank may refrain from doing anything which might, in its sole opinion, constitute a breach of any law or regulation or otherwise be actionable at the suit of any person and may do anything which, in its sole opinion, is necessary or desirable to comply with any law or regulation of any jurisdiction.

3.6. In consideration of the Bank acting as agent of the Customer, the Bank shall be entitled to:

- (a) a fixed Wakala fee as set out in the Wakala Deposit Form, if applicable; and

- (b) the Performance Incentive.

4. Investment

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- 4.1. The Customer acknowledges and agrees that he is entering into the Agreement and the Investment for the purposes of allowing him to invest his funds on the basis of unrestricted Wakala and in a manner compliant with the Principles of Shariah. The Customer undertakes to adhere to and comply with the Principles of Sharia at all times during the term of the Agreement.
- 4.2. The Customer, by completing and executing the Wakala Deposit Form, irrevocably and unconditionally instructs the Bank to enter into the Investment specified in the Wakala Deposit Form on and subject to the terms set out in the Agreement.
- 4.3. The Customer acknowledges and agrees that the Bank may, but shall be under no obligation to, segregate the Investment Amount received from the Customer from its own funds and the funds of its other customers but shall ordinarily commingle the Investment Amount with the Bank's own funds.
- 4.4. The Bank is authorised to act on the basis of the instructions provided in the Wakala Deposit Form. If the Bank requires any further instructions or clarifications from the Customer, the Bank shall be entitled to seek such information or clarification as it deems fit to allow it to fulfil its obligations under the Agreement and may refuse to act, without any liability, until it has received such instructions or clarification.
- 4.5. The Investment shall be carried out for and on behalf of the Customer but in the name of the Bank or in the name of such agent as the Bank selects. The Bank may discharge its agency functions under the Agreement by itself or through further agents and sub-agents as it may in its sole discretion choose.
- 4.6. The Customer shall bear all the risks associated with (i) the Investment (which shall include, for the avoidance of doubt, the risk of the partial or total loss of the Investment Amount); and (ii) all acts of the Bank as agent for the Customer except those risks resulting from the Bank's wilful misconduct or gross negligence or breach of its obligations under the Agreement. The Bank shall not be liable or responsible to the Customer for any risks or actual losses in relation to the Investment (including its performance) except those risks and actual losses (not to include any opportunity costs or funding costs) resulting from the Bank's wilful misconduct or gross negligence or breach of its obligation under the Agreement.
- 4.7. In the event the Investment Profit generated by the Investment is lower than the Anticipated Profit thereon, the Customer hereby acknowledges and agrees that he will only be entitled to receive the actual profit generated by the Investment (if any).
- 4.8. The Bank shall, without any liability, be entitled to withdraw from the Investment at any time during the Investment Period:
- (a) if any representation or warranty made by the Customer pursuant to condition 6 below is not true and accurate or becomes inaccurate or if there is any other breach by the Customer of the Agreement; and
 - (b) if it becomes unlawful, in any jurisdiction, for it to continue to participate in the Investment.
- 5. Payments**
- 5.1. By executing the Agreement, the Customer irrevocably and unconditionally authorises the Bank to debit its account for the value of the Investment Amount not later than the Investment Date and to invest such funds in accordance with the Agreement.
- 5.2. Following liquidation (on actual or constructive liquidation basis), the Bank shall transfer the Investment Maturity Proceeds of the Investment, after making the deductions set out in condition 5.5 below, on the Investment Maturity Date(s) in accordance with the instructions set out in the Wakala Deposit Form. If, on an Investment Maturity Date, the Investment Profit exceeds the Anticipated Profit, the Bank shall be entitled to retain any such excess amount as a Performance Incentive.
- 5.3. The Customer may, by notice in writing to the Bank, request immediate liquidation or termination of the Investment prior to an Investment Maturity Date (the "**Notice**"). Any such request shall be for the liquidation of the full amount of the Investment outstanding at that time and not part only.
- 5.4. In the event of termination or liquidation of the Investment pursuant to condition 4.8 or 5.3 above,

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the Bank shall, following actual or constructive liquidation as the case may be, within five (5) Business Days of such termination, transfer the Investment Maturity Proceeds along with the realised Investment Profit as at the date of termination to the Customer.

