

إِجْتِمَاعِي مَشَارَكَة

SYNDICATE MUSHARAKAH

THIS SYNDICATE MUSHARAKAH AGREEMENT
(the "Agreement") is made at _____ on ___ day of _____ by and

BETWEEN

_____, a company incorporated under the Companies Ordinance, 1984 and having its registered office at _____ (hereinafter referred to as "Client" which expression shall unless repugnant to the context include its successors-in-interest and assigns);

AND

_____, managed by _____ Modaraba Management Company, registered under the Modaraba Companies and Modaraba (Floatation & Control) Ordinance 1980 having its registered office at _____, (hereinafter referred to as the "Investment Agent" which expression shall where the context so permits mean and include its successors in interest and assigns).

IT IS AGREED BY THE PARTIES as follows:

1. PURPOSE AND DEFINITIONS

The capitalized terms used in this Agreement, shall have the following meaning:

"Assets" means the assets as described in Schedule 1 of this Agreement;

"Business Day" means a day on which the offices of the Investment Agent are open for business;

"Co-Owners" means Client and the Investment Agent agreeing that their *inter se* relationship will be governed by the provisions of this Agreement.

"Dissolution Event" means each of the events listed in Section 10 of the Declaration (Dissolution Events);

"Existing Charges" means the charges and encumbrances subsisting on the Musharakah Assets;

"Investing Agent" means a financing institution/Modaraba offering financial services, including but not limited to the investment of funds in short and medium-term transactions in accordance with the Islamic Shariah;

“Indebtedness” means any obligation of Client for the payment of any sum of money due, whether present or future, actual or contingent, including, without limitation, any amounts payable under the Declaration and / or in respect of any of the following:

- (a) Moneys borrowed or raised by Client including, without limitation, any finances or loans as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001;
- (b) a guarantee, indemnity, letter of credit, performance bond, or legally enforceable undertaking or obligation:
 - (i) to pay or provide funds (including by the purchase of property) in, or to enable payment or discharge of;
 - (ii) to indemnify against the consequences of default in payment of; or
 - (iii) otherwise to be responsible for

any obligation or indebtedness, or the solvency or financial condition, of any other Person;
- (c) bond, debenture, promissory note, redeemable securities, or bill of exchange (whether or not transferable or negotiable);
- (d) lease, or license in respect of any of Client’s Musharakah Assets (real and tangible) entered into primarily for the purpose of raising finance;
- (e) hire purchase or deferred payment obligation for any Musharakah Assets acquired or service employed;
- (f) obligation under any swap or future or option contract; or
- (g) central excise duty and other statutory levies payable by Client to the Federal, Provincial or any Local Governments; or
- (h) arrangement which achieves the same or equivalent commercial effect as to any of the above.

“Investment Agency Agreement” means an agent appointed by consortium of syndication Musharakah for arrangement of funds, an integral part of syndicate Musharakah agreement.

“Lien” means a mortgage, charge, pledge, lien, security, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Management Agreement” means the agreement titled “Management Agreement” dated on or about the date hereof and entered into between the Investment Agent and Client, in its capacity as the Management Agent;

“Material Adverse Effect” means the occurrence of an event or series of events, which in the opinion of the Investment Agent, have or might have a material adverse effect on:

- (a) the business, condition (financial or otherwise) of Client, the Musharakah or the Musharakah Assets and / or the operations or prospects of Client;
- (b) Client’s ability to perform obligations under this Agreement; and / or
- (c) which may materially and adversely affect the Investment Agent’s rights and remedies or its ability to continue with the arrangements under this Agreement;

“Musharakah” means the Musharakah resulting from the purchase by the Investment Agent of the undivided share in the Assets and comprising of the Co-owners joint ownership of the Musharakah Assets;

“Musharakah Assets” means the Assets jointly owned by the Co-owners, as a consequence of the purchase by the Investment Agent of an undivided share of the Assets from Client pursuant to the Asset Purchase Agreement and with the Investment Agent’s share therein being ____% and the share of Client being ____%.

“Musharakah Dissolution Event” means and includes each of the events or circumstances described in Article 3;

“Musharakah End Date” has the meaning ascribed thereto in 2.2;

“Person” means any natural person, corporation, company, partnership, firm, voluntary association, joint venture, trust, unincorporated organization, authority or any other entity whether acting in an individual, fiduciary or other capacity;

“PKR” and **“Pakistani Rupee”** means the lawful currency for the time being of the Islamic Republic of Pakistan;

“Potential Dissolution Event” means any event or circumstance which is likely to become a Dissolution Event;

“Proceedings” means any suit, action or proceedings arising out of or in connection with this Agreement;

“Secured Assets” means the assets charged pursuant to the Security Documents;

“Security Interest” means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement or other arrangement having the same or equivalent legal effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition;

“**Tax**” means any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty payable in connection with any failure to pay or any delay in paying any of the same);

Section 2.1 Commencement

2.1.1 Subject to the terms and conditions of this Agreement, the Co-owners have entered into the Musharakah which is a partnership in the ownership of the Musharakah Assets, in accordance with the terms and the dates of this Agreement, resulting from the purchase by the Investment Agent from Client, of an undivided share in the Assets, subject to the Existing Charges, pursuant to the Asset Purchase Agreement.

