**[Insert Date]**

**DUBAI MULTI COMMODITIES CENTRE AUTHORITY**

**DMCC TRADEFLOW**

**WAREHOUSE OPERATION AGREEMENT**



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**THIS AGREEMENT** is made on the [Insert Date, 2013]

**BETWEEN**:

1. **Dubai Multi Commodities Centre Authority**, established by decree under the laws of the Emirate of Dubai, United Arab Emirates having its registered office at Jumeirah Lakes Towers, Almas Tower, Sheikh Zayed Road, P O Box 48800, Dubai, United Arab Emirates (the “**DMCCA**”); and
2. [Insert Company name], established under the laws of the United Arab Emirates, having its registered office at [Insert Address] (the “**Storage Operator**”).

**INTRODUCTION**:

1. DMCCA serves, inter alia, as a centre for the trading of commodities in the UAE and is in a position to offer the Services, with the assistance of the Service Providers, to the Tradeflow Participants, through providing them with access to DMCC Tradeflow on the terms set out in the Corporate Access Agreement.
2. The Storage Operator owns and/or manages the Storage Facility within the United Arab Emirates and will provide Storage Services to Tradeflow Participants on the terms set out in the Corporate Access Agreement, the Rules and this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. INTERPRETATION
   1. In this Agreement, defined terms not otherwise defined herein shall have the meaning ascribed to them in the Corporate Access Agreement and unless the context or subject matter otherwise requires:-

“**Corporate Access Agreement**” means the Corporate Access Agreement dated 11th February 2013, entered into by and between the DMCCA and the Tradeflow Members;

“**Designated Goods**” means the specific type of Goods that the Storage Operator stores in the Storage Facility;

“**DMCC Tradeflow**”means the centralized internet based online commodities title receipt system developed by DMCCA that offers Tradeflow Participants the ability to make use of some or all of the Services;

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

“**Environmental Law**” means the applicable law in the United Arab Emirates which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants;

“**Environmental Permits**” means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the Storage Facility;

“**Hazardous Materials**” means substances that are prohibited by Local Requirements or that could have a detrimental impact on the Designated Goods;

“**Local Requirements**” means; (i) requirements and/or restrictions set out in a local and federal laws and regulations; and (ii) any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration requirements prescribed by the federal or local government authorities in the United Arab Emirates;

“**Relevant Tradeflow Participant**” means the relevant Tradeflow Participants concerned with a specific Transaction involving Designated Goods;

“**Rules**” means the Warrant Rules and the Security Rules;

“**Storage Facility**” means any premises or Vessel registered by the Storage Operator on DMCC Tradeflow;

“**Storage Services**” means the services provided by the Storage Operator under Clause 3 of this Agreement being a component of the Services provided to Tradeflow Participants under the Corporate Access Agreement; and

“**Warrant Rules**” means the Rules for DMCC Tradeflow Warrants attached as Appendix 1 to the Corporate Access Agreement, as amended and/or replaced from time to time by DMCCA at its sole discretion.

* 1. The provisions of Clause 1.2 of the Corporate Access Agreement apply to this Agreement as though they were set out in full in this Agreement.
  2. The headings in this Agreement do not affect its interpretation.

1. APPOINTMENT OF STORAGE operator
   1. The Storage Operator has applied to the Tradeflow Registrar to provide the Storage Services in accordance with the provisions of the Corporate Access Agreement and the DMCCA has approved the Storage Operator’s application.
   2. The Storage Operator shall be deemed to be a Storage Operator under the terms of the Corporate Access Agreement and the Rules issued thereto.
   3. The Storage Operator acknowledges that it has been provided with the Corporate Access Agreement and the Rules and shall adhere to the terms of the Corporate Access Agreement, the Rules and this Agreement while providing the Storage Services.
   4. In consideration of DMCCA accepting the Storage Operator’s application under Clause 2.1 of this Agreement, the Storage Operator agrees to pay to DMCCA the fees notified by DMCCA, from time to time, through DMCC Tradeflow.
2. Storage services

The Storage Operator shall provide the following Storage Services:

* + 1. The Storage Operator shall make available the Storage Facility and store Goods in accordance with this Agreement;
    2. The Storage Operator shall ensure that it maintains accurate records of the Goods stored in the Storage Facility in accordance with Clause 5 of this Agreement and the Warrant Rules; and
    3. The Storage Operator shall issue Warrants in accordance with the terms of the Warrant Rules.

