

**(Financier)**

**AND**

**(Customer)**

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**MASTER MUSHARAKAH AGREEMENT**

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**THIS MASTER MUSHARAKAH AGREEMENT** is made as of the .....day of ....., 20..

**BETWEEN:**

1. **(Financier)**, a company incorporated under the laws of the [ ] of Post Office Box Number ..... , [ ] (hereinafter referred to as the "**Financier**", which expression shall, where the context so requires, include the Financier's successors in title (whether immediate or derivative) and assigns); and
2. **(Customer)** of Post Office Box Number ..... of [ ] (hereinafter referred to as the "**Customer**", which expression shall, where the context so requires, include the Customer's personal representatives and permitted assigns).

**WHEREAS:**

(A) The Financier is engaged in various Islamic financing and capital funding activities primarily in the provisions of Islamic Financing Facility by offering its products through the ZeroH Platform.

(B) The Customer has requested the Financier through ZeroH Platform to make available the Musharakah Facility to the Customer where the Aggregate Cost in respect of which will not exceed **USD [ ]**

(C) The Financier has agreed to enter into a Musharakah from time to time on the terms and conditions of this Agreement and the other Transaction Documents through ZeroH Platform.

**IT IS HEREBY AGREED BY THE PARTIES** as follows:

9.13

9.14 1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement (including its recitals) unless the context otherwise requires:

"**Accounting Standards**" means the International Financial Reporting Standards (IFRS) promulgated by the International Accounting Standards Board from time to time;

"**Act**" means [to insert relevant act];

"**Acquisition Payment**" means the payment by the Customer towards the acquiring the Financier's Musharakah Share;

"**Agreement**" means this Master Musharakah Agreement;

"**Asset**" means the land (together with all buildings developments improvements fixtures and fittings thereon) or motor vehicles or any other class of property and/or assets as verified through the ZeroH Platform to be purchased by the Customer and identified in each Musharakah Assets Details Form and "**Assets**" shall be construed accordingly;

"**Authorisation**" means any authorization, consent, approval, resolution, license, exemption, filing notarisation or registration and "**Authorisations**" shall be construed accordingly;

"**Business Day**" means a day (other than a Saturday Sunday or gazetted public holiday in [ ]) on which financing institutions are generally open for the conduct of business in [ ];

Customer Signature.....

Financier Signature.....

**"Buy Out Price"** means the amount to be paid by the Customer to the Financier in order for the Customer to fully acquire the Financier's Musharakah Share in the Musharakah Asset together with any other amount due to the Financier under the Facility and the Transaction Documents either pursuant to an early settlement or due to the Event of Default or any other provisions under this Agreement;

**"Customer's Musharakah Share"** means the share of the Customer in the Musharakah Assets (held by the Customer as beneficial owner as proprietor in common with the Financier) in the proportion specified in each Musharakah Assets Details Form as the same may be increased from time to time pursuant to and as envisaged in the Purchase Undertaking and this Agreement;

**"Customer's Purchase Price"** means the sum specified as such in each Musharakah Assets Details Form in the form and manner as prescribed in Schedule 1;

**"Default"** means an Event of Default or any event or circumstance specified in Clause 12 which would (with the expiry of a grace period the giving of notice the making of any determination under this Agreement or any combination of any of the foregoing) be an Event of Default;

**"Event of Default"** means any event or circumstance described as such in Clause 12;

**"Financial Indebtedness"** means any obligation for the payment or repayment of money, whether present or future, actual or contingent;

**"Financier's Musharakah Share"** means the share of the Financier in the Musharakah Assets (held by the Financier as beneficial owner as proprietor in common with the Customer) in the proportion specified in each Musharakah Assets Details Form;

**"Financier's Purchase Price"** means the sum specified as such in each Musharakah Assets Details Form in the form and manner as prescribed in Schedule 1;

**"Ijarah Contract"** means the contract entered into between the Financier and the Customer for the lease of the portion of the Musharakah Assets owned or beneficially owned by the Financier to the Customer in the form and substance of Schedule 3, duly completed;

**"Ijarah Rental Payment"** means the lease rental payment being part of the Installment Payment payable by the Customer to the Financier under the Ijarah Contract;

**"Indebtedness"** means the outstanding Installment Payment and any amount due and payable by the Customer under this Agreement and Transaction Documents;

**"Installment Payment"** means the aggregate amount of (a) Acquisition Payment and (b) Ijarah Rental Payment to be paid by the Customer to the Financier for the right to use enjoy and exploit the Musharakah Assets on the dates and in the amounts specified in Schedule 1 and "**Installment Payments**" shall be construed accordingly;

**"Installment Payment Date"** means the date on which an Installment Payment becomes due and payable by the Customer to the Financier as specified in Schedule 1 and "**Installment Payment Dates**" shall be construed accordingly;

**"Lien"** means any mortgage charge (whether fixed or floating) pledge lien hypothecation assignment title retention sale and leaseback trust arrangement or other encumbrance

Customer Signature.....

Financier Signature.....

securing or any right conferring a priority of payment in respect of any obligation of any person or any other agreement or arrangement having a similar effect to the creation of a security interest;

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the business, operations, property, condition, (financial or otherwise) or prospects of the Customer;
- (b) the ability of the Customer to perform its obligations under this Agreement; or
- (c) the validity or enforceability of this Agreement or any Security Document or the rights and remedies of the Financier under this Agreement or any Security Document;

**"Musharakah"** means the arrangement between the Financier and the Customer pursuant to which the Financier and Customer will purchase from the Vendor an undivided beneficial ownership interest in the Musharakah Asset for the purpose of creating a "Shirkat ul Milk" (beneficial ownership as proprietors in common in specified shares) in the Musharakah Assets as provided for under and on the terms contained in this Agreement and with the Customer having the right to exclusively use enjoy and exploit the Musharakah Assets;

**"Musharakah Assets"** means the Asset which is the subject of a Musharakah and **"Musharakah Asset"** shall be construed accordingly;

**"Musharakah Assets Details Form"** means the form being in or substantially in the form set out in Schedule 1 to be completed by the Parties in respect of each Musharakah;

**"Musharakah Commencement Date"** means, in respect of each Musharakah, the date set out as such in each Musharakah Assets Details Form;

**"Musharakah End Date"** means, in respect of each Musharakah, the earlier of:

- (a) the date specified as such in each Musharakah Assets Details Form and being the date on or prior to which all the obligations of the Financier and the Customer (including, without limitation, the obligation of the Customer to pay the Installment Payments and/or the Indebtedness and all other monies and liabilities (whether actual or contingent) due and payable under the Agreement and the other Transaction Documents) in respect of the Musharakah are to be satisfied in full;
- (b) the date as of which the Financier has issued a notice in exercise of the Financier's rights under Clause 12.14;
- (c) the date as of which the Customer has paid the Indebtedness and all other monies and liabilities due and payable under the Agreement and the other Transaction Documents relevant to that Musharakah; and
- (d) the date of expiry of a notice by the Financier issued pursuant to Clause 18.1 18.3 or 18.5 (as the case may be);

**"Musharakah Units"** means the division and classification of each of the Financier's Musharakah Share and the Customer's Musharakah Share into units of value denominated in [ ] and in the number appearing in each Musharakah Assets Details Form and **"Musharakah Unit"** shall be construed accordingly;

Customer Signature.....

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**“Parties”** means the Financier and the Customer and **“Party”** shall be construed accordingly;

**“Purchase Undertaking”** means the purchase undertaking provided by the Customer in favour of the Financier for the acquisition of the Financier’s Musharakah Share in the Musharakah Assets in the form and substance of Schedule 2, duly completed;

**“Security Documents”** means the agreements and instruments executed or to be executed in favour of the Financier creating security for the due performance and satisfaction of obligations and liabilities of the Customer under this Agreement and the other Transaction Documents as may be specified by the Financier;

**“Shariah Supervisory Board”** means the committee of Islamic scholars and academics who have agreed to advise the Financier on matters of Islamic jurisprudence and Shari’ah as the same impacts on the business of the Financier;

**“Subsidiary”** means in relation to any body corporate any person:

- (a) which is controlled, directly or indirectly, by the first mentioned body corporate;
- (b) more than half the issued share capital of which is beneficially owned (directly or indirectly) by the first mentioned body corporate; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned body corporate,

and for this purpose, a body corporate shall be treated as being **“controlled”** by another if that other body corporate is able to direct its affairs and/or control the composition of its board of directors or equivalent executive body and **“Subsidiaries”** shall be construed accordingly;

**“Taxes”** means all present and future taxes levies imposts assessments customs or import duties or other duties or charges of a similar nature (including, without limitation, payroll taxes excise duties sales tax value added tax turnover tax or stamp duty) and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same and **“Tax”** and **“Taxation”** shall be construed accordingly and the expression **“competent taxing authority”** means any state or administrative division thereof or any governmental authority or monetary agency or central Financier having power to collect or levy Taxes;

**“Transaction Documents”** means this Agreement, the Ijarah Contract, the Purchase Undertaking and the Security Documents and **“Transaction Document”** shall be construed accordingly;

**“Vendor”** means the person who will sell the Musharakah Assets which are to become subject to a Musharakah; and

**“ZeroH Platform”** means an online platform that delivers Shariah-compliant financial products, including the Musharakah Facility.

