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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |                                  |
|---|----------------------------------|
| -----X                                  |                                  |
|   | :                                |
| <b>IN RE:</b>                           | : <b>Chapter 11</b>              |
|   | :                                |
| <b>ARCAPITA BANK B.S.C.(c), et al.,</b> | : <b>Case No. 12-11076 (SHL)</b> |
|   | :                                |
| <b>Debtors.</b>                         | : <b>Jointly Administered</b>    |
|   | :                                |
| -----X                                  |                                  |

**ERNST & YOUNG’S APPLICATION PURSUANT TO  
SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE FOR AN ORDER  
UPDATING THE TERMS OF ITS RETENTION BY THE DEBTORS AS AUDITORS**

With the support of the above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*” and each, a “*Debtor*”), Ernst & Young (“*EY Bahrain*”) hereby submits this application (the “*Application*”) for entry of an order, substantially in the form annexed hereto as Exhibit A (the “*Proposed Order*”), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “*Bankruptcy Code*”), updating certain terms of its retention and employment as auditors to the Debtors. In support of this Application, EY Bahrain respectfully states as follows:

**BACKGROUND**

1. On March 19, 2012 (the “*Petition Date*”), each of the Debtors other than Falcon Gas Storage Company, Inc. commenced the above-captioned cases (the “*Chapter 11 Cases*”). On April 30, 2012, Falcon Gas Storage Company, Inc. commenced its Chapter 11 Case. The

Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On June 12, 2012, the Debtors filed the *Debtors' Application Pursuant to Sections 327(A) and 328(A) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Ernst & Young as Auditor to the Debtors Nunc Pro Tunc to the Petition Date* [Docket No. 242] (the "**Initial EY Bahrain Retention Application**"). By Order dated July 11, 2012 [Docket No. 312] (the "**Initial EY Bahrain Retention Order**"), this Court approved the Initial EY Bahrain Retention Application on the terms set forth in the Initial EY Bahrain Retention Order.

3. On July 18, 2012, the Debtors filed the *Debtors' Application Pursuant to Sections 327(A) and 328(A) of the Bankruptcy Code for an Order Expanding the Scope of Their Retention of Ernst & Young as Auditor Nunc Pro Tunc to the Petition Date* [Docket No. 328] (the "**Supplemental EY Bahrain Retention Application**"). By Order dated August 6, 2012 [Docket No. 374] (the "**Supplemental EY Bahrain Retention Order**," and, together with the EY Bahrain Retention Order, the "**Retention Orders**"), this Court approved the Supplemental EY Bahrain Retention Application on the terms set forth in the Supplemental EY Bahrain Retention Order.

4. Through the Retention Orders, EY Bahrain was retained to provide various audit and related services to the Debtors, *nunc pro tunc* to the Petition Date. The Retention Orders provide that all compensation, reimbursement of expenses and indemnification payable to EY Bahrain would be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code; provided that the U.S. Trustee retained all rights to respond or object to EY Bahrain's interim and final applications for compensation and reimbursement of expenses on

all grounds, including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code (including any allegations that EY Bahrain and another professional retained by the Debtors and compensated by the estates provided unnecessarily and unreasonably duplicative services); and provided further that in the event the U.S. Trustee objects, the Court would retain the right to review the interim and final applications of EY Bahrain pursuant to section 330 of the Bankruptcy Code. *See* Initial EY Bahrain Retention Order at ¶ 4; Supplemental EY Bahrain Retention Order at ¶ 4. The Retention Orders also provided that the terms of the engagement letters annexed to the Initial EY Bahrain Retention Application and the Supplemental EY Bahrain Retention Application are reasonable terms and conditions of employment and were thereby approved. *See* Initial EY Bahrain Retention Order at ¶ 3; Supplemental EY Bahrain Retention Order at ¶ 3.

5. Pursuant to the Supplemental EY Bahrain Retention Order, the Debtors were authorized to retain and employ EY Bahrain under the terms of a certain engagement letter dated as of September 19, 2011 entitled “*Arca Bank B.S.C. (“the Bank”) and its Subsidiaries (“the Group”) Audit and Quarterly Reviews for the Year Ending 30 June 2012*” (the “***Audit and Quarterly Review Engagement Letter***”), a copy of which was annexed as the first engagement letter in Exhibit B to the Supplemental EY Bahrain Retention Application. For the convenience of the Court and parties-in-interest, a copy of the Audit and Quarterly Review Engagement Letter is also annexed as Exhibit B to this Application.

6. Paragraph 19 of the Audit and Quarterly Review Engagement Letter (and described in Paragraph 16 of the Supplemental EY Bahrain Retention Application) provides that EY Bahrain's *estimated* fees for its services under that engagement letter would be as follows:<sup>1</sup>

- Annual and Quarterly Audit Engagement: BD 277,500 (approximately \$735,375),<sup>2</sup> consisting of:
  - Annual audit: BD 240,000 (approximately \$636,000);
  - Three quarterly reviews at BD 12,500 (approximately \$33,125) per review; and
  - The above does not include the translation of the financial statement into Arabic. If such service is requested, it will be separately billed as an additional fee.

7. Paragraph 19(a) of the Audit and Quarterly Review Engagement Letter states that EY Bahrain's annual audit fee estimate of BD 240,000 may "exceed based on changes to the business (*e.g.*, nature of the business or change in business entities) or out-of-scope work."

8. Paragraph 21 of the Audit and Quarterly Review Engagement Letter reinforces that the fee amounts stated in Paragraph 19 were estimates, and further provides that:<sup>3</sup>

"Our estimated pricing and schedule of performance are based upon, among other things, our preliminary review of the Group's records and the representations Group personnel have made to us and are dependent upon the Group's personnel providing a reasonable level of assistance. Should our assumptions with respect to these matters be incorrect or should the condition of records, degree of cooperation, results of our audit procedures, or other matters beyond our reasonable control require additional commitments by us beyond those upon which our estimates are based, we may adjust our fees and planned completion dates. Fees for any special audit-related projects, such as proposed business combinations or research and/or consultation on special business or financial issues, will be

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1 In addition to these estimated fees, the Audit and Quarterly Review Engagement Letter provides that the Debtors would reimburse EY Bahrain for its expenses incurred in connection with its performance of the services described therein.

