

INVESTMENT AGENCY AGREEMENT

BY AND BETWEEN

(Investment Agent)

And

Participant 1 _____

Participant 2 _____

Participant 3 _____
(each a Participant)

By

[Client – Borrower]

Investment Agency Agreement

This Investment Agency Agreement is entered into at _____ on _____ (this “**Agreement**”)

by and between:

_____ ,
managed by _____, 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)

and

The Participants being the banks and financial institutions listed in Schedule 1 attached hereto (hereinafter collectively referred to as the “**Participants**” and individually as an “**Participant**”)

(The Investment Agent and the Participants are hereinafter collectively referred to as the “**Parties**”)

Whereas:

- a. Client/borrower has invited the Participants to enter into a Musharakah and the Participants upon the evaluation and assessment of the Musharakah Project have resolved to enter into a Musharakah with Client/borrower, through the Investment Agent.
- b. The Participants have requested [**Major Participant’s Name**] to act as the Investment Agent of the Participants in respect of the Musharakah and to do all acts necessary for investment by the Participants in the Musharakah and for safeguarding the interests of the Participants in respect of their investments in the Musharakah and in respect thereof to also safeguard the interests of the Participants.
- c. [**Major Participant’s Name**] has agreed to act as the Investment Agent, all in accordance with the terms and conditions of this Investment Agency Agreement.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed and declared as under:

ARTICLE 1 INTERPRETATION

Section 1.1 Additional Definitions

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

- 1.1.1. **“the Syndicate Musharakah Agreement”** means transaction document.
- 1.1.2. **“Affiliate”** means, as to any person, any other person which, directly or indirectly, is in control of, is under the control of, or is under common control with, that person; **control** for this purpose means the power to direct the management of an entity, whether by the ownership of share capital, voting rights, contract or otherwise;
- 1.1.3. **“Agent”** means the Investment Agent;
- 1.1.4. **“Commitment”** means, in relation to an Participant at any time and save as otherwise provided herein, the amount set opposite the name of such Participant in Column 3 of Schedule 1;
- 1.1.5. **“Contribution”** means a contribution made or to be made by an Participant under this Agreement which shall constitute that Participant's pro rata ownership (as principal) of the Units held by the Investment Agent;
- 1.1.6. **“Contribution Request”** means a request by the Investment Agent to the Participants substantially in the form of the request attached hereto as Schedule 2;
- 1.1.7. **“Liability”** means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis;
- 1.1.8. **“Majority Participants”** means:
- (a) if there is no disbursed Contribution, an Participant or Participants whose commitment to provide Contributions (as set out in Schedule 1) aggregate more than 66.67 per cent. of the total of such commitments; or
 - (b) at any other time, an Participant or Participants whose Contribution aggregate more than 66.67 per cent. of all Contributions;
- 1.1.9. **“Musharakah Agreement”** means the Musharakah Agreement dated on or about the date hereof and entered into between the Issuer and the Investment Agent as partners;

1.1.10. **“Percentage”** means, in relation to the Participants, the percentage set opposite such Participant's name in Column 4 of Schedule 1;

1.1.11. **“Payments”** means any payment made or owing under any Transaction Document by Client/borrower and remitted to or received by the Investment Agent (in its capacity as such) for onward payment to the Participants pursuant to this Agreement;

1.1.12. **“Security Documents”** means:

- (a) the Memorandum of Deposit of Title Deeds;
- (b) the Deed of Floating Charge; and
- (c) any other instrument or document designated as a “Security Document”;

1.1.13. **“Transfer Date”** means the date on which the Investment Agent certifies confirms that is has received a duly executed Transfer Certificate; and

ARTICLE 2 INVESTMENT AGENT

Section 2.1 Appointment of the Investment Agent

2.1.1 The Participants hereby irrevocably appoint the Investment Agent as their agent for the purposes set out in this Agreement and hereby authorize and instruct the Investment Agent to:

- (a) take such action on behalf of the Participants and to exercise such rights, remedies, powers and discretions as are specifically delegated to the Investment Agent by this Agreement, together with such powers and discretions as are reasonably incidental thereto;
- (b) receive amounts in respect of the Musharakah and to thereafter distribute the same to the Participants;
- (c) to enter into the Transaction Documents on behalf of the Participants and to exercise all rights, remedies, powers and discretions granted therein;
- (d) to hold the benefit of the Security for and on behalf of and in trust for the Participants;
- (e) to hold the benefits arising from the Trust Assets for and on behalf and in trust for the Participants; and

- (f) to issue notices and make claims and demands on Client/borrower and / or any other third party in relation to the Musharakah, pursuant to the Transaction Documents;
- (g) to do all such acts as may be necessary and / or incidental for safeguarding the interests of the Participants in relation to each Participants investment in the Musharakah.

ARTICLE 3 CONTRIBUTIONS

Section 3.1 Payment of Contributions

Upon receipt of a Contribution Request from the Investment Agent specifying each Participant's Contribution (being its Percentage of the cash capital contribution to the Musharakah) and the Settlement Date, each Participant shall pay its Contribution directly into the account specified in the Contribution Request for value on the Settlement Date and shall confirm to the Investment Agent its payment instructions relating to such payment by no later than [▪] am / pm Pakistan time on the Settlement Date.

Section 3.2 Right to participation in Payments

Upon the payment of its Contribution, a Participant shall be entitled to share *pro rata* in amounts paid to the Investment Agent in respect of the Payments.

