

### Adoption of AAOIFI Shariah Standards Nos. 10, 11, 25 & 50

In order to standardize and harmonize Shariah practices in Islamic Banking Institutions (IBIs), AAOIFI Shariah Standards No. 10 – Salam and Parallel Salam, No. 11– Istisna'a and Parallel Istisna'a, No. 25 - Combination of Contracts and No. 50 - Irrigation Partnership (Musaqat) have been adopted. These Shariah Standards are applicable with the following clarifications and amendments as mentioned against each clause(s) of respective Standard:

#### **AAOIFI Shariah Standard No. 10 – Salam and Parallel Salam**

1. **Clause 1:** The following is added as a footnote to the clause:

*This clause may be read as follows:*

***“Scope of the Standard***

*This standard covers Salam and Parallel Salam transactions, whether the institution is the buyer or the seller, but it does not cover Salam Sukuk which will be covered under 5/1/5/3 of the Sukuk Standard. Please see Clause 7 of this standard. Similarly, it does not cover Istisna'a because the latter is covered under a separate standard.”*

2. **Clause 2/1/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: “It is permissible to negotiate execution of various Salam contracts where each transaction will end on its due date. It is also permissible to draw up a general framework or a master agreement that consists of an understanding to conclude successive Salam contracts, each of which will take place at an appropriate time. In the latter case, the transactions shall be concluded on the basis of a memorandum of understanding in which the contracting parties determine the framework of the contract and the intention of the parties to buy and sell. The parties shall also determine the quantity and specifications of the goods, the manner of their delivery, the basis for determining the price, and the mode of payment. The types of guarantees and other prospective arrangements shall also be specified in the memorandum. The execution of each Salam contract may then take place separately on appropriate dates.”*

3. **Clause 2/1/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: “When the Salam contract is concluded on the basis of what was initially agreed in the memorandum of understanding, the contents of the memorandum become part and parcel of the contract. This will hold true unless the parties agree as to when the contract is concluded to exempt themselves from some of the provisions referred to in the memorandum of understanding.”*

4. **Clause 2/2:** The following is added as a footnote to the clause:

*This clause may be read as follows:*

***“Form of a Salam Contract***

*A contract of Salam may be concluded using the word Salam, or Salaf, or sale, or any term that indicates sale of commodity undertaken to be delivered on deferred basis according to accurate specification in exchange for immediate payment of the price.”*

5. **Clause 3/1:** The following are added as footnotes to the clause:

*The heading may be read as follows: “**Capital of Salam and its conditions**”*

*Following is added for clarity:*

*“Capital of Salam means price in a Salam contract”.*

6. **Clause 3/1/1:** The following are added as footnotes to the clause:  
*This clause may be read as follows: "It is permissible for the capital of Salam to be in the form of tangible goods from the category of Misliyaat (fungible), (such as wheat and other cereals), provided that it does not lead to Riba. The capital of Salam may also be from the items falling under the category of Qeemiyaat (non-fungible), (such as livestock/animals). It is also permissible for it to be in the form of the general usufruct of a particular asset such as living in a house or having the use of an aircraft or a ship for a certain period. In such a case, delivery of the asset whose usufruct has been transacted is regarded as immediate receipt (possession) of the Salam capital."*  
*Following is added for clarity:*  
*"Misliyaat (fungible): The commodities/goods/things which, if destroyed, can be compensated by similar commodities in quality and quantity e.g. wheat, rice, etc. If 100 kilograms of wheat are destroyed, they can easily be replaced by another 100 kilograms of wheat of the same quality.*  
*Qeemiyaat (non-fungible): The commodities/goods/things which cannot be compensated by similar commodities like cattle. Each head of sheep, for example, has its own characteristics which cannot be found in any other head. Therefore, if somebody kills the sheep of a person, he cannot compensate him by giving him a similar sheep. Rather, he is required to pay its price."*
7. **Clause 3/1/2:** The following are added as footnotes to the clause:  
*This clause may be read as follows: "The capital of Salam should be made known to the two parties in a manner that removes all uncertainties and eliminates the possibility of dispute. In principle, the capital of Salam should preferably be in the form of cash. In this case, the currency of payment, the amount and the manner of payment shall be clearly defined. If the capital of Salam is in the form of Misliyaat (fungible), then the kind, type, specifications and quantity thereof shall be clearly defined."*  
*Following is added for clarity:*  
*"Misliyaat (fungible): The commodities/goods/things which, if destroyed, can be compensated by similar commodities in quality and quantity e.g. wheat, rice, etc. If 100 kilograms of wheat are destroyed, they can easily be replaced by another 100 kilograms of wheat of the same quality."*
8. **Clause 3/1/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The capital in a Salam contract must be paid to and possessed by seller (al-Muslam Ilaihi) immediately at the time of the conclusion of the contract. However, it is permissible to delay the delivery of the capital for two or three days at the most either by stipulation in the contract or otherwise subject to the condition that the period of delay is not equal to or longer than the delivery period for al-Muslam Fihi (subject matter)."*
9. **Clause 3/1/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "A debt cannot be the capital of Salam such as cash loans or debts owed by the customer (seller) to the institution (buyer) as a result of previous transactions."*
10. **Clause 3/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Salam contracts are permitted for Misliyaat (fungible), like those that may be weighed, measured or counted, the units of which do not differ from each other in any significant manner, provided that it does not lead to Riba."*
11. **Clause 3/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Among the closely similar countables, are the items for which variations in units make no difference like the products of companies that manufacture goods in similar units that are identified by trademarks, standardized specifications and are regularly and commonly available at any time, keeping in view the Clause 3/2/8."*

