[Letterhead of Party A as Buyer of the First Leg Assets, the Undertaking provider]

[Date of confirmation]

DFT Terms confirmation

DFT Terms Agreement
for a *Himaayah Min Taqallub As 'aar Assarf* or an Islamic Cross-Currency Swap (ICRCS)
(*Wa'ad*-based and involving a Two Sales structure)
First Leg - Party A as Buyer DFT Terms confirmation[1]

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حماية من تقلب أسعار الصرف

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[1]   Note that this DFT Terms confirmation documents only one leg of a *Himaayah Min Taqallub As 'aar Assarf* or Islamic Cross-Currency Swap (**ICRCS**) involving a Two Sales structure (see footnote 2 for explanation of Two Sales structure). For *Shari 'ah* reasons, a separate DFT Terms confirmation should be used to document the other leg of the ICRCS. A party may enter into such an ICRCS where, for example, it is highly dependent on one currency (**Currency A**) (say, AED), being the currency of the country in which it operates, but it also has liabilities in another currency (**Currency B**) (say, GBP) and for risk management purposes it wishes to hedge itself against fluctuations in the exchange rate between Currency B and Currency A. For these purposes, this **party may enter into an ICRCS under which it will receive payments in Currency B (thereby hedging its liabilities in Currency B)** and it will make payments in Currency A (thereby applying some of its Currency A income to cover its Currency B liabilities and, in effect, fixing its liability in Currency A). In addition, there may be an initial exchange between the parties of a fixed amount of Currency A against a fixed amount of Currency B. If such an initial exchange is made, then a further final exchange of a fixed amount of Currency A against a fixed amount of Currency B may also be made between the parties at a later date or upon termination of the ICRCS (in an opposite manner to the initial exchange).

One objective of engaging in a *Himaayah Min Taqallub As 'aar Assarf* or an ICRCS would be to enable a party to raise funds through a *Murabaha* in one currency for a certain period of time (currently unavailable to it through other means) against a *Murabaha* in another currency or a base currency that is available. Profit rate, tenor and amount are all agreed-upon between the two parties before commencement of the transaction. It is mostly used to manage and mitigate currency risks and rate risks associated with investments and should not be used for speculation.

[Name and address of Party B as Seller]

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**").

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 (the "**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.[2]   This DFT Terms confirmation relates to *Himaayah Min Taqallub As 'aar Assarf* (Islamic cross-currency swap) ("**ICRCS** ") implemented through arrangements whereby each party simultaneously grants to the other party a *Wa 'ad* (undertaking) 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 in respect of each such *Murabaha* transaction is to be determined on the basis of the cost price of the purchased *Shari 'ah* Compliant Assets plus a profit amount, with the purchase price payable by one party being denominated in one of the two currencies the subject of such Islamic cross-currency swap and the purchase price payable by the other party being denominated in the other of the two currencies the subject of such Islamic cross-currency swap. This DFT Terms confirmation contains a Wa *'ad* (undertaking) granted by Party A (as Buyer) to Party B (as Seller). Under a Related DFT Terms Agreement, Party B (as Buyer) grants a *Wa 'ad* (undertaking) to Party A (as Seller). This DFT Terms Agreement and the Related DFT Terms Agreement together form an Islamic Cross Currency Swap.

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[2]   The *Wa 'ad*-based Two Sales structure ICRCS envisages that, under this leg, one party (**Party A**) gives a *Wa 'ad* (or undertaking) to the other party (**Party B**) in relation to each Payment Date under which Party B may exercise Party A's *Wa 'ad*, requiring Party A to buy from Party B, in cash in one of the two Specified Currencies (which may be different for different Payment Dates), *Shari 'ah* compliant assets in respect of that Payment Date. At the same time, under the separate DFT Terms confirmation for the other leg of the ICRCS, Party B gives a *Wa 'ad* (or undertaking) to Party A (in relation to payment dates which will generally be the same as the Payment Date under this leg) under which Party A may exercise Party B's *Wa 'ad*, requiring Party B to buy from Party A, in cash (in the other of the two Specified Currencies for the Payment Date under the second leg), different *Shari 'ah* compliant assets in respect of that Payment Date. Therefore, there will generally be two sales per Payment Date, one by Party A to Party B and the other by Party B to Party 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. Islamic Cross Currency Swap. "Islamic Cross Currency Swap" means an arrangement between two counterparties pursuant to which they enter into a series of *Murabaha* sale contracts through which they exchange *Murabaha assets for purchase prices* in different currencies at the beginning and end of an agreed period of time and exchange profit payments in the different currencies over the course of such period.