1.2 In this Agreement (including its recitals), unless the context otherwise requires:

1.2.1 words denoting the singular number shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;

Customer Signature.....

Financier Signature.....

1.2.2 recitals sub-Clauses Clauses and Schedules shall be construed as references to the recitals sub-Clauses and Clauses of and the schedules to this Agreement;

1.2.3 the expression "**person**" shall include any legal or natural person partnership trust company joint venture government or any agency thereof local authority or other body (whether corporate or unincorporate);

1.2.4 references to any statute or statutory provision shall be deemed to include references to any statute regulation or statutory instrument which amends extends consolidates or replaces the same (or shall have done so) and any other regulation statutory instrument or other subordinate legislation made thereunder or pursuant thereto;

1.2.5 references to costs charges expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof;

1.2.6 a reference to any agreement or document (including this Agreement) shall be construed as a reference to such agreement or document as the same may be amended varied supplemented or novated in writing by the parties thereto in accordance with the law to which that agreement or document is subject and the particular conditions (if any) of such agreement or document;

1.2.7 references to indemnifying any person against any circumstance include indemnifying and keeping that person harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;

1.2.8 the expression "**month**" means a calendar month; and

1.2.9 reference to "**arms' length**" means the relationship which exists between persons who are strangers to each other and who bear no special duty obligation or relation to each other.

1.3 The obligation of the Customer in this Agreement to pay any Taxes shall not extend to Taxes payable by the Financier on the income of Financier.

1.4 Any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within that Party's power or control.

1.5 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a Party to this Agreement such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.

1.6 Where any term is defined within the context of any particular Clause in this Agreement the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning ascribed to it for all purposes wherever used in this Agreement notwithstanding that that term has not been defined in this Clause 1.

1.7 Headings to Clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

Customer Signature.....

Financier Signature.....

## **10 2. MUSHARAKAH**

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10.14 2.1 This Agreement together with the other Transaction Documents sets out the terms and conditions upon and subject to which the Financier and the Customer have agreed to enter into each Musharakah.

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10.16 2.2 Each Musharakah will commence on the Musharakah Commencement Date and end on the relative Musharakah End Date.

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10.18 2.3 It is agreed that:

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10.20 2.3.1 legal title to the Musharakah Assets has been verified and confirmed through the ZeroH Platform prior to the execution of this Agreement;

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10.22 2.3.2 legal title to the Musharakah Assets shall remain vested in the Customer during the term of a Musharakah; and

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10.24 2.3.3 beneficial interest in the Musharakah Assets during the term of a Musharakah shall be held by the Customer and the Financier as proprietors in common in proportions equal to the Customer's Musharakah Share (in the case of the Customer) and the Financier's Musharakah Share (in the case of the Financier).

2.4 The Parties shall complete a Musharakah Assets Details Form on or prior to the Musharakah Commencement Date.

## **3. PURCHASE OF MUSHARAKAH ASSETS**

3.1 It is agreed, subject to Clause 11, that the Customer shall purchase the Musharakah Assets from the Vendor and the Financier shall on or before each Musharakah Commencement Date make available the Financier's Purchase Price to the Customer for the purposes of completing the purchase of a Musharakah Assets.

3.2 The Customer shall be responsible for ensuring that the Vendor has good valid and marketable title and/or document of ownership to the Musharakah Assets and the Customer prior to the Musharakah Commencement Date furnish the Financier with a report on title and/or document of ownership issued by an advocate approved by the Financier a valuation report and a survey report in accordance with sub-Clause 11.1.10 through the ZeroH Platform and the Customer shall also procure possession of the Musharakah Assets on terms satisfactory to the Financier on or before the Musharakah Commencement Date.

3.3 The Customer makes the following representations and warranties set out in this Clause 3.3 to the Financier on each Musharakah Commencement Date:

3.3.1 that the Customer is the sole legal owner of the Musharakah Assets free from Liens (other than a Lien in favour of the Financier) or any defects in title;

3.3.2 that all Taxes in respect of the ownership and use of the Musharakah Assets have been paid in full by the Customer and that no claims or demands have been made against the Customer by any competent taxing authority in respect of any unpaid Taxes;

Customer Signature.....

Financier Signature.....

3.3.3 that the Customer has not entered into an agreement or arrangement with any person (other than the Financier) to:

3.3.3.1 sell lease sub-let or otherwise part with possession of or dispose the Musharakah Assets;

3.3.3.2 create any Lien (other than a Lien in favour of the Financier) over the Musharakah Assets; and

3.3.3.3 grant any option to purchase lease sub-let or part with possession or otherwise alienate the Musharakah Assets; and

3.3.3 that, unless otherwise notified to the Financier by the Customer in writing and consented to by the Financier in writing, no person other than the Customer will be in occupation or possession of the Musharakah Assets on the Musharakah Commencement Date.

3.4 The representations and warranties in sub-Clauses 3.3.1 to 3.3.3 (both inclusive) are deemed to be repeated by the Customer on each Musharakah Commencement Date and on each Instalment Payment Date.

#### **4. USE OF MUSHARAKAH ASSETS AND REPAIR AND MAINTENANCE**

4.1 The Customer shall have the exclusive right to use, exploit and enjoy the Musharakah Assets including the Financier's Musharakah Share.

4.2 The Customer agrees that the Customer shall be responsible, at the Customer's sole cost and expense, for the due and punctual performance of all Ordinary Maintenance and Repair required to be undertaken in connection with the Musharakah Assets. The expression "**Ordinary Maintenance and Repair**" shall mean all repair and maintenance required to keep maintain and preserve the Musharakah Asset in good and tenantable repair and condition.

4.3 In performing Ordinary Maintenance and Repair, where applicable, the Customer shall:

4.3.1 keep at the Customer's sole cost and expense the interior and exterior of the Musharakah Assets including all floors walls and ceilings therein and also the doors providing access to the Musharakah Assets and the glass in windows (including the outside) and all locks fastenings keys and all water taps basins drains down-pipes water pipes internal and external sanitary apparatus and water tanks therein and also all immersion heaters electric light fittings (including the electrical apparatus forming part of the internal wiring of the Musharakah Assets) and all the fixtures and fittings in the Musharakah Assets cleaned and in good and tenantable repair order and condition and also to make good any damage howsoever caused to the Musharakah Assets or any portion thereof or to any of the fixtures and fittings therein and the Customer shall also replace all missing damaged or broken fixtures and fittings in the Musharakah Assets with fixtures and fittings of the same or similar quality and value and shall pay for all repair and maintenance expenses including where applicable the cost of replacement of fixtures and fittings parts or otherwise;

4.3.2 ensure that the Musharakah Asset is repaired and maintained by persons who are duly qualified and competent to repair and maintain the same; and

Customer Signature.....

Financier Signature.....

4.3.3 ensure that accurate complete and current records of all repairs and maintenance activities are maintained and provide copies to the Financier on demand by the Financier.

4.4 The Financier and the Customer shall be responsible for the costs and expenses incurred in connection with any Major Repair in the proportion of the Financier's Musharakah Share and the Customer's Musharakah Share from time to time. The term "**Major Repair**" shall mean all major structural repairs arising as a result of any accident or damage to the Musharakah Assets occurring otherwise than as a result of the negligence of the Customer its employees visitors licensees tenants or agents or as a result of any default by the Customer of its obligations under the Transaction Documents and expressly excluding any Ordinary Maintenance and Repair.