5.5. The Customer acknowledges and agrees that the Bank shall be entitled to deduct from the Investment Profit and/or Investment Amount an amount equal to the actual losses suffered or the costs incurred as a result of early termination or liquidation of the Investment pursuant to condition 4.8 or 5.3 above. For the avoidance of doubt, if the Customer requests liquidation or termination of the Investment prior to the relevant Investment Maturity Date, the Bank may liquidate or terminate the Investment and in such circumstances the Bank shall be entitled, in addition to the Wakala fee, a Performance Incentive (out of actual realized Wakala Profit) calculated in accordance with terms set out in the Wakala Deposit Form.

5.6. The Customer hereby authorises and instructs the Bank to, prior to paying any amount to the Customer, deduct from any Investment Maturity Proceeds:

- (a) all actual costs, liabilities and expenses incurred by the Bank in relation to the Investment; and
- (b) any applicable Performance Incentive.

6. Representations

6.1. The Customer hereby represents and warrants to the Bank that:

- (a) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it under the Agreement and (ii) to ensure that the obligations expressed to be assumed by it under the Agreement are legal, valid, binding and enforceable against it have been done, fulfilled or performed;

- (b) no litigation, arbitration or administrative proceedings is pending, initiated or threatened against it;

- (c) it has investigated itself without any reliance on any declaration, fatwa or opinion provided by the Bank and is satisfied as to the Sharia compliance of the Agreement and the transactions contemplated thereunder, will not raise any objection regarding the Sharia compliance of the Agreement and will not bring or make any claim against the Bank on the grounds of non-compliance of the Agreement or the transactions contemplated hereunder with the Principles of Sharia; and

6.2. Each of the representations and warranties constituted by this condition 6 are made on the date the Agreement comes into force and shall be deemed to be repeated on each day of the Investment Period (including, for the avoidance of doubt, each day of any period during which amounts are reinvested pursuant to condition 4.8 above) with reference in each case to the facts and circumstances then subsisting.

7. Indemnity

The Customer shall indemnify and hold harmless the Bank and its officers, employees agents and duly appointed representatives (the “**Compensated Persons**”) for and against any and all actual obligations, liabilities, losses, costs (except interest, opportunity costs or funding costs), expenses, fees (including taxes together with actual legal fees and expenses incurred in connection with any enforcement of the Agreement), damages, penalties, demands, actions and judgments of every kind and nature imposed on, incurred by or asserted against any of the Compensated Persons arising out of or connected with the Agreement, the Investment or the arrangements and transactions contemplated by the Agreement.

8. Currency

8.1. Payments by the Customer hereunder shall be made:

- (a) in the case of the Investment Amount, in the Investment Currency specified in the Wakala Deposit Form;

