

إِجَارَه

**IJARAH**

**THIS IJARAH (LEASE) AGREEMENT**

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

**BETWEEN**

\_\_\_\_\_,(hereinafter referred to as the "Lessee" which expression shall where the context so permits mean and include its successors in interest and permitted assigns) of the one part

**AND**

\_\_\_\_\_,(hereinafter referred to as the "Lessor" which expression shall where the context so 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 Lessor has, acting on the Written Request of the Lessee which is attached as Lease Document # \_\_\_\_ of this Agreement, acquired/beneficially acquired the requested assets and have agreed to Lease the same to the Lessee;

**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;

**"Due Date(s)"** means the respective dates for the payment of the lease rentals as stated in the Appendices or if such respective due date is not a Business Day, the next Business Day;

**"Event of Default"** means any of the events or circumstances described in Clause 14 hereto;

**"Indebtedness"** means any obligation of the Lessee for the payment or any sum of money due or, payable under this Agreement;

**"Leased Assets"** means Assets that are subject to Lease under this Agreement, more particularly described in Lease Document # \_\_\_\_;

**"Lessee"** means the Client;

**“Lessor”** means the Institution and is defined in the preamble;

**“License”** means any license, permission, authorization, registration, consent or approval granted to the Lessee for the purpose of or relating to the conduct of its business;

**“Lien”** shall mean any mortgage, charge, pledge, hypothecation, security interest, lien, right of set-off, contractual restriction (such as negative covenants) and any other encumbrance;

**“Principle Documents”** means this agreement and all other documents relating to collateral(s) provided by the lessee.

**“Promissory Note”** is defined in Clause 4.01(b);

**“Prudential Regulations”** means Prudential Regulations or other regulations as are notified from time to time by SECP;

**“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;

**“Security Documents”** and **“Security”** is defined in Clause 4.01;

**“Secured Assets”** means all the Lessee’s [insert description of assets in respect of which charge/mortgage may be created];

**“Specified Location”** shall mean \_\_\_\_\_ or such other location as the Lessor may agree in writing;

**“Supplier”** means the Supplier from whom the Lessor acquires Title of the Assets for onward lease to the Lessee;

**“Taxes”** includes all present and future taxes (including central excise duty and sales tax), levies, imposts, duties, stamp duties, penalties, fees or charges of whatever nature together with delayed payment charges thereon and penalties in respect thereof and "Taxation" shall be construed accordingly;

**“Title”** means such title or other interest in the Assets subject to Lease under this Agreement;

**“Total Loss”** shall have the same meaning assigned to it in the policy of insurance where under the Leased Assets are insured and shall include such other terms in such policy that have a meaning analogous to the term Total Loss as generally understood;

**“Value Date”** means the date on which the Lease commences under this Agreement and is given in the Lease Document # \_\_\_\_;

**1.03** 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.

## **2. LEASE**

**2.01** The Lessor hereby leases to the Lessee and the Lessee hereby agrees to take on lease from the Lessor, the Leased Assets for the period stated herein upon the terms and conditions herein set forth.

**2.02** The Lessee covenants and agrees to pay the amount of Rs.[-----] to the Lessor on execution of this Agreement as a security deposit to be applied in the absolute discretion of the Lessor in respect of any rent in default under this Lease at any time or from time to time. The Lessee shall have no right of set off against such security deposit, but shall be entitled to the return of the said deposit after deduction of any **actual** costs, charges or expenses at the end of the term of this Lease.

## **3. TERMS AND PERIOD OF LEASE**

**3.01** The term of the Lease and the charges payable hereunder (hereinafter referred to as lease rental) with respect to the Leased Assets shall be as set-forth in the aforementioned Lease Document # \_\_\_\_ attached hereto. The lease rental shall be payable monthly/quarterly/semi-annually in advance/arrears on the day mentioned in the Lease Document # \_\_\_\_ during the term of the Lease.

**3.02** This Agreement or the lease hereunder in respect of the Leased Assets can be terminated only with the mutual consent of the parties hereto. Such termination shall take effect after ----- days from the date of parties' consent. This Agreement and all its terms and conditions shall, notwithstanding the termination of lease, continue in full force and effect until all obligations of the Lessee under this Agreement are discharged (including the obligation to return the Leased Assets to the Lessor in good operating condition in accordance with the provisions of this Agreement) and the payment of all sums due hereunder to the satisfaction of the Lessor.