12. **Clause 3/2/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Salam is not permitted for anything identified like "this car". Nor is it permitted for anything that cannot become an unidentified liability (dhimmah), like land, buildings or trees; or for articles that cannot be fully described (such as those whose values change according to subjective assessment) like jewelry and antiques. It is also not permissible to stipulate that it (al-Muslam Fihi (subject matter)) must be from an identified piece of land. On the delivery date the seller may deliver to the buyer the available goods (that meet the contract specifications), irrespective of whether such goods are from his own fields or factories or from elsewhere."*
13. **Clause 3/2/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is not permissible for al-Muslam Fihi to be gold or silver, if the capital of the Salam contract was paid in the form of gold or silver."*
14. **Clause 3/2/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Al-Muslam Fihi (subject matter) must be capable of being adequately described and capable of becoming an unidentified obligation (dhimmah). It will be sufficient if the specifications are explained in a manner that removes uncertainty, except for minor discrepancies that are customarily ignored, and considered acceptable; hence do not lead to dispute."*
15. **Clause 3/2/6:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is a requirement that al-Muslam Fihi (subject matter) be clearly known to the contracting parties in a manner that eliminates any possibility of uncertainty or ambiguity. The method of description of the goods in a fully distinguishable way should be based on customary practice and the experience of the experts."*
16. **Clause 3/2/8:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is a requirement that al-Muslam Fihi (subject matter) be commonly available under normal circumstances at the place and time of delivery, so that the seller can discharge his obligation by delivering it to the buyer."*
17. **Clause 3/2/10:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "In principle, the parties should specify the place at which al-Muslam Fihi is to be delivered. However, if the parties to the contract do not determine the place of delivery, then the place at which the contract was concluded will be regarded as the place of delivery unless it turns out to be impossible to make delivery at such a place. In that case, the place of delivery shall be determined according to customary practice."*
18. **Clause 3/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
**"Security for al-Muslam Fihi**  
*Al-Muslam Fihi may be secured by a pledge or a guarantee or any other permissible means of security."*
19. **Clause 4/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
**"Replacement of al-Muslam Fihi (subject matter)**  
*It is permissible for the buyer to take other/substitute goods instead of al-Muslam Fihi, except currency, after the delivery date falls due, as long as such a substitution was not stipulated in the contract. This rule applies whether or not the substitute is similar in kind to al-Muslam Fihi. This is provided that the substitute is suitable for being purchased as al-Muslam Fihi for the capital of the*

*Salam contract, and that the market value of the substitute should not be greater than the market value of al-Muslam Fihi at the time of delivery.”*

20. **Clause 4/3:** The following is added as a footnote to the clause:

*This clause may be read as follows:*

***“Cancellation (Iqalah) of a Salam contract***

*It is permissible, when both parties agree, to cancel the entire Salam contract by returning in full the amount of the Capital of Salam. Partial cancellation, that is, cancellation of the delivery of part of al-Muslam Fihi, by returning corresponding part of capital of Salam, is also permissible.”*

21. **Clause 5/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: “The seller is under an obligation to deliver al-Muslam Fihi to the buyer on the due date in accordance with the terms of the contract, such as agreed specifications and quantity. The buyer, is also obliged to accept the goods if they meet the specifications stipulated in the contract; and he shall be compelled to do so if he refuses to accept the same.”*

22. **Clause 5/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: “If the seller offers to deliver goods of a superior quality, the buyer must accept the goods, provided the seller does not demand a higher price for the better quality. This shall be by way of fulfilling one’s obligation in a better manner than what is contractually required. However, this will apply only if the (inferior) description specified in the contract is not itself required by the buyer.”*

23. **Clause 5/3:** The following are added as footnotes to the clause:

*This clause may be read as follows: “If the quality of the delivered goods is inferior to that required by the contractual specifications, the buyer is entitled either to reject or to accept the goods in that condition. If he accepts the goods, his action is considered as waiving of right as a goodwill gesture. It is also permissible for the two parties to agree to on a settlement for acceptance of the goods even at a discounted price.”*

*Following is added for clarity:*

*“In case al-Muslam Fihi delivered is of inferior quality, the buyer among other options also has the right of recourse to security to acquire the agreed al-Muslam Fihi from the market.”*

24. **Clause 5/4:** The following is added as a footnote to the clause:

*This clause may be read as follows: “It is not permitted for a seller to deliver al-Muslam Fihi in the form of a commodity different from the one agreed upon even if the commodity belongs to the same genus as al-Muslam Fihi (e.g. al-Muslam Fihi is corn and the commodity that the seller wants to deliver is wheat) unless such a substitution takes place on the basis of the conditions for the replacement of al-Muslam Fihi with other goods (see item 4/2).”*

25. **Clause 5/5:** The following is added as a footnote to the clause:

