

**STATE BANK OF PAKISTAN**  
I.I. CHUNDRIGAR ROAD  
Post Box No. 4456  
KARACHI

**Press Release**

April 16, 2004

**State Bank's Shariah Board Approves  
Essentials and Model Agreements for  
Islamic Modes of Financing**

The Shariah Board of the State Bank of Pakistan has approved the [Essentials of Islamic Modes of Financing](#) to ensure compliance with minimum Shariah standards by banks conducting Islamic banking in Pakistan. These essentials have been placed on SBP website (<http://www.sbp.org.pk/>) as General Guidelines to be followed by banking institutions conducting Islamic banking in the country.

These [Guidelines/Essentials](#) are proposed to be enforced as Prudential Regulations for Islamic banks in due course. The State Bank invites suggestions and views for enforcing them as part of Prudential Regulations from all concerned, particularly the Shariah Scholars, Academics, Bankers and the Business community.

With dual objectives of facilitating the existing Islamic banking sector and the potential market players to develop Islamic banking products in particular and to create awareness about Islamic banking products in general, Model Agreements for following modes, vetted by the Shariah Board, have also been placed on SBP website (<http://www.sbp.org.pk/>).

1. [Murabaha Facility Agreement](#)
2. [Musawamah Facility Agreement](#)
3. [Lease Agreement](#)
4. [Salam Agreement](#)
5. [Musharaka Investment Agreement](#)
6. [Istisna Agreement](#)
7. [Agreement for Interest free Loan](#)
8. [Mudaraba Financing Agreement](#)
9. [Syndication Mudaraba Agreement](#)

It may be pointed out that these are model agreements, which can be modified, according to the products designed by the banks conducting Islamic banking business, with the approval of Shariah Board of Islamic commercial Banks or Shariah Adviser of banks having Islamic banking branches, ensuring that such changes are consistent with the principles of Shariah.

Suggestions and views in this regard may be sent to Mr. Pervez Said, Director, Islamic Banking Department / Adviser to the Governor on Islamic Banking, State Bank of Pakistan, Karachi through mail / fax (021-9212472) or e-mail ([pervez.said@sbp.org.pk](mailto:pervez.said@sbp.org.pk)).  
[Essentials of Islamic Modes of Financing](#)  
[Model Agreements](#)

## ESSENTIALS OF ISLAMIC MODES OF FINANCING

### **Introduction**

The Commission for Transformation of Financial System set up in the State Bank of Pakistan in pursuant to the Supreme Court Judgment on Riba dated December 23, 1999 approved essentials of Islamic modes of financing including Musharaka, Mudaraba, Murabaha, Musawama, Leasing, Salam and Istisna. The recently established State Bank of Pakistan's Shariah Board has reviewed and approved these essentials of Islamic modes of financing and recommended that the same may be circulated to the banks conducting Islamic banking business in Pakistan as guidelines that would form the basis for Prudential Regulations on Islamic banking in due course. It does not preclude the possibility of developing new modes or instruments of financing, modifications or variants of the modes provided they are Shariah compliant. The Essentials are given below:

#### **1. Murabaha (Agreed profit margin sale with cash or deferred payment of price)**

- i) Murabaha means a sale of goods by a person to another under an arrangement whereby the seller is obliged to disclose to the buyer the cost of goods sold either on cash basis or deferred payment basis and a margin of profit included in the sale price of goods agreed to be sold.
- ii) Goods to be traded should be real goods but not credit documents.
- iii) Being a sale transaction, it is essential that the commodities which are the subject of sale in a Murabaha transaction, must be existing, owned by the seller and in his physical or constructive possession. Therefore, it is necessary that the seller must have assumed the risks of ownership before selling the commodities to the buyer/customer.
- iv) Murabaha, like any other sale, requires an offer and acceptance which will include certainty of price, place of delivery, and date on which the price, if deferred, will be paid.
- v) In a Murabaha transaction, the appointment of an agent, if any, the purchase of goods by or for and on behalf of the bank and the ultimate sale of such goods to the customer shall all be transactions independent of each other and shall be so separately documented. An agreement to sell, however, may embody all the aforesaid events and transactions and can be entered into at the time of inception of relationship. The agent would first purchase the commodity on behalf of his principal i.e. financier and take its possession as such. Thereafter, the client would purchase the commodity from the financier, through an offer and acceptance. According to Sharia it is sufficient in respect of the condition of 'possession' that the supplier from whom the bank has purchased the item, gives possession to the bank or its agent in such a manner that subject matter of the sale comes under the risk of the bank. In other words, the commodity will remain in the risk of the financier during the period of purchase of the commodity by the agent and its ultimate sale to the client (agent/buyer) and its possession by him.
- vi) The invoice issued by the supplier will be in the name of the financier as the commodity would be purchased by an agent on behalf of such financier. It is preferable that the payment for such commodities should be made by the financier directly to the supplier.
- vii) Once the sale transaction has been concluded, the selling price determined cannot be changed.

- viii) It can be stipulated while entering into the agreement that in case of late payment or default by the client, he shall be liable to pay penalty calculated at percent per day or per annum that will go to the charity fund constituted by the bank. The amount of penalty cannot be taken to be a source of further return to the bank (the seller of the goods) but shall be used for charitable purposes including the projects intended to ameliorate economic conditions of the sections of the society possessing little or nothing *i.e.* needy people/peoples without means.
- ix) The banks can also approach competent courts for award of solatium which shall be determined by the Courts at their discretion, on the basis of direct and indirect costs incurred, other than opportunity cost. Also, security or collateral can be sold by the bank (seller) without intervention of the court.
- x) The buyer may be required to furnish security in the form of pledge, hypothecation, lien, mortgage or any other form of encumbrance on asset. However, the mortgagee or the chargeholder shall not derive any financial benefit from such security.
- xi) A Murabaha contract cannot be rolled over because the goods once sold by the bank become property of the client and, hence, cannot be resold.
- xii) Buy-back arrangement is prohibited. Therefore, commodities already owned by the client cannot become the subject of a Murabaha transaction between him and the same financier.
- xiii) The promissory note or bill of exchange or any evidence of indebtedness cannot be assigned or transferred on a price different from its face value.

## **2. Musawamah**

Musawamah is a general kind of sale in which price of the commodity to be traded is stipulated between seller and the buyer without any reference to the price paid or cost incurred by the former. Thus it is different from Murabaha in respect of pricing formula. Unlike Murabaha, seller in Musawamah is not obliged to reveal his cost. All other conditions relevant to Murabaha are valid for Musawamah as well. Musawamah can be an ideal mode where the seller is not in a position to ascertain precisely the costs of commodities that he is offering to sell.

## **3. Ijarah (Leasing)**

- i) In Ijara/leasing, the corpus of leased commodity remains in the ownership of the lessor and only its usufruct is transferred to the lessee. Any thing which cannot be used without consuming the same cannot be leased out like money, edibles, fuel, etc. Only such assets which are owned by the lessor can be leased out except that a sub-lease is effected by the lessee with the express permission of the lessor.
- ii) Until such time that assets to be leased are delivered to the lessee, lease rentals do not become due and payable.
- iii) During the entire term of the lease, the lessor must retain title to the assets, and bear all risks and rewards pertaining to ownership. However, if any damage or loss is caused to the leased assets due to the fault or negligence of the lessee, the consequences thereof shall be borne by the lessee. The consequences arising from non-customary use of the asset without mutual agreement will also be borne by the lessee. The lessee is also responsible for all risks and consequences in relation to third party liability, arising from or incidental to operation or use of the leased assets.

- iv) The insurance of the leased asset should be in the name of lessor and the cost of such insurance borne by him.  
(It is hoped that arrangement shall soon be made for Islamic Takaful to replace the existing insurance system).
- v) A lease can be terminated before expiry of the term of the lease but only with the mutual consent of the parties.
- vi) Either party can make a unilateral promise to buy/sell the assets upon expiry of the term of lease, or earlier at a price and at such terms and conditions as are agreed, provided that the lease agreement shall not be conditional upon such sale. Alternatively, the lessor may make a promise to gift the asset to the lessee upon termination of the lease, provided the lessee has fulfilled all his obligations. However, there shall not be any stipulation in the lease agreement purporting to transfer of ownership of the leased assets at a future date.
- vii) The amount of rental must be agreed in advance in an unambiguous manner either for the full term of the lease or for a specific period in absolute terms.
- viii) Assignment of only the lease rentals is not permissible except at par value.
- ix) Contract of lease will be considered terminated if the leased asset ceases to give the service for which it was rented. However, if the leased asset is damaged during the period of the contract but is capable of being repaired, the contract will remain valid.
- x) A penalty can be agreed *ab initio* in the lease agreement for delay in payment of rental by the lessee. In that case, lessee shall be liable to pay penalty calculated at the agreed rate in percent per day/annum. However, that penalty shall be used for the purposes of charity. The banks can also approach competent courts for award of damages, at discretion of the courts, which shall be determined on the basis of direct and indirect costs incurred, other than opportunity cost. Also, security or collateral can be sold by the bank (purchaser) without intervention of the court.

#### **4. Salam (Advance payment--Deferred Delivery Sale)**

- i) Salam (advance payment against deferred delivery of goods) means a kind of sale whereby the seller undertakes to supply specific goods to a buyer at a future date in consideration of a price fully paid in advance at the time the contract of sale is made.
- ii) The buyer shall pay the price in full to the seller at the time of effecting the sale. Otherwise, it will be tantamount to a sale of debt against debt, which is expressly prohibited in Shariah.
- iii) The specifications, quality and quantity of the commodity must be determined to avoid any ambiguity which could become a cause of dispute.
- iv) Date and place of delivery must be agreed upon but can be changed with mutual consent of the parties.
- v) Salam can be effected in respect of 'Dhawatul-Amthal' which represent such commodities the units of which are homogenous in characteristics and which are traded by counting, measuring or weighing according to usage and customs of trade. Therefore, other things such as precious stones, cattle heads etc. cannot be sold through the contract of Salam because every stone or individual animal is normally different from the others.

- vi) It is necessary that the commodity which is the subject of Salam contract is normally expected to be available at the time of delivery.
- vii) Salam cannot be effected in respect of things which must be delivered on spot. Examples are exchange of gold with silver or wheat with barley where it is necessary according to Shariah that the delivery of both be simultaneous.
- viii) Salam cannot be tied to the produce of a particular farm, field or tree.
- ix) In a Salam transaction, the buyer cannot contractually bind the seller to buy-back the commodity that will be delivered by the seller to the buyer. However, after the delivery is effected, the buyer and the seller can enter into a transaction of sale, independently, with their free will.
- x) In Salam transactions the buyer shall not, before taking possession (actual or constructive) of the goods sell or transfer ownership in the goods to any person.
- xi) The bank (buyer in Salam) can enter into a Parallel Salam contract without any condition or linkage with the original Salam contract. In one of them, the bank will be the buyer and in the second the seller. Each one of the two contracts shall be independent of the other. They cannot be tied up in a manner that the rights and obligations of original contract are dependant on the rights and obligations of the parallel contract. Further, Parallel Salam is allowed with a third party only.
- xii) In order to ensure that the seller shall deliver the commodity on the agreed date, the bank can ask him to furnish a security.
- xiii) In case of multiple commodities, the quantity and period of delivery for each of them should be separately fixed.
- xiv) A penalty can be agreed *ab initio* in the Salam contract for delay in delivery of the concerned commodity by the client i.e. seller of the commodity. In that case, the client shall be liable to pay penalty calculated at the agreed rate in percent per day/annum. However, that penalty shall be used for the purposes of charity. The banks can also approach competent courts for award of damages, at discretion of the courts, which shall be determined on the basis of direct and indirect costs incurred, other than opportunity cost. Also, security or collateral can be sold by the bank (purchaser) without intervention of the court.

## 5. Musharaka

- i) Musharaka means relationship established under a contract by the mutual consent of the parties for sharing of profits and losses arising from a joint enterprise or venture.
- ii) Investments come from all partners/shareholders hereinafter referred to as partners.
- iii) Profits shall be distributed in the proportion mutually agreed in the contract.
- iv) If one or more partners choose to become non-working or silent partners, the ratio of their profit cannot exceed the ratio which their capital investment bears to the total capital investment in Musharaka.
- v) If Mudarib in a Shirkah arrangement also contributes his own capital to the business, he will be entitled to share the profit in proportion to his own capital in addition to his share as Mudarib according to the agreed proportion.

- vi) It is not allowed to fix a lump sum amount for any of the partners, or any rate of profit tied up with his capital. A management fee however, can be paid to the partner managing the Musharaka provided the agreement for the payment of such fee is independent of the Musharaka agreement.
- vii) Losses are shared by all partners in proportion to their capital.
- viii) All assets of Musharaka are jointly owned in proportion to the capital of each partner.
- ix) All partners must contribute their capital in terms of money or species at an agreed valuation.

## **6. Mudaraba**

- i) Mudaraba means an arrangement in which a person participates with his money and another with his efforts and shall include banks, unit trusts, mutual funds or any other institutions or persons by whatever name called.
- ii) A Mudarib who runs the business can be a natural person, a group of persons, or a legal entity and a corporate body.
- iii) Rabbulmal shall provide his investment in money or species, other than receivables, at a mutually agreed valuation which shall be placed under the absolute disposal of the Mudarib.
- iv) The conduct of business of Mudaraba shall be carried out exclusively by the Mudarib within the framework of mandate given in the Mudaraba agreement.
- v) The profit shall be divided in strict proportion agreed at the time of contract and no party shall be entitled to a predetermined amount of return or remuneration.
- vi) Financial losses of the Mudaraba shall be borne solely by the Rabbulmal, unless it is proved that the Mudarib has been guilty of fraud, negligence or willful misconduct or has acted in contravention of the mandate.
- vii) The liability of Rabbulmal is limited to his investment unless otherwise specified in the Mudaraba contract.
- viii) Mudaraba may be of various types which may be multi purpose or specific purpose, perpetual or for a fixed period, restricted or unrestricted and close or open-ended in accordance with the conditions respective to each of them.
- ix) The Mudarib can invest his funds in the business of the Mudaraba with the permission of Rabbulmal. The condition is that in such situation, the Rabbulmal shall not be entitled to a proportion of profit in excess of the ratio that his investment bears to the total investment of the enterprise. The loss, if any, shall be shared in proportion to the capital of the parties.

## **7. Istisna**

- i) Istisna'a is an exceptional mode of sale, at an agreed price, whereby the buyer places an order to manufacture, assemble or construct, or cause so to do anything to be delivered at a future date.
- ii) The commodity must be known and specified to the extent of removing any ambiguity regarding its specifications including kind, type, quality and quantity.

