

ISDA<sup>®</sup>



*Heading*

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[Letterhead of Buyer, the Undertaking provider]

[Date of confirmation]

**DFT Terms confirmation**

**DFT Terms Agreement**

**for the Mu 'Addal Ribh Mutaghayyer (Floating Profit Rate or FLPR) Leg<sup>1</sup>  
of a Mubadalatul Arbaah (MA) (Profit Rate Swap)  
(Wa'ad-based and involving a Two Sales structure)**

[Name and address of Seller]

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Dear :

## PART 1

### INTRODUCTORY PREAMBLE AND PRODUCT DESCRIPTION

#### 1. Preamble and Product Description

**1.1 Preamble.** The purpose of this [letter] (this "**DFT Terms confirmation**") is to confirm the terms and conditions of the DFT Terms Agreement entered into between us on the Trade Date specified below (the, or this, "**DFT Terms Agreement**").

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<sup>1</sup> Note that this DFT Terms confirmation documents only one leg (a floating profit rate leg or FLPR leg) of a Two Sales structure Profit Rate Swap. For *Shari'ah* reasons, a separate DFT Terms confirmation should be used to document the other leg of the Profit Rate Swap, for example, a Fixed Profit Rate (or FPR) Leg. The cashflow generated by this floating profit rate leg would be the floating rate part of the Profit Rate Swap. A party may enter such a Profit Rate Swap where, for example, it is highly dependent on floating income, it has large fixed rate liabilities and for risk management purposes it wishes to hedge some of its fixed liabilities with floating income and, to do so, it enters into a profit rate swap under which it will receive fixed profit rate payments and it will pay floating profit rate payments (thereby converting some of its fluctuating floating rate income to stable fixed rate income). The cashflow generated by the other leg of the Profit Rate Swap would be the Fixed Profit Rate Leg, i.e. the fixed rate part of the Profit Rate Swap. A party may enter such a Profit Rate Swap where, for example, it has a floating profit rate liability (say, under a floating *Ijarah* liability), it wishes to protect itself against fluctuations in that floating profit rate and, to do so, it enters into a profit rate swap under which it will receive the floating profit rate (thereby hedging its floating profit rate liability) and it will pay the fixed profit rate (so in effect fixing its liability).

This DFT Terms confirmation constitutes a "DFT Terms confirmation" as referred to in, and supplements, forms part of, and is subject to, the ISDA/IIFM *Tahawwut* Master Agreement dated as of [date], as amended and supplemented from time to time (the "**Agreement**"), between [Name of Party A] ("**Party A**") and [Name of Party B] ("**Party B**"). All provisions contained in the Agreement govern this DFT Terms confirmation except as expressly modified below.

The definitions and provisions contained in Part 2 (*Definitions and General Provisions*) of this DFT Terms confirmation apply to this DFT Terms confirmation, this DFT Terms Agreement and each Transaction entered into pursuant to this DFT Terms Agreement. Where this DFT Terms confirmation

contemplates entry into more than one Designated Future transaction, then, notwithstanding such entry into a Transaction, this DFT Terms confirmation and this DFT Terms Agreement shall remain in full force and effect as, respectively, a DFT Terms confirmation and a DFT Terms Agreement in respect of all remaining Designated Future transactions to which they relate.

**1.2 Product Description.**<sup>2</sup> This DFT Terms confirmation relates to a *Mubadalatul Arbaah (MA)* (profit rate swap) whereby each party grants a *Wa'ad* (undertaking) to the other party to purchase *Shari'ah* compliant assets from such other party on one or more specified future dates on the basis of *Murabaha* transactions to be entered into on each exercise of the *Wa'ad* (undertaking) by such other party and where the purchase price payable is to be determined by reference to the cost price of the assets plus a profit amount. This DFT Terms confirmation contains the *Wa'ad* (undertaking) given by Party [A/B]. Under a related DFT Terms Agreement, Party [B/A] grants or will grant a *Wa'ad* (undertaking) in respect of such *Mubadalatul Arbaah (MA)* (profit rate swap).

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<sup>2</sup> The *Wa'ad*-based Two Sales structure Profit Rate Swap envisages that under each leg one party (A) gives a *Wa'ad* (or undertaking) to the other party (B) under which B may exercise A's *Wa'ad* in relation to a Calculation Period requiring A to buy from B a *Shari'ah* compliant asset in respect of that Calculation Period. At the same time, under the separate DFT Terms confirmation for the other leg of the Profit Rate Swap, B would give a *Wa'ad* to A in relation to each Calculation Period under which A may exercise B's *Wa'ad*, requiring B to buy from A a different *Shari'ah* compliant asset in respect of that Calculation Period. Therefore, there would be two sales per Calculation Period, one by A to B and one by B to A.