*This clause may be read as follows: “Delivery of al-Muslam Fihi may take place before the due date, provided that the goods conform to the agreed specifications and quantities. If the buyer has a valid reason for rejecting the goods, then he will not be compelled to accept them. Otherwise, the buyer is obliged to accept the goods.”*

26. **Clause 5/6:** The following is added as a footnote to the clause:

*This clause may be read as follows: “The buyer may add a Clause in the Salam contract that if the seller delays the delivery of al-Muslam Fihi, charity may apply on the seller.”*

27. **Clause 5/8:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "In case all or part of al-Muslam Fihi is not available to the seller on the due date in the market, the buyer shall have the following options:"*
28. **Clause 5/8/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "To wait until al-Muslam Fihi is available in the market."*
29. **Clause 6/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "In both the two situations mentioned in Clauses 6/1 and 6/2, it is not permissible for the parties to link the obligations under the two Salam contracts together so that the execution of the obligations of one contract is contingent on the outcome of the other. Hence, it is necessary that both the obligations and the rights under the two contracts stand alone in all respects. Therefore, if one party breaches his obligation under the first Salam contract, the other party (the injured party) has no right to transfer this damage or loss to the party with whom a parallel Salam has been concluded and hence he has no right to terminate the second Salam contract or delay in carrying it on."*
30. **Clause 7:** The following are added as footnotes to the clause:  
*This clause may be read as follows:*  
**"Issuance of Salam Sukuk**  
*It is not permitted to issue tradable Salam Sukuk. [see item (4/1)]"*  
*Following is added for clarity: "This Clause may be read with IBD Circular Number 3 of 2013 (Adoption of AAOIFI Shariah Standard No. 17 on 'Investment Sukuk') and any amendments therein as notified from time to time."*

**AAOIFI Shariah Standard No. 11 - Istisna'a and Parallel Istisna'a**

1. **Clause 1:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
**"Scope of the Standard**  
*The standard covers Istisna'a and parallel Istisna'a transactions whether the institution is acting as a purchaser or as a seller (manufacturer or a builder). But it does not cover 'Istisna'a Sukuk' whose rules have been mentioned in Sukuk Standard."*
2. **Clause 2/1/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible that the institution and a customer conclude an Istisna'a contract even if the institution is yet to hold title to the subject matter of the sale or to the material from which the subject matter will be produced (manufactured or constructed)."*
3. **Clause 2/1/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is not permitted for the institution to finance an already concluded Istisna'a contract between a buyer and a third party, especially if the buyer has become unable to meet his obligations toward such a third party, whether the financing takes place before or after commencement of the work. (see item 4/2/2)"*
4. **Clause 2/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "A contract of Istisna'a is binding on the contracting parties provided that certain conditions, such as determination of the type, kind, quality, quantity, price of the subject matter to be produced, and ascertaining the delivery date if necessary, are fulfilled. If the subject matter does not conform to the specification agreed upon, the customer has the option to accept or to refuse the subject matter."*

5. **Clause 2/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Since a contract of Istisna'a is binding, the parties to the contract are inevitably bound by all obligations and consequences following the execution of the agreement. In other words, the contracting parties need not to renew an exchange of offer and acceptance after the subject matter is manufactured. This is different from the promise in a contract of Murabaha, which requires execution of a sale contract through an offer and acceptance by the parties when the title to and possession of the items to be sold is taken by the institution."*
6. **Clause 2/2/4:** The following is added as a footnote to the clause:  
*The text "All the circumstances mentioned above would make the deal an interest-based financing deal in which the subject-matter never genuinely changes hands" is deleted.*
7. **Clause 3/1/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "An Istisna'a contract is permissible only for those materials that can be transformed from one state to another by a manufacturing or construction process. Therefore, if the manufacturer undertakes to deliver the subject matter of Istisna'a, the contract is valid."*
8. **Clause 3/1/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible that a contract of Istisna'a be concluded for the production of a subject matter having unique descriptions according to the requirement of the purchaser even if such a subject matter has no available sample in the market, provided it can be adequately described. Similarly, it is permissible that the subject matter of a contract of Istisna'a be items that are commonly available in the market, and can be substituted for one another in fulfilling an obligation, because they share common characteristics by virtue of the process of manufacture or construction. This rule applies whether the items to be produced are intended for consumption or use with their corpus kept intact."*
9. **Clause 3/1/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is not permissible that the subject matter of an Istisna'a contract be an identified asset; for example, the seller says I sell this car or this factory. This is because Istisna'a is a sale contract applicable to items that are described by specification and not by identification. Unless the items are completely or partially delivered, the purchaser has no prior right on the items that are the subject matter of the contract. In addition, the purchaser cannot be regarded as the owner of the materials in the possession of the manufacturer for the purpose of producing the subject matter of the contract, except when the manufacturer has undertaken, as a guarantee for the completion of the work, that such materials will only be used for the order of the purchaser."*
10. **Clause 3/1/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The contract of Istisna'a may be concluded with a condition that the production shall be carried out by the institution itself, in which case it has to abide by this condition and has no right to assign the process of production to another entity."*
11. **Clause 3/1/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible for the manufacturer to deliver items produced by it before entering into the Istisna'a contract or items produced by other parties. The latter option is, however, only valid if the purchaser has not stipulated that the manufacturer should manufacture the goods itself. However, this rule should not be used as a device for deferment of counter values (the price and the commodity) in selling a specified asset to be delivered by the seller, but which was not intended to be produced/manufactured."*

