

**These terms and conditions form an agreement between**

1. National Bank of Fujairah (Islamic Banking) pjsc, established under the laws of the United Arab Emirates, with its mailing address at[insert], represente by its authorized representative(s)(the“Wakeel”).And
2. Customer (“Muwakkil or Customer”).

The Wakeel and the Muwakkil are both possessing the legal capacity to enter into agreements and hereinafter individually and collectively referred to as the “Party” or the “Parties” respectively.

**RECITALS**

- A. Whereas the Muwakkil wishes to appoint the Wakeel in order to invest various amounts of agreed currencies deposited with the Wakeel from time to time for the purpose of investment in Shariah compliant financial assets (based on the Shariah Principle of Wakala bil Istithmar) against cash and/or credit in conformity with the regulations of Shariah under the terms and conditions of this Agreement.
- B. Whereas the Wakeel shall receive funds from the Muwakkil for investment in its capacity as Wakeel of the Muwakkil under this Agreement in the Wakala Account (as defined below) (“Wakala Investment Placement”) pursuant to the Wakala Investment Placement Request (as defined below).
- C. Whereas the Muwakkil shall instruct the Wakeel for the investment of the Muwakkil Specified Amount (as defined below) from time to time and specifies the minimum anticipated return acceptable for making the investments pursuant to a Wakala Investment Placement Request (substantially in the form and contents as set out under Annexure I hereof) (“Wakala Investment Placement Request”) which shall be subject to the acceptance of the Wakeel as set out under Annexure II (the “Acceptance”) undertaking to discharge its responsibilities in the best interests of the Muwakkil.
- D. Whereas the Wakeel has accepted such appointment.

NOW THEREFORE the Parties agree to the terms and conditions as set forth below.

**Article 1 - Definitions**

**Acceptance** has the meaning ascribed to it in paragraph C of the Recitals.

**Wakala Fee** has the meaning ascribed to it in Article 8.

**Business Day** means a day (other than a Friday or Saturday) on which banks are open for general business in Dubai.

**Contracts** has the meaning ascribed to it in Article 3.1.

**Performance Fee** has the meaning ascribed to it in Article 9.

**Anticipated Investment Return** has the meaning ascribed to it in the Wakala Investment Placement Request.

**Actual Investment Return** has the meaning ascribed to it in the Wakala Investment Placement Request.

**Maturity Date** means the last day of the Tenor.

**Net Proceeds** means in relation to a Relevant Wakala, the sum of the Muwakkil Invested Amount and the Wakala Profit (if any), less the Agency Fee and the Performance Fee (if applicable).

**Muwakkil Invested Amount** has the meaning ascribed to it in the Wakala Investment Placement Request.

**Relevant Wakala** has the meaning ascribed to it in paragraph C of the Recitals.

**Tenor** has the meaning ascribed to it in the Wakala Investment Placement Request.

**Wakala Investment Placement** has the meaning ascribed to it in paragraph B of the Recitals.

**Wakala Investment Placement Request** has the meaning ascribed to it in paragraph C of the Recitals.

**Wakala Profit** has the meaning ascribed to it in Article 9.

**Wakala Account** has the meaning ascribed to it in Article 7.

**Article 2 - Nature of the Recitals and Annexure**

The Recitals and Annexures attached hereto constitute an essential and integral part of this Agreement and shall be read and interpreted in accordance with the articles and conditions hereof.

**Article 3 - Duties and Obligations of the Wakeel**

The Wakeel, in performance of its duties and obligations under this Agreement, undertakes the following:

- 3.1 Select Shariah compliant goods and/or financial assets for trading, and to enter into any and all purchase and sale contracts in relation to such Shariah compliant goods and/or financial assets with any suppliers and/or third parties against cash or credit (collectively referred to as the “Contracts”). The Wakeel shall have all the authorities from the Muwakkil to claim all Wakeel’s rights under the Contracts executed in the Wakeel’s name, and to fulfill its obligations under such Contracts in an honest way to the best interests of its Muwakkil. However, since Wakala Investments are considered as Unrestricted Investment Accounts (URIA), account holders hereby authorize the Wakeel to invest their funds in the manner the Wakeel deems appropriate without laying down any restrictions as to where, how and for what purpose the such funds are to be invested.
- 3.2 Will be responsible for all losses and liabilities towards third parties concerning its gross negligence, fraud, omission, violation or breach of the contract conditions.
- 3.3 Ensure, in the event of an investment in Shariah-compliant commodities (excluding gold and silver), that the suppliers deliver the goods in the proper and stipulated time frame and directly without any attachment, fees, encumbrances or guarantees.
- 3.4 Perform and fulfill its obligations hereunder as if it is working for its own interests and it shall take all the steps and procedures necessary in order to protect the rights and interests of the Muwakkil and shall refrain from doing anything which is not in conformity with its obligations as set forth herein.
- 3.5 Comply with the terms and conditions of this Agreement and to ensure the execution of the Contracts to purchase Shariah compliant goods from suppliers and sell the same for cash or on credit in conformity with the principles of Shariah.
- 3.6 To provide the Muwakkil, if requested, with the particular details related to the transactions pursuant to the Contracts executed by the Wakeel in its performance of this Agreement. The Wakeel shall enable the Muwakkil to review such particulars to ensure the Wakeel’s compliance with the regulations of Shariah during performance of its duties and obligations set forth herein.
- 3.7 Not invest the Muwakkil’s funds other than in investments which are expected to make the Anticipated Investment Returns, and if an investment is not feasible to generate the Anticipated Investment Return or that the Anticipated Investment Return is not available on the market, the Wakeel shall obtain the express consent and approval of the Muwakkil prior to entering into any investment which may lower the Anticipated Investment Return.

- 3.8 Ensure that any amount paid by the Muwakkil as a price to purchase Shariah compliant goods and /or finance assets is inclusive of any taxes, fees, import tax or retention and that such amount will be paid on the goods' delivery date.

#### **Article 4 - Authorities, Powers and Responsibilities of the Muwakkil**

The Muwakkil hereby represents and warrants that it has the full authority and power required by law to enter into this Agreement and to fulfill its obligations herein and that that such fulfillment does not contradict with the clauses of the Muwakkil's constitutional documents or with any law, contract, covenant or obligation towards any third party. Subject to Article 3.2, all losses arising under the Relevant Wakala shall be on the account of the Muwakkil.

#### **Article 5 - Delegation of Powers of the Wakeel**

The Wakeel is entitled to appoint sub-Wakeels under the terms and conditions of this Agreement, and the Wakeel acknowledges that it will be liable towards the Muwakkil regardless of the appointment of such sub-Wakeels.

#### **Article 6 - Duration of the Wakala Investment Placement**

The duration of each Wakala Investment Placement will be specified in the relevant Wakala Investment Placement Request. Subject to the Muwakkil's instructions and as per the terms and conditions to this Wakala Agreement, the principal wakala investment amount (with or without profit)(if any) can be re-invested for a similar term at the end of each placement period subject to the proviso that no loss was incurred on the principal wakala amount during the investment period. In the event of loss, the new lower amount may be re-invested at the Muwakkil's sole discretion.

#### **Article 7 - Wakala Account**

The Wakeel shall maintain a Wakala Account in the name of the Muwakkil ("Wakala Account").

#### **Article 8 - The Fee of the Wakeel**

The Wakeel shall receive the Wakala fee agreed at the time of placement of AED (1) ("Agency Fee") on a predetermined fixed amount upon signing this Agreement as consideration for the management of the Wakala Account under this Agreement and which will be deducted at the beginning of deposit. If the Wakeel so decides from time to time to change the Wakala fee, this change has to be notified to the Muwakkil and agreed upon by both parties. Existing investment accounts will not be affected by such changes.

#### **Article 9 - Performance Fee**

The Muwakkil hereby agrees to pay to the Wakeel a Performance fee equal to the amount of profit gained in respect of a Relevant Wakala ("Wakala Profit") is in excess of the Anticipated Investment Return applicable to the Relevant Wakala (the "Performance Fee"). This fee is calculated on a predetermined fixed amount upon signing of this Wakala Agreement.

The Performance fee shall be taken by the Muwakkil solely in circumstances where the Actual Investment Return is in excess of the Anticipated Investment Return plus the Wakala Fee.

#### **Article 10 - Profit Calculation & Payment**

The funds in the Wakala Account will be placed by the Wakeel on a general unlimited and unrestricted Wakala basis. The Wakeel will intimate the Anticipated Investment Return on a monthly basis or as may otherwise be mutually agreed in writing with the Muwakkil. The Wakala Profit will be calculated on actual balance in the Wakala Account and the Wakeel will pay the accrued Wakala Profit on a payment date mutually agreed between the Parties to the Muwakkil designated account and the share of profit plus principal wakala investment amount shall be returned to the Muwakkil at maturity.