2.1.2 Profit and Loss shall be in accordance with the proportionate ratio of investment made by the members investing the funds, in overall financing amount.

2.1.2 The Musharakah will commence on the date of the Asset Purchase Agreement (being the date on which the co-ownership in the Assets has been created by the Co-owners).

Section 2.2 Termination

2.2.1 The Musharakah will end on the earlier to occur of the following:

- (a) the date falling _____ (____) years after the date of this Agreement (“Scheduled Musharakah End Date”);
- (b) termination and subsequent dissolution of the Musharakah upon the occurrence of a Musharakah Dissolution Event;
- (c) purchase of all Units held by the Investment Agent, in accordance with the Purchase Undertaking.

(each of the above is hereinafter referred to as the “Musharakah End Date”).

Section 2.3 Musharakah Assets

2.3.1 The Co-owners hereby confirm and represent that each Co-owner is holding, an undivided share in the Musharakah Assets, such co-ownership having been created between the Co-owners pursuant to the Asset Purchase Agreement. The Co-owners further agree that the registered title to the Musharakah Assets will be in the name of Client. The possession and the title of the Musharakah Assets for all regulatory and governmental matters will be held in the name of Client, in trust for and as agent for the Investment Agent. The Co-owners further agree that notwithstanding the provisions of this Clause 2.3, the ownership of the Investment Agent to the undivided share in the Musharakah Assets will not be challenged by Client or any other third party on the basis that the possession and registered title to the Musharakah Assets vests in Client.

Section 2.4 Units and Capital Contribution

2.4.1 Each Co-Owners' entitlement to the Musharakah Assets will be undivided and shall for the purpose of more particular determination constitute units in the Musharakah Assets (the "Units"). Each Unit comprises of an equivalent of ___% he Musharakah Assets.

2.4.2 As at the date of this Agreement the number of Units held by each Co-Owner is as follows:

(a) the Investment Agent [•] Units ("Investment Agent Units); and

(b) Client [•] Units.

2.4.3 Client hereby undertakes that it will not sell the Units to any person other than the Investment Agent. The Investment Agent may at its sole discretion sell the Units to any third party.

2.4.4 Profit and loss in respect of the Musharakah shall be borne by each Co-owner rate ably in proportion to the number of Units held by each Co-owner.

Section 2.5 Management of the Musharakah

2.5.1 The management of the Musharakah will be carried out solely by Client in its capacity as the Managing Agent (as defined in the Management Agreement) and in accordance with the terms and conditions of the Management Agreement.

2.5.2 Remuneration may be paid to the working partner in addition to the profit on its investment with the terms and conditions of the Agreement.

ARTICLE 3 MUSHARAKAHH DISSOLUTION EVENT AND TERMINATION

Section 3.1 Musharakah Dissolution Event

3.1.1 Each of the following events constitutes a Musharakah Dissolution Event:

- (a)** any representation or warranty made or deemed to be made or repeated by Client in or pursuant to the Transaction Documents or in any document delivered pursuant to this Agreement is found to be incorrect;
- (b)** any Indebtedness of Client (including the payment of any amounts payable in terms hereof), is not paid when due or becomes due or capable of being declared due prior to its stated maturity;
- (c)** Client makes an assignment or arrangement for the benefit of its creditors;
- (d)** Client (i) voluntarily or involuntarily becoming the subject of proceedings under a bankruptcy or insolvency law, or procedure for the relief of financially distressed debtors, (ii) has been unable or has admitted in writing its inability to pay its debts as they mature to the Investment Agent, or (iii) had a receiver or administrator appointed for all or any part of its assets or business;
- (e)** the Musharakah Assets are used in an unlawful or abusive manner;
- (f)** the insurance obtained by Client in respect of the Musharakah Assets is cancelled in whole or in part;
- (g)** any costs, charges and expenses under the Transaction Documents remains unpaid for a period of seven (7) days after notice of demand in respect thereof has been received by Client from the Investment Agent;
- (h)** any governmental agency nationalizes, acquires or expropriates (with or without compensation) the Musharakah Assets;
- (i)** Client's failure or refusal to accept the Investment Agent's entitlement to recover anticipated expenses and costs under this Agreement;
- (j)** Client's failure to meet any of its obligations under this Agreement;
- (k)** any other event or circumstance arising out of Client's negligence or default which may result in Client's failure to meet its obligations under this Agreement;
- (l)** any Indebtedness of Client is not paid when due nor within any originally applicable grace period;