12. **Clause 3/1/6:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The manufacturer is under an obligation to produce the subject matter according to specification and within the period agreed upon or within such reasonable time as the nature of the work may require, in accordance with accepted practice that is recognized by experts."*
13. **Clause 3/1/7:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible for the parties to agree on a warranty period (during which the manufacturer would be liable for manufacturing defects) or to agree on manufacturer's liability for maintenance of the asset for a period as mutually agreed or determined by customary practice."*
14. **Clause 3/1/8:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to draw up an Istisna'a contract for real estate developments on designated land owned either by the purchaser or the contractor, or on land in which either of them owns the usufruct on the ground that the subject matter of Istisna'a is specified buildings that will be constructed and not the identified place (i.e. the land)."*
15. **Clause 3/2:** The following is added as a footnote to the clause:  
*The heading may be read as "Price of Istisna'a Contract".*
16. **Clause 3/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is a requirement that the price for an Istisna'a contract be known at the conclusion of the contract, whether it is in the form of cash or tangible goods or the usufruct of an asset for a particular duration, and whether such usufruct is related to an asset other than the subject-matter or to the subject-matter itself. The use of usufruct of the subject-matter itself as consideration for an Istisna'a contract is relevant to situations when a government offers a preferential contract, giving the usufruct of a project to the builder or manufacturer for a particular duration, commonly known as Build Operate Transfer (BOT)."*
17. **Clause 3/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The price of an Istisna'a contract may be deferred or paid in installments within a certain period of time, or if delivery of the subject-matter is to be made in stages a portion of the price may be paid immediately while the balance is paid by installments according to the stages of delivery. It is also permissible to connect payment with the stage of completion of the work, (such that an installment payment is made at the end of each stage), provided the stages of the work can be adequately defined by customary practice in a manner that would not lead to any dispute."*
18. **Clause 3/2/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the process of manufacturing or construction is divided into phases, or the price is determined on the basis of units, then the manufacturer or contractor is entitled to stipulate that the buyer shall make the payments for the work that has been completed according to specifications."*
19. **Clause 3/2/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to quote different prices in Istisna'a in accordance with variations in delivery dates and there is also no objection to a number of quotations being subject to negotiation, provided that eventually only one quotation will be chosen for concluding the Istisna'a contract. This is to avoid uncertainty and ambiguity that may lead to dispute."*

20. **Clause 3/2/6:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the actual cost incurred by the institution to bring the subject matter to completion is less than the estimated cost or the institution secures a discount from the party with whom it contracted on a parallel Istisna'a basis to acquire the subject-matter in order to fulfill its contractual obligation, the institution is not obliged to give this discount to the purchaser and the latter is not entitled to the amount or part thereof the institution has gained over the estimated cost. The same rule applies conversely when the actual cost of production is greater than the estimated cost."*
21. **Clause 3/3/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible for the institution, acting either in the capacity of the manufacturer or of the purchaser, to demand or give 'Arboun as a guarantee, which will either be part of the price if the contract is fulfilled, or (the 'Arboun) be forfeited if the contract is rescinded. However, it is preferable that the amount forfeited be limited to an amount equivalent to the actual damage suffered."*
22. **Clause 3/3/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "In an Istisna'a contract, it is permissible for the institution, whether acting in the capacity of manufacturer or in the capacity of the purchaser, to demand guarantees that it considers sufficient to secure fulfillment of its rights against the purchaser or the manufacturer. It is also permissible for the institution, when acting as a purchaser, to give guarantees requested by the manufacturer, which can be in a form of a Rahn, personal guarantee, assignment of a right, a current account, or an investment account or consent to blocking withdrawal from the account."*
23. **Clause 4/1/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible, after the conclusion of an Istisna'a contract, for the manufacturer and the purchaser to agree on amending the manufacturing or construction specifications previously agreed upon or introducing additional specification requirements on the condition that the price is adjusted accordingly and a reasonable period for the execution of the new requirements is granted. It is also permissible to state in the contract that the consideration for amendments or introduction of additional requirements shall be determined in proportion to the original price as per the expert opinion, custom or an identified price index which preclude any ambiguity that may lead to dispute."*
24. **Clause 4/1/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The purchaser cannot oblige the manufacturer to introduce modifications and changes to the subject matter of an Istisna'a contract without the manufacturer's consent."*
25. **Clause 4/1/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is not permissible to increase the price in lieu of an extension of the period of payment. However, a rebate for early payment is permissible provided it is not stipulated in the contract."*
26. **Clause 4/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to amend the price in an Istisna'a contract upwards or downwards, through mutual agreement of the contracting parties or arbitration or judicial procedure, if such a price adjustment is required due to unforeseen circumstances and contingencies (force majeure). This rule must be read together with item 4/1/3 above."*