The Wakeel does not guarantee the principal wakala investment amount or the Anticipated Investment Return and if there are multiple investors, in case of loss it will be borne by each investor pro rata and deducted from their contributed principal wakala investment amounts.

#### **Article 11 - Muwakkil Request and Wakeel Acceptance (the "Relevant Wakala")**

- 11.1 The Muwakkil shall, from time to time, instruct the Wakeel pursuant to the Wakala Investment Placement Request [which may be executed and delivered by facsimile, by an exchange of telexes or by an exchange of electronic mails ("Email")], regarding the investment of the Muwakkil Amount in the Wakala Investment Placement.
- 11.2 Pursuant to the delivery of an Acceptance by the Wakeel by facsimile, an exchange of telexes or by an exchange of Email in respect of a Wakala Investment Placement Request, a binding agreement in respect of the relevant Wakala Investment Placement shall be created ("Relevant Wakala")
- 11.3 The Muwakkil agrees that the Wakeel may rely and act on, and treat as binding, any instruction from the Muwakkil which is purported to have been given by an authorized person, by facsimile or Email instruction or otherwise (whether or not in writing), without further enquiry, provided that the Wakeel reasonably and in good faith believes the instructions to be genuine unless and until such instructions are cancelled or amended by the Muwakkil. Any cancellation or amendment to an instruction will only be effective after actual receipt and confirmation by the Wakeel of an instruction to cancel or amend the instruction and shall not affect the liability of the Muwakkil under any Transactions entered into by the Wakeel for the account of the Muwakkil prior to receipt of an instruction to cancel or amend.
- 11.4 In case the start date of the Tenor as stipulated in a Wakala Investment Placement is not a Business Day, the Wakeel may continue to apply the Anticipated Investment Return agreed in the immediately preceding Wakala Investment Placement (if any).

#### **Article 12 - Termination of Agreement**

- 12.1 This Agreement commences on the date it is signed by all the Parties and shall continue, unless either Party terminates it, upon delivering the other Party thirty (30) days prior written notice.
- 12.2 Either Party may terminate this Agreement on giving not less than thirty (30) days written notice to the other if the other Party commits a material breach of any of the terms of this Agreement and fails to remedy that breach within seven (7) days of that Party being notified in writing of the breach.
- 12.3 However, the Muwakkil cannot terminate this Agreement, add or withdraw funds (wholly or partially) before maturity without Wakeel's consent while it will be possible for the Muwakkil to pre-close the account and liquidation subject to notice, following which the Wakeel shall, within three (3) business days transfer the invested amount to the Muwakkil. In such case, the Muwakkil acknowledges and agrees that the Wakeel shall be entitled to decide on payment/non-payment of the Actual Investment Return (if any). The Muwakkil also acknowledges and agrees, that in case of loss, the Muwakkil may not recover the full Muwakkil Invested Amount, either at maturity or upon its request for pre-closure.
- 12.3 The termination of this Agreement shall not affect any of the rights or obligations of either Party arising prior to or at the time of the termination of this Agreement.

#### **Article 13 - Applicable Law and Settlement of Disputes.**

- 13.1 Subject to Article 13.2, this Agreement and all disputes and claims arising out of or in connection with its subject matter are to be governed by and construed in accordance with the laws of the Emirate of Dubai and the Federal laws of the United Arab Emirates.

13.2 The Parties agree to amicably resolve any dispute that arises out of or in connection with this Agreement. In the event that the Parties fail to resolve such a dispute amicably fifteen (15) days from the date of serving a notice from one Party to the other, the Parties shall resolve the matter in accordance with Article 13.1.

**Article 14 - Validity of the Contract**

The Muwakkil acknowledges that it is fully aware of the terms and conditions of this Agreement and the requirements thereof.

