

Ref.No. Operation No: ITFC/1433/TFI/TG/0003
Mode: TWO-STEP MURABAHA AGREEMENT
Between: INTERNATIONAL ISLAMIC TRADE FINANCE
 CORPORATION
And BANQUE OUEST AFRICAINE DE
 DEVELOPPEMENT
Amount: US\$20,000,000/-

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TWO-STEP MURABAHA AGREEMENT

BETWEEN

INTERNATIONAL ISLAMIC TRADE FINANCE CORPORATION

AND

BANQUE OUEST AFRICAINE DE DEVELOPPEMENT

CONCERNING
THE PURCHASE OF QUANTITY OF GOODS ACCEPTABLE UNDER
INTERNATIONAL ISLAMIC TRADE FINANCING CORPORATION'S
RULES FOR TRADE FINANCING

Contents

Section-1	DEFINITIONS	3
Section-2	UTILISATION OF THE APPROVED AMOUNT.....	10
Section-3	PROCUREMENT OF THE GOODS.....	12
Section-4	INSURANCE	13
Section-5	DELIVERY	13
Section-6	PAYMENT OF THE PURCHASE PRICE BY ITFC.....	13
Section-7	PROMISE BY THE BOAD TO PURCHASE THE GOODS FROM ITFC AND TO RESELL THE SAME	15
Section-8	SALE PRICE PAYABLE TO ITFC	16
Section-9	SALE OF THE GOODS TO THE BOAD WITHOUT RESPONSIBILITY OF ITFC FOR DEFECTS	16
Section-10	DENOMINATION OF THE SALE PRICE.....	16
Section-11	PAYMENT OF THE SALE PRICE.....	16
Section-12	MANNER OF PAYMENT OF THE SALE PRICE	17
Section-13	DELAY IN THE EXERCISE OF RIGHTS	17
Section-14	CANCELLATION AND SUSPENSION OF THE APPROVED AMOUNT	17
Section-15	REPRESENTATIONS AND WARRANTIES	18
Section-16	COVENANTS.....	20
Section-17	EVENTS OF DEFAULT	21
Section-18	INDEMNITY	22
Section-19	EFFECTIVENESS	24
Section-20	DOCUMENTS-REPORTS	25
Section-21	GOVERNING LAW-SETTLEMENT OF DISPUTES.....	25
Section-22	NOTICES-REQUESTS.....	26
Section-23	MISCELLANEOUS	26
Execution Page:	28
Appendix-I	ISSUES TO BE COVERED IN THE LEGAL OPINION OF INDEPENDENT LAWYER ACCEPTABLE TO ITFC	29
Appendix-II	FORM OF OFFER TO PURCHASE THE GOODS FROM ITFC.....	31
Appendix-III	FORM OF ACCEPTANCE BY ITFC	32
Appendix-IV	TRANSACTION INTIMATION NOTICE	33

TWO-STEP MURABAHA AGREEMENT

This Agreement is made on ____/____/1434H corresponding to (____/____/2013G) between **International Islamic Trade Finance Corporation**, an international financial institution established pursuant to Articles of Agreement signed and/or ratified by the member countries with headquarters at King Khalid Street, Jeddah-21534, Kingdom of Saudi Arabia (hereinafter referred to as "**ITFC**") and **Banque Ouest Africaine de Développement**, an international public institution, created pursuant to the Treaty establishing the Banque Ouest Africaine de Développement dated 14 November 1973 as well as pursuant to the Treaty of the West African Monetary Union (WAMU), having an authorized capital of One Thousand and Fifty billion CFA Francs (CFA Francs 1,050,000,000,000), with headquarters and principal office located at 68, Avenue de la Libération, BP 1172 Lomé, Republic of Togo (hereinafter referred to as the "**BOAD**").

ITFC and BOAD collectively referred to as the "**Parties**" and individually as "**Party**".

Whereas,

- A. The BOAD has requested ITFC to purchase a quantity of the Goods (hereinafter defined) and to sell the same to the BOAD on Murabaha basis, so that the BOAD may resell the same to the Buyer (hereinafter defined).
- B. ITFC has, on 22/10/1433H (10/09/2012G), approved the purchase of Goods (hereinafter defined) in an amount not exceeding **US\$20,000,000/- (US Dollars Twenty Million)** (hereinafter referred to as the "**Approved Amount**") only, and the sale thereof to the BOAD for resale to the Buyers.
- C. The terms and conditions of ITFC financing are set out in the Term Sheet, which is incorporated by reference and constitute part of this Agreement.
- D. ITFC has agreed, subject to the terms and conditions of this Agreement, to authorize the BOAD, as an agent of and on behalf of ITFC and to the extent of the Approved Amount, to authorize BOAD's agent banks receiving the onward financing of ITFC from the BOAD to negotiate with the Supplier (hereinafter defined) and to conclude contracts for the purchase of the Goods.

Now it is hereby agreed as follows:

Section-1 DEFINITIONS

- 1.1 Except where the context otherwise requires, each of the following terms shall have the meaning assigned to it hereunder wherever used in this Agreement:

"Applicable Law": any law, regulation, rule, executive order, decree, code of practice, circular, guideline note or injunction of, or made by any Competent Authority, which is binding and enforceable on or against the BOAD or the subject matter of the Agreement or the Operation.

"Approved Amount" the amount approved by ITFC for financing the purchase of the Goods under this Agreement.

"Authorization" any consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or

exemption from, by or with any authority, whether given by express action or deemed given by failure to act within any specified time period and all corporate, creditors' and shareholders' approvals or consents.

"Business Day"	any day on which banks are official open for business in the place where a sum or sums are payable by the BOAD to ITFC in the currency in which such payment shall be effected.
"Buyer"	a person, corporation, corporate body or any other entity acting or operating in the territory of the member states of West African Economic and Monetary Union (UEMOA), to which the Goods are resold by BOAD's agent banks receiving the onward financing of ITFC from the BOAD.
"Competent Authority":	a government, supranational, local government, statutory or regulatory body or any subdivision thereof and any ministerial or governmental, quasi-governmental, or other regulatory department, body, instrumentality, agency or official court or tribunal having jurisdiction over the BOAD, the Operation or the subject matter of the Agreement.
"Disbursement"	actual payment of any part of the Approved Amount by ITFC.
"Documentary Collection"	shall have the meaning given to it in URC (Latest Revision).
"Documentary Letter of Credit"	shall have the meaning given to it in the UCP.
"Effective Date"	the date on which this Agreement shall enter into effect as provided in Section 18 hereof.
"Event of Default"	any of the events listed in Section 17 hereof.
"First Operation"	the Operation to be carried out after the effectiveness of this Agreement.
"Force Majeure":	any act, event or circumstance that serves as the basis for a force majeure claim under this Agreement including, without limitation, an act of God, war, hostilities (whether or not war has been declared), terrorist acts, acts of any civil or military authority, governmental or regulatory direction or restriction or suspension or withdrawal of licences or consents, disaster, fire, flood, extreme weather conditions, epidemic, explosion, release of ionising radiation or contamination by radioactivity, the order of any court or governmental or regulatory authority, delay in transportation or communications, unavailability of feedstock, breakage of or accidental damage to equipment, any strike, lock-out or other industrial trade

dispute (not involving solely the employees of that person), riot, civil commotion, public demonstration, structural shift or subsidence) materially affects the ability of each Party to perform its obligations under this Agreement; the cause of which is beyond the reasonable control of the relevant person whose performance is affected.

"Goods"

all goods and products acceptable under Islamic law, which are specified in Transaction Intimation Notice and approved by ITFC to be purchased and sold under this Agreement.

"Letter of Credit"

either a Documentary Letter of Credit or a Standby Letter of Credit.