## PART 2

### DEFINITIONS AND GENERAL PROVISIONS

The following definitions and general provisions apply to this DFT Terms confirmation, this DFT Terms Agreement and, where applicable and unless otherwise indicated in the Confirmation relating thereto, each Transaction entered into pursuant to this DFT Terms Agreement.

#### 2. General Definitions

**2.1. Business Day.** "Business Day" means, in respect of any date that is specified in this DFT Terms confirmation to be subject to adjustment in accordance with any applicable Business Day Convention, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in the place(s) and on the days specified for that purpose in this DFT Terms confirmation and, if place(s) and days are not so specified, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in the same currency as the payment obligation that is payable on or calculated by reference to that date in the principal financial centre of such currency.

**2.2. Buyer's Undertaking.** "Buyer's Undertaking" means the undertaking of the Buyer granted to the Seller pursuant to Paragraph 10 of this DFT Terms confirmation.

#### 3. Parties

**3.1. Buyer.** "Buyer" means, in respect of this DFT Terms Agreement and each Transaction entered into pursuant thereto, the party specified as such in this DFT Terms confirmation, being the party that undertakes to purchase FLPR Assets from the Seller at the election of the Seller.

**3.2. Seller.** "Seller" means, in respect of this DFT Terms Agreement and each Transaction entered into pursuant thereto, the party specified as such in this DFT Terms confirmation, being the party that may elect to sell FLPR Assets to the Buyer.

#### 4. Dates and Term<sup>3</sup>

**4.1. Effective Date.** "Effective Date" means the date specified as such in this DFT Terms confirmation, being the first day of the Term. The Effective Date shall not be subject to adjustment in accordance with any Business Day Convention unless otherwise specified in this DFT Terms confirmation.

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<sup>3</sup> Note in relation to dates: The **Trade Date** is the date on which the parties enter into the DFT Terms Agreement. The **Effective Date** is the first day of the Term of the profit rate swap established through the DFT Terms Agreement, and the first day of the first Calculation Period in respect of that DFT Terms Agreement. For example, a party may wish to put in place a hedge for *Sukuk* that it will issue in 10 days time. It may enter into the relevant DFT Terms Agreement today (Trade Date) but on the basis that the hedging period or Term will commence in 10 days time (Effective Date). Alternatively, if a party is entering into the hedge on the same day as it issues its *Sukuk*, it will want the hedge to take effect immediately, and so the parties would agree that the Term will commence immediately and the Trade Date and the Effective Date will be the same. The Term will be divided into one or more Calculation Periods. The *Wa'ad* is exercisable separately in respect of each Calculation Period. Where the *Wa'ad* is exercised in respect of a Calculation Period, delivery is required to be made on the relevant **Purchase Date** by the Seller and payment is required to be made on the relevant **Payment Date** by the Buyer, (in each case, in respect of the assets to be purchased and sold under the *Murabaha* Sale entered into pursuant to that exercise of its *Wa'ad* in respect of that Calculation Period). The

**4.2. Term.** "Term" means the period commencing on the Effective Date of this DFT Terms Agreement and ending on the Termination Date.

**4.3. Termination Date.** "Termination Date" means the date specified as such in this DFT Terms confirmation. The Termination Date shall not be subject to adjustment in accordance with any Business Day Convention unless otherwise specified in this DFT Terms confirmation.

**4.4. Trade Date.** "Trade Date" means the date on which the parties enter into this DFT Terms Agreement, which may precede or be the same date as the Effective Date.

## **5. Certain definitions relating to exercise and settlement**

**5.1. Exercise Date.** "Exercise Date" means each date specified as such in this DFT Terms confirmation.<sup>4</sup>

**5.2. Exercise Notice.** "Exercise Notice" means a notice substantially in the form set out in Annex 1 of this DFT Terms confirmation.

**5.3. FLPR Assets.** "FLPR Assets" means the *Shari'ah* compliant assets specified as such in this DFT Terms confirmation.

**5.4. FLPR Asset Quantity.** "FLPR Asset Quantity" means the quantity specified as such in this DFT Terms confirmation.

**5.5. Murabaha Sale.** "*Murabaha* Sale" means a Transaction comprising a binding agreement for the sale of FLPR Assets by the Seller to the Buyer following an exercise by the Seller of Buyer's Undertaking; the terms of each such Transaction shall be evidenced by a Confirmation, being a *Murabaha* FLPR Asset Sale Confirmation.

**5.6. Murabaha FLPR Asset Sale Confirmation.** "*Murabaha* FLPR Asset Sale Confirmation" means a Confirmation substantially in the form set out in Annex 2 of this DFT Terms confirmation.