2 "**BD**" stands for Bahraini Dinars. The equivalent U.S. dollar amounts, converted from Bahraini Dinars at the rate of BD 1 = \$2.65, are set forth in this Application for illustrative purposes only.

3 See also Supplemental EY Bahrain Retention Application at ¶ 17.

billed separately from the fees referred to above and will be the subject of other written agreements.”

9. The fee estimates set forth in the Audit and Quarterly Review Engagement Letter were based upon a good-faith estimate that EY Bahrain and the Debtors made on or about September 19, 2011 (*i.e.*, six months before the Petition Date) regarding the amount of work that ultimately would be required to complete the services.<sup>4</sup> The Audit and Quarterly Review Engagement Letter, therefore, explicitly contemplates an adjustment of EY Bahrain’s actual fees if that estimate wound up being incorrect.

10. For the reasons set forth herein and in the declaration of Essa Al-Jowder (the “*Al-Jowder Declaration*”) annexed hereto as Exhibit C, EY Bahrain and the Debtors have agreed to increase the fees payable under the Audit and Quarterly Review Engagement Letter by a total of BD 220,000 (approximately \$583,000). The purpose of the increased fee was to compensate EY Bahrain for significant post-petition work that it was required to perform, which had not been contemplated when the Audit and Quarterly Review Engagement Letter was executed six months before the Petition Date.

### **JURISDICTION AND VENUE**

11. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

12. By this Application, EY Bahrain requests entry of an order approving an increase of the fees that had been estimated in Paragraph 19 of the Audit and Quarterly Review

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<sup>4</sup> The fee estimates that were set forth in the Audit and Quarterly Review Engagement Letter were based on, among other things, EY Bahrain’s estimate of the number of hours it would need to spend on that engagement, and based on the audit risks it believed would be associated with the engagement.

Engagement Letter by a total of BD 220,000 (approximately USD \$583,000) (the “*Updated Fee*”), as agreed upon by EY Bahrain and the Debtors.<sup>5</sup>

13. If this Application is approved, EY Bahrain will seek payment of the Updated Fee in a fee application.

### **BASIS FOR RELIEF REQUESTED**

#### **I. Legal Standards**

14. EY Bahrain hereby respectfully requests Court approval of the Updated Fee pursuant to section 328(a) of the Bankruptcy Code. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum (In re Nat’l Gypsum Co.)*:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d 861, 862 (5th Cir. 1997) (internal citations and emphasis omitted).

15. Section 328(a) of the Bankruptcy Code provides, in part, as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. ...

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<sup>5</sup> Although the Updated Fee may already be permitted under the terms of the Supplemental EY Retention Order, out of an abundance of caution, it hereby seeks specific Court approval of the Updated Fee.

*See* 11 U.S.C. § 328(a). Thus, section 328(a) of the Bankruptcy Code provides that debtors-in-possession may retain, subject to bankruptcy court approval, a professional on a fixed-fee basis that reflects the nature of the professional's services and market conditions.

## **II. Facts Supporting the Updated Fee**

16. The filing of a chapter 11 case in the United States is an extraordinary event for a company based in Bahrain. Indeed, to date, the Debtors are the only clients of EY Bahrain to have been debtors in chapter 11 cases. The Chapter 11 Cases have added substantial complexity to the Debtors' audit, and caused EY Bahrain's professionals (including its senior partners and executive directors) to spend significantly more time providing services during the Chapter 11 Cases than in earlier years. This additional post-petition work has included, without limitation:

- researching, understanding and analyzing how the Chapter 11 Cases affected the Debtors' financial statements and EY Bahrain's review of those financial statements;
- addressing and discussing novel and complex issues with other professionals within EY Bahrain and other Ernst & Young member firms in the Middle East, Europe and Africa;
- discussing audit-related issues arising out of the Chapter 11 Cases with the Debtors' management and the central bank of Bahrain; and
- updating audit workpapers.

17. In addition to the above, the reporting considerations of Debtors' financial statements for the quarters ended December 31, 2011 and March 31, 2012 and the annual financial statements for the year ended June 30, 2012 changed significantly compared to similar periods in the previous year (and became more complicated) because of post-petition changes in investment valuations and post-petition negotiations between the Debtors and their creditors. This required EY Bahrain's professionals (including senior personnel) to spend significantly more time in their review of the Debtors' current financial statements than had been expected

when the Audit and Quarterly Review Engagement Letter was executed. Additionally, the Debtors' post-petition liquidity problems and organizational changes gave rise to various accounting issues that required EY Bahrain's professionals (including senior personnel) to spend additional time on research and in meetings with the Debtors' management. Moreover, because of operational changes in the Debtors' businesses after the Petition Date, the Debtors' financial statements changed continuously, which required EY Bahrain to spend additional time adjusting its working papers.

18. EY Bahrain incurred approximately **5,574** hours between the Petition Date and March 31, 2013 in providing services under the Audit and Quarterly Review Engagement Letter. As noted above, the total estimated fee under the Audit and Quarterly Review Engagement Letter is **BD 277,500 (approximately \$735,375)**. For purposes of comparison to previous years, set forth below are the approximate number of hours EY Bahrain incurred in providing audit and audit-related services during the same 12 ½ month period in each of the three years before the Petition Date, as well as the total audit fee the Debtors paid to EY Bahrain for each of those years.

| <b>Audit for the year ended</b> | <b>Approximate Number of Hours Incurred During 12 ½ Month Period</b> | <b>Total Audit Fee Paid to EY Bahrain</b> |
|---------------------------------|--|---|
| June 30, 2009                   | 5,101  | BD 334,750                                |
| June 30, 2010                   | 3,890  | BD 320,000                                |
| June 30, 2011                   | 4,479  | BD 282,631                                |

19. As shown above, although EY Bahrain spent significantly more time since the Petition Date in reviewing the Debtors' current financial statements than it had in similar periods in each of the three years before the Petition Date, the estimated aggregate fee in the Audit and



Quarterly Review Engagement Letter is less than the audit fees the Debtors paid to EY Bahrain for each of those last three years.