#### **4. SECURITY**

**4.01** As security for the payment of the lease rentals as well as any other amount due under this Agreement and use of the Leased Assets as per conditions set out in this Agreement, the Lessee shall:

(a) Furnish to the Lessor a collateral(s), substantially in the form and substance attached hereto as Lease Document # \_\_\_\_\_ (the "\_\_\_\_\_");

(b) Execute such further deeds and documents as may from time to time be required by the Lessor for the purpose of more fully securing and or perfecting the security created in favour of the Lessor; and

(c) Create such other securities to secure the Lessee's obligations under the Principal Documents as the parties, hereto, may by mutual consent agree from time to time.

(The above are hereinafter collectively referred to as the "**Security**").

**4.02** In addition to above, the Lessee shall execute a demand promissory note in favour of the Lessor for the entire amount of the lease rentals (the "Promissory Note"); (The Security and the Promissory Note are hereinafter collectively referred to as the "Security Documents").

#### **5. FEES AND EXPENSES**

The Lessee shall pay to the Lessor on demand within 15 days of such demand being made, legal and other ancillary expenses incurred by the Lessor in connection with the negotiation, preparation and execution of the Principal Documents and of amendment or extension of or the granting of any waiver or consent under the Principal Documents.

#### **6. RENTAL**

**6.01** All payments to be made by the Lessee under this Agreement shall be made in full, without any set-off or counter claim whatsoever, on the due date and when the due date is not a Business Day, the next Business Day and save as provided in Clause 6.02, free and clear of any deductions or withholdings, to an account of the Lessor as may be notified from time to time, and the Lessee will only be released from its payment obligations hereunder by paying sums due into the aforementioned account;

**6.02** If at any time the Lessee is required to make any non refundable and non-adjustable deduction or withholding in respect of Taxes from any payment due to the Lessor under this Agreement, the sum due from the Lessee in respect of such payment shall be increased to the extent necessary to ensure that, after the making

of such deduction or withholding, the Lessor receives on the Payment Date, a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Lessee shall indemnify the Lessor against any actual losses or costs incurred by the Lessor by reason of any failure of the Lessee to make any such deduction or withholding. The Lessee shall promptly deliver to the Lessor original or copies of any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

- 6.03** (i) It is intended that the Rental payable by the Lessee should be calculated to provide return to the Lessor equivalent to the Bench Mark plus margin of [\_\_\_\_\_] (%) ("Margin"). "Bench Mark" shall mean Karachi Inter Bank Offer Rate ("KIBOR") for calculating the rentals, which will be set [\_\_\_\_\_] quarterly/biannually in respect of the Rental payable. The rentals stated in annexure A has been calculated at KIBOR prevailing on the date of the execution of the Lease Agreement.

In case of leases based on floating rentals, as and when KIBOR varies, the rentals stated in Annexure A to the Lease Agreement shall be revised and notified by the Lessor to the Lessee so that the future rentals reflects the Bench Mark (as defined above) plus Margin, provided that the maximum rate applicable to the revision of the rent after calculation by reference to the bench mark shall not exceed [\_%] per annum ("Ceiling") and minimum rate applicable for the revision of the rent shall not be less than [\_\_\_\_\_] (%) ("Floor" [\_\_\_\_\_] (%)).

In the event that the KIBOR is no longer available for any reason whatsoever, the Lessor may alter the Bench Mark by substituting another suitable mechanism / reference for the purpose of calculating the rentals.

(ii) The institution may revise **with the mutual consent** the Lease Rentals in cases where any cost relating to the Lease borne by the institution (including without limitation to insurance cost) increases to the extent to cover such increase in cost.

- 6.04 In the event of total loss of leased asset, the Ijarah contract will be terminated with immediate effect and payment of all future rentals will be stopped.**

## **7. DELIVERY**

- 7.01** The Leased Assets as set out in the Lease Document # \_\_ attached hereto shall be delivered by the Lessor to the place stated in the Lease Document # \_\_. All costs incurred in connection with delivery of the Leased Assets up to the point of delivery as stated in the Lease Document # \_\_ shall be borne by the Lessor. Further, the Lessee shall notify the Lessor in writing of the place at which such Leased Assets are to be installed, located, used or operated and thereafter the

Lessee shall not remove or shift the Leased Assets to any other place without the prior written consent of the Lessor.