27. **Clause 4/2/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the institution to enter into an Istisna'a contract with a customer to complete a project, which has been started by another contractor. In this case, the incomplete project should be settled fully by the customer, and the outstanding debts, if any, (that may arise from the settlement of the incomplete Istisna'a transaction) shall be the personal liability of the customer. The institution and the customer may thereafter conclude an Istisna'a contract for the remaining work without any binding on the institution that it would seek help from the previous contractor. Rather, it should be stipulated that the institution may complete the work by any means it deems fit."*

28. **Clause 4/2/3:** The following is added as a footnote to the clause:

*This clause may be read as follows: "In case of constructing buildings or projects on land owned by the purchaser, it is permissible to stipulate that the purchaser has the right to carry out the Istisna'a contract, after passage of a specified time from discontinuation of the work by the contractor, at the expense of the manufacturer if the latter fails to carry out the contract or fails to complete the work."*

29. **Clause 4/2/4:** The following is added as a footnote to the clause:

*This clause may be read as follows: "If the contractor is unable to complete the work, the purchaser (the owner of the land) is not entitled to own the incomplete building structures free of cost. However, this rule depends on the cause of the failure to continue the work. If the failure to perform is due to a reason attributable to the contractor, the purchaser is liable only for the value of the building structure to the extent the work completed and the builder is liable to compensate the purchaser for any actual damage or loss. If the failure to perform is due to a reason attributable to the purchaser, the contractor is entitled to the value of the work he has completed and compensation for any damage or loss to the contractor. However, if the failure to perform has not been caused by either of them, the purchaser shall be liable only for the value of the building structure to the extent that has been completed and neither of them has any responsibility to pay compensation for the loss or damage the other party has suffered (see item 4/2/3)."*

30. **Clause 4/2/5:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible that a contract of Istisna'a includes a clause to the effect that if any additional conditions are inserted into the contract at a later date as a result of directives of the relevant authorities, and these additional conditions lead to extra expenses that are not to be borne by the manufacturer under the terms of the contract, and the law of the land, the extra expenses will be borne by the purchaser."*

31. **Clause 5:** The following is added as a footnote to the clause:

*The heading may be read as "Supervising Execution of an Istisna'a Contract"*

32. **Clause 5/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the institution, when acting as the manufacturer, to draw up an independent and separate contract of agency appointing the purchaser as an agent of the institution to supervise the manufacturing or construction process so as to ensure that the items produced conform to the specifications stipulated in the contract."*

33. **Clause 5/3:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the manufacturer and the purchaser to agree on who amongst them will bear the additional costs of supervision of an Istisna'a contract."*

34. **Clause 6/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The manufacturer is discharged from liability if the subject-matter is delivered to either the purchaser or to a person appointed by him or if the purchaser is enabled to exercise full control over the subject matter."*
35. **Clause 6/1/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the subject matter does not conform to the contractual specifications at the date of delivery, the purchaser has the right to reject the subject matter or to accept it as it is, showing leniency with the manufacturer in accepting the asset (of lower standard). It is also permissible for the contracting parties to agree on acceptance of such subject matter even if it involves a price discount."*
36. **Clause 6/1/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the seller offers to deliver a better quality, then the purchaser shall accept the same provided that the seller shall not charge any additional amount for the better quality. This shall be by way of fulfilling one's obligation in a better manner than what is contractually required. However, this will apply only if the (inferior) description specified in the contract is not itself required by the buyer."*
37. **Clause 6/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to deliver the subject-matter before the due date, on the condition that the subject-matter meets the specifications agreed upon. If the purchaser refuses to take delivery of the subject-matter, the matter will be decided on the basis of the reason for this refusal. If there is a valid reason for the rejection of the subject-matter, the purchaser shall not be obliged to take delivery thereof. However, if there is no valid reason for rejecting delivery before due date, then the purchaser will be obliged to take delivery of the subject-matter."*
38. **Clause 6/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The delivery of the subject-matter may take place through constructive possession, by enabling the purchaser to take possession of the subject-matter after the production process is completed. At this point, the risks of ownership of the asset transfer from the manufacturer to the purchaser. If after enabling the purchaser to take possession of the subject-matter any loss or damage occurs to the subject-matter which has not been a result of negligence or misconduct on the part of the manufacturer, then the purchaser shall bear such loss. This is therefore the demarcation line between the liabilities of the two parties: the liability of the manufacturer and the liability of the purchaser."*
39. **Clause 6/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the purchaser refuses to take the possession of the subject-matter without a valid reason after he is enabled to take possession, the subject-matter will remain in the possession of the manufacturer on a trust basis, in which case the manufacturer will not be liable for loss or damage that occurs to it, unless such loss or damage is a result of negligence or misconduct on the part of the manufacturer. The purchaser shall also bear the expenses of safe keeping of the subject-matter."*
40. **Clause 6/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is permissible to stipulate in a contract of Istisna'a that the manufacturer will act as the agent of the purchaser to sell the subject-matter if there is a delay for a specific period of time on the part of the purchaser in taking delivery of the subject-matter. In this case, the manufacturer will sell the subject-matter on account of the purchaser and, after*

*deducting the agreed contract price, the balance, if any, will be returned to the purchaser. If the price obtained is less than the contract price, the manufacturer shall have a right of recourse to the purchaser for recovery of the shortfall. In addition, the purchaser will bear the expenses incurred in selling the subject-matter."*