20. Additionally, EY Bahrain incurred approximately 750 additional hours after March 31, 2013 in providing services under the Audit and Quarterly Review Engagement Letter. Accordingly, EY Bahrain has incurred over 6,300 hours after the Petition Date in providing these services. If the Updated Fee is not approved and paid, then EY Bahrain's blended hourly rate would only be approximately USD \$116.73 (*i.e.*, \$735,375 / 6,300 hours). On the other hand, if the Updated Fee is approved and paid, then EY Bahrain's blended hourly rate would increase to about USD \$209.27 (*i.e.*, \$1,318,375 / 6,300 hours).

21. The additional time that EY Bahrain has been required to spend reviewing the Debtors' current financial statements and the necessary involvement of senior EY Bahrain personnel have impacted the profitability of this engagement to EY Bahrain. To assess the profitability of its engagements, in the ordinary course of its practice EY Bahrain calculates "recovery rates" for each engagement.<sup>6</sup> EY Bahrain's average recovery rate for its audit and audit-related work for the Debtors during the three years before the Petition Date was

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6 EY Bahrain maintains hourly time records to assess the profitability on an engagement. Each EY Bahrain professional is assigned a charge out rate, based on his or her position at the firm. EY Bahrain calculates the revenue booked on a particular engagement based on the hourly time records and the charge out rates. The actual fee earned on the engagement is then compared to the revenue booked, and a recovery rate is calculated. This recovery rate is used to determine profitability on an engagement. The recovery rate is calculated as:

A = Hourly rate of an employee  
B = Number of hours  
C = Fee on the engagement

Recovery rate =  $C / (A * B)$ .

approximately 60%. In contrast, if EY Bahrain does not receive the Updated Fee, its recovery rate for its work for the Debtors after the Petition Date would only be 38%.<sup>7</sup>

22. Finally, EY Bahrain notes that in each of the three years before the Petition Date, the Debtors had agreed to pay EY Bahrain additional fees (ranging from about BD 42,000 to about BD 95,000 of additional fees each year) beyond the fees that were stated in the audit engagement letters for those three years. The Debtors paid these additional fees to compensate EY Bahrain for time it ultimately had to spend on the engagements (including time spent by EY Bahrain's valuation experts with respect to the audits) in excess of what had been expected when the audit engagement letters were executed. Accordingly, the negotiation and payment of the Updated Fee this year is a continuation of a practice that had been employed by EY Bahrain and the Debtors before the Petition Date.

23. In light of the foregoing, EY Bahrain believes that the Updated Fee is fair and reasonable.

### **NOTICE**

24. Notice of filing of this Application will be provided to the Master Service List in accordance with the Court's *Order (A) Waiving the Requirement that Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of a Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures* [Docket No. 21]. Because of the nature of the relief requested herein, EY Bahrain submits that no other or further notice is required. EY Bahrain understands that a copy of the Application will also be available on the

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<sup>7</sup> If the Updated Fee is approved and paid, EY Bahrain's recovery rate would be approximately 59.8%.

website of the Debtors' notice and claims agent, The Garden City Group, Inc., at  
[www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

25. No prior application for the relief requested herein has been made to this or any  
other court.

**WHEREFORE**, EY Bahrain respectfully requests that the Court enter the Proposed  
Order annexed hereto as Exhibit A, and grant EY Bahrain such other and further relief as the  
Court may deem just and proper.

Dated: New York, New York  
July 3, 2013

*/s/ Michael J. Riela*

Michael J. Riela

**LATHAM & WATKINS LLP**

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**EXHIBIT A**  
**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|  |                           |
|--|---------------------------|
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| IN RE:                                   | : Chapter 11 Case         |
| ARCAPITA BANK B.S.C.(c), <i>et al.</i> , | : Case No. 12-11076 (SHL) |
| Debtors.                                 | : Jointly Administered    |
| -----X                                   |                           |

**ORDER GRANTING ERNST & YOUNG’S APPLICATION FOR AN ORDER  
UPDATING THE TERMS OF ITS RETENTION BY THE DEBTORS AS AUDITORS**

Upon consideration of the application (the “*Application*”)<sup>1</sup> of Ernst & Young (“*EY Bahrain*”) for an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “*Bankruptcy Code*”), authorizing the debtors and debtors-in-possession in the above-captioned cases (collectively, the “*Debtors*” and each, a “*Debtor*”) to update the terms of their retention and employment of EY Bahrain as auditors; and upon the Declaration of Essa Al-Jowder in support thereof; and the Court having found that it has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Application and the opportunity for a hearing on the Application was appropriate under the circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Application and having considered the statements in support of the relief requested therein at a hearing before the Court (the “*Hearing*”); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and it appearing

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

that the relief requested by this Application is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Application is granted as set forth herein.
2. The Updated Fee (comprising an increase in the amount of 220,000 Bahraini Dinars (approximately USD \$583,000))<sup>2</sup> is hereby approved pursuant to sections 327(a) and 328(a) of the Bankruptcy Code. EY Bahrain will seek payment of the Updated Fee through a fee application.
3. The Updated Fee shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code; *provided, however*, the U.S. Trustee shall retain all rights to respond or object to EY Bahrain's interim and final applications for compensation (including any application requesting payment of the Updated Fee) and reimbursement of expenses on all grounds, including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code (including any allegations that EY Bahrain and another professional retained by the Debtors and compensated by the estates provided unnecessarily and unreasonably duplicative services); *provided further*, that in the event the U.S. Trustee objects, the Court retains the right to review the interim and final applications of EY Bahrain pursuant to section 330 of the Bankruptcy Code.

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2 “**BD**” stands for Bahraini Dinars. The equivalent U.S. dollar amounts, converted from Bahraini Dinars at the rate of BD 1 = \$2.65, are set forth herein for illustrative purposes only.