- 7.02** Upon delivery of the Leased Assets to the Lessee, the Lessee shall execute and deliver to the Lessor a receipt or acceptance thereof in the form annexed hereto as Lease Document # \_\_. By such acceptance, the Lessee agrees and covenants that such Leased Assets are in good working order, condition and appearance and in all respects satisfactory to the Lessee and complete in all respects.

## **8. USE OF LEASED ASSETS**

- 8.01** The Lessee hereby agrees and undertakes that:

**a)** Lessee shall at all times store, house, use and operate the Leased Assets carefully and strictly in conformity with the instructions and directions of the manufacturers and/or Suppliers thereof (including those relating to the environmental conditions, if any, under which the Leased Assets is to be transported, stored, housed, used or operated), whether such instructions and directions are contained in the operational manuals or are otherwise provided with or before or after the delivery of the Leased Assets by the manufacturer and/or Suppliers thereof;

**b)** The Leased Assets shall be handled, used and operated by authorized and suitably trained persons and shall not be handled, used or operated by unauthorized or untrained persons;

**c)** The Lessee shall not do or omit to do any act or thing by which the warranties and performance guarantees given by the Suppliers and/or manufacturers of the Leased Assets would or could become invalidated or unenforceable, whether wholly or in part;

**d)** Each item of Leased Assets shall be used for the normal and usual purpose of the business of the Lessee for the time being, and, except with the prior permissions of the Lessor, for no other purpose whatsoever;

**e)** The Lessee shall store, house, install, use and operate the Leased Assets in compliance with all relevant laws, rules, regulations, orders and direction, whether of the Federal or any Provincial government or of any Municipal or Local Authority or of any court, tribunal or other competent authority or officer;

**f)** The Lessee shall not sell, transfer, assign or otherwise dispose off, loan, give on license, or part with the possession of, or in any way mortgage, hypothecate, pledge, charge or otherwise encumber, the Leased Assets and except with the permission of the Lessor in writing, sublease or let for hire.

- 8.02** The Lessee shall not, without the prior written consent of the Lessor, make any alteration, addition, or improvement to the Leased Assets or change the condition thereof; In the event of any component or accessory being affixed or added to the leased asset in the process of alteration or improvement of any kind, such component or accessory shall and be deemed to be the property of the Lessee. Accordingly, the Lessee shall have the right to retrieve by detachment or removal such accessories or components from the Leased Assets, upon termination of lease (or earlier) provided that such detachment or removal shall neither tend to damage the appearance nor impair the working of Leased Assets.
- 8.03** Nothing contained in this article shall release the Lessee from its liability for any storage, handling, use or operation of the Leased Assets or any of them in breach of any of the terms and conditions contained herein or in a manner contrary to any provisions or requirements of the insurance policy or policies intended to cover the Lessor's liability as owner of the Leased Assets or in contravention of any law, rule, regulation, order or direction, whether of the Federal or any Provincial government or of any Municipal or Local Authority or of any court, tribunal or other competent authority or officer;
- 8.04** The Lessee hereby agrees to indemnify and save harmless the Lessor from and against all claims and demands made and all fines or penalties levied or imposed in respect of or arising out of the storage, handling, use or operation of the Leased Assets or any of them;
- 8.05** Lessee will immediately notify Lessor of any change of place of permanent location of the Leased Assets.