"Material Adverse Effect":

in relation to any event or circumstance in whatsoever nature, the occurrence of which would, in the opinion of ITFC:

- (a) constitute a Force Majeure;
- (b) affect the BOAD, its assets and properties;
- (c) impact the financial condition, business or operations of the BOAD ;
- (d) affect the implementation of the Operation, the financial plan or the carrying on of the BOAD's business or operation; or
- (e) impair the ability of the BOAD to perform or comply with its obligations under this Agreement or any related document;
- (f) affect the enforceability of any provision under this Agreement or any related document;
- (g) cause the suspension, cancellation, revocation or termination of this Agreement or any related document; or
- (h) impact the socio-political, financial and/or economic conditions of the the member states of West African Economic and Monetary Union (UEMOA), which would have adverse impact on the domestic money, banking and/or capital markets.

and may do so:

- (i) in a manner or to an extent materially prejudicial to the rights and/or remedies of ITFC under this Agreement or any related agreement; or
- (j) in a manner or to an extent which, is likely materially and adversely to affect the BOAD's ability to comply with any of its payment

obligations under any agreement to which it is a Party or to the BOAD's ability to complete the Operation as a whole;

and references herein to an event or circumstance which "has" or which "would have" a Material Adverse Effect shall be construed accordingly.

"Operation"

Transaction(s) to be carried out pursuant to this Agreement for an aggregate sum that shall not exceed the Approved Amount.

"Other Sanctionable Practices"

any of Illegal Drug Trade, Illicit Origin, Money Laundering, Organised Criminal Activities, or Terrorism Funding:

- (i) **Illegal Drug Trade:** means the leading or putting together a group whose aim is the production, manufacture, import, export, transport, holding, sale, distribution, purchase and/or illegal use of drugs as well as the illegal sale of drugs to a person for own consumption as set out in the Laws of the member states of West African Economic and Monetary Union (UEMOA).
- (ii) **Illicit Origin:** means when related to funds, equity or financial interest, any funds which are related to the Illegal Drug Trade, Corruption, Organized Criminal Activities and/or Terrorism Funding as they are defined in this Agreement, in each case with regard to Applicable Laws in the member states of West African Economic and Monetary Union (UEMOA).
- (iii) **Money Laundering:** means,
 - (a) the conversion or transfer of property, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions;
 - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offence; or
 - (c) the acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offence.
- (iv) **Organized Criminal Activities:** means any group

established with the aim of committing one or several infractions following the Laws of the member states of West African Economic and Monetary Union (UEMOA).

- (v) **Terrorism Funding:** means funding a terrorist enterprise, individual or action group, by providing or collecting funds, or goods, or by giving advice to this end, in order to see funds or goods, or knowing that they are designed to be, used, totally or partly, to commit a terrorism act, regardless of the incidence of such an act.

"Procurement Procedures of ITFC":	the Guidelines for Procurement of Goods and Services under the Islamic Development Bank's Financing.
"Purchase Contract"	the contract concluded by BOAD's agent banks receiving the onward financing of ITFC from the BOAD with the Supplier on behalf of ITFC; the terms and conditions of which have been approved by ITFC prior to its conclusion.
"Purchase Price"	the price paid, or payable, by ITFC to the Supplier for each shipment of the Goods including insurance premiums, banking and other fees borne by ITFC in connection with the purchase and shipment of the Goods.
"Sale Contract"	the contract concluded between ITFC and the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD in the manner specified in Section 7.2 of this Agreement, under which ITFC sells the Goods to the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD.
"Sale Price"	the price at which ITFC sells the Goods to the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD as determined in accordance with Section-8 of this Agreement.
"Sanctionable Practices":	any of Corrupt practice, Coercive practice, Collusive practice, Fraudulent practice or Obstructive practice.: (i) Corrupt Practice: means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another Party; (ii) Coercive Practice: means any act or omission impairing or harming, or threatening to impair or harm, directly or indirectly, any Party or the property of the Party to influence improperly the actions of a Party. (iii) Collusive Practice: means an arrangement

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between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another Party.

- (iv) **Fraudulent practice:** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Party to obtain a financial or other benefit or to avoid an obligation.
- (v) **Obstructive Practice:** means,
 - (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede ITFC investigation into allegations of a Corrupt, Fraudulent, Coercive or Collusive practice, and/or threatening, harassing or intimidating any Party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (b) acts intended to materially impede the exercise of ITFC's access to contractually required information in connection with ITFC's investigation into allegations of a Corrupt, Fraudulent, Coercive or Collusive practice.

"Standby Letter of Credit"	shall have the meaning given to it in the UCP.
"Subsequent Operation"	the Operation to be carried out in accordance with Sections 2.2, 2.3, 2.4 and all other relevant Sections and provisions hereof after the payment of the Sale Price under the First Operation.
"Supplier"	the person or entity, from which the Goods are purchased by the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD on behalf of ITFC under this Agreement.
"Tax"	includes imposts, levies, fees and duties of any nature, whether in effect on the Effective Date, or thereafter imposed.
"Term Sheet":	terms and conditions communicated to the BOAD on 10/07/2012G and duly accepted signed by the BOAD on 19/03/2013G
"Transaction Intimation Notice"	a notice, substantially in the form provided in Appendix-IV hereto, sent by the BOAD to ITFC prior to each Transaction through authenticated SWIFT

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message, detailing the type of the Goods, the name and contact details of the Buyer and the Supplier and the date of the Transaction for approval of ITFC.

“Transaction”

purchase of a quantity of the Goods by the BOAD or BOAD’s agent banks receiving the onward financing of ITFC from the BOAD, on behalf of ITFC, in a single shipment and sale of the same by ITFC to the BOAD or BOAD’s agent banks receiving the onward financing of ITFC from the BOAD in accordance with this Agreement.

“UCP”

the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and its revision thereof.

“URC”

The Uniform Rules for Collections (522 Version), International Chamber of Commerce.

“USD” or “US Dollar”

the lawful currency of the United States of America.

1.02 Headings used are for ease of reference only.

1.03 Interpretation:

- (a) the “Party” shall be construed so as to include its and any subsequent successors and permitted transferees in accordance with the interest of ITFC;
- (b) an “affiliate” of a Party shall be construed as a reference to its holding company, subsidiary or another subsidiary of its holding company;
- (c) an “appendix” shall, subject to any contrary indication, be construed as a reference to an appendix of the agreement or document in which such reference appears;
- (d) “assets” includes properties (movable and immovable), revenues and rights of every description;
- (e) “continuing”, in relation to an Event of Default, shall be construed as a reference to an Event of Default which has not been waived or remedied in accordance with the terms hereof;
- (f) “including” shall be construed as a reference to “including, without limitation,”;
- (g) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (h) a “law” shall be construed as any law (including common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, bye-law, order or any other legislative measure of any relevant government, supranational, local government, statutory or regulatory body or court;
- (i) a “month” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next succeeding Business

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Day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the immediately preceding Business Day, provided that, if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month (and references to "months" shall be construed accordingly);

- (j) a "successor" shall be construed so as to include an assignee or successor in title of such Party and any person who under the laws of its jurisdiction of incorporation or domicile has assumed the rights and obligations of such Party under this Agreement or to which, under such laws, such rights and obligations have been transferred;
- (k) the "winding-up", "dissolution", "liquidation", "insolvency" or "reorganisation" of a company or corporation and references to "liquidator", "assignee", "receiver", "manager" and "trustee" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the laws of the member states of the West African Economic and Monetary Union (UEMOA) or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, adjustment, protection or relief of debtors.
- (l) this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;
- (m) "Section", "paragraph" or "Appendix" shall, unless a contrary indication appears, be construed as one in or to this Agreement, and any headings to any section, paragraph or Appendix shall be for ease of reference only.
- (n) "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (o) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (p) a Section, Sub-Section, paragraph, sub-paragraph or appendix is a reference to a section, sub-section, paragraph or sub-paragraph of, or appendix to, this Agreement.