## **5. TAKAFUL (ISLAMIC INSURANCE)**

5.1 The Customer shall (on the Customer's own behalf and as agent for this Musharakah Commencement Date insure and shall keep insured the Musharakah Assets for the duration of the Musharakah for the full reinstatement value from time to time of the Musharakah Assets including architects' surveyors' engineers' and all other professional fees and demolition charges together with full provision for estimated inflation. Such takaful (or in the event Takaful is not available or feasible, and subject to the Shariah board's approval a conventional insurance) shall cover:

5.1.1 loss or damage howsoever occurring (including, but not limited to, loss or damage by fire civil commotion explosion earthquake subsidence landslip heave aircraft and articles dropped therefrom flood storm lightning burst pipes theft malicious damage and impact);

5.1.2 third party and public liability risk in such amounts as the Financier may agree from time to time;

5.1.3 such other or further risks as may be required by law or by the Financier; and

5.1.4 the costs and expenses of undertaking Major Repairs.

5.2 All takaful coverages taken out by the Customer in accordance with Clause 5.1 shall:

5.2.1 be in a form and with insurers approved by the Financier;

5.2.2 name the Financier as additional insured; and

5.2.3 name the Financier as first loss payee.

5.3 The Customer will notify the Financier immediately in writing of any loss of or damage to the Musharakah Assets.

5.4 (Without prejudice to the Financier's obligations under Clause 5.8), should the Customer fail to comply with the Customer's obligations in terms of Clause 5.1 or 5.2, the Financier shall be entitled to (but the Financier shall not be under obligation so to do) either insure the relevant Musharakah Assets or pay the insurance premiums on behalf of the Customer and the Customer shall, on first written demand by the Financier, pay to the Financier the costs and expenses incurred by the Financier in exercising the Financier's rights under this Clause 5.4.

Customer Signature.....

Financier Signature.....

5.5 In relation to the insurances referred to in sub-Clause 5.1.2 such insurances shall name each of the Financier and the Financier's respective officers, directors employees and agents as additional insurers ("**Additional Insured**").

5.6 In relation to all the insurances referred to in Clause 5.1, such takaful coverages shall:

5.6.1 provide that the Financier shall be given thirty (30) days' prior notice of any cancellation amendment or non-renewal;

5.6.2 provide that the Financier's and any other Additional Insured's interests shall not be invalidated by any act or omission or breach of warranty or misrepresentation of the Customer or the Customer's employees or agents; and

5.6.3 provide a waiver by insurers of any right of subrogation against the Financier and of any right of contribution from any other insurance carried by the Financier.

5.7 The Customer irrevocably authorises the Financier to give a good discharge to the insurance company for any monies paid under any such insurance policy. The Customer shall, if so requested by the Financier, assign to the Financier or to the Financier's order the rights claims and benefits arising under any such policy and shall indemnify the Financier in respect of any stamp duty payable on such assignment.

5.8 Each insurance premium payable in respect of each insurance policy maintained pursuant to this Clause 5 and other monies necessary for effecting and keeping in force each such insurance shall be paid not later than seven (7) Business Days prior to the due date for payment of the same by the Financier and the Customer in the proportion equal to the Financier's Musharakah Share and the Customer's Musharakah Share as at the due date for payment of the relevant insurance premium and the Customer shall on demand by the Financier produce to the Financier (at the option of the Financier) the original or a certified copy of each insurance policy and proof of payment of each insurance premium in full.

5.9 The Customer shall not, in respect of each policy of insurance maintained pursuant to this Clause 5, do or permit to be done anything whereby any insurance of the Musharakah Assets may become void or voidable or whereby the rate of premium for any such insurance may be increased or which would entitle the relevant insurance company to avoid or reduce its liability under the relevant insurance policy.

5.10 It is agreed that:

5.10.1 if any claim is made on an insurance policy obtained and maintained pursuant to this Clause 5, each of the Customer and the Financier shall satisfy the excess amount under the terms of the relevant insurance policy in proportion to the Financier's Musharakah Share and the Customer's Musharakah Share as at the date the relevant claim is made; and

5.10.2 all monies to be received by virtue of any insurance relating to the Musharakah Assets maintained or effected pursuant to this Clause 5 shall be applied in repairing restoring or reinstating the Musharakah Assets destroyed damaged or lost (any deficiency being made good by the Customer and the Financier in proportion to the Financier's Musharakah Share and the Customer's Musharakah Share as at the date the insurance monies are received as aforesaid provided that the Financier's obligation to fund any deficiency shall not apply in the case where the Customer is in breach of the Customer's obligations under the Transaction Documents or in the case of the relevant claim being made as a result of

Customer Signature.....

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any act or omission (negligent or otherwise) of the Customer or the Customer's employees agents or contractors).

5.11 For avoidance of doubt, the term insurance referred to under this Clause or in any part of this Agreement shall include takaful under the Shari'ah.

**6. PAYMENT AND PREPAYMENT**

6.1 The Customer shall:

6.1.1 pay each Installment Payment to the Financier on each Installment Payment Date (for value on the Installment Payment Date);

6.1.2 pay the BuyOut Price to the Financier subject to the Purchase Undertaking; and

6.1.3 pay any other cost expense Tax or other liability payable hereunder or under the other Transaction Documents in the currency in which the cost expense Tax or other liability was incurred. Payment shall be made to the account of the Financier as may be notified in writing by the Financier to the Customer from time to time.

6.2 All payments to be made by the Customer to the Financier under or pursuant to this Agreement and any other Transaction Document shall be made on the due date for payment in full without any set off or counterclaim whatsoever and free and clear of any deductions or withholdings whether for or on account of present or future Taxes or otherwise to an account of the Financier as may be notified from time to time by the Financier to the Customer. If at any time, whether now or in the future, any applicable law regulation or regulatory requirement or competent taxing authority requires the Customer to make any deduction or withholding in respect of Taxes from any payment due under this Agreement or any other Transaction Document for the account of the Financier the sum due from the Customer in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Financier receives a net sum equal to the sum which the Financier would have received had no such deduction or withholding been required to be made and the Customer shall indemnify the Financier against any loss or costs incurred by the Financier by reason of any failure of the Customer to make any such deduction or withholding. The Customer shall forthwith deliver to the Financier any receipts certificates or other proof evidencing the amounts (if any) paid or payable in respect of such deduction or withholding.

6.3 It is hereby agreed in respect of each Musharakah as follows:

6.3.1 the Customer shall pay all stamp and documentary Taxes registration fees or other like fees imposed on or in connection with this Agreement and the Transaction Document as at the Musharakah Commencement Date. The Customer shall make such payment within three (3) days of demand by the Financier and the Customer shall indemnify the Financier against any loss damage liability or expense suffered or incurred by the Financier arising by reason of any delay or omission by the Customer to pay any such fees or Taxes; and

6.3.2 the Customer shall pay all stamp and documentary Taxes registration fees or other like fees in connection with the creation and registration of the Security Documents. The Customer shall pay such Taxes and fees within three (3) days of demand by the Financier and the Customer shall indemnify the Financier against any loss damage liability or expense suffered or incurred by the Financier arising by reason of any delay or omission by the Customer to pay such Taxes or fees.

Customer Signature.....

Financier Signature.....

6.4 Each of the Customer and the Financier shall pay all costs and expenses (including legal fees and travel expenses) incurred by the Financier in connection with the negotiation preparation printing execution and registration of the Transaction Documents (but excluding the Security Documents) in the proportion of the Financier's Musharakah Share and the Customer's Musharakah Share as at the Musharakah Commencement Date. The Customer shall pay its proportionate share of such costs and expenses within three (3) days of demand by the Financier and the Customer shall indemnify the Financier against any loss damage liability or expense suffered or incurred by the Financier arising by reason of any delay or omission by the Customer to pay such costs and expenses. The Customer shall pay on first written demand by the Financier all costs and expenses (including legal fees and travel expenses) incurred in connection with the registration preparation printing execution and registration of the Security Documents.

6.5 If the Customer requests any amendment or waiver of or under any Transaction Document or any consent of the Financier as may be required to be obtained under any Transaction Document, the Customer shall within three (3) days of demand by the Financier reimburse the Financier for all costs and expenses (including legal fees) incurred by the Financier in responding to evaluating negotiating or complying with that request or requirement.