1. STORAGE FACILITY
   1. **Physical Requirements**

The Storage Operator shall ensure that the Storage Facility:

* + - 1. is constructed and fitted out in a manner that is suitable for storage of the Designated Goods;
      2. contains the equipment with the technical specifications required for the purposes of unloading, storing and delivering the Designated Goods; and
      3. has been constructed in accordance with Local Requirements and the relevant building permits (stipulated in the Local Requirements) have been obtained and are in force.
  1. **Safety of Storage Facility and Hazardous Materials**
     + 1. The Storage Operator shall ensure that the Storage Facility conforms to Local Requirements relating to fire safety and natural disasters; and
       2. The Storage Operator shall not permit Hazardous Materials to be stored in the Storage Facility (except pursuant to a specific authorisation from the relevant government authority and in accordance with the conditions of such authorisation) and shall maintain adequate systems for the detection of Hazardous Materials.
  2. **Staffing**
     + 1. The staff employed by the Storage Operator shall be suitably qualified for the purposes of managing and operating the Storage Facility and to administer its functions on DMCC Tradeflow.
       2. The Storage Operator shall ensure that a suitable number of staff is available at the Storage Facility for the purposes of executing the Storage Services.

1. RECORD KEEPING
   1. The Storage Operator shall maintain adequate records relating to the Designated Goods including:
      1. the name and relevant details of the Originator of such Designated Goods;
      2. the HS Code for the Designated Goods stored in the Storage Facility;
      3. a description of the Designated Goods (provided by the Originator and agreed by the Storage Operator);
      4. the quantity and unit of measure for the Designated Goods (including the Variation Margin agreed with the Originator (if applicable)); and
      5. whether the Designated Goods are Allocated Goods or Non-Allocated Goods.
2. ISSUANCE OF WARRANTS
   1. Following the receipt of Designated Goods (under Clause 7.3 of this Agreement) at the Storage Facility and upon a request by the Legal Owner of the Designated Goods made through DMCC Tradeflow the Storage Operator shall issue a Warrant in respect of such Designated Goods in accordance with the Warrant Rules.
   2. The Storage Operator shall be deemed to be aware of the Legal Owner of the Designated Goods and the Tradeflow Finance Party (if any) recorded on DMCC Tradeflow.
3. STORAGE OF DESIGNATED GOODS
   1. The Storage Operator shall comply with Rule 5.1 of the Warrant Rules (*Storage of Goods*) while carrying out its duties relating to storage of the Designated Goods.
   2. The Storage Operator shall supervise the unloading of the Designated Goods, designate locations within the Storage Facility for the purposes of storing the Designated Goods and periodically monitor the Designated Goods.
   3. Upon the receipt by the Storage Operator of any Designated Goods to be stored in the Storage Facility, the Storage Operator shall, inspect the Designated Goods to determine the description and quantity of such Designated Goods.
   4. The Storage Operator shall, in case of Allocated Goods, keep such Designated Goods segregated and capable of being identified as Goods relating to a particular Legal Owner and/or Warrant.
   5. The Storage Operator may comingle Non-Allocated Goods with other Non-Allocated Goods of the same kind and grade.
   6. The Storage Operator shall promptly notify the Relevant Tradeflow Participant, through DMCC Tradeflow, in the event that the Storage Operator detects any deterioration in the Designated Goods.
4. Delivery and Removal of Goods
   1. The Storage Operator shall comply with Rule 5.2 of the Warrant Rules (*Delivery of Goods*) when delivering the Designated Goods to the Relevant Tradeflow Participant.
   2. In the event that the Storage Operator determines that any Designated Goods stored in the Storage Facility are required to be immediately disposed off or are otherwise made unusable as a result of the deterioration of such Designated Goods, the Storage Operator shall notify the Relevant Tradeflow Participant(s) of the same through DMCC Tradeflow and carry out any such disposal procedures in consultation with the Relevant Tradeflow Participant(s).
   3. Any removal or disposal of Designated Goods under Clause 8.2 above shall be undertaken in accordance with Clause 5.5 of the Warrant Rules (*Disposal of dangerous or perishable Goods*).
5. INSURANCE

The Storage Operator shall obtain insurance in accordance with any Local Requirements.