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- (b) in the case of any cost, expense or tax, in the currency in which such cost, expense or tax was incurred;
- (c) in the case of any fee or other amount, in the currency in which such fee or other amount is expressed to be payable.
- 8.2. If any sum due from the Customer under the Agreement (“**Sum**”) or any order or judgement given or made in relation to a Sum has to be converted from the currency (the “**First Currency**”) in which the Sum is payable into another currency (the “**Second Currency**”) for the purpose of (i) making or filing a claim or proof against the Customer, (ii) obtaining an order or judgement in any court or other tribunal against the Customer or (iii) enforcing any order or judgement given or made against the Customer. In each case in relation to the Agreement, the Customer shall as an independent obligation indemnify and hold harmless the Bank from and against any loss suffered as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert the Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which the Bank may in the ordinary course of business purchase the First Currency with the Second Currency upon receipt by it of the Sum.
- 9. Termination**
- 9.1. The Agreement will be effective from the date of acceptance by the Bank of the duly completed and executed Wakala Deposit Form and shall continue until the Investment terminates in accordance with the terms of the Agreement.
- 9.2. An exercise by the Bank of its rights pursuant to condition 4.8 above or the Customer of his right pursuant to condition 5.3 above shall be deemed to terminate the Investment when all amounts paid as a result of such termination have been paid in full pursuant to condition 5.2 or 5.5 above (as the case may be).
- 9.3. Termination of the Agreement will not affect, extinguish or prejudice any right or obligation of the Bank or the Customer arising prior to termination.
- 10. Notices**
- 10.1. All notices sent by the Bank to the Customer shall be sent to the Customer at the most recent address of the Customer provided by the Customer to the Bank. Notices from the Customer to the Bank shall be sent to Commercial Bank of Dubai, Attijari Al Islami, P.O Box 2668, Dubai, UAE. Notices may be delivered by (i) hand (ii) facsimile message (against a machine-generated confirmation of delivery) or (iii) by registered post or courier.
- 10.2. Notices sent will be deemed to be effective as follows:
- a) if by hand, at the time shown on the transmission report showing successful delivery, and
 - b) if by fax, at the time shown on the transmission report showing successful delivery; and
 - c) if by registered post or courier, when it has been delivered to or left at the relevant address as shown on the signed proof of delivery.
- 10.3. The Customer and the Bank notify each other that, in accordance with the Bank’s internal rules and procedures, all telephone calls made by or to either the Bank or the Customer concerning any matter related to this Agreement may be tape recorded. Accordingly, the Customer consents to the recording of the telephone conversations and agreed that the recording may be submitted in evidence in any proceedings relating to any matter contemplated under this Agreement.
- 11. Waivers**
- 11.1. No failure by the Bank to exercise or any delay by the Bank in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 11.2. The Customer hereby irrevocably waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of the giving of any relief by way of

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injunction or order for specific performance or for the recovery of assets or revenues and the issue of any process against its assets or revenues for the enforcement of a judgment, arbitral award or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

12. Entire Agreement

The Agreement contains the whole agreement between the Bank and the Customer concerning the Investment and supersedes all previous agreements between the Bank and the Customer relating to the Investment.

13. Severability

If, at any time, any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

14. Assignment

- 14.1. The Agreement shall be binding upon and inure to Bank and the Customer, their respective successors and permitted assigns, heirs and/or legal representatives.
- 14.2. The Customer may not assign or transfer any of his rights or obligations under the Agreement. The Bank may assign or transfer any of its rights or obligations under the Agreement to any affiliate without the consent of the Customer.

15. Amendments

No amendment of or addition to the Agreement shall be of any force or effect unless effected in writing and signed by the Bank and the Customer.

16. Third Parties

A person who is not a party to the Agreement has no rights to enforce or to enjoy the benefit of any term of the Agreement.

17. Governing Law And Jurisdiction

17.1. The Agreement and the construction, performance and validity thereof shall be governed by and interpreted and construed in accordance with the laws of the Emirate of Dubai and the Federal laws of the UAE and the Principles of Shariah as interpreted by the Shariah Board of the Bank and in the event of conflict, the Principles of Sharia shall prevail.

17.2. The Customer hereby irrevocably submits to the exclusive jurisdiction of the courts of Dubai to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with the Agreement.

17.3. Submission to the jurisdiction of the courts of Dubai shall not limit the right of the Bank to bring proceedings against the Customer in any other court of competent jurisdiction. The Customer acknowledges and agrees that the Bank shall be entitled to institute proceedings in any one or more jurisdictions in which the Customer is domiciled, or possesses assets, or conducts business

18. Waiver of Interest

The Bank and the Customer recognise and agree that the principle of payment of interest is repugnant to the Principles of Shariah and, accordingly, to the extent that any court would impose, whether by contract or by statute any obligation to pay interest, the Bank and the Customer each hereby irrevocably and unconditionally expressly waives and rejects any entitlement to recover interest from the other.

19. Confidentiality

The Bank and the Customer each agrees to keep the information contained in the Agreement and the terms of the Investment confidential and not to disclose any such confidential information or terms to anyone other than those:

- (a) officers, directors, employees, professional advisers, auditors and partners who need to know such information for the purposes of the Agreement;
- (b) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or

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similar body or pursuant to any applicable law or regulation; or

- (c) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigation, proceeding or dispute.