6.6 In the event that the Customer does not pay any amount payable hereunder or under any other Transaction Document on its due date for payment the Customer shall (without prejudice to the exercise by the Financier of any other rights or remedies in favour of the Financier) pay to the Financier (as well after as before any demand or judgment or the liquidation of the Customer) an amount (non-compoundable) calculated at the rate of [ ]% per annum on the amount due from (and including) the date of the same becoming due until actual payment of such amount (together with the additional amounts payable pursuant to this Clause 6.6) in full and such sums shall hereinafter be referred to as "**Default Damages**".

6.7 In relation to the Default Damages the Customer acknowledges that:

6.7.1 delinquent payment of an Instalment Payment or any other payments to be made under the Transaction Documents is a material breach of the relevant Transaction Documents which results in loss and damage to the Financier and therefore must be compensated;

6.7.2 such liquidated damages are not by way of a fine or penalty and will constitute actual loss suffered by the Financier as a consequence of delinquent payments by the Customer;

6.7.3 given the nature of Financiering business it is entirely possible to predetermine the actual loss that may be suffered by the Financier as a consequence of delinquent payments by the Customer; and

6.7.4 the liquidated damages provided herein are without prejudice to the other remedies that may be available to the Financier.

6.8 Notwithstanding anything contained in Clauses 6.6 and 6.7, the Financier undertakes to put all amounts recovered from the Customer on account of Default Damages in a separate account. The Financier shall, after deducting an amount to compensate it for any actual costs (not to include any opportunity costs or funding costs), pay the balance amount received by it on behalf of the Customer to such Shariah

Customer Signature.....

Financier Signature.....

compliant charitable organization(s) as approved by a competent Shariah Supervisory Board or Shariah Advisor.

6.9 The Customer shall be entitled to prepay the Buy Out Price or, as the case may be, part thereof. In the case of part prepayment of the Buy Out Price, the amount prepaid shall be equal to an amount representing the value of a whole Musharakah Unit of the Financier or multiples thereof.

6.10 Time shall be of the essence in respect of the Customer's obligations under each Transaction Document.

6.11 In the case that a demand is made by the Financier under Clauses 18.1, 18.3, 18.5 or 12.14 on a day which is not an Installment Payment Date, the Customer shall pay a proportionate share of the Installment Payment payable on the next succeeding Installment Payment Date and the expression "**proportionate share**" shall mean the proportion of the relevant Installment Payment pro-rated to the date of demand by the Financier.

## **7. CUSTOMER'S REPRESENTATIONS AND WARRANTIES**

7.1 The Customer makes the representations and warranties set out in this Clause 7.1 to the Financier on the date of this Agreement:

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10.25.1 7.1.1 it has the power to own its assets and carry on its business as it is being conducted;

7.1.2 the obligations expressed to be assumed by it in each Transaction Document are legal valid binding and enforceable obligations in accordance with their respective terms;

7.1.3 the entry into and performance by it of, and the transactions contemplated by, each Transaction Document do not and will not conflict with:

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10.25.3 7.1.3.1 any law or regulation applicable to it;

10.25.4

10.25.5 7.1.3.2 any agreement or instrument binding upon it or any of its assets;

7.1.4 it has the power to apply for the Musharakah Facility through the ZeroH Platform, enter into perform and deliver each Transaction Document to which it is a party and the transactions contemplated by each Transaction Document;

7.1.5 all Authorisations required or desirable:

10.25.6

10.25.7 7.1.5.1 to enable it to lawfully enter into exercise its rights and comply with its obligations in each Transaction Document; and

10.25.8

10.25.9 7.1.5.2 to make this Agreement admissible in evidence in [1],

10.25.10

10.25.11 have been obtained or effected and are in full force and effect;

7.1.6 without prejudice to its obligations under Clause 6.2, it is not required to make any deduction or withholding on account of Taxes from any payment it may make under this Agreement or any other Transaction Document;

10.25.12

10.25.13 7.1.7 no Event of Default is continuing or might reasonably be expected to result from the entering into of a Musharakah or any Transaction Document;

Customer Signature.....

Financier Signature.....

- 10.25.14
- 10.25.15        7.1.8 no other event or circumstance is outstanding which:
- 10.25.16
- 10.25.17        7.1.8.1 constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its assets are subject; or
- 10.25.18
- 10.25.19        7.1.8.2 which might have a Material Adverse Effect;
- 10.25.20        7.1.9 its financial statements were prepared in accordance with the Accounting Standards consistently applied;
- 10.25.21        7.1.10 there has been no material adverse change in its business or financial condition since (if applicable) the publication of the Customer's previously prepared financial statements;
- 7.1.11 all written information supplied by the Customer to the Financier through the ZeroH Platfrom was true complete and accurate in all material respects as at the date it was given and is not misleading in any respect;
- 7.1.12 its payment obligations under this Agreement and the other Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to companies generally;
- 7.1.13 no litigation arbitration or administrative proceedings of or before any court arbitral body or agency or governmental regulatory authority or other investigations proceedings or disputes which, if adversely determined, might reasonably be expected to have a Material Adverse Effect and (to the best of its knowledge and belief) no such proceedings have been started or threatened against it;
- 10.25.22
- 10.25.23        7.1.14 it has duly and punctually paid and discharged all Taxes imposed upon it or its assets (including the Musharakah Assets) within the time period allowed without incurring penalties save to the extent that:
- 10.25.24
- 10.25.25        7.1.14.1        payment is being contested in good faith;
- 10.25.26
- 10.25.27        7.1.14.2        it has maintained adequate reserves for those Taxes;  
and
- 10.25.28
- 10.25.29        7.1.14.3        payment can be lawfully withheld;
- 7.1.15 it has all appropriate Authorisations to use the assets (including the Musharakah Assets) necessary to carry on its business as presently conducted;
- 7.1.15 each Certificate of Authority has been duly issued by the Customer and is valid and binding on the Customer;
- 7.1.18 the Musharakah Assets are in a good and tenantable state of repair and condition and all information details and confirmations contained in and/or referred to in any report on title the land searches valuation reports survey report inspection reports and other documents supplied to the Financier in connection with the Musharakah Assets are true correct accurate in all respects; and

Customer Signature.....

Financier Signature.....

7.1.19 no breach has to any of the terms conditions and covenants (if any) set out in or referred to in the document of title of the Musharakah Assets.

7.2 The representations and warranties in sub-Clauses 7.1.1 to 7.1.19 (both inclusive) are deemed to be made by the Customer (by reference to the facts and circumstances then existing and the representation and warranties relating to financial statements shall for this purpose refer to the then latest financial statements) on the date of each Musharakah Assets Details Form and on each Musharakah Commencement Date and on each Instalment Payment Date.

## **8. INFORMATION UNDERTAKINGS**

8.1 The undertakings in this Clause 8 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement and any other Transaction Documents, unless these undertakings or any part of it are waived by the Financier at its sole discretion.

8.2 The Customer shall supply to the Financier through the ZeroH Platfrom and/or in any manner as may be determined by the Financier in the English language:

10.25.30

10.25.31 8.2.1 as soon as the same become available, but in any event within one hundred and eighty (180) days after the end of each of its financial years, its audited financial statements;

10.25.32 8.2.2 as soon as the same become available, but in any event within sixty (60) days after the end of each half year of each of its financial years, its financial statements; and

10.25.33 8.2.3 as soon as the same became available, but in any event within forty five (45) days after the end of each quarter of each of its financial years, its financial statements.

10.25.34 8.3 Each set of the financial statements delivered by the Customer pursuant to Clause 8.2 shall be certified by the Customer as fairly representing the Customer's financial condition as at the date at which those financial statements were drawn up.

10.25.35 8.4 The Customer shall procure that each set of its financial statements delivered pursuant to sub-Clauses 8.2.2 and 8.2.3 is prepared using the Accounting Standards and accounting practices and financial reference periods consistent with those applied in the preparation of its yearly audited financial statements unless, in relation to any set of financial statements, it notifies the Financier that there has been a change in the Accounting Standards or the accounting practices or reference periods and its key delivers to the Financier a description of any change necessary for those financial statements to reflect the Accounting Standards accounting practices and reference periods upon which its yearly audited financial statements were prepared. Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the yearly audited financial statements were prepared.

10.25.35.1

8.5 The Customer shall supply to the Financier:

10.25.36 8.5.1 all documents dispatched by the Customer to the Customer's creditors generally at the same time as they are dispatched;

Customer Signature.....

Financier Signature.....