4. Except as otherwise provided in this Order, the provisions of (a) this Court's July 11, 2012 *Order Pursuant to Sections 327(a) and 328 of the Bankruptcy Code Authorizing Debtors to Retain and Employ Ernst & Young as Auditor to the Debtors Nunc Pro Tunc to the Petition Date* [Docket No. 312] and (b) this Court's August 6, 2012 *Order Expanding the Scope of the Debtors' Retention of Ernst & Young as Auditor Nunc Pro Tunc to the Petition Date* [Docket No. 374] shall remain in full force and effect.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

Dated: \_\_\_\_\_, 2013  
New York, New York

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**  
**Audit and Quarterly Review Engagement Letter**





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PRIVATE AND CONFIDENTIAL

19 September 2011

The Board of Directors  
Arcapita Bank B.S.C. (c)  
P O Box 1406  
Manama  
Kingdom of Bahrain

**Arcapita Bank B.S.C. ("the Bank") and its Subsidiaries ("the Group")  
Audit and quarterly reviews for the year ending 30 June 2012**

Dear Sirs

1. This Engagement Letter, together with the attached General Terms and Conditions for Audit and Review Engagements, (collectively, this "Agreement"), confirms the terms and conditions upon which Ernst & Young, Bahrain ("we" or "EY") has been engaged to audit and report on the consolidated financial statements of Arcapita Bank B.S.C. (the "Bank") and its subsidiaries (together the "Group") for the year ending 30 June 2012 (hereafter referred to as the "Consolidated financial statements"). We have also been engaged to review the quarterly interim condensed consolidated financial statements of the Group, Arcapita Investment Holdings Limited (AIHL) and Arcapita LT Holdings Limited (LTHL) for the quarters ending 30 September 2011, 31 December 2011 and 31 March 2012. The services described in this paragraph may hereafter be referred to as either the "Audit Services" or the "Services."
2. Should conditions not now anticipated preclude us from completing our audit and issuing a report (the "Report") as contemplated by this Agreement, we will advise you and those charged with governance promptly and take such action as we deem appropriate.

**Audit Responsibilities and Limitations**

3. The objective of our audit is to express an opinion on whether:
  - a) the Consolidated financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Group in accordance with Financial Accounting Standards issued by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), International Financial Reporting Standards and the Shari'a rules and principles as determined by the Shari'a Supervisory Board of the Bank; and
  - b) the financial statements of the Subsidiaries, present fairly, in all material respects, the financial position of the subsidiaries at the balance sheet date, results of its operations and changes in its cash flows for the year then ending in accordance with International Financial Reporting Standards.

The financial reporting frameworks mentioned in (a) and (b) above, for respective financial statements will hereinafter be referred to as "the applicable financial reporting framework".

#### Audit Responsibilities and Limitations (continued)

4. We will conduct the audit of:

- a) Consolidated financial statements in accordance with both International Standards on Auditing (the "ISAs") and Auditing Standards for Islamic Financial Institutions.
- b) Financial statements of the subsidiaries in accordance with International Standards on Auditing (the "ISAs").

Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the Consolidated financial statements are free of material misstatement, whether due to fraud or error. There are inherent limitations in the audit process, including, for example, the use of judgment and selective testing of data and the possibility that collusion or forgery may preclude the detection of material error, fraud, or illegal acts. Accordingly, there is some risk that a material misstatement of the Consolidated financial statements may remain undetected. Also, an audit is not designed to detect fraud or error that is immaterial to the Consolidated financial statements.

5. As part of our audit, we will consider, solely for the purpose of planning our audit and determining the nature, timing, and extent of our audit procedures, the Group's internal control over financial reporting. This consideration will not be sufficient to enable us to express an opinion on the effectiveness of internal control or to identify all significant deficiencies.
6. In accordance with ISAs, we will communicate certain matters related to the conduct and results of the audit to those charged with governance. Such matters include:
  - our responsibility under the ISAs for forming and expressing an opinion on the Consolidated financial statements that have been prepared by the Board of Directors ("BoD") and that such an audit does not relieve BoD and management of their responsibilities;
  - an overview of the planned scope and timing of the audit;
  - significant findings from the audit. Significant findings from the audit include: (1) our views about the significant qualitative aspects of the Group's accounting practices, including accounting policies, accounting estimates, and consolidated financial statement disclosures; (2) significant difficulties, if any, encountered during the audit; (3) uncorrected misstatements, other than those we believe are trivial; (4) disagreements with management, if any, whether or not satisfactorily resolved; and (5) other matters, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding the oversight of the financial reporting process, including significant matters in connection with the Group's related parties; and
  - written representations requested from management and significant matters, if any, arising from the audit that were discussed, or the subject of correspondence, with management.





#### Audit Responsibilities and Limitations (continued)

7. In addition, we will communicate all relationships and other matters between EY, other member firms of the global Ernst & Young organization ("network firms") and the Group that, in our professional judgment, may reasonably be thought to bear on independence (including total fees charged during the period covered by the Consolidated financial statements for audit and non-audit services provided by us and network firms to the Group and other companies controlled by the Group) and the related safeguards that have been applied to eliminate identified threats to independence or reduce them to an acceptable level. Further, we will confirm that the engagement team and others in EY as appropriate, EY and, when applicable, network firms have complied with relevant ethical requirements regarding independence.
8. If we determine that there is evidence that fraud or possible non-compliance with laws and regulations may have occurred, we will bring such matters to the attention of the appropriate level of management. If we become aware of fraud involving management or fraud involving employees who have significant roles in internal control or others where the fraud results in a material misstatement of the Consolidated financial statements, we will report this matter directly to those charged with governance. We will communicate with those charged with governance matters involving non-compliance with laws and regulations that come to our attention unless they are clearly inconsequential.
9. We will communicate in writing significant deficiencies in internal control identified during the audit of the Group's Consolidated financial statements.
10. We also may communicate our observations as to the potential for economies in, or improved controls over, the Group's operations.