Section 3.3 Participants' rights and obligations

- 3.3.1 The obligations of each Participant under the Transaction Documents are several. Failure by a Participant to perform its obligations under the Transaction Documents does not affect the obligations of any other party under the Transaction Documents. No Participant is responsible for the obligations of any other Participant under the Transaction Documents.
- 3.3.2 The rights of each Participant under or in connection with the Transaction Documents are separate and independent rights and any liability arising under the Transaction Documents to a Participant from Client/borrower shall be a separate and independent Liability.
- 3.3.3 Unless expressly provided otherwise in a Transaction Document, no Participant shall have any independent right to enforce any of the Transaction Documents or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to any of the Transaction Documents or otherwise have direct recourse to (if any) any security and/or guarantees or other assurances constituted by any of the Transaction Documents, except through the Investment Agent.

ARTICLE 4 PAYMENTS

Section 4.1 Payments by the Participants

The Contributions and any other sums to be paid by the Participants to the Investment Agent pursuant to this Agreement shall be made available in PKR no later than _____ on the transfer date to such account as the Investment Agent shall notify the Participants for this purpose.

Section 4.2 Payments by the Investment Agent; limited recourse

- 4.2.1 The Investment Agent will pay the Participants their *pro rata* proportions of the Payments on the dates and otherwise on the terms described in this Article 4.
- 4.2.2 The Investment Agent shall specify to Client/borrower the account or accounts agreed in writing by the Investment Agent for the payment of all Payments.
- 4.2.3 If, notwithstanding such specification and any other provision of this Article 4, any Payments are received by the Investment Agent, the Investment Agent shall promptly notify the Participants of the same and such Payments shall be held for payment or applied in accordance with the instructions of the Participants in accordance with this Agreement.

Section 4.3 Limited recourse nature of obligation

The Investment Agent's obligation to make payments to the Participants under this Agreement is conditional upon its receiving the applicable Payment from Client/borrower pursuant to the Transaction Documents. Subject to Section 5.4(b), none of the Participants shall have any recourse to the Investment Agent if Client/borrower fails to make any such Payment. In particular, but without limitation, the Investment Agent shall not have any obligation to pay any amount by reference to the Contributions except to the extent that the Investment Agent has received such corresponding Payment, it being acknowledged and agreed by the Participants that the credit risk assumed by the Participants in relation to their participation under this Agreement is that of Client/borrower.

Section 4.4 Corresponding payments

Notwithstanding that the Investment Agent's obligation to make payment of any sum under this Agreement is conditional upon it receiving the corresponding Payment from Client/borrower pursuant to the provisions of the Transaction Documents, the Investment Agent may assume that the applicable Payment will be made when due and may (but shall not be obliged to) make payments of such sums to the Participants. If it transpires that such Payment was not made to the Investment Agent, then the Participants shall on request refund such sum to the Investment Agent.

Section 4.5 Payments to Participants

Whenever the Investment Agent is satisfied that:

- (a) it has actually received a payment in respect of a Payment; and
- (b) it is entitled to apply the amount received in accordance with this Agreement;

it shall promptly pay to each Participant its Percentage of the Payment.

ARTICLE 5 ROLE OF THE INVESTMENT AGENT

Section 5.1 Authority of the Investment Agent

The Investment Agent shall (i) exercise any right, power, authority or discretion vested in it as the Investment Agent in accordance with any instructions given to it by the Majority Participants (or, if so instructed by the Majority Participants, refrain from exercising any right, power, authority or discretion vested in it as an Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Participants.

Section 5.2 Liability of the Investment Agent

The Investment Agent shall not:

- (a) be obliged to enquire whether any Termination Event has occurred unless it has actual knowledge thereof or has been notified in writing thereof by an Participant, in which case the Investment Agent shall promptly notify the Participants of the relevant event or circumstance; or
- (b) be liable to any Participant for any action taken or omitted by it under or in connection with any of the Transaction Documents unless caused by its gross negligence or willful misconduct.

Section 5.3 Investment Agent as Participant

In its capacity as a Participant, the Investment Agent has the same rights and powers under each of the Transaction Documents as any other Participant. The Investment Agent may exercise these rights and powers as though it were not performing the duties and functions delegated to it under this Agreement.

Section 5.4 Appraisal by Participants

5.10.1 It is understood and agreed by each Participant that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of Client/borrower and, accordingly, each Participant warrants to each of the other Parties that it has not relied on and will not at any time rely on any such Party

Section 5.5 Change in Investment Agent

9.4.1 The Investment Agent may, and if so directed by the Majority Participants shall, resign by giving at least 30 days' notice to the Participants. The Investment Agent may nominate one of its Affiliates as successor Investment Agent and the Participants shall appoint such Affiliate as successor Investment Agent upon receipt of a notice of resignation from the Investment Agent. Failing such nomination by the Investment Agent, the Participants shall appoint as successor Investment Agent:

ARTICLE 6 MISCELLANEOUS

Section 6.1 Jurisdiction

6.1.1 The courts of the Islamic Republic of Pakistan have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement and the Parties submit to the exclusive jurisdiction of such courts.

6.1.2 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.

[EXECUTION PAGE]

Schedule 1 The Participants' Commitments and Percentages

Participants	Address and notice details	Commitment (PKR)	Percentage (%)

Schedule 2 Form of Contribution Request

To: [Name of each Participant]

From: **[Major Participant's Name]** as Investment Agent

Date: [•]

Dear Sirs,

Investment Agency Agreement entered into between, amongst others, ourselves (as Investment Agent) and certain banks and financial institutions as Participants dated [•] (the Agreement)

- 1 We refer to the Agreement. Terms defined in the Agreement have the same meaning herein.
- 2 This is a Contribution Request.
- 3 Pursuant to Article 3 of the Agreement, please make your Contribution as follows:

Settlement Date:

Payment instructions:

To be deposited in to Account Number:

Maintained with [•]

(Authorized Signatory)
for and on behalf of
[Major Participant's Name]
as Investment Agent