

AGREEMENT (SAMPLE)

This agreement ("Agreement") is made on this the —— day of ----- at Islamabad.

BY AND BETWEEN

Securities and Exchange Commission of Pakistan, a statutory body established in pursuance of the Securities and Exchange Commission of Pakistan Act, 1997 with its head office located at **NIC Building, 63 Jinnah Avenue, Islamabad** (the "Commission", which expression shall, where the context so admits, include its successors in interest and permitted assigns) of the One Part

AND

(Name of Firm), a firm in the field of design & build solutions, registered as a sole Proprietor/ partnership under the _____ Act, 1932, having its office at **(Office Address)** (the "Contractor" which expression shall, where the context so admits, include its successors in interest and permitted assigns) of the other part;

Commission and the Contractor shall hereinafter be referred to as the "Parties" collectively and the "Party" individually and interchangeably.

WHEREAS:

1. The Commission is desirous to renovate its office floor premises located at ____ Floor(s) situated at its Head Office, NICL Building, Islamabad ("**Premises**").
2. The Contractor represents and warrants that it has the relevant expertise and adequate skills to provide the Services required by the Commission.
3. The Commission has approved and the Contractor has agreed for the provision and installation of all materials, labor and supervision to perform the Services described in attached schedule as mentioned in (BOQ/TORs) "**Annexure -A**".
4. The Contractor represents that it can execute the same as per Specifications in (BOQ/TORs) Annexure "A" and to complete the work renovating the Premises on the terms and conditions set out hereunder.

Now Therefore it is Agreed Between The Parties as Follows:

The recital hereof shall form an integral part of this Agreement.

ARTICLE 1– DEFINITION AND INTERPRETATION

- 1.1 For the purposes of this Agreement, the following terms shall have the meaning set out herein, unless the context requires otherwise.
 - a. "**Agreement**" means this agreement **dated** _____ along with its Annexure and Appendices.
 - b. "**Design**" means the basic Design and concept provided by or approved by the Commission for the renovation, before start of Agreement, of the Premises set out generally as (LAYOUT/BOQ/TORs) "**Annexure – A**" hereto.
 - c. "**Premises**" means ____ Floor(s) of the Commission's Head Office at NICL Building, Islamabad.

- d. **“Specifications”** means the description of materials and details of renovation work as outlined in (BOQ/TORs) **“Annexure -A”** attached hereto and approved by the Commission.
 - e. **“Services”** bears the meaning attributed thereto in clause 2.1.
- 1.2 In this Agreement any reference to an Article, a Schedule or an Appendix shall be a reference to an Article, Schedule or Appendix of this Agreement.

ARTICLE 2 – OBJECT OF THIS AGREEMENT AND SCOPE OF WORK OF CONTRACTOR

- 2.1 The Services under this Agreement is for the Contractor to renovate ____ floor tiles as per approved Sample/Design;
- 2.2 In case of any additional item proposed / made by the Commission to the scope and price will be adjusted accordingly and signed by both the Parties based on the existing Agreement and market price on that time as guideline.

ARTICLE 3 – PRICE

- 3.1 In consideration of the performance by the “CONTRACTOR” of its obligations under this Agreement to the satisfaction of the Commission, the Agreement price (“Price”) to be paid to the Contractor shall be **Rs. _____ at the Rate of Rs. ____ per sft for ____ sft** (=in words, inclusive of all applicable Govt. taxes and duties but not limited to excise duty, sales tax, or any other taxes or levies). All services shall be executed / supplied as one Job as per (BOQ/TORs) **“Annexure -A”** and design layout as per design provided by the/Commission”.
- 3.2 All payments made under this Agreement will be subject to Government taxes which the Commission is authorized to deduct.

ARTICLE 4 – TERMS OF PAYMENT

No mobilization advance will be paid. Payment terms shall be clearly specified in the financial offer

- 4.1 The Contractor shall be submitting work progressive running bills to the Commission. These bills shall be submitted at the following stages:-
- a. _____
 - b. _____
 - c. _____

After completion of the work, 10 % percent of the total project value certified for payment based on the actual measurement book shall be retained from final payment by the Commission for 6 months.

The quantity of work done (MB) will be verified by Commission. Final bill will be supported by verified measurement of the actual work done.

- 4.2 All bills submitted to the Commission shall be verified and cleared within specified time period of the Finance Deptt. of the SECP on their submission, exclusive of dates of submission and payment.