2.2. 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:

(a)   in respect of an Exercise Date:

      (i)   on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in the principal financial centres of each of the two Specified Currencies; and

      (ii)   where one of the Specified Currencies is Euro, that is a TARGET Settlement Day, and

(b)   in any other case:

      (i)   on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in the principal financial centre of the currency of the payment obligation that is payable on or calculated by reference to that date; and

      (ii)   where a payment is denominated in Euro, that is a TARGET Settlement Day[3].

2.3. 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.

2.4. Participating Member States. "Participating Member States" means any state of the European Union that has the Euro as its lawful currency in accordance with the legislation of the European Union relating to the Economic and Monetary Union.

2.5. Euro. "Euro" means the single currency of the Participating Member States.

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[3] The "**Business Day**" concept used here, which is common to and applicable for all major currencies other than the Euro, refers to days on which commercial banks and foreign exchange markets settle payments and are open for general business in the principal financial centre for the relevant currency. The Business Day concept for the Euro requires a reference to the TARGET Settlement Day (being a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer service, the service through which transfers of Euro are effected, is open). That is why the definitions of Euro, Participating Member States and TARGET Settlement Date are also required.

2.6. TARGET Settlement Day. "TARGET Settlement Day" means any day on which TARGET2 (the Trans-European Automated Real-time Gross Settlement Express Transfer system) is open.

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 the Asset Quantity of the *Shari 'ah* Compliant 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 the Asset Quantity of the *Shari 'ah* Compliant Assets to the Buyer.

4. Dates and Term[4]

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.

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

5.2. Exercise Date. "Exercise Date" means each date specified as such in this DFT Terms confirmation.[5]

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[4]   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 ICRCS 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 with AED income may wish to put in place a hedge for *Sukuk* liability denominated in GBP 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 calendar date. The Effective Date may also be the date on which the first exercise and settlement of the Buyer's Undertaking (*Wa 'ad*) occurs where an initial exchange payment is provided for as described in Footnote 1. Where the *Wa 'ad* is exercised in respect of a Payment Date, 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 Payment Date). The Payment Dates and the Purchase Dates are agreed between the parties on the date they enter into the DFT Terms Agreement and should be specified in Paragraph 13 of the DFT Terms confirmation.

[5]   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

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

5.4. First Currency. "First Currency" means the currency specified as such in this DFT Terms confirmation.

5.5. Second Currency. "Second Currency" means the currency specified as such in this DFT Terms confirmation.

5.6. *Murabaha* Sale. "*Murabaha* Sale" means a Transaction comprising a binding agreement for the sale of *Shari 'ah* Compliant 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* Party A as Buyer Asset Sale Confirmation.

5.7. *Murabaha* Party A as Buyer Asset Sale Confirmation. "*Murabaha* Party A as Buyer Asset Sale Confirmation" means a Confirmation substantially in the form set out in Annex 2 of this DFT Terms confirmation.

5.8. Purchase Date. "Purchase Date" means each day specified as such in this DFT Terms confirmation; except that each day so specified shall be subject to adjustment in accordance with the Following Business Day Convention unless another Business Day Convention is specified to be applicable to Purchase Dates in this DFT Terms confirmation in which case such adjustment shall be made in accordance with the other Business Day Convention. .

5.9. *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).

5.10. Specified Currencies. "Specified Currencies" means the First Currency and the Second Currency, and "**Specified Currency**" shall mean either of them.