#### Review of Unaudited Interim Financial Information

11. Our review of the Group's unaudited interim financial information will be performed in accordance with the International Standard for Review Engagements (ISRE) 2410, Review of Interim Financial Information Performed by the Independent Auditor of the Entity.
12. A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with ISAs and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we will not express an audit opinion on the interim financial information.

A handwritten signature in blue ink, appearing to be a stylized 'M' or similar character.



### Review of Unaudited Interim Financial Information (continued)

13. A review includes obtaining a sufficient understanding of the Group's business and its internal control as it relates to the preparation of the interim financial information to: identify the types of potential misstatements in the interim financial information and consider the likelihood of their occurrence; and select the inquiries, analytical and other review procedures that will provide us with a basis for reporting whether anything has come to our attention that causes us to believe that the interim financial information is not prepared, in all material respects, in accordance with guidance given by International Accounting Standard 34, Interim Financial Reporting.
14. You agree that where any document containing interim financial information indicates that the interim financial information has been reviewed by us, the review report will also be included in the document.

### Board of Directors' Responsibilities and Representations

15. Our audit will be conducted on the basis that BoD, acknowledge and understand that they have responsibility:
  - a) For the preparation and fair presentation of the Consolidated financial statements and unaudited interim financial information in accordance with the applicable financial reporting framework;
  - b) For such internal control as BoD determines is necessary to enable the preparation of the Consolidated financial statements and unaudited interim financial information that are free from material misstatement, whether due to fraud or error; and
  - c) To provide us with: 1) access, on a timely basis, to all information of which management is aware that is relevant to the preparation of the Consolidated financial statements and unaudited interim financial information such as records, documentation and other matters; 2) additional information that we may request from directors and management for the purpose of the audit; and 3) unrestricted access to persons within the Group from whom we determine it necessary to obtain audit evidence.

BoD's failure to provide us with the information referred to above or access to persons within the Group may cause us to delay our report, modify our procedures, or even terminate our engagement.

16. BoD is also responsible for adjusting the Consolidated financial statements and unaudited interim financial information to correct misstatements identified by us and for affirming to us in its representation letter that they believe the effects of unrecorded misstatements are immaterial, individually and in aggregate, to the consolidated financial statements and unaudited interim financial information as a whole.

**Board of Directors' Responsibilities and Representations (continued)**

17. BoD is responsible for apprising us of all allegations involving financial improprieties received by BoD (regardless of the source or form and including, without limitation, allegations by "whistle-blowers," employees, former employees, analysts, regulators or others), and providing us full access to these allegations and any internal investigations of them, on a timely basis. Allegations of financial improprieties include allegations of manipulation of financial results by management or employees, misappropriation of assets by management or employees, intentional circumvention of internal controls, inappropriate influence on related party transactions by related parties, intentionally misleading EY, or other allegations of illegal acts or fraud that could result in a misstatement of the Consolidated financial statements or otherwise affect the financial reporting of the Group. If the Group limits the information otherwise available to us under this paragraph (based on the Group's claims of attorney/client privilege, work product doctrine, or otherwise), the Group will immediately inform us of the fact that certain information is being withheld from us. Any such withholding of information could be considered a restriction on the scope of the audit and may prevent us from opining on the Group's Consolidated financial statements; alter the form of report we may issue on such financial statements; or otherwise affect our ability to continue as the Group's independent auditors. We will disclose any such withholding of information to those charged with governance.
  
18. We will make specific inquiries of directors and management about the representations contained in the Consolidated financial statements and unaudited interim financial information. At the conclusion of the engagement, we will also obtain written representations from BoD about these matters, and that management: (1) has fulfilled its responsibility for the preparation and fair presentation of the Consolidated financial statements and unaudited interim financial information in accordance with the applicable financial reporting framework and that all transactions have been recorded and are reflected in the Consolidated financial statements and unaudited interim financial information; and (2) has provided us with all relevant information and access as contemplated in this Agreement. The responses to those inquiries, the written representations, and the results of our procedures comprise evidence on which we will rely in forming an opinion on the Consolidated financial statements and expressing a conclusion on the unaudited interim financial information.



**Fees and Billings**

19. For the year ending 30 June 2012 we have divided the services into the following two areas as discussed below:

**a) Audit**

For the year ending 30 June 2012, we have estimated the audit fee to be BD 240,000. However, our actual fees may exceed based on changes to the business (e.g., nature of the business or change in business entities) or out-of-scope work.

Out of pocket expenses will be added to this fee. It is our practice to request an advance payment at the commencement of our work and one or more payments on account during the course of our work.

We intend to undertake visits to investee companies, if required and as appropriate, in order to directly meet with management of the investee companies and assess reasonableness of the presentation and disclosure of such investments in the Group's financial statements. Time costs and disbursements such as airfares, visa, and hotel expenses relating to our travel would be agreed with the management of the Group and billed separately.

The translation of the financial statement into Arabic, if requested, will be billed at BD 1,000.

**b) Quarterly reviews**

Our fees are charged on the basis of time occupied and expenses incurred having regard to the degree of responsibility involved and the experience and skill required. Our fees for the review of financial statements are as follows:

| Entities                                    | Fees      |
|---|-----------|
| Arcapita Bank B.S.C. (c)                    | BD 10,000 |
| Arcapita Investment Holdings Limited (AIHL) | BD 1,250  |
| Arcapita LT Holdings Limited (LTHL)         | BD 1,250  |

This estimate assumes we will receive appropriate assistance from your staff in preparation of schedules and other matters, and that this assistance is on a timely basis.

It is our practice to request a 50% advance payment at the commencement of our work and one or more payments on account during the course of our engagement.

20. All deliverables prepared by us will be presented in English. If you require us to translate deliverables into Arabic, a separate fee will be agreed for this service.





**Fees and Billings (continued)**

21. Our estimated pricing and schedule of performance are based upon, among other things, our preliminary review of the Group's records and the representations Group personnel have made to us and are dependent upon the Group's personnel providing a reasonable level of assistance. Should our assumptions with respect to these matters be incorrect or should the condition of records, degree of cooperation, results of our audit procedures, or other matters beyond our reasonable control require additional commitments by us beyond those upon which our estimates are based, we may adjust our fees and planned completion dates. Fees for any special audit-related projects, such as proposed business combinations or research and/or consultation on special business or financial issues, will be billed separately from the fees referred to above and will be the subject of other written agreements.