Section-2 UTILISATION OF THE APPROVED AMOUNT

- 2.1 ITFC shall, upon effectiveness of this Agreement in accordance with Section 19 hereof, make the Approved Amount available to the BOAD.
- 2.2 Without prejudice to Section 2.1 above, ITFC may by sending written notice to the BOAD, effective immediately on the date of sending, suspend all or some of Disbursements not yet made by ITFC pursuant to Section 6 hereunder upon the

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occurrence of any exceptional circumstances which adversely affect ITFC's access to the money and capital markets (all as determined by ITFC in its sole discretion). Any such suspension will continue until notification in writing from ITFC to the BOAD of the end of this suspension or until ITFC cancels the relevant Disbursements which are subject to such suspension pursuant to Section 2.03.

2.3 ITFC shall use its best endeavors to make the Approved Amount, or such part thereof, available for the BOAD for the Subsequent Operation, on the following conditions:

- (a) that the whole of the Sale Price under each Transaction under the First Operation shall have been paid in full on due date;
- (b) that the goods, to be financed under the Subsequent Operation shall be the same kind of Goods as in the First Operation, while, however, the quantity of the Goods under the Subsequent Operation may differ from the quantity of the First Operation;
- (c) That no adverse change in the business, assets or financial condition of the BOAD and in the economy of the member states of the West African Economic and Monetary Union (UEMOA) shall have occurred, or is likely to occur, which in the reasonable opinion of ITFC would affect the ability of the BOAD to meet their respective obligations under this Agreement;
- (d) Unless otherwise stipulated by ITFC, the Subsequent Operations shall be subject to the same terms and conditions as applied to the First Operation and the whole Financing is valid for 3 (Three) months from the date of the first disbursement;
- (e) That the Subsequent Operations shall revolve within the availability of the exposure of US\$20,000,000/- (US Dollars Twenty Million);
- (f) That the BOAD has paid a revolving fee in an amount of US\$15,000/- (US Dollars Fifteen Thousand only) for each Subsequent Operation.

2.4 The decision of ITFC whether or not to enter into the Subsequent Operation shall be notified by ITFC to the BOAD within 30 (Thirty) days after the date of payment of the Sale Price under the First Operation. Unless ITFC shall otherwise decide, the Subsequent Operation shall be subject to the same terms and conditions as applied to the First Operation.

2.5 The BOAD shall pay to ITFC an Administrative Fee amounting to US\$50,000/- (US Dollars Fifty Thousand) to be collected upfront as a condition of effectiveness, prior to utilization of the Approved Amount.

2.6 Prior to each Transaction, the BOAD shall provide to ITFC a Transaction Intimation Notice, which shall detail the type of the Goods, the name and contact details of the Buyer and the Supplier and the date of the Transaction. The BOAD shall not proceed with the Transaction without obtaining the prior approval of ITFC to the Transaction Intimation Notice.

2.7 All costs and expenses reasonably incurred in relation to the Murabaha facility granted under this Agreement, including legal fees, shall be borne and paid by the BOAD.

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Section-3 PROCUREMENT OF THE GOODS

- 3.1 ITFC appoints the BOAD as its agent and the BOAD accepts the appointment, to negotiate, through BOAD's agent banks receiving the onward financing of ITFC from the BOAD, with the Supplier and to conclude contracts for the purchase of Goods to the extent of the Approved Amount.
- 3.2 ITFC shall make the Approved Amount available to the BOAD for the purchase of the Goods in accordance with this Agreement.
- 3.3 It is agreed between the Parties hereto that the BOAD's authority (including BOAD's agent banks receiving the onward financing of ITFC from the BOAD) to purchase the Goods for and on behalf of ITFC covers its procurement from the Supplier from the member countries and non-member countries of the Organization of the Islamic Cooperation (OIC) and that the procurement shall be in accordance with the terms and conditions of this Agreement and shall be subject to the procedure to which the ITFC may, in writing, agree or determine.
- 3.4 In acting as an agent of ITFC, the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall endeavor to act as if acting for its own account and shall take all necessary measures to protect ITFC's rights and interests and will not do or omit to do anything which will be inconsistent with its obligations and responsibilities under the Agreement and possession taken by the BOAD as an agent is agreed to be the possession taken by ITFC.
- 3.5 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD undertakes to ensure that the Supplier is not in the Boycott List of the OIC.
- 3.6 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD undertakes to select the Goods and to exercise as much care in satisfying itself as to matters of quality and quantity of the Goods and title thereto and of performance by the Supplier as if it were purchasing the Goods for its own account directly from the Supplier.
- 3.7 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall be fully and solely responsible for the quality, condition, selection and specifications of the Goods and for deciding the need for, and the extent and the manner of, the transaction and storage thereof.
- 3.8 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall ensure that all necessary permits, exchange control approvals, import licenses and all other consents required in connection with the purchase of the Goods are obtained.
- 3.9 The BOAD shall submit through the most expeditious mode of communication the terms and conditions of the draft Purchase Contract for the approval of ITFC prior to the execution of the same. Any reference to the Purchase Contract shall be taken as a reference to such contract after the approval of its terms and conditions by ITFC and its conclusion by the BOAD on ITFC's behalf. Once approved by ITFC, no material amendment to or waiver or cancellation of, the Purchase Contract shall be made or agreed by the BOAD without the prior written consent of ITFC.

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- 3.10 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall ensure that the purchase of the Goods will be done without the assistance or intervention, whether direct or indirect, of any middleman, commission agent or a similar person.
- 3.11 The BOAD shall, on behalf of ITFC, do all things and observe and perform all obligations lawfully required to be done or observed under the Purchase Contract as if the Goods are purchased by ITFC directly from the Supplier.
- 3.12 The BOAD shall not engage itself or through any person acting on its behalf, in any Sanctionable Practices or Other Sanctionable Practices in connection with its business and operations, including the procurement or the execution of any contract relating to the Operation.

Section-4 INSURANCE

- 4.1 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall insure, or procure insurance of, the Goods during transit and until the Sale Contract between ITFC and the BOAD is concluded in accordance with Section-7 hereof. Such insurance shall be, to the full replacement cost of the Goods, with reputable insurers acceptable to ITFC against such risks as are normally insured by persons transporting goods in the same manner and of the same kind as the Goods. The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall ensure that a term of such insurance will be that any proceeds payable by the insurers under such policy will be paid in a freely convertible currency. The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall also make sure that, if any of the risks covered by the insurance shall have happened, the proceeds of such insurance shall be paid to ITFC.
- 4.2 Where the draft Purchase Contract does not provide for the insurance of the Goods by the Supplier in the manner specified in Section 4.1, the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall, at the time of submitting the terms and conditions of the draft Purchase Contract for the approval of ITFC, advise ITFC of the arrangements it has made, or will make, to insure the Goods in the aforesaid manner in order to obtain ITFC's approval for the same.

Section-5 DELIVERY

The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall ensure that the Purchase Contract provides for the delivery of the Goods to its order, and the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall be responsible for checking its quality, quantity, specifications and all other matters relating thereto.

Section-6 PAYMENT OF THE PURCHASE PRICE BY ITFC

- 6.1 Unless ITFC otherwise agrees in writing, payment of the Purchase Price of all Goods shall be made by Documentary Letters of Credit.
- 6.2 For each Operation, the minimum drawdown shall be US\$500,000/- (US Dollars Five Hundred Thousand).