**Article 15 - Indemnity of Damage**

- 15.1 If the Wakeel breaches any of the obligations set forth herein, it shall indemnify the Muwakkil against any actual damages sustained by the Muwakkil as a result of such breach.
- 15.2 If the Muwakkil desires to recover Muwakkil Invested Amount prior to the Maturity Date and the Wakeel sustains actual damages as a result thereof, the Muwakkil shall indemnify the Wakeel against any such damages or, as an alternative, keep the Muwakkil Amount in the Wakala Account until the Maturity Date.
- 15.3 The Muwakkil shall release the Wakeel and indemnify and hold the Wakeel, and any of its directors, officers, employees or Wakeels, harmless from and against all actions, suits, proceedings, costs (including legal costs), claims, demands, charges, expenses, losses and liabilities howsoever arising (unless due to the fraud, gross negligence or willful default of the Wakeel) in consequence of, or in any way related to:
  - (a) The Wakeel having acted in good faith in accordance with the Muwakkil's written facsimile or Email instructions, notwithstanding that such instructions, have been initiated or transmitted in error or fraudulently altered, misunderstood or distorted in the lines of communication or transmission;
  - (b) The Wakeel having refrained from acting in accordance with Muwakkil's written facsimile or Email instructions by failure of either actual transmission thereof to the Wakeel or receipt by the Wakeel for whatever reason, whether connected with the fault, failure or unreadiness of the sending or receiving machine or otherwise; or
  - (c) The Muwakkil's failure to forward all original copies of facsimile or Email instructions to the Wakeel within such period as the Wakeel may specify.

**Article 16 - Transfer of Proceeds**

On the Maturity Date, the Wakeel undertakes to transfer the Net Proceeds of the Relevant Wakala to any designated account (including but not limited to the Wakala Account) as instructed by the Muwakkil in the relevant Wakala Investment Placement Request.

**Article 17 - Confidentiality and Protection of Interests**

The Parties agree to consider as confidential all information provided under this Agreement or by any other means concerning the commercial secrets of the other Party or its financial resources, assets, transactions or business and it is not entitled to divulge such information or any part thereof to any third party or to publish such information by any other means whether personally or by its employees or Wakeels during the term of this Agreement and

for a period of two (2) years from the date of termination of this Agreement.

**Article 18 - Effects of the Agreement**

This Agreement shall be binding upon each Party's heirs, executor, administrator, personal representatives and assignees.

**Article 19 - Partial Execution**

The omission to demand by either Party at any time of the execution of any part of the conditions and obligations set forth in this Agreement shall not be considered as a waiver of such right or abandonment of the right to demand full performance thereof at any later time.

**Article 20 - Notices and Correspondences**

All notices under this Agreement must be given in writing to the recipient identified below at its registered office (or such other address or recipient as it has previously provided to the other Party in writing) or by fax to the following addresses:

- A. Address of the Wakeel:  
National Bank of Fujairah (Islamic Banking Division),  
P.O. Box: ....., Dubai, United Arab Emirates  
Telephone: .....  
Fax: .....
- B. Address of the Muwakkil:  
P.O. Box: .....  
Telephone: .....  
Fax: .....

**Article 21 - Headings**

Clause and Annexure headings shall not affect the interpretation of this Agreement.

**Article 22 - Copies of the Agreement and signature**

This Agreement shall be executed in two original copies in English by the Parties.

**Article 23 - Wakala investment placement terms**

Wakeel shall not invest the Muwakkil Amount other than in investments which are expected to make returns of not less than the Anticipated Investment Return and in Shariah compliant investments. In the event that wakeel is unable to achieve the Anticipated Investment Return in any investment, it shall, subject to customer's consent, re-enter into investments based on the terms agreed to by the customer. Such consent shall be deemed to have been given after the Wakeel has announced revised anticipated investment return for relevant investment amount and tenor on its website.

The Actual Investment Return shall be the return realized by wakeel on the Muwakkil Investment Amount during Tenor of this Agreement. Customer acknowledges that he/she may suffer losses in this investment and they shall bear such losses accordingly except for the situations as explained in the Wakala Terms and conditions.

Date: 

D	D	M	M	Y	Y

The Muwakkil hereby requests the Wakeel to place a Wakala Investment Placement on their behalf per the specification given below:

Investment Amount: ("Muwakkil Investment Amount") .....

Tenor: ..... (months/years)                      From: ..... To: ..... ("Tenor")

Cut-off investment anticipated return: .....% per annum ("Anticipated Investment Return")

At the end of the investment tenor, the muwakkil hereby requests the wakeel to (select as desired).

- Transfer the proceeds to the muwakkil's account.
- Reinvest principal only for the same tenor as the original deposit.
- Reinvest principal and profit for the same tenor as the original deposit.

(Note: incase customer wishes to opt for automatic reinvestment, the anticipated Investment Return as announced by wakeel on its website as on the date of reinvestment will be applicable.

**Signatures**

Muwakkil:

Name:

Title:

**Bank use only**

Investment accepted by the Wakeel:

National Bank of Fujairah (Islamic Banking Division)

Name:

Title: