

SAMPLE AGREEMENT

This agreement ("Agreement") is made on this ____ day of ____ 2021

By and between

Securities & 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

_____(the "Firm", which expression shall, where the context so admits, include its successors in interest and permitted assigns of the Other Part)

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

Whereas;

- a) The Commission is desirous of acquiring investigation/inspections services ("**Services**") as per scope of work attached as Annex-A.
- b) The Firm represents and warrants that it has the requisite expertise and adequate skills to provide the Services as required by the Commission.
- c) The Commission has agreed to engage the Services of the Firm and the Firm has agreed to provide the same.

Now, therefore, upon the terms and subject to the conditions of this Agreement, it is hereby agreed by and between the Parties as under:

1. Duration

This Agreement will become effective on the _____ and will remain in effect for a period of three years (the "Term") or until terminated in accordance with Clause 7 or 9. The termination of this Agreement will not;

(a) relieve either Party from any expense, liability or obligation or any remedy therefore which has accrued or attached prior to the date of such termination, nor

(b) cause either Party to lose, surrender or forfeit any rights or benefits which have accrued at the time of termination.

Prior to the expiration of the Term, this Agreement may be extended or modified by written mutual agreement between the Parties. When used in this Agreement, the phrase "the Term" shall refer to the entire duration of the Agreement.

2. Definition

In this Agreement, the following terms shall have the meanings assigned as under:

- a) “Commission” means the Securities and Exchange Commission of Pakistan.
- b) “Firm” means chartered account firm prequalified for provision of services as per prequalification document.
- c) “Services” means the Investigation/Inspection services to be provided by the Firm under this Agreement.
- d) “Department” means the Corporate Supervision Department of the Commission.

3. Services

- a) The Firm shall perform the Services under this Agreement as detailed in **Annexure-A**.
- b) The Firm shall perform and execute the Services at the times and in the manner as specified in **Annexure-A** to this Agreement with due care and skill in accordance with the best professional standards prevailing in similar industry to the satisfaction of the Commission.
- c) The Firm recognizes and assures that any Services performed under this Agreement and work done shall be the exclusive property of the Commission and the Firm shall have no right or claim to it.
- d) The Parties hereby agree that this Agreement does not in any manner restrict the Commission from the appointment of any other Firm for similar purposes. The Commission reserves the right of appointment concerning the subject matter of this Agreement and may appoint several Firms for the purpose of the Services stated herein.

4. Responsibilities

a) Firm

The Firm shall: -

- (i) ensure the effective performance and execution of Services detailed in **Annexure-A**.
- (ii) endeavor to effectively perform its obligations and ensure to satisfy the objective of the Commission regarding the Services.
- (iii) make appropriate documentation available to the Department.

b) Commission

The Commission shall:-

- (i) arrange for adequate and concise documentation in order to facilitate the Firm for the execution of Services to be rendered under this Agreement.
- (ii) facilitate the Firm regarding execution of the Services.
- (iii) provide adequate information necessary for the execution of the Services to be performed by the Firm.
- (iv) ensure that the terms of this Agreement are implemented as mutually agreed between the Parties.
- (v) Ensure timely payments in accordance with the Agreement.

5. Payments

- a) The fee shall be as per bid submitted against the requirement.

- b) The amount quoted in the bid shall be the total fee and if declared as most advantageous bid, shall be paid to the Firm subject to the satisfactory performance of Services.
- c) All payments as agreed shall be less any Government taxes which the Commission is required by law to deduct.
- d) The payments shall be made in Pak rupees through a mode as mutually agreed between the Parties.

6. Proprietary Information/Confidentiality

- a) During the course of the Agreement both Parties will share information of confidential and / or proprietary nature. Recipient agrees not to disclose any information to any third parties or to any of its employees except those employees who have a need to know the information to accomplish a stated task in accordance with the terms and conditions of this Agreement and such employees shall be made aware that the information is confidential and shall be under a written contractual restriction on nondisclosure and proper treatment of confidential information that is no less restrictive than the terms of this Agreement.
- b) Notwithstanding the foregoing, recipient may disclose the disclosing Party's information if in the opinion of its counsel, disclosure is required by law; provided, however, that recipient will use all reasonable efforts to notify disclosing Party of the obligation to make such disclosure in advance of the disclosure so that disclosing Party will have a reasonable opportunity to object to the disclosure and that recipient requests confidential treatment of the disclosed information. Recipient agrees that it shall treat the confidential information with the same degree of care it accords to its own confidential information of a similar nature; provided that in no event shall recipient exercise less than reasonable care to provide the confidential information.
- c) The treatment accorded by the foregoing clause shall be binding on both the Parties and shall remain in force for a period of five (5) years from the date of execution or completion/ termination of this Agreement.