10.25.37

10.25.38 8.5.2 promptly upon becoming aware of them, the details of any litigation arbitration or administrative proceedings which are current threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect;

10.25.39

10.25.40 8.5.3 promptly, such further information regarding the financial condition business and operations of the Customer as the Financier may reasonably request;

10.25.41 8.5.4 a copy of any notice order or other similar demand affecting or likely to affect the Musharakah Assets or any parts thereof or any interest therein immediately on receipt by the Customer of the same and shall on demand by the Financier supply to the Financier (at the cost of the Customer) all information relating to the matters mentioned in such notice order or other similar demand and shall take (at the expense of the Customer) such action in respect thereof as the Financier shall require; and

10.25.42

10.25.43 8.5.5 without prejudice to the provisions of sub-Clause 8.5.4, the Customer will forthwith provide to the Financier a copy of any notice claim demand or order by whomsoever served or given which may materially affect the value of the Musharakah Assets or the rights of the Customer in respect of the Musharakah Assets or the rights of the Financier under this Agreement and the other Transaction Documents.

10.25.44

10.25.45 8.6 The Customer shall notify the Financier of any Event of Default (and the steps, if any, being taken to remedy any Event of Default) promptly upon becoming aware of its occurrence.

10.25.46

10.25.47 8.7 Promptly upon a request by the Financier, the Customer shall supply to the Financier a certificate signed by the Customer certifying that no Event of Default is continuing or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy the Default.

**11**

**12 9. POSITIVE UNDERTAKINGS**

9.1 The undertakings in this Clause 9 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement and any other Transaction Document unless these undertakings or any part of it are waived by the Financier at its sole discretion..

9.2 The Customer shall promptly:

9.2.1 obtain comply with and do all that is necessary to maintain in full force and effect; and

9.2.2 supply certified copies to the Financier of, either through the ZeroH Platfrom or in any manner as may be determined by the Financier,

any Authorisation required under any law or regulation of [ ] to enable it to perform its obligations under the Transaction Documents to ensure the legality validity enforceability or admissibility in evidence in [ ] of the Transaction Documents to use and operate the Musharakah Assets and to undertake its business.

9.3 The Customer shall comply in all respects with and observe all laws by laws or regulations (whether or not having the force of law including any by laws or regulations promulgated by a local authority) to which it and the Musharakah Assets may be subject.

Customer Signature.....

Financier Signature.....

9.4 The Customer shall procure that each member of the Group and all owners and occupiers of the Musharakah Assets will comply in all material respects with all applicable laws and the Customer shall take all reasonable steps in anticipation of known or expected future changes to or obligations under the same.

9.5 The Customer shall permit the Financier and/or accountants or other professional advisers and contractors of the Financier free access at all reasonable times and on reasonable notice to:

9.5.1 (at the cost of the Customer) inspect and take copies of and extracts from the books accounts and records of the Customer; and

9.5.2 meet and discuss matters with senior management employees of the Customer.

9.6 The Customer shall permit the Financier and/or the Financier's representatives and agents to inspect the Musharakah Assets on the Financier giving to the Customer twenty four (24) hours prior notice in writing in that regard.

9.7 The Customer shall at all times use and operate the fixtures and fittings in the Musharakah Assets in a proper manner and shall at all times use and operate such fixtures and fittings according to the best industry practice and strictly in conformity with the instructions of the manufacturers and/or suppliers thereof.

9.8 The Customer shall procure, if required by the Financier, that any particular fixtures and fittings in the Musharakah Assets specified by the Financier shall be operated and used by authorised and suitable trained personnel.

9.9 The Customer shall not do or omit to do any act or thing by which the warranties given by the suppliers and/or manufacturers of the fixtures and fittings in the Musharakah Assets may become invalidated or unenforceable whether wholly or in part.

9.10 The Customer shall (at the cost and expense of the Customer) provide to the Financier such reports on title by advocates approved by the Financier valuations searches survey reports from a licensed surveyor approved by the Financier inspection agency reports expert reports and confirmations in relation to the Musharakah Assets as the Financier may from time to time require.

9.11 The Customer shall observe and perform all covenants and stipulations from time to time affecting the Musharakah Assets or the mode of user or enjoyment of the same and shall not without the prior consent in writing of the Financier enter into any onerous or restrictive obligations affecting any part of the Musharakah Assets or undertake any developments on the Musharakah Assets including but without limitation developments which would require the Customer to obtain a change of user in respect of the Musharakah Assets pursuant to the applicable laws and regulations.

9.12 The Customer shall permit the Financier its employees and its agents during working hours or at any time in the event of an emergency (as determined by the Financier in its sole discretion) to enter the Musharakah Assets to enable the Financier its employees or its agents (as the case may be) to examine the state and condition thereof.

12.13 The Customer shall punctually pay in full all existing and future land rents municipal or local authority rates taxes duties charges assessments impositions and outgoings whatsoever (including, but not limited to, all telephone charges water and electricity charges sewerage and drainage charges and refuse collection costs (whether imposed

Customer Signature.....

Financier Signature.....

by agreement statute or otherwise and whether in the nature of capital or revenue and even if wholly novel) now or at any time during the continuance of this Agreement payable in respect of the Musharakah Assets or any part thereof or by the owner or occupier thereof.

12.14 Without prejudice to the generality of Clause 9.15 (if the Musharakah Assets consists of a leasehold interest) the Customer shall pay the rents reserved by and generally perform and observe all the covenants stipulations conditions and restrictions imposed on the Customer under the lease under which the Customer holds the Musharakah Assets and use its best endeavours to procure the observance and performance by the landlord under the said lease of the terms covenants stipulations and conditions on the part of the landlord and provide to the Financier such evidence as the Financier may reasonably require proving the compliance by the Customer with this covenant.

12.15 Without prejudice to the generality of Clause 9.11 the Customer shall comply with and observe all the terms and conditions (if any) endorsed on or referred to in the document of title in respect of the Musharakah Assets.

12.16 The Customer shall punctually pay in full all charges in connection with road making and paving which may become chargeable in respect of the Musharakah Assets during the continuance of this Agreement.

## **10. NEGATIVE UNDERTAKINGS**

10.1 The undertakings in this Clause 10 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement or any other Transaction Documents, unless these undertakings or any part of it are waived by the Financier at its sole discretion.

12.16.1

12.16.2 10.2 The Customer shall not, without the prior written consent of the Financier, create or permit to subsist any Lien over any of its assets (including, without limitation, the Musharakah Assets), other than any Lien granted in respect of Financial Indebtedness of the Customer incurred prior to the date hereof which is approved by the Financier and any Lien created in favour of the Financier.

12.16.3

12.16.4 10.3 The Customer shall not without the prior written consent of the Financier:

12.16.4.1

12.16.4.2 10.3.1 sell transfer or otherwise dispose of any receivables on recourse terms;

12.16.4.3 10.3.2 enter into any arrangement under which money or the benefit of a Financier or other account may be applied set-off or made subject to a combination of accounts; or

12.16.4.4

12.16.4.5 10.3.3 enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

10.4 The Customer shall procure that no substantial change is made to the general nature of the business of the Customer from that carried on at the date of this Agreement.

10.5 The Customer shall not, without the prior written consent of the Financier, enter into any transaction with any person or enter into or continue business relations with its employees except on proper commercial terms negotiated at arms' length.

Customer Signature.....

Financier Signature.....

10.6 The Customer will not do or cause or permit to be done anything which may in any way depreciate or otherwise adversely affect the value of the Musharakah Assets nor permit any person (other than the Financier) to become entitled to any proprietary right or interest in or to the Musharakah Assets which might adversely affect the value of the Musharakah Assets or any part thereof.

10.7 The Customer will not without the prior consent in writing of the Financier part with possession of transfer sell assign lease sub-let or give a licence to use or occupy or otherwise dispose of any interest in the Musharakah Assets or any part thereof or attempt or agree so to do.

10.8 The Customer covenants with the Financier that no person (other than the Customer) shall without the prior consent in writing of the Financier be registered as the registered proprietor of the Musharakah Assets or any part thereof or any interest therein nor without such consent first having been obtained shall the Customer create or permit to arise or subsist any overriding interest in relation to the Musharakah Assets.

10.9 (If the Musharakah Assets consists of a leasehold interest) the Customer covenants with the Financier that during the continuance of this Agreement that Customer will not (without the prior consent in writing of the Financier) vary surrender cancel assign charge or otherwise dispose of or permit to be forfeit any lease of the Musharakah Assets or any part thereof or agree to do so whether such lease be the lease under which the Customer holds the Musharakah Assets or superior thereto or derived out of the Customer's interest therein.