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- 6.3 Subject to Sections 6.1 and 6.2 hereof, promptly after securing ITFC's approval, the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall open the Letter of Credit in favour of the Supplier in accordance with the terms mentioned in Section 6.4 hereof, and arrange with the issuing bank to send a copy of the full text of the Letter of Credit to ITFC by an authenticated message. Upon receipt of the authenticated SWIFT message, ITFC shall check the terms of the Letter of Credit against the terms of this Agreement.
- 6.3.1. ITFC will only provide its confirmation to Letters of Credit open under ITFC's line of financing extended to the BOAD.
- 6.3.2. ITFC may issue Letters of Credit as and when necessary for banks receiving the onward financing from the BOAD or
- 6.3.3. Such banks may also issue Letters of Credit subject to the instruction of the BOAD to ITFC to provide ITFC's confirmation.
- 6.4 Subject to Section 6.2 hereof, BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall open a Letter of Credit in the manner required by the Purchase Contract in favor of the Supplier. Each and every Letter of Credit established under this Agreement shall contain, inter alia, the following particulars:
- (a) The number of the Letter of Credit.
 - (b) The name of the issuing bank.
 - (c) The name of the applicant for the Credit.
 - (d) The name of the beneficiary of the Credit.
 - (e) Description and quantity of the Goods.
 - (f) Origin of the Goods.
 - (g) The amount.
 - (h) Insurance cover
 - (i) The expiry date.
 - (j) The latest shipment date.
 - (k) The name of the paying bank or the negotiating bank.
 - (l) That the Credit will be available by sight/deferred payment.
 - (m) That the Letter of Credit is subject to the UCP.
 - (n) That the negotiating bank to inform ITFC 3 (Three) days prior to the value date of the payment to the Supplier.
- 6.5 The issuing bank shall communicate to ITFC through authenticated SWIFT message the full text of the Letter of Credit. Provided that the terms and conditions of the Letter of Credit are acceptable to ITFC, ITFC will, on receipt of the said telex or message, issue an Irrevocable Commitment to Reimburse.
- 6.6 Notwithstanding the provision of Section 6.4 of this Section, the availability period of the Approved Amount for the First Operation and Subsequent Operation is 12 (Twelve) months from the date of first Disbursement.
- 6.7 Amendments of any Letter of Credit relating to the matters specified in Section 6.4 hereof shall be subject to the approval of ITFC, such approval not to be unreasonably withheld. Any other amendment could be made by agreement of the Parties to the Letter of Credit without reverting to ITFC. However, any such amendment shall be notified to ITFC.

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- 6.8 The first Letter of Credit shall be opened within One (1) month from the Effective Date or any other mutually agreed date. In the event that the first Letter of Credit is not opened or submitted to ITFC for the first Disbursement to the Supplier within the period specified hereinabove, and ITFC is not satisfied with the justification for such failure to open or submit the first Letter of Credit, ITFC may, by notice to the BOAD, terminate this Agreement and cancel the Approved Amount.
- 6.9 It is agreed by the Parties hereto that the whole of the Approved Amount shall be disbursed within a period Three (3) months from the date of first Disbursement. Unless ITFC otherwise agrees, such part of the Approved Amount as may remain undisbursed after the expiry of the period specified herein, will be considered cancelled.
- 6.10 ITFC will not be obliged to issue an Irrevocable Commitment to Reimburse under any Letter of Credit opened pursuant to this Section or make any Disbursements unless the effectiveness conditions set out in Section 19 hereunder have been fulfilled.
- 6.11 The disbursement of funds under this Agreement shall be subject to the following conditions precedent, including but not limited to the receipt of a copy of:
- (i) the Murabaha Agreement between the BOAD and the Buyer; and
 - (ii) the corresponding Letter of Credit sent to ITFC through authenticated means in accordance with this Section 6.
- 6.12 The documents stated in Section 6.13 are for the sole benefit of ITFC and may be waived by ITFC, in its sole discretion, in whole or in part with or without terms or conditions without prejudicing the right of ITFC to assert the requirement of such waived documents at a later date.

Section-7 PROMISE BY THE BOAD TO PURCHASE THE GOODS FROM ITFC AND TO RESELL THE SAME

- 7.1 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD undertakes to purchase the Goods from ITFC after it has taken delivery thereof on behalf of ITFC on the terms specified in Section 7.2 to Section 23 hereof.
- 7.2 The Sale Contract shall be concluded by an exchange of tested telexes, authenticated swift or fax messages as soon as the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD has taken delivery of the Goods on behalf of ITFC. The said exchange will consist of an offer from the BOAD in the form provided in Appendix-II hereof, and an acceptance from ITFC in the form provided in Appendix-III hereof. If the BOAD fails, without excuse, to communicate with ITFC for the finalization of the conclusion of the Sale Contract after the BOAD has taken delivery of the Goods on behalf of ITFC, the BOAD shall be liable to ITFC for any damage caused by the breach of the BOAD's undertaking to conclude the Sale Contract.
- 7.3 The BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall, immediately upon purchase of the Goods from ITFC hereunder, resell the Goods to the Buyer on such terms and conditions as may be agreed upon between the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD and the Buyer.

Section-8 SALE PRICE PAYABLE TO ITFC

The Sale Price payable by the BOAD to ITFC with respect to each Operation shall consist of the Purchase Price and a fixed mark-up of 4.5% (Four point Five per cent) per annum.

Section-9 SALE OF THE GOODS TO THE BOAD WITHOUT RESPONSIBILITY OF ITFC FOR DEFECTS

As the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD will select the Goods relying solely on its own skill and judgment, it is expressly agreed between ITFC and the BOAD that the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD shall purchase the Goods from ITFC "As - Is" on delivery without responsibility on the part of ITFC for any defect therein. When the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD takes delivery of the Goods and the Sale Contract is concluded in accordance with Section 7 hereof, or after 21 (Twenty-one) days from the date of delivery, the BOAD or BOAD's agent banks receiving the onward financing of ITFC from the BOAD will be assumed to have examined the Goods and has satisfied itself as to its quality, quantity etc. However, if any defect appears in the Goods, ITFC undertakes to assign to the BOAD, or to its nominee, the rights and warranties to which ITFC may be entitled under the Purchase Contract, together with any other rights and warranties which may be implied by law or custom in favour of a purchaser.

Section-10 DENOMINATION OF THE SALE PRICE

Each Sale Price shall be denominated in United States Dollar.

Section-11 PAYMENT OF THE SALE PRICE

- 11.1 The BOAD shall pay to ITFC the Sale Price Three (3) months from the date of each Disbursement.
- 11.2 If any payment becomes due on a day on which the banks are not officially open for business in the place where payment is to be effected by the BOAD to ITFC hereunder, such payment shall be made on the next following day on which such banks are opened for business.
- 11.3 If the BOAD shall fail to pay any Sale Price, or any part thereof, on the due date, the BOAD shall,
- (i) in accordance with the Principles of Islamic Shariah, compensate ITFC for any loss, damage, reasonable actual costs and expenses (including, but not limited to, any legal, or collecting agent's costs and expenses) incurred by ITFC as a result of delay in payment to ITFC.
 - (ii) pay ITFC a late payment charge in respect of the overdue amount any such late payment charge shall be calculated and applied as a sum determined by ITFC after applying the formula indicated below:

$$\frac{A \times B \times C}{360}$$

Where: "A" means the amount of such unpaid amount;

"B" means 3% per annum; and

"C" means the number of days from and including such due date to an including the date of actual payment (whether before or after judgment).

