

مُضَارَبَه

**MODARABA**

## THIS MODARABA AGREEMENT

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

### BETWEEN

[Name of the Client], \_\_\_\_\_, **having its place of business at / resident of** \_\_\_\_\_ hereinafter referred to as the Client (which expression shall, where the context admits, mean and include its successors in interest and assigns) acting as Mudarib of the ONE PART;

### AND

[\_\_\_\_\_ Modaraba], a Modaraba floated under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980, having its Registered Office at \_\_\_\_\_, hereinafter referred to as the Modaraba, (which expression shall, where the context admits, mean and include its successors in interest and assigns) acting as Rab Al-Maal of the OTHER PART.

IT IS AGREED BY THE PARTIES as follows:

### 1. PURPOSE AND DEFINITIONS

**1.01** the Client and the Modaraba wish to enter into a Modaraba in conformity with the Islamic Shariah for the purpose of carrying out the Project described in **Exhibit A**.

**1.02** the Client has presented to the Modaraba an application to finance the Project described in **Exhibit A** and has satisfied conditions precedent and other formalities to avail of such financing;

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

**“Account”** means an account opened with the Modaraba in the name of the Client

**“Client Asset Finance”** means the sum estimated by the Client as necessary to acquire the assets required for the Project as disclosed on the Project Information Form **Exhibit A** and as reflected in the Cash Flow and Revenue Projection.

**“Cash Flow and Revenue Projection”** means the financial projections for the project prepared by the client and annexed as **Exhibit B**.

**“Management Services”** means the technical management and supervision services, required to ensure the success of the Project described in **Exhibit B** hereto.

**“Profit”** means the amount of gross profit available for distribution after deduction of permissible expenses as may be agreed between the client and the Modaraba in terms of Schedule of Expenses hereto attached (**Exhibit C**).

**“Client Information Form”** means **Exhibit D** prepared by the Client, disclosing certain information regarding the Client.

**“Client Financials”** means the Balance Sheet and Profit and Loss Statement of the Client for the last three years, prepared by the Client and audited by an independent accountant.

**“Draw Down Dates”** means the dates specified in **Exhibit E** at which the Modaraba is obliged to provide funds by credit to the Account

**“Project Assets”** means all Asset Finance and all things acquired with such finance and the proceeds and profits thereof until distributed to the client and the Modaraba in accordance with the terms and conditions of this Agreement

**“Termination Date”** is the date on which this Agreement shall terminate as herein provided.

The following exhibits shall form part of this Agreement:

1. **Exhibit A: Project Information Form being a narrative description of the Project**
2. **Exhibit B: Cash Flow and Revenue Projection for Project, and Management Services**
3. **Exhibit C: Schedule of Expenses**
4. **Exhibit D: Client Information Form**
5. **Exhibit E: Draw Down Dates**
6. **Exhibit F: Authorized Signatories.**

## **2. INVESTMENT**

The parties agree that a sum of Rs. [ ] by way of finance required for the Project as estimated by the Client in the Project Information Form shall be supplied by the Modaraba for a period of \_\_\_\_\_ months hereof and deposited in the Account.

## **3. ACCOUNT**

- a) The authorized signatories on the Account shall be as specified in **Exhibit F.**
- b) All funds for the purpose of the project shall be disbursed only through the Account by cheque or transfer against proper supporting invoices maintained by the Client but available for inspection by the Modaraba or its agents. .
- c) All receivables from third parties arising from the Project or the transfer of Project Assets shall be collected only through the Account.
- d) The Modaraba shall have the right to refrain from the payment of any cheque or transfers from the Account if it reasonably appears to the Modaraba that such amounts are not included in the Cash Flow and Revenue Projections and do not directly or indirectly relate to the Project.

## **4. REPRESENTATIONS OF THE CLIENT**

The Client represents to the Modaraba that:

- a) The Client possesses all necessary powers and licenses to conduct its present business and the Project.
- b) The Client Information Form is true and correct.
- c) The Client is experienced and knowledgeable in all business matters relating to the Project.
- d) The Client has prepared with all due care the Project Information Form and the Cash Flow and Revenue Projection based on his experience and knowledge and has completed all reasonable investigation to assure that such are true and correct and disclose all factors relevant to the Modaraba's evaluation of the Project.
- e) The Client Financials are true and correct according to generally accepted accounting principles consistently applied accurately representing the Client's financial status on the dates and the profit and loss for the periods

indicated, and no liabilities, fixed or contingent exist at the indicated dates other than as appear in the Client Financials.

- f) The Client has suffered no material adverse change in business operation or financial position since the date of the most recent Client Financials supplied to the Modaraba.

