

**MONTHLY/QUARTERLY/HALF YEARLY
PAYMENT AGREEMENT**

THIS MONTHLY/QUARTERLY/HALF YEARLY PAYMENT AGREEMENT is made at _____ this _____ day of _____ 200__ (the “Monthly/Quarterly/Half Yearly Payment Agreement”) and is made

BY AND BETWEEN

_____ **Modaraba**, floated under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 by _____, a Modaraba Management Company, having its _____ registered _____ office _____ at _____ acting through _____ (hereinafter referred to as “**the Modaraba**” which expression shall, where the context so permits, mean and include its successors in interest and assigns) of the **FIRST PART**.

AND

(1) _____ a company incorporated and existing under the corporate laws of Pakistan having its Registered Office _____ at _____ Pakistan acting through _____ Mr. _____, Director (s) of the Company duly authorized vide Article _____ of the Articles of Association of the Company / Resolution dated _____ of the Company

OR

(2) _____, a partnership having its _____ Office _____ at _____ Pakistan acting through its Managing Partner Mr. _____ duly authorized vide Clause _____ of the Partnership Deed

OR

(3) Mr./ Miss/ Mrs. _____ son/ daughter/ wife _____ of _____ Mr. _____ resident _____ of _____

(Hereinafter referred to as “**the Customer**” which expression shall where the context so permits mean and include its/his/her successors in interest and permitted assigns) of the **SECOND PART**

(Individually referred to as a “Party” and collectively as the “Parties”)

The bold terms used herein shall have the meanings assigned to them in the Musharakah Agreement dated ----- between the Parties (the “Agreement”) unless defined herein.

WHEREAS, the Customer wishes to avail finance based on the Islamic modes of financing and has entered into the Musharakah agreement whereby the Modaraba and the Customer have agreed *inter alia* to participate on the basis of Musharakah in the acquisition of the Musharakah Asset(s) in the name of the Customer for purposes of business use by the Customer against payment of consideration in terms of this Monthly/Quarterly/Half Yearly Payment Agreement.

AND WHEREAS, the Musharakah Asset(s) is to be purchased and acquired in the name of the Customer and the Customer has agreed to be bound by the terms of this Monthly/Quarterly/Half Yearly Payment Agreement in respect of matters related to the Musharakah Asset(s).

AND WHEREAS, the Parties have agreed that the Customer shall use the Musharakah Asset(s) and to the extent of the Modaraba’s Musharakah Share, the Customer shall pay a Monthly/Quarterly/Half Yearly Payment to the Modaraba upon the terms and conditions set out hereunder.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Musharakah agreement and below herein, the Parties hereby agree as follows:

1. MUSHARAKAH ASSET(S)

1.1 Notwithstanding that the Musharakah Asset(s) is/shall be in the name of the Customer, the Parties agree that in consideration of the Modaraba’s Musharakah Share, the Customer’s right in respect of the Musharakah Asset(s) shall be qualified as laid down in this Monthly/Quarterly/Half Yearly Payment Agreement and the Musharakah Agreement.

1.2 The Customer shall have the exclusive right to use the Musharakah Asset(s) for business purposes only against the Monthly/Quarterly/Half Yearly Payments.

1.3 The Customer hereby represents and covenants as follows:

- a) That the Customer shall permit the Modaraba and/or the Modaraba's representatives and agents to inspect the Musharakah Asset(s) on the Modaraba giving to the Customer twenty four (24) hours prior notice in writing.
- b) That the Customer shall pay all taxes; charges, demands and levies that are imposed in respect of the Musharakah Asset(s) whenever, including without limitation for any period prior to the Effective Date, and by whomsoever levied, provided however that, Asset(s) tax and Insurance charges, shall be jointly paid by the Modaraba, and the Customer in proportion to their share in the Musharakah Asset(s).