6. Certain definitions relating to payments

6.1. Capital Amount. "Capital Amount" means, in respect of any Payment Date or any Calculation Period, as applicable, the amount specified as such in this DFT Terms confirmation.[6]

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

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:

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agreed between the parties on the date they enter into the DFT Terms Agreement and should be specified in Paragraph 13 of the DFT Terms confirmation.

[6]   The Capital Amount is the original principal amount in respect of which the exchange rate is calculated, i.e. this identifies the size of the ICRCS.

(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.[7] 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.

The Calculation Agent is responsible for: (a) calculating any Payment Amount payable on each Payment Date or for each Calculation Period; (b) determining the Profit in respect of any Payment Date; (c) 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; and (iii) reasonable details as to how the amount or amounts were determined; (d) selecting leading dealers to act as reference banks or dealers[8], if relevant; and (e) 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[9], if a party hereto is designated as the Calculation Agent then Section 5(a)(ii) of the Agreement 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

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[7]   The parties must agree upon and specify the identity of the Calculation Agent. Often the role of the Calculation Agent will be performed by the same entity under both legs of a ICRCS. 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 "Buyer" or "Seller", as the Buyer under one leg of the ICRCS will be the Seller under the other leg).

[8] Leading dealers in this context may include Islamic windows of conventional Financial Institutions as well as Islamic Financial Institutions.

[9] "Agreement" in this DFT Terms confirmation/Agreement is a reference to the ISDA/IIFM *Tahawwut* Master Agreement.

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[10],

except that, in the case of subparagraph (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 of this DFT Terms confirmation, to pay a Payment Amount on a Payment Date in respect of the purchase price for the relevant Asset Quantity of the relevant *Shari 'ah* Compliant Assets, the "Payment Amount" payable by the Buyer on that Payment Date will be an amount in the applicable Specified Currency, calculated on a formula basis by the Calculation Agent for that Payment Date as follows:

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

7.2. Calculation of Profit.[11] For the purposes of the calculation of the Payment Amount payable (in respect of the purchase price for the relevant Asset Quantity of the relevant *Shari 'ah* Compliant Assets) by the Buyer on a Payment Date, the "Profit" in respect of such Payment Date will be:

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[10] The Period End Date may not always be the same as a Payment Date (e.g. where, in the case of a payment amount calculated on the basis of a fixed rate, interim payments may be made on days which are not Period End Dates. The amount of these payments will be fixed on day one).

[11]   The profit element of the purchase price may not be calculated in the same manner in respect of each Murabaha Sale. In particular, the first *Murabaha* Sale entered into pursuant to a *Wa 'ad* may entail a profit amount that is the capital amount of one of the Specified Currencies (Profit Type 1), the payment of such capital amount representing the initial exchange of such Specified Currency, whereas each of the other *Murabaha* Sales after the first one may entail a profit amount that is calculated on the basis of either a fixed rate (Profit Type 2 – Fixed Profit Rate) or a benchmark profit rate (Profit Type 2 – Floating Profit Rate), the payment of such capital amount representing the payment of the profit element of the ICRCS, and the final *Murabaha* Sale entered into pursuant to a *Wa 'ad* may entail a profit amount that is equal to the sum of (i) a profit amount that is the capital amount of one of the Specified Currencies (Profit Type 1) which represents the final exchange of a Specified Currency and (ii) a profit amount that is calculated on the basis of either a fixed rate (Profit Type 2 – Fixed Profit Rate) or a benchmark profit rate (Profit Type 2 – Floating Profit Rate).   Paragraph 13 of this DFT Terms confirmation will specify whether, in respect of each *Murabaha* Sale envisaged, the profit element of the purchase price for that *Murabaha* Sale is "Profit Type 1", "Profit Type 2 – Fixed Rate", "Profit Type 2 – Floating Rate", "Profit Type 1 *plus* Profit Type 2 – Fixed Rate" or "Profit Type 1 *plus* Profit Type 2 – Floating Rate".   The profit rate types used in this DFT Terms Agreement and a Related DFT Terms Agreement can be based on a fixed rate, together with a floating rate, or two fixed rates or two floating rates as each rate represents the rate of return on a different Specified Currency.

(a)   if "Profit Type 1"[12] is specified in respect against a Payment Date in Paragraph 13 of this DFT Terms confirmation, the relevant Specified Currency Amount;

(b)   if "Profit Type 2– Fixed Profit Rate"[13] is specified against a Payment Date in Paragraph 13 of this DFT Terms confirmation, an amount in the Specified Currency, as specified in Paragraph 13 of this DFT Terms confirmation, calculated on a formula basis by the Calculation Agent for that Payment Date and Calculation Period as follows:

$$\text{Profit} = \text{Capital Amount x FPR x FPR Day Count Fraction}^{14}$$

and the amount so calculated will be specified in the relevant Exercise Notice; and

(c)   if "Profit Type 2 – Floating Profit Rate" is specified against a Payment Date in Paragraph 13 of this DFT Terms confirmation, an amount in the Specified Currency, as specified in Paragraph 13 of this DFT Terms confirmation, calculated on a formula basis by the Calculation Agent for that Payment Date and Calculation Period as follows:

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

and the amount so calculated will be 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 Asset Quantity of the relevant *Shari 'ah* Compliant Assets) by the Buyer on a Payment Date:

(a)   "Cost Price" means the cost (in the applicable Specified Currency for Cost Price as specified in Paragraph 13 of this DFT Terms confirmation) for the Seller to acquire the relevant Asset Quantity of the relevant *Shari 'ah* Compliant Assets 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)   "FLPR Day Count Fraction" means the day count fraction specified as such in this DFT Terms confirmation.

(d)   "FPR" means the per annum rate, expressed as a decimal, specified as such in this DFT Terms confirmation.

(e)   "FPR Day Count Fraction" means the day count fraction specified as such in this DFT Terms confirmation.

(f)   "Reset Date"[15] 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

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[12] Profit Type 1: means a capital amount of a Specified Currency representing the initial and final exchanges of the Specified Currencies which are the subject of the ICRCS.

[13] Profit Type 2: means: the profit element which can be calculated in respect of a capital amount and on the basis of either a Fixed profit rate or Floating Profit Rate in this DFT terms confirmation.

[14] The Day Count Fraction or convention determines how profit accrues over time in the Murabaha transactions of this DFT Terms confirmation. In other words, it regulates how the parties are to calculate the amount of profit payable at the end of each period. For example where the profit rate is a fixed profit rate, that rate is applied to the capital amount for the relevant number of days to give a fixed amount of profit.

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.

(g)   "Specified Currency Amount" means the amount specified as such in Paragraph 13 of this DFT Terms confirmation.

(h)   "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.

8. Related Transactions

8.1. Default in respect of a Related DFT Terms Agreement and/or Related Transactions. If an Event of Default or Termination Event occurs in respect of a party under the terms of a Related DFT Terms Agreement and/or Related Transactions, then an Event of Default or Termination Event, as the case may be, shall be deemed to occur at the same time under the terms of this DFT Terms Agreement.

8.2. Related DFT Terms Agreement. "Related DFT Terms Agreement" means, for the purposes of this DFT Terms Agreement, each DFT Terms Agreement specified as such in Part 3 of this DFT Terms confirmation.[16]

8.3. Related Transaction. "Related Transaction" means, for the purposes of this DFT Terms Agreement, any transaction entered into between the parties pursuant to a Related DFT Terms Agreement and specified as such in Part 3 of this DFT Terms confirmation.

9. Agency and brokerage[17]

9.1. Appointment of Agent or Broker. In delivering, buying, selling, or receiving delivery of, *Shari 'ah* Compliant 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.[18]

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[15] The reset date is intended to be the date on which a new floating rate becomes effective. The new floating rate is typically determined two days before the reset date (sometimes called fixing date).

[16]   It is envisaged that the Related DFT Terms Agreement specified in this DFT Terms confirmation will be the DFT Terms Agreement for the other leg of the ICRCS (where Party B will be the Buyer). This allows the two legs of an ICRCS to be "linked" for two reasons: (1) in order to ensure clarity as to which are the component legs of a particular ICRCS, 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 ICRCS to remain separate and distinct from each other, and (2) so that, if an event of default or termination event occurs in respect of one party under one leg of the trade, (e.g. failure to pay where that party is the Buyer of assets) an event of default or termination event, as applicable, also occurs in respect of that same party under the other leg of the trade (where that party is the Seller of assets).

[17]   Note that in order to avoid an ICRCS 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).

[18]   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

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, specified as such in this DFT Terms confirmation.

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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 Asset Quantity of the *Shari 'ah* Compliant 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 Asset Quantity of the *Shari 'ah* Compliant Assets.[19]

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* Party A as Buyer 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* Party A as Buyer 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* Party A as Buyer 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* Party A as Buyer 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* Party A as Buyer Asset Sale Confirmation, although any failure to return such countersigned original shall not invalidate such acceptance;

(b)   following acceptance the Seller shall deliver to the Buyer on the Purchase Date, the Asset Quantity of the *Shari 'ah* Compliant 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) of the Agreement.

12. Purchase of *Shari 'ah* Compliant Assets under *Murabaha* Sale

12.1. No representation or warranty as to assets. *Shari 'ah* Compliant Assets sold by the Seller[20] and purchased by the Buyer shall be 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 in the agreed quantity but otherwise on an 'as is

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[19] Parties may agree that the purchase price should be payable in instalments, but if they do so, they must agree the instalment schedule that is to apply.

where is' basis and without any representation or warranty as to quality, condition or suitability (whether arising by implication, by law or otherwise).

12.2. Without prejudice to Paragraph 12.1 where appropriate each party shall draw Paragraph 12.1 to the attention of its *Shari 'ah* board or advisers.

12.3. Convention on Contracts for the International Sale of Goods. No convention on contracts for the international sale of goods shall apply to this DFT Terms Agreement or any Transaction entered into pursuant thereto.

13. General Terms

Capital Amount:	[ ]
Trade Date:	[ ]
Effective Date:	[ ]
Termination Date:	[ ]
Exercise Date(s):	[The Effective Date, and] [with respect to each Payment Date and the related Purchase Date, the date which falls [on]/[[ ] Business Days prior to] such Purchase Date[21]][, and the Termination Date].[22]
Buyer:	Party A
Seller:	Party B
First Currency:	[ ][23]
Second Currency:	[ ][24]

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[20] Note: Provision is made at Paragraph 9 and Paragraph 14 of this DFT Terms confirmation 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.

[21] Note: To be defined to match Exercise Date(s) as provided in the Related DFT Terms Agreement, if appropriate.

[22] Typically, where Profit Type 2 applies, 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.

[23] Insert currency of payment, which will be the denomination currency of the first payment by Buyer on the Effective Date.

[24] Insert currency of payment, which will be the denomination currency for payment by Buyer other than the first payment on the Effective Date.

***Murabaha* Sale of *Shari 'ah* Compliant Assets** [25]

Shari 'ah Compliant Assets:	[ ][26]
Asset Quantity[27]:	[On the first Purchase Date - [ ][28] [ ][29]]
	[On the last Purchase Date - [ ] [ ]]
	[On the intervening Purchase Date - [ ] [ ]][30]
Period End Date(s):	[ ][,][, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention]/[No adjustment][31]
Purchase Date(s):	[The Effective Date, and] [with respect to each Payment Date, [such Payment Date]/[the first Business Day of the Calculation Period ending on such Payment Date]][, and the Termination Date].
Payment Date(s):	[The Effective Date,] [and] [*include all dates to which Profit Type 2 applies*] [, subject to adjustment in accordance with the [Following/ Modified Following/ Preceding] Business Day Convention][32] [, and the Termination Date].
Specified Currency for Cost Price and Profit Type for each Payment Date:	[*Indicate Specified Currency for Cost Price in respect of each Payment Date, as applicable*]
	First Payment Date:[33] [First Currency/Second Currency]
	Second Payment Date: [First Currency/Second Currency]
	Third Payment Date: [First Currency/Second Currency]
	Fourth Payment Date: [First Currency/Second Currency]
	[etc.]