41. **Clause 6/6:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the contract of Istisna'a to include a fair penalty clause stipulating a mutually agreed amount of money to compensate the purchaser in case the manufacturer fails to deliver the subject-matter at maturity without the delay being caused by force majeure or unforeseen circumstances. However, it is not permitted to stipulate a penalty clause on the purchaser for delay in payment (see item 2/1/2 of the Shari'ah Standard No. (3) on Procrastinating Debtor)."*

42. **Clause 6/7:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is not permissible to sell the subject-matter prior to taking either actual or constructive possession of it (see item 6/4). However, it is permissible to conclude an independent Istisna'a contract to sell an item on the basis of description or specification that is similar to an item to be acquired from a manufacturer, and this is called Istisna'a al-Muwazi: parallel Istisna'a (see item 7)."*

43. **Clause 6/8:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the institution, acting as purchaser, to appoint the manufacturer as an agent to sell the subject-matter, after taking possession of the subject-matter, to manufacturer's customers on behalf of the institution. This agency is permissible whether it is carried out free of charge, or for consideration either in the form of a fixed fee or a particular percentage of the sale price, on condition that the agency is not stipulated as a condition in the contract of Istisna'a."*

44. **Clause 7/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the institution, acting as purchaser, to buy described items to be manufactured on the basis of a clear and unambiguous specification and to pay, with the aim of providing liquidity to the manufacturer, the price in cash when the contract is concluded. Subsequently, the institution may enter into a contract with another party in order to sell, through a parallel Istisna'a in the capacity of manufacturer or supplier, items whose specifications conform to those of the items purchased by it with a delivery date occurring after delivery date of the first Istisna'a contract, provided the two contracts are fully independent from each other (see item 3/1/4)."*

45. **Clause 7/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is permissible for the institution, acting as manufacturer/contractor, to conclude an Istisna'a contract with a customer on a deferred payment basis, and to enter into a parallel Istisna'a contract on an immediate payment basis with a manufacturer or builder to acquire such items as per the specifications in the first contract provided that the two contracts are independent from each other and the rule in item 3/1/4 is complied with."*

46. **Clause 7/3:** The following is added as a footnote to the clause:

*This clause may be read as follows: "An institution, concluding an Istisna'a contract as a manufacturer/contractor, must assume liability for ownership risks, maintenance and insurance (Takaful) expenses prior to delivery of the subject-matter to the purchaser (the customer). The*

*institution is not permitted to transfer these liabilities to the manufacturer/contractor in the parallel Istisna'a contract."*

47. **Clause 7/4:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is not permitted to make any contractual link between the contract of Istisna'a and the contract of parallel Istisna'a. And it is not permissible for a party to one of these two contracts to refrain from delivery of the asset in case the asset has not been delivered in the other one, or to delay the delivery or increase the cost on the basis of a delay or increase in cost in the other one. However, there is no issue if the institution stipulates conditions and requirements when concluding a parallel Istisna'a contract as a purchaser, including a penalty clause similar to, or different from, those conditions which the customer has stipulated in the first Istisna'a contract (in which the institution is the manufacturer/contractor)."*

#### **AAOIFI Shariah Standard No. 25 - Combination of Contracts**

1. **Clause 1:** The following is added as a footnote to the clause:

*This clause may be read as follows:*

##### ***"Scope of the Standard***

*This standard covers transactions that comprise two or more contracts in a single arrangement. The scope of the discussion in this respect covers the definition, forms, controls, characteristics, and concessions relating to the process of Combination of Contracts and explores the characteristics of Muwata`ah (prior arrangement/understanding) and the Shari'ah rulings pertaining thereto. The discussion also embarks on contemporary applications of combined contracts."*

2. **Clause 2/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: "It is a process that takes place between two or more parties, which consists of two or more contracts.*

*The Combination of contracts has following four scenarios:"*

3. **Clause 2/1/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Combining more than one contracts while imposing some of them [i.e. contract(s)] as conditions in the others, without prior agreement to do so."*

4. **Clause 2/1/4:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Indecisiveness between the two contracts on the same subject matter without absolute confirmation of one contract during contract session."*

5. **Clause 2/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Forms of combined contracts in one transaction"*

6. **Clause 2/2/1:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Combined contracts are sometimes executed against single consideration like a party may sell his piece of land to other and simultaneously rent a car to the same party for one month, both against one thousand dinars."*

7. **Clause 2/2/2:** The following is added as a footnote to the clause:

*This clause may be read as follows: "Sometimes the contracts are executed against two separate considerations. For instance, one party may sell his house to the other for one thousand dinars, and rent his car to the same party for one hundred dinars per month."*