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ITFC shall, after the deduction of all actual costs and expenses incurred, pay any amount received pursuant to this Section to IDB Waqf Account No: 0000 100 102 with British Arab Commercial Bank, London, United Kingdom (Swift Code: BACMGB2L, IBAN: GB 69 BACM 4051 3200 100 102).

Section-12 MANNER OF PAYMENT OF THE SALE PRICE

- 12.1 The BOAD shall pay each Sale Price to ITFC by telex or cable transfer to such bank account as ITFC shall specify to the BOAD, or in such other manner as ITFC may direct from time to time.
- 12.2 Without prejudice to the generality of Section 12.1 hereof, all payments due hereunder shall be deemed to be duly paid when the following bank confirms to ITFC the receipt of such payment in ITFC's account with it:
- Account Title: IDB-ITFC-Syndications
Account No: GB93SINT60928000159152
Gulf International Bank (UK) Ltd.
One Knightsbridge, London SW1X7XS
Swift Code: SINTGB2LXXX
- 12.3 All charges and expenses in connection with any payment by the BOAD to ITFC hereunder shall be paid by and shall be for the account of the BOAD.
- 12.4 All payments by the BOAD to ITFC hereunder shall be made without any set-off or counterclaim and free and clear of all taxes, charges, deductions or withholdings of whatever nature, all of which shall be for the account of the BOAD.

Section-13 DELAY IN THE EXERCISE OF RIGHTS

No delay, forbearance or other indulgence on the part of ITFC or the BOAD in exercising any rights, which it may have against the other Party, shall constitute a waiver thereof.

Section-14 CANCELLATION AND SUSPENSION OF THE APPROVED AMOUNT

- 14.1 Unless a commitment has been made with a third party by, or on behalf of, ITFC:
- (i) The BOAD may request ITFC to cancel the Approved Amount or any part thereof.
 - (ii) ITFC may, by notice to the BOAD, suspend the authority of the BOAD to purchase the Goods on behalf of ITFC in any of the following cases:
 - (a) If the Agreement is not declared effective within 30 (Thirty) days of the date of signature of the Agreement.
 - (b) An Event of Default has occurred and is continuing.
 - (c) Any action shall have been taken or legal proceedings shall have been started for the winding up, dissolution or reorganization of the BOAD (otherwise than for the purposes of an amalgamation or reconstruction while solvent on terms) or for the appointment of a receiver, trustee or similar officer of the BOAD or of any or all revenues and assets of the BOAD.

- (d) An extraordinary situation shall have arisen which
 - (i) shall, in ITFC's reasonable opinion make improbable that the Operation can be carried out by the BOAD, or
 - (ii) shall prevent the attainment of the purposes for which this Agreement is entered into.
- 14.2 Suspension of the authority of the BOAD to purchase the Goods on behalf of ITFC shall continue, in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist before the expiry of the time limit indicated in Section 6.3 hereof, or until ITFC shall have notified the BOAD that the suspension has been lifted, whichever is earlier, provided, however, that in the case of any such notice, the lifting of the suspension shall only be to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of ITFC in respect of any other or subsequent event described in this Section.
- 14.3 If
 - (a) suspension under Section 14.2 hereof shall have continued with respect to any part of the Approved Amount for a continuous period of 30 (Thirty) days; or
 - (b) at any time ITFC determines, after consultation with the BOAD, that any part of the Approved Amount will not be required to finance the purchase of the Goods hereunder, ITFC may give notice to the BOAD canceling such part of the Approved Amount. That part of the Approved Amount shall be considered cancelled as from the date specified in such notice.
- 14.4 The BOAD shall have no authority to make any commitment on behalf of ITFC after the date indicated in Section 14.3 hereof.
- 14.5 Cancellation of the Approved Amount or any part thereof under Section 14.3 hereof shall not affect any commitment made, obligations incurred or rights accrued prior to date of cancellation.

Section-15 REPRESENTATIONS AND WARRANTIES

- 15.1 The BOAD represents and warrants to ITFC and acknowledges that ITFC has agreed to this Agreement in reliance on the following representations and warranties:
 - (a) the BOAD is duly established and validly existing under the BOAD's constitutive documents and has the corporate power and has obtained all required Authorizations to own its assets, conduct its business as presently conducted and to enter into, and comply with its obligations under, this Agreement and the Transaction to which it is a party or will, in the case of any Transaction document not executed as at the date of this Agreement, when that Transaction document is executed, have the corporate power to enter into, and comply with its obligations under, that Transaction document.
 - (b) Each Transaction document to which the BOAD is a party has been, or will be, duly authorized and executed by the BOAD and constitutes, or will when executed constitute, a valid and legally binding obligation of the BOAD,

enforceable in accordance with its terms and the BOAD is not, nor will it be, a party to any agreement other than the Transaction documents, and none of the Transaction documents has been, or will be, amended or modified except as permitted under this Agreement.

- (c) Neither the making of any Transaction document to which the BOAD is a party nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which the BOAD is a party or which it is bound, or violate any of the terms or provisions of the BOAD's constitutive documents or any Authorization, judgment, decree or order or any statute, rule or regulation applicable to the BOAD.
- (d)
 - (i) To the best of the BOAD's knowledge, after due inquiry all the Authorizations (other than Authorizations that are of a routine nature and are obtained in the ordinary course of business) needed by the BOAD to conduct its business, carry out the Transactions and execute, and comply with its obligations under, this Agreement and each of the other Transaction documents to which it is a party; and
 - (ii) except for rights that can reasonably be expected to be obtained on commercially reasonable terms at the time required, the Transaction documents contain all rights that are necessary for the conduct of the obligations of the BOAD as contemplated under this Agreement.
- (e) Except for amendments reflecting capital increases, the BOAD's constitutive documents have not been amended since 31/12/2012G.
- (f) Neither the BOAD nor any of its property enjoys any right of immunity from set-off, suit or execution with respect to its assets or its obligations under any Transaction document.
- (g) Since 31/12/2012G, the BOAD:
 - (i) has not suffered any change that has a material adverse effect or incurred any substantial loss or liability that is continuing; and
 - (ii) has not undertaken or agreed to undertake any substantial obligation that will affect the BOAD's ability to perform its obligations under this agreement.
- (h) The financial statements of the BOAD for the period ending on 31/12/2012G:
 - (i) have been prepared in accordance with the accounting standards, and give a true and fair view of the financial condition of the BOAD as of the date as of which they were prepared and the results of the BOAD's operations during the period then ended; and
 - (ii) disclose all liabilities (contingent or otherwise) of the BOAD or and the reserves, if any, for such liabilities and all unrealized or anticipated liabilities and losses arising from commitments entered into by the BOAD (whether or not such commitments have been disclosed in such financial statements).
- (i) The BOAD has good title to all of the assets purported to be owned by it, in all cases free and clear of all liens that will affect the BOAD's ability to perform

its obligations under this Agreement, other than permitted liens and no contracts or arrangements, conditional or unconditional, exist for the creation by the BOAD of any lien;

- (j) All tax returns and reports of the BOAD required by law to be filed have been duly filed and all taxes, obligations, fees and other governmental charges upon the BOAD, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty.
- (k) the BOAD is not engaged in, to the best of its knowledge, after due inquiry, nor threatened by, any litigation, arbitration or administrative proceedings, the outcome of which could reasonably be expected to have a material adverse effect.
- (l) No judgment or order has been issued which has or may reasonably be expected to have a material adverse effect.
- (m) To the best of its knowledge and belief after due inquiry, the BOAD is not in violation of any statute or regulation of any authority.
- (n) There are no ongoing, to the best knowledge of the BOAD after due inquiry, or threatened, strikes, slowdowns or work stoppages by employees of the BOAD or any contractor with respect to this Agreement.
- (o) None of the representations and warranties in this Section omits any matter the omission of which makes any of such representations and warranties untrue or misleading in any material respect.
- (p) the BOAD shall not engage, through any person acting on their behalf, in any Sanctionable Practices or Other Sanctionable Practices in connection with their business and operations, including the procurement or the execution of any contract relating to this Operation

15.2 Each representation and warranty is deemed to be repeated by the BOAD on the date of each Disbursement. It is deemed to be made by reference to the circumstances existing at the time of the representation or warranty.