2. **OBLIGATION TO PAY MONTHLY/QUARTERLY/HALF YEARLY PAYMENTS**

- 2.1 The Customer shall pay to the Modaraba the Monthly/Quarterly/Half Yearly Payment in respect of the use of the Musharakah Asset(s) to the extent represented by the Modaraba's Share in the Musharakah.
- 2.2 The Customer shall pay to the Modaraba the Monthly/Quarterly/Half Yearly Payment on the Monthly/Quarterly/Half Yearly Payment Date(s) as appearing in the schedule of Monthly/Quarterly/Half Yearly Payment appearing in Appendix "A" hereto.
- 2.3 The Customer's obligation to make the Monthly/Quarterly/Half Yearly Payments shall continue during the Term of this Agreement.
- 2.4 The Customer's obligation to make the Monthly/Quarterly/Half Yearly Payments to the Modaraba in accordance with Clause 2.2 above is absolute and shall continue and subsist notwithstanding the inability of the Customer to use the Musharakah Asset(s) for business purposes.

3. **VARIATION OF MONTHLY/QUARTERLY/HALF YEARLY PAYMENTS**

- 3.1 The amounts of the Monthly/Quarterly/Half Yearly Payments shall be in accordance with Appendix 'B'.
- 3.2 The amounts of the Monthly/Quarterly/Half Yearly Payments appearing in Appendix "B" hereto are on a declining balance corresponding to the purchase of the Musharakah Units by the Customer.
- 3.3 Where the Customer opts to prepay by acquiring some of the Musharakah Units, the Monthly/Quarterly/Half Yearly Payments shall be revised to reflect the reduced share of the Modaraba in the Musharakah.
- 3.4 Upon acquisition of the Musharakah Units by the Customer, the Modaraba shall provide to the Customer a revised Schedule of Monthly/Quarterly/Half Yearly Payments to be attached hereto as the amended Appendix "A".

4. **PAYMENT AND ACCOUNTS**

- 4.1 All payments to be made by the Customer under this Monthly/Quarterly/Half Yearly Payment Agreement shall be made in full, without any set off or counter claim whatsoever, and free and clear of any deductions or withholdings, on the due dates to the Modaraba. When any payment would otherwise be due on a day which is not a Business Day, the next following Business Day shall be substituted for such day.
- 4.2 Without prejudice to any other rights of the Modaraba, in the event of a default in the payment of any amounts due under this Monthly/Quarterly/Half Yearly Payment Agreement, the Customer hereby undertakes to pay to Charity Fund an amount on such outstanding amounts remaining unpaid, at the rate of _____ % per annum for each day that such default continues. Such additional amount shall be utilized by the Modaraba on behalf of Customer for **charitable and religious purposes**. The Customer hereby consents to such utilization of the said amount by the Modaraba, at its absolute discretion.

5. **EVENTS OF DEFAULT**

- 5.1 A default in payment of any Monthly/Quarterly/Half Yearly Payment in terms of this Agreement and the occurrence of an Event of Default under the Agreement, shall constitute a default under this Monthly/Quarterly/Half Yearly Payment Agreement as well and the Modaraba shall thereupon become entitled to exercise all rights and remedies as provided in the Agreement upon occurrence of an Event of Default.

6. **SECURITY**

- 6.1.1 As security for the performance of the Customer's obligations in accordance with the create a Charge on its Current/Fixed Assets with the concerned Authorities in respect of the Musharakah Asset(s) and execute the Demand Promissory note set out in Appendix "C" hereto.

7. **REPAIR & MAINTENANCE**

- a) The Customer agrees at its own cost and expense, to be responsible for the performance of all Ordinary Maintenance and Repairs required by the Musharakah Asset(s). The term "Ordinary Maintenance and Repair" shall mean all repair, replacement and maintenance required to keep repair, maintain and preserve the Musharakah Asset(s) in good operating condition, and in compliance with such standards of maintenance as is generally required for such Musharakah Asset(s).
- b) The Modaraba shall be responsible for the performance of Major Repair. The term "Major Repair" shall mean all major repairs arising due to accidents and damages occurring without the negligence of the Customer, excluding repair and maintenance covered under Ordinary Maintenance and Repair in 7 (a) herein above. The Major Repairs shall be covered by insurance arrangements made by the Modaraba.

