

مُشَارَكَةُ مُتَنَاقِصَةٍ

**DIMINISHING MUSHARAKAH**

## THIS DIMINISHING MUSHARAKAH AGREEMENT

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

### BETWEEN

\_\_\_\_\_ **Modaraba (Name)**, floated under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (the Modaraba Ordinance) by \_\_\_\_\_, a Modaraba Company, registered under Modaraba Ordinance, 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 **ONE PART**

### AND

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

### OR

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

### OR

(3) Mr./ Miss/ Mrs. \_\_\_\_\_ son/ daughter/ wife of Mr. \_\_\_\_\_, resident of \_\_\_\_\_

(hereinafter referred to as the "Customer" which expression shall where the context so permits mean and include his successors in interest and permitted assigns) of the **OTHER PART**

IT IS AGREED BY THE PARTIES as follows:

## 1. PURPOSE AND DEFINITIONS

**1.01** On the request of the Customer, Modaraba has agreed to enter in to a Musharakah arrangement to purchase “Musharakah Asset(s)”, fully described in the Schedule below, which the Customer will buy from Modaraba on Diminishing Musharakah basis.

**1.02** The parties are desirous of reducing in to writing the terms and conditions that will govern their relationship during the term of this Joint Ownership Agreement.

**1.03** The terms defined in the Musharakah Agreement shall have the same meanings in this Agreement.

In addition to the above, the terms defined below shall have the meanings assigned to them hereunder:

**“Buy Out Payment Date(s)”** Means the date(s) on which the Customer shall buy the Musharakah Units from time to time from the Modaraba as set out in Appendix A” hereto;

**“Buy Out Price”** Means the amount to be paid by the Customer to the Modaraba to purchase the Musharakah Units of Modaraba’s share.

**“Musharakah Units”** Means the division and classification of the Modaraba’s Musharakah Share into units of the value and in the number appearing in Appendix ‘B’ hereto;

**“Outstanding Buyout Price”** Means the aggregate Buyout Price minus the total amounts of Buy Out Price already paid by the Customer as appearing in Appendix ‘C’ hereto. In the event of termination under Clause 7, the “Schedule of Outstanding Buy Out Price (Applicable upon Termination)” only, shall apply;

**“Term”** Means the period of validity of the Agreement commencing from the Effective Date up to the payment date of the last Buy Out Price or the Monthly/Quarterly/Half Yearly Payment Date which ever is late;

2. The Customer represents that:

- (1) He has satisfied himself as to the quality, specifications and market value of the Musharakah Asset(s) and has recommended to the Modaraba that its should participate in buying the Musharakah Asset(s) at the said price.
- (2) He would be prepared to participate to the extent of \_\_\_\_\_ % in purchasing the Musharakah Asset(s) and will make Rs. \_\_\_\_\_ available to Modaraba in this regard at the time of signing of this Agreement.

3. Based on the representations of the Customer, the Modaraba has agreed to purchase the Musharakah Asset(s).
4. After the acquisition of the Musharakah Asset(s), the Customer shall purchase the share of Modaraba in the Musharakah Asset(s) in the shape of Musharakah Units from Modaraba in terms of the following:
  - (1) The Customer shall purchase the Musharakah Units from Modaraba and make payment therefore in terms of Appendix 'C'.
  - (2) The Customer may at any time, during the Term of this Agreement, purchase the Modaraba's entire remaining Musharakah Units at their applicable Buyout Prices subject to the provisions of this Agreement.
  - (3) The Customer shall serve upon the Bank a prior written notice of at least fifteen (15) days of his intention to purchase all or any of the remaining Musharakah Units.
  - (4) In case the Customer acquires all the remaining Musharakah Units by payment of the aggregate amount of applicable Buy Out Prices, this Agreement shall stand terminated subject to the fulfilment of all the obligations of the Customer and the payment by the Customer of all outstanding, due and payable by the Customer to the Modaraba.
5. In case of a default committed by the Customer in fulfilling any of his/ her obligations under this Agreement, the Modaraba may terminate this Agreement by serving a Notice on the Customer. In such an eventuality, the Customer undertakes to purchase all the outstanding Musharakah Units in terms of the following:
  - (1) Upon a notice of termination being issued by the Modaraba under Clause 7 above, the Customer hereby agrees and undertakes to purchase the remaining Musharakah Units from the Modaraba immediately.
  - (2) The remaining Musharakah Units shall be purchased by the Customer at the Outstanding Buyout Prices (Applicable only Upon Termination) as provided in Appendix 'C'
6. As security for all obligations of the Customer and payment of the rentals in terms of this Agreement, the Customer shall, at the time of execution of this Agreement, create/ execute/ provide/ensure the following to Modaraba:

- (a) execute a Demand Promissory note in favour of the Modaraba for the amount of the Modaraba's Musharakah Investment and Monthly/Quarterly/Half Yearly Payments receivable during the term of the Musharakah; (the "**Demand Promissory Note**");
  - (b) execute such further deeds and documents as may from time to time be required by the Modaraba for the purpose of more fully securing and or perfecting the Security created or to be created in favor of the Modaraba; and
  - (c) create such other securities and execute such further documents to secure the Customer's obligations under the Principal Documents as the Modaraba may require the Customer to furnish from time to time. (The above are hereinafter collectively referred to as the "**Security**").  
(The Demand Promissory Note and other documents mentioned in clause 7 (a) to 7 (c) hereinabove are hereinafter collectively referred to as the "Security Documents").
7. Till such time that the Customer purchases all the Musharakah Units of the Modaraba, the parties shall share the rent in respect of the Musharakah Asset(s) in proportion to their respective interests in the Joint Ownership.
  8. Pending the purchase of all the Musharakah Units of Modaraba by the Customer, the Monthly/Quarterly/Half Yearly rent of the Musharakah Asset(s) will be jointly determined by the parties from time to time and the Customer shall pay the share of Modaraba to it every month/quarter/half year.
  9. The Musharakah Agreement and Monthly/Quarterly/Half Yearly Payment Agreement shall form an integral part of this Agreement.
  10. In the event that the Customer fails to purchase the remaining Musharakah Units at the Outstanding Buy Out Prices (Applicable only upon Termination), within a period of fifteen (15) days from the date of the notice being issued under Clause 7, the Modaraba may, at its discretion, proceed to enforce the security interest in the Musharakah Asset(s) and Current Assets of the company under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 or any statutory modification thereof for recovery of the amounts due to the Modaraba under this Agreement and the Monthly/Quarterly/Half Yearly Payment Agreement, including the remaining Musharakah Units and accrued and unpaid Monthly/Quarterly/Half Yearly Payment, if applicable, plus any costs, Taxes and other dues payable and applicable to the Musharakah Asset(s).
  11. The Customer covenants to and undertakes with the Modaraba that so long as it remains obliged under the Agreement:
    - (1) It 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:

- (2) The Customer shall do all such things and execute all such documents which in the judgment of the Modaraba may be necessary to; (i) enable the Modaraba to assign or otherwise transfer the liability of the Customer in respect of the Modaraba's Musharakah Investment and Monthly/Quarterly/Half Yearly Payments to any creditor of the Modaraba or to any third party as the Modaraba may deem fit at its entire discretion; (ii) create and perfect the Security; (iii) maintain the Security in full force and effect at all times including the priority thereof; (iv) maintain, insure and pay all Taxes assessed in respect of the assets constituting the Security.
- (3) It will satisfactorily insure all its insurable assets with reputable companies offering protection under the Islamic Concept of Takaful. Until the Islamic Insurance Concept of Takaful is not available, the Musharakah Asset(s) shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Modaraba) against all insurable risks, which may include fire, arson, collision, vandalism, riots and acts of terrorism, and to assign all policies of insurance in favour of the Modaraba to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Modaraba to be noted on the policies of insurance, and to punctually pay the premium due for such insurances and to contemporaneously therewith deliver the premium receipts to the Modaraba. At this stage, Modaraba shall reimburse to the Customer its share in the insurance cost. Should the Customer fail to insure or keep insured the Assets constituting the Security and/ or to deliver such policies and premium receipts to the Modaraba, then it shall be lawful for the Modaraba but not obligatory to pay such premia and to keep the said Asset(s) so insured and all cost charges and expenses incurred by it for the purpose shall be charged to the Customer on pro rata basis and shall be paid by the Customer to the Modaraba within five (5) days of a demand being made by the Modaraba. The Customer expressly agrees that the Modaraba shall be entitled to adjust, settle or compromise any dispute with the insurance company(is) and the insurance arising under or in connection with the policies of insurance and such adjustments/compromises or settlements shall be binding on the Customer and the Modaraba shall be entitled to appropriate and adjust the amount, if any, received under the aforesaid policy or policies toward part or full satisfaction of the Customer's indebtedness arising out of the above arrangements and the Customer shall not raise any question or objection that larger sums might or should have been received under the aforesaid policy nor the Customer shall dispute its liability(is) for the balance remaining due after such payment / adjustment;
- (4) Except as required in the normal operation of its business, the Customer shall not, without the prior written consent of the Modaraba, sell or otherwise dispose of all or a sizeable part of its other assets or undertake or permit any merger, consolidation, dismantling or re-

organization which would materially affect the Customer's ability to perform its obligations under this Agreement;

(5) It shall forthwith inform the Modaraba of:

(a) Any event or factor, any litigation or proceedings pending or threatened against the Customer which could materially and adversely affect or be likely to materially and adversely affect: (i) the financial condition of the Customer, (ii) business or operations of the Customer; and (iii) the Customer's ability to meet its obligations when due under this Agreement, (iv) expiry or cancellation of a material patent, copyright or license, (v) cancellation or termination of a material trade agreement;

(b) Where the Customer is a Company, any change in the directors or management of the Customer;

12. The Courts at \_\_\_\_\_ shall have the exclusive jurisdiction to adjudicate upon any dispute or claim arising out or in connection with this Agreement.

13. The above represents the entire understanding of the parties on the subject and can be modified/ amended only through a written instrument signed by authorized representatives of both the parties.

14. 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.

## **SCHEDULE**

(Description of the Musharakah Asset(s))

**IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS AGREEMENT ON THE DATE AND PLACE FIRST ABOVE WRITTEN.**

\_\_\_\_\_  
Modaraba

\_\_\_\_\_  
Customer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness



**APPENDIX ‘A’**  
**Buy Out Payment Dates**

For and on behalf of  
Modaraba

For and on behalf of  
Customer

**APPENDIX 'B'**  
Musharakah Units of Modaraba

Number of Musharakah Units:

Value of each Musharakah Unit:

For and on behalf of  
Modaraba

For and on behalf of  
Customer

**APPENDIX ‘C’**  
Schedule of Buyout Prices

Buy Out Price

Buy Out Payment Date.

Schedule of Outstanding Buyout Prices  
(Applicable only upon Termination) pursuant to Clauses \_\_\_\_\_ and \_\_\_\_\_

For and on behalf of  
Modaraba

For and on behalf of  
Customer