

مُشَارَكَة

**MUSHARAKAH**

**THIS MUSHARAKAH AGREEMENT**

(the "Agreement") is made at \_\_\_\_\_ on \_\_\_\_ day of \_\_\_\_\_ by and

**BETWEEN**

\_\_\_\_\_ Limited, a duly incorporated company having its registered office at \_\_\_\_\_ hereinafter referred to as “the Client” (which expression shall wherever the context so requires or permits mean and include its successors-in-interest and assigns) of the ONE PART

**AND**

\_\_\_\_\_ Modaraba having its registered office at \_\_\_\_\_ hereinafter referred to as “the Modaraba” (which expression shall wherever the context so requires or permits mean and include its successors-in-interest and assigns) of the OTHER PART:

IT IS AGREED BY THE PARTIES as follows:

**1. PURPOSE AND DEFINITIONS**

**1.01** This Agreement sets out the terms and conditions upon and subject to which the Modaraba has agreed to finance the Client by way of Musharakah investment.

**1.02** In this Agreement, unless the context otherwise requires:

**"Business Day"** means a day, on which the offices of the Modaraba are open for normal business in Pakistan,

**"Client's Investment"** mean is defined in clause 4 (ii),

**"Financial Statements"** shall mean the client's Balance Sheet, Profit & Loss Account, Cash Flow statement and statement of changes in equity.

**"Modaraba's Investment"** is defined in Clause 2,

**"Musharakah Capital"** means the sum of Client's Investment, Modaraba's Investment and the other PLS Funds, if any;

**"NBFCs"** means non-banking finance companies as licensed from time to time by SECP;

**"Other PLS Funds"** is defined in clause 4(iii)

**"Parties"** means the parties to this Agreement,

**"Principal Documents"** means this Agreement, and the Security Documents,

**"Prudential Regulations"** means Prudential Regulations or other regulations notified from time to time by the concerned regulatory authorities.

**"Security Documents"** means such deeds and documents as the Modaraba may require the Client to furnish or execute under this Agreement.

**"Security"** is defined in Clause 16.

**"Rupees"** or **"Rs."** means the lawful currency of Pakistan

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

**"Written Request"** means request by the Client to the Modaraba.

2. The Modaraba hereby agrees at written request of the Client to provide financing up to a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) on the terms and conditions hereinafter contained (which financing is hereinafter referred to as "Modaraba's \_\_\_\_\_ Investment").

3. This Agreement shall be valid for a period of \_\_\_\_\_ years from the date of first disbursement of the Modaraba's Investment.

4. The Client and the Modaraba hereby mutually agree and covenant as under:

i) The Modaraba's Investment shall be used only for [insert description of purpose of the Musharakah Investment] and shall not be used and / or diverted for any other purpose;

ii) The investment of the Client for the purpose of this Agreement aggregate to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as on \_\_\_\_\_ as per details given in Annexure 'A' to this Agreement (**Client's Investment**);

iii) The Client has obtained following funds from various sources on Profit and Loss Sharing basis all of which are hereinafter referred to as "other PLS Funds";

\_\_\_\_\_  
\_\_\_\_\_

iv) The Client shall not make any change in its paid up capital, accumulated reserves or un-appropriated profits, except on the basis of annual audited accounts, and shall also not, without prior written consent of the Modaraba (which consent shall not be unreasonably withheld) make any additional borrowing or accept any further funds on Profit and Loss Sharing basis either for short term or

long term from any source. The Client shall also not, without the prior written consent of the Modaraba, repay, earlier than the repayment schedule already agreed to, any other PLS Funds;

v) The Client shall not declare any dividend without the prior consent in writing of the Modaraba;

vi) The Client hereby covenants with the Modaraba that on the basis of past experience, data available with the Client and reasonable and prudent expectations about future plans of the Client, it is expected that after adding the Modaraba's Investment to the Client's investment, the projected pre-tax annual profit of the Client hereafter shall be \_\_\_\_\_ % p.a. (\_\_\_\_\_ percent per annum) of the total of investments of (a) the Client, (b) the Modaraba and (c) other PLS Funds. The aforesaid profit percentage is hereinafter referred to as the "Projected Rate of Return" of the Client;

vii) It is hereby expressly agreed that the Client may avail the Modaraba's Investment as and when required, provided the outstanding amount of the Modaraba's Investment at any time shall not exceed the amount specified in clause 2 hereof;

viii) The Client shall perform all acts and fulfill all legal requirements, which may at any time and from time to time be necessary to implement this Agreement. The Client shall also execute all documents and furnish all information which the Modaraba may at any time require from the Client;

ix) The Client shall furnish to the Modaraba within one month of the end of each quarter of its accounting year, a report of its operations and statements of financial affairs and any other information in such form as may be devised by the Modaraba from time to time;

x) Based on the Projected Rate of Return the Client shall pay at the end of each quarter of its accounting year to the Modaraba its share of profit worked out in accordance with the formula specified in **Annexure-I**;

xi) Payments under sub clause (x) above shall be treated as provisional to be adjusted on final accounts being prepared for the whole accounting year in accordance with clause 5.