8. **SETOFF**

- 8.1 The Customer authorizes the Modaraba to apply any credit balance to which the Customer is then entitled in any account of the Customer with the Modaraba at its head office or any of its branches in or towards satisfaction of any sum then due and payable from the Customer to the Modaraba under this Monthly/Quarterly/Half Yearly Payment Agreement.

9. **NOTICES AND OTHER MATTERS**

- 9.1 Every notice or other communication under this Monthly/Quarterly/Half Yearly Payment Agreement shall be in writing delivered personally, or by courier or addressed to the relevant Party at its address stated above or to any telex or telefax number which is published as belonging to it (or such other address or telefax or telex number as is notified by one Party to the other under this Monthly/Quarterly/Half Yearly Payment Agreement). Every notice or other communication shall, subject as otherwise provided in this Monthly/Quarterly/Half Yearly Payment Agreement be deemed to have been received in the case of a letter when delivered personally or three (03) days after it has been delivered to a courier company for delivery to the addressee and in the case of a telex at the time of dispatch with confirmed answer back of the addressee appearing at the beginning and end of the transmission or in the

case of telefax when the recipient confirms by telex receipt of the transmission (provided that it shall be deemed to have been received at the opening of business on the next such Business Day).

9.2 No failure or delay on the part of the Modaraba to exercise any power, right or remedy under this Monthly/Quarterly/Half Yearly Payment Agreement shall operate as a waiver thereof nor shall any single or partial exercise by the Modaraba of any power right or remedy preclude any other or further exercise thereof or the exercise of any other power right or remedy. The remedies provided in this Monthly/Quarterly/Half Yearly Payment Agreement are cumulative and are not exclusive of any remedies provided by law.

10. **JURISDICTION**

10.1 This Monthly/Quarterly/Half Yearly Payment 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 Monthly/Quarterly/Half Yearly Payment Agreement. The amounts payable by the Customer to the Modaraba under this Monthly/Quarterly/Half Yearly Payment Agreement may be recovered through the Banking Courts, under the Financial Institutions (Recovery of Finances) Ordinance, 2001 or any replacement or statutory modification thereof.

IN WITNESS WHEREOF the parties to this Monthly/Quarterly/Half Yearly Payment Agreement have caused this Monthly/Quarterly/Half Yearly Payment Agreement to be duly executed on the place, date and year first aforementioned.

SIGNED by
Customer

WITNESSES

1. _____
2. _____

For and on behalf of Modaraba

WITNESSES

1. _____
2. _____

APPENDIX 'A'

Schedule of Monthly/Quarterly/Half Yearly Payments

Monthly/Quarterly/Half Yearly Payment Amounts
AND Monthly/Quarterly/Half Yearly Payment Date(s)

For and on behalf of
Modaraba

for and on behalf of
Customer

APPENDIX 'B'

Schedule of Monthly/Quarterly/Half Yearly Payments

<u>S.No.</u>	<u>Monthly/Quarterly/Half Yearly Payment</u>	<u>Unit Purchased</u>	<u>Monthly/Quarterly/Half Yearly Payment Amount</u>
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For and on behalf of
Modaraba

For and on behalf of
Customer

APPENDIX 'C'

Promissory Note under Clause 6 of the
Monthly/Quarterly/Half Yearly Payment Agreement

Rs. _____

Date:

ON DEMAND, I/we the undersigned jointly and severally promise to pay to XYZ Modaraba,
or order the sum of Rs. _____ (Rupees _____
_____ only) for the value received.

Name of Executant (s)

**UNDERTAKING TO PURCHASE MUSHARAKA UNITS DURING
THE TERM OF MUSHARAKAH AGREEMENT**

_____ Modaraba
Pakistan
_____.

_____, 2007

Dear Sirs,

We refer to the Musharakah Agreement dated _____, 2007 (the “Agreement” and the _____ Payment Agreement dated _____, 2007 (the “_____ Payment Agreement”) executed by us with _____, a Modaraba company having Registered Office at _____, Karachi along with an _____, Pakistan (hereinafter referred to as the Modaraba)

The terms used herein shall have the meanings assigned to them in the “Agreement”.