- (m) any Indebtedness of Client is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described);
- (n) any commitment for any Indebtedness of Client is cancelled or suspended by a creditor of Client, as a result of an event of default (however described);
- (o) any creditor of Client becomes entitled to declare any Indebtedness of Client due and payable prior to its specified maturity as a result of an event of default (however described);

Provided however, no Musharakah Dissolution Event shall occur under this (l) to (o) above, if the aggregate amount of Indebtedness or commitment for Indebtedness falling within paragraphs (l) to (o) above is less than Pak Rupees [] (or its equivalent in any other currency or currencies);

- (p) it is or becomes unlawful for Client to perform any of its obligations under this Agreement;
- (q) any obligation or obligations of Client under this Agreement or any related agreement are not, or cease to be, legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely effects the interests of the Investment Agent;
- (r) this Agreement ceases to be in full force and effect to be ineffective;
- (s) Client repudiates this Agreement or evidences an intention to repudiate a this Agreement;
- (t) any court or arbitration makes a final judgment or arbitral award against Client and which Client fails to pay within 30 days of the date at which the obligation to pay arises;
- (u) Client fails to comply with any law or regulation to which it may be subject.

Section 3.2 Consequences of Musharakah Dissolution Event

3.2.1 Upon the occurrence of a Musharakah Dissolution Event, the Investment Agent shall be entitled to invoke its Exercise Option (as provided for in the Purchase Undertaking) in terms whereof, Client shall be under an obligation to purchase the Investment Agent's Units in accordance with the terms of the Purchase Undertaking.

ARTICLE 4 DISSOLUTION

Section 4.1 Dissolution on Scheduled Musharakah End Date

4.1.1 On the Business Day immediately following the Scheduled Musharakah End Date, the Musharakah shall be wound up by the Co-Owners, in the manner agreed upon between the Co-Owners.

ARTICLE 5 INDEMNITY

5.1.1 Client shall on demand by the Investment Agent indemnify the Investment Agent to the full extent permitted by law, and hold it harmless, against any and all claims, demands, losses, penalties, actions, suits, damages and liabilities of whatsoever nature (any of the foregoing being referred to as the “Claim”) if caused by the misuse or gross negligence of Client:

- (a) relating to or pertaining to the Musharakah Assets, including any Claim in respect of the acceptance, non-acceptance, rejection, lease, sublease, financing, possession, use, presence, manufacture, design, control, construction, installation, operation, transportation, accident, insurance, condition, storage maintenance, servicing, improvement, modification, alteration or disposition of the Musharakah Assets or any part thereof or any infringement or alleged infringement of any intellectual property by the use or possession of the Musharakah Assets, or
- (b) in respect of any Tax (other than ownership taxes and Taxes imposed due to the willful misconduct of the Investment Agent), however imposed, upon or with respect to:
 - (i) the Musharakah Assets or any part thereof;
 - (ii) this Agreement or any other Transaction Document that Client is a party to;
 - (iii) the payment of any sum under this Agreement or any other Transaction Document to which Client is a party, or;
 - (iv) in respect of any claims or actions in connection with the protection and defense of the Investment Agent's rights and interests.

5.1.2 Each party to this Agreement shall promptly give the other party to this Agreement notice upon receiving knowledge of any matter, which could give rise to a Claim.

5.1.3 After becoming aware of any matter which may give rise to a Claim, the Investment Agent shall, subject to being indemnified to its reasonable satisfaction by Client against all costs and liabilities incurred in doing so, promptly take or

procure such action to be taken as Client may reasonably request to deal with the Claim.

5.1.4 The Investment Agent shall provide to Client and its legal advisers at the cost of Client such information and documentation relating to any Claim as Client may reasonably require.

JURISDICTION

This Agreement is governed by and shall be construed in accordance with Pakistani law. All competent courts at _____ shall have the exclusive jurisdiction to hear and determine any action, claim or proceedings arising out of or in connection with this Agreement. The amounts payable by the Customer to the Modaraba under any Agreement may be recovered through the Banking Courts, under the Financial Institutions (Recovery of Finances) Ordinance, 2001 or any replacement or statutory modification thereof.

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 THEREOF the parties to this Agreement have caused this Agreement to be duly executed on the place, date and year first aforementioned.

SIGNED by
Customer

WITNESSES

1.

2.

SIGNED by

For and on behalf of
MODARABA