## **5. Financial Statement Assessment.**

i) At the end of each accounting year of the Client, Financial Statements shall be prepared based on accounting policies consistently applied, in accordance with the International Accounting Standards as applicable in Pakistan. Any changes in

accounting policies of the Client shall require prior written approval of the Modaraba.

**ii)** Upon finalization of the annual Financial Statements in the manner provided in clause (i) above, the pre-tax net profits for that year shall be allocated among the Modaraba, Other PLS Funds and the Client on the basis of ratio of profit sharing stipulated in Annexure-II and subject to such conditions as contained therein. The amount so allocated is and shall be deemed to be the due share of profit of the Modaraba. All quarterly payments made by the Client to the Modaraba shall be deducted from the final payment to be made to the Modaraba.

**iii)** In the event of annual Financial Statements of the Client, showing a loss the same shall be shares by the Modaraba, the Client and other PLS funds in proportion to their respective shares in the Musharakah Capital. The amount of such loss shall be either paid by the respective parties into the Musharakah Capital or shall be deducted from the Musharakah Capital at the option of the respective party.

**6.** The Client shall submit to the Modaraba its audited Financial Statements within four months from the end of its accounting year duly audited by a firm of auditors approved by the Modaraba.

**7.** At the expiry of this Musharakah Agreement or its earlier termination as provided for in this Agreement, the Client shall redeem the Modaraba's Investment and any unpaid share of Modaraba's profit.

**8.** Where the Musharakah under this Agreement is for a period of \_\_\_\_\_ years, the Modaraba shall have the right to convert into the shares of the Client the full amount of its investment outstanding at the time of such conversion. Such conversion shall, be at the Market\* Value of the shares of the Client. Where Modaraba's entitlement under the above valuation results in a fraction of a share, fractions of half or more shall be taken as one and fractions of less than half shall be ignored.

Provided that the Modaraba shall exercise its right under this clause only if the Client has achieved, during any three previous years of the currency of this Agreement, an average profit of less than 2/3rd of the mutually agreed Projected Rate of Profit. Provided further that whenever the Modaraba decides to sell the shares acquired by it under this clause, the existing shareholders of the Client (other than the Modaraba), shall have the first right of refusal to purchase the same at a price at which the Modaraba wishes to sell them.

**9.** The Client shall issue the letters of allotment of shares as mentioned hereinabove within thirty days of demand by the Modaraba and these shares may be of any class of shares of the Client as mutually agreed and the Modaraba shall have equal rights as enjoyed by other share holders holding shares of the same class including right of voting, transferring, subscription for right issue, bonus issue, dividends etc., under the law governing joint stock companies.

**10.** Subject only to the express terms of this Agreement, management and control shall primarily vested in the Client and the Client shall be responsible for the management and control of the business except when option under clause 8 or 9 above has been exercised. Provided that the Modaraba shall have the option in its sole discretion to nominate one or more persons on the Board of Directors of the Client.

**11.** This Agreement shall not be deemed to create a partnership or company and in no event has the Client any authority to bind the Modaraba. In no event shall the Modaraba be liable for the debts and obligations of the Client incurred for other purposes, except as stipulated in this Agreement.

**12.** In the event of the Client making default in:

i) Payment of due share of profit,

ii) Redemption of Modaraba's investment on the expiry/termination of the Musharakah, or

iii) Performance of any of the covenants under this Agreement provided such default remains un-rectified for a period of \_\_\_days from the date of notice served by the Modaraba, the Modaraba shall have the right to dispose of the securities defined in clause 16 hereto and adjust the sale proceeds thereof towards the amounts receivable by it.

**13. Penalty.**

i) Where any amount is required to be paid by the Client under the Principal Documents on a specified date and is not paid by that date, or an extension thereof, permitted by the Modaraba without any increase in the amount payable, the Client hereby undertake to pay directly to the Charity Fund approved by the Modaraba, a sum calculated @ \_\_\_% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Modaraba, exclusively for the purposes of approved charity.

ii) In case

(a) any amount(s) referred to in clause 13.01 above, including the amount undertaken to be paid directly to the Charity Account, by the Client, is not paid by him, or

(b) the Client delays the payment of any amount due under the Principal Documents and/ or the payment of amount to the Charity Fund as envisaged under Clause 13.01 above, as a result of which any direct or

indirect costs are incurred by the Modaraba, the Modaraba shall have the right to approach a competent Court.

(c) for recovery of any amounts remaining unpaid as well as

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

- iii) The Modaraba, with the approval of the Board of Directors shall forward the proceeds to charity for its onward distribution among approved charitable/religious/welfare institutions.
- iv) The account for charity shall be separately maintained and audited, and be disclosed separately in the financial statements of the Modaraba.