Section-16 COVENANTS

16.1 Affirmative Covenants:

- (a) The BOAD shall deliver to ITFC, within 45 days after the close of each fiscal quarter of the BOAD (other than the last fiscal quarter of the fiscal year), the balance sheets of the BOAD as at the end of such fiscal quarter and the related financial statements for such fiscal quarter and for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter.
- (b) The BOAD shall deliver to ITFC the latest annual financial statements corresponding to the preceding fiscal year of the BOAD, prior to each Subsequent Operation.
- (c) At the time of the delivery of its quarterly and annual financial statements, the BOAD shall deliver a certificate of its chief financial officer stating that no Event of Default exists, or, if any such Event of Default does exist, specifying the nature thereof, which certificate shall set forth detailed computations

required to establish whether the BOAD was in compliance with the financial covenants for the periods covered by such financial statements.

- (d) The BOAD shall deliver to ITFC, within 15 days after the close of each fiscal quarter of the BOAD, the quarterly management accounts of the BOAD.
- (e) The BOAD shall deliver to ITFC, at the end of every 3 (Three) months starting from the date of first Disbursement, the list of the beneficiaries and the Goods financed.
- (f) The BOAD shall deliver, within two days of the occurrence of any Event of Default, notice thereof specifying the nature and duration thereof and what action the BOAD intends to take with respect thereto.
- (g) Within three days of the commencement of, or the occurrence of any significant development in, any litigation or governmental proceeding or investigation pending against the BOAD that could reasonably be expected to have a Material Adverse Effect, the BOAD shall deliver notice thereof to ITFC.
- (h) The BOAD shall promptly deliver such other information and documents (financial or otherwise) as may be reasonably requested by ITFC.
- (i) The BOAD shall comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of their business and the ownership of their property except for such non-compliance as would not reasonably be expected to have a Material Adverse Effect.

16.2 Negative Covenants:

- (a) The BOAD shall not enter into any liquidation or dissolution or enter into any merger, amalgamation, reconstruction or consolidation with any other person.
- (b) The BOAD shall not settle or compromise any action, claim or proceedings that could have a Material Adverse Effect.
- (c) The BOAD shall not amend, vary or waive the terms and conditions of the financing (excluding purely operational changes) without the prior written consent of ITFC.

Section-17 EVENTS OF DEFAULT

17.1 If one of the events specified in this Section (Events of Default) shall have happened and be continuing then ITFC may, by notice to the BOAD, declare the whole outstanding Sale Price, and the same shall immediately be, due and payable (anything in this Agreement notwithstanding) without any further notice:

- (a) any default shall have occurred in the payment of any amount due to ITFC or to any of its affiliates, and such default shall have continued for a period of 15 (Fifteen) days.
- (b) any default (other than the default specified in (a) above) shall have occurred in the performance of any obligation of the BOAD hereunder and any such default shall have continued for a period of 30 (Thirty) days.

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- (c) any representation or warranty confirmed or made by the BOAD in connection with the execution and delivery of this Agreement, or in connection with any request for Disbursement hereunder, shall be found to have been incorrect in any material respect and shall continue to be incorrect for a period of 30 (Thirty) days after notice thereof shall have been given by ITFC to the BOAD.
- (d) the BOAD shall have convened a meeting, or shall have taken any action, for the purpose of making any arrangement or composition with its creditors.
- (e) the BOAD shall have ceased, or shall have threatened to cease, for any reason whatsoever, to carry on its business or any substantial part thereof.
- (f) the BOAD shall have become unable to pay its debts as they fall due, or shall otherwise have become insolvent; or any encumbrance shall have lawfully taken possession or a receiver or trustee shall have been appointed of the whole or any part of the undertaking or assets of the BOAD, or a distress or execution (or analogous process) shall have been levied or enforced upon or issued out against any of the chattels or property of the BOAD and such distress or execution shall not have been discharged within 15 (Fifteen) days; or an order shall have been made or an effective resolution passed or analogous proceedings taken for the BOAD's winding up, bankruptcy or dissolution; or any other event shall have occurred which under any applicable law would have an effect analogous to any of those events mentioned in this paragraph.
- (g) any provision of this Agreement becomes invalid or unenforceable.
- (h) if the BOAD shall engage itself or through any person acting on its behalf, in any Sanctionable Practices or Other Sanctionable Practices in connection with its business and operations, including the procurement or the execution of any contract relating to the Operation.

17.2 If any Event of Default or any event which, with lapse of time or notice and lapse of time, would become an Event of Default shall have happened, the BOAD shall immediately give ITFC notice thereof by telex or facsimile, specifying the nature of such Event of Default or such event and any steps the is taking to remedy the same.

17.3 No course of dealing, and no delay in exercising, or omission to exercise, any right, power or remedy accruing to ITFC upon any Event of Default hereunder or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of ITFC in respect of any such Event of Default, or any acquiescence by it therein, affect or impair any right, power or remedy of ITFC in respect of any other default.

Section-18 INDEMNITY

18.1 The BOAD hereby undertakes to indemnify ITFC, on a net after-tax basis (at the applicable local and foreign income tax rates) against, and agrees to protect, save and keep harmless, ITFC from any, and all obligations, fees, liabilities, losses, interest, damages, penalties, demands, actions, judgments and expenses, including reasonable legal fees and expenses (including such legal fees and expenses incurred in connection

with the enforcement of this Agreement), of every kind and nature whatsoever imposed on, incurred by, or asserted against ITFC arising out of:

- (a) ownership, possession, use, documentation, removal, return, or other applications or dispositions of the Goods, including such as may arise from:
 - (i) any loss or damage to any property or death or injury to any person;
 - (ii) defects in the Goods which could have been discovered by a reasonable inspection;
 - (iii) any claims based on strict liability in tort or otherwise;
 - (iv) any claims based on liability arising under the applicable environmental laws or environmental approvals;
 - (v) any claim regarding title to the Goods;
 - (vi) any claim or dispute relating to any Purchase Contract concluded by the BOAD on behalf of ITFC hereunder or any Letter of Credit established pursuant to this Agreement.
- (b) the occurrence of any default or any other failure on the part of the BOAD to perform or comply with any term of this Agreement, or any document, agreement or contract entered into in relation hereto or otherwise in relation to the Goods, but excluding any claim based upon any failure on the part of ITFC to comply with its obligations under this Agreement or any document, agreement or contract entered into by ITFC in relation hereto or otherwise in relation to the Goods;
- (c) the receipt of any payment from the BOAD otherwise than on a due date thereof; or
- (d) any claims, encumbrances, security interests, and liens or legal processes regarding ITFC's title to or interests in the Goods.