## **5. REPRESENTATION OF THE MODARABA**

The Modaraba represents to the Client that on the date of this Agreement:

The Modaraba is a corporation organised under the laws of ..... and possesses all necessary powers and licenses to conduct its business and to finance the Project as provided by this Agreement.

## **6. GENERAL COVENANTS OF THE CLIENT**

The Client undertakes to the Modaraba that the Client shall:

- a) promptly give notice to the Modaraba of any change in the information disclosed on the Client Information Form.
- b) render the Management Services with due care and all reasonable commercial diligence expected of an experienced businessman to ensure the success of the Project according to the description of the Project Information Form and the Cash Flow and Revenue Projection.
- c) utilize the Project assets exclusively for purposes of the Project as specified in the Cash Flow and Revenue Projection.
- d) disburse all funds for the purpose of the Project only through the Account by cheque or transfer against proper supporting invoices maintained by the Client but available for inspection by the Modaraba or its agents.
- e) collect all receivables from third parties arising from the Project or the transfer of Project assets or other documents requiring payment from third parties directly to the Account.
- f) maintain all Project assets in the name of the Client, but physically segregated from other assets of the Client and free and clear of all liens and encumbrances except those in favour of the Modaraba.

- g)** submit the following to the Modaraba, prepared according to the instructions of the Modaraba:
- (i)** A cash flow and revenue statement of the Project for the previous quarter, with a clear explanation of each variation from the Cash Flow and Revenue Projection, within 30 days of the close of each quarter.
  - (ii)** A balance sheet and income statement of the Client prepared in accordance with principles utilized in the Client Financials consistently applied. The annual balance sheet and income statement shall be audited by an independent firm of accountants approved by the Modaraba, and audited documents shall be presented to the Modaraba within 120 days of the close of the Client's accounting year.
- h)** maintain true and correct books of account relating to the Project together with all invoices, records contracts and all other documentation.
- i)** supply to the Modaraba any information, material or document relating to the Project or to Client's financial status, and grant access to the Modaraba or its agents to all books and relating to the Project and to the Client's financial statements.
- j)** immediately disclose in writing to the Modaraba any business factors of which the Client becomes aware and which might adversely affect the success of the Project.
- k)** not effect directly or indirectly any transaction on behalf of the Project in which the Client or any family member of the Client or any shareholder of the Client, if a corporation, is interested directly or indirectly without consent of the Modaraba.
- l)** consult with the Modaraba in any matter, including but not limited to insurance of the assets Modaraba with a view to determining the policy to be followed in order to ensure the proper implementation of this Agreement, but without any obligation of the Client to compromise rights of the Client hereunder.
- m)** under its sole responsibility, conduct the Project in conformity with all applicable civil and criminal laws.
- n)** conduct the Project without violation of the principles of the Islamic Shariah.

- o)** it will satisfactorily insure all its insurable assets of the Project with reputable companies offering protection under the Islamic concept of Takaful. Until the Islamic concept of Takaful is not available the such assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Modaraba) against all insurable risks, which may include fire, arson, theft, accidents, collision, body and engine damage, 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 insurance's and to contemporaneously therewith deliver the premium receipts to the Modaraba. Should the Client fail to insure or keep insured the aforesaid 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 Secured Assets so insured and all cost charges and expenses incurred by it for the purpose shall be charged to and paid by the Client as if the same were part of the monies due. The Client expressly agrees that the Modaraba shall be entitled to adjust, settle or compromise any dispute with the insurance company(ies) and the insurance arising under or in connection with the policies of insurance and such adjustments/compromises or settlements shall be binding on the Client and the Modaraba shall be entitled to appropriate and adjust the amount, if any received, under the aforesaid policy or policies towards part or full satisfaction of the Client's indebtedness arising out of the above arrangements and the Client shall not raise any question or objection that larger sums might or should have been received under the aforesaid policy nor the Client shall dispute its liability(ies) for the balance remaining due after such payment/adjustment;

## **7. GENERAL COVENANTS OF THE MODARABA**

The Modaraba undertakes to the Client that it shall:

- a)** make all payments of Finance required of the Modaraba under this Agreement to the Account on the Draw-Down Dates.
- b)** whenever the circumstances so require consult with the Client in any matter with a view to determining the policy to be followed in order to ensure the proper implementation of this Agreement, but without any obligation of the Modaraba to compromise its right, hereunder.
- c)** perform its obligations under this Agreement without violation of the principles of Islamic Shariah.

