

In the name of Allah, the Merciful, the Compassionate

**MUSHARAKAH AGREEMENT
FOR PURCHASE OF ASSET (S)**

THIS MUSHARAKAH AGREEMENT is made at _____ this _____ day of _____ 200__ (the “Agreement”) and is made

BY AND BETWEEN

_____ **Modaraba (Name)** floated under the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 and managed by _____, 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 _____ 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”)

WHEREAS the Customer wishes to enter into a Musharakah Agreement, with the Modaraba for the purchase of certain asset(s) (as defined hereunder).

AND WHEREAS the Modaraba has agreed to enter into a Musharakah Agreement on the terms, conditions and undertakings contained herein.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES as follows:

1. **PURPOSE**

1.1 This Agreement sets out the terms and conditions upon and subject to which the Modaraba and the Customer have agreed to enter into a Musharakah Agreement.

2. **DEFINITIONS**

2.1 In this Agreement, unless the context otherwise requires, the following words shall have the meanings assigned to them hereunder:

“Asset(s)” Means the Musharakah Property i.e Fixed Asset(s), Property(s), Vehicle(s), Plant & Machinery, Equipments etc. purchased under Musharakah Agreement (Appendix ‘A’).

“Modaraba’s Musharakah Share” Means the share of the Modaraba in the Musharakah as appearing in Appendix ‘B’ hereto;

“Business Day” Means a day on which the offices of the Modaraba are open for business in Islamic Republic of Pakistan;

“Customer’s Musharakah Share” Means the share of the Customer in the Musharakah as appearing in Appendix ‘B’ hereto;

“Effective Date” Means the date of execution of this Agreement or the date on which the Modaraba disburses any amount out of the Modaraba’s Musharakah Share, which ever is later;

“Event of Default” Means any of the events or circumstances described in Clause 11 hereto;

“Musharakah” Means the arrangement between the Modaraba and the Customer where by the Modaraba makes payment in the acquisition of the Musharakah Asset(s) jointly for the purpose of allowing the Asset(s) to be used by the Customer in terms of this Agreement.

“Musharakah Asset(s)” Means the Asset(s) purchased with the participation of the Modaraba and the Customer in accordance with the terms of this Agreement details whereof appear in Appendix “A” hereto.

“Taxes” Means and includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together including without limitation stamp duty, registration charges, and levies with delayed payment charges thereon and penalties in respect thereof and “Taxation” shall be construed accordingly;

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

3. **MUSHARAKAH**

3.1 The Parties have agreed to contribute their respective share of investment towards the Musharakah.

3.2 The respective Modaraba’s Musharakah Share and the Customer’s Musharakah Share will be set out in Appendix ‘B’ hereto and the Modaraba’s investment in the Musharakah may be made available to the Customer in one or more tranches in accordance with the terms and conditions of purchase of the Musharakah Asset(s) between the Customer and the seller of the Musharakah Asset(s).

4. **PURCHASE OF MUSHARAKAH ASSET(S)**

4.1 It is agreed that the Customer shall, subject to compliance with the conditions precedent specified in Clause 10 below, purchase the Musharakah Asset(s) from the seller in the name of the **Modaraba / Customer** and the Modaraba shall make available its investment in the Musharakah to the Customer or his nominee for the purpose of completing the sale in the name of the **Modaraba / Customer** on its own behalf and on behalf of the Musharakah.

4.2 The Customer shall be responsible for checking the specifications, conditions and all other matters relating to the Musharakah Asset(s), including ensuring proper legal, marketable title and possession to be obtained from the seller.

5. **FEES AND EXPENSES**

5.1 The Customer shall pay all duties and taxes imposed on, or which arise in connection with, any agreement or other document executed in respect of the purchase of the Musharakah Asset(s).

5.2 Subject to Clause 5.3 below, the Customer shall pay all types of Taxes in respect of the Musharakah Asset(s) during the entire term of Musharakah.

5.3 The Modaraba and Customer shall jointly pay, commensurate with their respective share in the Musharakah Asset(s), Taxes and Insurance charges relating to and/or in respect of the Musharakah Asset(s), during the entire Term.

6. **PAYMENT AND ACCOUNTS**

6.1 All payments to be made by the Customer under this 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.

6.2 When any payment would otherwise be due on a day which is not a Business Day, the payment will be made on the next following Business Day.

6.3 If at any time, the Customer is required to make any deduction or withholding in respect of Taxes from any payment to the Modaraba under this Agreement, it shall promptly deliver to the Modaraba any receipts, certificates or other, proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

6.4 In the event of occurrence of an Event of Default, or otherwise a default in respect of the payment of any amounts due under this Agreement, the Customer hereby undertakes to pay to the Charity Fund an amount on such outstanding amounts remaining unpaid at the rate of ____% P.A. for each day that such default continues. Such additional amounts 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 Bank, at its absolute discretion.

7. **MODARABA'S REPRESENTATIONS AND WARRANTIES**

7.1 The Modaraba warrants and represents that:

a) It is a Modaraba floated under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 and licensed to carry on the businesses as prescribed in its Prospectus.

b) It has full legal right, power and authority to enter into, execute and deliver this Agreement and to perform the transactions set forth herein;

c) All requisite corporate approvals and consents have been obtained to enable it to enter into _____ and perform its obligations under this Agreement.