18.2 The BOAD shall give ITFC prompt notice of any occurrence or condition known to the BOAD as a consequence of which ITFC is or is reasonably likely to be entitled to indemnification. The indemnification provided in Section 17.1 hereof shall specifically apply to and include claims or actions brought by or on behalf of any third party against ITFC, and the BOAD hereby expressly waives, as against ITFC, any immunity to which the BOAD might otherwise be entitled under any applicable laws. The BOAD shall promptly upon request by ITFC (but in any event within 15 (Fifteen) days of such request) reimburse ITFC for amounts expended by it in connection with any of the foregoing or pay such amounts directly. The BOAD shall be subrogated to ITFC's rights in any matter with respect to which the BOAD has actually reimbursed ITFC for amounts expended by it or has actually paid such amounts directly pursuant to Section 17.1 or this Section 17.2. In case any action or proceeding is brought against ITFC in connection with any indemnified claim, ITFC will, after receipt of notice of the commencement of such action or proceeding, notify the BOAD thereof, enclosing a copy of all papers served upon ITFC. The BOAD may, and upon ITFC's request, will resist and defend such action or proceeding at the BOAD's expense, or cause the same to be resisted or defended by counsel selected by the BOAD and reasonably satisfactory to ITFC. In the event of any failure by the BOAD to do so, the BOAD shall pay all costs and expenses (including reasonable attorney's fees and expenses) incurred by ITFC in connection with such action or proceeding.

18.3 The provisions of Sections 17.1 and 17.2 shall apply to the use of the Goods from the date of the execution of this Agreement, and this Section 17.3 shall survive the expiry or earlier termination of this Agreement and all documents, agreements and contracts entered into in relation hereto or otherwise in relation to the Goods and are expressly made for the benefit of, and are enforceable by ITFC.

18.4 If any sum due from the BOAD under this Agreement or any award, order or judgment given or made in relation hereto has to be converted from the currency (the "first currency") in which the same is payable under this Agreement or under such award, order or judgment into another currency (the "second currency") for the purpose:

- (a) making or filing a claim or proof against the BOAD;
- (b) obtaining an award, order or judgment in any court or tribunal or
- (c) enforcing any award, order or judgment given or made in relation to this Agreement;

The BOAD shall indemnify and hold harmless ITFC from and against any loss suffered as a result of any difference between:

- (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency; and
- (ii) the rate or rates of exchange at which ITFC may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.

Any amount due from the BOAD under this Section 17.4, shall be due as a separate debt, and shall not be affected by judgment being obtained for any other sums due under or in respect of this Agreement, and the term "rate of exchange" includes any premium and costs of exchange payable in connection with the purchase of the first currency with the second currency.

18.5 Payments pursuant to the BOAD's obligations under this Section shall be made on demand.

Section-19 EFFECTIVENESS

19.1 This Agreement shall not be effective unless and until the BOAD furnishes ITFC, within One (1) month from the date of signature of the Agreement, with the following documents:

- (i) Board resolution authorizing the BOAD to seek ITFC's financing;
- (ii) A Certified document evidencing corporate approval of this Agreement and containing the names and specimen signatures of the officers of the BOAD authorized to execute the Agreement;
- (iii) Legal Opinion from an independent legal counsel acceptable to ITFC substantially in the form provided in Appendix-I hereto; and
- (iv) Evidence of ITFC's receipt of the administrative fee specified in Section 2.5 hereof.

- 19.2 The documents stated in Section 19.1 above are for the sole purpose of ITFC and may be waived by ITFC, in its sole discretion, in whole or in part with or without terms or conditions without prejudicing the right of ITFC to assert the requirement of such waived documents at a later date.

Section-20 DOCUMENTS-REPORTS

- 20.1 The BOAD shall provide ITFC with evidence of the resale of the Goods to the Buyer(s) and such other documents relating to the Operations hereunder as ITFC may reasonably request.
- 20.2 The BOAD shall provide ITFC with copies of its annual reports, audited financial statements, and such other information regarding the BOAD's business, as ITFC may from time to time reasonably request.

Section-21 GOVERNING LAW-SETTLEMENT OF DISPUTES

- 21.1 This Agreement shall be governed by and be construed in accordance with the principles of Islamic Shariah (as set out in the Shariah Standards published by and as interpreted by Articles of Agreement establishing the Islamic Fiqh Academy of the Organization of Islamic Cooperation or IDB Shariah Committee).
- 21.2 Any dispute between the Parties to this Agreement and any claim by any Party against the other Party arising under this Agreement, which could not be determined by agreement of the Parties, shall be submitted within 30 (Thirty) days of notice by one Party to the other, shall be submitted to an arbitration panel for final and binding decision in accordance with the rules and procedures of the International Islamic Centre for Reconciliation and Arbitration (IICRA), Dubai. The arbitration rules and procedures of IICRA shall be in lieu of any other procedure for the determination of disputes between the Parties to this Agreement or any claim by any Party against the other Party arising thereunder. The English language shall be used throughout the arbitral proceedings and the resulting award shall be final, binding and enforceable on the Parties.
- 21.3 If within 30 (Thirty) days after counterparts of the award shall have been delivered to the Parties, the award is not complied with, any Party may enter judgment upon, or institute a proceeding to enforce the award, in any court of competent jurisdiction against the other Party, may enforce such judgment by execution or may pursue any other appropriate remedy against the other Party for the enforcement of the award or the provisions of this Agreement.
- 21.4 The BOAD agrees that any judgment rendered under this Agreement against it may be executed against its funds (assets) in any jurisdiction. The BOAD hereby irrevocably waives any objection it may have to any suit, action or proceeding arising out of or relating to the enforcement of an arbitration judgment under this Agreement, whether brought in any jurisdiction in which it has funds (assets), and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any jurisdiction has been brought in any inconvenient forum.
- 21.5 To the extent that the BOAD may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid or execution, before award or judgment or otherwise) or other legal process or to the extent that in any such

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jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the BOAD hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

- 21.6 Notwithstanding the foregoing provisions of this Section, ITFC may institute legal proceedings in a court of law in the member states of West African Monetary Union (UEMOA) or any other jurisdiction at the absolute discretion of ITFC, if the BOAD fails to pay to ITFC any amount under this Agreement. This provision is for the sole benefit of ITFC.
- 21.7 Service of any notice or process in connection with any proceedings under Section 21.6 or in connection with any proceedings to enforce any award rendered pursuant to Section 21.6 may be made in the manner provided in Section-22 of this Agreement. The parties to this Agreement waive any and all other requirements for the service of any such notice or process.

Section-22 NOTICES-REQUESTS

- 22.1 Any notice or request required to be given or made under this Agreement to either Party shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail, cable, telex or fax or authenticated SWIFT Message to the address to which it is required or permitted to be given or made to such Party at its address specified in Section 22.2 hereof or at such other address which such addressee shall have designated by notice to the Party giving such notice or making such request.
- 22.2 For purposes of Section 22.1 above, the Parties hereto have given their addresses as follows:

For ITFC:

P.O. Box: 55335
Jeddah-21534
Kingdom of Saudi Arabia
SWIFT: ISLDSAJE
Tel: +966 (2) 646 7009
Fax: +966 (2) 637 1064

For the BOAD:

68, avenue de la Libération
BP 1172 Lomé, Togo
Tel: +228 22 21 59 06
Fax: +228 22 21 52 67
Swift: _____

Section-23 MISCELLANEOUS

- 23.1 The headings in this Agreement are for convenience only and are not intended, and shall not be construed, to alter, limit, or enlarge in any way the scope or meaning of the language contained in this Agreement.

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- 23.2 The person signing this Agreement on behalf of each Party hereby represents and warrants to the other Party that he or she has the requisite legal power and authority to execute this Agreement on behalf of the Party and bind the Party to the obligations herein.
- 23.3 This Agreement binds and benefits the respective successors and assignees of the Parties, provided that neither of them may assign this Agreement in whole or in part without the prior written consent of the other.
- 23.4 This Agreement may be executed in several counterparts, each of which is an original, but all of which constitute the same agreement.
- 23.5 The date of this Agreement shall, for all purposes of this Agreement, be that appearing in the Preamble hereto.