**5.7. Purchase Date.** "Purchase Date" means each day so specified in this DFT Terms confirmation; except that each Purchase Date shall be subject to adjustment in accordance with the Modified Following Business Day Convention unless another Business Day Convention is specified to be applicable to Purchase Dates in this DFT Terms confirmation.

**5.8. Shari'ah compliant assets.** "*Shari'ah* compliant assets" means any asset or assets which comply or are consistent with the principles of the *Shari'ah* and which, for *Shari'ah* purposes, are suitable as the subject matter of a *Murabaha* sale (accordingly, gold, silver or any currency do not constitute *Shari'ah* compliant assets for this purpose).

## **6. Certain definitions relating to payments**

**6.1. Capital Amount.** "Capital Amount" means, in respect of any Calculation Period, the amount specified as such in this DFT Terms confirmation.<sup>5</sup>

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Payment Dates and the Purchase Dates are agreed between the parties on the date they enter into the DFT Terms Agreement, which should be specified in Paragraph 13 of Part 3 of the DFT Terms confirmation.

<sup>4</sup> Note in relation to dates (continued): **Exercise Date** means a date on which the recipient of the *Wa'ad* contained in this DFT Terms confirmation (i.e. the Seller) may elect to exercise that *Wa'ad*. The Exercise Dates will be agreed between the parties on the date they enter into the DFT Terms Agreement and should be specified in Paragraph 13 of Part 3 of the DFT Terms confirmation.

**6.2. Payment Date.** "Payment Date" means each day so specified in this DFT Terms confirmation; except that each Payment Date shall be subject to adjustment in accordance with the Modified Following Business Day Convention unless another Business Day Convention is specified to be applicable to Payment Dates in this DFT Terms confirmation.

**6.3. Business Day Convention.**

(a) "Business Day Convention" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day. The following terms, when used in conjunction with the term "Business Day Convention" and a date, shall mean that an adjustment will be made if that date would otherwise fall on a day that is not a Business Day so that:

- (i) if "Following" is specified, that date will be the first following day that is a Business Day;
- (ii) if "Modified Following" or "Modified" is specified, that date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day; and
- (iii) if "Preceding" is specified, that date will be the first preceding day that is a Business Day.

(b) The Business Day Convention applicable to a date that is specified in this DFT Terms confirmation to be subject to adjustment in accordance with an applicable Business Day Convention shall be the Business Day Convention specified for that date in this DFT Terms confirmation or, if a Business Day Convention is not so specified for that date but a Business Day Convention is specified for this DFT Terms Agreement, shall be the Business Day Convention so specified.

**6.4. Calculation Period.** "Calculation Period" means each period from, and including, one Period End Date to, but excluding, the next following Period End Date, except that (a) the initial Calculation Period will commence on, and include, the Effective Date and (b) the final Calculation Period will end on, but exclude, the Termination Date.

**6.5. Calculation Agent.** "Calculation Agent" means the party to this DFT Terms Agreement (or a third party) designated as such in this DFT Terms confirmation.<sup>6</sup> Whenever the Calculation Agent is required to select banks or dealers for the purposes of making any calculation or determination or to select any exchange rate, the Calculation Agent will make the selection in good faith after consultation with the other party (or the parties, if the Calculation Agent is a third party), if practicable, for the purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market or designating a freely convertible currency, as the case may be. Whenever the Calculation Agent is required to act, make a determination or to exercise judgement in any other way, it will do so in good faith and in a commercially reasonable manner.

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<sup>5</sup> The Capital Amount is the notional amount in respect of which the profit rate is calculated, i.e. this identifies the size of the profit rate swap.

<sup>6</sup> Often the role of the Calculation Agent will be performed by the same entity under both legs of a Profit Rate Swap. If this is the case, it may be simpler specifying Party A or Party B or, if the Calculation Agent is to be a third party the relevant third party, as appropriate, as the Calculation Agent under both legs (instead of specifying the Buyer or the Seller, as the Buyer under one leg of the Profit Rate Swap will be the Seller under the other leg).

The Calculation Agent is responsible for: (a) calculating the applicable FLPR for each Payment Date or for each Calculation Period; (b) calculating any Payment Amount payable on each Payment Date or for each Calculation Period; (c) determining the Cost Price and the Profit in respect of any Payment Date; (d) giving notice to the Buyer and the Seller in respect of each Payment Date or Calculation Period, specifying (i) the Payment Date, (ii) the Profit in respect of a Payment Date; (iii) the Payment Amount payable on a Payment Date; and (iv) reasonable details as to how the amount or amounts were determined; (e) selecting leading dealers to act as reference banks or dealers, if relevant; and (f) performing any other duties specified in this DFT Terms confirmation as being duties required to be performed by the Calculation Agent.

With respect to Section 5(a)(ii) of the Agreement, if a party hereto is designated as the Calculation Agent then Section 5(a)(ii) shall not include any failure by that party to comply with its obligations as Calculation Agent. For the avoidance of doubt, the Calculation Agent does not act as a fiduciary for or as an adviser to any party in respect of its duties as Calculation Agent hereunder. The Calculation Agent shall not be liable for any loss, damage, costs or expenses, suffered or incurred by a party as a result of anything done or omitted to be done (as the case may be) by the Calculation Agent in the course of performing its obligations under the Agreement and this DFT Terms Agreement unless any such loss, damage, costs or expenses arose directly as a result of wilful default or gross negligence on the part of the Calculation Agent.

**6.6. Period End Date.** "Period End Date" means, in respect of this DFT Terms Agreement:

- (a) if Period End Dates are not specified in this DFT Terms Agreement, each Payment Date; and
- (b) if Period End Dates are specified in this DFT Terms Agreement, each day so specified;

except that, in the case of subsection (b) above, each Period End Date shall be subject to adjustment in accordance with the Modified Following Business Day Convention unless (i) another Business Day Convention is specified in this DFT Terms confirmation to be applicable to Period End Dates, in which case an adjustment will be made in accordance with that Business Day Convention, or (ii) "No Adjustment" is specified in this DFT Terms confirmation in connection with Period End Dates, in which case no adjustment will be made, notwithstanding that the Period End Date occurs on a day that is not a Business Day.

## **7. Payment Amounts**

**7.1. Calculation of a Payment Amount.** In the event that the Buyer becomes obliged, pursuant to Paragraph 10, to pay a Payment Amount on a Payment Date in respect of the purchase price for the relevant FLPR Asset Quantity of the FLPR Assets that the Buyer has become obliged to purchase pursuant to such Paragraph 10 the Payment Amount payable by the Buyer on that Payment Date will be an amount calculated on a formula basis by the Calculation Agent for that Payment Date and for the Calculation Period ending on such date as follows:

$$\text{Payment Amount} = \text{Cost Price} + \text{Profit}$$

**7.2. Calculation of Profit.** For the purposes of the calculation of the Payment Amount payable (in respect of the purchase price for the relevant FLPR Asset Quantity of the FLPR Assets) by the Buyer on a Payment Date in respect of a Calculation Period, the Profit in respect of such Payment Date and the Calculation Period ending on such Payment Date will be an amount calculated on a formula basis by the Calculation Agent for that Payment Date and Calculation Period as follows:

$$\text{Profit} = \text{Capital Amount} \times (\text{FLPR} + \text{Spread}) \times \text{FLPR Day Count Fraction}$$

The amount so calculated will be as specified in the relevant Exercise Notice.

**7.3. Certain Definitions Relating to Payment Amounts.** For the purposes of the calculation of a Payment Amount payable (in respect of the purchase price for the relevant FLPR Asset Quantity of the FLPR Assets) by the Buyer on a Payment Date in respect of a Calculation Period:

- (a) "Cost Price" means the cost for the Seller to acquire the FLPR Asset Quantity of the FLPR Asset from a third party on the Exercise Date with respect to such Payment Date for delivery on the Purchase Date with respect to such Payment Date, as specified in the relevant Exercise Notice.
- (b) "FLPR" means a per annum rate, expressed as a decimal, equal to the rate determined with respect to the Reset Date during (or in respect of) that Calculation Period for the specified FLPR Benchmark or as otherwise provided in this DFT Terms confirmation;
- (c) "Reset Date" means the day or days specified as such (or determined pursuant to a method specified for such purpose) in this DFT Terms Agreement, subject to adjustment in accordance with any applicable Business Day Convention which, if a Business Day Convention is not specified in this DFT Terms Agreement as being applicable to Reset Dates, shall be the Business Day Convention applicable to Payment Dates, unless an adjustment in accordance with that Business Day Convention would cause a Reset Date to fall on the Payment Date in respect of the Calculation Period to which that Reset Date relates, in which case that Reset Date shall be adjusted in accordance with the Preceding Business Day Convention.
- (d) "Spread" means the per annum rate (which may be positive or negative), if any, expressed as a decimal, specified as such in this DFT Terms confirmation. For the purposes of determining a Payment Amount, (i) if the Spread is positive, the Spread will be added to the FLPR, and (ii) if the Spread is negative, the absolute value of the Spread will be subtracted from the FLPR.
- (e) "FLPR Day Count Fraction" means the Day Count Fraction specified as such in this DFT Terms confirmation.

## **8. Related Transactions**

**8.1. Related DFT Terms confirmation.** "Related DFT Terms confirmation" means each DFT Terms confirmation so specified in this DFT Terms confirmation.<sup>7</sup>

**8.2. Related Transaction.** "Related Transaction" means a Transaction entered into between the parties pursuant to a Related DFT Terms confirmation.

**8.3. Netting of Payments.** "Multiple Transaction Netting" will apply for the purposes of Section 2(c) of the Agreement to each Transaction entered into pursuant to this DFT Terms Agreement and each Transaction entered into pursuant to a DFT Terms Agreement evidenced by a Related DFT Terms confirmation, starting from the Effective Date.

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<sup>7</sup> It is envisaged that the Related DFT Terms confirmation specified in this DFT Terms confirmation will be the DFT Terms confirmation for the other leg of the Profit Rate Swap transaction (e.g. the fixed profit rate leg). This allows the fixed profit rate and floating profit rate legs of a Profit Rate Swap to be "linked" in order to ensure clarity as to which are the component legs of a particular Profit Rate Swap, but nevertheless enabling the legs to be documented separately in order to comply with the *Shari'ah* preference for the *Wa'ads* set out in the DFT Terms confirmations for each leg of the Profit Rate Swap to remain separate and distinct from each other.



## 9. Agency and brokerage<sup>8</sup>

**9.1. Appointment of Agent or Broker.** In delivering, buying, selling, or receiving delivery of, FLPR Assets in respect of any *Murabaha* Sale entered into pursuant to the terms of this DFT Terms Agreement, a party may appoint an Agent or Broker in order to effect such delivery, purchase or sale, or to receive such delivery, on its behalf.<sup>9</sup>

**9.2. Agent.** "Agent" means, in respect of any *Murabaha* Sale entered into pursuant to the terms of this DFT Terms Agreement, the person (if any) acting as agent of the Seller or Buyer, as the case may be, specified as such in this DFT Terms confirmation. One party to this DFT Terms Agreement may appoint the other party to this DFT Terms Agreement or any third party as its Agent for such purpose.

**9.3. Broker.** "Broker" means, in respect of any *Murabaha* Sale entered into pursuant to the terms of this DFT Terms Agreement, the person (if any) acting as a broker for the Seller or Buyer, as the case may be, as specified in this DFT Terms confirmation.

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<sup>8</sup> Note that in order to avoid a Profit Rate Swap constituting *Bai Al Inah* (sale and buy-back agreement), the asset purchased from the Broker by the Seller should not then be sold to that same Broker by the Buyer. Market participants will be aware of the differences of opinion amongst scholars on the permissibility of *Bai Al Inah* (sale and buy-back agreement).

<sup>9</sup> An Agent or Broker should be appointed by a party only if that has been approved by the relevant party's *Shari'ah* board or other appropriate *Shari'ah* approval procedure has been effected (in particular, where one party to the Agreement is to be appointed as Agent or Broker for the other party to the Agreement). Note that any conflict of interest issues arising where one party is appointed as Agent or Broker for the counterparty will need to be addressed.

### PART 3

#### UNDERTAKING AND TRANSACTION TERMS

**10. Buyer's Undertaking.** The Buyer unilaterally hereby irrevocably and unconditionally undertakes to the Seller, in respect of each Payment Date, that if the Seller delivers to the Buyer an Exercise Notice on or prior to, and with respect to, the Exercise Date with respect to such Payment Date, the Buyer will

(a) purchase from the Seller for delivery to the Buyer on the Purchase Date with respect to such Payment Date the FLPR Asset Quantity of the FLPR Assets; and

(b) pay to the Seller on such Payment Date the Payment Amount with respect to such Payment Date, being the purchase price for the purchase of such FLPR Asset Quantity of the FLPR Assets.

#### **11. Exercise of Buyer's Undertaking and Murabaha Sale**

**11.1. Exercise of Buyer's Undertaking.** The Seller, as the recipient of Buyer's Undertaking, will be entitled to deliver to the Buyer, on or prior to each Exercise Date, an Exercise Notice with respect to that Exercise Date. Each Exercise Notice shall be accompanied by two copies of a *Murabaha* FLPR Asset Sale Confirmation referring to and reflecting the terms of that Exercise Notice and executed by the Seller (provided that such Exercise Notice shall not be invalid by reason only of being accompanied by one copy of such *Murabaha* FLPR Asset Sale Confirmation).

**11.2. Murabaha Sale.** Following the delivery to the Buyer of an Exercise Notice with respect to an Exercise Date, such delivery constituting an offer by the Seller to the Buyer to enter into the relevant *Murabaha* Sale, together with two copies of the duly completed *Murabaha* FLPR Asset Sale Confirmation executed by the Seller:

(a) the Buyer shall accept such offer either (A) orally by telephone or in writing via email or (B) by countersigning such *Murabaha* FLPR Asset Sale Confirmation and returning one such original to the Seller on the same day as that on which the Exercise Notice became effective (in accordance with Section 12 of the Agreement). If the Buyer accepts such offer by telephone or via email, then such acceptance shall be subsequently confirmed by returning to the Seller an original of the countersigned *Murabaha* FLPR Asset Sale Confirmation, although any failure to do so shall not invalidate such acceptance;

(b) the Seller shall deliver to the Buyer on the Purchase Date, the FLPR Asset Quantity of the FLPR Assets, title and risk in which shall pass upon delivery; and

(c) the Buyer shall pay to the Seller the applicable Payment Amount on the relevant Payment Date.

For the purposes of Section 5(a)(ii)(3) of the Agreement, a failure by the Buyer to accept the Seller's offer in accordance with subparagraph (a) above shall constitute a failure by the Buyer to enter into a Designated Future transaction in compliance with and in accordance with the terms of Section 2(a)(i) of the Agreement and this DFT Terms Agreement, unless such failure is remedied in accordance with the terms of that Section 5(a)(ii)(3).

**12. Purchase of FLPR Assets under *Murabaha* Sale**

**12.1. No representation or warranty as to assets.** The FLPR Assets shall be purchased by the Buyer, and sold by the Seller<sup>10</sup>, free and clear of any encumbrance whether or not created by or through or as a result of any action or inaction of the Seller but otherwise on an 'as is where is' basis without any representation or warranty whatsoever whether arising by implication, by law or otherwise and without prejudice to the generality of the foregoing, without any warranties as to condition, merchantability, fitness for purpose, and adequacy of use of whatever nature from the Seller and the Seller and the Buyer acknowledge that any such representation or warranty is expressly excluded to the extent permitted by law.

**12.2. United Nations Convention on Contracts for the International Sale of Goods.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this DFT Terms Agreement and each Transaction entered into pursuant thereto.

**13. General Terms**

Capital Amount: [ ]

Trade Date: [ ]

Effective Date: [ ]

Termination Date: [ ]

Exercise Date(s): [With respect to each Payment Date and the related Purchase Date, the date which falls [on/[ ] Business Days prior to] such Purchase Date<sup>11</sup>]<sup>12</sup>

Seller: [Party A/B]

Buyer: [Party B/A]

***Murabaha* Sale of FLPR Assets<sup>13</sup>**

FLPR Assets: [ ]<sup>14</sup>

<sup>10</sup> Note: Provision is made at Part 2, Paragraph 9 and Part 3 Paragraph 14 for Agents or Brokers to be appointed by Buyer and/or Seller and the details of those entities to be specified in this DFT Terms confirmation, as appropriate.

<sup>11</sup> Note: To be defined to match Exercise Date(s) as provided in the Related DFT Terms confirmation, if appropriate.

<sup>12</sup> Typically, the Exercise Date may be specified as falling at the beginning or the end of a Calculation Period. If the Exercise Date and the Purchase Date fall at the beginning of a Calculation Period, a *Murabaha* Sale will be entered into at the beginning of the Calculation Period, with deferred payment of the Payment Amount being made at the end of the Calculation Period on the Payment Date. However, if the Exercise Date and the Purchase Date both fall at the end of the Calculation Period, then the *Murabaha* Sale arising upon exercise will be entered into at the end of the Calculation Period with payment of the Payment Amount also being made at the end of the Calculation Period.

<sup>13</sup> Note: No line items are provided for "Profit" or "Cost Price" on the assumption these will be determined in accordance with the respective definitions in Paragraphs 7.2 and 7.3(a).

<sup>14</sup> Insert general description of relevant *Shari'ah* compliant assets.

FLPR Asset Quantity:	[ ] <sup>15</sup> [ ] <sup>16</sup>
FLPR Benchmark:	[ ] [and if such rate does not appear on [ ], the rate will be determined by reference to the Fallback Rate]
Fallback Rate:	[ ] <sup>17</sup>
Spread:	[Plus/Minus [ ] %] [None] <sup>18</sup>
Reset Date(s):	[ ] [, subject to adjustment in accordance with the [Following / Modified Following / Preceding] Business Day Convention] <sup>19</sup>
Period End Date(s):	[ ] [,], subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention]/[No adjustment] <sup>20</sup>
Purchase Date(s):	[With respect to each Payment Date, [such Payment Date] [the first Business Day of the Calculation Period ending on such Payment Date]]
Payment Date(s):	[ ] [, subject to adjustment in accordance with the [Following/ Modified Following/ Preceding] Business Day Convention] <sup>21</sup>
FLPR Day Count Fraction:	[ ] <sup>22</sup>
Business Days:	[ ]
Business Day Convention:	[ ] <sup>23</sup>
Calculation Agent:	[ ]
Related DFT Terms confirmation(s):	[ ]

<sup>15</sup> Insert quantity as a number (of units).

<sup>16</sup> Insert unit of FLPR Assets.

<sup>17</sup> Insert fallback rate. The fallback rate is the fallback source of the benchmark rate if the Reference Rate is not available from the primary source.

<sup>18</sup> The Spread is the percentage above (or below) the benchmark rate.

<sup>19</sup> Bracketed language is not necessary if Reset Dates are to be adjusted in accordance with the Business Day Convention applicable to Payment Dates.

<sup>20</sup> Bracketed language is not necessary if Period End Dates are to be adjusted in accordance with the Modified Following Business Day Convention, as provided in Paragraph 6.6.

<sup>21</sup> Bracketed language is not necessary if Payment Dates are to be adjusted in accordance with the Modified Following Business Day Convention, as provided in Paragraph 6.2.

<sup>22</sup> Insert applicable day count fraction.

<sup>23</sup> Insert applicable business day convention – standard definitions are provided in Paragraph 6.3.

#### 14. Agency or Brokerage

Buyer's [Selling/Buying/Receiving/Delivery] Agent: [Seller/Not Applicable/*details of third party agent*] [*add further details if more than one agent*]

Seller's [Selling/Buying/Receiving/Delivery] Agent: [Buyer/Not Applicable/*details of third party agent*] [*add further details if more than one agent*]

Buyer's [Selling/Buying/Receiving/Delivery] Broker: [Seller/Not Applicable/*details of third party broker*] [*add further details if more than one broker*]

Seller's [Selling/Buying/Receiving/Delivery] Broker: [Buyer/Not Applicable/*details of third party broker*] [*add further details if more than one broker*]

#### 15. Account Details

Account(s) for payments to [Buyer/Seller]: [ ]

Account(s) for deliveries to [Buyer/Seller]  
or, as the case may be, its Agent or Broker,  
as appropriate: [ ]

#### 16. Offices

- (a) The Office of the Buyer for this DFT Terms Agreement and each Transaction entered into pursuant thereto is [ ]; and
- (b) The Office of the Seller for this DFT Terms Agreement and each Transaction entered into pursuant thereto is [ ].

#### 17. VAT

The Payment Amounts calculated as provided above are exclusive of any applicable value added tax or any other tax of a similar nature ("VAT").

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*Closing of DFT Terms confirmation*

IN WITNESS WHEREOF this DFT Terms confirmation has been executed as a deed<sup>24</sup> by the Buyer and is intended to be and is hereby delivered on the day first before written.

EXECUTED as a deed by     )  
(Buyer)                             )  
acting by (*insert name(s) of*     )  
*duly authorised signatory(ies)* )

\_\_\_\_\_  
\_\_\_\_\_  
(A second signatory or more may be required)

or

EXECUTED as a deed by     )  
(Buyer)                             )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Signature of director  
Name of director  
Signature of director/secretary  
Name of director/secretary

or

The Common Seal of         )  
(Buyer)                             )  
was affixed to this deed in the )  
presence of:                         )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Signature of director  
Name of director  
Signature of director/secretary  
Name of director/secretary

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<sup>24</sup> Some sample forms of execution blocks are included in this DFT Terms confirmation but they are not exhaustive and it is the parties' responsibility to ensure that the appropriate form of execution block is used by the Buyer.

**ANNEX 1  
FORM OF EXERCISE NOTICE**

**[Letterhead of Seller, the Undertaking recipient]**

To: [ ] (the "**Buyer**")

Dear :

We refer to the DFT Terms confirmation entered into by you and us dated [date] (the "**DFT Terms confirmation**") which supplements, forms part of, and is subject to, the ISDA/IIFM *Tahawwut* Master Agreement dated as of [date], as amended and supplemented from time to time, between you and us (the "**Agreement**").

Unless the context requires otherwise, capitalised terms used in this Exercise Notice and not defined herein will have the same meaning as in the DFT Terms confirmation.

The Seller hereby confirms to the Buyer that:

1. the undersigned is duly authorised to execute and deliver this Exercise Notice on behalf of the Seller;
2. the Seller is hereby exercising Buyer's Undertaking in respect of the Exercise Date specified below and accordingly the Buyer is hereby required to purchase from the Seller the following FLPR Assets on the following terms:
  - (i) Exercise Date: [ ]
  - (ii) FLPR Assets: [ ]<sup>25</sup>
  - (iii) FLPR Asset Quantity: [ ]<sup>26</sup>
  - (iv) Purchase Date: [ ]
  - (v) Payment Date: [ ]
  - (vi) Cost Price: [ ]
  - (vii) Profit: [ ]
  - (viii) Payment Amount: [ ]<sup>27</sup>
3. attached are two copies of the *Murabaha* FLPR Asset Sale Confirmation to record the above transaction which the Buyer should arrange to be countersigned and for one executed original of such *Murabaha* FLPR Asset Sale Confirmation to then be returned to us on the same day as the date on which this Exercise Notice is effective (in accordance with Section 12 of the Agreement) (and the *Murabaha* FLPR Asset Sale Confirmation will constitute a "Confirmation" for the purposes of the Agreement); and

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<sup>25</sup> Include warrant number or storage facility ticket number or other details for the assets.

