

سَلَام

SALAM

THIS SALAM AGREEMENT

(the “Agreement”) is made at _____ on _____ day of _____ by and

BETWEEN

_____,
(hereinafter referred to as the “**Supplier**” which expression shall where the context so permits mean and include its successors in interest and permitted assigns) of the one part

AND

_____,
(hereinafter referred to as the “**Institution**” which expression shall where the context so permits mean and include its successors in interest and assigns) of the other part.

IT IS AGREED BY THE PARTIES as follows:

1. PURPOSE AND DEFINITIONS

1.01 This Agreement sets out the terms and conditions upon and subject to which the Institution has agreed to purchase the Goods from the Supplier:

1.02 In this Agreement, unless the context otherwise requires:

“**Business Day**” means a day on which the offices of Modaraba are open for normal business in Pakistan;

“**Contract Price**” means Rs. _____, paid by the Institution to the Supplier or such other sum, in advance, as may mutually be agreed in writing between the parties hereto as the price of the Goods purchased in accordance with the terms of this Agreement;

“**Event of Default**” means any of the events or circumstances described in Clause 09 hereto;

“**Goods**” means the Goods described in Salam Document # ___;

“**Goods Receiving Note**” means confirmation of receipt of Goods as set out in Salam Document # ;

“**Indebtedness**” means any obligation of the Supplier for delivery of the Goods or for payment of any sum of money due or, payable under this Agreement;

“**License**” means any license, permission, authorization, registration, consent or approval granted to the Supplier for the purpose of or relating to the conduct of its business;

“Lien” shall mean any mortgage, charge, pledge, hypothecation, security interest, lien, right of set-off, contractual restriction (such as negative covenants) and any other encumbrance;

“Parties” mean parties to this Agreement;

“Notice of Delivery” means the Notice of Delivery given by the Supplier to the Institution as set out in Salam Document # __;

“Principal Documents” means this Agreement and the Security Documents;

“Promissory Note” is defined in Clause 3.01(b);

“Prudential Regulations” means Prudential Regulations or other regulations as are notified from time to time by SECP;

“Security Documents” and **“Security”** is defined in Clause 3.01;

“Secured Assets” means the following assets of the Supplier [insert description of assets in respect of which charge/mortgage may be created];

“Rupees” or **“Rs.”** means the lawful currency of Pakistan;

“SBP” means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 and includes any successors thereto;

“SECP” means the Securities and Exchange Commission of Pakistan established under the Securities & Exchange Commission of Pakistan Act, 1997 and includes any successors thereto;

“Taxes” includes all present and future taxes (including central excise duty and sales tax), levies, imposts, duties, stamp duties, penalties, fees or charges of whatever nature together with delayed payment charges thereon and penalties in respect thereof and **“Taxation”** shall be construed accordingly;

“Written Offer” means the Offer made by the Supplier to the Institution as per Salam Document # __ .

1.03 Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement. In this Agreement, unless the context otherwise requires, references to Clauses and Appendices are to be construed as references to the clauses of, and Appendices to, this Agreement and references to this Agreement include its appendices; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, institution, corporation, unincorporated body of persons or any state or any agency thereof.

1.04 The recitals herein above and Appendices to this Agreement shall form an integral part of this Agreement.

2. SUPPLY OF THE GOODS PURCHASED

2.01 The Supplier has agreed to supply the Goods to the Institution pursuant to the Written Offer for the Contract Price. Upon receipt by the Institution of the Supplier's Notice of Delivery, which shall be dated or such other date as may be mutually agreed between the parties hereto, hereinafter referred to as Delivery Date, advising the Institution to take delivery of the Goods, the Institution shall receive or cause to receive the Goods at the designated point of delivery.;

2.02 The Goods shall remain at the risk of the Supplier until they are delivered to the point of delivery and have been inspected and accepted by the Institution, immediately after which, all risks in respect of the Goods shall be passed on to the Institution;

3. SECURITY

3.01 As security for the performance of this Agreement by the Supplier under this Agreement, the Supplier shall:

(a) Furnish to the Institution a collateral(s), substantially in the form and substance attached hereto as Salam Document # __ ;

(b) Execute such further deeds and documents as may from time to time be required by the Institution for the purpose of more fully securing and or perfecting the security created in favour of the Institution; and

(c) Create such other securities to secure the Supplier's obligations under the Principal Documents as the parties, hereto, may by mutual consent agree from time to time.

(The above are hereinafter collectively referred to as the "**Security**").

3.02 In addition to above, the Supplier shall execute a demand promissory note in favour of the Institution for the amount of the Contract Price (the "Promissory Note"); (The Security and the Promissory Note are hereinafter collectively referred to as the "Security Documents").