8. **CUSTOMER'S REPRESENTATIONS AND WARRANTIES**

8.1 The Customer warrants and represents that:

a) The Customer has the power to execute, deliver and perform his/her obligations under this Agreement and that this Agreement constitutes valid and legally binding obligations of the Customer enforceable in accordance with its terms;

b) The execution, delivery and performance of this Agreement and any incidental agreement, instrument or undertaking by the Customer will not **(i)** contravene any existing law, regulations or authorization to which the Customer is subject or **(ii)**

result in any breach of or default under any agreement or other instrument to which the Customer is a party or is subject to;

- c) There are no suits or proceedings pending, or to the knowledge of the Customer threatened, the adverse determination of which may have a material effect on the financial condition of the Customer or may impair the ability of the Customer to perform any of its obligations or affect the enforceability of this Agreement;
- d) No litigation, arbitration or administrative proceeding is pending or threatened against the Customer; and
- e) No event or circumstances which constitute or which with the giving of notice or lapse of time or both would constitute an Event of Default has occurred and is continuing.

9. **UNDERTAKINGS**

9.1 The Customer undertakes with the Modaraba that during the Term of this Agreement:

- a) Subject to Clause 5.3, the Customer shall pay all Taxes applicable to the Musharakah Asset(s), and other dues of all governmental authorities.
- b) The Customer shall inform the Modaraba of any Event of Default or any event, which with the giving of notice or lapse of time or both would constitute an Event of Default forthwith upon becoming aware thereof;
- c) The Customer shall provide the Modaraba with such financial and other information concerning his affairs as the Modaraba may from time to time reasonably require;

10. **CONDITIONS PRECEDENT**

10.1 The Customer agrees that the obligation of the Modaraba to provide the Modaraba's Musharakah Share is subject to the conditions that:

- a) Duly executed versions of this Agreement, and the security documents to be obtained in accordance with Clause 13 herein below and such other documents as may be related or incidental to the terms of this financing arrangement have been received by the Modaraba to the satisfaction of the Modaraba ;
- b) All duties, fees, commissions, expenses and Taxes required to be paid by the Customer to the Modaraba in respect of any transaction have been received by the Modaraba;
- c) All such documents, approval, consents and the like as have been reasonably requested by the Modaraba in connection with any transaction have been received by the Modaraba;
- d) The Modaraba has confirmed in writing that it is satisfied with the nature, type, value, title and documentation requirements of the Musharakah Asset(s), based inter alia upon legal opinions and valuation reports obtained by the Modaraba directly or through the Customer, at the cost of the Customer.

11. **EVENTS OF DEFAULT**

11.1 There shall be an Event of Default if:

- a) The Customer fails to pay any sum payable by it under this Agreement when due; or
- b) The Customer defaults in the due and punctual performance of any other provision of this Agreement (if such default is in the opinion of the Modaraba capable of remedy) such default shall not have been remedied within twenty one (21) days of the Modaraba notifying the Customer of such default; or
- c) Any representation or warranty made or deemed to be made or repeated by the Customer in or pursuant to this Agreement or in any document delivered under this Agreement is or proves to have been incorrect in any material respect;
- d) The commencement of proceedings for bankruptcy of the Customer; or
- e) The Customer stops or suspends payment of its debts or is unable or admits inability to pay its debts as they fall due or proceedings are commenced in relation to the Customer under any law, regulation or procedure; or
- f) The Musharakah Asset(s) ceases to be in the actual physical occupation of the Customer for any reason, without the express written consent of the Modaraba;
- g) The title of the Musharakah Asset(s) and/or the security interest of the Modaraba is in jeopardy in the reasonable opinion of the Modaraba.

11.2 The Modaraba may, without prejudice to any of its other rights, at any time after the happening of an Event of Default, by notice to the Customer, terminate this Agreement.

12. **INDEMNITIES**

12.1 The Customer shall indemnify the Modaraba against expense which the Modaraba shall certify as rightly incurred by it as a consequence of any default in payment by the Customer of any sum under this Agreement when due.

13. **SECURITY**

13.1 As security for the performance of the Customer's obligations in accordance with the terms of this Agreement, the Customer will create a charge on its Current /Fixed Assets in favor of the Modaraba and execute the Demand Promissory Note set out in Appendix "C" hereto on the Effective Date.

13.2 The Customer hereby agrees to obtain insurance coverage from a reputable insurance company offering protection under the Islamic concept of Takaful. Until the Islamic concept of Takaful is available, the Musharakah Asset(s) shall be insured with a reputable insurance company against all relevant insurable risks such as loss, damage or destruction of the Musharakah Asset(s). Such insurance shall be in the name of the Modaraba as the loss payee thereof and shall remain valid and effective for the entire Term. However it is agreed that in the event of a claim being lodged under the insurance policy, the proceeds thereof shall be shared between the Modaraba and the

Customer in accordance their respective shares in the Musharakah. All costs and expenses incurred in respect of such insurance of the Musharakah Asset(s) shall be shared by the Modaraba and the Customer in proportion to their respective shares in the Musharakah.

14. **SETOFF**

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 towards satisfaction of any sum then due and payable from the Customer to the Modaraba under this Agreement and the Monthly Payment Agreement.

15. **NOTICES AND OTHER MATTERS**

15.1 Every notice or other communication under this 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 Agreement). Every notice or other communication shall, subject as otherwise provided in this 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 Business Day.)

15.2 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 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 Agreement are cumulative and are not exclusive of any remedies provided by law.

16. **JURISDICTION**

16.1 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.

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

SIGNED by

For and on behalf of
Modaraba

WITNESSES

1. _____

2. _____

3. _____

APPENDIX 'A'

Description of the Musharakah Asset(s)

For and on behalf of
Modaraba

For and on behalf of
Customer

APPENDIX 'B'

Modaraba 's Musharakah Share:	Rs	Modaraba 's	% share
Customer's Musharakah Share:	Rs	Customer	% share

For and on behalf of
Modaraba

For and on behalf of
Customer

APPENDIX 'C'

Promissory Note in favor of the Modaraba as per Clause 13 of the Agreement

Rs. _____ Date _____ :

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

Name of Executants (s)