10.10 The Customer covenants with the Financier that the Customer shall not and shall procure that all occupiers and managers of the Musharakah Assets shall not carry on any illegal or immoral activities on the Musharakah Assets.

## **11. CONDITIONS**

## **PRECEDENT**

11.1 No Musharakah shall be entered into under the Transaction Documents unless the Financier has received all the documents and other evidence listed below in this Clause 11.1 through the ZeroH Platfrom and in the form and substance satisfactory to the Financier:

11.1.1 duly executed stamped and registered originals of the Security Documents having been received by the Financier;

11.1.2 any fees commissions and/or expenses required to be paid by the Customer to the Financier prior to entering into of a Musharakah having been received by the Financier in full;

11.1.3 all such documents as have been requested by the Financier in connection with this Agreement and the other Transaction Documents have been received by the Financier;

11.1.4 legal opinions in form and substance satisfactory to the Financier having been obtained from legal advisors acceptable to the Financier;

11.1.5 the Financier being satisfied with regard to all insurance obligations of the Customer pursuant to Clause 5;

11.1.6 the financial statements of the Customer;

Customer Signature.....

Financier Signature.....

11.1.7 all Authorisations required by the Customer in the opinion of the Financier having been obtained and being in full force and effect;

11.1.8 such reports on title by advocates approved by the Financier valuations searches in respect of the Musharakah Assets survey report from a licensed surveyor approved by the Financier inspection agency reports expert reports and confirmations in relation to the Musharakah Assets as the Financier may require;

11.1.9 certified true copies of receipts evidencing payment in full up to the end of the year in which the Musharakah Commencement Date falls of rates and land rent and other outgoings, including but not limited to, utility bills for consumption of electric power water telephone and all conservancy expenses and costs in connection with the Musharakah Assets; and

11.1.10 certified true copy of rates clearance certificate and land rent clearance certificate in respect of the Musharakah Assets.

11.2 The entering into of each Musharakah shall be further subject to the fulfillment of the following conditions (as shall be determined by the Financier in the Financier's sole discretion):

11.2.1 the payment of any Installment Payment or any other amount under any Transaction Document shall not result in any:

11.2.1.1 breach of the Act or any prudential regulations promulgated under the Act; or

11.2.1.2 violation by any Party of any applicable law including any statute rule regulation or circular of any relevant governmental or quasi-governmental authority or central Financier;

11.2.2 the Financier's rights under the Security Documents have been validly created and perfected and are duly subsisting in terms of the Security Documents;

11.2.3 the Financier has received such other documents and information as it may reasonably request in respect of the Musharakah Assets;

11.2.4 the representations and warranties set out in Clauses 3.2 and 7 being true and correct on and as of each Musharakah Commencement Date as if each was made with respect to facts and circumstances existing at such time;

11.2.5 no Default shall have occurred and be continuing or is likely to accrue and that the payment of the Purchase Price shall not result in the occurrence of any Event of Default;

11.2.6 all fees commission expenses required to be paid by the Customer to the Financier pursuant to the Transaction Documents having been received by the Financier in full;

11.2.7 delivery by the Customer to the Financier of a notice of demand; and

11.2.8 delivery of such reports on title by advocates approved by the Financier valuations searches survey report from a licensed surveyor approved by the Financier inspection agency reports expert reports and confirmations in relation to the Musharakah Assets as the Financier may require.

Customer Signature.....

Financier Signature.....

11.3 The Financier shall have the right to waive any conditions precedent in Clauses 11.1 and 11.2 in whole or in part.

## **12. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 12 is an Event of Default.

12.1 The Customer does not pay on the due date the Indebtedness and/or any amount payable under or pursuant to a Transaction Document at the place and in the currency in which it is expressed to be payable.

12.16.5

12.16.6 12.2 The Customer does not comply with any provision of this Agreement or any other Transaction Document (other than those referred to in Clause 12.1). No Event of Default under this Clause 12.2 will occur if the failure to comply is capable of remedy (in the opinion of the Financier) and is remedied within fifteen (15) days of the Financier giving notice to the Customer or the Customer becoming aware of the failure to comply.

12.3 Any representation warranty or statement made or deemed to be made by the Customer in this Agreement or any other Transaction Document or any other document delivered by or on behalf of the Customer under or in connection with this Agreement or any other Transaction Document is or proves to have been incorrect or misleading in any respect when made or deemed to be made.

12.16.7 12.4 Any Financial Indebtedness of the Customer is not paid when due nor within any originally applicable grace period.

12.16.8 12.5 Any Financial Indebtedness of the Customer is declared to be or otherwise becomes or may become due and payable prior to its specified maturity as a result of an event of default (however described).

12.16.9

12.16.10 12.6 The Customer is unable or admits inability to pay its debts as they fall due suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness.

12.16.11

12.16.12 12.7 A moratorium is declared in respect of any Financial Indebtedness of the Customer.

12.8 If:

12.16.13 12.8.1 a petition is presented or an order is made or analogous proceedings or steps are taken in any jurisdiction for making the Customer Financierupt or if the Customer dies or becomes of unsound mind;

12.16.14

12.8.2 the Customer stops payment or commits an act of Financieruptcy or is unable to pay his debts as and when they fall due or if a notice is issued convening a meeting of the creditors of the Customer or if the Customer proposes or enters into any composition or arrangement with his creditors generally or any class of his creditors; or

12.16.15

12.8.3 any action legal proceedings analogous proceedings or steps or other procedures are taken in any jurisdiction in relation to the enforcement of any Lien over any assets of the Customer.

Customer Signature.....

Financier Signature.....

12.9 Any expropriation attachment sequestration distress or execution affects any of the Customer's assets (including Musharakah Assets) and is not fully discharged within thirty (30) days.

12.10 It is or becomes unlawful for the Customer to perform any of its obligations under this Agreement or any other Transaction Document.

12.11 The Customer repudiates this Agreement or any other Transaction Document or evidences an intention to repudiate this Agreement or any other Transaction Document.

12.12 Any event or circumstance occurs which the Financier reasonably believes might have a Material Adverse Effect.

12.13 On and at any time after the occurrence of an Event of Default the Financier may by notice to the Customer:

12.16.16

12.16.17 12.13.1 cancel the ability of the Customer to request the Financier to enter into a Musharakah; and

12.16.18

12.16.19 12.13.2 trigger the provisions of Clause 12.14.

12.14 On and at any time after an Event of Default the Financier may by notice to the Customer require the Customer to immediately purchase all the Musharakah Units of the Financier then outstanding in relation to each Musharakah (and thereby reduce the Financier's Musharakah Share to zero) and upon the Financier issuing a notice to the Customer on the terms of this Clause 12.14 the Customer shall be bound to purchase all the Musharakah Units of the Financier then outstanding in relation to each Musharakah as aforesaid and immediately pay the Buy Out Price and all other monies and liabilities due and payable under this Agreement and the other Transaction Documents which shall be and constitute a debt lawfully due and payable by the Customer to the Financier.

### **13. FURTHER ASSURANCE**

The Customer shall forthwith on demand by the Financier execute such documents and such further assignments or other assurances in favour of the Financier as the Financier shall from time to time require in order to perfect or protect the Financier's rights under this Agreement and the other Transaction Documents or to facilitate the sale and purchase of Musharakah Assets in connection with a specific Musharakah such further documents assignments and assurances to be in such form required by the Financier and to be prepared by or on behalf of the Financier at the cost of the Customer.

### **14. INDEMNITIES**

14.1 The Customer shall on first written demand by the Financier indemnify the Financier from and against any Taxes payable by the Financier in connection with the purchase of Musharakah Assets and the subsequent sale of the Financier's Musharakah Share to the Customer pursuant to a Musharakah.

14.2 The Customer shall on first written demand by the Financier indemnify the Financier from and against any cost expense liability Tax loss or damage suffered or incurred by the Financier (whether directly or indirectly) as a result or consequence of:

14.2.1 a failure by the Customer to pay any amount due this Agreement or any other Transaction Document on its due date;

Customer Signature.....

Financier Signature.....

14.2.2 the occurrence of any Event of Default or any other breach by the Customer of its obligations and duties hereunder or under any other Transaction Document; and

14.2.3 the purchase or ownership of Musharakah Assets by the Financier or the Customer not purchasing the Musharakah Units of the Financier agreed to be purchased by the Customer pursuant to this Agreement and the Purchase Undertaking.