## **9. MAINTENANCE OF LEASED ASSETS**

- 9.01** The Lessee agrees to maintain each item of Leased Assets in reasonable condition satisfactory to the Lessor. All maintenance works shall be carried out strictly in accordance with the maintenance manuals or other instructions and directions of the manufacturers and/or Suppliers of the Leased Assets, or where no such manuals instructions or directions are provided, in accordance with the best practice in the industry;
- 9.02** The Lessee agrees to be solely responsible for all maintenance and operating costs and expenses which shall include but shall not be limited to such as fuel, oil and lubricants, repairs, replacement of components and/or parts, periodic and preventive maintenance and repair costs, incurred in connection with or in any way referable to storage, handling, use and operation of each item of the Leased Assets;
- 9.03** The Lessee also agrees to be responsible for and forthwith to pay all fees, taxes, fines or penalties of operational nature by and to whosoever payable and relating



to the transportation, storage, handling, use and operation of the Leased Assets, except the income tax of the Lessor;

- 9.04** In the event of normal maintenance or operation costs and expenses as aforesaid or fees, taxes, fines and penalties or any other charges not being paid by the Lessee as herein required, the Lessor may, but shall not be obligated, pay such cost, expenses, fees, taxes, fines, penalties and charges and the Lessee shall forthwith upon demand reimburse the Lessor therefore. The Lessor shall always receive a fixed amount herein provided for as rent on the Leased Assets leased hereunder, and any other charges, such as those specified above shall be in addition to the rent payable by the Lessee to the Lessor.

## **10. INSURANCE, ACCIDENTS, INJURIES AND INDEMNIFICATION**

- 10.01** The Lessor shall procure insurance coverage from reputable companies offering protection under the Islamic concept of Takaful. Until the Islamic insurance concept of Takaful is available the Leased Assets shall be comprehensively insured (with a reputable insurance company) against all insurable risks, which shall include, but not limited to fire, theft, accidents, collision, body and engine damage, vandalism, riots and acts of terrorism.
- 10.02** The Lessee, its agents and employees shall comply with all the terms and conditions of the said insurance policy, including the immediate reporting of accidents or damage to the Lessor and the insurance company and shall do all the things necessary or proper to protect or preserve the Leased Assets in accordance with the appropriate clause as mentioned in the Insurance policy. The Lessee shall also provide all assistance to the insurance company and the Lessor for a prompt settlement of any claim and shall take all such actions and steps as may be necessary in that regard;
- 10.03** The Lessee shall be responsible for and keep the Lessor indemnified against accidents and injuries, whether fatal or otherwise, damages and losses occurring to any person or property which may result from or be traceable to the storage, handling, use or operation of the Leased Assets by the Lessee, its contractors, its and/or their respective employees or agents, or any failure on the part of the Lessee to observe and perform any of the obligations under this Agreement or the instructions contained in the manufacturer's and/or the Supplier's maintenance and operation manual or any other instructions of the manufacturers and/or Suppliers and the Lessor. If the Lessor shall have to pay any money in respect of any claim or demand for which the Lessee is responsible hereunder, or incurs any costs, charges or expenses (including attorney's fees) in connection with any such claim or demand, the amount so paid and the costs, charges and expenses incurred by the Lessor shall be paid by the Lessee to the Lessor in full upon demand;
- 10.04** The parties hereto agree that notwithstanding anything contained in this Agreement, the Lessor shall also not be responsible in any way whatsoever for the

products derived from or through the use or operation of the Leased Assets by the Lessee or anybody else nor also as to their efficacy or merchantability or otherwise, and the Lessee shall indemnify and keep indemnified the Lessor against any and all actions, proceedings, liabilities, claims, losses, damages, costs and expenses relating to or arising out of the storage, sale, use or consumption of any product derived there from which may be instituted against or suffered or incurred by the Lessor or by any other person or party;

**10.05** The Lessee further indemnifies the Lessor against any loss or expense which the Lessor shall certify as rightly incurred by it as a consequence of : (i) the occurrence of any Event of Default, other than those stipulated in sub clauses (b), (c) & (i) of Clause 14 of this Agreement and (ii) arising out of any misrepresentation.

**10.06** All proceeds of insurance, whether consisting of Total Loss Proceeds or otherwise, shall be applied at the option of Lessor towards:

(a) The replacement restoration or repair of the Leased Asset if the same may be reasonably possible.

(b) The payment obligations of the Lessee to the Lessor hereunder.

**10.07** If any event covered by the insurance occurs, the Lessee shall forthwith notify the Lessor regarding the same in writing and shall immediately take all steps as may be required for ensuring that the insurance claim is properly lodged, and for said purpose, the Lessee shall sign all such documents as may be required and allow full opportunity to the insurance company and its nominee for carrying out inspection test, investigation and examination.