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[25]   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) of this DFT Terms confirmation.

[26]   Insert general description of relevant *Shari 'ah* compliant asset.

[27]   The quantity of Assets need not be the same for each Purchase Date, for example, a smaller quantity can be used for dates on which a smaller profit amount is anticipated (i.e. *Profit Type 2* applies).

[28]   Insert quantity as a number (of units).

[29]   Insert unit of Assets.

[30]   There may be multiple *Murabaha* sales carried out in the course of a Transaction aside from the initial and final exchanges (Profit Rate 1) in order to make profit payments based on the rate of return of the Specified Currencies (Profit Rate 2).

[31]   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 of this DFT Terms confirmation.

[32]   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 of this DFT Terms confirmation.

[33]   First Payment Date will be the initial Payment Date beginning on the Effective Date (typically, the initial exchange of currencies).

	Final Payment Date[34]**:** [First Currency/Second Currency]
Profit Type for each Payment Date:	[*Specify Profit Type for each Payment Date, as applicable*]
	[First Payment Date: [Profit Type 1]/ [Profit Type 2 – Fixed Profit Rate]/ [Profit Type 2 – Floating Profit Rate] **Second Payment Date:** [Profit Type 1]/ [Profit Type 2 – Fixed Profit Rate]/ [Profit Type 2 – Floating Profit Rate] **Third Payment Date:** [Profit Type 1]/ [Profit Type 2 – Fixed Profit Rate]/ [Profit Type 2 – Floating Profit Rate] **Fourth Payment Date:** [Profit Type 1]/ [Profit Type 2 – Fixed Profit Rate]/ [Profit Type 2 – Floating Profit Rate] [etc.] **Final Payment Date:** [Profit Type 1]/ [Profit Type 2 – Fixed Profit Rate]/ [Profit Type 2 – Floating Profit Rate]/ [Profit Type 1 *plus* Profit Type 2 – Fixed Profit Rate]/ [Profit Type 1 *plus* Profit Type 2 – Floating Profit Rate]
[Specified Currency Amount(s) for Profit Type 1 for each Payment Date:]	[*Indicate Specified Currency Amount for each Payment Date, as applicable. Specified Currency Amount will typically be an amount that is the Capital Amount of one of the Specified Currencies*.]
	First Payment Date: [*insert [First Currency/Second Currency] denomination*][amount] **Second Payment Date:** [*insert [First Currency/Second Currency] denomination*][amount] **Third Payment Date:** [*insert [First Currency/Second Currency] denomination*][amount] **Fourth Payment Date:** [*insert [First Currency/Second Currency] denomination*][amount] [etc.] **Final Payment Date:** [*insert [First Currency/Second Currency] denomination*][amount]
[Profit Type 2 – Fixed Profit Rate:]	[Applicable] [*If not applicable, delete the rest of this section*]
FPR:	[ ]
FPR Day Count Fraction:	[ ][35]
[Profit Type 2 – Floating Profit Rate:]	[Applicable] [*If not applicable, delete the rest of this section*]
FLPR Benchmark:	[ ] [and if such rate does not appear on [ ], the rate will

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[34] Final Payment Date will be the last Payment Date (typically, the final exchange of currencies and final profit rate payment).

[35] Insert applicable day count fraction.

be determined on the basis of the Fallback Rate]

Fallback Rate:	[ ]³⁶

Fallback Rate: [   ]³⁶

Spread: [Plus/Minus [   ] %] [None]³⁷

Reset Date(s):   [   ] [, subject to adjustment in accordance with the [Following / Modified Following / Preceding] Business Day Convention]³⁸

FLPR Day Count Fraction: [ ] ³⁹

Business Days: [In respect of the First Currency: [   ]]/[Not Applicable]

[In respect of the Second Currency: [   ]]/[Not Applicable]

Business Day Convention: [   ]⁴⁰

Calculation Agent: [   ]

Related DFT Terms Agreement [/ Related Transaction(s)]:   For the purposes of Paragraph 8.1 of this DFT Terms confirmation:

[*insert details of Second Leg (e.g. Trade Date; Effective Date; reference number)*]

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 Seller in First Currency: [   ]

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³⁶ 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.