**Other Matters**

22. The Group shall provide us with copies of the printer's proofs of its annual report prior to publication for our review. BoD is primarily responsible to ensure that the annual report contains no misrepresentations. We will review the document for consistency between the Consolidated financial statements and other information contained in the document, and to determine if the Consolidated financial statements and our report thereon have been accurately reproduced. If we identify any errors or inconsistencies that may affect the Consolidated financial statements, we will advise management and those charged with governance, as appropriate.

We appreciate the opportunity to be of assistance to the Group. If this Agreement accurately reflects the terms and conditions on which the Group has agreed to engage us, please sign below on behalf of the Group and return it to us.

Yours faithfully

Manama, Kingdom of Bahrain

Attachment: Appendix 1 - Ernst & Young Terms of Business  
Appendix 2 - Dispute Resolution Procedure  
Appendix 3 - List of subsidiaries

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We hereby confirm our agreement to the terms of the above letter and the enclosed terms of business:

For and on behalf of Arcapita Bank B.S.C. (c)

Date:

*Appendix 3 to our letter dated 19 September 2011*

**Arcapita Bank B.S.C. (c)**  
**List of subsidiaries to be audited**  
**(to be read in conjunction with our engagement letter dated 19 September 2011)**

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| <b>Name of Subsidiary</b>                     | <b>Country of incorporation</b> | <b>Type of Service</b> |
|---|---------------------------------|------------------------|
| Arcapita Investment Management Limited (AIML) | Cayman Islands                  | Audit                  |
| Arcapita Investment Holdings Limited (AIHL)   | Cayman Islands                  | Audit/ Review          |
| Arcapita LT Holdings Limited (LTHL)           | Cayman Islands                  | Audit / Review         |
| Arcapita Structured Finance Limited (ASFL)    | Cayman Islands                  | Audit                  |
| Arcapita Investment Funding Limited (AIFL)    | Cayman Islands                  | Audit                  |

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## GENERAL TERMS AND CONDITIONS

### Appendix 1 to our letter dated 19 September 2011

#### Our Relationship with You

- 1 We are a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity.
- 2 We may subcontract portions of the Services to other EY Firms, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Report(s), the performance of the Services, and our other obligations under this Agreement.

#### Your Responsibilities

- 3 You shall be responsible for your personnel's compliance with your obligations under this Agreement.

#### Our Reports

- 4 You may not rely on any draft Report.

#### Limitations

- 5 You and any others for whom Services are provided may not recover from us, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, data or goodwill, or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
- 6 You and any others for whom Services are provided may not recover from us, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services.
- 7 If we are liable to you (or to any others for whom Services are provided) under this Agreement or otherwise in connection with the Services, for loss or damage to which any other persons have also contributed, our liability to you shall be several, and not joint, with such others, and shall be limited to our fair share of that total loss or damage, based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.
- 8 You shall make any claim relating to the Services or otherwise under this Agreement no later than within 12 months of the act or omission alleged to have caused the claim.
- 9 The limitations in Sections 6 and 8 will not apply to losses or damages caused by our fraud or wilful misconduct or deceit to the extent such exclusions are prohibited by applicable law or professional regulations.
- 10 You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("EY Persons") to the extent that no direct contractual relationship exists between you and any of the EY Persons. You shall make any claim or bring proceedings only against us on the basis that we are the party with whom you have contracted. The limitations in [Sections 5 through 8 and] this Section 10 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

#### Indemnity

- 11 To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) arising out of or relating to the Services or this Agreement. On behalf of yourself and your affiliates, you release us, the other EY Firms and the EY Persons from all claims and causes of action (together, "Claims"), pending or threatened, that you or they may have arising out of the Services or this Agreement to the extent such Claims result from or arise out of any misrepresentation or fraudulent act or omission by you, your employees or agents on your behalf.

#### Confidentiality

- 12 We follow professional standards of confidentiality and will treat information related to you disclosed to us by you or on your behalf ("Client Information") as set forth in the IFAC Code of Ethics Section 140.
- 13 Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.
- 14 Unless prohibited by applicable law, we may disclose Client Information to other EY Firms and EY Persons to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, or for quality, risk management or financial accounting purposes.
- 15 You agree that, if a regulatory or governmental authority responsible for auditor oversight asks or orders us to produce information or documents in our files relating to your affairs, including our working papers or other work product, we may provide these materials to it. Except where prohibited by law, we will advise you of the request or order.
- 16 You shall cause all of your foreign subsidiaries and affiliates included in your consolidated financial statements to provide any authorization, to the fullest extent permissible under applicable law, to permit compliance with requests from regulatory or governmental authorities for production of documents or information in a foreign public accounting firm's, associated person's or our possession, custody and control that was obtained in the conduct of the Services by such firm or person.

#### Data Protection

- 17 We may collect, use, transfer, store or otherwise process (collectively, "Process") Client Information that can be linked to specific individuals ("Personal Data"). We may Process Personal Data in various jurisdictions in which we and the other EY Firms operate (which are listed at [www.ey.com](http://www.ey.com)). We will Process the Personal Data in accordance with applicable law and professional regulations. We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements.
- 18 You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been processed in accordance with applicable law.

#### Solicitation and hiring of EY personnel

- 19 Our auditor independence may be impaired if you solicit or hire certain EY personnel. This may either delay the provision of the Services or cause us to resign from the engagement. You shall not, during the term of this Agreement and for 6 months following its termination, for any reason, without our prior written consent, solicit to employ or nominate for a position on your Board of Directors or a financial reporting oversight role, or hire or appoint to your Board of Directors or a financial reporting oversight role, any professional employee of EY or of any other EY Entity who is or has been involved directly or indirectly with the performance of the Services for the current or prior financial year. A person in a financial reporting oversight role exercises, or is in a position to exercise, influence over the financial statements and anyone who prepares the financial statements.