**10.08** The Lessee agrees to pay the Lessor the cost of repairing or replacing any damage arising out of misuse to the Leased Assets;

## **11. REGISTRATION AND TITLE**

**11.01** The Leased Assets shall, where applicable, be registered in the name of Lessor under the Federal/ Provincial/Municipal laws pertaining to registration of such assets. All taxes that are incidental to the ownership of the leased asset shall be borne by the Lessor. Title, ownership and right of property in and to the Leased Assets leased hereunder shall at all times remain vested in Lessor and the Lessee covenants and agrees not to do or perform any act prejudicial thereto. Notwithstanding such registration, it is understood and agreed between the parties hereto that Lessor shall not be liable or responsible for the infraction of or noncompliance with any Federal/Provincial/Municipal statute, law, ordinance, rule or regulation whatsoever relating to the operation or use of Leased Assets;

- 11.02** Payment of all taxes incidental to usage and operations of the leased asset including the Road Tax, if applicable, shall be the sole responsibility of the Lessee, and it is understood this payment has been factored in the Lease Rentals. Further provided that if Lessee is not in default under this Lease, the Lessor will, upon request, furnish the Lessee a letter of authority for this purpose;
- 11.03** The Lessee shall affix a plate or label or other mark on the Leased Assets indicating that it has been leased from the Lessor and the Lessee shall ensure that such plates, labels or marks are not covered up, obliterated, defaced or removed. The detailed specifications and wordings of such plates, labels and marks shall be provided by the Lessor to the Lessee and the Lessee shall affix the plates, labels and marks on the leased assets in conformity with said specifications and wordings;
- 11.04** As between the Lessor and the Lessee, the Leased Assets shall remain personal or moveable property and shall continue in the ownership of the Lessor notwithstanding that the same may have been affixed to any land or building. The Lessee shall be responsible for any damage caused to any such land or building by the affixing to or removal there from of the Leased Assets, whether affixed or removed by the Lessee or the Lessor, and the Lessee shall indemnify and save harmless the Lessor from and against any and all claims made in respect of such damage.

## **12. RETURN OF LEASED ASSETS**

- 12.01** Return of the Leased Assets shall be at the Lessor's place of business or as specified in Lease Document # \_\_ hereto attached. Any structural alteration, special equipment or material alteration hereinafter required by the Lessee shall be added only with approval of the Lessor and shall, subject to the provisions of Clause 8.02, be removed at the Lessee's expense prior to the end of the term of the lease hereby granted. The Lessor shall be entitled to label the Leased Assets as having been leased from the Lessor;
- 12.02** The Lessee agrees to return the Leased Assets at the end of the term of the lease hereby granted or any extension thereof or earlier upon termination of the lease, in good operating condition and working order, free from any physical damage. In general, normal wear and tear proportionate to the usage is to be expected. The Lessee and the Lessor or their respective Agents shall inspect and provide a jointly signed report on the condition of the Leased Assets. However, any condition as a result of neglect or abuse is the sole responsibility of the Lessee;

## **13. LIMITATION OF LIABILITY**

- 13.01** It is understood and agreed that Lessor shall not be liable or accountable to the Lessee for any loss, damage, claim, demand, liability, cost or expense of any nature or kind sustained by the Lessee directly or indirectly resulting from any

inadequacy for any purpose, or any defect therein, from loss or interruption of use thereof, or any loss of business, profits consequential or any other damage of any nature;