³⁷ The Spread is the percentage above (or below) the benchmark rate.

³⁸ Bracketed language is not necessary if Reset Dates are to be adjusted in accordance with the Business Day Convention applicable to Payment Dates.

³⁹ Insert applicable day count fraction.

⁴⁰ Insert applicable business day convention – standard definitions are provided in Paragraph 6.3 of this DFT Terms confirmation.

Account(s) for payments to Seller in Second   [   ]
Currency:

Account(s) for deliveries to Buyer   [   ]
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**").

_____

Closing of DFT Terms confirmation

IN WITNESS WHEREOF this DFT Terms confirmation has been executed as a deed[41] 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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[41] 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**") relating to a Party A as Buyer DFT Terms Agreement for a *Himaayah Min Taqallub As 'aar Assarf* or an Islamic Cross-Currency Swap.

　　　　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 *Shari 'ah* Compliant Assets (which are to be owned and possessed by the Seller) on the following terms:

(i)	Exercise Date:	[ ]
(ii)	*Shari 'ah* Compliant Assets:	[ ][42]
(iii)	Asset Quantity:	[ ][43]
(iv)	Purchase Date:	[ ]
(v)	Payment Date:	[ ]
(vi)	Cost Price:	[ ]
(vii)	Profit:	[ ]
(viii)	Payment Amount:	[ ][44]

3.　　　attached are two copies of the *Murabaha* Party A as Buyer Asset Sale Confirmation to record the above transaction which the Buyer should arrange to be countersigned and for one executed original of such *Murabaha* Party A as Buyer 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* Party A as Buyer Asset Sale Confirmation will constitute a "Confirmation" for the purposes of the Agreement); and

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[42]　Include warrant number or storage facility ticket number or other details for these assets.

[43]　Insert same text as is included for "Asset Quantity" in the DFT Terms confirmation.

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

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

[*Seller*]

Executed by: _____

             Name:

             Title:

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[44] Insert the sum of amounts specified in (vi) (Cost Price) and (vii) (Profit) of the notice.

Heading

[Letterhead of Seller, the Undertaking recipient]

[Date]

Murabaha **Party A as Buyer Asset Sale Confirmation**

[Name and address of Buyer]

Dear   :

The purpose of this [letter] (this "*Murabaha* **Party A as Buyer 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 Party A as Buyer DFT Terms Agreement for a *Himaayah Min Taqallub As 'aar Assarf* or an Islamic Cross-Currency Swap evidenced by a DFT Terms confirmation dated [   ] (the "**Party A as Buyer DFT Terms confirmation**").

This *Murabaha* Party A as Buyer Asset Sale 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* Party A as Buyer Asset Sale Confirmation.

Pursuant to the DFT Terms Agreement evidenced by the Party A as Buyer DFT Terms confirmation, the Seller has delivered to the Buyer an Exercise Notice dated [date] (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 Asset Quantity of the *Shari 'ah* Compliant 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 [*specify*] 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*]45

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45   Include warrant number or storage facility ticket number or Holding Certificate Number or other details for the Assets.

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 that the Relevant *Shari 'ah* Compliant Assets delivered shall be in the agreed quantity but Buyer acknowledges that the Relevant *Shari 'ah* Compliant Assets are being sold on an "as is where is" basis and without any representation or warranty as to quality, condition or suitability (whether arising by implication, by law or otherwise).

The definitions and provisions contained in the Party A as Buyer DFT Terms confirmation are incorporated in and apply to this *Murabaha* Party A as Buyer Asset Sale Confirmation.

To accept the Seller's offer to enter into the *Murabaha* Sale pursuant to Paragraph 11.2 of the Party A as Buyer 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 Party A as Buyer DFT Terms confirmation.

[*Seller*]

Executed by: _____
                 Name:
                 Title:

[*Buyer*]

Countersigned
by: _____
                 Name:
                 Title:

ANNEX 3
INDEX OF TERMS