[END OF SECTIONS]

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EXECUTION PAGE

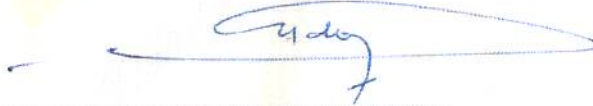
IN WITNESS WHEREOF, the Parties, through their duly authorized representatives have signed this Agreement relating to Operation No. ITFC/1433/TF1/TG/003 for Banque Ouest Africaine de Développement in an amount not exceeding US\$20,000,000/- (US Dollars Twenty Million) on date first written above.

FOR AND ON BEHALF OF
INTERNATIONAL ISLAMIC TRADE FINANCE CORPORATION



Name: **Eng. Hanl Salem Sonbol**
Deputy Chief Executive Officer
International Islamic Trade
Title: Finance Corporation (ITFC)

FOR AND ON BEHALF OF
BANQUE OUEST AFRICAINE DE DEVELOPPEMENT



Name: **Christian ADOVELANDE**
Président de la BOAD
Title:

**Appendix-I ISSUES TO BE COVERED IN THE LEGAL OPINION OF
INDEPENDENT LAWYER ACCEPTABLE TO ITFC**

- (a) The BOAD is duly organized and validly existing under the Agreement Establishing the BOAD and has the power and authority to own its property, to conduct its business as currently conducted and to consummate the transactions contemplated in the Agreement.
- (b) the BOAD has taken all necessary action, to authorize the execution and delivery of the Agreement and all other documents to be executed and delivered by it in connection with the Agreement, the performance of its obligations under the Agreement and the consummation of the transactions contemplated in the Agreement.
- (c) The Agreement has been duly executed and delivered by the BOAD and constitutes a legal, valid and binding obligation of the BOAD enforceable against the BOAD in accordance with its terms.
- (d) All corporate and governmental authorizations and actions of any kind necessary to authorize or required for the validity or enforceability of the obligations contemplated under the Agreement against the BOAD have been obtained or performed and are valid and subsisting in full force and effect.
- (e) No event has occurred, and is continuing, that constitutes, or that with the giving of notice or the lapse of time or both, would constitute a default under any agreement or instrument evidencing any obligation of the BOAD, and no such event will occur upon the making of any disbursement under the Agreement.
- (f) No consent of, approval of, or notice to, any creditor of the BOAD, is required by the terms of any agreement, or instrument evidencing any obligations of the BOAD, for the execution or delivery of, or the performance of the obligations of the BOAD under the Agreement or the consummation of the transactions contemplated in the Agreement, and that execution, delivery, performance and consummation will not result in any breach or violation of, or constitute a default under, the charter or by-laws of the BOAD or any agreement, instrument, judgment or order known to me, or any statute, rule, regulation or law, applicable to the BOAD or to any of its property.
- (g) There are no actions or proceedings pending or, to my knowledge, threatened, the adverse determination of which might have a materially adverse effect on the financial condition of the BOAD or impair the ability of the BOAD to perform its obligations under, or affect the validity or enforceability of the Agreement.
- (h) The BOAD has good title to its property free and clear of all liens and other encumbrances, and its obligations under the Agreement rank at least *pari passu* with all its other unsecured obligations.
- (i) The execution and delivery of the Agreement are not subject to any tax, duty, fee or other charge, including, without limitation, any registration or transfer tax or similar levy, imposed by or within the territory of the West African Economic and Monetary Union (UEMOA) or taxing authority thereof or therein.
- (j) Neither the BOAD nor its property has any right of immunity on grounds of sovereignty or otherwise from jurisdiction, attachment (before or after judgement) or execution in respect of any action or proceeding relating in any way to the Agreement that may be brought in any court.

- (k) The execution and delivery of the Agreement by the BOAD and performance of its obligations thereunder constitute commercial transactions.
- (l) The choice by the Parties to the Agreement of the Principles of Islamic Shariah as governing law, and the agreement of the Parties to settle disputes arising under the Agreement by Arbitration, is legal, valid and binding.
- (m) The BOAD has taken all necessary actions required by any applicable law in order that the Agreement may be admissible in evidence in the competent courts of its member states.
- (n) It is not necessary, under the laws of UEMOA in order to enable ITFC to enforce its rights under the Agreement or by reason of the execution of the Agreement or the performance by ITFC of its obligations thereunder that ITFC should be licensed, qualified or entitled to carry on business in the member states of UEMOA.
- (o) ITFC will not be deemed to be resident, domiciled, to carry on business or subject to taxation in the territory of the member states of UEMOA by reason only of the execution, performance and/or enforcement of the Agreement, the purchase of Goods by ITFC and the sale thereof to the BOAD pursuant to the Agreement, and no withholding taxes will be imposed on any amounts otherwise receivable by ITFC under the Agreement.

Appendix-II FORM OF OFFER TO PURCHASE THE GOODS FROM ITFC

[TO BE PRINTED ON THE LETTERHEAD]

International Islamic Trade Finance Corporation
P.O. Box 55335, Jeddah- 21534
Kingdom of Saudi Arabia

OFFER

BOAD, in conformity with the 2-Step Murabaha Agreement concluded between us on ___/___/___G (the Agreement), and in accordance with Section-7 thereof, offers to buy the Goods (specified in the attached message for Disbursement) of which we have taken delivery on behalf of International Islamic Trade Finance Corporation, on the terms and conditions provided for in Section 7.2 to Section 23 (inclusive) of the said Agreement.

For and on behalf of
Banque Ouest Africaine de Développement

ME

Appendix-III FORM OF ACCEPTANCE BY ITFC

[TO BE PRINTED ON THE LETTERHEAD]

Banque Ouest Africaine de Développement
[Adress]

ACCEPTANCE

The International Islamic Trade Finance Corporation (**ITFC**), in response to Banque Ouest Africaine de Développement (BOAD) offer communicated through telex/fax number Insert Data dated ____/____/____ G, agrees to sell to Insert Data on the terms and conditions provided for in Section 7.2 to Section 23 (inclusive) of the Agreement concluded between us on ____/____/____ G, the Goods (specified in your message for Disbursement dated ____/____/____ G) which Insert Data has taken delivery of, on behalf of ITFC. The Sale Price of the Goods and the due date(s) as determined in accordance with Sections 8 and 11 of the Agreement shall be Insert Data.

For and on behalf of
International Islamic Trade Finance Corporation

Appendix-IV TRANSACTION INTIMATION NOTICE

[TO BE PRINTED ON THE LETTERHEAD]

To: International Islamic Trade Finance Corporation
P.O. Box 55335
Jeddah- 21534
Kingdom of Saudi Arabia

Ref: **TWO STEP MURABAHA AGREEMENT DATED**__/__/__G

We refer to the above Murabaha Agreement (the "**Agreement**") and are pleased to notify you about the terms of the Transaction which are as follows:

Supplier:	
Type of Goods:	
Purchase Price	
Buyer:	
Transaction Date:	

Transaction Date: Submitted for your consideration.

For and on behalf of
Banque Ouest Africaine de Développement

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1. *Pharmaceutical Innovation and Access*
 2. *Global Health Challenges and Solutions*
 3. *Healthcare Systems and Policy*
 4. *Medical Research and Clinical Trials*
 5. *Public Health and Epidemiology*
 6. *Healthcare Economics and Finance*
 7. *Healthcare Law and Ethics*
 8. *Healthcare Technology and Digital Health*
 9. *Healthcare Quality and Patient Safety*
 10. *Healthcare Workforce and Education*
 11. *Healthcare Reform and Policy*
 12. *Healthcare Innovation and Entrepreneurship*
 13. *Healthcare Research and Development*
 14. *Healthcare Policy and Regulation*
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