## **8. PARTICIPATION IN PROFIT**

- a)** The participation in profit will be in accordance with the following ratio:
  - (i)** [ ]% of the profit will be for the Management Services and payable to the Client.
  - (ii)** [ ]% of the profit will be payable to the Modaraba.
- b)** On Termination Date, the accounts of the Modaraba shall be drawn up in accordance with accepted accounting principles, and the profit if any due to the Client and the Modaraba shall be worked out and paid in the proportion specified above, subject to adjustment of any provisional payments made, (plus the amount paid by the Modaraba after deducting loss if any).
- c)** At the sole discretion of the Modaraba, the Client may become entitled to receive a Good Performance Bonus at a rate to be determined by the Modaraba.

## **9. LOSSES**

- a)**
  - (i)** 100% of the loss in the Project will be borne by the Modaraba
  - (ii)** The client will receive no compensation for his Management Services, and will be liable for the loss if it is proven that he has breached his obligations or is proven to be failing in the discharge of his obligations under this Agreement.
- b)** In the event of the Project showing losses during the currency of this Agreement the client shall forthwith give notice of such losses to the Modaraba together with all accounts and details pertaining thereto and such other information and records as may be required by the Modaraba. Notwithstanding the above, the Modaraba shall only be liable for the losses in the manner specified if the said losses have not been caused due to misconduct on the part of the Client in out the Project's business and operations or as a result of his negligence or inefficiency, including non-compliance with the terms and conditions of this Agreement



## **10. TAXATION**

On behalf of the Project, the Client shall be liable for and shall punctually and regularly pay all taxes, duties, cesses and other charges relating to the Project's business and operations.

## **11. TERMINATION**

- a) Subject to other provisions of this Agreement, it is agreed that upon full payment on Termination Date or earlier, if proceeds have been received, the Modaraba shall stand redeemed.
- b) While the amount invested by the Modaraba must be repaid on the due date, mentioned above, the accounts of the Modaraba will be drawn up within 7 days thereof and the agreed share the Modaraba's profit will be promptly paid.

## **12. MANAGEMENT AND CONTROL**

Subject only to the express terms of this Agreement, complete management and control of the Project is exclusively vested in the Client and the Client shall be solely responsible for the management and control of the Project.

## **13. ASSUMPTION OF MANAGEMENT OF THE PROJECT BY THE MODARABA**

The Modaraba shall have the right to terminate by notice the powers of the Client to manage the Project and assume the same if the Client violates any obligation hereunder, or if for any cause the results of the Project depart in a material adverse manner from those projected by the Client in the Cash Flow and Revenue Projections. In such event:

- a) The Client shall be entitled to receive his share of the profit, if any, until the date of termination stated in the notice. Thereafter, the Modaraba shall be entitled to the whole profit.
- b) The assumption of management by the Modaraba shall not discharge the Client of any obligation hereunder other than the obligation to render the Management Services.

- c) The assumption of management by the Modaraba with respect to the Project shall in no event be deemed to affect the liability of the Client to the Modaraba, with respect to any other facilities granted under any other agreement between the Client and the Modaraba whether or not the proceeds of such were employed in connection with the Project.
- d) On assumption of management of the Project by the Modaraba, the Client will, on the written demand of the Modaraba, deliver to it all Project Asset, all books, records, contracts and other documents relating to the Project.

#### **14. CIVIL LAW STRUCTURE AND INTERPRETATION**

In all relations with third parties and this Agreement be construed under the laws of Islamic Republic of Pakistan. This Agreement shall not create a partnership or company and in no event has the Client any authority to bind the Modaraba. The Client shall contract the Project in the name of the Client and in no event shall the Modaraba be liable for the debts and obligations of the Client incurred for the Project or other purposes, except as stipulated in this Agreement and its Exhibits.

#### **15. SET OFF**

The Modaraba may set-off against any obligation of the Client hereunder, or any other obligation of the Client, the balances of any account maintained by the Client with it.

#### **16. GENERAL**

The parties agree that:

- a) Any notice or other communication required or permitted by this Agreement shall be deemed to have been given to the other party seven days after the day on which the same is posted by registered mail, addressed to the address mentioned in this Agreement or any other address given in writing to the other party, or one day after actual delivery at such address, whichever is earlier.
- b) 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.
- c) The Exhibits of this Agreement shall be considered an integral part thereof.
- d) This Agreement has been executed in two original counterparts. Each page of this Agreement and each Exhibit have been initialed for identification.

**IN WITNESS WHEREOF** this Agreement is executed on the date above mentioned by the parties.

**Witnessed**

\_\_\_\_\_  
The Modaraba

\_\_\_\_\_  
The Client

**Witnessed**

**1. Name:** \_\_\_\_\_

**2. Name:** \_\_\_\_\_