8. **Clause 2/2/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Sometimes contracts may be stipulated as a condition in the other contracts. One party, for instance, may say to the other party that I sell you my house for ten thousand dinars, on condition that you rent the house to me for two years for one thousand dinars or on condition that you sell your car to me for two thousand dinars."*
9. **Clause 2/2/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Sometimes Combination of contracts are in contractual arrangements comprising a number of successive parts and stages, in conformity with the system that governs the contracts as a single transaction, targeting towards the achievement of a specific objective intended by the two parties. A good example in this regard may be seen in a number of present day financial transactions like Ijarah Muntahia Bittamleek, Murabaha to the Purchase Orderer, and Diminishing Musharakah."*
10. **Clause 3:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
***"Shari'ah Ruling of Combination of Contracts***  
*It is permissible in Shari'ah to combine more than one contract in one arrangement, without imposing a contract as a condition in the other, and provided that each contract is permissible on its own. Combining contracts in this manner is acceptable unless there is a specific Shari'ah restriction in which case it would be prohibited as an exception."*
11. **Clause 4/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "That it should not include the scenarios that are explicitly prohibited by Shari'ah like combining sale and lending in one contract."*
12. **Clause 4/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "That it should not be used as a hilah (Stratagem) for Riba such as agreement between two parties to practice Bay' al-'Inah or Riba al-Fadl."*
13. **Clause 4/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "That it should not be used as means for practicing Riba. For example, combining loan and commutative contract or giving loan to somebody on the condition that the debtor gives accommodation in his house or gives him a gift or pays him with excess in quantity or quality. [see Shari'ah Standard No. (19) on Loan (Qard) – item 4/1]"*
14. **Clause 4/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "That it should not be between contradictory or conflicting contracts with regard to their underlying rulings and ultimate goals, like granting an asset to somebody as a gift and selling/leasing it to him simultaneously, or combining Mudarabah with lending the Mudarabah capital to the Mudarib, or bai'-sarf with Ju'alah, or Salam with Ju'alah for the same contract value, or leasing with selling (i.e. hire-purchase in its traditional form)."*
15. **Clause 5/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "In principle, some basic conditions of the contracts may be overlooked when these contracts are implicit and ancillary, but not when these are concluded independently or standalone basis. Here, implicit contracts refer to contractual commitments that are implicitly embodied in the contract or those which succeed or precede the original contract in intention or achievement of the desired result. This may be decided in the light of traditions, practices and professionals' experience, subject to clearance by the Shari'ah Supervisory Board of the Institution. "*

16. **Clause 5/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Concessions granted to implicit and subsidiary contracts with respect to following five impermissible acts (defects):"*
17. **Clause 5/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Gharar, which affects financial commutative contracts, in implicit and subsidiary contracts."*
18. **Clause 5/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The Jahalah (ambiguity) which occurs in the subject matter on an ancillary basis in financial commutative contracts."*
19. **Clause 5/2/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Sale-based Riba and non fulfilment of conditions of Bai' Sarf. Like combining between Bai' Sarf and Hawala where absence of possession in Bai' Sarf may be allowed. "*
20. **Clause 5/2/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Bai al kaali bil kaali (Selling of an obligation/debt for another obligation/debt) when it occurs in the secondary context like purchasing the shares of an indebted company on credit."*
21. **Clause 5/2/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Absence of some conditions of the validity at the time of need or outweighing preference like leaving offer and acceptance in implicit sale."*
22. **Clause 6/1/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Explicit or implicit collusion of the two parties to conceal their intention to practice a Riba based stratagem in the permissible (Shari'ah) contracts."*
23. **Clause 6/1/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "An unrevealed prior agreement between the two parties to perform a Shari'ah-permissible act or deal for the sake of finding a way out acceptable to Shari'ah (acceptable stratagem- حيلة محمودة (Heela Mahmooda))."*
24. **Clause 6/1/3:** The following is added as footnote to the clause:  
*This clause may be read as follows: "Harmony between the intentions of parties at the stage of preliminary negotiations that precede the execution of the combined contracts as indicated in item (2/2/4) above."*
25. **Clause 6/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "It is an agreement between two parties to conclude contracts and to fulfill promises in the future."*
26. **Clause 6/2/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "When Muwata`ah is stipulated as part of the contract it becomes a condition precedent to the conclusion of the contract, and the contract becomes subject to the relevant Shari'ah rulings with regard to permissibility, validity and enforceability."*
27. **Clause 6/2/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "Enforceability of Muwata`ah in Shari'ah is similar to enforceability of conditions precedent to the signing of contracts. A condition that precedes the*

*signing of the contract has the same validity and binding nature of the normal conditions of the contract, as long as the former constitutes the basis of the contract that have been mutually agreed upon between the two parties.”*

