

SHARIAH ADDENDUM

BETWEEN

**MASHREQ AL ISLAMI, ISLAMIC BANKING DIVISION
OF MASHREQBANK PSC**

AND

DATED: _____

THIS Shariah Addendum (this “**Agreement**”) is entered into on this ____ day of _____, 202__ between:

MASHREQ AL ISLAMI, ISLAMIC BANKING DIVISION OF MASHREQBANK PSC, a public shareholding company incorporated under the laws of the United Arab Emirates with its address at P.O. Box 1250, Dubai, United Arab Emirates (the “**Bank**”);

AND

[[insert company name], a sole proprietorship / partnership / company duly organised and existing under the laws of [insert jurisdiction];

or

[insert name], [insert nationality], holding passport number [insert number];

(the “**Counterparty**”).

(together the “**Parties**” and each a “**Party**”).

WHEREAS, at the request of the Counterparty, the Bank has agreed to make available certain Islamic finance facilities to the Counterparty on the terms and conditions stated in this Agreement;

NOW, THEREFORE, in consideration of the agreements and covenants contained herein, the Bank and the Counterparty hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following terms shall have the meanings assigned to them below:

- (a) “**Agreement**” means this Shariah Addendum.
- (b) “**Product Document**” means this Agreement, any terms and conditions or any document signed by the Counterparty in relation to a product entered into between the Bank and the Counterparty as detailed in Schedule 1.
- (c) “**Late Payment Amount**” has the meaning given to it in Clause 2.2.
- (d) “**Late Payment Rate**” means either (a) the prevailing late payment rate set out in the schedule of charges maintained by the Bank from time to time, which may be published in the Bank’s website at periodically, but not necessarily always updated; or (b) the rate advised by the Bank to the Counterparty in writing from time to time but in the event of any conflict between the two, the rate advised by the Bank to the Counterparty shall prevail.
- (e) “**Shari’ah**” means the rules, principles and parameters of Islamic law.
- (f) “**Shari’ah Standards**” the latest publication of the written set of Shari’ah principles and guidelines related to financial transactions published by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) as interpreted by the ISSC.

- (g) “**Internal Shari’ah Supervisory Committee (ISSC)**” means the supervisory board of the Bank for Shari’ah matters.
- (h) “**UAE**” means the United Arab Emirates.
- (i) “**Unpaid Sum**” has the meaning given to it in Clause 2.2.

1.2. Interpretation

Any reference in this Agreement to:

- (a) a “Clause” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement;
- (b) a “person” shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (c) a period of time shall be construed as a reference to a period of time measured by the Gregorian calendar and all profits, costs, expenses, commission and fees hereunder shall be calculated according to the Gregorian calendar;
- (d) the “Bank” or the “Counterparty” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (e) the singular shall include references in the plural and vice versa and words denoting any gender shall include any other gender; and
- (f) Clause headings are for ease of reference only.
- (g) a “Counterparty” may be either a company or an individual as applicable and where the Counterparty is an individual, provisions relating to a body corporate shall not apply.

2. PAYMENTS

- 2.1. The Counterparty shall pay commission, profit, fees, required rent and charges to the Bank in accordance with this Agreement and the relevant Product Document. For the avoidance of doubt, all fees charged by the Bank shall be in accordance with the guidelines of the Central Bank of the United Arab Emirates.
- 2.2. In the event that any amount payable (or part thereof) under any Product Document is not paid on its due date (the balance thereof being an “**Unpaid Sum**”), the Late Payment Rate shall be applied to the Unpaid Sum (based on a demand from the Bank) and the resulting amount shall accrue daily and shall be paid by the Counterparty to Bank (the “**Late Payment Amount**”). The Counterparty shall have the right to provide written reasons promptly to the Bank requesting to quash its payment obligation of Late Payment Amount, and if the reasons are found satisfactory to the Bank, the Bank may decide to relieve by not demanding the Counterparty to pay and/or not deducting the Late Payment Amount from Counterparty’s account. The Bank shall be permitted to deduct its actual costs and expenses incurred as a result of such late payment from the Late Payment Amount and shall transfer the balance of the Late Payment Amount to an Islamic charity of its choice as decided by its ISSC.

- 2.3. All payments due to the Bank under any Product Document shall be made so that each such payment is received by the Bank in cleared funds on or before 10:00 a.m. on the day on which such payment is due to be paid.
- 2.4. Except as expressly stated otherwise, any payment received or recovered by the Bank from the Counterparty shall be applied against amounts payable by the Counterparty under any Product Document in the following order of precedence: (i) fees and commissions; (ii) profit and required rent; (iii) principal; (iv) actual costs and expenses related to the Late Payment Amounts; and (v) the Late Payment Amount.
- 2.5. The Bank may at any time without notice to the Counterparty debit any account of the Counterparty in settlement of an amount due and payable by the Counterparty to the Bank.
- 2.6. The payment of any Late Payment Amount is not applicable to the extent that the Counterparty is insolvent.