ARTICLE 5 – PERFORMANCE GUARANTEES

5. The Contractor shall ensure that only such materials as shall be of the respective kinds described in the design and (BOQ/TORs) **“Annexure - A”** and only such workmanship as conforms with the Design shall be approved. Contractor will ensure that all material used for renovation is fit for the purpose it is intended and is free from defects. The Contractor shall arrange samples of all relevant materials and get its approval from the Commission.
- 5.1 The Services shall be completed and the Premises handed over to the Commission within a maximum period of two weeks (with best possible try to complete the work early) from the completion date of the Agreement, however, the Commission shall have a right to make deduction from the Agreement price @ 5,000/-(Rupees only) for every day of delay.
- 5.2 If the project could not be completed in maximum two weeks from the execution date of the Agreement due to delay of payments, approvals or any other reason caused by the Commission, then the charge specified in Article 5.1 shall be waived off.

ARTICLE 6 – ADDRESSES OF THE PARTIES

- 6.1 The authorized representatives of both the Parties alongwith their addresses are as follows.

Commission: Securities and Exchange Commission of Pakistan, NICL Building, Blue Area, Islamabad, Pakistan

Attention Mr. _____
(Designation)

Contractor:

Attention:

ARTICLE 7

TERMINATION BY THE CONTRACTOR

If the Coordinator, as defined in Article 16 of this agreement, fails to issue a payment certificate for a period of thirty days through no fault of the Contractor, or if the Commission fails to make payment thereon for a period of thirty days from issuance of a payment certificate, the Contractor may, upon fourteen days' written notice to the Commission, terminate the Agreement, provided however, that Commission shall first have an opportunity to remit such payment within the fourteen day period following written notice by the Agreementor.

TERMINATION BY THE COMMISSION:

If the Contractor defaults or neglects to carry out the work in accordance with the Agreement, Scope of work or fails to perform any provision of the Agreement, the Commission may, after Seven days' written notice to the Contractor and without prejudice to any other remedy that the Commission may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at Commission's option, may terminate Contractor's work under the Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Commission may deem expedient, and if the unpaid balance of the Agreement Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Commission. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

ARTICLE 8 – DISPUTE RESOLUTION

- 8.1 **Amicable settlement.** The Parties shall use their best efforts to amicably settle all disputes arising out of or in connection with this Agreement.
- 8.2 **Dispute settlement.** Any dispute between the Parties arising under this Agreement, which cannot be amicably settled within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement, may be submitted by either Party for settlement in accordance with the provisions of the Arbitration Act, 1940 (Act No. X of 1940). Any Services to be performed under the Agreement shall, if reasonably practicable, continue during the arbitration proceedings and no payment due to or by the Commission shall be withheld on account of such arbitration proceedings.
- 8.3 The matter shall be referred to a sole arbitrator as agreed by both Parties.
- 8.4 The seat of arbitration shall be Islamabad, Pakistan and the language of arbitration shall be English.
- 8.5 In case the Parties do not agree to the appointment of arbitrator, the same shall be appointed by the court of competent jurisdiction.
- 8.6 For the purposes of this Agreement, the Parties irrevocably submit to the jurisdiction of the courts of Islamabad.

ARTICLE 9 - MISCELLANEOUS

- 9. The Contractor shall make its own arrangements for the engagement of all staff and labor necessary for the fulfillment of its obligations under this Agreement, and for their payment, feeding and transport. Whereas Commission allows to work Labor 24/7.

- 9.1 Contractor agrees to protect, indemnify, defend and hold harmless the Commission, its Chairman, Commissioners and employees from any loss, claims, demands obtained by the Contractor's staff, labor or its employees, on account of personal injury or death or any third party claim.
- 9.2 The copyright of all document prepared by the Contractor in connection with the Agreement rests with the Commission. The Contractor shall not be entitled either directly or indirectly to make use of these documents for carrying out work other than that required by the terms of this Agreement.
- 9.3 The Contractor shall maintain confidentially in all matters arising out of this Agreement and which are not in the public domain for a period of five (5) years from the date of execution of this Agreement. The Contractor shall deliver to the Commission all as built drawings and relevant warranties (wherever applicable) for equipment upon handing over of the Premises.
- 9.4 Commission shall be responsible to pay all the Utility Bills (Electricity or Backup and water supply etc.) of the Premises for the whole time period of renovation which shall not be misused by the Contractor or its personnel.
- 9.5 Both the Parties shall bear the work 15% variation as per (BOQ/TORs) "Annexure A".
- 9.6 Two weeks are inclusive of all gazette holidays.
- 9.7 Lead time items procurement will be done well in time.
- 9.8 Proof of all procurements will be produced on the request of Commission.
- 9.9 Measurement sheet duly signed by the authorized representative of the Commission will be prepared at the end of project and should be attached with final invoice.
- 9.10 Any changes alternation in plan or material etc will be obtained in writing from Commission.

ARTICLE 10 – ACTIONS ON BEHALF OF COMMISSION

10. The Contractor shall take no action on behalf of the Commission in the performance of Services under this Agreement or conduct any operations relating thereto that would subject either Party to liability or penalty under any law, rules, regulation, or decrees by any Government or Authority.