- 13.02** Parties hereto shall not be required to carry out any of the terms of this Agreement if prevented from so doing by Acts of God, or the State's enemies or any other circumstances beyond their control and shall not be liable for any loss or damages sustained by any party resulting there from;
- 13.03** If the Leased Asset should be damaged without any fault on the part of the Lessee, but be capable of being repaired and if the applicable insurance proceeds be insufficient to pay the full cost of repairing the same, the Lessee may arrange repair and the difference between the actual cost of repairs and the amount of insurance claim received for it from the insurance company shall be payable by the Lessor. However, if the Leased Asset is completely lost or incapable of repair the proceeds of insurance shall be payable to the Lessor and this Agreement shall stand terminated;
- 13.04** All repairs, replacements or substitution of the parts or component of the Leased Assets necessitated due to normal usage shall be at the Lessee's expense;
- 13.05** The Lessor has not made and does not hereby make any representation as to merchantability, condition or suitability of the Leased Assets for the purpose of the Lessee or any other representation, with respect thereto. The Lessee agrees that its obligation hereunder to pay rentals herein provided for shall not in any way be affected by any such defect or failure of performance of the Leased Assets once it has accepted the delivery of the same;
- 13.06** Whenever they fall due, the Lessee shall be liable to forthwith pay all fees, central excise duties, taxes, levies and penalties **(that are not incidental to the ownership of the Leased Asset)**, under any statute or enactment for the time being in force as may relate to or charged upon or otherwise payable in respect of the Leased Assets or any services in relation to leasing or any transaction or activities under this Agreement. In the event any fees, duties, taxes, levies and penalties or any maintenance or operating costs are levied and paid by the Lessor, the Lessee shall be responsible to reimburse the Lessor for the amount so paid. The Lessee recognizes that the Lessor has no liability whatsoever to make any payment whatsoever in respect of above stated account and the amount receivable under this Lease Agreement as Lease rental shall be net and not reducible in value on any account whatsoever.

#### **14. DEFAULT AND TERMINATION**

- 14.01** This lease shall be terminated by the Lessor prior to expiration of its maximum terms in the event of default by the Lessee in either of the following manners;

(a) Any representation or warranty made or deemed to be made or repeated by the Lessee in or pursuant to the Principal Documents or in any document delivered under this Agreement is found to be incorrect;

(b) The lease rentals payable under this Agreement remain outstanding for a period of more than [Insert period];

(c) Any Indebtedness, including lease rentals outstanding under this Agreement, of the Lessee in excess of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) is not paid when due or becomes due or capable of being declared due prior to its stated maturity;

(d) In the event of the Lessee making an assignment for the benefit of its creditors;

(e) In the event of the Lessee (A) voluntarily or involuntarily becoming the subject of proceedings under the Bankruptcy or insolvency law, or procedure for the relief of financially distressed debtors. (B) Has been unable or has admitted in writing its inability to pay his debts as they mature to the Lessor or to another party or the financial Lessor, (C) taken or suffered any action for its reorganization, liquidation or dissolution, or (D) had a receiver or liquidator appointed for all or any part of its assets or business

(f) Any authority of or registration with governmental or public bodies or courts required by the Lessee in connection with the execution, delivery, performance, validity, enforceability or admissibility in evidence of the Principal Documents are modified in a manner unacceptable to the Lessor or is not granted or is revoked or otherwise ceases to be in full force and effect;

(g) The total interruption or cessation of the business activities of the Lessee;

(h) In the Leased Assets are used unreasonably or in an abusive manner;

(i) Any costs, charges and expenses under the Principal Documents shall remain unpaid for a period of \_\_\_\_ days after notice of demand in that behalf has been received by the Lessee from the Lessor;

(j) If there is any change in the majority ownership and/or senior management of the Lessee without the consent of the Lessor.

**14.02** In the event that Lessor shall, by reason of the breach of any of the terms of this Agreement or the termination of this Lease becomes entitled to the return of the Leased Assets, then notwithstanding any terms or conditions herein contained, Lessor at its sole discretion in addition to any other remedy open to it and without obtaining a judgment, decree or other order from a court, may at any time without notice take possession of the said Leased Assets, and the Lessee hereby authorizes

and empowers Lessor, its servants, agents, or other representatives to enter on any of the Lessee's lands or premises, or any other place or places where the said Leased Assets may be found, for the purpose of taking possession thereof, and on the happening of such an event or events the Lessee hereby irrevocably appoints Lessor or any of its officers, agents, or representatives as the Lessee's true and lawful attorneys to execute such document as may be necessary for the purpose of regaining possession of the said Leased Assets and the accessories attached thereto. The Lessee shall pay the costs of such repossession including transportation and storage charges.

## **15. INSPECTION**

The Lessee shall permit, during the currency of the Lease Agreement, persons authorized by the Lessor to inspect and examine the condition of the Leased Assets and, for the said purpose, shall permit such persons to enter upon the premises where the Leased Assets are situated, even where, in default of custody, control, and use, the Leased Assets are not situated at the Specified Location.

