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# MUSHARAKA AGREEMENT

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By and Between

**MUGHAL IRON & STEEL INDUSTRIES LIMITED**

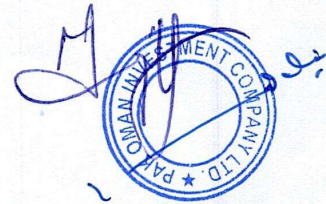
(As the Managing Partner)

And

**PAK OMAN INVESTMENT COMPANY LIMITED**

(As the Musharaka Agent)

Executed at Lahore on December 21, 2023



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**MIC**

**MOHSIN TAYEBALY & CO.**  
CORPORATE LEGAL CONSULTANTS | BARRISTERS & ADVOCATES

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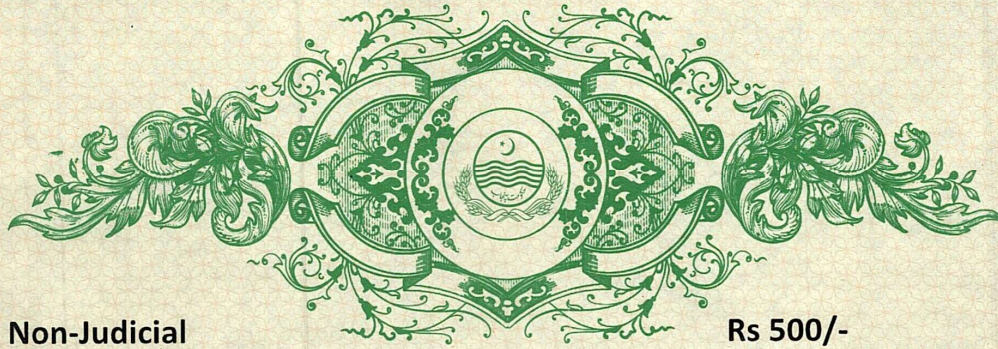
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Non-Judicial

Rs 500/-

Description	: AGREEMENT OR MEMORANDUM OF AN AGREEMENT - 5(d)
First Party	: Mughal Iron and Steel Industries Limited [35202-9750871-7]
Second Party	: PAK OMAN INVESTMENT COMPANY LIMITED [42201-0612185-9]
Agent	: Waqas Ramzan [35104-0359445-9]
Stamp Duty Paid by	: Mughal Iron and Steel Industries Limited [35202-9750871-7]
Issue Date	: 19-Dec-2023, 04:28:07 PM
Paid Through Challan	: 20236F5CBD644571
Amount in Words	: Five Hundred Rupees Only

Please Write Below This Line

**MUSHARAKA AGREEMENT**

This **MUSHARAKA AGREEMENT** (hereinafter referred to as the "Agreement") is made at Lahore on Dec. 21, 2023;

**BY AND BETWEEN**

1. **MUGHAL IRON & STEEL INDUSTRIES LIMITED**, a company incorporated under the laws of Islamic Republic of Pakistan and having its registered office at 31-A, Shadman - I, Lahore (hereinafter referred to as the "Managing Partner", which expression shall mean and include, where the context so requires or admits, its successors-in-interest and assigns);

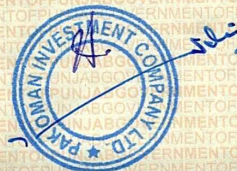
**AND**

2. **PAK OMAN INVESTMENT COMPANY LIMITED**, a company incorporated under the laws of Pakistan and having its registered office at First Floor, Tower A Finance And Trade Center, Main Sharah-E-Faisal, Karachi (hereinafter referred to as the "Musharaka Agent" which expression shall mean and include where the context so requires or admits its successors-in-interest and assigns).

(The Managing Partner and the Musharaka Agent are hereinafter collectively referred to as "Partners" and each individually referred to as a "Partner").

**WHEREAS:**

- A. The Managing Partner on the date of these presents is, *inter alia*, involved in and undertaking the Designated Business (as defined below).
- B. The Musharaka Agent (on behalf of the Investors) has agreed to invest in the Designated Business of the Managing Partner on a profit and loss sharing basis i.e., Musharaka (Shirkat-ul-Aqd) on the terms and conditions hereinafter appearing.



- C. It is anticipated that the contribution of the Musharaka Agent (on behalf of the Investors) towards the Musharaka Capital shall be represented by the Sukuk with each Sukuk Certificate reflecting and representing ownership/investment of the Investors in the Designated Business.

**NOW, THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. PURPOSE**

**1.1 Purpose**

- 1.1.1 This Agreement sets out the terms and conditions upon and subject to which the Partners have agreed to enter into a Musharaka in respect of the Designated Business.

**2. DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

- 2.1.1 In this Agreement, unless the context otherwise requires the following words shall have the meanings assigned to them hereunder:

**"Articles"** means the articles of association of the Managing Partner;

**"Account Bank"** means Faysal Bank Limited;

**"Account Bank II"** means MCB Islamic Bank Limited;

**"Availability Period"** means a period of 30 (thirty) days, commencing from the Closing Date;

**"Business Day"** means a day on which banks are open for the transaction of general banking business in Karachi, Pakistan;

**"Buy Out Price"** means the outstanding principal value of the Musharaka Agent's Investment in the Designated Business at the Musharaka End Date, which price shall be paid by the Issuer to the Musharaka Agent as payment for redemption of the Musharaka Agent's Investment;

**"Collection Arrangement Agreement"** means the collection arrangement agreement dated on or about the date hereof executed between *inter alia* the Managing Partner, Account Bank and the Musharaka Agent;

**"Closing Date"** means the date on which all conditions precedent, as set out in Clause 5 hereunder are met by the Managing Partner to the satisfaction of the Musharaka Agent, which date shall be no later than 30 (thirty) days from the execution of this Agreement;

**"Current Assets"** means the aggregate of all assets which would, in accordance with generally accepted accounting principles, be classified as current assets which can reasonably be expected to be converted into cash in the normal course of business within 1 (one) year of the date of the relevant balance sheet including, without limitation, cash, notes and accounts receivable, inventories (including spares and loose tools), prepaid expenses, guarantee deposits, accrued income and short-term advances;

**"Current Liabilities"** means the aggregate of all liabilities which would, in accordance with generally accepted accounting principles, be classified as current liabilities including, but not limited to, notes and accounts payable, short-term borrowings, current maturities of long-term debt, creditors' charges, accruals, deposits, unclaimed and proposed dividends and current maturity of finance lease payments and other obligations due within 12 (twelve) months;



**“Current Ratio”** means Current Assets divided by Current Liabilities;

**“Designated Business”** means the business of the Managing Partner for the manufacturing and sale of various ferrous and nonferrous products ;

**“Debt”** means a sum of short-term loans/ financing and long-term loans/ financing and lease finance along with current maturity of long term debt / lease finance;

**“Debt to EBITDA Ratio”** means Debt divided by EBITDA;

**“EBITDA”** means earnings before interest, taxes, depreciation, and amortization;

**“Event of Default & Termination”** means each of the events of default and termination as set out in Clause 11 hereunder;

**“Equity”** means capital plus reserves and accumulated profits (net of losses) plus curative equity and surplus on revaluation of fixed assets / subordinated debt (as per Prudential Regulations);

**“Existing Creditors”** means the existing creditors of the Managing Partner over the Hypothecated Assets as detailed in the relevant section of the Letter of Hypothecation;

**“Financial Indebtedness”** means any indebtedness (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent for or in respect of:

- (a) moneys borrowed or raised by the Managing Partner including, without limitation, any loans or finances as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, sukuk, notes, debentures, debt stock, redeemable capital or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting principles in Pakistan, be treated as a finance or capital lease;
- (e) receivables assigned/ sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into, in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of redeemable shares;



- (j) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into this agreement is to raise finance; and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above;

**"Finance Service Coverage Ratio"** means earnings before interest, taxes, depreciation, and amortization during the financial year, divided by current maturity of long-term debt (including any lease liabilities) as at last financial year and financial charges during the financial year;

**"Finance Service Reserve Amount Account"** means the account of the Managing Partner to be opened and maintained with the Account Bank II in terms of Clause 12 of this Agreement;

**"Finance Payment Account"** means the account of the Managing Partner to be opened and maintained with the Account Bank in terms of Clause 12 of this Agreement;

**"Hypothecated Assets"** means all present and future current assets of the Managing Partner as defined in detail in the relevant schedule to the Letter of Hypothecation;

**"Investors"** shall have the same meaning as provided under the Sukuk Subscription and Agency Agreement(s);

**"Investment Agent"** means Pak Oman Investment Company Limited appointed pursuant to the Sukuk Issuance Agreement;

**"Issue Date"** means the Musharaka Commencement Date, being the date on which the complete disbursement of the Musharaka is made being a date no later than January 31, 2024;

**"Letter of Hypothecation"** is defined in Clause 12.1.1 (i) below;

**"Letter of Lien"** is defined in Clause 12.1.1 (ii) below;

**"Letter of Lien II"** is defined in Clause 12.1.1 (iii) below;

**"Managing Partner's Investment"** means the Managing Partner's contribution towards the Musharaka Capital as detailed in Clause 3.1.1 hereunder;

**"Material Adverse Effect"** means the occurrence of any event or series of events which in the opinion of the Musharaka Agent, might have a material adverse effect on (i) the business, assets or financial condition of the Managing Partner; (ii) on the Managing Partner's ability to perform its obligations under this Agreement or any other agreement entered into in connection herewith; or (iii) which may materially and adversely affect the Musharaka Agent's rights and remedies or its ability to continue with the arrangements under this Agreement or any other agreement entered into in connection herewith;

**"Majority Certificate Holders"** mean Certificate Holders holding together more than 75 % (Seventy Five percent) of the total outstanding face value of the Sukuk Certificates;

**"Memorandum"** means the memorandum of association of the Managing Partner;

**"Musharaka"** means the Musharaka established by the Partners, whereby each Partner has contributed / agreed to contribute towards the Musharaka Capital in terms of this Agreement;

**"Musharaka Agent's Investment"** means the Musharaka Agent's contribution (on behalf of the Investors) towards the Musharaka Capital as detailed in Clause 3.1.1 hereunder;



**"Musharaka Capital"** means the aggregate sum of the Musharaka Agent's Investment and the Managing Partner's Investment;

**"Musharaka Contribution Request"** means a notice substantially in the form set out in Schedule 4 hereto, to be issued by the Managing Partner to the Musharaka Agent, requesting disbursement of the Musharaka Agent's Investment;

**"Musharaka Commencement Date"** means the date of the first disbursement/contribution of the Musharaka Agent's Investment;

**"Musharaka End Date"** means the date falling 15 (fifteen) months from the Issue Date;

**"Operating Loss"** means the operating loss of the Managing Partner incurred in connection with the Designated Business during the Profit Period calculated as per Schedule 1;

**"Operating Profit"** means the operating profit of the Managing Partner (net of donations) incurred in connection with the running of the Designated Business during the Profit Period and calculated as per Schedule 1;

**"PACRA"** means the Pakistan Credit Rating Agency Limited;

**"Profit Sharing Mechanism"** means the mechanism in which the Managing Partner and the Musharaka Agent will share in the Operating Profit of the Designated Business, as detailed in Schedule 1 attached hereto;

**"Profit Period"** means the 3 (three) months period (i) between the Musharaka Commencement Date and due date for payment of the Buy Out Price/ first Provisional Profit Payment; and (ii) between due date for payment of an upcoming Buy Out Price/ Provisional Profit Payment and the respective due date for payment of the immediately subsequent Buy Out Price/ Provisional Profit Payment;

**"Provisional Profit Payment"** means the provisional profit payment calculated as per Schedule 2 hereto for Profit Period;

**"Provisional Profit Payment Date"** means the dates on which the Provisional Profit Payments shall be made to the Musharaka Agent, in accordance with Schedule 2;

**"Proceeds"** means all the proceeds/monies realized from the Secured Property by the Investment Agent;

**"Rupees"** or **"PKR"** means the lawful currency of Pakistan;

**"Receiver"** means any person or persons appointed by the Investment Agent as administrative receiver or a receiver and manager or receivers and managers with respect to administration of the Secured Property;

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

**"SECP"** means the Securities and Exchange Commission of Pakistan;

**"Shariah Advisor"** means Al Hilal Shariah Advisors (Pvt.) Limited;

**"Security"** means all the securities required by this Agreement to be created in favour of the Investment Agent for the benefit of the Certificate Holders in terms of Clause 12.1 below;



**“Security Documents”** means the security documents executed / to be executed in favour of the Investment Agent, pursuant to Clause 12.1 including any replacements, additional documents, or supplemental documents thereof;

**“Security Interest”** means:

- (i) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off) having the same or equivalent commercial effect as a grant of security; or
- (ii) an agreement to create or give any security or arrangement referred to in paragraph (i) of this definition;

**“Secured Property”** means:

- (i) all the assets comprised in the Security and all benefits and rights attached thereto, including the realization of any of these benefits and rights, held by the Investment Agent pursuant to the Security Documents;
- (ii) rights and benefits under the Transaction Documents; and
- (iii) all benefits and rights of the Certificate Holders in the Musharaka Capital/ Investment, including the realization of any of these benefits and rights, held pursuant to the any of the Transaction Documents;

**“Sukuk Issue”** means the Shariah compliant Sukuk Certificates by the Managing Partner in the amount of up to PKR 2,500,000,000/- (Pak Rupees Two Billion Five Hundred Million) inclusive of a green shoe of up to PKR 1,000,000,000/- (Pak Rupees One Billion), to eligible institutional and other investors by way of private placement pursuant to the provisions of Section 66 of the Companies Act, 2017;

**“Sukuk Subscription and Agency Agreement”** means the sukuk subscription and agency agreement dated on or about the date hereof, executed between the Musharaka Agent and the Investors;

**“Transaction Documents”** means the documents to be entered into in respect of the Sukuk Issue being;

- (i) this Agreement;
- (ii) the Sukuk Issuance Agreement;
- (iii) the Security Documents;
- (iv) the Sale Undertaking; and
- (v) the Sukuk Subscription and Agency Agreement(s) and;

**“Transaction Legal Counsel”** means Mohsin Tayebaly & Co. | Corporate Legal Consultants | Barristers and Advocates.

## 2.2 Interpretation

### 2.2.1 In this Agreement:

- (i) clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement;



- (ii) unless the context otherwise requires, references to Clauses and Annexures are to be construed as references to the clauses of and annexures to this Agreement and references to this Agreement include its annexures;
- (iii) words importing the plural shall include the singular and vice versa; and
- (iv) references to a person shall be construed as including references to an individual, firm, bank, corporation, unincorporated bodies of persons or any state or any agency thereof.

2.2.2 The Partners recognize and acknowledge that this Agreement and the transaction contemplated hereby is being entered into in a manner compliant with the principles of Shariah and undertake to perform their respective obligations under this Agreement accordingly.

### **3. MUSHARAKA**

#### **3.1 Musharaka**

- 3.1.1 Subject to the terms and conditions of this Agreement, the Partners hereby agree to enter into a Musharaka and to contribute their respective investments towards the Musharaka Capital.
- 3.1.2 The Musharaka Agent's Investment in the Designated Business will be up to PKR 2,500,000,000 (Pak Rupees Two Billion Five Hundred Million) inclusive of a green shoe of up to PKR 1,000,000,000/- (Pak Rupees One Billion) for and on behalf of the Investors.
- 3.1.3 The Managing Partner's Investment in the Designated Business will be determined at the Musharaka End Date or upon the occurrence of an Event of Default & Termination (whichever is earlier).
- 3.1.4 Furthermore, the Musharaka Capital will be calculated at the Musharaka End Date or upon occurrence of an Event of Default & Termination (whichever is earlier).
- 3.1.5 The total Musharaka Capital shall be made as per the Musharaka pool which shall approximately be PKR 33,611,435,375/- (Pak Rupees Thirty Three Billion Six Hundred Eleven Million Four Hundred Thirty Five Thousand Three Hundred Seventy Five) comprising of stock in trade of up to PKR 22,425,878,900/- (Pak Rupees Twenty Two Billion Four Hundred Twenty Five Million Eight Hundred Seventy Eight Thousand Nine Hundred) and account receivables of up to PKR 8,685,556,385/- (Pak Rupees Eight Billion Six Hundred Eighty Five Million Five Hundred Fifty Six Thousand Three Hundred Eighty Five) and Musharaka Agent's Investment shall be equivalent to PKR 2,500,000,000/- (Pak Rupees Two Billion Five Hundred Million), based on the latest available unaudited accounts of the Managing Partner as of March 2023 and projected numbers provided by the Managing Partner. The Musharaka Agent/Investors shall contribute in the Musharaka as mentioned above, whereas the Managing Partner shall contribute through stock in trade and account receivables.
- 3.1.6 The investment ratio for the Investors and the Managing Partner will be 7.44%: 92.56% respectively, which may be more precisely determined at any point in time as per Clause 3.1.5.
- 3.1.7 The purpose of the Musharaka will be to utilize the Musharaka Capital in the manner provided in Clause 3.1.11 below and to generate profits, which are to be shared in accordance with the Profit-Sharing Mechanism.
- 3.1.8 The Musharaka Agent shall monitor the utilization of the Musharaka Agent's Investment and periodically monitor the Designated Business by reviewing its financial performance. The Managing Partner shall provide all the details and calculations of the Musharaka Agent's and Managing Partner's respective Operating Profit or Operating Loss in the Musharaka according to the format provided in Schedule 3. The Managing Partner will be responsible for promptly





providing all material information to the Musharaka Agent relating to any change in its financial performance and position as per the terms of this Agreement. It is understood that the overall performance and management of the Designated Business shall be the responsibility of the Managing Partner.

3.1.9 The Musharaka will commence on the Musharaka Commencement Date and will end on the Musharaka End Date or upon the occurrence of an Event of Default (whichever is earlier).

3.1.10 The Managing Partner and the Musharaka Agent irrevocably acknowledge and agree that subject to the terms of the transaction documents:

(i) If the Managing Partner decides, in its sole discretion, to obtain further funding or finance and make additional capital contributions in respect of the Designated Business then in such case the Managing Partner shall be solely responsible for such funding, finance or contribution and the Musharaka Agent shall have no liability or responsibility for the same.

(ii) the Musharaka Agent's obligation and liability under this Agreement shall at all times be limited to the contribution of the Musharaka Agent's Investment. Under no circumstances shall the Managing Partner be entitled to request, nor shall the Musharaka Agent be required to contribute, any amount in excess of the Musharaka Agent's Investment.

3.1.11 During the Musharaka, the Musharaka Capital shall be used in a manner compliant with the principles of Shariah as interpreted by the Shariah Advisor and shall not be used or diverted for any other purpose except for the business operations of the Managing Partner or any other purpose permitted under the Memorandum of Association of the Managing Partner in the Designated Business.

3.1.12 It is clarified that during the Musharaka, the legal title to the Designated Business shall remain with the Managing Partner and the beneficial ownership and associated risk and rewards in the Designated Business shall vest with the Musharaka Agent up to extent of the Musharaka Agent's Investment.

#### **4. MUSHARAKA CAPITAL**

##### **4.1 Musharaka Capital**

4.1.1 The Musharaka Agent shall contribute the Musharaka Agent's Investment within 1 (one) Business Day from the receipt of the Musharaka Contribution Request, subject to the terms of and upon reliance of the representations and warranties set forth in this Agreement and disburse the same to the Managing Partner, subject to (i) receipt of funds from the Investors, (ii) no Event of Default & Termination having occurred or subsisting and (iii) receipt of Musharaka Contribution Request by the Managing Partner, in accordance with Clause 4.1.2 below. Furthermore, the Managing Partner will provide the Profit-Sharing Mechanism in terms of the Musharaka Contribution Request and if acceptable to the Musharaka Agent, the Musharaka Agent shall make payment of the Musharaka Agent's Investment.

4.1.2 The Managing Partner must deliver the Musharaka Contribution Request to the Musharaka Agent not later than 11:00 a.m. on a Business Day, and at least 1 (one) Business Day prior to the date on which the Managing Partner requires disbursement of the Musharaka Agent's Investment. Each Musharaka Contribution Request shall be irrevocable and shall not be regarded as having been duly completed unless:

(i) the Musharaka Contribution Request is made within the Availability Period;



- (ii) the amount requested pursuant to the Musharaka Contribution Request is not more than the Musharaka Agent's Investment;
- (iii) the currency requested is Pak Rupees; and
- (iv) all conditions precedent as stated in Clause 5 below have been fulfilled (or duly deferred or waived) prior to the issuance of the Musharaka Contribution Request, to the Musharaka Agent's satisfaction.

**5. CONDITIONS PRECEDENT**

**5.1 Conditions Precedent**

5.1.1 It is agreed that the Musharaka Agent shall only be required to provide the Musharaka Agent's Investment subject to the Managing Partner providing evidence or representation as to the following to the satisfaction of the Musharaka Agent:

- (i) that the Managing Partner has the necessary power to enter into this Agreement and the relevant transaction documents, and that the execution and delivery of this Agreement and the relevant transaction documents by the Managing Partner is duly authorized by a resolution of the Board of Directors passed in a meeting;
- (ii) that the signatories of this Agreement and the relevant transaction documents hereto on behalf of the Managing Partner are duly empowered to sign this Agreement and the relevant transaction documents and to bind the Managing Partner into the covenants and undertakings herein contained or which arise as a consequence of the entering into this Agreement and the relevant transaction documents by the Managing Partner;
- (iii) the Musharaka Agent is satisfied that nothing herein contained or in this Agreement conflicts with any of the provisions of the Memorandum and Articles of Association of the Managing Partner;
- (iv) completion and fulfilment of all the legal formalities for the documentation and the Musharaka by the Managing Partner;
- (v) this Agreement is valid, binding, effective and enforceable against the parties in terms thereof;
- (vi) the Managing Partner has taken all steps and executed all documents required under or pursuant to this Agreement or any other agreement between the parties or any documents creating, evidencing, and perfecting the Security in favour of the Investment Agent;
- (vii) there exists no charge, encumbrance, or lien upon the Security, other than the charges of the Existing Creditors (to the extent applicable);
- (viii) the charge registration certificates, and Form 10s have been issued by the companies registration office of the SECP in respect of the Security Documents and copies of the same have been provided to the Investment Agent;
- (ix) the Managing Partner has obtained a long term entity rating of "A+" (A Plus) and a minimum short term entity rating of "A-1" (A One) from PACRA;
- (x) the Managing Partner has issued a certificate that there is no Event of Default & Termination as on the date thereof;



- (xi) the authorized person of the Managing Partner has issued a certificate that the Managing Partner is not in breach of any representation, warranty or covenant made under this Agreement;
- (xii) that the Managing Partner has obtained all material consents, waivers, approvals, authorizations, and permissions required for the Musharaka including but not limited to compliance with all, regulations of the SECP;
- (xiii) that the Managing Partner has paid all costs, charges, fees, and expenses due in terms of this Agreement including but not limited to legal fee, issue agency fee, trustee fee and arrangement fee;
- (xiv) the Managing Partner has taken all necessary steps and executed / procured the execution of all documentation pertaining to the Musharaka or any other agreement between the parties;
- (xv) the Managing Partner has obtained a long term rating of "AA-" (double A minus) for the Sukuk Issue from PACRA;
- (xvi) the Managing Partner has a clear eCIB Report (Electronic Credit Information Bureau report of the SBP), evidenced by a current eCIB Report from SBP and which report is not more than 2 (two) months old;
- (xvii) the Managing Partner is in compliance with the Prudential Regulations of the SBP (to the extent applicable) and all other applicable laws, rules, regulations and guidelines, including guidelines set out by the Shariah Advisor;
- (xviii) the Musharaka Agent has received sufficient certified true copies of the following from the Managing Partner:
  - (a) SECP certified Memorandum and Articles of Association;
  - (b) SECP certified Certificate of Incorporation;
  - (c) SECP certified latest Form 29 and Form A;
  - (d) SECP certified Certificate of Commencement of Business;
  - (e) Company Secretary certified CNIC copies of all directors;
  - (f) Company Secretary certified list of authorized signatories along with specimens of their signatures;
  - (g) Company Secretary certified list of directors along with their specimen signatures;
  - (h) Duly filled, signed, and stamped Borrower Basic Fact Sheet in form acceptable to the Investment Agent;
  - (i) Undertaking for Appropriate Utilization of Funds;
  - (j) Duly filled, signed, and stamped Finance Application Form;
  - (k) Accepted Shariah Structure;



- (xix) the Musharaka Agent has received the audited Balance Sheet and Profit and Loss Account of the Managing Partner as at June 30, 2023;
- (xx) that the Managing Partner has obtained comprehensive Takaful policies against events of force majeure, including but not limited to loss or damage by fire, explosion, lightning, theft, insurrection, riot, strikes, civil commotion, terrorism, earthquake, malicious damage, atmosphere disturbance, damage caused by impact, damage caused by aircraft (in whole or in part) covering all the risks up to the extent of the charge amount in respect of the Security (to the extent applicable) for the full value thereof from an Takaful company acceptable to the Investment Agent and assigned the benefits of all the policies of Takaful in respect of the same to the Investment Agent as co-loss payee and the Managing Partner shall provide to the Investment Agent all the Takaful policies together with the receipt in respect of the payment of the premium made by the Investment Agent in respect of such policies;
- (xxi) the Managing Partner has provided the Musharaka Agent/ Investment Agent with a latest valuation report of the Hypothecated Assets from a valuator acceptable to the Musharaka Agent/ Investment Agent;
- (xxii) a legal opinion has been obtained from the Transaction Legal Counsel confirming, *inter alia*, the validity, enforceability and binding effect of the obligations of the relevant parties under this Agreement and the Security Documents;
- (xxiii) the Musharaka Agent has received for the benefit of the Investors all costs, fees and charges payable and due by the Managing Partner in terms of this Agreement and in connection with the relevant transaction documents, including but not limited to any arrangement fee, agency fee, Transaction Legal Counsel's fee and any other professional fee approved by the Shariah Advisor;
- (xxiv) the Managing Partner has provided to the Musharaka Agent the Shariah Advisor's certificate for the purposes of the Musharaka;
- (xxv) the Managing Partner is in compliance with all relevant environmental related laws, regulations, and guidelines wherever applicable to the Sukuk Issue/ Musharaka/ Managing Partner; and
- (xxvi) certification of completion, compliance and fulfilment of all the legal formalities/ requirements including compliance with all applicable regulations, corporate actions/ consents required for the documentation of the Musharaka by the Managing Partner.

5.1.2 The conditions specified in Clauses 5.1.1 above may be waived or postponed by the Musharaka Agent (acting on the instructions of all Investors), in whole or in part and with or without conditions. Where a waiver or postponement is allowed under this Clause 5.1.2, the Managing Partner shall comply with the terms on which the waiver or postponement is granted, and the Managing Partner shall be in breach of the provisions of this Agreement if it fails to satisfy by the postponement date, the conditions precedent for which postponement was granted or satisfy the conditions on which a waiver was granted.

## 6. GOOD FAITH

6.1 The Partners agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.



## **7. MANAGEMENT OF THE MUSHARAKA AND STANDARD OF CARE**

### **7.1 Management of the Musharaka**

7.1.1 During the Musharaka, the Managing Partner shall manage the Designated Business for the benefit of the Partners in accordance with this Agreement. Without prejudice to the generality of the aforesaid the Managing Partner shall carry out the following:

- (a) all activities required for carrying on the Designated Business in the ordinary course of business;
- (b) maintain all assets, properties and other facilities necessary or desirable for the Designated Business;
- (c) developing and expanding the Designated Business;
- (d) payment of all undisputed taxes (if any) charged, levied or claimed in respect of the Musharaka or the Designated Business by any relevant taxing authority and file all relevant tax returns in a timely manner;
- (e) obtain all necessary authorizations and licenses in connection with the Musharaka Capital, the Designated Business and the transaction contemplated by this Agreement; and
- (f) maintain adequate and accurate accounts in connection with the Designated Business and Musharaka Capital.

### **7.2. Standard of Care**

7.2.1 The Managing Partner shall manage the Designated Business and Musharaka Capital:

- (a) in accordance with all applicable laws and regulations;
- (b) with the degree of skill and care that it would exercise in respect of its own assets (that are not part of the Designated Business); and
- (c) in a manner that is not repugnant to the concept of Shariah.

## **8. SHARING OF OPERATING PROFIT AND OPERATING LOSS**

### **8.1 Sharing of Operating Profit**

8.1.1 The Partners agree that Operating Profits generated from the Designated Business shall be shared on a provisional basis between the Managing Partner and the Musharaka Agent (on behalf of the Investors) in accordance with the Profit-Sharing Mechanism during the Profit Period as specified in Schedule 1 which shall be given by the Musharaka Agent. The profit and loss statement will be provided by the Managing Partner for the Profit Period for the purposes of ascertaining the Operating Profit or Operating Loss (as the case may be) during the Profit Period.

8.1.2 For the period between the Musharaka Commencement Date and the last day occurring prior to the Issue Date, the Managing Partner shall, on the Issue Date, make Provisional Profit Payments to the Musharaka Agent for such period (for the benefit of the relevant Participants). During the Profit Period, the Managing Partner shall make Provisional Profit Payments to the Musharaka Agent on the Provisional Profit Payment Date. Such Provisional Profit Payments shall be calculated in accordance with the formula given in Schedule 2 attached hereto and shall be made by the Managing Partner on-account.



8.1.3 Upon finalization of the profit and loss statement as illustrated in Schedule 3 for the Profit Period, which shall be done within 30 (thirty) Business Days of the end of the Profit Period, or occurrence of Event of Default (whichever is earlier), the Managing Partner will calculate the Operating Profit or Operating Loss amounts for the Profit Period. This Operating Profit amount will be used to arrive at the Musharaka Agent's share of the Operating Profit (which shall also take into account the Provisional Profit Payment amount made). Upon finalization of the profit and loss statement as illustrated in Schedule 3 for the Profit Period, in case Operating Profit is more than the Provisional Profit Amount, the Managing Partner will deposit the incremental amount in the designated account and the Musharaka Agent shall make payment of the same amount to the Investors proportionately as per their respective contribution towards the Musharaka Capital or in the event that the Operating Profit is less than the Provisional Profit Amount, the Investors/Musharaka Agent will return the differential amount within 10 (ten) Business Days of the finalization of the profit and loss statement.

## 8.2 Sharing of Operating Loss

8.2.1 In case the profit and loss statements provided in Schedule 3 as mentioned in Clauses 8.1.1 and 8.1.2 above show an Operating Loss, such Operating Loss shall be shared by the Partners on a pro-rata basis in proportion to their respective investment in the Musharaka Capital. Upon finalization of the profit and loss statement as illustrated in Schedule 3 for the Profit Period, Investors/Musharaka Agent will return the Provisional Profit Amount along with the proportionate loss in the Musharaka Capital as mentioned in Clause 8.2.2.

8.2.2 The Operating Loss distribution as envisaged in Clause 8.2.1 will however be subject to the following provisions:

- (a) the Musharaka Agent shall not be liable for any Operating Loss in excess of its liability/investment percentage under this Agreement and shall always be limited to, the Musharaka Agent's Investment; and
- (b) the Managing Partner undertakes not to do anything, or omit to do anything, whether as manager of the Designated Business or otherwise, which would increase the Musharaka Agent's liability under this Agreement or expose the Musharaka Agent to Operating Loss in excess of the Musharaka Agent's Investment.
- (c) In case of loss as mentioned in Clause 8.2.1 above is due to wilful negligence or misrepresentation of the Managing Partner, the Musharaka Agent shall not be responsible for such loss and the Managing Partner shall bear all actual losses in such cases.
- (d) In case of a loss the Managing Partner shall, if so, requested by the Musharaka Agent in writing within 10 (ten) Business Days of the Managing Partner's announcement of such loss, provide an explanation, of such loss to the Musharaka Agent. In the event that the Musharaka Agent is not satisfied with the explanation, it shall be entitled to refer the matter to a joint committee consisting of mutually selected Shariah Advisor(s), finance and legal teams of both the Partners (the "Joint Committee") as advised and formed by the Musharaka Agent within 7 (seven) days of receipt of the explanation from the Managing Partner. The Joint Committee shall decide the referred matter within 15 (fifteen) days of the referral. The decision of the Joint Committee with respect to the referred matter shall be final and binding on the Parties and shall not be challenged in any manner whatsoever. In the event that the matter is not referred to the Joint Committee, the Investors/Musharaka Agent will return the Provisional Profit Amount along with the proportionate loss in the Musharaka Capital within 30 (thirty) Business Days of the end of the relevant month of the Musharaka End Date or occurrence of Event of Default (whichever occurs earlier).



- e) In case of Takaful proceeds received by the Managing Partner on behalf of the Musharaka Agent as a result of inventory loss/damage, up to the extent of the Musharaka Agent's Investment in the Musharaka Capital, the method and quantum of disbursement of such proceeds to the Musharaka Agent shall be advised by the Shariah Advisor of the Sukuk Issue.

## **9. DISSOLUTION AND REDEMPTION ON MUSHARAKA END DATE**

### **9.1 Dissolution on Musharaka End Date**

- 9.1.1 On the day following the Musharaka End Date, the Musharaka shall be wound up in the manner agreed between the Partners.

### **9.2 Redemption on Musharaka End Date**

- 9.2.1 In consideration of the Musharaka Agent having entered into this Agreement, the Managing Partner hereby irrevocably agrees and undertakes that it shall redeem / buy out the Musharaka Agent's Investment at the Buy Out Price subject to the adjustment of profit/loss (if any) from the Musharaka Agent on the Musharaka End Date. Upon finalization of the profit and loss statement as illustrated in Schedule 3 for the Profit Period, in case of loss the Investors/Musharaka Agent will return the Provisional Profit Amount along with the proportionate loss in the Musharaka Capital to the Managing Partner as mentioned in Clause 8.2.1.

### **9.3 Redemption on Occurrence of Event of Default & Termination**

- 9.3.1 The Managing Partner further undertakes that if the Musharaka Agent (on behalf of the Investors) desires to terminate the Musharaka and this Agreement upon the occurrence of an Event of Default & Termination, the Managing Partner shall immediately redeem the remaining Musharaka Agent's Investment at the Buy Out Price along with the Provisional Profit till such date upon receipt of a notice in writing from the Musharaka Agent. The Musharaka will stand terminated upon the issuance of a notice to such effect by the Musharaka Agent. The profit and loss statement as illustrated in Schedule 3 shall be provided within 20 (twenty) Business Days of the of the month subsequent to the month of the termination of the Musharaka. The Managing Partner will calculate the Operating Profit or Operating Loss amounts for the period up till the date of termination for the Musharaka. This Operating Profit amount will be used to arrive at the Musharaka Agent's share of Operating Profit (which shall also take into account the Provisional Profit Payment amount made). In case of failure on the Managing Partner's part to immediately or within the period stipulated by the Musharaka Agent (in the notice, payment of Musharaka Agent's Investment, the Managing Partner undertakes to pay an amount, if the Musharaka Agent is of the opinion that the delay is without a valid reason which the investment agent shall inform through a notice , as charity to the Musharaka Agent calculated at 25% (Twenty Five percent) per annum of any amounts demanded hereunder which remains unpaid for 10 (ten) days after demand thereof or the date stipulated in the notice, as applicable. The charity due and recovered from the Managing Partner shall be donated by the Musharaka Agent on behalf of Managing Partner in accordance with the guidelines of the Shariah Advisor.

## **10. THE MANAGING PARTNER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **10.1 The Managing Partner's Representations and Warranties**

- 10.1.1 The Managing Partner makes the representations and warranties to the Musharaka Agent as set out in this Clause 10 which are deemed to be made by the Managing Partner by reference to the facts and circumstances existing on the date of this Agreement and are deemed to be made on the Musharaka Commencement Date and on each date that a Musharaka Contribution Request (in form and substance acceptable to the Musharaka Agent) is received by the Musharaka Agent:



- (i) it is a company incorporated and existing under the laws of Pakistan and is not in liquidation (nor it is threatened with liquidation);
- (ii) it has full legal capacity and power:
  - (a) to own its properties and assets and carry on its business as it is now being conducted;
  - (b) to utilize the Issue Price towards and for carrying on the purpose contemplated under the relevant transaction documents; and
  - (c) to enter into, exercise its rights and perform its obligations under this Agreement, the Sukuk Certificates, and the Security Documents;
- (iii) all conditions and things required by applicable law to be fulfilled or done in order to enable it to lawfully to enter into, and exercise its rights and perform its obligations under this Agreement have been fulfilled or done;
- (iv) it has a valid, legal and subsisting title to the Secured Property and on the date of the execution of this Agreement there are no other encumbrances on the Secured Property except for the charges in favour of the Existing Creditors;
- (v) that no Event of Default & Termination or Potential Event of Default & Termination has occurred as of the date of this Agreement;
- (vi) it is in compliance with all applicable laws;
- (vii) its Balance Sheet and Profit and Loss Account as at June 30, 2023 has been prepared in accordance with the applicable law and generally accepted accounting principles consistently applied in Pakistan and give a true and fair view of its financial condition as of that date and that there has been no change since that date having a Material Adverse Effect on it;
- (viii) to the knowledge of the Managing Partner, neither the execution of, nor exercise of its rights or performance of its obligations under, this Agreement does or will:
  - (a) contravene any applicable law or any order, judgment or direction of any court or tribunal to which the Managing Partner or any of its properties and businesses are subject;
  - (b) contravene any contract, undertaking or instrument binding on the Managing Partner or any of its properties;
  - (c) contravene any provision of the Managing Partner's Memorandum or Articles of Association;
  - (d) require the Managing Partner to make any payment or delivery in respect of any Financial Indebtedness before the scheduled date of that payment or delivery; or
  - (e) cause any limitation on the power of the Managing Partner to incur Financial Indebtedness to be exceeded;
- (ix) save as otherwise disclosed, no litigation, arbitration or administrative proceedings to which the Managing Partner is a party are taking place, pending or, to the knowledge of the Managing Partner, threatened against the Managing Partner or any of its properties





which have or are reasonably likely to have a Material Adverse Effect and which, in the reasonable opinion of the Managing Partner, is likely to be adversely determined;

- (x) it has disclosed to the Musharaka Agent in writing all existing liabilities and commitments and all other matters which could have a Material Adverse Effect on it;
- (xi) to the knowledge of the Managing Partner, no extraordinary circumstances and no change of law has occurred which would make it impossible for it to carry on the Musharaka/ Sukuk Issue and/or its business or fulfil its obligations under this Agreement;
- (xii) it has taken all steps necessary and to the extent applicable to ensure that the Investors are in compliance with the provisions of the Prudential Regulations and / or all other applicable laws and regulations, as applicable to the Investors, or has obtained the necessary waivers for the same in connection with the Musharaka;
- (xiii) all information furnished by the Managing Partner to the Musharaka Agent is accurate and that it has not omitted or concealed any material facts which would render such information incorrect, misleading, or inaccurate;
- (xiv) all governmental, regulatory, creditors' and corporate consents, approvals, registrations, and authorizations (to the extent required) for the purposes of the Musharaka are in place;
- (xv) it has all licences, approvals, authorizations and consents necessary for carrying out its business and fulfilling its obligations under the transaction documents;
- (xvi) it has a clear eCIB Report, evidenced by a current eCIB Report, which report is not more than 2 (two) months old at the time of the execution of this Agreement;
- (xvii) the Managing Partner shall provide the inventory and fixed assets report on a monthly basis to the Musharaka Agent and, if required by the Shariah Advisor, the Managing Partner shall arrange a visit to verify and confirm the level of inventory; and
- (xviii) this Agreement constitutes its valid and legal binding obligations, enforceable against it in accordance with its terms;
- (xix) it has legal, valid, and subsisting title to the Security and that as at the date hereof there exists no Security Interest over the Security except for the charges in favour of the Existing Creditors;
- (xx) it has obtained all necessary corporate and regulatory approvals for the purposes of the Musharaka; and
- (xxi) its assets and properties are adequately insured against all usual risks.

## 10.2 The Managing Partner's Covenants

10.2.1 The Managing Partner undertakes and covenants that it shall:

- (i) pay the Buy Out Price on the Buy Out Payment Dates and the Provisional Profit Payments on the relevant dates;
- (ii) use the Musharaka Capital only for the agreed purpose in a manner compliant with the principles of Islamic Shariah as interpreted by the Shariah Advisor and shall not use or divert the same for any other purpose;



- (ii) ensure compliance with all applicable laws, rules and regulations in all material aspects, issued by all applicable authorities including but not limited to SBP and SECP;
- (iii) provide the Musharaka Agent, on request, and in any event within 7 (seven) Business Days of request, with any information relating to its financial condition, business, assets and affairs as the Musharaka Agent may reasonably request;
- (iv) it shall provide the Musharaka Agent with copies of all documents, reports, notices, circulars, and particulars which the Managing Partner provides to its shareholders, at the same time as they are provided to its shareholders, with sufficient copies to enable the Musharaka Agent to provide a copy to each Investor;
- (v) it shall duly perform and observe the obligations in terms of this Agreement
- (vi) keep proper records and books of account, and in the event of an Event of Default & Termination, permit the Musharaka Agent or their respective employees, agents or representatives to examine and take copies of those records and books of account and all other documents relating to its activities;
- (vii) deliver to the Musharaka Agent, for the Investors adequate number of copies of:
  - (a) the audited annual accounts and balance sheet of the Issuer at the closing of each preceding financial year within 120 (one hundred twenty) days after the close of such year; and
  - (b) half-yearly reviewed accounts within 90 (ninety) days of the close of the relevant half-year;

These financial statements shall reflect the true and fair view of the financial position of the Issuer and shall be drawn in conformity with generally accepted accounting principles consistently applied;

- (viii) pay or keep paid up all undisputed fees, taxes, dues, rents, rates and charges of any governmental or municipal authority or other competent authority;
- (ix) ordinary wear and tear excepted, maintain the buildings, sites, works, constructions, plants, equipment, facilities and other assets of the Managing Partner in a good state of repair and in good working order and condition and take all precautions against such risks including fire, arson, riots, earthquakes, and acts of terrorism;
- (x) provide the Musharaka Agent, on request, and in any event within 5 (five) Business Days of request, with any information relating to its financial condition as the Musharaka Agent may reasonably request;
- (xi) give the Musharaka Agent prompt notice of any litigation, arbitration or administrative proceedings to which it is a party which, in the reasonable opinion of the Managing Partner, if adversely determined, could have either separately or in aggregate a Material Adverse Effect on it;
- (xii) execute all documents and do all acts and things as are stated in this Agreement;
- (xiii) make prompt payment of all amounts due to the Musharaka Agent under this Agreement;
- (xiv) enter into supplementary agreement with the Musharaka Agent (which shall be deemed to be part of this Agreement) if at any time pursuant to the Government/SBP/ Shariah Advisor directives any term or condition of this Agreement required is to be altered or



some new conditions are required to be incorporated, provided that entering into such supplementary agreement does not have or potentially have a Material Adverse Effect on it, however the changes suggested by the Shariah Advisor have to be implemented regardless of any Material Adverse Effect;

- (xv) maintain the following financial ratios throughout the tenor of the Sukuk Issue/ Musharaka:
  - a. Total Debt to Equity Ratio of not more than 2x;
  - b. Current ratio of at least 1;
  - c. Finance Service Coverage Ratio of at least 1x;
  - d. Debt to EBITDA of not more than 4x;
- (xvi) keep proper records and books of account;
- (xvii) maintain perfection of the Security throughout the tenor of the Musharaka;
- (xviii) conduct and manage its business and affairs with diligence and efficiency in accordance with sound financial and business practices as are prevailing in the similar industry in Pakistan and with the assistance of qualified personnel;
- (xix) maintain its existence and right to carry on business and take all steps necessary to maintain and renew its lease / hire agreements, other contracts, rights, powers, privileges, concessions, licences and franchises (as applicable) which are necessary or materially useful for the conduct of its business and maintain its books of accounts and other records adequately to reflect truly and fairly its financial position and the results of its respective operations in conformity with generally accepted accounting principles consistently applied;
- (xxii) it shall maintain stock in trade and operating fixed assets quantity having worth of at least 33% (thirty three percent) of the Musharaka Agent's investment. The Managing Partner will be bound to intimate to the Musharaka Agent if the inventory level at any period of time during the Musharaka reduces below 33% (thirty three percent) value of the Musharaka Agent's investment;
- (xx) ensure compliance of all applicable laws and regulatory requirements;
- (xxi) maintain adequate Takaful /insurance in respect of its assets and properties as represented to the Investment Agent/ Musharaka Agent;
- (xxii) shall ensure compliance with all relevant environmental related laws, regulations, and guidelines wherever applicable to the Sukuk Issue/ Musharaka/ Managing Partner;
- (xxiii) immediately inform the Musharaka Agent if, to the knowledge of the Managing Partner, there is any event having a Material Adverse Effect on it and to take all steps to rectify such Material Adverse Effect;
- (xxiv) intimate the Musharaka Agent prior to availing any short-term financing including but not limited to a running Musharaka facility;
- (xxv) as soon as practicable, inform the Musharaka Agent of the occurrence of any Event of Default & Termination;



(xxvi) shall maintain its long term entity rating of A+“(A Plus) and short term entity rating of “A-1” (A One); and

(xxvii) shall maintain its Sukuk Issue long term rating of “AA-” (double A minus).

10.2.2 The Managing Partner undertakes and covenants that it shall not except with the prior written consent of the Musharaka Agent:

- (i) create or permit any Security Interest over the Security, other than the charges of the Existing Creditors (to the extent applicable); or
- (ii) sell, transfer, lease out or otherwise dispose of a substantial part of its undertaking or assets or undertake or permit any merger, consolidation, dismantling or re-organization of the Issuer; or
- (iii) change its Memorandum or Articles in any manner that may have a Material Adverse Effect, or change its fiscal year or change the nature of its business; or
- (iv) take any action which may have a Material Adverse Effect on it; or
- (v) declare any dividend if, to the knowledge of the Managing Partner, there is, or if the declaration and payment of such dividend will result in, a violation of any of the financial covenants as contained herein and/ or required under the Prudential Regulations issued by SBP; or
- (vi) sell its assets other than in the ordinary course of business and/or for financing under Islamic modes of financing and subject to compliance with the terms and conditions of the Security Documents; or
- (vii) allow any change in the majority control and/ or ownership of the Managing Partner, at any time during the tenor of the Musharaka; or
- (viii) sell the Security.

10.2.3 The Managing Partner’s covenants and undertakings contained under Clause 10.1 and Clause 10.2 shall remain in force from the date of this Agreement for so long as this Agreement is in force.

## 11. EVENTS OF DEFAULT & TERMINATION

### 11.1 Events of Default & Termination

11.1.1 Each of the following events constitutes an Event of Default & Termination:

- (i) default of the Managing Partner in paying on the due date for payment, or within any period stipulated herein or within any period stipulated in the demand of the Musharaka Agent, of any sum payable under this Agreement;
- (ii) the Managing Partner does not comply with its undertakings or covenants, or any other provision of this Agreement and such non-compliance continues for 7 (seven) Business Days after the receipt by the Managing Partner of a written notice from the Musharaka Agent, notifying the Managing Partner of its non-compliance with the provisions of this Agreement;
- (iii) the Managing Partner is merged or amalgamated with another company or corporation or is reconstituted and in the reasonable opinion of the Musharaka Agent any such action has a Material Adverse Effect in the opinion of the Musharaka Agent;



- (iv) any existing license or any regulatory approvals in favour of the Managing Partner to carry on its business is revoked, terminated, or suspended for any reason whatsoever and such state continues without relief by a court of law, for a period of 7 (seven) days;
- (v) a representation, warranty or statement made or repeated in or in connection with this Agreement or in any document delivered by or on behalf of the Managing Partner under or in connection with the Musharaka is or proves to have been incorrect or misleading in any material respect or any statement, representation or warranty made or repeated by the Managing Partner in any notice, certificate or statement referred to or delivered under this Agreement, is or proves to have been incorrect or misleading in any respect or any such statement, representation or warranty is incorrect in any respect at any time and such defect is not rectified within 7 (seven) Business Days after the written notice is received by the Managing Partner from the Musharaka Agent;
- (vi) default by the Managing Partner in performance of any of its material financial commitments, obligations and/or covenants under any other agreement or arrangement with any bank or financial institution, which default continues for a period of 30 (thirty) days after notice of default by the Musharaka Agent. The Managing Partner acknowledges that delinquent payment(s) of any amount that are due by it towards and its failure to comply with its covenants under the agreement to which it is party will have an impact on its ability to perform or comply with the various terms and conditions contemplated in this agreement;
- (vii) liquidation, bankruptcy, cessation of business activities or cessation of the payment of debts of the Managing Partner, or any other legal or factual situation, including judicial or amicable settlement of debts, which may have a Material Adverse Effect in the opinion of the Musharaka Agent;
- (viii) any transformation / change in the form, nature, or corporate objects of the Managing Partner without prior written approval of the Musharaka Agent;
- (ix) judicial and enforcement proceedings taken against the Managing Partner which may, singly or cumulatively, result in a Material Adverse Effect in the opinion of the Musharaka Agent;
- (x) governmental measure or decision, whether general moratorium or individual decision or any other event whatsoever which has a Material Adverse Effect in the opinion of the Musharaka Agent;
- (xi) attachment or assignment or transfer of delivery to or takeover of any properties or assets of the Managing Partner by any receiver, encumbrancer, assignee, or any other person or body whether appointed by the Managing Partner or a Court or the government under any law or regulation;
- (xii) the Security deteriorates in quality or becomes inadequate in the reasonable judgment of the Investment Agent/ Musharaka Agent and is not replenished within 15 (fifteen) days of receipt of notice;
- (xiii) any Security Documents executed or furnished by the managing Partner for any reason whatsoever ceases to be in full force and effect or is declared to be void or is repudiated or the validity or enforceability of any such Security Documents is legally contested and such default is not rectified (where it is capable of being rectified) within 15 (fifteen) days of receipt of notice received from the Investment Agent/ Musharaka Agent;
- (xiv) making of any order or passing of a resolution for the winding up of the Managing Partner;



- (xv) one or more judgments, decrees or orders for the payment of money rendered against the Managing Partner which is likely to have a Material Adverse Effect on it in the opinion of the Musharaka Agent, and such judgments, decrees or order shall continue unsatisfied and in effect for a period of 15 (fifteen) consecutive days without being vacated, discharged, satisfied or stayed;
- (xvi) the taking of any step by the Managing Partner for the purpose of entering into a compromise or arrangement with any of its members / shareholders, or creditors, generally or any class of them whereby the interests of the Musharaka Agent are affected in any material manner;
- (xvii) the occurrence of any event whatsoever which is likely to have a Material Adverse Effect on the Managing Partner in the opinion of the Musharaka Agent;
- (xviii) if the Managing Partner claims that all or any material provision of this Agreement:
  - (a) do not have effect or cease to have effect in accordance with its terms; or
  - (b) are or become void, voidable, illegal or unenforceable;
- (xix) if all or any material part of the properties of the Managing Partner is compulsorily acquired or expropriated by the federal government or any provincial governments; or
- (xx) any litigation proceedings being commenced against the Managing Partner which may have a Material Adverse Effect in the opinion of the Musharaka Agent, which has not been vacated, discharged, satisfied or stayed within a period of 15 (fifteen) days.

## 11.2 Consequence of an Event of Default & Termination

11.2.1 Upon the occurrence of an Event of Default & Termination, in case the Event of Default & Termination is capable of rectification (other than an Event of Default & Termination in relation to the obligation to pay any amount payable in accordance with the terms of this Agreement), the Musharaka Agent (upon the instructions of the Investors holding, in aggregate, more than 75% (Seventy Five percent) in value of the Musharaka Agent's Investment) shall issue a notice in writing to the Managing Partner, requiring the Managing Partner to rectify the Event of Default & Termination within 7 (seven) Business Days of the notice. In case the Event of Default & Termination remains un-rectified within the stipulated period, the Musharaka Agent shall, on the instructions of the Majority Certificate Holders (as defined in the Sukuk Issuance Agreement) be entitled (without prejudice to other rights and remedies), on issuing a written notice to the Managing Partner, to:

- (a) requiring the profit and loss statement as per Schedule 3 attached hereto;
- (b) terminate the Musharaka and exercise any rights including but not limited to enforcement of the Security available under the law;
- (c) declare that the obligation of the Musharaka Agent to make the Musharaka Agent's Investment available to the Managing Partner under this Agreement stand terminated; or
- (d) require, by written notice to ascertain the profit and loss till the termination date, the Managing Partner will share the calculations as per the format mentioned in Schedule 3 to make any immediate payment to the Musharaka Agent of all amounts withdrawn from the Musharaka Agent's Investment, Provisional Profit Payments accrued until the date of termination and any sums then payable under this Agreement and under any other document or agreement issued or executed hereunder or in connection herewith.



## 12. SECURITY

### 12.1 Security

12.1.1 In order to secure the Certificate Holders / Participants rights under this Agreement, the Managing Partner shall:

- (i) create a charge by way of hypothecation over the Hypothecated Assets in favour of the Investment Agent (for the benefit of the Certificate Holders) in the amount of PKR 3,333,333,333/- (Pak Rupees Three Billion Three Hundred Thirty Three Million Three Hundred Thirty Three Thousand Three Hundred Thirty Three) (inclusive of margin of 25% (twenty five percent)) in terms of a letter of hypothecation in form and substance acceptable to the Investment Agent (for the benefit of the Certificate Holders) ("**Letter of Hypothecation**") which charge shall initially constitute a ranking charge, ranking subordinate and subservient to the charges created in favour of the Existing Creditors and shall be upgraded to a pari passu charge, ranking pari passu with the charges of the Existing Creditors within 120 (One Hundred Twenty) days from the Musharaka Commencement Date;
- (ii) create a lien and right of set-off over the Finance Payment Account maintained with the Account Bank, in favour of, the Investment Agent in terms of the letter of lien and right of set-off, in form and substance acceptable to the Investment Agent (for the benefit of the Certificate Holders / Participants) ("**Letter of Lien**");
- (iii) create a lien and right of set-off over the Finance Service Reserve Amount Account maintained with the Account Bank II, in favour of, the Investment Agent in terms of the letter of lien and right of set-off, in form and substance acceptable to the Investment Agent (for the benefit of the Certificate Holders / Participants) ("**Letter of Lien II**"); and
- (iv) execute / procure the execution of such other documents and deeds from time to time as may be mutually agreed between the parties for the purpose of more fully perfecting the Security created in favour of the Investment Agent in terms of Clause 12.1.1.

## 13. NOTICES AND COMMUNICATION

### 13.1 Method of Giving Notices

13.1.1 A notice, consent, approval or other communication (each a "**Notice**") under this Agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (i) delivered by messenger or courier; or
- (ii) sent by electronic mail

to that person's address.

### 13.2 Time of Receipt

13.2.1 A Notice given to a person in accordance with this Clause is treated as having been given and received

- (i) if delivered by hand or courier, on the day of delivery if delivered before 3:00 PM on a Business Day otherwise on the next Business Day; or



- (ii) if transmitted by electronic mail, on the dispatch of the same, if before 3:00 PM (and if not, then on the next Business Day of the addressee), provided that no error has been received by the sender.

### **13.3 Address and Numbers for Notices**

13.3.1 For the purposes of this Clause, addresses and e-mail addresses of the parties are:

#### **The Musharaka Agent**

Attention: Tariq Hassan

Email: [tariq.hasan@pakoman.com](mailto:tariq.hasan@pakoman.com)

Phone: 0323-2264920

Address: First Floor, Tower A Finance And Trade Center, Main Sharah-E-Faisal, Karachi

#### **The Managing Partner**

Attention: Muhammad Fahad Hafeez

Telephone: 0324-4050006

Email: [fahadhafeez@mughalsteel.com](mailto:fahadhafeez@mughalsteel.com)

Address: 31-A Shadman 1, Lahore

### **14. GOVERNING LAW AND JURISDICTION**

14.1 This Agreement shall be governed by the laws of the Islamic Republic of Pakistan and the courts of Lahore shall have non-exclusive jurisdiction in respect of any dispute arising hereunder.

### **15. LIMITATION OF LIABILITY**

15.1 The Musharaka Agent's liability to share the Operating Loss of the Designated Business shall be limited to the share of Operating Loss determined in accordance with Clause 8.2 and the Musharaka Agent shall not be liable for any amount other than or beyond the share of Operating Loss so calculated and in no case exceeding the Musharaka Agent's Investment.

15.2 The Musharaka Agent shall not be responsible for raising or providing any financing for the Designated Business except for the Musharaka Agent's Investment. The Managing Partner shall be solely and exclusively liable for any Financial Indebtedness of the Managing Partner for the purpose of the Designated Business or otherwise and the Musharaka Agent shall have no responsibility in this regard. For the avoidance of doubt, raising any financing by the Managing Partner or creating Security therefor shall not create any liability on the part of the Musharaka Agent for securing of paying/repaying such Financial Indebtedness of the Managing Partner.

### **16. CHARITY**

16.1 If the Payments or any other amounts due under this Agreement are not made by the Managing Partner to the Investors / Musharaka Agent in full on the respective due date(s), the Managing Partner hereby irrevocably undertakes to pay to the Investors / Musharaka Agent, as charity upon written demand and receipt of written notice from Musharaka Agent if the Musharaka Agent is of the opinion that the delay is without a valid reason which the investment agent shall inform





through a notice , an amount calculated at the rate of 25% (twenty five percent) per annum of such unpaid amounts, or part thereof or any other amount due for each day of delay beyond the relevant due date by which such amount, any part thereof or any other amount due remains unpaid, to be donated by the Investors / Musharaka Agent on behalf of the Managing Partner for charitable purposes as deemed fit and advised by the Shariah Advisor.

## **17. GENERAL INDEMNITY**

- 17.1 The Managing Partner shall indemnify the Musharaka Agent on its first demand against all losses, claims, actions, proceedings, damage, costs and expenses incurred by the Musharaka Agent as a result of the Managing Partner's failure to comply with its obligations under this Agreement.

## **18. TAX INDEMNITY**

- 18.1 If any law or regulation or any order of any court, tribunal or authority has the effect of subjecting the Musharaka Agent to taxes or charges with respect to any payment under this Agreement (other than taxes or taxation on the overall income of the Musharaka Agent), the Managing Partner shall be liable to pay such amount of taxes in addition to the amount otherwise payable by it under this Agreement.

- 18.2 If at any time, the Managing Partner is required to make any deductions or withholding in respect of taxes (other than taxes or taxation on the overall income of the Musharaka Agent) from any payment to the Musharaka Agent under this Agreement, the Managing Partner will pay an additional amount in respect of such payment to such extent as is necessary to ensure that after making of such deduction or withholding, the Musharaka Agent receives on the due 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 Managing Partner shall indemnify the Musharaka Agent against any losses or costs incurred by the Musharaka Agent by reason of any failure of the Managing Partner to make any such deduction or withholding. The Managing Partner shall promptly deliver to the Musharaka Agent any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

## **19. SET OFF**

- 19.1 The Musharaka Agent shall be entitled at any time and without notice to the Managing Partner to set-off any rightful obligations of the Musharaka Agent to the Managing Partner in or towards satisfaction of any obligations of the Managing Partner to the Musharaka Agent, regardless of the place of payment, booking branch or currency of either obligation in relation to this Musharaka. If the obligations are in different currencies, the Musharaka Agent may convert either obligation at a market rate of exchange in its usual course of business for the purposes of set-off.

## **20. ASSIGNMENT**

- 20.1 This Agreement shall be binding upon and inure to the benefit of each party and its permitted successors and assigns.
- 20.2 The Managing Partner shall not be entitled to assign or transfer any of its rights or obligations under this Agreement.
- 20.3 The Musharaka Agent may assign all or any part of its rights or transfer all or any part of its obligations under this Agreement to any person, without the written consent of the Managing Partner by giving prior notice of such assignment to the Managing Partner.
- 20.4 The Musharaka Agent may disclose to a potential assignee or transferee or to any other person who may propose entering into contractual relations with the Musharaka Agent in relation to this



Agreement such information about the Managing Partner as the Musharaka Agent shall consider appropriate.

**21. SEVERABILITY**

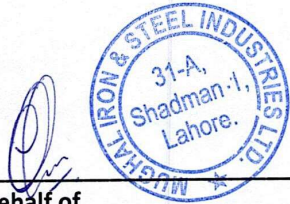
21.1 If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any jurisdiction will in any way be affected or impaired.

**22. NATURE OF RELATIONSHIP**

22.1 The Partners shall participate in the Musharaka on profit and loss sharing basis, based on the concept of Shirkat-ul-aqd, in accordance with the principles of Shari'a. Notwithstanding anything stated above, this Agreement shall not be deemed to create a partnership (as envisaged in the Partnership Act, 1932, or any successor legislation thereof) or company (as envisaged under the Companies Act, 2017 or any successor legislation thereof) and in no event does the Managing Partner have any right or authority, express or implied, to bind the Musharaka Agent with a third party or impose any obligation or liability on the Musharaka Agent in connection with the management of the Designated Business and Musharaka. In no event shall the Musharaka Agent be liable for the debts and obligations of the Managing Partner incurred by the Managing Partner, except as expressly stipulated in this Agreement.



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



For and on behalf of  
**MUGHAL IRON & STEEL INDUSTRIES LIMITED**

Name: Khayam Javaid  
Designation: CEO & Director  
CNIC No.: 35202-4960271-7

**In presence of the following Witnesses**

1 Signature: [Signature]  
Name: Usman Ali  
CNIC No.: 35202-4876441-1

2 Signature: [Signature]  
Name: Abdul Qadous  
CNIC No.: 36103-6154835-1

[Signature]



For and on behalf of  
**PAK OMAN INVESTMENT COMPANY LIMITED**  
(As the Musharaka Agent)

Name: TARIQ HASSAN / ZALMAI R. KANZ  
Designation: VP-IBD / SEVP-CBD  
CNIC No.: 42201-06121859/131013276277-1

**In presence of the following Witnesses**

1 Signature: [Signature]  
Name: Muraza Mandaswala  
CNIC No.: 42301-1919270-3

Signature: [Signature]  
Name: HASSAN IQBAL  
CNIC No.: 42101-3660547-1



## SCHEDULE 1

### PROFIT SHARING MECHANISM

The Profit-Sharing Mechanism between the Managing Partner and the Musharaka Agent (on behalf of the Investors) shall be as follows:

#### Tier 1 Profit:

Operating Profit up till the Tier 1 Profit Ceiling Amount shall be shared by the Managing Partner with the Musharaka Agent (on behalf of the Investors) on a pro rata basis based on the actual Musharaka Contribution by the Musharaka Agent (on behalf of the Investors) in the Musharaka Capital till such date.

“Tier 1 Profit Ceiling Amount” for the purposes hereof, calculated keeping in mind the following:

Musharaka Capital \* Desired Profit Rate\* (Base Rate + Margin) \* (Number of Days of Musharaka / 365/366)

Where:

**Base Rate:** The Base Rate (3 Month KIBOR) will be set 1 (One) Business Day prior to the Musharaka Commencement Date by way of issuance of a notice in the format attached herewith as Schedule 1-A. The Base Rate will be subject to revision by way of issuance of notice in the format attached herewith as Schedule 1-B, 1 (one) Business Day prior to the beginning of the subsequent quarterly period. It being clarified that in case of any decrease in the Base Rate, the Base Rate will remain unchanged. The “KIBOR” rates used for reference will be taken from Reuters page “KIBR”, as published at 11.30 a.m. Pakistan Standard Time by the Financial Markets Association (FMA). The daily average of the 3 (three) months Offer Rate will be used. In the event that this rate is not published on Reuters on the Base Rate Setting Date or if less than 8 (eight) banks provide their rates for the KIBOR fixing, the FMA or other relevant market body will be contacted for the relevant fixing rate.

**KIBOR:** The daily average of Karachi Interbank Offered Rate (Ask side) for the relevant period as published on Reuters page KIBR or as published by the Financial Markets Association of Pakistan in case the Reuters page is unavailable;

**Margin:** 145 bps

#### Tier 2 Profit:

Operating Profit in excess of Tier 1 Profit Ceiling Amount shall be shared between the Partners in the following ratio:

- |                        |        |
|------------------------|--------|
| (i) Musharaka Agent:   | 0.15%  |
| (ii) Managing Partner: | 99.85% |

It is clarified that the redemption of Sukuk at face value shall also comprise of Operating Profit up till the Tier 1 Profit Ceiling Amount. The operating profit in excess of the Tier 1 Profit Ceiling Amount will be shared as per the agreed ratio specified above. Face value of the Sukuk Issue may be adjusted subject to final settlement of Profit & Loss at the time of calculation of Tier 2 Profit.



**SCHEDULE 1-A**

**FORMAT OF BASE RATE NOTICE**

**Dated: [•]**

**To: MUGHAL IRON & STEEL INDUSTRIES LIMITED**  
(as the Managing Partner)

**Subject: Musharaka Agreement dated [•], 2023 between Pak Oman Investment Company Limited (as the Musharaka Agent on behalf of the Investors) and Mughal Iron & Steel Industries Limited (as the Managing Partner)**

Dear Sirs,

Capitalized terms used herein shall have the meanings as ascribed to them in the Musharaka Agreement dated [•], 2023 (the "**Musharaka Agreement**").

With reference to Schedule 1 of the Musharaka Agreement, Base Rate is defined as the three (3) Month KIBOR, prevailing three (3) Business Days prior to the Musharaka Commencement Date.

In this regard, the Base Rate, prevailing three (3) Business Days prior to the Musharaka Commencement Date, comes out to [•]**% p.a.**

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
[•]



**SCHEDULE 1-B**

**FORMAT OF REVISED BASE RATE NOTICE**

**Dated: [•]**

**To: MUGHAL IRON & STEEL INDUSTRIES LIMITED  
(as the Managing Partner)**

**Subject: Musharaka Agreement dated [•], 2023 between Pak Oman Investment Company Limited (as the Musharaka Agent on behalf of the Investors) and Mughal Iron & Steel Industries Limited (as the Managing Partner)**

Dear Sirs:

Capitalized terms used herein shall have the meanings as ascribed to them in the Musharaka Agreement dated [•], 2023.

With reference to Schedule 1 of Musharaka Agreement, Revised Base Rate is defined as the three (3) Month KIBOR, prevailing one (1) Business Day prior to the beginning of the subsequent quarterly period.

In this regard, Revised Base Rate, prevailing one (1) Business Day prior to the beginning of the subsequent quarterly period comes to [•]% p.a.

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
[•]



## SCHEDULE 2

### Provisional Profit Calculation

#### Provisional Profit Payment

The Provisional Profit Payment shall be the aggregate of the amount calculated in accordance with the formula given below, for each Profit Period:

$P \times R \times (D/365)$  or 366 in case of leap year

Where:

- P: is the outstanding balance of the Musharaka Agent's Investment utilized for Musharaka during the relevant Profit Period
- R: Base Rate + Margin
- D: Number of days



**SCHEDULE 3**

**Calculation of Profit/Loss of Musharaka Business**

<b>Musharaka Income Statement</b>	<b>Expected</b>	<b>For Musharaka</b>
Net Sales	XXXXXXX	XXXXXXX
<b>Less: Adjusted Cost of goods sold</b>		
Raw material consumed	XXXXXXX	XXXXXXX
Salaries & other benefits	XXXXXXX	XXXXXXX
Store consumption	XXXXXXX	XXXXXXX
Fuel and power	XXXXXXX	XXXXXXX
Repair & maintenance	XXXXXXX	XXXXXXX
Other manufacturing expenses	XXXXXXX	XXXXXXX
Depreciation	XXXXXXX	-
<b>Total COGS</b>	(XXXXXXX)	(XXXXXXX)
<b>Gross profit</b>	<b>XXXXXXX</b>	<b>XXXXXXX</b>
Less: Sales and Marketing	(XXXXXXX)	(XXXXXXX)
<b>Musharaka Profit</b>	<b>XXXXXXX</b>	<b>XXXXXXX</b>





SCHEDULE 4

FORMAT OF MUSHARAKA CONTRIBUTION REQUEST

Dated: [•]

To: [•]  
(As the Musharaka Agent)

Subject: Musharaka Agreement dated [•] between Pak Oman Investment Company Limited (as the Musharaka Agent on behalf of the Investors) and Mughal Iron & Steel Industries Limited (as the Managing Partner)

Dear Sirs:

Capitalized terms used herein shall have the meanings as ascribed to them in the Musharaka Agreement. With reference to the Musharaka Agreement we hereby issue this Musharaka Contribution Request for investment in the Designated Business on the following terms:

Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: PKR [•]/- (Pak Rupees [•])

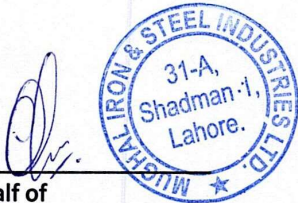
By way of: Payment into account no [•] maintained with the [•] branch of [•]

We propose that upon to receipt of the Musharaka Agent's Investment in terms of this Musharaka Contribution Request for investment in the Designated Business the profit-sharing ratio shall be as per Appendix A attached hereto. If the same are acceptable to the Musharaka Agent, the Musharaka Agent may make disbursement of the investment in terms of this Musharaka Contribution Request.

We further confirm that on the date of this Musharaka Contribution Request, all Representations and Warranties contained in the Musharaka Agreement are correct and no Event of Default & Termination has occurred and is continuing.

This Musharaka Contribution Request is irrevocable and is governed by the laws of the Islamic Republic of Pakistan.

Yours faithfully



For and on behalf of  
MUGHAL IRON & STEEL INDUSTRIES LIMITED



## Appendix A

### PROFIT SHARING MECHANISM

The Profit-Sharing Mechanism between the Managing Partner and the Musharaka Agent (on behalf of the Investors) shall be as follows:

#### Tier 1 Profit:

Operating Profit up till the Tier 1 Profit Ceiling Amount shall be shared by the Managing Partner with the Musharaka Agent (on behalf of the Investors) on a pro rata basis based on the actual Musharaka Contribution by the Musharaka Agent (on behalf of the Investors) in the Musharaka Capital till such date.

“Tier 1 Profit Ceiling Amount” for the purposes hereof, calculated keeping in mind the following:

Musharaka Capital \* Desired Profit Rate\* (Base Rate + Margin) \* (Number of Days of Musharaka / 365)

Where:

**Base Rate:** The Base Rate (3 Month KIBOR) will be set 1 (one) Business Day prior to the Musharaka Commencement Date by way of issuance of a notice in the format attached herewith as Schedule 1-A. The Base Rate will be subject to revision by way of issuance of notice in the format attached herewith as Schedule 1-B, 1 (one) Business Day prior to the beginning of the subsequent quarterly period. It being clarified that in case of any decrease in the Base Rate, the Base Rate will remain unchanged. The “KIBOR” rates used for reference will be taken from Reuters page “KIBR”, as published at 11.30 a.m. Pakistan Standard Time by the Financial Markets Association (FMA). The daily average of the 3 (three) months Offer Rate will be used. In the event that this rate is not published on Reuters on the Base Rate Setting Date or if less than 8 (eight) banks provide their rates for the KIBOR fixing, the FMA or other relevant market body will be contacted for the relevant fixing rate.

**KIBOR:** The daily average of Karachi Interbank Offered Rate (Ask side) for the relevant period as published on Reuters page KIBR or as published by the Financial Markets Association of Pakistan in case the Reuters page is unavailable;

**Margin:** 145 bps

#### Tier 2 Profit:

Operating Profit in excess of Tier 1 Profit Ceiling Amount shall be shared between the Partners in the following ratio:

- |      |                   |        |
|------|-------------------|--------|
| (i)  | Musharaka Agent:  | 0.15%  |
| (ii) | Managing Partner: | 99.85% |

It is clarified that the redemption of Sukuk at face value shall also comprise of Operating Profit up till the Tier 1 Profit Ceiling Amount. The operating profit in excess of the Tier 1 Profit Ceiling Amount will be shared as per the agreed ratio specified above. Face value of the Sukuk Issue may be adjusted subject to final settlement of Profit & Loss at the time of calculation of Tier 2 Profit.