3. REPRESENTATIONS AND WARRANTIES OF THE COUNTERPARTY

- 3.1. The Counterparty hereby represents and warrants to the Bank that after having reviewed the Product Documents for the purposes of their permissibility under Shari'ah and, to the extent it has considered this necessary, taken independent advice from advisors specializing in Shari'ah, it is satisfied that the provisions of each Product Document do not contravene Shari'ah. Therefore, Counterparty shall not contest on the Shari'ah noncompliance and shall not prejudice any obligations under this Agreement.
- 3.2. The Counterparty shall not engage in any business or activity that is not compliant with Shari'ah.

4. INDEMNIFICATION

- 4.1. The Counterparty shall defend, indemnify and hold the Bank free and harmless on demand from and against any deficiency in the amounts received by the Bank including without limitation any shortfall arising from payment in a different currency.
- 4.2. The Counterparty shall defend, indemnify and hold the Bank free and harmless on demand against any and all claims, actions, liabilities, losses, costs and expenses (including, without limitation, court costs and attorney charges) which the Bank may suffer or incur arising from or relating to or in connection with (a) the entry by the Bank into any Product Document or any other agreement or contract relating thereto, or (b) the breach by the Counterparty of any Product Document or any other agreement or contract relating thereto.
- 4.3. The indemnification obligations of the Counterparty under this Agreement shall survive the termination of any Product Document (including this Agreement) and shall constitute separate and independent obligations of the Counterparty. The Counterparty's obligations in Clause 4.1 and Clause 4.2 to indemnify the Bank shall not apply to the extent arising due to the fraud, gross negligence, or willful misconduct of the Bank as finally and judicially proven.
- 4.4. For the avoidance of doubt, the Counterparty's obligations under any Product Document to indemnify the Bank shall not apply to the extent arising due to the fraud, gross negligence or willful misconduct of the Bank as finally and judicially proven.

5. MISCELLANEOUS

- 5.1. Any notice under any Product Document shall be given in writing by facsimile, registered mail, courier, hand delivery or electronic mail to the following addresses of the Parties (or at such other address which a Party shall notify to the other).

to the Counterparty

Attention: _____

Address:

Facsimile:

Email:

to the Bank

Attention: _____

Address: P.O. Box _____, Dubai, UAE

Facsimile:

Email:

All notices communications, or other documents served in the foregoing manner shall be deemed delivered (a) when delivered in person, (b) upon receipt when the same has been sent by registered mail, and (c) upon receipt of confirmation when sent by facsimile or electronic mail. No notice or other communication shall be deemed to have been given by the Counterparty to the Bank unless and until the same has in fact been received by the Bank.

- 5.2. The Bank is authorised to act without further enquiry upon any instruction or communication received by facsimile or email which it reasonably believes in good faith to be an instruction or communication given or made by the Counterparty or any person authorised by the Counterparty to give instructions or make other communications by facsimile or email on its behalf and is entitled to treat any such instruction or communication as fully authorised by and binding upon the Counterparty regardless of the circumstances prevailing at the time such instruction or communication is given or made. The Counterparty shall defend indemnify, and hold harmless on demand the Bank and its officers, directors, employees, representatives and agents from and against any cost, claim, loss, expense (including legal fees) or liability together with any value added tax thereon which any of them may reasonably incur or sustain by reason of having acted upon any such instruction or communication.
- 5.3. Neither Party may amend any Product Document without the prior written consent of the other Party. Any amendments shall be subject to Shari'ah Standards.
- 5.4. If any transaction under any Product Document involves the conversion of one currency into another, unless otherwise agreed, the Bank shall make such conversions at its then prevailing rate of exchange for purchasing or selling the relevant currency, as the case may be, on the date of the exchange.
- 5.5. In the event of any conflict between this Agreement, and any other Product Document, the provisions of this Agreement will prevail.
- 5.6. All references to dates and times shall be to the Gregorian calendar and United Arab Emirates local time, respectively.

- 5.7. Unless the context otherwise requires, all references to the Bank herein shall mean the Bank and all branches of the Bank within or outside the United Arab Emirates.
- 5.8. This Agreement may be executed in any number of counterparts, each of which when executed and delivered constitutes an original of this Agreement, but all the counterparts shall together constitute one and the same agreement. This Agreement shall be effective if each party has executed at least one counterpart.
- 5.9. As per the ongoing regulatory requirements of the Central Bank of the United Arab Emirates, the Bank is obliged to comply with Shari'ah Standards. The Counterparty irrevocably agrees to forego any rights and remedies that are not compliant with the Shari'ah Standards, and would have been available had the Shari'ah Standards not been complied with.
- 5.10. The Bank and the Client agree that (unless otherwise agreed in writing), there shall be no investment return payable by the Bank in respect of any cash collateral posted by the Client in connection with a Product Document ("Cash Collateral") and the Cash Collateral shall be held in a non-pay out account.
- 5.11. Any security provided by the Client to the Bank in connection a Product Document shall be compliant with Shari'ah Standards.
- 5.12. The Client shall ensure that insurance policies taken out in accordance with any Product Document shall be Shari'ah compliant insurance ("Takaful"). If Takaful is not available, conventional insurance may be obtained subject to the approval of the Bank;

6. APPOINTMENT OF FACILITATOR

- 6.1. For the purposes of this Agreement, the following terms have the meaning given below:

Broker means the broker involved in the Purchase Transaction.