- iii) Price of the goods to be manufactured must be fixed in absolute and unambiguous terms. The agreed price may be paid in lump sum or in installments in the matter mutually agreed by the parties.
- iv) Providing of material required for manufacture of commodity is the responsibility of the buyer.
- v) Unless otherwise mutually agreed, any party may cancel the contract unilaterally if the seller has not incurred any direct or indirect cost in relation thereto.
- vi) If goods manufactured conform to the specifications agreed between the parties, the orderer (purchaser) cannot decline to accept them except if there is an obvious defect in such goods. However, the agreement can stipulate that if the delivery is not made within the mutually agreed time period, then the buyer can refuse to accept the goods.
- vii) The bank (buyer in Istisna) can enter into a Parallel Istisna contract without any condition or linkage with the original Istisna contract. In one of them, the bank will be the buyer and in the second the seller. Each of the two contracts shall be independent of the other. They cannot be tied up in a manner that the rights and obligations of one contract are dependant on the rights and obligations of the parallel contract. Further, Parallel Istisna is allowed with a third party only.
- viii) In Istisna transactions the buyer shall not, before taking possession (actual or constructive) of the goods sell or transfer ownership in the goods to any other person.
- ix) If the seller fails to deliver the goods within the stipulated period, the price of the commodity can be reduced by a specified amount per day as per the agreement.
- x) The agreement can provide for payment for penalty calculated at the agreed rate in percent per day/annum that shall be used for the purposes of charity. The banks can also approach competent courts for award of solatium, at discretion of the courts, which shall be determined on the basis of direct and indirect costs incurred, other than opportunity cost. Also, security or collateral can be sold by the bank (purchaser) without intervention of the court.
- xi) In case of default by the client (Saani'i), the banks can also approach competent courts for award of damages, at discretion of the courts, which shall be determined on the basis of direct and indirect costs incurred, other than opportunity cost.

*In the Name of Allah, the Merciful, the Compassionate*

**Model Murabaha Facility Agreement**

(FOR CORPORATE CLIENTS-LOCAL PURCHASES)

THIS MURABAHA FACILITY AGREEMENT (this "**Agreement**") is made at \_\_\_\_ on \_\_\_\_ day of \_\_\_\_ by and

**BETWEEN**

\_\_\_\_\_, (hereinafter referred to as the "**Client**" 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 "**Institution**" 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 Institution has agreed to purchase the Goods from time to time from the Suppliers and upon which the Institution has agreed to sell the same to the Client from time to time by way of Murabaha facility.

1.02 In this Agreement, unless the context otherwise requires:

"**Act**" means the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 or any statutory modification or re-promulgation thereof;

"**Agent**" means the person appointed under the terms of the Agency Agreement;

"**Agency Agreement**" means the Agency Agreement between the Institution and the Client as provided in the Murabaha Document # 2;

"**Business Day**" means a day on which banks are open for normal business in Pakistan;

"**Cost Price**" means the amount which may be incurred by and/or on behalf of the Institution for the acquisition of Goods plus all costs, duties, taxes and charges incidental to and connected with acquisition of Goods;

"**Contract Price**" means aggregate of Cost Price and a Profit of \_\_\_\_ per cent calculated thereon payable by the Client to the Institution for Goods as stipulated in Part-III of the Declaration (Murabaha Document # 5) to be issued by the Institution from time to time;

"**Declaration**" means Declaration as set out in Murabaha Document # 5;

"**Event of Default**" means any of the events or circumstances described in Clause 9 hereto;

"**Goods**" means the Goods as may be specified in the Purchase Requisition(s) to be issued by the Client from time to time;

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

"**License**" means any license, permission, authorization, registration, consent or approval granted to the Client 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;

"**Ordinance**" means {insert description of Ordinance};

"**Payment Date**" or "**Payment Dates**" means the respective dates for the payment of the installments of the Contract Price or part thereof by the Client to the Institution as specified in Murabaha Document # 6 hereto, or, if such respective due date is not a Business Day, the next Business Day;

"**Profit**" means any part of the Contract Price which is not a part of the Cost Price;

"**Parties**" mean the parties to this Agreement;

"**Principal Documents**" means this Agreement, the Agency Agreement; and the Security Documents;



"**Promissory Note**" is defined in Clause 3.02 and is negotiable only at the face value, if required;

"**Prudential Regulations**" means Prudential Regulations or other regulations as are notified from time to time by SBP;

"**Purchase Requisition**" means a request from time to time by the Client to the Institution as per Murabaha Document # 3/1;

"**Receipt**" means a confirmation by the Client (as Agent of the Institution) of receipt of funds by the Supplier for the supply of Goods Murabaha Document # 4.

"**Security Documents**" and "**Security**" is defined in Clause 3;

"**Supplier**" means the supplier from whom the Institution acquires Title to the Goods;

"**Secured Assets**" means (insert description of assets in respect of which charge/mortgage may be created) offered as security by the Client;

"**Rupees**" or "**Rs.**" means the lawful currency of Pakistan;

"**SBP**" means the State Bank of Pakistan;

"**Title**" means such title or other interest in the Goods as the Institution receives from the Supplier;

"**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;

"**Value Date**" means the date on which the Cost Price will be disbursed by the Institution as stated in the Purchase Requisition.

- 1.01 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 Murabaha Documents are to be construed as references to the clauses of, and Murabaha Documents to, this Agreement and references to this Agreement include its Murabaha Documents; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, Institution, corporation, unincorporated body of persons or any state or any Agency thereof.
- 1.02 The recitals herein above and Murabaha Documents to this Agreement shall form an integral part of this Agreement.

## 2. **SALE AND PURCHASE OF THE GOODS**

- 2.01 The Institution agrees to sell the Goods to the Client to a maximum amount of Rs \_\_\_\_\_ and the Client agrees to purchase the Goods from the Institution from time to time at the Contract Price. Upon receipt by the Institution of the Client's Purchase Requisition advising the Institution to purchase the Goods and making payment therefor, the Institution shall acquire the Goods either directly or through the Agent, the payment for which shall be made by the institution to the Supplier. The Receipt for such payment shall be acknowledged by the Client in his capacity as an Agent to the Institution, should he be so appointed as an Agent of the Institution. The said Receipt shall be substantially in a form given in Murabaha Document # 4.
- 2.02 Upon purchase of Goods by the Institution, directly or through an Agent, from the Supplier, the Goods shall be at the risk and cost of the Institution until such time that these Goods are sold to the Client, to be evidenced by the acceptance, duly signed and endorsed by the Institution in Part-III of the Declaration.
- 2.03 After the purchase of Goods by the Institution, the Client shall offer to purchase the Goods from the Institution at the Contract Price in the manner provided in the Part-II of the Declaration.
- 2.04 The Client's purchase of Goods from the Institution shall be effected by the exchange of an offer and acceptance between the Client and the Institution as stipulated in the Declaration.

## 3. **SECURITY**

- 3.01 As security for the indebtedness of the Client under this Agreement, the Client shall:-
  - (a) Furnish to the Institution collateral(s)/security(ies), substantially in the form and substance attached hereto as Murabaha Document # 7;
  - (b) Execute such further deeds and documents as may from time to time be required by the Institution for the purpose of more fully securing and or perfecting the security created in favour of the Institution; and
  - (c) Create such other securities to secure the Client'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**").

- 3.02 In addition to above, the Client shall execute a demand promissory note in favour of the Institution for the amount of the Contract Price (the "Promissory Note");  
(The **Security** and the Promissory Note are hereinafter collectively referred to as the "**Security Documents**").
4. **FEEs AND EXPENSES**  
The Client shall pay to the Institution on demand within 15 days of such demand being made, all expenses (including legal and other ancillary expenses) incurred by the Institution 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.
5. **PAYMENT OF CONTRACT PRICE**  
5.01 All payments to be made by the Client under this Agreement shall be made in full, without any set-off, roll over or counterclaim whatsoever, on the due date and when the due date is not a Business Day, the following Business Day and save as provided in Clause 5.02, free and clear of any deductions or withholdings, to a current account of the Institution as may be notified from time to time, and the Client will only be released from its payment obligations hereunder by paying sums due into the aforementioned account.  
5.02 If at any time the Client is required to make any non refundable and non-adjustable deduction or withholding in respect of Taxes from any payment due to the Institution under this Agreement, the sum due from the Client in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Institution 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 Client shall indemnify the Institution against any losses or costs incurred by the Institution by reason of any failure of the Client to make any such deduction or withholding. The Client shall promptly deliver to the Institution any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.
6. **REPRESENTATIONS AND WARRANTIES**  
a. The Client warrants and represents to the Institution that in addition to the conditions set out in the Ordinance that:  
b. The execution, delivery and performance of the Principal Documents by the Client will not (i) contravene any existing law, regulations or authorization to which the Client is subject (ii) result in any breach of or default under any agreement or other instrument to which the Client is a party or is subject to, or (iii) contravene any provision of the constitutive documents of the Client or any resolutions adopted by the board of directors or members of the Client;  
c. The financial statements submitted together with the notes to the accounts and all contingent liabilities and assets that are disclosed therein represent a true and fair financial position of the business and to the best of the knowledge of the client, its directors and principal officers, there are no material omissions and/or misrepresentations;  
d. All requisite corporate and regulatory approvals required to be obtained by the Client in order to enter into the Principal Documents are in full force and effect and such approvals permit the Client, inter alia, to obtain financial facilities under this Agreement and perform its obligations hereunder and that the execution of the Principal Documents by the Client and the exercise of its rights and performance of its obligations hereunder, constitute private and commercial acts done for private and commercial purposes;  
e. No material litigation, arbitration or administrative proceedings is pending or threatened against the Client or any of its assets;  
f. It shall inform the Institution within \_\_\_\_ business days of an event or happening which may have an adverse effect on the financial position of the company, whether such an event is recorded in the financial statements or not as per applicable International Accounting Standards.
7. **UNDERTAKING**  
The Client covenants to and undertakes with the Institution that so long as the Client is indebted to the Institution in terms of this Agreement:  
(a) It shall inform the Institution 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;  
(b) It shall provide to the Institution, upon written request, copies of all contracts, agreements and documentation relating to the purchase of the Goods;

- (c) The Client shall do all such things and execute all such documents which in the judgment of the Institution may be necessary to; (i) enable the Institution to assign or otherwise transfer the liability of the Client in respect of the Contract Price to any creditor of the Institution or to any third party as the Institution may deem fit at its absolute 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 Secured Assets and protect and enforce its rights and title, and the rights of the Institution in respect of the Secured Assets, and; (v) preserve and protect the Secured Assets. The Client shall at its own expense cause to be delivered to the Institution such other documentation and legal opinion(s) as the Institution may reasonably require from time to time in respect of the foregoing;
- (d) It will satisfactorily insure all its insurable assets with reputable companies offering protection under the Islamic concept of Takaful. The Secured Assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Institution) 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 Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution 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 Institution. Should the Client fail to insure or keep insured the Secured Assets and/or to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution, 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 Indebtedness. The Client expressly agrees that the Institution 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 Institution 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;
- (e) Except as required in the normal operation of its business, the Client shall not, without the written consent of the Institution, sell, transfer, lease or otherwise dispose of all or a sizeable part of its assets, or undertake or permit any merger, consolidation, dismantling or re-organization which would materially affect the Client's ability to perform its obligations under any of the Principal Documents;
- (f) The Client shall not (and shall not agree to), except with the written consent of the Institution, create, incur, assume or suffer to exist any Lien whatsoever upon or with respect to the Secured Assets and any other assets and properties owned by the Client which may rank superior, pari passu or inferior to the security created or to be created in favour of the Institution pursuant to the Principal Documents;
- (g) It shall forthwith inform the Institution of:
  - (i) Any event or factor, any litigation or proceedings pending or threatened against the Client which could materially and adversely affect or be likely to materially and adversely affect: (A) the financial condition of the Client; (B) business or operations of the Client; and (C) the Client's ability to meet its obligations when due under any of the Principal Documents;
  - (ii) Any change in the directors of the Client;
  - (iii) Any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment or waiver or indulgence under any material provision of any of the Principal Documents;
  - (iv) Any material notice or correspondence received or initiated by the Client relating to the License, consent or authorization necessary for the performance by the Client of its obligations under any of the Principal Documents

## 8. **CONDITIONS PRECEDENT**

8.01 The obligation of the Institution to pay the Cost Price shall be subject to the receipt by the Institution (in form and substance acceptable to the Institution) at least \_\_\_\_ Business Days prior to the Value Date of:

- (a) Documentary evidence that:
  - (i) This Agreement and the Agency Agreement (should the Institution appoint the Client as its Agent) have been executed and delivered by the Client;
  - (ii) The Client's representatives are duly empowered to sign the Principal Documents for and on behalf of the Client and to enter into the covenants and undertakings set out herein or which arise as a consequence of the Client entering into the Principal Documents;

- (iii) The Client has taken all necessary steps and executed all documents required under or pursuant to the Principal Documents or any documents creating or evidencing the Security in favour of the Institution and has perfected the Security as required by the Institution.
  - (b) Certified copy of the Memorandum and Articles of Association of the Client.
  - (c) Certified copies of the Client's audited financial statements for the last \_\_\_\_ years
  - (d) The Purchase Requisition.
- 8.02 The obligation of the Institution to pay the Cost Price on the Value Date shall be further subject to the fulfillment of the following conditions (as shall be determined by the Institution in its sole discretion):
- (a) The payment of Cost Price by the Institution to the Supplier on the Value Date shall not result in any breach of any law or existing agreement;
  - (b) The Security has been validly created, perfected and is subsisting in terms of this Agreement;
  - (c) The Institution has received such other documents as it may reasonably require in respect of the payment of the Cost Price;
  - (d) No event or circumstance which constitutes or which with the giving of notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing or is likely to occur and that the payment of the Cost Price shall not result in the occurrence of any Event of Default;
  - (e) Delivery by the Client to the Institution of a true and complete extract of all relevant parts of the minutes of a duly convened meeting of its Board of Directors approving the Principal Documents and granting the necessary authorizations for entering into, execution and delivery of the Principal Documents which shall be duly signed and certified by the person authorized by the Board for this purpose;
  - (f) All fees, commission, expenses required to be paid by the Client to the Institution have been received by the Institution.
- 8.03 Any condition precedent set forth in this Clause 8 may be waived and or modified by the mutual written consent of the parties hereto.
9. **EVENTS OF DEFAULT**
- 9.01 There shall be an Event of Default if in the opinion of the Institution
- (a) Any representation or warranty made or deemed to be made or repeated by the Client in or pursuant to the Principal Documents or in any document delivered under this Agreement is found to be incorrect;
  - (b) Any Indebtedness of the Client to the Institution 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;
- 9.02 Notwithstanding anything contained herein, the Institution may without prejudice to any of its other rights, at any time after the happening of an Event of Default by notice to the Client declare that entire amount by which the Client is indebted to the Institution shall forthwith become due and payable.

#### 10. **PENALTY**

- 10.1. Where any amount is required to be paid by the Client 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 Contract Price, the Client hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.
- 10.2. In case (i) any amount(s) referred to in clause 10.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Client, is not paid by him, or (ii) the Client 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 10.01 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 (i) for recovery of any amounts remaining unpaid as well as (ii) for imposing of a penalty on the Client. In this regard the Client is aware and acknowledges that in terms of the Ordinance and notwithstanding the amount paid by the Client 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.

11. **INDEMNITIES**

The Client shall indemnify the Institution against any expense which the Institution shall prove as rightly incurred by it as a consequence of (i) the occurrence of any Event of Default, (ii) the purchase and sale of Goods or any part thereof by the Client or the ownership thereof, and (iii) any mis-representation.

12. **SET-OFF**

The Client authorizes the Institution to apply any credit balance to which the Client is entitled or any amount which is payable by the Institution to the Client at any time in or towards partial or total satisfaction of any sum which may be due or payable from the Client to the Institution under this Agreement.

13. **ASSIGNMENT**

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

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

14. **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.

15. **GENERAL**

15.01 No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor a partial exercise by the Institution 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;

15.02 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;

15.03 This Agreement is governed by and shall be construed in accordance with Pakistan 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.

15.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.

15.05 Any reconstruction, division, re-organization or change in the constitution of the Institution 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.

15.06 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;

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

**WITNESSES:**  
Institution]

For and on behalf of [insert name of the

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

\_\_\_\_\_  
\_\_\_\_\_

For and on behalf of

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

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_

**AGENCY AGREEMENT**

With reference to the Murabaha Facility Agreement dated \_\_\_\_\_, we hereby confirm our agreement to appoint you as our Agent to acquire for our account and benefit goods of the description to be specified in the purchase requisition which shall be issued from time to time, under the following terms and conditions;

1. As an Agent of the Institution, you will be responsible to receive the Goods directly from the Supplier (s) from time to time in terms of Purchase Requisition(s) to be duly endorsed by the Institution and provide us a declaration confirming acquisition thereof, alongwith a statement containing relevant details including place of storage.
2. At your request, we will effect payment(s) directly to the Supplier(s) nominated by you, for the Goods to be specified in the Purchase Requisition. All Purchase Requisitions shall be accompanied by quotation(s) from the Supplier(s). All payments to Supplier(s) shall be evidenced by a Receipt to be signed by you, in your capacity as an Agent of the Institution.
3. In case of failure on your part to:-
  - a) Acquire goods in terms of this agreement and to refund, in consequence, the amount paid by us (the Institution) therefor, and/or
  - b) Repay the amount, if any, due from you upon a notice of revocation, if any, served by you in the manner provided hereunder;  
you shall become liable to pay a penalty to the institution by credit to a special Account, separately maintained by the institution, an amount which shall be 5% over the rate announced by SBP for providing short term accommodation to commercial banks, as on the date of such default by you. This amount will be calculated on the entire amount due from you, under this Agency Agreement and for the entire period for which the default subsists. The amount of such penalty shall be utilized by the institution only for the purposes of charity, in its absolute discretion.
4. The Institution shall have the authority, in its absolute discretion to refuse the disbursement of funds or to revoke this Agency Agreement at any time., subject to a notice in writing served given at least 07 days prior to revocation.
5. You may revoke this Agency Agreement by giving a notice in writing of at least 07 days prior to the date of intended revocation, provided that any amount due by you to the Institution shall become payable immediately and until such time that any such amount due from you has been discharged in full, this agreement shall not be deemed to have been revoked.
6. This Agency Agreement shall remain in force until revoked and shall be governed by the prevailing laws of Pakistan and the Murabaha Facility Agreement dated \_\_\_\_\_. Any dispute between the parties shall be submitted to a Court/Tribunal of competent jurisdiction in \_\_\_\_\_.

Kindly signify your acceptance of the foregoing terms and conditions by signing the duplicate.

For and on behalf of (insert name of the Institution)

\_\_\_\_\_  
AUTHORISED SIGNATORY OF THE INSTITUTION

**AGREED AND ACCEPTED**

For and on behalf of [insert name]

\_\_\_\_\_  
AUTHORISED SIGNATORY OF THE AGENT

**WITNESSES:**

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

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

**PURCHASE REQUISITION**

S. No. \_\_\_\_\_  
Date: \_\_\_\_\_

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

Dear Sirs,

**PURCHASE REQUISITION FOR PURCHASE OF THE GOODS**  
**MURABAHA FACILITY AGREEMENT DATED**

- (1) Please refer to the Murabaha Facility Agreement dated [\_\_\_\_\_] (the "**Agreement**") between [insert name of the Client] (the "**Client**") (of the first part) and [insert name of the Institution] (the "**Institution**") (of the second part).
- (2) All terms defined in the Agreement bear the same meanings herein.
- (3) The Client hereby requests you to purchase the Goods from the Suppliers as per the provisions of the Agreement as follows:
  - (a) Goods as detailed in Murabaha Document # 3/2:
  - (b) Cost Price: \_\_\_\_\_
  - (c) Value Date: \_\_\_\_\_
- (4) Please make arrangements to pay the Cost Price to the account of \_\_\_\_\_ on the Value Date in immediately available funds.
- (5) All the terms and conditions of the Agreement shall form an integral part of this Requisition.

Yours faithfully,

For and on Behalf of the Client  
\_\_\_\_\_  
\_\_\_\_\_

**INSTITUTION'S INSTRUCTIONS**

No. \_\_\_\_\_  
Date: \_\_\_\_\_

Dear Sir,

You are hereby instructed to execute the aforesaid Purchase Requisition for and on our behalf in the manner, to the extent and for the Goods stipulated therein.

For and on Behalf of

\_\_\_\_\_  
(Insert Institution's name)



**DETAILS OF GOODS TO BE PURCHASED**

*(To be attached to Purchase Requisition)*

Name of Supplier : \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

**Murabaha Document # 4**

**R E C E I P T**

Received with thanks from \_\_\_\_\_ branch,  
a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) for the purchase of  
goods in respect of which a Quotation dated \_\_\_\_\_ has been issued by M/S \_\_\_\_\_  
\_\_\_\_\_.

In the event of failure on the part of the Supplier to supply the said goods within the period specified in the  
Purchase Requisition, I/We undertake and agree to refund/reimburse \_\_\_\_\_ the full amount of  
Rs. \_\_\_\_\_ and all cost and consequences under and in terms of the Agency Agreement.

For and on behalf of  
[Insert name of the Agent)

\_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**DECLARATION**

**(Part-I)**

**CONFIRMATION OF GOODS PURCHASED**

Date: \_\_\_\_\_

Messrs. \_\_\_\_\_  
\_\_\_\_\_

With reference to the Agency Agreement dated \_\_\_\_\_ and the Institution's instructions contained in Murabaha Document # 3/1, we hereby declare and certify that acting as your Agent, we have used the sum of Rs. \_\_\_\_\_ paid by your good selves to M/s \_\_\_\_\_ and purchased on your behalf the Goods as detailed in Murabaha Document # 3/2).

A sum of Rs. \_\_\_\_\_ has been incurred for the purchase of the Goods, which are in my/our possession at the following address: \_\_\_\_\_  
\_\_\_\_\_

Copies of bill/cash memo/invoice issued in your name by M/s \_\_\_\_\_ are attached.

For and on behalf of [insert Agent's name]

\_\_\_\_\_  
AUTHORISED SIGNATORY

**(Part-II)**

**OFFER TO PURCHASE**

I/We offer to purchase the above Goods from you for a Contract Price of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

I/We undertake to pay the Contract Price referred to above in lump sum on \_\_\_\_\_, or in \_\_\_\_\_ installments, if agreed by the Institution, as per the attached schedule (Murabaha Document # 6).

For and on behalf of [Insert Agent's name]

\_\_\_\_\_  
AUTHORISED SIGNATORY

Date:

**(Part-III)**

**INSTITUTION'S ACCEPTANCE**

We have accepted your offer and have sold the above-mentioned Goods to you on the following terms and conditions.

1) The Contract Price is Pak Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) comprising cost incurred Rs. \_\_\_\_\_, plus Profit Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) and Sales Tax Rs. \_\_\_\_\_.

2) The Contract Price stated above shall be payable in lump sum on \_\_\_\_\_ or in \_\_\_\_\_ installments, as per the attached schedule (Murabaha Document # 6).

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

\_\_\_\_\_  
AUTHORISED SIGNATORY

Date:

\_\_\_\_\_  
AUTHORISED SIGNATORY

Date:

**SCHEDULE OF PAYMENTS OF CONTRACT PRICE**

Payment Date	Installment Amount

**SCHEDULE OF SECURITY**

Description of Security	Nature of Charge

*In the Name of Allah, the Merciful, the Compassionate*

**MODEL MUSAWAMAH FACILITY AGREEMENT**

**(For Corporate Clients-local purchases)**

THIS MUSAWAMA FACILITY AGREEMENT (this "**Agreement**") is made at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ by and

**BETWEEN**

\_\_\_\_\_, (hereinafter referred to as the "**Client**" 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 "**Institution**" 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 Institution has agreed to purchase the Goods from time to time from the Suppliers and upon which the Institution has agreed to sell the same to the Client from time to time by way of Musawamah facility.

- 1.02 In this Agreement, unless the context otherwise requires:

"**Act**" means the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 or any statutory modification or re-promulgation thereof;

"**Agent**" means the person appointed under the terms of the Agency Agreement;

"**Agency Agreement**" means the Agency Agreement between the Institution and the person appointed as Agent (which may be the Client) as provided in the Musawamah Document # 2;

"**Business Day**" means a day on which banks are open for normal business in Pakistan;

"**Cost Price**" means the amount which may be incurred by and/or on behalf of the Institution for the acquisition of Goods plus all costs, duties, taxes and charges incidental to and connected with acquisition of Goods;

"**Contract Price**" means the price payable by the Client to the Institution for Goods as stipulated in Part-III of the Declaration (Musawamah Document # 5) to be issued by the Institution from time to time;

"**Declaration**" means Declaration as set out in Musawamah Document # 5;

"**Event of Default**" means any of the events or circumstances described in Clause 9 hereto;

"**Goods**" means the Goods as may be specified in the Purchase Requisition(s) to be issued by the Client from time to time;

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

"**License**" means any license, permission, authorization, registration, consent or approval granted to the Client 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;

"**Ordinance**" means {insert description of the proposed Ordinance,};

"**Payment Date**" or "**Payment Dates**" means the respective dates for the payment of the installments of the Contract Price or part thereof by the Client to the Institution as specified in Musawamah Document # 6 hereto, or, if such respective due date is not a Business Day, the next Business Day;

"**Profit**" means any part of the Contract Price which is not a part of the Cost Price;

"**Parties**" mean the parties to this Agreement;

"**Principal Documents**" means this Agreement, the Agency Agreement; and the Security Documents;

"**Promissory Note**" is defined in Clause 3.02 and is negotiable only at the face value, if required;

"**Prudential Regulations**" means Prudential Regulations or other regulations as are notified from time to time by SBP;

"**Purchase Requisition**" means a request from time to time by the Client to the Institution as per Musawamah Document # 3/1;

"**Security Documents**" and "**Security**" is defined in Clause 3;

"**Supplier**" means the supplier from whom the Institution acquires Title to the Goods;

"**Secured Assets**" means (insert description of assets in respect of which charge/mortgage may be created) offered as security by the Client;

"**Receipt**" means a confirmation by the Agent of the Institution, of receipt of funds by the Supplier for the supply of Goods Musawamah Document # 4.

"**Rupees**" or "**Rs.**" means the lawful currency of Pakistan;

"**SBP**" means the State Bank of Pakistan;

"**Title**" means such title or other interest in the Goods as the Institution receives from the Supplier;

"**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;

"**Value Date**" means the date on which the Cost Price will be disbursed by the Institution as stated in the Purchase Requisition.

- 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 Musawamah Documents are to be construed as references to the clauses of, and Musawamah Documents to, this Agreement and references to this Agreement include its Musawamah Documents; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, Institution, corporation, unincorporated body of persons or any state or any Agency thereof.
- 1.04 The recitals herein above and Musawamah Documents to this Agreement shall form an integral part of this Agreement.

## **2. SALE AND PURCHASE OF THE GOODS**

- 2.01 The Institution agrees to sell the Goods to the Client to a maximum amount of Rs \_\_\_\_\_ and the Client agrees to purchase the Goods from the Institution from time to time at the Contract Price. Upon receipt by the Institution of the Client's Purchase Requisition advising the Institution to purchase the Goods and make payment therefor, the Institution shall acquire the Goods either directly or through the Agent, the payment for which shall be made by the institution to the Supplier. The Receipt for such payment shall be acknowledged by the Client in his capacity as an Agent to the Institution, should he be so appointed as an Agent of the Institution. The said Receipt shall be substantially in a form given in Musawamah Document # 4.
- 2.02.1 After the purchase of Goods by the Institution, the Client shall offer to purchase the Goods from the Institution at the Contract Price in the manner provided in the Part-II of the Declaration.
- 2.03 The Client shall purchase the Goods from the Institution after the Institution has beneficially acquired the Goods. The Musawamah purchase of the Client from the Institution shall be effected by the exchange of an offer and acceptance between the Client and the Institution. The Goods shall remain at the risk of the Institution until such time the client has accepted the offer made by the Institution as set out in the Appendix C of this Agreement, immediately after which, all risks in respect of the Goods shall be passed on to the Client.

**OR (to be applicable if sale is being made from inventory of the institution)**

- 2.03 The Institution has agreed to sell the Goods to the Client and the Client has agreed to purchase the Goods from the Institution for the Contract Price. Upon receipt by the Institution of the Client's Purchase Requisition advising the Institution of its requirements, the Institution shall deliver the Goods to the client. The title of Goods shall stand transferred to the Client as per agreed terms of delivery

## **3. SECURITY**

- 3.01 As security for the indebtedness of the Client under this Agreement, the Client shall:-
- (a) Furnish to the Institution collateral(s)/security(ies), substantially in the form and substance attached hereto as Musawamah Document # 7;

- (b) Execute such further deeds and documents as may from time to time be required by the Institution for the purpose of more fully securing and or perfecting the security created in favour of the Institution; and
- (c) Create such other securities to secure the Client'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**").

- 3.02 In addition to above, the Client shall execute a demand promissory note in favour of the Institution for the amount of the Contract Price (the "Promissory Note");

(The **Security** and the Promissory Note are hereinafter collectively referred to as the "**Security Documents**").

#### **4. FEES AND EXPENSES**

The Client shall pay to the Institution on demand within 15 days of such demand being made, all expenses (including legal and other ancillary expenses) incurred by the Institution 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.

#### **5. PAYMENT OF CONTRACT PRICE**

- 5.01 All payments to be made by the Client under this Agreement shall be made in full, without any set-off, roll over or counterclaim whatsoever, on the due date and when the due date is not a Business Day, the following Business Day and save as provided in Clause 5.02, free and clear of any deductions or withholdings, to a current account of the Institution as may be notified from time to time, and the Client will only be released from its payment obligations hereunder by paying sums due into the aforementioned account.
- 5.02 If at any time the Client is required to make any non refundable and non-adjustable deduction or withholding in respect of Taxes from any payment due to the Institution under this Agreement, the sum due from the Client in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Institution 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 Client shall indemnify the Institution against any losses or costs incurred by the Institution by reason of any failure of the Client to make any such deduction or withholding. The Client shall promptly deliver to the Institution any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

#### **6. REPRESENTATIONS AND WARRANTIES**

The Client warrants and represents to the Institution that in addition to the conditions set out in the Ordinance that:

- a. The execution, delivery and performance of the Principal Documents by the Client will not (i) contravene any existing law, regulations or authorization to which the Client is subject (ii) result in any breach of or default under any agreement or other instrument to which the Client is a party or is subject to, or (iii) contravene any provision of the constitutive documents of the Client or any resolutions adopted by the board of directors or members of the Client;
- b. The financial statements submitted together with the notes to the accounts and all contingent liabilities and assets that are disclosed therein represent a true and fair financial position of the business and to the best of the knowledge of the client, its directors and principal officers, there are no material omissions and/or misrepresentations;
- c. All requisite corporate and regulatory approvals required to be obtained by the Client in order to enter into the Principal Documents are in full force and effect and such approvals permit the Client, inter alia, to obtain financial facilities under this Agreement and perform its obligations hereunder and that the execution of the Principal Documents by the Client and the exercise of its rights and performance of its obligations hereunder, constitute private and commercial acts done for private and commercial purposes;
- d. No material litigation, arbitration or administrative proceedings is pending or threatened against the Client or any of its assets;
- e. It shall inform the Institution within \_\_\_\_ business days of an event or happening which may have an adverse effect on the financial position of the company, whether such an event is recorded in the financial statements or not as per applicable International Accounting Standards.

7. **UNDERTAKING**

The Client covenants to and undertakes with the Institution that so long as the Client is indebted to the Institution in terms of this Agreement:

- a) It shall inform the Institution 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;
- b) It shall provide to the Institution, upon written request, copies of all contracts, agreements and documentation relating to the purchase of the Goods;
- c) The Client shall do all such things and execute all such documents which in the judgment of the Institution may be necessary to: (i) enable the Institution to assign or otherwise transfer the liability of the Client in respect of the Contract Price to any creditor of the Institution or to any third party as the Institution may deem fit at its absolute 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 Secured Assets and protect and enforce its rights and title, and the rights of the Institution in respect of the Secured Assets, and; (v) preserve and protect the Secured Assets. The Client shall at its own expense cause to be delivered to the Institution such other documentation and legal opinion(s) as the Institution may reasonably require from time to time in respect of the foregoing;
- d) It will satisfactorily insure all its insurable assets with reputable companies offering protection under the Islamic concept of Takaful. The Secured Assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Institution) 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 Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution 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 Institution. Should the Client fail to insure or keep insured the Secured Assets and/or to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution, 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 Indebtedness. The Client expressly agrees that the Institution 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 Institution 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;
- e) Except as required in the normal operation of its business, the Client shall not, without the written consent of the Institution, sell, transfer, lease or otherwise dispose of all or a sizeable part of its assets, or undertake or permit any merger, consolidation, dismantling or re-organization which would materially affect the Client's ability to perform its obligations under any of the Principal Documents;
- f) The Client shall not (and shall not agree to), except with the written consent of the Institution, create, incur, assume or suffer to exist any Lien whatsoever upon or with respect to the Secured Assets and any other assets and properties owned by the Client which may rank superior, pari passu or inferior to the security created or to be created in favour of the Institution pursuant to the Principal Documents;
- g) It shall forthwith inform the Institution of:
  - i) Any event or factor, any litigation or proceedings pending or threatened against the Client which could materially and adversely affect or be likely to materially and adversely affect: (A) the financial condition of the Client; (B) business or operations of the Client; and (C) the Client's ability to meet its obligations when due under any of the Principal Documents;
  - ii) Any change in the directors of the Client;
  - iii) Any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment or waiver or indulgence under any material provision of any of the Principal Documents;
  - iv) Any material notice or correspondence received or initiated by the Client relating to the License, consent or authorization necessary for the performance by the Client of its obligations under any of the Principal Documents

8. **CONDITIONS PRECEDENT**

- 8.01 The obligation of the Institution to pay the Cost Price shall be subject to the receipt by the Institution (in form and substance acceptable to the Institution) at least \_\_\_ Business Days prior to the Value Date of:

- a) Documentary evidence that:
    - i) This Agreement and the Agency Agreement (should the Institution appoint the Client as its Agent) have been executed and delivered by the Client;
    - ii) The Client's representatives are duly empowered to sign the Principal Documents for and on behalf of the Client and to enter into the covenants and undertakings set out herein or which arise as a consequence of the Client entering into the Principal Documents;
    - iii) The Client has taken all necessary steps and executed all documents required under or pursuant to the Principal Documents or any documents creating or evidencing the Security in favour of the Institution and has perfected the Security as required by the Institution.
  - b) Certified copy of the Memorandum and Articles of Association of the Client.
  - c) Certified copies of the Client's audited financial statements for the last \_\_\_\_ years
  - d) The Purchase Requisition.
- 8.02 The obligation of the Institution to pay the Cost Price on the Value Date shall be further subject to the fulfillment of the following conditions (as shall be determined by the Institution in its sole discretion):
- a) The payment of Cost Price by the Institution to the Supplier on the Value Date shall not result in any breach of any law or existing agreement;
  - b) The Security has been validly created, perfected and is subsisting in terms of this Agreement;
  - c) The Institution has received such other documents as it may reasonably require in respect of the payment of the Cost Price;
  - d) No event or circumstance which constitutes or which with the giving of notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing or is likely to occur and that the payment of the Cost Price shall not result in the occurrence of any Event of Default;
  - e) Delivery by the Client to the Institution of a true and complete extract of all relevant parts of the minutes of a duly convened meeting of its Board of Directors approving the Principal Documents and granting the necessary authorizations for entering into, execution and delivery of the Principal Documents which shall be duly signed and certified by the person authorised by the Board for this purpose;
  - f) All fees, commission, expenses required to be paid by the Client to the Institution have been received by the Institution.
- 8.03 Any condition precedent set forth in this Clause 8 may be waived and or modified by the mutual written consent of the parties hereto.

## **9. EVENTS OF DEFAULT**

- 9.01 There shall be an Event of Default if in the opinion of the Institution
- (a) Any representation or warranty made or deemed to be made or repeated by the Client in or pursuant to the Principal Documents or in any document delivered under this Agreement is found to be incorrect;
  - (b) Any Indebtedness of the Client to the Institution 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;
- 9.02 Notwithstanding anything contained herein, the Institution may without prejudice to any of its other rights, at any time after the happening of an Event of Default by notice to the Client declare that entire amount by which the Client is indebted to the Institution shall forthwith become due and payable.

## **10. PENALTY**

- 10.1 Where any amount is required to be paid by the Client 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 Contract Price, the Client hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.



- 10.2 In case (i) any amount(s) referred to in clause 10.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Client, is not paid by him, or (ii) the Client 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 10.01 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 (i) for recovery of any amounts remaining unpaid as well as (ii) for imposing of a penalty on the Client. In this regard the Client is aware and acknowledges that in terms of the Ordinance and notwithstanding the amount paid by the Client 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.

**11. INDEMNITIES**

The Client shall indemnify the Institution against any expense which the Institution shall prove as rightly incurred by it as a consequence of (i) the occurrence of any Event of Default, (ii) the purchase and sale of Goods or any part thereof by the Client or the ownership thereof, and (iii) any mis-representation.

**12. SET-OFF**

The Client authorizes the Institution to apply any credit balance to which the Client is entitled or any amount which is payable by the Institution to the Client at any time in or towards partial or total satisfaction of any sum which may be due or payable from the Client to the Institution under this Agreement.

**13. ASSIGNMENT**

- 13.01 This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Institution, the Client, and respective successors permitted assigns and transferees of the parties hereto, provided that the Client shall not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Institution. The Institution 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 Institution, or other person. The Client shall not be liable for the costs of the assignment and/or transfer of commitments hereunder by the Institution. If the Institution 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 Institution shall thereafter be construed as a reference to the Institution and/or its assignee(s) or transferee(s) (as the case may be) to the extent of their respective interests.
- 13.02 The Institution may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Institution in relation to this Agreement such information about the Client as the Institution shall consider appropriate.

**14. 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.

**15. GENERAL**

- 15.01 No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor a partial exercise by the Institution 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;
- 15.02 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;

- 15.03 This Agreement is governed by and shall be construed in accordance with Pakistan 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.
- 15.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.
- 15.05 Any reconstruction, division, re-organization or change in the constitution of the Institution 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.
- 15.06 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 to telex or by any other electronic means, or the next Business Day as counted from the date of delivery if delivered by courier mail;

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

**WITNESSES:**

	For and on behalf of [insert name of the Institution]
1. _____	_____
2. _____	_____
	For and on behalf of
1. _____	_____
2. _____	_____

AGENCY AGREEMENT  
(If Required)

With reference to the Musawamah Facility Agreement dated \_\_\_\_\_, we hereby confirm our agreement to appoint you as our Agent to acquire for our account and benefit goods of the description to be specified in the purchase requisition which shall be issued from time to time, under the following terms and conditions;

1. As an Agent of the Institution, you will be responsible to receive the Goods directly from the Supplier (s) from time to time in terms of Purchase Requisition(s) to be duly endorsed by the Institution and provide us a declaration confirming acquisition thereof, alongwith a statement containing relevant details including place of storage.
2. At your request, we will effect payment(s) directly to the Supplier(s) nominated by you, for the Goods to be specified in the Purchase Requisition. All Purchase Requisitions shall be accompanied by quotation(s) from the Supplier(s). All payments to Supplier(s) shall be evidenced by a Receipt to be signed by you, in your capacity as an Agent of the Institution.
3. In case of failure on your part to:-
  - a) acquire goods in terms of this agreement and to refund, in consequence, the amount paid by us (the Institution) therefore, and/or
  - b) repay the amount, if any, due from you upon a notice of revocation, if any, served by you in the manner provided hereunder;

You shall become liable to pay a penalty to the institution by credit to a special Account, separately maintained by the institution, an amount which shall be 5% over the rate announced by SBP for providing short term accommodation to commercial banks, as on the date of such default by you. This amount will be calculated on the entire amount due from you, under this Agency Agreement and for the entire period for which the default subsists. The amount of such penalty shall be utilized by the institution only for the purposes of charity, in its absolute discretion.

4. The Institution shall have the authority, in its absolute discretion to refuse the disbursement of funds or to revoke this Agency Agreement at any time., subject to a notice in writing served given at least 07 days prior to revocation.
5. You may revoke this Agency Agreement by giving a notice in writing of at least 07 days prior to the date of intended revocation, provided that any amount due by you to the Institution shall become payable immediately and until such time that any such amount due from you has been discharged in full, this agreement shall not be deemed to have been revoked.
6. This Agency Agreement shall remain in force until revoked and shall be governed by the prevailing laws of Pakistan and the Musawamah Facility Agreement dated \_\_\_\_\_. Any dispute between the parties shall be submitted to a Court/Tribunal of competent jurisdiction in \_\_\_\_\_.

Kindly signify your acceptance of the foregoing terms and conditions by signing the duplicate.

For and on behalf of (insert name of the Institution)

\_\_\_\_\_  
AUTHORISED SIGNATORY OF THE INSTITUTION

AGREED AND ACCEPTED

For and on behalf of [insert name]

\_\_\_\_\_  
AUTHORISED SIGNATORY OF THE AGENT

WITNESSES:

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

**PURCHASE REQUISITION**

S. No. \_\_\_\_\_  
Date: \_\_\_\_\_

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

Dear Sirs,

**PURCHASE REQUISITION FOR PURCHASE OF THE GOODS  
MUSAWAMAH FACILITY AGREEMENT DATED**

- (1) Please refer to the Musawamah Facility Agreement dated [\_\_\_\_\_] (the "**Agreement**") between [insert name of the Client] (the "**Client**") (of the first part) and [insert name of the Institution] (the "**Institution**") (of the second part).
- (2) All terms defined in the Agreement bear the same meanings herein.
- (3) The Client hereby requests you to purchase the Goods from the Suppliers as per the provisions of the Agreement as follows:
  - (a) Goods as detailed in Musawamah Document # 3/2:
  - (b) Value Date: \_\_\_\_\_
- (4) Please make arrangements to pay the Cost Price to the account of \_\_\_\_\_ on the Value Date in immediately available funds.
- (5) All the terms and conditions of the Agreement shall form an integral part of this Requisition.

Yours faithfully,

For and on Behalf of the Client

\_\_\_\_\_

**Institution's instructions**

No. \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dear Sir,

You are hereby instructed to execute the aforesaid Purchase Requisition for and on our behalf in the manner, to the extent and for the Goods stipulated therein.

For and on Behalf of

\_\_\_\_\_  
(Insert Institution's name)

**DETAILS OF GOODS TO BE PURCHASED***(To be attached to Purchase Requisition)*

Name of Supplier: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Sr. No.	Specifications of Goods	Quantity Requisitioned	Cost	Quantity Received	Cost
------------	-------------------------	------------------------	------	-------------------	------

**Musawamah Document # 4****R E C E I P T**

Received with thanks from \_\_\_\_\_ branch, a  
sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)  
for the purchase of goods in respect of which a Quotation dated \_\_\_\_\_ has been issued by  
M/s. \_\_\_\_\_.

In the event of failure on the part of the Supplier to supply the said goods within the period specified in the Purchase Requisition, I/We undertake and agree to refund/reimburse \_\_\_\_\_ the full amount of Rs. \_\_\_\_\_ and all cost and consequences under and in terms of the Agency Agreement.

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

\_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**DECLARATION**

**(Part-I)**

**CONFIRMATION OF GOODS PURCHASED**

Messrs. \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

With reference to the Agency Agreement dated \_\_\_\_\_ and the Institution's instructions contained in Musawamah Document # 3/1, we hereby declare and certify that acting as your Agent, we have used the sum of Rs. \_\_\_\_\_ paid by your good selves to M/s \_\_\_\_\_ and purchased on your behalf the Goods as detailed in Musawamah Document # 3/2).

A sum of Rs. \_\_\_\_\_ has been incurred for the purchase of the Goods, which are in my/our possession at the following address: \_\_\_\_\_.

Copies of bill/cash memo/invoice issued in your name by M/s. \_\_\_\_\_ are attached.

For and on behalf of [insert Agent's name]

\_\_\_\_\_  
AUTHORISED SIGNATORY

**(Part-II)**

**OFFER TO PURCHASE**

I/We offer to purchase the above Goods from you for a Contract Price of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

I/We undertake to pay the Contract Price referred to above in lump sum on \_\_\_\_\_, or in \_\_\_\_\_ installments, if agreed by the Institution, as per the attached schedule (Musawamah Document # 6).

For and on behalf of [Insert Agent's name]

\_\_\_\_\_  
AUTHORISED SIGNATORY  
Date: \_\_\_\_\_

**(Part-III)**

**INSTITUTION'S ACCEPTANCE**

We have accepted your offer and have sold the above mentioned Goods to you on the following terms and conditions.

- 1) The Contract Price is Pak Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) inclusive of Sales Tax Rs. \_\_\_\_\_.
- 2) The Contract Price stated above shall be payable in lump sum on \_\_\_\_\_ or in \_\_\_\_\_ installments, as per the attached schedule (Musawamah Document # 6).

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

\_\_\_\_\_  
AUTHORISED SIGNATORY  
Date: \_\_\_\_\_

\_\_\_\_\_  
AUTHORISED SIGNATORY  
Date: \_\_\_\_\_

**SCHEDULE OF PAYMENTS OF CONTRACT PRICE**

Payment Date	Installment Amount

**SCHEDULE OF SECURITY**

Description of Security	Nature of Charge

**MODEL LEASE AGREEMENT**

THIS 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 Banks 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 and is defined in the preamble;
"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;
"Ordinance"	means [insert description of the proposed Ordinance];
"Parties"	mean parties to this Agreement;
"Principal Documents"	means this Agreement and the Security Documents;
"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 SBP and SECP;
"Rupees" or "Rs."	Means the lawful currency of Pakistan;
"SBP"	means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 and includes any successors thereto;
"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 and references to this Agreement include its appendices; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, Institution, corporation, unincorporated body of persons or any state or any agency thereof.

1.04 The recitals herein above and Appendices to this Agreement shall form an integral part of 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 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. PAYMENT AND ACCOUNTS**

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 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.

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.
  - g) In the event the Leased Assets have been acquired by the Lessor from the Lessee prior to or simultaneous with the execution of this Lease, the Lessee represents and warrants, as of the date of such acquisition, that (i) the Leased Assets are free and clear of all liens, encumbrances or other charges of whatsoever nature; (ii) the transfer of Lease Assets to the Lessor does not violate any contract to which the Lessee is a party or by which it may be bound and (iii) the Lessee has the necessary corporate power and authority to transfer or sell the Leased Assets to the Lessor.
- 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 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. 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 ownership 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, 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 There shall be an Event of Default if in the opinion of the Lessor in addition to the Events of Default stated in the Ordinance:
- (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;
  - (m) 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 issued by any Government regulatory body including the SBP and the SECP to Non-Banking Financial Institutions or banking companies as if such regulations are applicable and binding on the Lessee.
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 mark-up, interest 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**
- 20.1. 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 directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.
- 20.2. 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 (i) for recovery of any amounts remaining unpaid as well as (ii) for imposing of a penalty on the Lessee. In this regard the Lessee is aware and acknowledges that in terms of the Ordinance and 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.

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. **GENERAL**

- 23.01 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 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;
- 23.02 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;
- 23.03 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.
- 23.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.
- 23.05 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.
- 23.06 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.

**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]

**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: -----  
-----  
-----

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**

[Name & Address of the Lessor]  
\_\_\_\_\_  
\_\_\_\_\_

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,

**MODEL SALAM AGREEMENT**

THIS SALAM AGREEMENT (the “**Agreement**”) is made at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ by and  
**BETWEEN**

\_\_\_\_\_, (hereinafter referred to as the “**Supplier**” 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 “**Institution**” 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**

1.03 This Agreement sets out the terms and conditions upon and subject to which the Institution has agreed to purchase the Goods from the Supplier:

1.02 In this Agreement, unless the context otherwise requires:

“ <b>Business Day</b> ”	means a day on which banks are open for normal business in Pakistan;
“ <b>Contract Price</b> ”	means Rs. _____, paid by the Institution to the Supplier or such other sum as may mutually be agreed in writing between the parties hereto as the price of the Goods purchased in accordance with the terms of this Agreement;
“ <b>Event of Default</b> ”	means any of the events or circumstances described in Clause 09 hereto;
“ <b>Goods</b> ”	means the Goods described in Salam Document # _____;
“ <b>Goods Receiving Note</b> ”	means confirmation of receipt of Goods as set out in Salam Document # _____;
“ <b>Indebtedness</b> ”	means any obligation of the Supplier for delivery of the Goods or for payment of any sum of money due or, payable under this Agreement;
“ <b>License</b> ”	means any license, permission, authorization, registration, consent or approval granted to the Supplier for the purpose of or relating to the conduct of its business;
“ <b>Lien</b> ”	shall mean any mortgage, charge, pledge, hypothecation, security interest, lien, right of set-off, contractual restriction (such as negative covenants) and any other encumbrance;
“ <b>Parties</b> ”	means parties to this Agreement;
“ <b>Notice of Delivery</b> ”	means the Notice of Delivery given by the Supplier to the Institution as set out in Salam Document # _____
“ <b>Principal Documents</b> ”	means this Agreement and the Security Documents;
“ <b>Promissory Note</b> ”	is defined in Clause 3.01(b);
“ <b>Prudential Regulations</b> ”	means Prudential Regulations or other regulations as are notified from time to time by SBP or SECP;
“ <b>Security Documents</b> ” and “ <b>Security</b> ”	is defined in Clause 3.01;
“ <b>Secured Assets</b> ”	means the following assets of the Supplier [insert description of assets in respect of which charge/mortgage may be created];
“ <b>Ordinance</b> ”	means [insert description of the proposed Ordinance];
“ <b>Rupees</b> ” or “ <b>Rs.</b> ”	means the lawful currency of Pakistan;
“ <b>SBP</b> ”	means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 and includes any successors thereto;
“ <b>SECP</b> ”	means the Securities and Exchange Commission of Pakistan established under the Securities & Exchange Commission of Pakistan Act, 1997 and includes any successors thereto;
“ <b>Taxes</b> ”	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;
“ <b>Written Offer</b> ”	means the Offer made by the Supplier to the Institution as per Salam 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 and references to this Agreement include its appendices; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, institution, corporation, unincorporated body of persons or any state or any agency thereof.

- 1.04 The recitals herein above and Appendices to this Agreement shall form an integral part of this Agreement.
2. **SUPPLY OF THE GOODS PURCHASED**
- 2.01 The Supplier has agreed to supply the Goods to the Institution pursuant to the Written Offer for the Contract Price. Upon receipt by the Institution of the Supplier's Notice of Delivery, which shall be date] or such other date as may be mutually agreed between the parties hereto, hereinafter referred to as Delivery Date, advising the Institution to take delivery of the Goods, the Institution shall receive or cause to receive the Goods at the designated point of delivery.;
- 2.02 The Goods shall remain at the risk of the Supplier until they are delivered to the point of delivery and have been inspected and accepted by the Institution, immediately after which, all risks in respect of the Goods shall be passed on to the Institution;
3. **SECURITY**
- 3.01 As security for the performance of this Agreement by the Supplier under this Agreement, the Supplier shall:
- (a) Furnish to the Institution a collateral(s), substantially in the form and substance attached hereto as Salam Document # \_\_;
  - (b) Execute such further deeds and documents as may from time to time be required by the Institution for the purpose of more fully securing and or perfecting the security created in favour of the Institution; and
  - (d) Create such other securities to secure the Supplier'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**").
- 3.02 In addition to above, the Supplier shall execute a demand promissory note in favour of the Institution for the amount of the Contract Price (the "Promissory Note");
- (The **Security** and the Promissory Note are hereinafter collectively referred to as the "**Security Documents**").
4. **FEES AND EXPENSES**
- It is understood that each party shall bear the fees and expenses incurred from its own account 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.
5. **PAYMENT OF CONTRACT PRICE**
- Payment to the Supplier under this Agreement has been made of such withholding taxes that the institutions is required to deduct under various laws in force. The Institution shall promptly deliver to the Supplier copies or originals 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. **REPRESENTATIONS AND WARRANTIES**
- 6.01 In addition to the conditions set out in the Ordinance, the Supplier warrants and represents to the Institution that that:
- a. The execution, delivery and performance of the Principal Documents by the Supplier will not (i) contravene any existing law, regulation or authorization, which the supplier is subject to, (ii) result in any breach of or default under any agreement or other instrument to which the Supplier is a party or is subject to, or (iii) contravene any provision of the constitutive documents of the Supplier or any resolution adopted by the board of directors or members of the Supplier;
  - b. The financial statements together with the notes to the accounts and all contingent liabilities and assets that are disclosed therein represent a true and fair financial position of the business of the Supplier and to the best of the knowledge of the Supplier there are no material omissions and or misrepresentations.
  - c. All requisite corporate and regulatory approvals required to be obtained by the Supplier in order to enter into the Principal Documents are in full force and effect and such approvals permit the Supplier, inter alia, to obtain the entire sales price in advance under this Agreement and perform its obligations hereunder and that the execution of the Principal Documents by the Supplier and the exercise of its rights and performance of its obligations hereunder, constitute private and commercial acts done for private and commercial purposes;
  - d. No material litigation, arbitration or administrative proceedings is pending or threatened against the Supplier or any of its assets;

- e. It shall inform the Institution within ----- Business Days of an event or happening which may have an adverse effect on the financial position of the Supplier, whether such an event is recorded in the financial statements or not as per applicable International Accounting Standards, as applicable in Pakistan.

## 7. **UNDERTAKING**

7.01 The Supplier covenants and undertakes that so long as it remains obliged under this Agreement:

- a. It shall inform the Institution 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;
- b. It shall do all such things and execute all such documents which in the opinion of the Institution may be necessary to; (i) enable the Institution to assign or otherwise transfer the right of the Institution to enable any creditor of the Institution or to any third party to receive the delivery of the Goods as the Institution 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 Secured Assets and protect and enforce its rights and title, and the rights of the Institution in respect of the Secured Assets, and; (v) preserve and protect the Secured Assets. The Supplier shall at its own expense cause to be delivered to the Institution such other documentation and legal opinion(s) as the Institution may reasonably require from time to time in respect of the foregoing;
- c. It will satisfactorily insure all Secured Assets with reputable companies offering protection under the Islamic concept of Takaful. The Secured Assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Institution) 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 Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution 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 Institution. Should the Supplier fail to insure or keep insured the Secured Assets and/or to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution 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 Supplier as if the same were part of the monies due. The Supplier expressly agrees that the Institution 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 Supplier and the Institution 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 Supplier's indebtedness arising out of the above arrangements and the Supplier shall not raise any question or objection that larger sums might or should have been received under the aforesaid policy nor the Supplier shall dispute its liability(ies) for the balance remaining due after such payment/adjustment;
- d. Except as required in the normal operation of its business, the Supplier shall not, without the written consent of the Institution, sell, transfer, lease or otherwise dispose of all or a sizeable part of its assets, or undertake or permit any merger, consolidation, dismantling or re-organization which would materially affect the Supplier's ability to perform its obligations under any of the Principal Documents;
- e. It shall not (and shall not agree to), except with the written consent of the Institution, create, incur, assume or suffer to exist any Lien whatsoever upon or with respect to the Secured Assets and any other assets and properties owned by the Supplier which may rank superior, pari passu or inferior to the security created or to be created in favour of the Institution pursuant to the Principal Documents;
- f. It shall forthwith inform the Institution of:
  - (i) Any event or factor, any litigation or proceedings pending or threatened against the Supplier which could materially and adversely affect or be likely to materially and adversely affect: (A) the financial condition of the Supplier; (B) business or operations of the Supplier; and (C) the Supplier's ability to meet its obligations when due under any of the Principal Documents, (D) expiry or cancellation of a material patent, copy right or license, (E) loss of a key executive or trade Agreement;
  - (ii) Any change in the directors or management of the Supplier;
  - (iii) Any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment or waiver or indulgence under any material provision of any of the Principal Documents;
  - (iv) Any material notice or correspondence received or initiated by the Supplier relating to the License, consent or authorization necessary for the performance by the Supplier of its obligations under any of the Principal Documents;
- g. The Supplier shall indemnify and hold the Institution and its officers and employees harmless against any claims on account of quality, merchantability, fitness for use, any latent or patent defects in the Goods and any matters pertaining to intellectual property rights in respect of such Goods.

8. **EVENTS OF DEFAULT AND TERMINATION**

8.1 In addition to the Events of Default stated in the Ordinance, there shall be an Event of Default if in the opinion of the Institution:

- (a) The Supplier fails to deliver the Goods contracted to be delivered under this Agreement on the Delivery Date at [insert Place of Delivery];
- (b) Any representation or warranty made or deemed to be made or repeated by the Supplier in or pursuant to the principal Documents or in any document delivered under this Agreement is found to be incorrect;
- (c) Any Indebtedness of the Supplier in excess of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) is not paid when due or becomes due or capable of being declared due in terms of this Agreement;
- (d) Any authority of or registration with governmental or public bodies or courts required by the Supplier 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 Institution or is not granted or is revoked or otherwise ceases to be in full force and effect;
- (e) The total interruption or cessation of the business activities of the Supplier;
- (f) 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 Supplier from the Institution;

8.02 Notwithstanding anything contained herein, the Institution may without prejudice to any of its other rights, at any time after the happening of an Event of Default by notice to the Supplier declare that::

- (a) The obligation of the Institution to take delivery of the Goods from the Supplier shall be terminated, forthwith; and/or
- (b) The entire outstanding amount of the Contract Price and any other amounts paid to the Supplier under this Agreement along with all other costs, charges, and expenses incurred or actual loss sustained by the Institution shall forthwith become due and refundable.

9. **PENALTY**

9.01 Where any amount is required to be paid by the Supplier 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 decrease in the Contract Price, the Supplier hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.

9.02 In case (i) any amount(s) referred to in clause 9.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Supplier, is not paid by him, or (ii) the Supplier 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 10.01 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 (i) for recovery of any amounts remaining unpaid as well as (ii) for imposing of a penalty on the Supplier. In this regard the Supplier is aware and acknowledges that in terms of the Ordinance and notwithstanding the amount paid by the Supplier 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.

10. **INDEMNITIES**

The Supplier shall indemnify the Institution against any expense, which the Institution shall prove as rightly incurred by it as a consequence of (i) any default in performance of any obligations under the Principal Documents, (ii) the occurrence of any Event of Default, and (iii) arising out of any misrepresentation

11. **INCREASED COSTS**

If any law or regulation or any order of any court, tribunal or authority has the effect of subjecting the Supplier to Taxes or changes the basis or rate of Taxation with respect to any payment or other obligation under this Agreement (other than Taxes or Taxation on the overall income of the Institution), the same shall be borne by the Supplier. No additional amount will be demanded or become payable by Institution;

12. **SET-OFF**

The Supplier authorizes the Institution to apply any credit balance to which the Supplier is entitled or any amount which is payable by the Institution to the Supplier at any time in or towards partial or total satisfaction of any sum which may be due from or payable by the Supplier to the Institution under this Agreement including the Contract Price upon occurrence of any event of the Supplier failing to meet the delivery.

13. **ASSIGNMENT**

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

14. **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 efforts and an on arm's length basis.

15. **GENERAL**

- 15.01 No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor shall a partial exercise by the Institution 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;
- 15.02 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;
- 15.03 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.
- 15.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.
- 15.05 Any reconstruction, division, reorganization or change in the constitution of the Institution 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.
- 15.06 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 to telex or by any other electronic means, or the next Business Day as counted from the date of delivery if delivered by courier mail;

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

**WITNESSES:**

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

For and on behalf of [insert name of the Institution]

\_\_\_\_\_

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

For and on behalf of the Supplier

\_\_\_\_\_

**WRITTEN OFFER**

Date: \_\_\_\_\_

To:

\_\_\_\_\_  
[Insert name and address of the Institution]  
\_\_\_\_\_

Dear Sirs,

**Written offer for Sale of Goods [insert descriptions]**

- (1) Please refer to your recent inquiry for the sale of the above referred Goods. In this regard, we are pleased to offer the Goods as per following terms and conditions:

- (a) Description of the Goods:

Sr. No.	Specification of Goods	Quantity	Sale Price

- (b) Validity of the Offer:

- (c) Delivery Date:

- (d) Terms of delivery:

- (e) Place of delivery:

- (2) We certify that:

- (a) There are no circumstances (i) that would materially and adversely affect the carrying on of our business, operations or prospects or financial position, or (ii) which has made the fulfillment of our obligations unlikely;
- (c) The delivery of the Goods by us to you shall not result in a breach of our organizational documents, any provision of any document to which ~~the~~ 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  
\_\_\_\_\_

**NOTICE OF DELIVERY**

Date: \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
[Insert name and address of the Institution]

Dear Sirs,

**Notice of Delivery of Goods** [insert descriptions]

Reference to the above we are pleased to inform you that we are ready to deliver the Goods under the above-referred agreement as per the following details:

- a) Delivery Date:
- b) Place of delivery:
- c) Description of the Goods:

Sr. No.	Specification of Goods	Quantity	Sale Price

- d) Additional remarks (if any):

Yours faithfully,

For and on Behalf of (Supplier)

\_\_\_\_\_

**GOODS RECEIVING NOTE**

Date: \_\_\_\_\_

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

To: \_\_\_\_\_

\_\_\_\_\_  
[Insert name and address of the Supplier]

Dear Sirs,

- (1) We acknowledge having received the Goods as detailed in the Notice of Delivery aforesaid:
  - a) Date of Receipt:
  - b) Time:
  - c) Place of Delivery:
  - d) Description of Goods delivered:

Sr. No.	Specification of Goods	Quantity	Sale Price

- e) Additional remarks (if any):

- (2) Subject to 1(e), we hereby confirm that there are no claims or liabilities against you.

Yours faithfully,

For and on Behalf of (Institution)

\_\_\_\_\_



*In the Name of Allah, the Merciful, the Compassionate*  
**MUSHARAKA INVESTMENT AGREEMENT**  
(For Incorporated Companies)

THIS AGREEMENT IS MADE AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2000

**BETWEEN**

\_\_\_\_\_ Limited, a duly incorporated company having its registered office at \_\_\_\_\_ hereinafter referred to as "the Client" (which expression shall wherever the context so requires or permits mean and include its successors-in-interest and assigns) of the ONE PART

**AND**

\_\_\_\_\_ Institution (or financial institution), a duly incorporated banking company (or financial institution) having its registered office at \_\_\_\_\_ hereinafter referred to as "the Institution" (which expression shall wherever the context so requires or permits mean and include its successors-in-interest and assigns) of the OTHER PART:

WHEREAS the parties hereto have agreed that the Institution shall provide finance to the Client on profit and loss sharing basis on the terms and conditions hereinafter appearing.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS UNDER:-

**1. PURPOSE AND DEFINITIONS**

This Agreement sets out the terms and conditions upon and subject to which the Institution has agreed to finance the Client by way of Musharaka investment.

1.02 In this Agreement, unless the context otherwise requires:

"Business Day"	means a day, on which Banks are open for normal business in Pakistan,
"Client's Investment"	mean is defined in clause 4 (ii),
"Financial Statements"	shall mean the client's Balance Sheet, Profit & Loss Account, Cash Flow statement and statement of changes in equity.
"Institution's Investment"	is defined in Clause 2,
"License"	means any license, permission, authorization, registration, consent or approval granted to the Client 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,
"Musharaka Capital"	means the sum of Client's Investment, Institution's Investment and the other PLS Funds, if any;
"NBFIs"	means non-banking financial institutions as notified from time to time by SBP or SECP
"Other PLS Funds"	is defined in clause 4(iii)
"Parties"	means the parties to this Agreement,
"Principal Documents"	means this Agreement, and the Security Documents,
"Prudential Regulations"	means Prudential Regulations or other regulations as are notified from time to time by the concerned regulatory authorities for banks or NBFIs.
"Security Documents"	means such deeds and documents as the Institution may require the Client to furnish or execute under this Agreement.
"Security"	is defined in Clause 15.
"Secured Assets"	means all the Client's (insert description of the proposed securities)
"Rupees" or "Rs."	means the lawful currency of Pakistan
"SBP"	means the State Bank of Pakistan,
"SEC"	means the Securities and Exchange Commission of Pakistan established under the Securities & Exchange Commission of Pakistan Act, 1997 and includes any successors thereto;
"Written Request"	means request by the Client to the Institution.

2. The Institution hereby agrees at written request of the Client to provide financing up to a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) on the terms and conditions hereinafter contained (which financing is hereinafter referred to as "**Institution's Investment**").

3. This Agreement shall be valid for a period of \_\_\_\_\_ years from the date of first disbursement of the Institution's Investment.
4. The Client and the Institution hereby mutually agree and covenant as under:
  - i) The Institution's Investment shall be used only for *[insert description of purpose of the Musharaka Investment]* and shall not be used and / or diverted for any other purpose.
  - ii) The investment of the Client for the purpose of this Agreement aggregate to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as on \_\_\_\_\_ as per details given in Annexure 'A' to this Agreement (**Client's Investment**).
  - iii) The Client has obtained following funds from various sources on Profit and Loss Sharing basis all of which are hereinafter referred to as "other PLS Funds".
 

\_\_\_\_\_  
 \_\_\_\_\_
  - iv) The Client shall not make any change in its paid up capital, accumulated reserves or un-appropriated profits, except on the basis of annual audited accounts, and shall also not, without prior written consent of the Institution (which consent shall not be unreasonably withheld) make any additional borrowing or accept any further funds on Profit and Loss Sharing basis either for short term or long term from any source. The Client shall also not, without the prior written consent of the Institution, repay, earlier than the repayment schedule already agreed to, any other PLS Funds.
  - v) The Client shall not declare any dividend without the prior consent in writing of the Institution.
  - vi) The Client hereby covenants with the Institution that on the basis of past experience, data available with the Client and reasonable and prudent expectations about future plans of the Client, it is expected that after adding the Institution's Investment to the Client's investment, the projected pre-tax annual profit of the Client hereafter shall be \_\_\_\_\_ % p.a. (\_\_\_\_\_ percent per annum) of the total of investments of (a) the Client, (b) the Institution and (c) other PLS Funds. The aforesaid profit percentage is hereinafter referred to as the "Projected Rate of Return" of the Client.
  - vii) It is hereby expressly agreed that the Client may avail the Institution's Investment as and when required, provided the outstanding amount of the Institution's Investment at any time shall not exceed the amount specified in clause 2 hereof.
  - viii) The Client shall perform all acts and fulfill all legal requirements, which may at any time and from time to time be necessary to implement this Agreement. The Client shall also execute all documents and furnish all information which the Institution may at any time require from the Client.
  - ix) The Client shall furnish to the Institution within one month of the end of each quarter of its accounting year, a report of its operations and statements of financial affairs and any other information in such form as may be devised by the Institution from time to time.
  - x) Based on the Projected Rate of Return the Client shall pay at the end of each quarter of its accounting year to the Institution its share of profit worked out in accordance with the formula specified in **Annexure-I**.
  - xi) Payments under sub clause (x) above shall be treated as provisional to be adjusted on final accounts being prepared for the whole accounting year in accordance with clause 5.
5.
  - i) At the end of each accounting year of the Client, Financial Statements shall be prepared based on accounting policies consistently applied, in accordance with International Accounting Standards as applicable in Pakistan. Any change in accounting policies of the Client shall require prior written approval of the Institution.
  - ii) Upon finalization of the annual Financial Statements in the manner provided in clause (i) above, the pre-tax net profits for that year shall be allocated among the Institution, Other PLS Funds and the Client on the basis of ratio of profit sharing stipulated in Annexure-II and subject to such conditions as contained therein. The amount so allocated is and shall be deemed to be the due share of profit of the Institution. All quarterly payments made by the Client to the Institution shall be deducted from the final payment to be made to the Institution.
  - iii) In the event of annual Financial Statements of the Client, showing a loss the same shall be shares by the Institution, the Client and other PLS funds in proportion to their respective shares in the Musharaka Capital. The amount of such loss shall be either paid by the respective parties into the Musharaka Capital or shall be deducted from the Musharaka Capital at the option of the respective party.
6. The Client shall submit to the Institution its audited Financial Statements within four months from the end of its accounting year duly audited by a firm of auditors approved by the Institution.
7. At the expiry of this Musharaka Agreement or its earlier termination as provided for in this Agreement, the Client shall redeem the Institution's Investment and any unpaid share of Institution's profit.

Deleted: ¶

8. Where the Musharaka under this Agreement is for a period of \_\_\_\_ years, the Institution shall have the right to convert into the shares of the Client the full amount of its investment outstanding at the time of such conversion. Such conversion shall, be at the Market\* Value of the shares of the Client. Where Institution's entitlement under the above valuation results in a fraction of a share, fractions of half or more shall be taken as one and fractions of less than half shall be ignored.  
 Provided that the Institution shall exercise its right under this clause only if the Client has achieved, during any three previous years of the currency of this Agreement, an average profit of less than 2/3<sup>rd</sup> of the mutually agreed Projected Rate of Profit.  
 Provided further that whenever the Institution decides to sell the shares acquired by it under this clause, the existing shareholders of the Client (other than the Institution), shall have the first right of refusal to purchase the same at a price at which the Institution wishes to sell them.
9. The Client shall issue the letters of allotment of shares as mentioned hereinabove within thirty days of demand by the Institution and these shares may be of any class of shares of the Client as mutually agreed and the Institution shall have equal rights as enjoyed by other share holders holding shares of the same class including right of voting, transferring, subscription for right issue, bonus issue, dividends etc., under the law governing joint stock companies.
10. Subject only to the express terms of this Agreement, management and control shall primarily vested in the Client and the Client shall be responsible for the management and control of the business except when option under clause 8 or 9 above has been exercised. Provided that the Institution shall have the option in its sole discretion to nominate one or more persons on the Board of Directors of the Client.
11. This Agreement shall not be deemed to create a partnership or company and in no event has the Client any authority to bind the Institution. In no event shall the Institution be liable for the debts and obligations of the Client incurred for other purposes, except as stipulated in this Agreement.
12. In the event of the Client making default in:
  - i) Payment of due share of profit,
  - ii) Redemption of Institution's investment on the expiry/termination of the Musharaka, or
  - iii) Performance of any of the covenants under this Agreement provided such default remains un-rectified for a period of \_\_\_\_ days from the date of notice served by the Institution,  
 the Institution shall have the right to dispose of the securities defined in clause 16 hereto and adjust the sale proceeds thereof towards the amounts receivable by it.
13. i) Where any amount is required to be paid by the Client 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 amount payable, the Client hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum for the entire period of default, calculated on the total amount of the obligations remaining un-discharged. The Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.
- ii) In case (i) any amount(s) referred to in clause 10.01 above, including the amount undertaken to be paid directly to the Charity Fund, by the Client, is not paid by him, or (ii) the Client 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 10.01 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 (i) for recovery of any amounts remaining unpaid as well as (ii) for imposing of a penalty on the Client. In this regard the Client is aware and acknowledges that in terms of the Ordinance and notwithstanding the amount paid by the Client 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.
14. i) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Institution, the Client and respective successors permitted assigns and transferees of the parties hereto, provided that the Client shall not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Institution. The Institution may assign all or any part of its obligations and/or commitments under this Agreement to any bank, financial institution or other person. The Client shall not be liable for the costs of the assignment and/or transfer of commitments hereunder by the Institution. If the Institution 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 Institution shall thereafter be construed as a reference to the Institution an/or its assignee's or transferee's (as the case may be) to the extent of their respective interests.

---

\* In the case of an unquoted company, it shall be the higher of the break-up or face value.

- ii) The Institution may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Institution in relation to this Agreement such information about the Client as the Institution shall consider appropriate.

15. **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.

- 16. i) The Institution shall, with mutual consent of the parties hereto, obtain security for redemption of the Institution's Investment together with profit and / or all other sums receivable by the Institution as aforesaid after adjustment of losses (if any). The Client hereby agrees and undertakes to give the following security, the terms and conditions of which shall be such as the Institution may determine to secure its priority over other creditors of the Client:

- i) Mortgage
- ii) Hypothecation
- iii) Pledge

and / or such other securities as the Institution may require.

- ii) In case any other creditor of the Client claims or secures or attempts to secure lowering of the Institution's priority over the security or in case of defalcation by the Client, the Institution shall have a right to terminate the Agreement forthwith. The securities obtained by the Institution will be kept fully insured at the Client's cost and expenses through a reputable company offering protection under the Islamic concept of Takaful. Until Islamic concept of insurance is available, the secured assets shall be comprehensively insured with a reputable insurance company to the satisfaction of the Institution against all insurable risks.
- 17. i) No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor a partial exercise by the Institution 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;
  - ii) 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;
  - iii) This Agreement is governed by and shall be construed in accordance with Pakistan 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.
  - iv) Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.
  - v) Any reconstruction, division, re-organization or change in the constitution of the Institution 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.
  - vi) 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;

IN WITNESS WHEREOF the Client and the Institution have executed this Agreement on the day, month and year hereinabove mentioned.

**WITNESSES**

1.

Signature  
Name  
Address  
NIC No.
2.

Signature  
Name  
Address  
NIC No.

**SIGNATURES**

1.
2.

(Authorized signatures)
- Common Seal  
for and on behalf of

**WITNESSES**

1.

Signature  
Name  
Address  
NIC No.
2.

Signature  
Name  
Address  
NIC No.

**SIGNATURES**

1.
2.

(Authorized signatures)
- Common Seal  
for and on behalf of

**Annexure-I**

**BASIS OF PROVISIONAL PAYMENT TO THE INSTITUTION<sup>◇</sup>**  
**(All Figures are Illustrative)**

		<b><u>Agreed Ratio For Profit Sharing</u></b>	<b><u>Rupees</u></b>
A)	Client's investment	70	Rs. 100
B)	Institution's investment	30	<u>Rs. 100</u>
C)	Total Investment (A+B)		<u>Rs. 200</u>
D)	Agreed Projected Rate of Return on Total Investment		60%
E)	Projected amount of Profit on total investment		Rs. 120
F)	Allocation of Projected Profit in mutually agreed profit sharing Ratio of:		
	Client	70	Rs. 84
	Institution	30	<u>Rs. 36</u>
			<u>Rs. 120</u>
G)	Quarterly provisional payment of projected Profit $\frac{36}{4}$ = Rs. 9 per quarter		
H)	Allocation of actual net profit of Rs. 160 on year end:		
	Client		Rs. 112
	Institution		<u>Rs. 48</u>
			<u>Rs. 160</u>
I)	Therefore, final net payment to the Institution will be Rs. 12 (Rs. 48 - Rs. 36)		

**Annexure-II****PARAMETERS AGREED****I) Ratio of sharing of Profit (Ratios indicative only)**

Institution	18%
Client	70%
Other PLS Funds	12%

**II) Other Conditions, if any**

(For example, relating to valuation of inventories, depreciation policies, agreed level or quantum of admissible costs etc.)

<sup>◇</sup>Based on the projected rate of Return stipulated in Clause 4(vi)

## **MODEL ISTISNA AGREEMENT**

THIS ISTISNA AGREEMENT (the "**Agreement**") is made at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ by and

**BETWEEN**

\_\_\_\_\_, (hereinafter referred to as the "**Manufacturer/Supplier**") 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 "**Institution**") 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 Institution has agreed to have the Specified Goods manufactured from the Manufacturer/Supplier subject to the following terms and conditions:

1.02 In this Agreement, unless the context otherwise requires:

"Business Day"	means a day on which Institutions are open for normal business in Pakistan;
"Contract Price"	means Rs. _____, being the sum payable by the Institution to the Manufacturer/Supplier as price of the Goods to be manufactured by the Manufacturer/Supplier;
"Event of Default"	means any of the events or circumstances described in Clause 09 hereto;
"Goods"	means the Goods described in the clause 2.01 and the <b>Appendix "A"</b> ;
"Goods Receiving Note"	means confirmation of receipt of Goods as set out in the <b>Appendix "B"</b> ;
"Indebtedness"	means any obligation of the Supplier for delivery of the Goods or for payment of any sum of money due or, payable under this Agreement;
"License"	means any license, permission, authorization, registration, consent or approval granted to the Manufacturer/Supplier 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;
"Parties"	mean parties to this Agreement;
"Principal Documents"	means this Agreement and the Security Documents;
"Promissory Note"	is defined in Clause 3.01(b);
"Prudential Regulations"	means Prudential Regulations or other regulations as are notified from time to time by SBP;
"Security Documents"	and " <b>Security</b> " is defined in Clause 3.01;
"Secured Assets"	means the following assets of the Manufacturer/Supplier; [insert description of assets in respect of which charge/mortgage may be created];
"Ordinance"	means [insert description of the proposed Ordinance];
"Rupees" or "Rs."	means the lawful currency of Pakistan;
"SBP"	means the State Bank of Pakistan;
"Title"	means such title or other interest in the Goods as the Institution receives from the Manufacturer/Supplier;
"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;
"Written Offer"	means the Offer made by the Manufacturer/Supplier to the Institution as per <b>Appendix "A"</b> .

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 and references to this Agreement include its appendices; words importing the plural shall include the singular and vice versa and reference to a person shall be construed as including references to an individual, firm, institution, corporation, unincorporated body of persons or any state or any agency thereof.

- 1.04 The Appendices to this Agreement shall form an integral part of this Agreement.
2. **MANUFACTURE OF GOODS**
- 2.01 The Manufacturer/Supplier hereby agrees to manufacture or cause to manufacture the Goods described below on Istisna for the Institution to be delivered as per schedule set out in clause 2.04:
- [Insert description of the Goods with specifications, quantity quality and respective contract price]
- 2.02 The Contract Price shall subject to the provisions of clause 5 hereof, be paid by the Institution as per the following schedule:
- |  |                     |
|--|---------------------|
| Within ____ days of signing this Agreement | Rs. [insert amount] |
| On [insert date]                           | -----               |
| On [insert date]                           | -----               |
| On [insert date]                           | -----               |
| On delivery                                | -----               |
| TOTAL                                      | =====               |
- 2.03 The Manufacturer/Supplier agrees that the Contract Price is fixed at the amount stated in clause 2.02 and shall not be revised except by mutual consent, in writing, of the parties hereto due to any reason whatsoever including the Force Majeure events, if any;
- 2.04 The delivery of the Goods shall be according to the following schedule:
- | <b><u>Description of Goods</u></b> | <b><u>Date:</u></b> | <b><u>Quantity</u></b> |
|------------------------------------|---------------------|------------------------|
|------------------------------------|---------------------|------------------------|
- 2.05 The Goods shall remain at the risk of the Manufacturer/Supplier until they are delivered to the point of delivery and have been inspected and accepted by the Institution, immediately after which, all risks in respect of the Goods shall be passed on to the Institution:
3. **SECURITY**
- 3.01 As security for the performance of this Agreement by the Manufacturer/Supplier under this Agreement, the Manufacturer/Supplier shall:
- (a) Furnish to the Institution a collateral (s), substantially in the form and substance attached hereto as \_\_\_\_\_, (the "\_\_\_\_\_");
  - (b) Execute such further deeds and documents as may from time to time be required by the Institution for the purpose of more fully securing and or perfecting the security created in favour of the Institution; and
  - (c) Create such other securities to secure the Manufacturer's/Supplier'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**").
- 3.02 In addition to above, the Manufacturer/Supplier shall execute a demand promissory note in favour of the Institution for the amount of the Contract Price (the "Promissory Note");
- (The **Security** and the Promissory Note are hereinafter collectively referred to as the "**Security Documents**")
4. **FEES AND EXPENSES**
- It is understood each party shall bear the fees and expenses incurred from its own account: (i) 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 and (ii) in contemplation of or otherwise in connection with, the enforcement of, or preservation of any rights under the Principal Documents.
5. **PAYMENT OF CONTRACT PRICE**
- Payments to be made to the Manufacturer/Supplier under this Agreement shall be made after adjustment of such withholding that the Institution is required to deduct under various laws in force. The Institution shall promptly deliver to the Manufacturer/Supplier any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid;



6. **REPRESENTATIONS AND WARRANTIES**

- a) The financial statements together with the notes to the accounts and all contingent liabilities and assets that are disclosed therein represent a true and fair financial position of the business and to the best of the knowledge of the Manufacturer/Supplier, its directors and principal officers and there are no material omissions and or mis-representations;
- b) All requisite corporate and regulatory approvals required to be obtained by the Manufacturer/Supplier in order to enter into the Principal Documents are in full force and effect
- c) No material litigation, arbitration or administrative proceedings is pending or threatened against the Manufacturer/Supplier or any of its assets;
- d) It shall inform the Institution within ----- Business Days of an event or happening which may have an adverse effect on the financial position of the Manufacturer/Supplier, whether such an event is recorded in the financial statements or not as per applicable International Accounting Standards[, as applicable in Pakistan].

7. **UNDERTAKING**

7.01 The Manufacturer/Supplier covenants to and undertakes with the Institution that so long as it remains obliged under this Agreement:

- a. It shall inform the Institution 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;
- b. The Manufacturer/Supplier shall do all such things and execute all such documents which in the judgment of the Institution may be necessary to; (i) enable the Institution to assign or otherwise transfer the liability of the Manufacturer/Supplier in respect of the Contract Price to any creditor of the Institution or to any third party as the Institution 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 Secured Assets and protect and enforce its rights and title, and the rights of the Institution in respect of the Secured Assets, and; (v) preserve and protect the Secured Assets. The Manufacturer/Supplier shall at its own expense cause to be delivered to the Institution such other documentation and legal opinion(s) as the Institution may reasonably require from time to time in respect of the foregoing;
- c. 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 Secured Assets shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Institution) 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 Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution 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 Institution. Should the Manufacturer/Supplier fail to insure or keep insured the Secured Assets and/or to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution 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 the Manufacturer/Supplier and shall be paid by the Manufacturer/Supplier to the Institutions within five (5) days of a demand being made by the Institution. The Manufacturer/Supplier expressly agrees that the Institution 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 Manufacturer/Supplier and the Institution 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 Manufacturer/Supplier's indebtedness arising out of the above arrangements and the Manufacturer/Supplier shall not raise any question or objection that larger sums might or should have been received under the aforesaid policy nor the Manufacturer/Supplier shall dispute its liability(ies) for the balance remaining due after such payment/adjustment;
- d. Except as required in the normal operation of its business, the Manufacturer/Supplier shall not, without the written consent of the Institution, sell, transfer, lease or otherwise dispose of all or a sizeable part of its assets, or undertake or permit any merger, consolidation, dismantling or re-organization which would materially affect the Manufacturer/Supplier's ability to perform its obligations under any of the Principal Documents;
- e. The Manufacturer/Supplier shall not (and shall not agree to), except with the written consent of the Institution, create, incur, assume or suffer to exist any Lien whatsoever upon or with respect to the Secured

Assets and any other assets and properties owned by the Manufacturer/Supplier which may rank superior, pari passu or inferior to the security created or to be created in favour of the Institution pursuant to the Principal Documents;

- f. It shall forthwith inform the Institution of:
- i) Any event or factor, any litigation or proceedings pending or threatened against the Manufacturer/Supplier which could materially and adversely affect or be likely to materially and adversely affect: (A) the financial condition of the Manufacturer/Supplier; (B) business or operations of the Manufacturer/Supplier; and (C) the Manufacturer/Supplier's ability to meet its obligations when due under any of the Principal Documents, (D) expiry or cancellation of a material patent, copy right or license, (E) cancellation or termination of a material trade agreement;
  - ii) Any change in the directors or management of the Manufacturer/Supplier;
  - iii) Any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment or waiver or indulgence under any material provision of any of the Principal Documents;
  - iv) Any material notice or correspondence received or initiated by the Manufacturer/Supplier relating to the License, consent or authorization necessary for the performance by the Manufacturer/Supplier of its obligations under any of the Principal Documents

## **8. CONDITIONS PRECEDENT**

- 8.01 The obligation of the Institution to purchase the Goods under this Istisna Contract shall be subject to the receipt by the Institution (in form and substance acceptable to the Institution), at least \_\_\_\_ Business Days prior to the first date on which the payment is to be made in accordance with clause 2.02 above, of:
- (a) Documentary evidence that:
    - (i) This Agreement has been executed and delivered by the Manufacturer/Supplier;
    - (ii) The Manufacturer/Supplier's representatives are duly empowered to sign the Principal Documents for and on behalf of the Manufacturer/Supplier and to enter into the covenants and undertakings set out herein or which arise as a consequence of the Manufacturer/Supplier entering into the Principal Documents;
    - (iii) The Manufacturer/Supplier has taken all necessary steps and executed all documents required under or pursuant to the Principal Documents or any documents creating or evidencing the Security in favor of the Institution and has perfected the Security as required by the Institution.
  - (b) Certified copy(ies) of the Memorandum and Articles of Association of the Manufacturer/Supplier.
  - (c) Certified copies of the Manufacturer/Supplier's audited financial statements for the last \_\_\_\_ years
  - (d) The Written Offer and Cost Estimate;
- 8.02 The obligation of the Institution to purchase the Goods shall be further subject to the fulfillment of the following conditions:
- (a) The purchase of the Goods under this Istisna Agreement shall not result in any breach of any law or existing Agreement;
  - (b) The Security has been validly created, perfected and is subsisting in terms of this Agreement;
  - (c) The Institution has received such other documents as it may reasonably request in respect of sale of Goods and their necessity for the conduct of the Manufacturer/Suppliers' business;
  - (d) No event or circumstance which constitutes or which with the giving of notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing or is likely to occur and that the payment of the Contract Price shall not result in the occurrence of any Event of Default;
  - (e) Delivery by the Manufacturer/Supplier to the Institution of a true and complete extract of all relevant parts of the minutes of a duly convened meeting of its Board of Directors approving the Principal Documents and granting the necessary authorizations for entering into, execution and delivery of the Principal Documents which shall be duly signed and certified by the person authorized by the Board of Directors'; and
  - (f) All fees, commission, expenses required to be paid by the Manufacturer/Supplier have been received by the Institution.
- 8.03 Any condition precedent set forth in this Clause 8 may be waived and or modified by the mutual written consent of the parties hereto.

## **9. EVENTS OF DEFAULT AND TERMINATION**

- 9.01 There shall be an Event of Default if in the opinion of the Institution in addition to the Events of Default stated in the Ordinance:
- a) The Manufacturer/Supplier fails to deliver the Goods as per delivery schedule agreed under this Agreement;

- b) Any representation or warranty made or deemed to be made or repeated by the Manufacturer/Supplier in or pursuant to the Principal Documents or in any document delivered under this Agreement is found to be incorrect;
  - c) Any Indebtedness of the Manufacturer/Supplier in excess of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) is not paid when due or becomes due or capable of being declared due;
  - d) Any authority of or registration with governmental or public bodies or courts required by the Manufacturer/Supplier 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 Institution or is not granted or is revoked or otherwise ceases to be in full force and effect;
  - e) The total interruption or cessation of the business activities of the Manufacturer/Supplier;
  - f) 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 Manufacturer/Supplier from the Institution;
- 9.02 Notwithstanding anything contained herein, the Institution may without prejudice to any of its other rights, at any time after the happening of an Event of Default by notice to the Manufacturer/Supplier declare that:
- a) The obligation of the Institution to take delivery of the Goods from the Manufacturer/Supplier and pay the Contract Price to the Manufacturer/Supplier shall be terminated, forthwith; and/or
  - b) The entire amount of the Contract Price or such part thereof against which the Goods have not been delivered to the Institution by the Manufacturer/Supplier along with all other costs, charges, expenses and damages etc. and any other amounts paid to the Manufacturer/Supplier under this Agreement shall forthwith become due and refundable.
10. **PENALTY**
- 10.01 Where the Manufacturer/Supplier fails to deliver the Goods required to be delivered to the Institution under the Principal Documents and are not delivered by the Delivery Date, the Contract Price will be reduced by Rs. \_\_\_\_\_ per day unless an extension is mutually agreed.
- 10.02 When any amount is required to be paid by the Manufacturer/Supplier and is not paid by the specified date, the Manufacturer/Supplier hereby undertakes to pay directly to the Charity Fund, constituted by the Institution, a sum calculated @ -----% per annum of the total amount payable for the entire period of default. Payment by the Manufacturer/Supplier to the Charity Fund shall be used at the absolute discretion of the Institution, exclusively for the purposes of approved charity.
- 10.03 In case (i) any amount(s) due under clause 10.02 above, including the amount undertaken to be paid directly to the Charity Fund, by the Manufacturer/Supplier is/ are not paid by him within the specified period, or (ii) the Manufacturer/Supplier 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 10.02 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 (i) for recovery of any amounts remaining unpaid as well as (ii) imposing of a penalty on the Manufacturer/Supplier and awarding of solatium to the Institution. In this regard the Manufacturer/Supplier is aware and acknowledges that in terms of the Ordinance and notwithstanding the amount paid by the Manufacturer/Supplier 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 by the Institution, other than the opportunity cost.
11. **INDEMNITIES**
- The Manufacturer/Supplier acknowledges that in case of any breach of this Agreement the Institution may suffer losses. The Manufacturer/Supplier shall, therefore, indemnify the Institution against any expense which the Institution shall prove as rightly sustained or incurred by it as a consequence of (i) any default in payment by the Manufacturer/Supplier of any sum under the Principal Documents when due, (ii) the occurrence of any Event of Default, and (iii) arising out of an misrepresentation
12. **INCREASED COSTS**
- If any law or regulation or any order of any court, tribunal or authority has the effect of subjecting the Institution to Taxes or changes the basis or rate of Taxation with respect to any payment under this Agreement (other than Taxes or Taxation on the overall income of the Institution), the same shall be borne by the Manufacturer/Supplier. No additional amount will be demanded or become payable by Institution;
13. **SET-OFF**
- The Manufacturer/Supplier authorizes the Institution to apply any credit balance to which the Manufacturer/Supplier is entitled or any amount which is payable by the Institution to the Manufacturer/Supplier at any time in or towards partial or total satisfaction of any sum which may be due from or payable by the Manufacturer/Supplier to the Institution under this Agreement including the Contract Price in the event of the

Manufacturer/Supplier failing to meet the delivery schedule as given in clause 2.04 above or the Contract Price has become due and/or payable to the Institution under this Agreement.

14. **ASSIGNMENT**

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

14.02 The Institution may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Institution in relation to this Agreement such information about the Manufacturer/Supplier as the Institution shall consider appropriate.

15. **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.

16. **GENERAL**

16.01 No failure or delay on the part of the Institution to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof nor shall a partial exercise by the Institution of any power right or remedy preclude any other or further exercise thereof or the exercise of any other power right or remedy. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law;

16.02 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;

16.03 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.

16.04 Nothing contained herein shall prejudice or otherwise affect the rights and remedies that may otherwise be available under law to the parties.

16.05 Any reconstruction, division, reorganization or change in the constitution of the Institution 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.

16.06 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 to telex or by any other electronic means, or the next Business Day as counted from the date of delivery if delivered by courier mail;

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

**WITNESSES:**

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

For and on behalf of [insert name of the Institution]

-----  
-----

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

For and on behalf of the Manufacturer/Supplier

-----

**APPENDIX- A**

**WRITTEN OFFER**

Date: \_\_\_\_\_

To

\_\_\_\_\_  
[Insert name and address of the Institution]

Dear Sirs,

**Written offer for manufacture of Goods** [insert description]

Reference our recent meeting, we are pleased to confirm our willingness to manufacture the Goods subject to the following terms and conditions:

- (a) Description of the Goods: -----  
-----  
-----\* (attach details if required)
- (b) Terms of delivery:
- (c) Terms of Payment:
- (d) Validity of the Offer:
- (e) Place of delivery:

2. We certify that:

- a) There have not been any circumstances (i) that would materially and adversely affect the carrying on of the Manufacturer/Supplier's business and operations or the Manufacturer/Supplier's prospects or financial position, or (ii) which has made the fulfillment of the Manufacturer/Supplier's obligations;
- (b) The delivery of the Goods by us to you shall not result in a breach of its organizational documents, any provision of any document to which the Manufacturer/Supplier is a party or by which the Manufacturer/Supplier is bound, or any applicable law, rule or regulation whether directly or indirectly.

Yours faithfully,

For and on Behalf of the Manufacturer/Supplier

**APPENDIX B**

**GOODS RECEIVING NOTE**

Date \_\_\_\_\_

To

\_\_\_\_\_  
[Insert name and address of the Manufacturer/Supplier]

Dear Sirs,

**Istisna Agreement dated [ ] – Goods Receiving Note**

Reference to the above, we are pleased to inform you that we have received the Goods contracted to be delivered by you as per the following details:

- f) Date of Receipt:
- g) Time:
- h) Address:
- i) Description of Goods received:
- j) Additional remarks:

i. Subject to 1(e), we hereby confirm that there are no claims or liabilities against you.

Yours faithfully,

For and on Behalf of (Institution)

## **AGREEMENT TO SELL**

THIS AGREEMENT TO SELL (the "**Agreement**") is made at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ by and

### **BETWEEN**

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

### **AND**

\_\_\_\_\_ (hereinafter referred to as the "**Customer**") which expression shall where the context so permits mean and include its successors in interest and assigns) of the other part.

Whereas:

1. The Institution is acquiring the goods described in the Appendix **1** ("**Goods**") from the Manufacturer/Supplier namely \_\_\_\_\_ ("**Manufacturer/Supplier**"); and
2. The Customer has requested vide written request dated ..... to purchase the Goods from the Institution on the terms and condition contained hereinafter.

### **NOW THEREFORE THIS AGREEMENT WITNESSETH:**

1. That the Institution agrees to sell and the Customer agrees to purchase the Goods from the Institution at the price of Rs. \_\_\_\_\_.
2. That the Customer shall pay the price of the Goods in advance to the Institution upon receipt of a notice from the Institution confirming that the Goods are ready for delivery to the Customer.
3. The Customer shall satisfy itself as to the quality and quantity of the Goods at the time of delivery and shall issue a Delivery Receipt in the form of Appendix **2** hereto.
4. Upon payment of the price, all rights and claims of the Institution against the Manufacturer/Supplier on account of warranties pertaining to the Goods shall stand assigned to the Customer. In case of any defect in the Goods, the Customer shall only have a claim against the Manufacturer/Supplier to the complete exclusion of the Institution.

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

### **WITNESSES:**

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

For and on behalf of [insert name of the Institution]

\_\_\_\_\_  
\_\_\_\_\_

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

For and on behalf of the Customer

\_\_\_\_\_

**Appendix -1**

**DESCRIPTION OF THE GOODS**

-----  
-----  
-----

**Appendix -2**

**GOODS DELIVERY RECEIPT**

Date: \_\_\_\_\_

To: \_\_\_\_\_

[Insert name and address of the Institution]

Dear Sirs,

**Agreement to Sell dated [ ] – Goods Delivery Receipt**

- (1) Reference to the above, we are pleased to inform you that we have received the Goods contracted to be delivered by you as per the following details:
- a) Date of Receipt:
  - b) Time:
  - c) Address:
  - d) Description of Goods received:
- (2) We hereby confirm that the Goods have been received to our complete satisfaction and there are no claims against you.

**Yours faithfully,**  
For and on Behalf of (Customer)

**Appendix-3**

**WRITTEN REQUEST**

Date: \_\_\_\_\_

To: \_\_\_\_\_

[Insert name and address of the Institution]

Dear Sirs,

**Written Request for Purchase of Goods**

- 1) We offer to purchase Goods described below from you: \_\_\_\_\_ (the description of Goods should be same as the description of Goods given in Appendix A of the Istisna Agreement \_\_\_\_\_)
- 2) We further requests you to deliver the Goods as per the provisions of Sale Agreement as follows:-
- (a) Quantity
  - (b) Price
  - (c) Terms of delivery:
  - (d) Address of delivery:
- (3) The sale of the Goods shall be subject to the terms contained in the Sale Agreement to be executed between the parties.

**Yours faithfully,**  
For and on Behalf of (Customer)

**Appendix-4**

**DESCRIPTION OF SECURITY**

Payment Date	Installment Amount

# Agreement For Interest Free Loan

This AGREEMENT is made at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2001.

BETWEEN

\_\_\_\_\_ Limited, having its place of business at / resident of \_\_\_\_\_ hereinafter referred to as "the Client" (which term shall wherever the context so requires or permits mean and include its successors-in-interest and assigns) of the ONE PART.

AND

\_\_\_\_\_ Bank Limited (or financial institution), a duly incorporated banking company (or financial institution) having its registered office at \_\_\_\_\_ hereinafter referred as "the Institution" (which expression shall wherever the context so requires or permits mean and include the heirs, legal representatives and successors-in-interest and assigns) of the OTHER PART.

WHEREAS the Institution has agreed to give an Interest Free Loan to the Client on terms and conditions hereinafter appearing.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS UNDER:-

1. The Institution hereby agrees to provide to the Client an Interest Free Loan (hereinafter referred to as "the Loan") upto a maximum of Rs. \_\_\_\_\_ on the terms and conditions hereinafter contained.
2. The parties hereto hereby mutually agree and covenant as under:-
  - i. The Client undertake to repay the loan without any interest on or before \_\_\_\_\_.
  - ii. In case the Client fails to perform as per provisions of this Agreement or any amount is required to be paid by the Client under the Principal Documents on a specified date and is not paid on that date, or any amount is payable by the Client under this Agreement within a specified period after the receipt of a demand from the Institution and is not paid by it within the specified period after the receipt of the demand and such amounts have to be recovered through litigation, a court may award solatium to the Institution to cover the expenses incurred in the recovery of its dues.
3. As security for repayment of the Institution's loan and/or all other sums payable as aforesaid the Client hereby agrees and undertake to give such security as may be acceptable to the Institution and the terms and conditions of which shall be such as the Institution may determine.



IN WITNESS WHEREOF the Client and the Institution have executed this agreement on the day, month and year hereinabove mentioned.

Witness

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

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

\_\_\_\_\_  
CLIENT

Witness

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

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

\_\_\_\_\_  
INSTITUTION

**Appendix A**

**Description of the Project**

**Appendix B**

**Schedule for Purchase of Project Shares**

**Appendix C**

**Cost/Value of the Project**

# Mudaraba Financing Agreement

THIS AGREEMENT FOR FINANCING ON THE BASIS OF MUDARABA is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2001

## 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

[Name of the financial institution], a banking company incorporated under the laws of Pakistan, having its Registered Office at \_\_\_\_\_, hereinafter referred to as the Institution, (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.

## PREAMBLE

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

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

**NOW THEREFORE THIS AGREEMENT WITNESSES AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:**

## 1. DEFINITIONS

The parties agree that the following terms used in this agreement shall have the following meanings:

**Account** means an account opened with the Institution 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.

<b>Profit</b>	means the amount of gross profit available for distribution after deduction of permissible expenses as may be agreed between the client and the Institution in terms of Schedule of Expenses hereto attached ( <b>Exhibit C</b> ).
<b>Client Information Form</b>	means <b>Exhibit D</b> prepared by the Client, disclosing certain regarding the Client.
<b>Client Financials</b>	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.
<b>Draw Down Dates</b>	means the dates specified in <b>Exhibit E</b> at which the Institution is obliged to provide funds by credit to the Account.
<b>Project Assets</b>	means all Asset Finance and all things acquired with such finance and the proceeds and profits thereof until distributed to the client and the Institution in accordance with the terms and conditions of this Agreement.
<b>Termination Date</b>	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 Institution 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 Institution 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 Institution shall have the right to refrain from the payment of any cheque or transfers from the Account if it reasonably appears to the Institution 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 Institution 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 Institution'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 Institution.

#### **5. REPRESENTATION OF THE INSTITUTION**

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

The Institution 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 Institution that the Client shall:

- a) promptly give notice to the Institution 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 Institution 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 Institution.
- g) submit the following to the Institution, prepared according to the instructions of the Institution:
  - (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 Institution, and audited documents shall be presented to the Institution 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 Institution any information, material or document relating to the Project or to Client's financial status, and grant access to the Institution 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 Institution 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 Institution.
- l) consult with the Institution 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 Institution) 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 Institution to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Institution 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 Institution. Should the Client fail to insure or keep insured the aforesaid and/or

to deliver such policies and premium receipts to the Institution, then it shall be lawful for the Institution 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 Institution 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 Institution 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 INSTITUTION**

The Institution undertakes to the Client that it shall:

- a) make all payments of Finance required of the Institution 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 Institution 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 Institution.
- 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 Institution 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 Institution after deducting loss if any).
- c) At the sole discretion of the Institution, the Client may become entitled to receive a Good Performance Bonus at a rate to be determined by the Institution.

## **9. LOSSES**

- a)
  - (i) 100% of the loss in the Project will be borne by the Institution
  - (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 Institution together with all accounts and

details pertaining thereto and such other information and records as may be required by the Institution. Notwithstanding the above, the Institution 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**

- i) 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.
- ii) While the amount invested by the Institution 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 Institution'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 INSTITUTION**

The Institution 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 Institution shall be entitled to the whole profit.
- b) The assumption of management by the Institution 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 Institution with respect to the Project shall in no event be deemed to affect the liability of the Client to the Institution, with respect to any other facilities granted under any other agreement between the Client and the Institution whether or not the proceeds of such were employed in connection with the Project.
- d) On assumption of management of the Project by the Institution, the Client will, on the written demand of the Institution, 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 Institution. The Client shall contract the Project in the name of the Client



and in no event shall the Institution 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 Institution 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.
- 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.

\_\_\_\_\_  
The Institution

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

Witnessed:

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

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

## Syndication Mudaraba Agreement

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_\_.

### BETWEEN

[*Name of Institution*] a company duly organised under the laws of Pakistan having its registered office at [*address*] (hereinafter referred to as the **Mudarib**).

### AND

[*name of the investing person/company/body*], \_\_\_\_\_, having its place of business at / resident of \_\_\_\_\_ (hereinafter referred to as **Rab Al-Maal**).

WHEREAS, the Mudarib is a financing institution offering financial services, including but not limited to the investment of funds in short and medium-term transactions in accordance with the Islamic Shariah;

WHEREAS, the Mudarib is currently entering into a Murabaha Financing Agreement with [*name and address of Client*] (hereinafter referred to as the **Client**) to finance the acquisition of materials (hereinafter referred to as the Goods)

WHEREAS, the Rab Al-Maal desires to invest, among other investors, an amount of [*currency and amount*] for the financing of the said Goods in accordance with the terms and conditions of the Murabaha Financing Agreement dated \_\_\_\_\_ between Mudarib and Client.

THEREFORE, the parties hereto agreed upon the following:

1. The Rab Al-Maal hereby agrees to entrust to the Mudarib an amount of (currency and amount) to be invested together with the other investors' funds for the purpose of acquisition of the Goods specified in the Murabaha Financing Agreement. Such amount shall be remitted to the Mudarib upon written request sent by the Mudarib to the Rab-al-Maal. The said remittance shall be made at least four (4) working days before the effective date of Murabaha financing.
2. The Mudarib undertakes to invest the amount entrusted to it by the Rab Al-Maal together with the funds of the other investors in the acquisition of the Goods in accordance with the terms and conditions of the Murabaha Financing Agreement. All the Murabaha Financing documents will be made out in the name of the Mudarib, and will be held by him on behalf of the Rab Al-Maal and the other investors.
3. The Rab Al- Maal has independently studied and is satisfied with the Murabaha financing. The liability of the Rab Al-Maal is, however, limited to the funds entrusted to the Mudarib in accordance with this Agreement.
4. The Mudarib undertakes to maintain the funds entrusted to it separate from its own assets and away from the claims of its creditors.
5. The profit generated from Murabaha Financing Agreement shall be distributed on a pro-rata basis to the investors including the Rab Al-Maal as follows:

(i) [●] % of the profit on a pro-rata basis to the Rab Al-Maal;

(ii) [●] % of the profit to the Mudarib.

The profit distribution formula given above may be amended by the mutual written agreement of both parties.

6. The Mudarib shall pay to the Rab Al-Maal its part in the profit received with respect to the investments made in accordance with the Murabaha Financing Agreement not later than the following business day as of the date of any payment received whether on principal, profit or any other account whatsoever.
7. The Mudarib's obligations to make payments to the Rab Al-Maal under this Agreement in respect of the Rab Al-Maal's investment is conditional upon the Mudarib receiving the corresponding payments from the Client in accordance with the Murabaha Financing Agreement dated .....
8. It is understood and acknowledged by the Mudarib that any collateral or security held in the Mudarib's name is for the benefit of the Mudarib, the Rab Al-Maal and the other investors on a *pro-rata* basis.
9. As provided by the Islamic Sharia, the Mudarib is liable for any loss of the capital invested under this Agreement only if it is proven that the Mudarib has breached the conditions of this Agreement or proven to be negligent in keeping or managing the said capital.
10. In case of default of the client, the Mudarib shall inform the Rab Al –Maal and the other investors and take necessary action on their behalf as it deems fit to protect their interest.
11. This Agreement shall be governed by the law of Islamic Republic of Pakistan. Any court of competent jurisdiction located at [●] shall have the jurisdiction to adjudicate upon all disputes and differences in connection with this Agreement.
12. This Agreement shall become effective on [●] and shall continue to be valid up to [●].

\_\_\_\_\_  
Mudarib

\_\_\_\_\_  
Rab-Al-Maal

(Duly authorized signatory)

(Duly authorized signatory)

Witnessed :

1.Name:

Signature:

2.Name :

Signature:

**EXHIBIT A**

PROJECT INFORMATION FORM

-:-

**EXHIBIT B**

CASH FLOW AND REVENUE PROJECTION FOR PROJECT  
AND MANAGEMENT SERVICES

-:-

**EXHIBIT C**

SCHEDULE OF EXPENSES

-:-

**EXHIBIT D**

CLIENT INFORMATION FORM

-:-

**EXHIBIT E**

DRAW DOWN DATES

-:-

**EXHIBIT F**

AUTHORISED SIGNATORIES