#### **14.**

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

ii) The Modaraba may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Modaraba in relation to this Agreement such information about the Client as the Modaraba shall consider appropriate.

#### **15. FORCE MAJEURE**

Any delays in or failure by a Party hereto in the performance hereunder if and to the extent it is caused by the occurrences or circumstances beyond such Party's reasonable control, including but not limited to, acts of God, fire, strikes or other labor disturbances, riots, civil commotion, war (declared or not) sabotage, any other causes, similar to those

herein specified which cannot be controlled by such Party. The Party affected by such events shall promptly inform the other Party of the occurrence of such events and shall furnish proof of details of the occurrence and reasons for its non-performance of whole or part of this Agreement. The parties shall consult each other to decide whether to terminate this Agreement or to discharge part of the obligations of the affected Party or extend its obligations on a best effort and on an arm's length basis.

**16.**

**i)** The Modaraba shall, with mutual consent of the parties hereto, obtain security for redemption of the Modaraba's Investment together with profit and / or all other sums receivable by the Modaraba as aforesaid after adjustment of losses (if any). The Client hereby agrees and undertakes to give the following security, the terms and conditions of which shall be such as the Modaraba may determine to secure its priority over other creditors of the Client:

- a)** Mortgage
  - b)** Hypothecation
  - c)** Pledge
- and / or such other securities as the Modaraba may require.

**ii)** In case any other creditor of the Client claims or secures or attempts to secure lowering of the Modaraba's priority over the security or in case of defalcation by the Client, the Modaraba shall have a right to terminate the Agreement forthwith. The securities obtained by the Modaraba will be kept fully insured at the Client's cost and expenses through a reputable company offering protection under the Islamic concept of Takaful. Until Islamic concept of insurance is available, the secured assets shall be comprehensively insured with a reputable insurance company to the satisfaction of the Modaraba against all insurable risks.

**17.**

**i)** No failure or delay on the part of the Modaraba to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor a 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 Agreement are cumulative and are not exclusive of any remedies provided by law;

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

**iii)** This Agreement is governed by and shall be construed in accordance with Pakistan law. All competent courts at \_\_\_\_\_ shall have the non-exclusive

jurisdiction to hear and determine any action, claim or proceedings arising out of or in connection with this Agreement.

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

v) Any reconstruction, division, re-organization or change in the constitution of the Modaraba or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights hereunder.

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

vii) 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 the case of an unquoted company, it shall be the higher of the break-up or face value.

**IN WITNESS WHEREOF** the Client and the Modaraba have executed this Agreement on the day, month and year hereinabove mentioned.

**WITNESSES SIGNATURES**

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1. Signature \_\_\_\_\_

2. Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

NIC No. \_\_\_\_\_

NIC No. \_\_\_\_\_

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

(Authorized signatures)

(Authorized signatures)

Common Seal

Common Seal

For and on behalf of

For and on behalf of

**Annexure-I**

**BASIS OF PROVISIONAL PAYMENT TO THE MODARABA  
(All Figures are Illustrative)**

|           |  | <b>Agreed Ratio<br/>For Profit<br/>Sharing</b> | <b>Rupees</b>  |
|-----------|--|--|----------------|
| <b>A)</b> | Client's investment  | 70%  | Rs. 100        |
| <b>B)</b> | Modaraba's investment  | 30%  | <u>Rs. 100</u> |
| <b>C)</b> | Total Investment (A+B)   |  | <u>Rs. 200</u> |
| <b>D)</b> | Agreed Projected Rate of Return on Total Investment                                    | 60%  |                |
| <b>E)</b> | Projected amount of Profit on total investment   |  | Rs. 120        |
| <b>F)</b> | Allocation of Projected Profit in mutually agreed profit sharing                       |  |                |
|           |  |  |                |
|           | <b>Ratio of:</b>   |  |                |
|           | Client   | 70%  | Rs. 84         |
|           | Modaraba   | 30%  | <u>Rs. 36</u>  |
|           |  |  | <u>Rs. 120</u> |
| <b>G)</b> | Quarterly provisional payment of projected Profit<br>$36/4 = \text{Rs. 9}$ per quarter |  |                |
| <b>H)</b> | Allocation of actual net profit of Rs. 160 on year end:                                |  |                |
|           | Client   |  | Rs. 112        |
|           | Modaraba   |  | <u>Rs. 48</u>  |
|           |  |  | <u>Rs. 160</u> |
| <b>I)</b> | Therefore, final net payment to the Modaraba will be Rs. 12 (Rs. 48 - Rs. 36)          |  |                |

**Based on the projected rate of Return stipulated in Clause 4(vi)**

**PARAMETERS AGREED**

**I) Ratio of sharing of Profit (Ratios indicative only)**

|                 |     |
|-----------------|-----|
| Modaraba        | 18% |
| Client          | 70% |
| Other PLS Funds | 12% |

**II) Other Conditions, if any**

(For example, relating to valuation of inventories, depreciation policies, agreed level or quantum of admissible costs etc.)