NOW, THEREFORE, OUR THIS UNDERTAKING WITNESSED AS FOLLOWS:

1. We hereby irrevocably agree and undertake that we shall purchase one Musharakah Unit (as per schedule attached) every month @ Rs. _____ per unit from the Modaraba in order to purchase total Units of the Modaraba in the Musharakah Property. Additionally we will pay to your Modaraba all amounts of _____ Payments in terms of the _____ Payment Agreement up to the date on which we are in occupation of the Musharakah Property pursuant to the Agreement.
2. Failure on our part to purchase the Musharakah Units at the above mentioned Price and/or to pay the outstanding _____ Payments, shall entitle the Modaraba at its discretion to serve or without serving a seven days notice for rectification of the situation and thereafter to proceed to enforce the security interest in the Musharakah Property for recovery of the amounts due to the Modaraba under the Musharakah Agreement and the _____ Payment Agreement, including the remaining Musharakah Units and accrued and unpaid _____ Payments, if applicable, plus any costs, taxes and other dues payable by us to the Modaraba in connection with Musharakah Agreement and _____ Payment Agreement

For and on behalf of Customer

Witnesses: 1. _____
Name:
Address:
NIC No.

2. _____
Name:
Address:
NIC No.

**UNDERTAKING TO PURCHASE
MUSHARAKAH UNITS UPON TERMINATION OF AGREEMENT**

_____ Modaraba

Dear Sir,

We refer to the Musharakah Agreement dated _____ (the “**Agreement**”) and the Monthly/Quarterly/Half Yearly Payment Agreement dated _____ (the “**Monthly/Quarterly/Half Yearly Payment Agreement**”) between XYZ Modaraba (hereinafter referred to as the “**Modaraba**”) and ourselves.

Capitalized terms used herein shall have the meanings assigned to them in the “**Agreement**”.

NOW, THEREFORE, THIS LETTER WITNESSETH AS FOLLOWS:

1. In consideration of your having entered into the Musharakah Agreement and the Monthly/Quarterly/Half Yearly Payment Agreement, we hereby irrevocably agree and undertake that if you desire to terminate the Agreement and/or the Monthly/Quarterly/Half Yearly Payment Agreement on account of any of the grounds mentioned in the Musharakah Agreement and/or the Monthly/Quarterly/Half Yearly Payment Agreement respectively, we shall purchase the remaining Musharakah Units at the Outstanding Buyout Price mentioned below herein on the date of termination of the Musharakah Agreement and/or the Monthly/Quarterly/Half Yearly Payment Agreement in accordance with the Schedule appearing below herein. Additionally, I/we will pay to you all amounts of Monthly/Quarterly/Half Yearly Payments in terms of the Monthly/Quarterly/Half Yearly Payment Agreement up to the date on which I/we am/are in possession of the Musharakah Asset(s) pursuant to the Musharakah Agreement.
2. Failure on our part to immediately purchase the remaining Musharakah Units at the applicable Outstanding Buy Out
3. +Price in accordance with the schedule given below and / or the outstanding Monthly/Quarterly/Half Yearly Payments, within seven (07) days of notification to do by the Modaraba, shall entitle the Modaraba at its discretion to proceed to enforce the security interest in the Musharakah Asset(s) and our Current/Fixed Assets for recovery of the amounts due to the Modaraba under the Musharakah Agreement and the Monthly/Quarterly/Half Yearly Payment Agreement, including the remaining Musharakah Units and accrued and unpaid Monthly/Quarterly/Half Yearly Payments, if applicable, plus any costs, taxes and other dues payable and applicable to the Musharakah Asset(s).

Schedule of Outstanding Buyout Prices

For and on behalf of
Customer

Witnesses: 1. _____
2. _____