14.3 The Customer shall be liable for all loss costs expenses liabilities and damage resulting from or in connection with any accidents or injuries (whether fatal or otherwise) occurring to any person or property which may result from or be traceable to the custody possession exploitation enjoyment or use of the Musharakah Assets by the Customer the Customer contractors employees or agents or the employees or agents of the Customer's contractor or any failure on the part of the Customer to observe and perform any of the Customer's obligations under the Transaction Documents or the negligence of the Customer the Customer contractors employees or agents or the employees or agents of the Customer's contractor. If the Financier shall have to pay any money in respect of any claim or demand for which the Customer is liable hereunder or incurs any costs charges or expenses (including but not limited to legal fees) in connection with any such claim or demand, the amount so paid and the costs charges and expenses incurred by the Financier shall be paid by the Customer to the Financier in full forthwith upon first written demand by the Financier.

14.4 The Customer shall on first written demand by the Financier indemnify and keep indemnified (on a full and unqualified indemnity basis) the Financier from and against any and all claims loss costs damage suits and expenses (including legal fees) which the Financier may sustain or incur as a result of any accident or injury (whether fatal or otherwise) suffered by or any damage or loss occurring to any person or property and resulting from or traceable or related to the custody possession exploitation enjoyment or use of the Musharakah Assets by the Customer the Customer's contractors employees or agents or the employees or agents of the Customer's contractor or to any failure on the part of the Customer to observe and perform the Customer's obligations under this Agreement or the other Transaction Documents.

## **15. SET-OFF**

15.1 The Customer hereby agrees that the Financier may at any time without notice notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any of the Customer's then existing accounts including accounts in the name of the Customer or of the Customer jointly with others (whether current deposit loan or of any other nature whatsoever whether subject to notice or not and whether in [ ] or in any other currency) wheresoever situate and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards the satisfaction of any obligations and liabilities of the Customer to the Financier whether such liabilities be present future actual contingent primary collateral several or joint. Where such combination set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing buying rate of exchange of the Financier or such other Financier in [ ] nominated by the Financier (as conclusively determined by the Financier) for purchasing the currency for which the Customer is liable with the existing currency.

15.2 The Customer unconditionally and irrevocably confirms that the Financier may on receipt by the Financier of monies under the export contracts and letters of credit on behalf

Customer Signature.....

Financier Signature.....

of the Customer apply such monies towards the payment of the monies and liabilities outstanding hereunder or under any other Transaction Documents without prior notification to the Customer.

## **16. GENERAL**

16.1 No failure or delay by the Financier in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.

16.2 Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

16.3 Any notice or demand for payment by the Financier under this Agreement or any other Transaction Document shall, without prejudice to any other effective mode of serving the same, be deemed to have been properly served on the Customer if served on the Customer or sent by letter by registered post to the Customer at its postal address referred to above or delivered to the Customer at its principal places of business in [ ]. Any such notice or demand shall be deemed to be served in the case of personal service at the time of delivery and if sent by registered post shall be deemed to have been served on the addressee five (5) Business Days following the day of posting notwithstanding that it be undelivered or returned undelivered and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and sent by registered post.

16.4 The rights powers and remedies provided by this Agreement are cumulative and are not nor are they to be construed as exclusive of any rights powers and remedies provided by law.

16.5 A certificate of any officer of the Financier as to the amount of any monies or liabilities owing or incurred to the Financier by the Customer shall, save in the case of manifest error, be binding on the Customer and conclusive for all purposes.

16.6 The Financier shall have a full and unfettered right to assign the whole or any part of the benefit of this Agreement free from any equities and the assignees and other successors whether immediate or derivative of the Financier shall be entitled to enforce and proceed upon this Agreement in the same manner as if named herein. This Agreement shall remain in effect and be binding on the Customer notwithstanding any change in the constitution of the Financier or the Financier's absorption in or amalgamation or merger with any other person and notwithstanding the sale or transfer of all or any part of the Financier's undertaking and assets to another person whether the person with which the Financier is absorbed into or amalgamates or merges with or the person to which the Financier transfers all or any part of its undertaking and assets either on a reconstruction or sale or transfer as aforesaid shall or shall not differ from the Financier in its objects character or constitution it being the intent of the Customer that the provisions herein contained shall remain valid and effectual in all respects in favour of the Financier and that the benefit thereof and all rights conferred upon the Financier thereby may be assigned to and enforced by any such person and proceeded on in the same manner to all intents and purposes as if such person had been named herein instead of or in addition to the Financier. The Financier shall be entitled to impart any information concerning the Customer to any such assignee or successor or any proposed assignee or other successor or to any credit reference agency to assist other persons made credit decisions with respect to the Customer. The Financier shall also be entitled to obtain information from credit reference agencies about the

Customer Signature.....

Financier Signature.....

Customer from time to time. The Customer shall not be entitled to assign or transfer any of its rights and obligations under this Agreement.

16.7 Any liberty or power which may be exercised or any determination which may be made hereunder by the Financier may be exercised and made in the absolute and unfettered discretion of the Financier but who shall be obligated to give reasons therefore if demanded by the Customer.

16.8 Where the consent of the Financier is required under any of the provisions of this Agreement the Financier may withhold consent in its sole discretion and give reasons therefore or may grant consent upon and subject to such terms and conditions as the Financier shall think fit. Where it is necessary to determine whether any act circumstance event matter or thing is "material" for the purposes of any provision hereunder the Financier's opinion thereupon shall be final and binding on the Customer.

16.9 The Financier may from time to time and at any time waive or authorize on such terms and conditions (if any) as shall seem expedient to the Financier any breach or proposed breach by the Customer of any of the covenants conditions provisions or obligations contained in this Agreement without prejudice to the rights of the Financier in respect of any subsequent breach thereof.

16.10 It is expressly agreed by the Parties that the relationship of the Parties under the Transaction Documents shall be that of a financing arrangement between Financier and Customer and not of partners and no joint venture or partnership shall or shall be deemed to exist or arise between the Parties.

### **13      17.      CURRENCY CLAUSES**

17.1 All monies received or held by the Financier under this Agreement or any other Transaction Document may from time to time after demand has been made by the Financier be converted into such other currency or currencies as the Financier considers necessary or desirable to cover all amounts and liabilities due and payable under this Agreement and the other Transaction Documents and such conversion shall be made in accordance with the Financier's usual practice of converting the existing currency into the other currency or currencies.

17.2 If and to the extent that the Customer fails to pay any amount due and payable under this Agreement or any other Transaction Documents on demand, the Financier may in its absolute discretion without notice to the Customer purchase at any time thereafter so much of any currency or currencies as the Financier considers necessary or desirable to cover the amount due and payable and such purchase will be in accordance with the Financier's usual practice of purchasing such other currency or currencies with the existing currency and the Customer hereby agrees to indemnify the Financier against the full cost incurred by the Financier in respect of any such purchase.

17.3 No payment to the Financier (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Customer in respect of which it was made unless and until the Financier shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Financier shall have a further separate cause of action against the Customer and shall be entitled to enforce this Agreement to recover the amount of the shortfall.

Customer Signature.....

Financier Signature.....

17.4 If the Financier is required to convert a currency into another currency for the purpose of making any calculation or determination under this Agreement the Financier shall effect the conversion at the Financier's applicable spot rate of exchange as determined by the Financier.

**18.  
CANCELLATION**

**INCREASED COSTS, ILLEGALITY AND**

18.1 If any law or regulation or any order of any court tribunal or authority binding upon the Financier renders it unlawful for the Financier to disburse the Purchase Price or delays the payment of the Instalment Payments or the Buy Out Price, the Financier shall forthwith notify the Customer of such fact and may require the Customer to purchase all the Musharakah Units of the Financier then outstanding under each Musharakah (and thereby reduce the Financier's Musharakah Share to zero) and repay the Buy Out Price at a future date specified by the Financier, and the Customer shall purchase all the Musharakah Units of the Financier as aforesaid and repay the Buy Out Price in accordance with such notice together with all other monies and liabilities payable by the Customer under this Agreement and the other Transaction Documents.

18.2 If any law or regulation or any order of any court tribunal or authority has the effect of subjecting the Financier to Taxes or changes the basis or rate of Taxation with respect to any payment under this Agreement and the other Transaction Documents (other than Taxes on the overall income of the Financier), the Customer shall be liable to pay such amount of Taxes in addition to the amount otherwise payable by it under this Agreement or the other Transaction Documents.