## **16. PRUDENTIAL REGULATIONS**

The Lessee shall comply with the Prudential Regulations and or other regulations as are notified from time to time by the SECP.

## **17. REPORT OF BUSINESS**

The Lessee shall furnish its latest audited and un-audited financial reports, statements or other documents relating to the financial status of the Lessee to the Lessor within ten (10) calendar days of the Lessor requesting the same.

## **18. REPRESENTATIONS AND WARRANTIES**

The Lessee hereby represents and confirms that:

- (a) The Lessee has not defaulted in respect of any payment obligation (whether relating to loan, finance or otherwise) or any other type of obligation owed to any bank or financial institution; and
- (b) The Lessee has not defaulted in payment of any taxes or other dues owed to the government or any local authority.

## **19. LEASE KEY MONEY/SECURITY DEPOSIT**

The Lessor shall not be liable to return/profit or other charges to the Lessee in respect of the Lease Key Money/Security Deposit, whether or not the same or any part thereof, is actually returned to the Lessee.

## **20. PENALTY**

**20.01** Where any amount is required to be paid by the Lessee under the Principal Documents on a specified date and is not paid by that date, or an extension thereof, permitted by the Institution without any increase in the Lease Rentals, the Lessee hereby undertakes to pay to the Institution for **Charity Account**, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining undischarged. The **Charity Account** shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.

**20.02** In case,

(i) any amount(s) referred to in clause 20.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Lessee, is not paid by him, or

(ii) the Lessee 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 20.01 above, as a result of which any direct or indirect costs are incurred by the Institution, the Institution shall have the right to approach a competent Court:

(a) for recovery of any amounts remaining unpaid.

(b) for imposing of a penalty on the Lessee. In this regard the Lessee is aware and acknowledges that notwithstanding the amount paid by the Lessee to the Charity Fund of the Institution, 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 Institution, determined on the basis of direct and indirect costs incurred, other than the opportunity cost.

**20.03** 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.

**20.05** The account for charity shall be separately maintained and audited, and be disclosed separately in the financial statements of the Modaraba.

## **21. ASSIGNMENT**

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

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

## **22. 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.

## **23. WAIVER OF INTEREST**

The parties recognize and agree that the principle of payment of interest is repugnant to Shariah principles and, accordingly, to the extent that any court would impose, whether contract or by statute any obligation to pay interest, the parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

## **24. GENERAL**

**24.01** No failure or delay on the part of the Lessor to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor shall or a



- partial exercise by the Lessor 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;
- 24.02** 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;
- 24.03** This Agreement is governed by and shall be construed in accordance with the Pakistani 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.
- 24.04** Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.
- 24.05** Any reconstruction, division, reorganization or change in the constitution of the Lessor 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.
- 24.06** 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.
- 24.7** That the LESSEE has full power, capacity and authority to execute, deliver and perform this Lease Agreement and has taken all necessary actions, authorizations and approvals (corporate or otherwise) to authorize the taking on lease of the leased assets upon the terms of this Agreement and to authorize its execution delivery and performance of this Lease Agreement and the LESSEE undertakes to keep such authorizations effective and in force during the lease term hereunder or any renewal thereof and till the leased assets are delivered back to the MODARABA in good order and condition;
- 24.8** The Lessee will not repay the Subordinated Loan if any without the written consent of Lessor.
- 24.09** There will be no change in constitution, Management, Main sponsors, Major Share holders of the Lessee without prior concurrence of the Lessor.
- 24.10** The MODARABA shall also have the right to raise the finance, and to create any

encumbrance or charge, on the security of the rights possessed by the MODARABA in the leased assets in favour of any creditor or surety of the MODARABA and will not require any approval for this purpose from the LESSEE.

**24.11** That the LESSEE shall operate and maintain its business, plant and leased assets in compliance with the applicable environmental, occupational health and safety requirements in accordance with Local Laws.

**24.12** That the LESSEE has secured all sanctions, permissions, licenses, approvals and consents from the Government and or any other Authority, which are or may be required for the implementation of the project ("Project") in connection with which this Lease Agreement is being executed.

**24.13** Since the LESSEE is not the owner of the leased assets, the LESSEE shall not claim any relief by way of any deduction allowance or grant available to the MODARABA as the owner of the leased assets under the Income Tax or other laws or rules of regulations and shall not do anything by which the MODARABA may be deprived of such allowance or grant.