Broker's Offer to Purchase means the Broker's offer to purchase the Commodities sent to the Client via the Facilitator in the form as notified by the Bank.

Client's Acceptance to Sell means the acceptance by the Client sent to the Broker via the Facilitator to sell the Commodities in the form as notified by the Bank.

Commodities means, with respect to any Purchase Transaction:

- (a) platinum, palladium and/or rhodium that is segregated and held in allocated accounts and that meet the specifications of the London Platinum and Palladium Market to qualify for good delivery; and/or
- (b) any other commodities (excluding gold and silver or any currency);

Facilitator means the Bank assuming the role of messenger/coordinator between the Client and the Broker to enable the entry into Purchase Transactions from time to time and to do all such other things and acts, at its own responsibility, as are incidental to and/or required in relation each Purchase Transaction including (without limitation);

- i. Coordination and messenger services;
- ii. Operational assistance; and
- iii. Record keeping;

Purchase Transaction means the purchase of Commodities by the Client (acting through the Facilitator) from the Broker.

6.2. Facilitation under Purchase Transaction

- (A) The Client hereby appoints the Bank to act as its Facilitator, pursuant to the terms of this Agreement;
- (B) The Facilitator shall be free to accept or refuse any time to act in such a capacity at sole discretion.
- (C) Any act or omission of the Facilitator pursuant to this Agreement shall always be towards satisfaction of this Agreement and shall be subject to payment of all cost and expenses by the Client's in a manner that the Facilitator should not go out of pocket for that act or omission. The Facilitator may reject to proceed for any act or omission where the Facilitator has to go out of pocket.
- (D) In relation to any Purchase Transaction, parties agree that, the Bank may act as Facilitator on the following terms and conditions;
 - (i) The Facilitator shall not be an agent; therefore, the Facilitator shall not make any offer or accept any offer for and on behalf of the Client. The Client indemnifies the Facilitator and holds harmless from all the claims, costs, expenses of any nature incurred for any reason for Client's failure to make or accept an offer in a timely manner;
 - (ii) The Client shall be solely responsible for any act or omission of the Facilitator done in good faith and in compliance with the instructions received from the Client save where willful misconduct and/or gross negligence of the Facilitator is proved by an unchallengeable, final and binding decision of a court of competent jurisdiction.
 - (iii) Parties agree that the Facilitator's services shall be limited to the following tasks;
 - (a) Coordination and messenger services: a coordinator and messenger between the Broker and the Client in relation to a Purchase Transaction to;
 - (b) convey the the Client's Acceptance to Sell in response to the Broker's Offer to Purchase;
 - (c) Mediate between the Client and the Broker in case of disputes with regards to a Purchase Transaction;
 - (d) Operational assistance: operationally enable execution of the Purchase Transaction for the Client from time to time by;
 - (e) Managing currency account(s) for payments in relation to each Purchase Transaction;
 - (f) Managing commodity accounts as and when required; and
 - (g) Hold constructive possession in a commodity account mentioned in the offer and acceptance executed for each Purchase Transaction save for the case where the Client is capable of and has agreed to take constructive and/or physical possession;
 - (h) Record keeping: maintain record of the supporting documents related to each Purchase Transaction for at least one year from the date of execution of each Purchase Transaction in a manner suitable to retrieve the same as and when required for a justifiable professional reason including legal proceedings in a court of competent jurisdiction; and
 - (j) Do all the tasks related to and/or incidental to conclusion of each Purchase Transaction to the satisfaction of the purpose of this Agreement.

(E) The Parties agree that title to the Commodities (on a trust basis) shall be held by the Bank but possession of the Commodities may be held by the Facilitator for and on behalf of the Client (as the case may be).

7. GOVERNING LAW AND JURISDICTION

- 7.1. This Agreement shall be governed by and construed in accordance with the laws of the Emirate of Dubai and the applicable federal laws of the United Arab Emirates, save in each case to the extent that any such laws conflict with the Shari’ah Standards as determined and interpreted by the ISSC..
- 7.2. The Parties recognize and agree that the principle of the payment of interest is prohibited under Shari’ah and accordingly, to the extent that any legal system would (but for the provisions of this Clause) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.
- 7.3. Any dispute connected with this Agreement shall be submitted to the non-exclusive jurisdiction of the courts of the Emirate of Dubai.

Counterparty

Mashreqbank psc

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 1

[INSERT DOCUMENTS PERTAINING TO PRODUCT, such as Terms and Conditions, Agreements]