28. **Clause 6/3/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Muwata`ah to form up Riba based stratagem, like in which the two parties agree to practice, Bay’ al-’Inah or its reverse, or Bay’ al-Wafa` (Bay’ al-Raja`), or stratagem to Riba al-Fadl, which is impermissible as it leads to the invalidity of the contracts.”*
29. **Clause 6/3/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Muwata`ah for Riba based means: like agreement to combine a loan with a commutative contract or where the borrower will present a gift or make excess repayment (on the borrowed amount) in terms of quantity or quality to the lender.”*
30. **Clause 6/3/2/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Muwata`ah will make such means impermissible which are allowed in principle, subject to following two conditions:  
First, as a common customary practice, the use of a permissible act leads to concluding a prohibited deal, and the accusation of the intention of the impermissibility is strong and apparent.  
Second, that there is no obvious need or preferred/outweighing interest that justifies resorting to such an act.”*
31. **Clause 6/3/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Muwata`ah on Shari’ah way-outs is permissible and it refers to acceptable stratagems that do not violate Shari’ah rules, and do not contradict with Shari’ah objectives, and do not lead to absolute or major violation.”*
32. **Clause 6/3/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “Muwata`ah for combining contracts that contradict to or oppose each other, is prohibited based on the impermissibility of the combination of two or more contracts within which there is contradiction or conflict or repulsion in the implications and consequences because they are means of it. [see item 4/4]”*
33. **Clause 7/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “One of the most distinguishable forms of contemporary financial transactions is the contractual arrangements which comprise a number of contracts and promises that the parties agree beforehand to execute in a specific manner and according to agreed number of successive stages. Such arrangements aim to achieve a given purpose or interest of the parties to the contract such as performing Murabaha to the Purchase Orderer, Ijarah Muntahia Bittamleek, or Diminishing Musharakah.”*
34. **Clause 7/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “The promises contained in such combined sets of contracts are binding on the respective parties.”*
35. **Clause 7/4:** The following is added as a footnote to the clause:  
*This clause may be read as follows: “The contractual arrangements in their formation, rulings, requirements and condition come under the general rules of Shari’ah about the contracts. In this regard, the contractual arrangements will stay as fresh and independent contracts and they will be considered as valid, binding, obligatory as long as they are not against the Shari’ah acceptable rule. [see item 5/2]”*

36. **Clause 7/5:** The following is added as footnote to the clause:  
*This clause may be read as follows: "The contractual arrangements should also observe the Shari'ah rulings pertaining to combination of contracts. [see clause 4]"*
37. **Clause 7/6:** The following clauses is inserted as a footnote:  
*This clause may be read as follows: "It is permissible to avail the Shariah concessions upon the contractual arrangements when these are present in the distinct and independent contracts. [See clause 5]"*
38. **Clause 7/7:** The following is added as footnote to the clause:  
*This clause may be read as follows: "Failure of any of the parties to combined contracts to honor its contractual commitments gives the aggrieved party right of claiming indemnity for the actual damage."*

#### **AAOIFI Shariah Standard No. 50 - Irrigation Partnership (Musaqat)**

1. **Clause 5/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The work should be restricted to the husbandry of trees and their output. The owner may not, (in this contract) demand any additional work from the worker (irrigator)."*
2. **Clause 6/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The worker (irrigator) is obligated to care for the trees and their output as per agreement with the owner and customary requirements, including:"*
3. **Clause 6/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The worker (irrigator) acts in a fiduciary capacity and is not liable for any loss arising from other than wilful misconduct, negligence or breach of the terms of the contract. In such a case, he is liable to indemnify the owner against any actual loss caused, but remains entitled to his share of the output."*
4. **Clause 7:** The following is added as a footnote to the clause:  
*This clause may be read as follows:*  
***"Duties of the Owner of the Trees***  
*The owner should facilitate for the worker (irrigator) full access to the trees (subject of the contract), and provide all the enablers that can only be provided by the owner."*
5. **Clause 8/1:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "After harvesting (taking out the output), the worker (irrigator) and the owner are obligated to take care of the fruit/output. Prior to harvesting, the worker (irrigator) is obligated to take care of the fruit/output unless custom or a term of the contract dictates otherwise."*
6. **Clause 8/3:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "The worker (irrigator) is solely responsible for performing the work customarily undertaken by the workers (irrigators)/agreed between the parties in similar Irrigation Partnerships and such work does not entitle him to any increase in his share of the output as he is already contractually obligated to carry it out. If he hires others to perform his work, their wage is his sole responsibility and should not be taken from the overall output. The worker (irrigator) may hire, on the account of the Irrigation Partnership, others to perform work that is customarily beyond the scope of his duties."*



7. **Clause 8/5:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the owner stops the worker (irrigator) from conducting his duties, before the maturity of Irrigation Partnership (Musaqat) i.e. materialization of the output, or its readiness for harvesting, then the owner shall be obligated to allow the worker (irrigator) to complete his work. And if the owner does not allow the worker (irrigator), then the worker (irrigator) shall be entitled to a wage at the market rate for similar work. If this occurs after the output materializes, the worker (irrigator) is entitled to his stipulated share of the output."*
8. **Clause 11/2:** The following is added as a footnote to the clause:  
*This clause may be read as follows: "If the worker (irrigator) enters into an Irrigation Partnership (Musaqat) with a party who has usurped the trees, and the worker (irrigator) is not aware of the usurpation, then the output, if any, will belong to the owner of the trees and the worker (irrigator) will be entitled to the wages at the market rate. But if the worker (irrigator) knew that the trees were usurped, then he is not entitled to any remuneration."*
9. **Clause 13/2/1/2:** The following is added as a footnote to the clause:  
*The text of Clause 13/2/1/2 as appearing in English Version is different from Arabic Version and the English version will be applicable from Shariah perspective instead of Arabic version for this clause which is as below:  
"If the worker (irrigator) is unable to work for a reason within his control, he is entitled to receive a wage at the market rate for similar work for the period of time worked. He is also liable to indemnify the owner for actual loss suffered, as determined by experts."*

\*\*\*\*\*