**24.14** The LESSEE undertakes with the MODARABA that:

a) The LESSEE shall promptly inform the MODARABA of any event or condition, which is likely to have an adverse effect on the operations, profits or business of the LESSEE;

**24.15** 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.

**24.16** all schedules annexed hereto are and shall form an integral part of this agreement;

**IN WITNESS WHEREOF**, the Parties to this Agreement have caused this Agreement to be duly executed on the date and year first aforementioned.

**For and on behalf of the Lessee**

**For and on behalf of [insert name of the Lessor]**

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**WITNESSES:**

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

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

**WITNESSES:**

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

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

**WRITTEN REQUEST**

[Date]\_\_\_\_\_

To: \_\_\_\_\_  
[Insert name and address of the Lessor]  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sirs,

**WRITTEN REQUEST FOR PURCHASE OF ASSETS**

(1) We request you to kindly procure the Assets described below to be leased to us under a separate Agreement:

Sr. No.	Specification of Assets	Amount

(2) We further request you to deliver the Assets as follows:-

- (a) Assets:
- (b) Terms of delivery:
- (c) Place of delivery:

(3) We hereby certify that the Lease of the Assets by you to us shall not result in a breach of our organizational documents, any provision of any document to which we are a party or by which we are bound, or any applicable law, rule or regulation, whether directly or indirectly.

Yours faithfully,

For and on behalf of [Insert name of the Lessee]

**SCHEDULE**

This Schedule shall be attached to and form an integral part of the Lease Agreement Between M/s (Lessor)\_\_\_\_\_and (Lessee)

The Lessee authorizes the Lessor to procure the under noted asset(s), to be leased in terms of the Agreement between the parties, and at the rate and for the term herein specified.

Sr. No.	Specification of Assets	Amount	Term of Lease

The **Lessor** shall maintain comprehensive insurance during entire period of lease.

Registration, CVT, Income Tax, and Road Tax shall be paid by Lessee.

Place of delivery and return of the Leased Assets shall be at the Head Office of Lessor or as agreed between the Parties.

Commencement date of Lease: \_\_\_\_\_

Duly authorized by the Lessees:\_\_\_\_\_

The amount of Security Deposit Rs. \_\_\_\_\_ shall be adjusted towards Residual Value at the end of lease period

**OR**

The amount of Residual Value Rs. \_\_\_\_\_ shall be payable by the Lessee at the end of Lease Period.

**RECEIPT OF LEASED ASSETS**

**AGREEMENT NO [-----] DATED [-----]**

Description of the Assets: -----  
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The Assets described above are received complete in all respect and in perfect working order and condition.

Delivery dated \_\_\_\_\_

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

Full Name \_\_\_\_\_

S/o.D/o.W/o. \_\_\_\_\_

Res.Address \_\_\_\_\_

\_\_\_\_\_

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

Designation \_\_\_\_\_

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

Full Name \_\_\_\_\_

S/o.D/o.W/o. \_\_\_\_\_

Res.Address \_\_\_\_\_

\_\_\_\_\_

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

Designation \_\_\_\_\_

Stamp \_\_\_\_\_

**SIGNED for and on behalf of the Lessor by:**

-----

Dated: \_\_\_\_\_

**UNDERTAKING**

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**[Name & Address of the Lessor]**

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Dear Sirs

In consideration of your entering into the Lease Agreement dated ..... (**Lease Agreement**), we hereby agree and undertake that if you desire to terminate this Lease on account of any of the grounds mentioned in the Lease Agreement during the currency of the Lease, we shall be obliged to purchase the Leased Assets at the Purchase Price mentioned **below** against the date immediately preceding the date of termination of the Lease (**Purchase Date**). In any such event, all our rights under the Lease Agreement and in the Leased Assets covered by this Lease Agreement shall forthwith terminate and, if we fail to pay the Purchase Price on or before the date specified by you, you shall have the right to take immediate possession of the Leased Assets and we shall immediately deliver to you the Leased Assets together with the registration certificate, permit or other documents pertaining thereto;

**Purchase Date**

**Purchase Price**

Yours faithfully,