<sup>26</sup> Insert same text as is included for "FLPR Asset Quantity" in the DFT Terms confirmation.

<sup>27</sup> Insert the sum of amounts specified in (vi) (Cost Price) and (vii) (Profit) of the notice.

4. the Buyer shall pay the Payment Amount (together with any applicable VAT) to the Seller in accordance with the terms of the *Murabaha* FLPR Asset Sale Confirmation.

**IN WITNESS WHEREOF**, the Seller has executed and delivered this Exercise Notice on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**[Seller]**

Executed by: \_\_\_\_\_

Name:

Title:



**ANNEX 2**  
**FORM OF MURABAHA FLPR ASSET SALE CONFIRMATION**

*Heading*

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[Letterhead of Seller, the Undertaking recipient]

[Date]

**Murabaha FLPR Asset Sale Confirmation**

[Name and address of Buyer]

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Dear :

The purpose of this [letter] (this "**Murabaha FLPR Asset Sale Confirmation**") is to confirm the terms and conditions of the *Murabaha* (or sale) transaction entered into between us (the or this "Transaction") pursuant to the terms of a DFT Terms Agreement evidenced by a DFT Terms confirmation dated [ ] (the "**FLPR DFT Terms confirmation**").

The definitions and provisions contained in the FLPR DFT Terms confirmation are incorporated in this *Murabaha* FLPR Asset Confirmation.

This *Murabaha* FLPR Asset Confirmation constitutes a Confirmation as referred to in, and supplements, forms part of, and is subject to, the ISDA/IIFM *Tahawwut* Master Agreement dated as of [date], as amended and supplemented from time to time (the "**Agreement**"), between [Name of Party A] ("**Party A**") and [Name of Party B] ("**Party B**"). All provisions contained in the Agreement govern this *Murabaha* FLPR Asset Confirmation.

Pursuant to the DFT Terms Agreement evidenced by the FLPR DFT Terms confirmation, the Seller has delivered to the Buyer an Exercise Notice dated [ ] (the "**Exercise Notice**") and the Buyer has granted the Seller a Buyer's Undertaking under which the Buyer has undertaken to purchase from the Seller the FLPR Assets specified in the Exercise Notice (the "**Relevant Shari'ah Compliant Assets**").

The terms of this Transaction are as follows:

**1. Sale of Relevant Shari'ah Compliant Assets**

1.1 The Seller hereby sells to the Buyer and the Buyer hereby purchases the Relevant *Shari'ah* Compliant Assets for delivery to the Buyer on the Purchase Date and for payment by the Buyer of the Payment Amount (together with any applicable VAT) on the Payment Date, into the account number [ ] of the Seller, such Payment Amount being comprised of Cost Price plus Profit, where:

- (i) Cost Price is [ ]; and
- (ii) Profit is [ ].

1.2 Details of the Relevant *Shari'ah* Compliant Assets are as follows:

[details]<sup>28</sup>

1.3 The Seller represents and warrants to the Buyer that the title to the Relevant *Shari'ah* Compliant Assets is free and clear of any encumbrance whether or not created by or through or as a result of any action or inaction of the Seller and the Buyer acknowledges that the Relevant *Shari'ah* Compliant Assets are being sold on an "as is where is" basis without any other representation or warranty whatsoever whether arising by implication, by law or otherwise and without prejudice to the generality of the foregoing, without any warranties as to condition, merchantability, fitness for purpose, and adequacy of use of whatever nature from the Seller. Each of the Seller and the Buyer acknowledges that any such representation or warranty is expressly excluded to the extent permitted by law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Transaction.

To accept the Seller's offer to enter into the *Murabaha* Sale pursuant to Paragraph 11.2 of the FLPR DFT Terms confirmation, the Buyer may telephone or email the Seller at:

Telephone: [ ]  
Email: [ ]  
Attention: [ ]

In addition, please confirm that the foregoing correctly sets forth the terms of the Transaction by executing this Confirmation and the enclosed duplicate enclosed for that purpose and returning one executed original to us as required by the FLPR DFT Terms confirmation.

**[Seller]**

Executed by: \_\_\_\_\_  
Name:  
Title:

**[Buyer]**

Countersigned

by: \_\_\_\_\_  
Name:  
Title:

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<sup>28</sup> Include warrant number or storage facility ticket number or other details for the assets.