1. STORAGE OPERATOR’S FEES AND TERMS
   1. The DMCCA shall not, under any circumstances, be liable to bear the fees payable for the provision of Storage Services and shall not be liable for the costs and expenses incurred by the Storage Operator in the performance of the Storage Services.
   2. The Storage Operator shall provide the terms and conditions upon which it will provide its services to the Relevant Tradeflow Participants (the “**Terms of Service**”), provided that in the event of any conflict between the Corporate Access Agreement, the Rules and/or the Agreement (the “**Tradeflow Documents**”) and the Terms of Service, the Tradeflow Documents shall prevail.
2. SERVICE LEVELS

The Storage Operator shall provide the Storage Services in accordance with this service levels stated in the Terms of Service agreed between the Storage Operator and the Relevant Tradeflow Participant.

1. INSPECTIONS
   1. The Storage Operator may, in accordance with Clause 5.2 of the Corporate Access Agreement, request the DMCCA (or a Storage Inspector appointed by DMCCA) to rate the Storage Facility in which the Goods will be stored.
   2. The DMCCA may, at any time, require the Storage Operator to make the Storage Facility available for an inspection and shall provide the Storage Operator with reasonable notice of the date and time of the inspection.
   3. If the Storage Operator makes a request for inspection of its Storage Facility or the DMCCA notifies the Storage Operator of its intention to carry out an inspection, the Storage Operator shall grant reasonable access to DMCCA, the Storage Inspector or either of their officers, employees or agents to the Storage Facility in order for the DMCCA or the Storage Inspector to carry out its inspection.
   4. The DMCCA will issue Warehouse Standards for the purposes of conducting inspections and providing a standardised rating system of Storage Facilities. The Warehouse Standards may be amended or supplemented from time to time at the sole discretion of DMCCA.
   5. The Storage Operator may publicise the current rating provided by the DMCCA in respect of the Storage Facility.
2. REPRESENTATIONS AND WARRANTIES
   1. The Storage Operator represents and warrants as follows:
      1. it is duly incorporated and validly existing under the jurisdiction of its establishment and has the power to own its assets and perform the Storage Services;
      2. it has the power and has taken all necessary corporate or other actions required to authorize the execution of the Corporate Access Agreement and this Agreement and to perform its it’s obligations thereunder;
      3. it is the lawful owner, lessee or charterer (for Vessels) of the Storage Facility for the duration of this Agreement;
      4. all Local Requirements have been obtained or effected and are in full force and effect.
      5. the Storage Operator has performed and observed in all material respects and in accordance with generally accepted industry good practice, Environmental Law, Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance which is or was at any time owned, leased or occupied by the Storage Operator.
      6. no Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against the Storage Operator.

The above representations are deemed to be made by the Storage Operator on the final calendar day of each month during the validity of this Agreement.

1. indemnity

The Storage Operator undertakes to defend and indemnify DMCCA and each officer, employee and agent of DMCCA against all losses, liabilities and claims (including the costs of any legal claim, suit or proceedings brought against DMCCA or any officer, employee or agent of DMCCA and any legal fees and disbursements incurred in respect therewith) incurred by DMCCA or any officer, employee and agent of DMCCA or alleged by any other Tradeflow Member against DMCCA or any officer, employee or agent of DMCCA and arising out of (directly or indirectly):

* + 1. the Storage Services; or
    2. any breach by the Storage Operator of:

(i) its obligations under this Agreement; or

* 1. the unauthorized use or any infringement (actual or claimed) by the Storage Operator of any intellectual property rights owned by DMCCA or otherwise relating to DMCC Tradeflow; or
  2. any breach by the Storage Operator of any duty of care owed by it to the DMCCA, except to the extent that such losses, liabilities or claims arise out of DMCCA's or any officer, employee and agent of DMCCA’s gross negligence or deliberate misconduct.