4. FEES AND EXPENSES

It is understood that each party shall bear the fees and expenses incurred from its own account in connection with the negotiation, preparation and execution of the Principal Documents and of amendment or extension of or the granting of any waiver or consent under the Principal Documents.

5. PAYMENT OF CONTRACT PRICE

Payment to the Supplier under this Agreement has been made of such withholding taxes that the institution is required to deduct under various laws in force. The Institution shall promptly deliver to the Supplier copies or originals of any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

6. REPRESENTATIONS AND WARRANTIES

6.01 The Supplier warrants and represents to the Institution that:

- a.** The execution, delivery and performance of the Principal Documents by the Supplier will not (i) contravene any existing law, regulation or authorization, which the supplier is subject to, (ii) result in any breach of or default under any agreement or other instrument to which the Supplier is a party or is subject to, or (iii) contravene any provision of the constitutive documents of the Supplier or any resolution adopted by the board of directors or members of the Supplier;
- b.** The financial statements together with the notes to the accounts and all contingent liabilities and assets that are disclosed therein represent a true and fair financial position of the business of the Supplier and to the best of the knowledge of the Supplier there are no material omissions and or misrepresentations.
- c.** All requisite corporate and regulatory approvals required to be obtained by the Supplier in order to enter into the Principal Documents are in full force and effect and such approvals permit the Supplier, inter alia, to obtain the entire sales price in advance under this Agreement and perform its obligations hereunder and that the execution of the Principal Documents by the Supplier and the exercise of its rights and performance of its obligations hereunder, constitute private and commercial acts done for private and commercial purposes;
- d.** No material litigation, arbitration or administrative proceedings is pending or threatened against the Supplier or any of its assets;
- e.** It shall inform the Institution within ----- Business Days of an event or happening which may have an adverse effect on the financial position of the Supplier, whether such an event is recorded in the financial statements or not as per applicable International Accounting Standards, as applicable in Pakistan.

7. UNDERTAKING

7.01 The Supplier covenants and undertakes that so long as it remains obliged under this Agreement:

- a.** At no stage during the financing and repayment, the parties to the agreement shall indulge into any element contrary to *Shariah* principles.
- b.** It shall inform the Institution of any Event of Default or any event, which with the giving of notice or lapse of time or both would constitute an Event of Default forthwith upon becoming aware thereof;
- c.** It shall do all such things and execute all such documents which in the opinion of the Institution may be necessary to;
 - (i)** enable the Institution to assign or otherwise transfer the right of the Institution to enable any creditor of the Institution or to any third party to receive the delivery of the Goods as the Institution may deem fit at its entire discretion;
 - (ii)** create and perfect the Security;
 - (iii)** maintain the Security in full force and effect at all times including the priority thereof;
 - (iv)** maintain, insure and pay all Taxes assessed in respect of the Secured Assets and protect and enforce its rights and title, and the rights of the Institution in respect of the Secured Assets, and;
 - (v)** preserve and protect the Secured Assets. The Supplier shall at its own expense cause to be delivered to the Institution such other documentation and legal opinion(s) as the Institution may reasonably require from time to time in respect of the foregoing;
- c.** It will satisfactorily insure all Secured Assets with reputable companies offering protection under the Islamic concept of Takaful. The Secured Assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Institution) against all insurable risks, which may include fire, arson, theft, accidents, collision, body and engine damage, vandalism, riots and acts of terrorism, and to assign all policies of insurance in favour of the Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution to be noted on the policies of insurance, and to punctually pay the premium due for such insurance's and to contemporaneously therewith deliver the premium receipts to the Institution. Should the Supplier fail to insure or keep insured the Secured Assets and/or to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution but not obligatory to pay such premia and to keep the Secured Assets so insured and all cost charges and expenses incurred by it for the purpose shall be charged to and paid by the Supplier as if the same were part of the monies due. The Supplier expressly agrees that the Institution shall be entitled to adjust, settle or compromise any dispute with the insurance company (ies) and

the insurance arising under or in connection with the policies of insurance and such adjustments/compromises or settlements shall be binding on the Supplier and the Institution shall be entitled to appropriate and adjust the amount, if any received, under the aforesaid policy or policies towards part or full satisfaction of the Supplier's indebtedness arising out of the above arrangements and the Supplier shall not raise any question or objection that larger sums might or should have been received under the aforesaid policy nor the Supplier shall dispute its liability(ies) for the balance remaining due after such payment/adjustment;

d. Except as required in the normal operation of its business, the Supplier shall not, without the written consent of the Institution, sell, transfer, lease or otherwise dispose of all or a sizeable part of its assets, or undertake or permit any merger, consolidation, dismantling or re organization which would materially affect the Supplier's ability to perform its obligations under any of the Principal Documents;

e. It shall not (and shall not agree to), except with the written consent of the Institution, create, incur, assume or suffer to exist any Lien whatsoever upon or with respect to the Secured Assets and any other assets and properties owned by the Supplier which may rank superior, pari passu or inferior to the security created or to be created in favour of the Institution pursuant to the Principal Documents;

f. It shall forthwith inform the Institution of:

(i) Any event or factor, any litigation or proceedings pending or threatened against the Supplier which could materially and adversely affect or be likely to materially and adversely affect:

(a) the financial condition of the Supplier;

(b) business or operations of the Supplier; and

(c) the Supplier's ability to meet its obligations when due under any of the Principal Documents,

(d) expiry or cancellation of a material patent, copy right or license,

(e) loss of a key executive or trade Agreement;

(ii) Any change in the directors or management of the Supplier;

(iii) Any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment or waiver or indulgence under any material provision of any of the Principal Documents;

(iv) Any material notice or correspondence received or initiated by the Supplier relating to the License, consent or authorization necessary for the performance by the Supplier of its obligations under any of the Principal Documents;

g. The Supplier shall indemnify and hold the Institution and its officers and employees harmless against any claims on account of quality, merchantability, fitness for use, any latent or patent defects in the Goods and any matters pertaining to intellectual property rights in respect of such Goods.

8. EVENTS OF DEFAULT AND TERMINATION

8.1 There shall be an Event of Default if in the opinion of the Institution:

(a) The Supplier fails to deliver the Goods contracted to be delivered under this Agreement on the Delivery Date at [insert Place of Delivery];

(b) Any representation or warranty made or deemed to be made or repeated by the Supplier in or pursuant to the principal Documents or in any document delivered under this Agreement is found to be incorrect;

(c) Any Indebtedness of the Supplier in excess of Rs. _____ (Rupees _____ only) is not paid when due or becomes due or capable of being declared due in terms of this Agreement;

(d) Any authority of or registration with governmental or public bodies or courts required by the Supplier in connection with the execution, delivery, performance, validity, enforceability or admissibility in evidence of the Principal Documents are modified in a manner unacceptable to the Institution or is not granted or is revoked or otherwise ceases to be in full force and effect;

(e) The total interruption or cessation of the business activities of the Supplier;

(f) Any costs, charges and expenses under the Principal Documents shall remain unpaid for a period of _____ days after notice of demand in that behalf has been received by the Supplier from the Institution;

8.02 Notwithstanding anything contained herein, the Institution may without prejudice to any of its other rights, at any time after the happening of an Event of Default by notice to the Supplier declare that:

(a) The obligation of the Institution to take delivery of the Goods from the Supplier shall be terminated, forthwith; and/or

(b) The entire outstanding amount of the Contract Price and any other amounts paid to the Supplier under this Agreement along with all other costs, charges, and

expenses incurred or actual loss sustained by the Institution shall forthwith become due and refundable.

9. PENALTY

9.01 Where any amount is required to be paid by the Supplier under the Principal Documents on a specified date and is not paid by that date, or an extension thereof, permitted by the Institution without any decrease in the Contract Price, the Supplier hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.

9.02 In case

(i) any amount(s) referred to in clause 9.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Supplier, is not paid by him, or

(ii) the Supplier delays the payment of any amount due under the Principal Documents and/ or the payment of amount to the Charity Fund as envisaged under Clause 10.01 above, as a result of which any direct or indirect costs are incurred by the Institution, the Institution shall have the right to approach a competent Court for;

(a) recovery of any amounts remaining unpaid as well as

(b) imposing of a penalty on the Supplier. In this regard the Supplier is aware and acknowledges that notwithstanding the amount paid by the Supplier to the Charity Fund of the Institution, the Court has the power to impose penalty, at its discretion, and from the amount of such penalty, a smaller or bigger part, depending upon the circumstances, can be awarded as solatium to the Institution, determined on the basis of direct and indirect costs incurred, other than the opportunity cost.

10. INDEMNITIES

The Supplier shall indemnify the Institution against any expense, which the Institution shall prove as rightly incurred by it as a consequence of

(i) any default in performance of any obligations under the Principal Documents,

(ii) the occurrence of any Event of Default, and

(iii) arising out of any misrepresentation

11. INCREASED COSTS

11.01 If any law or regulation or any order of any court, tribunal or authority has the effect of subjecting the Supplier to Taxes or changes the basis or rate of Taxation with respect to any payment or other obligation under this Agreement (other than Taxes or Taxation on the overall income of the Institution), the same shall be borne by the Supplier. No additional amount will be demanded or become payable by Institution;

11.02 In addition to the selling price of the commodity, purchase price of the commodity shall also be verified through independent sources.

12. SET-OFF

The Supplier authorizes the Institution to apply any credit balance to which the Supplier is entitled or any amount which is payable by the Institution to the Supplier at any time in or towards partial or total satisfaction of any sum which may be due from or payable by the Supplier to the Institution under this Agreement including the Contract Price upon occurrence of any event of the Supplier failing to meet the delivery.

13. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Institution, the Supplier and respective successors, assigns and transferees of the parties hereto, provided that the Supplier shall not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Institution. The Institution may assign all or any part of its rights or transfer all or any part of its obligations and/or commitments under this Agreement to any financial institution or other person without any consent of the Supplier. The Supplier shall not be liable for the costs of the assignment and/or transfer of commitments hereunder by the Institution. If the Institution assigns all or any part of its rights or transfers all or any part of its obligations and commitments as provided in this Clause, all relevant references in this Agreement to the Institution shall thereafter be construed as a reference to the Institution and/or its assignee(s) or transferee(s) (as the case may be) to the extent of their respective interests.

14. FORCE MAJEURE

Any delays in or failure by a Party hereto in the performance hereunder if and to the extent it is caused by the occurrences or circumstances beyond such Party's reasonable control, including but not limited to, acts of God, fire, strikes or other labor disturbances, riots, civil commotion, war (declared or not) sabotage, any other causes, similar to those herein specified which cannot be controlled by such Party. The Party affected by such events shall promptly inform the other Party of the occurrence of such events and shall furnish proof of details of the occurrence and reasons for its non-performance of whole or

part of this Agreement. The parties shall consult each other to decide whether to terminate this Agreement or to discharge part of the obligations of the affected Party or extend its obligations on a best efforts and an on arm's length basis.

15. GENERAL

15.01 No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor shall a partial exercise by the Institution of any power right or remedy preclude any other or further exercise thereof or the exercise of any other power right or remedy. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law;

15.02 This Agreement represents the entire Agreement and understanding between the parties in relation to the subject matter and no amendment or modification to this Agreement will be effective or binding unless it is in writing, signed by both parties and refers to this Agreement;

15.03 This Agreement is governed by and shall be construed in accordance with the Pakistani law. All competent courts at _____ shall have the non-exclusive jurisdiction to hear and determine any action, claim or proceedings arising out of or in connection with this Agreement.

15.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.

15.05 Any reconstruction, division, reorganization or change in the constitution of the Institution or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights hereunder.

15.06 The two parties agree that any notice or communication required or permitted by this Agreement shall be deemed to have been given to the other party seven days after the same has been posted by registered mail or the next Business Day if given by a facsimile message to telex or by any other electronic means, or the next Business Day as counted from the date of delivery if delivered by courier mail;

15.07 This agreement may be amended or any term or condition waived only in writing executed by persons duly authorized, provided that no term or condition which has the effect of materiality altering the agreement or which is otherwise repugnant to *Shariah* shall be added, deleted or waived.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be duly executed on the date and year first aforementioned.

WRITTEN OFFER

Date: _____

To:

[Insert name and address of the Institution]

Dear Sirs,

Written offer for Sale of Goods [insert descriptions]

(1) Please refer to your recent inquiry for the sale of the above referred Goods. In this regard, we are pleased to offer the Goods as per following terms and conditions:

(a) Description of the Goods:

Sr. No.

Specification of Goods

Quantity

Sale Price

(b) Validity of the Offer:

(c) Delivery Date:

(d) Terms of delivery:

(e) Place of delivery:

(2) We certify that:

(a) There are no circumstances (i) that would materially and adversely affect the carrying on of our business, operations or prospects or financial position, or (ii) which has made the fulfillment of our obligations unlikely;

(b) The delivery of the Goods by us to you shall not result in a breach of our organizational documents, any provision of any document to which the we are a party or by which we are bound, or any applicable law, rule or regulation whether directly or indirectly.

Yours faithfully,

For and on Behalf of

NOTICE OF DELIVERY

Date: _____

To: _____

[Insert name and address of the Institution]

Dear Sirs,

Notice of Delivery of Goods [insert descriptions]

Reference to the above we are pleased to inform you that we are ready to deliver the Goods under the above-referred agreement as per the following details:

- a) Delivery Date:
- b) Place of delivery:
- c) Description of the Goods:

Sr. No.
Specification of Goods
Quantity
Sale Price

- d) Additional remarks (if any):

Yours faithfully,

For and on Behalf of (Supplier)

GOODS RECEIVING NOTE

Date: _____

No. _____

To: _____

[Insert name and address of the Supplier]

Dear Sirs,

(1) We acknowledge having received the Goods as detailed in the Notice of Delivery aforesaid:

- a)** Date of Receipt:
- b)** Time:
- c)** Place of Delivery:
- d)** Description of Goods delivered:

Sr. No.
Specification of Goods
Quantity
Sale Price

e) Additional remarks (if any):

(2) Subject to 1(e), we hereby confirm that there are no claims or liabilities against you.

Yours faithfully,

For and on Behalf of (Institution)