ARTICLE 11 – FORCE MAJEURE

11. Neither Party shall make claim against the other Party or be deemed to be in breach of Agreement where such failure or omission is caused by Force Majeure. Force Majeure shall include, but not be limited to. Acts of God, war (declared or undeclared), insurrection, acts of terrorists, acts of governments or government bodies (including legislative bodies, courts and executive officers of agencies), unusually severe weather during the period in question,. Or any other similar matters beyond the control of or which could not have been reasonably foreseen and / or avoided by the Party affected.

ARTICLE 12 – ENTIRETY AND COUNTERPARTS

- 12.1 This Agreement including any supplement and all Appendices and Annexures hereto constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all promises and representations made by one Party to the other concerning the obligations to be performed hereunder. This Agreement may not be discharged, released, supplemented, amended or modified in any manner except by an instrument in writing signed by a duly authorized representative of both the Parties.
- 12.2 This Agreement shall be executed in two counterparts, both of which shall be deemed original.

ARTICLE 13 – RELATIONSHIP

The Parties hereby agree that no terms of this Agreement shall be construed as to portray an employer-employee relationship between the Parties and that both the Parties are acting independently and at their discretion.

ARTICLE 14 – APPLICABLE LAW AND JURISDICTION

- 14.1 This Agreement is governed by the laws of the Islamic Republic of Pakistan.
- 14.2 Disputes arising out of this Agreement are subject to the exclusive jurisdiction of the courts of Islamabad, to which the Parties irrevocably submit.

ARTICLE 15 – PROJECT COORDINATOR

The Commission designates Mr. Arshad Kamal, Joint Director (Admin) Commission Head Office NICL Building, 63 Jinnah Avenue, Islamabad as Commission's Coordinator; Coordinator will provide general administration of the Agreement and will be the Commission representative during construction and until issuance of the final Certificate for Payment. The Coordinator shall at all times have access to the Work wherever it is in preparation and progress. The Coordinator will make periodic visits to the Premises to determine in general if the Work is proceeding in accordance with the Agreement Scope of work. On the basis of on-site observations, the Coordinator will keep the record of the progress of the Work. The Coordinator will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Scope of Work. Based on such observations and the Contractor's Applications for Payment, the Coordinator will determine the amounts owing to the Contractor and will issue Certificates for Payment in accordance with Article 12. The Coordinator will be, in the first instance, the interpreter of the requirements of the Agreement Scope of work. For payment of the invoices, approval/verification of the Coordinator shall be necessary and no payment shall be made in the absence of such approval/verification as mentioned in Article 4 of this Agreement. The Coordinator will have authority to reject Work not conforming to the Agreement Scope of work.

ARTICLE 16 – ACCEPTANCE OF THE WORK:

The Contractor shall correct any work that fails to conform to the requirements of the Agreement Scope of work where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of Final Settlement of the Agreement or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement Scope of work. The provisions of this Article apply to Work done by Sub Contractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law. No act of the Commission or the Coordinator, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the Commission or Coordinator in this behalf. Before any final certificate shall issue, Contractor shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Work done and materials furnished under this Agreement, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Agreement by the Commission or anyone acting on Commissions' behalf shall be held as a waiver of any other subsequent breach thereof. Contractor agrees to guarantee all work under this Agreement for a period of one year from the date of Final Settlement by the Commission. If any unsatisfactory condition or damage develops within the time of this guarantee due to materials or workmanship that are defective, inferior, or not in accordance with the Agreement or the prevailing industrial norms, as reasonably determined by the Commission or the Coordinator, then the Contractor shall, when notified by the Commission or Coordinator in this behalf, immediately place such guaranteed Work in a condition satisfactory to the Commission.

ARTICLE 17 - SPECIAL/MISCELLANEOUS PROVISIONS:

Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent Addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of the law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance, or enforcement of this Agreement.

This Agreement is governed by the laws of the Islamic Republic of Pakistan and any action to enforce any of the provisions, obligations or covenants of this Agreement shall be commenced only in a court of proper jurisdiction in Pakistan.

Contractor shall not assign this Agreement. The provisions of the Agreement are binding on the heirs, successors or assignees of the parties.

The rights and remedies available under this Agreement shall be in addition to any rights and remedies allowed by law.

No failure to enforce any provision of the Agreement on account of any breach thereof shall be considered as a waiver of any right to enforce provisions of this Agreement concerning any subsequent or continuing breach.

If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in this Agreement.

ARTICLE 18 – STAMP DUTY

This Agreement shall be stamped in accordance with Stamp Act, 1899 by the Consultant.

In witness hereof the Parties have executed this Agreement on the date abovementioned.

CONTRACTOR
Mr. _____

Date:

WITNESS:

1) _____

2) _____

COMMISSION
Mr. _____

Date:

1) _____

2) _____