1. TERM
   1. This Agreement has an initial term of one (1) year from the date of this Agreement (the “**Initial Term**”). At the end of the Initial Term, the Agreement shall be renewed automatically for similar consecutive periods unless the Storage Operator’s membership as a Tradeflow Member is revoked or the Storage Operator resigns pursuant to Clause 5.9 (*Service Providers*) of the Corporate Access Agreement.
   2. Clause 23 (*Consequences of Revocation or Resignation of Membership*) of the Corporate Access Agreement shall apply in the event of resignation or revocation of the Storage Operator’s membership and termination of this Agreement.
2. FORCE MAJEURE
   1. If a party (the “**Affected Party**”) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement other than a payment obligation by a Force Majeure Event:
      1. the Affected Party’s obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
      2. as soon as reasonably possible after the start of the Force Majeure Event the Affected Party will notify the other party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
      3. the Affected Party will make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
      4. as soon as reasonably possible after the end of the Force Majeure Event the Affected Party will notify the other party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.
   2. In this Clause , “**Force Majeure Event**”means:
      1. an event beyond the reasonable control of the Affected Party; or
      2. a failure of a third party, supplier or contractor (such as an internet service provider) caused by any event that would be a Force Majeure Event had it affected DMCCA under this Agreement.
3. ASSIGNMENT AND SUBCONTRACTING
   1. The Storage Operator cannot assign, transfer or create any trust in respect of, or purport to assign, transfer or create any trust in respect of, a right or obligation under this Agreement without having first obtained the DMCCA’s prior written consent.
4. ENTIRE AGREEMENT
   1. This Agreement, including its schedules, constitutes the entire agreement, and supersedes any previous agreements, between the parties relating to the subject matter of this Agreement.
   2. Each party acknowledges that it has not relied on or been induced to enter this Agreement by a representation, warranty or undertaking (whether contractual or otherwise) other than those expressly set out in this Agreement.
   3. Nothing in this Agreement has the effect of limiting or restricting any liability of a party arising as a result of any fraud.
5. GENERAL
   1. A variation of this Agreement is valid only if it is agreed to in writing by each party.
   2. A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
   3. Except where this Agreement provides otherwise the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.
   4. Each party will, to the extent that it is reasonably able to do so and at its own expense, execute all documents and do all acts and things reasonably required by the other to give effect to the terms of this Agreement.
   5. Except where this Agreement provides otherwise, each party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.
   6. Except as expressly provided in this Agreement, no provision of this Agreement creates a partnership between the Parties or makes a Party the agent of the other party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose unless specifically provided for in this Agreement.
6. NOTICES
   1. A notice under or in connection with this Agreement (a “**Notice**”):
      1. must be in writing;
      2. must be in the English language; and
      3. must be delivered personally or sent by reputable courier or by fax to the party due to receive the Notice at its address specified in Clause  or to another address, person, or fax number specified by the receiving party by not less than 7 days’ written notice to the other party received before the Notice was despatched.
   2. The address referred to in Clause 20.1 is:
      1. In the case of the Storage Operator as per the address particulars given in the Letter of Adherence and marked for the attention of the Member Representative identified therein.
      2. in the case of DMCCA or the Tradeflow Registrar:

Address: DMCCA, 49th Floor Almas Tower, Jumeirah Lakes Towers, Sheikh Zayed Road, P O Box 48800, Dubai, United Arab Emirates

Fax: 04 368 0736

Marked for the attention of: Sebnem Sen

Unless there is evidence that it was received earlier, a Notice is deemed given:

* + 1. if delivered personally or by courier, when the person delivering the notice obtains the signature of a person at the address referred to in Clause 20.2;
    2. if sent by fax, when confirmation of its transmission has been recorded by the sender’s fax machine.

1. COUNTERPARTS

This Agreement may be executed in more than one counterpart and signature pages may be exchanged by email.

1. GOVERNING LAW
   1. Subject to Clause 22.2 the laws of the Emirate of Dubai and all applicable laws of the United Arab Emirates shall govern this Agreement.
   2. In the case of a dispute concerning Goods stored in any Emirate other than the Emirate of Dubai (an “**Alternative Local Jurisdiction**”) or any security interest related to such Goods, the laws of the Alternative Local Jurisdiction and all applicable laws of the United Arab Emirates shall govern, but only to the extent that the dispute concerns those Goods or any security interest related to such Goods.

**SIGNATORIES TO THE AGREEMENT**

**DUBAI MULTI COMMODITIES CENTRE AUTHORITY**

**By:**

**Storage Operator**

**By:**