#### Fees and Expenses Generally

- 20 You shall pay our professional fees and specific expenses in connection with the Services as detailed in the Engagement Letter. You shall also reimburse us for other reasonable expenses incurred in performing the Services. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay other than taxes imposed on our income generally.
- 21 If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

#### Force Majeure

- 22 Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and Termination

- 23 This Agreement applies to all Services performed at any time (including before the date of this Agreement).
- 24 This Agreement shall terminate on the completion of the Services. We may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
- 25 You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 30 days following receipt of our invoice for these amounts.

Governing Law and Dispute Resolution

- 26 This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of Bahrain applicable to agreements made and fully to be performed therein by residents thereof.
- 27 Any dispute relating to this Agreement or the Services shall be resolved [as set forth in Appendix 2] [subject to the exclusive jurisdiction of the Bahrain courts, to which each of us agrees to submit for these purposes].

Miscellaneous

- 28 This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
- 29 Both of us may execute this Agreement (and modifications to it) and each of us may sign a different copy of the same document. Both of us must agree in writing to modify this Agreement.
- 30 You represent that the person signing this Agreement on your behalf is expressly authorized to execute it and to bind you and any of your affiliates or others for whom Services are performed to its terms.
- 31 We retain ownership in the working papers compiled in connection with the Services.
- 32 Neither of us may assign any of our rights, obligations or claims under this Agreement.
- 33 If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.
- 34 If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise):
  - (a) the Engagement Letter,
  - (b) these General Terms and Conditions for agreed-upon procedure Engagements, and
  - (c) other annexes to this Agreement.
- 35 We may use your name publically to identify you as a client, but we may refer to you in connection with the Services only if it is a matter of public knowledge that we are providing them (or have provided them).

*Appendix 2 to our letter dated 19 September 2011*  
**Dispute Resolution Procedure**

In the event of any controversy or claim arising out of or relating to this Agreement or an Engagement Letter, or a breach thereof, the parties shall consult and negotiate with each other and, recognising their mutual interests, attempt to reach a solution satisfactory to the parties. If the parties fail to settle the controversy or claim at the expiration of thirty (30) days, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be settled by arbitration administered by the International Centre for Dispute Resolution Bahrain ("Dispute Resolution Centre") ([www.icdr.org](http://www.icdr.org)) in accordance with the provisions of its [International Arbitration Rules / Procedures for Cases under the UNCITRAL Arbitration Rules]. The Parties agree that:

- (a) the arbitration shall be heard before one (1) arbitrator appointed in accordance with the procedures of the Dispute Resolution Centre.
- (b) all arbitration proceedings are to take place in Manama, Kingdom of Bahrain;
- (c) except as may be required by law, neither a party nor its representatives may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all parties.
- (d) the language of the arbitration shall be English;
- (e) it is the intent of the parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within 120 days from the date the arbitrator is appointed. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.
- (f) the decision of such arbitration shall be final and binding upon the parties hereto without appeal to any court or other party(s);
- (g) pending the decision or award, the parties shall continue to perform their obligations pursuant to the Agreement or Statement of Work; and
- (h) this clause shall continue in force notwithstanding the termination of this Agreement.

**EXHIBIT C**  
**Declaration**

**LATHAM & WATKINS LLP**  
Michael J. Riela  
885 Third Avenue  
New York, New York 10022-4834  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864

*Attorneys for Ernst & Young*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |                                  |
|---|----------------------------------|
| -----X                                  |                                  |
|   | :                                |
| <b>IN RE:</b>                           | : <b>Chapter 11</b>              |
|   | :                                |
| <b>ARCAPITA BANK B.S.C.(c), et al.,</b> | : <b>Case No. 12-11076 (SHL)</b> |
|   | :                                |
| <b>Debtors.</b>                         | : <b>Jointly Administered</b>    |
|   | :                                |
| -----X                                  |                                  |

**DECLARATION OF ESSA AL-JOWDER IN SUPPORT OF  
ERNST & YOUNG’S APPLICATION PURSUANT TO  
SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE FOR AN ORDER  
UPDATING THE TERMS OF ITS RETENTION BY THE DEBTORS AS AUDITORS**

I, Essa Al-Jowder, hereby declare as follows:

1. I am a partner of Ernst & Young (“*EY Bahrain*”), which has an office at Bahrain Commercial Complex 14th Floor, P.O. Box 140, Manama, Kingdom of Bahrain. I am authorized to execute this Declaration on behalf of EY Bahrain.

2. This Declaration is being submitted in connection with *Ernst & Young’s Application Pursuant to Sections 327(A) and 328(A) of the Bankruptcy Code for an Order Updating the Terms of its Retention by the Debtors as Auditors* (the “*Application*”), which is being filed concurrently herewith. Capitalized terms used but not defined herein have the meanings given to them in the Application.

3. The facts set forth in this Declaration are based upon my personal knowledge, upon information and belief, or upon client matter records kept in the ordinary course of business that were reviewed by me or other employees of EY Bahrain or its affiliates under my general supervision and direction.

4. The Debtors were authorized to retain and employ EY Bahrain under the terms of a certain engagement letter dated as of September 19, 2011 entitled “*Arcapita Bank B.S.C. (“the Bank”) and its Subsidiaries (“the Group”) Audit and Quarterly Reviews for the Year Ending 30 June 2012*” (the “*Audit and Quarterly Review Engagement Letter*”), a copy of which was annexed as the first engagement letter in Exhibit B to the Supplemental EY Bahrain Retention Application.

5. The fee estimates set forth in the Audit and Quarterly Review Engagement Letter were based upon a good-faith estimate that EY Bahrain made on or about September 19, 2011 (*i.e.*, six months before the Petition Date) regarding the amount of work that ultimately would be required to complete the services.<sup>1</sup> The Audit and Quarterly Review Engagement Letter, therefore, explicitly contemplates an adjustment of EY Bahrain’s actual fees if that estimate wound up being incorrect.