18.3 If due to any change in law or regulation or any order of any court tribunal or authority or any direction or requirement of any competent governmental authority, any liquidity or reserve requirement or other similar requirements are imposed on the Financier, or any other condition is imposed on the Financier in respect of the Transaction Documents or the Financier's obligations under any Transaction Document, and as a result of any of the foregoing the cost to the Financier of maintaining or funding the Buy Out Price in respect of each Musharakah is increased or the effective return of the Financier in respect of each Musharakah is reduced, the Financier may demand repayment of the Buy Out Price and, in such event, the Customer shall purchase all the Musharakah Units of the Financier then outstanding under each Musharakah (and thereby reduce the Financier's Musharakah Share to zero) and repay the Buy Out Price together with all other monies and liabilities payable by the Customer under the Transaction Documents at a date to be specified by the Financier.

18.4 Each facility in respect of each Musharakah shall be subject to renewal by the Financier in the Financier's sole and absolute discretion from year to year (or such other period or periods as determined by the Financier in the Financier's sole discretion). Non-renewal of the facility in respect of each Musharakah shall not prejudice or otherwise restrict or limit in any way whatsoever the Financier's rights and privileges under or pursuant to this Agreement and the other Transaction Documents and shall not vary limit alter or amend any of the Customer's obligations and duties under this Agreement or under the other Transaction Documents.

**19. LAW**

**AND**

**DISPUTE**

**RESOLUTION**

Customer Signature.....

Financier Signature.....

19.1 This Agreement is governed by and shall be construed in accordance with the [ ] law to the extent that such laws are not inconsistent with the recognized principles of the Islamic Shariah relating to this transaction.

19.2 The Parties hereby agree to submit to the non-exclusive jurisdiction of the courts of [ ] in connection with any legal action suit or proceedings arising out of or relating to this Agreement.

## **20. EXECUTION**

20.1 The Transaction Documents may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. The Parties agree that the Transaction Document or any other document necessary for the consummation of the transaction contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature or digital signatures as provided in the ZeroH Platform and as prescribed by the relevant law. Any document accepted, executed or agreed to in conformity with such laws will be binding on both Parties the same as if it were physically executed; and

20.2 The Parties further agree that facsimile, documents executed, scanned and transmitted electronically vide any platform as may be determined by the Financier, digital signatures and electronic signatures shall be deemed original signatures for the purposes of the Transaction Documents and all matters related thereto, with such facsimile, scanned, digital signatures and electronic signatures having the same legal effect as original signatures.

[The rest of the page is intentionally left blank]

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties as of the date and year first aforementioned.

**Yours faithfully,**  
**Signed for (the Financier).**

**Authorized signatories**

Customer Signature.....

Financier Signature.....

**THE CUSTOMER:**

I, (**Customer**), hereby accept the Financing facility subject to the terms and conditions stated aherein above;

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **ID NO.** \_\_\_\_\_

**WITNESS' NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **ID NO.** \_\_\_\_\_

**WITNESS' SIGNATURE:** \_\_\_\_\_

Customer Signature.....

Financier Signature.....

## SCHEDULE 1

### FORM OF MUSHARAKAH ASSETS DETAILS FORM

Facility : .....

Commencement Date: .....

Musharakah End Date:

Financier's Purchase Price : (.....Only).

Financier's Musharakah Share: [...../-] and [....%] share

Customer's Purchase Price : (.....Only).

Customer's Musharakah Share : [...../=] and [.... %] share

Total Number of Musharakah Units : [100%]

Value of Musharakah Unit/s of the Financier : [1] unit/s @ [...../=]

Value of Musharakah Unit/s of the Customer : [1] units @ [...../=]

Musharakah Units of the Financier as at the Musharakah Commencement Date:

.....

Musharakah Units of the Customer as at the Musharakah Commencement Date:

.....

Instalment Payment : (.....Only).

Instalment Payment Date : .....

Confirmed and Agreed:

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Authorised Signatory  
for and on behalf of  
(Customer)

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Authorised Signatory  
for and on behalf of  
(Financier)

## SCHEDULE 2

### PURCHASE UNDERTAKING

Date :

#### 1. PURCHASE UNDERTAKING

Customer Signature..... Financier Signature.....

1.1 In consideration of the Financier having agreed to grant the Facility to the Customer, the Customer hereby irrevocably undertakes as follows:

- (a) to acquire the Financier's Musharakah Share in the Musharakah Assets during the period of Musharakah subject to the terms and conditions herein contained; and
- (b) to acquire the Financier's Musharakah Share in the Musharakah Assets upon the occurrence of the Event of Default or early settlement of the Facility subject to the terms and conditions herein contained.

The acquisition amount payable to the Financier under the abovesaid acquisitions shall be in the amount as may be advised by the Financier.

## 2. IRREVOCABLE UNDERTAKING

2.1 The Customer hereby agrees that the undertaking hereof shall not be cancelled, revoked or varied without the prior written consent of the Financier.

IN WITNESS WHEREOF this Purchase Undertaking has been duly executed by the Parties as of the date and year first aforementioned.

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(Customer)

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(Financier)

## SCHEDULE 2

### IJARAH CONTRACT

Date :

#### 1. LEASE

(a) At the request of the Customer, the Financier hereby leases and the Customer hereby takes on lease the Musharakah Assets for consideration of Ijarah Rental Payment subject to the terms of this Ijarah Contract.

(b) The Customer acknowledges that the lease of the Musharakah Assets is on an "as is where is" basis and that the Financier does not make nor is deemed to have made any representation or warranties as to the title, value, condition or otherwise whatsoever.

Customer Signature.....

Financier Signature.....

## 2. UNDERTAKING TO PAY IJARAH RENTAL PAYMENT

- (a) The Customer hereby undertakes and agrees to promptly pay the Ijarah Rental Payment in the manner as set out in this Agreement.

## 3. REVIEW AND VARIATION OF IJARAH RENTAL PAYMENT

- (a) The Customer hereby agrees that the Financier shall have the rights to review and/or vary the Ijarah Rental Payment annually, or at such other intervals as may determined by the Financier, in the manner as determined by the Financier. Any variation to the Ijarah Rental Payment shall be advised by the Financier by way of notification in writing and shall take effect from the effective date as set out in the said notification.

## 4. COVENANT BY THE CUSTOMER

The Customer being lessee under this Ijarah Contract hereby covenants that throughout the leasing tenure:

- (a) it shall observe and comply with and shall cause to be observed and complied with the provisions of any written law with which it may be required to comply for the operation and use of the Musharakah Assets;
- (b) it shall upon receipt of any notice, order or direction from any appropriate authority affecting or which may adversely affect the Musharakah Assets or the use thereof, forthwith deliver to the Financier a copy of such notice, order or direction and shall forthwith comply with such order, notice or direction;
- (c) it shall at its own expenses make any modifications, alterations or improvements to the Musharakah Assets so long as such modifications do not adversely affect the useful life and value of the Musharakah Assets and are carried out in accordance with all applicable law, and shall also make such modifications that are required by any appropriate authority;
- (d) upon the expiry of the leasing tenure, it shall yield up possession of the Musharakah Assets;
- (e) it shall notify the Financier of the occurrence of any Ijarah Default or any event which with the giving of notice, lapse of time or fulfillment of any condition would be likely to become a Termination Event as soon as it becomes aware of it;
- (f) it shall not create or attempt to create any security Interests over the Musharakah Assets or attempt to assign, sell, transfer or dispose of in any way, the legal and/or the beneficial title to the Property; and
- (g) keep the Musharakah Assets free from distress or execution or any other legal process and shall inform the Financier immediately if the Property is the subject matter of any litigation, legal execution, distress or lien by any person and shall bear all costs and expenses (including legal costs on a full indemnify basis) to have the Musharakah Assets released there from.

## 5. EVENT OF DEFAULT

The Customer hereby agrees and acknowledges that upon declaration of Event of Default by the Financier under this Agreement, the Financier shall have the right to exercise any or

Customer Signature.....

Financier Signature.....

all of its rights under this Agreement and the Transaction Documents including but not limited to terminate the lease arrangement under this Ijarah Contract and to require the Customer to purchase the Musharakah Assets pursuant to the terms of this Agreement.

IN WITNESS WHEREOF this Ijarah Contract has been duly executed by the Parties as of the date and year first aforementioned.

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(Customer)

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(Financier)

Customer Signature.....

Financier Signature.....