6. EY Bahrain and the Debtors have agreed to increase the fees payable under the Audit and Quarterly Review Engagement Letter by a total of BD 220,000 (approximately USD \$583,000) (the “*Updated Fee*”). The purpose of the Updated Fee is to compensate EY Bahrain for significant post-petition work that it was required to perform, which had not been

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<sup>1</sup> The fee estimates that were set forth in the Audit and Quarterly Review Engagement Letter were based on, among other things, EY Bahrain’s estimate of the number of hours it would need to spend on that engagement, and based on the audit risks it believed would be associated with the engagement.

contemplated when the Audit and Quarterly Review Engagement Letter was executed six months before the Petition Date.

7. The filing of a chapter 11 case in the United States is an extraordinary event for a company based in Bahrain. Indeed, I understand that to date, the Debtors are the only clients of EY Bahrain to have been debtors in chapter 11 cases. The Chapter 11 Cases have added substantial complexity to the Debtors' audit, and caused EY Bahrain's professionals (including its senior partners and executive directors) to spend significantly more time providing services during the Chapter 11 Cases than in earlier years. This additional post-petition work has included, without limitation:

- researching, understanding and analyzing how the Chapter 11 Cases affected the Debtors' financial statements and EY Bahrain's review of those financial statements;
- addressing and discussing novel and complex issues with other professionals within EY Bahrain and other Ernst & Young member firms in the Middle East, Europe and Africa;
- discussing audit-related issues arising out of the Chapter 11 Cases with the Debtors' management and the central bank of Bahrain; and
- updating audit workpapers.

8. In addition to the above, the reporting considerations of Debtors' financial statements for the quarters ended December 31, 2011 and March 31, 2012 and the annual financial statements for the year ended June 30, 2012 changed significantly compared to similar periods in the previous year (and became more complicated) because of post-petition changes in investment valuations and post-petition negotiations between the Debtors and their creditors. This required EY Bahrain's professionals (including senior personnel) to spend significantly more time in their review of the Debtors' current financial statements than had been expected when the Audit and Quarterly Review Engagement Letter was executed. Additionally, the



Debtors' post-petition liquidity problems and organizational changes gave rise to various accounting issues that required EY Bahrain's professionals (including senior personnel) to spend additional time on research and in meetings with the Debtors' management. Moreover, because of operational changes in the Debtors' businesses after the Petition Date, the Debtors' financial statements changed continuously, which required EY Bahrain to spend additional time adjusting its working papers.

9. EY Bahrain incurred approximately **5,574** hours between the Petition Date and March 31, 2013 in providing services under the Audit and Quarterly Review Engagement Letter. As noted above, the total estimated fee under the Audit and Quarterly Review Engagement Letter is **BD 277,500 (approximately \$735,375)**. For purposes of comparison to previous years, set forth below are the approximate number of hours EY Bahrain incurred in providing audit and audit-related services during the same 12 ½ month period in each of the three years before the Petition Date, as well as the total audit fee the Debtors paid to EY Bahrain for each of those years.

| <b>Audit for the year ended</b> | <b>Approximate Number of Hours Incurred During 12 ½ Month Period</b> | <b>Total Audit Fee Paid to EY Bahrain</b> |
|---------------------------------|--|---|
| June 30, 2009                   | 5,101  | BD 334,750                                |
| June 30, 2010                   | 3,890  | BD 320,000                                |
| June 30, 2011                   | 4,479  | BD 282,631                                |

10. As shown above, although EY Bahrain spent significantly more time since the Petition Date in reviewing the Debtors' current financial statements than it had in similar periods in each of the three years before the Petition Date, the estimated aggregate fee in the Audit and

Quarterly Review Engagement Letter is less than the audit fees the Debtors paid to EY Bahrain for each of those last three years.

11. Additionally, EY Bahrain incurred approximately 750 additional hours after March 31, 2013 in providing services under the Audit and Quarterly Review Engagement Letter. Accordingly, EY Bahrain has incurred over 6,300 hours after the Petition Date in providing these services.

12. The additional time that EY Bahrain has been required to spend reviewing the Debtors' current financial statements and the necessary involvement of senior EY Bahrain personnel have impacted the profitability of this engagement to EY Bahrain. To assess the profitability of its engagements, in the ordinary course of its practice EY Bahrain calculates "recovery rates" for each engagement.<sup>2</sup> EY Bahrain's average recovery rate for its audit and audit-related work for the Debtors during the three years before the Petition Date was approximately 60%. In contrast, if EY Bahrain does not receive the Updated Fee, its recovery rate for its work for the Debtors after the Petition Date would only be 38%.<sup>3</sup>

13. Finally, in each of the three years before the Petition Date, the Debtors had agreed to pay EY Bahrain additional fees (ranging from about BD 42,000 to about BD 95,000 of additional fees each year) beyond the fees that were stated in the audit engagement letters for

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<sup>2</sup> EY Bahrain maintains hourly time records to assess the profitability on an engagement. Each EY Bahrain professional is assigned a charge out rate, based on his or her position at the firm. EY Bahrain calculates the revenue booked on a particular engagement based on the hourly time records and the charge out rates. The actual fee earned on the engagement is then compared to the revenue booked, and a recovery rate is calculated. This recovery rate is used to determine profitability on an engagement. The recovery rate is calculated as:

A = Hourly rate of an employee  
B = Number of hours  
C = Fee on the engagement

Recovery rate =  $C / (A * B)$ .

<sup>3</sup> If the Updated Fee is approved and paid, EY Bahrain's recovery rate would be approximately 59.8%.

those three years. The Debtors paid these additional fees to compensate EY Bahrain for time it ultimately had to spend on the engagements (including time spent by EY Bahrain's valuation experts with respect to the audits) in excess of what had been expected when the audit engagement letters were executed. Accordingly, the negotiation and payment of the Updated Fee this year is a continuation of a practice that had been employed by EY Bahrain and the Debtors before the Petition Date.


14. In light of the foregoing, I believe that the Updated Fee is fair and reasonable.

15. If the Application is approved, EY Bahrain will seek payment of the Updated Fee in a fee application.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Manama, Kingdom of Bahrain  
June 24, 2013



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Essa Al-Jowder