7. Termination

- a) Either Party may terminate this Agreement if the other Party fails to remedy a breach of the terms of this Agreement within fifteen (15) days of a written notice to do so.
- b) The Commission may terminate this Agreement if the Firm fails to provide the Services in accordance with this Agreement.
- c) The Firm may terminate this Agreement if the Commission fails to make payments in accordance with this Agreement.

8. Other conditions

The Firms' liability for loss or damages arising in relation to the services, as a result of breach of contract, tort (including negligence) or otherwise, is limited to an amount equal to the fees paid by the Commission for the portion of the Firms' services or work giving rise to the liability.

In any event and to the extent permitted by law, the Firms will not be liable for any indirect, incidental or consequential loss, damages or expenses (including loss of profits or revenue, business interruption, loss of data or failure to realize anticipated savings or benefits) arising in any way in relation to the Services.

9. Force Majeure

- a) The obligations of each of the Parties hereunder shall be suspended during the period and to the extent that such Party is prevented or hindered from complying therewith by "Force Majeure" (as hereinafter defined). In such event, the Party shall give notice of suspension as soon as reasonably possible to the other Party stating the date and extent of such suspension and the cause thereof. Any of the Parties whose obligations have been suspended as aforesaid

shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the other Party.

- b) "Force Majeure" means any cause beyond the reasonable control of such Party including (in so far as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, natural catastrophe and compliance with any law or governmental order, rule, regulation or direction but solely restricted to laws, orders, rules, regulations, or directions of governmental agencies or bodies in Pakistan or of any other organization or commission or regulatory authority binding within Pakistan, provided that a lack of funds shall not constitute "Force Majeure".
- c) Nothing herein shall require the Parties concerned to settle strikes or labour disputes by acceding to demands deemed to be unreasonable by objectively evaluating the situation but subject to this, the Party concerned shall use its reasonable endeavors to remove, avoid and / or mitigate the effects of such circumstances.
- d) If the force majeure continues, or the carrying out of this Agreement is delayed, for a prolonged period or it becomes impossible to perform a material provision of this Agreement, either Party may terminate this Agreement by notice to the other Party.
- e) For the purpose of this clause, a prolonged period is one exceeding (30) days.

10. Dispute Resolution/Arbitration

- a) The Parties shall attempt to amicably resolve any and all disputes as to the interpretation of the Agreement or as to the performance of either Party hereunder.
- b) If the Parties cannot settle any dispute or difference within thirty (30) days after first conferring, then such dispute or difference shall be settled through arbitration each party shall appoint one arbitrator and the appointed arbitrators shall then appoint an umpire. The award of the arbitrators or in case of a dispute between the arbitrators, the decision of the umpire shall be final and binding.
- c) If before initiation or during the pendency of the arbitration proceedings either of the parties applies to a court having jurisdiction for settlement of dispute otherwise the other Party may apply for a temporary restraining order or preliminary injunction before filing of a written statement, where such relief is necessary to protect its interest pending completion of the arbitration proceedings. Prior to initiation of arbitration or any other form of legal proceeding, the aggrieved Party will give the other Party a fifteen (15) days' prior written notice describing the claim and amount as to which it intends to initiate action.
- d) The arbitrators shall preferably be retired judges of High Courts of Pakistan. The arbitrators will have no authority to award or make any ruling, finding or award that does not conform to the terms and conditions of this Agreement.
- e) The place of arbitration shall be Islamabad, the arbitration shall be governed by the Arbitration Act, 1940 and the language of the arbitration shall be English.

11. Notices

- a) Any notice required to be provided pursuant to this Agreement shall be in writing and may be given by delivering the same by hand at, or by sending the same by prepaid first class post, telex or facsimile to, the registered addresses of the Parties or such other address as the Parties may notify to each other. Any such notice given as aforesaid shall be deemed to have been given or received at the time of delivery (if delivered by hand), the first Working

Day next following the day of sending (if sent by telex or facsimile) and the second Working Day next following the day it is sent (if sent by post). Without prejudice to the foregoing provisions of this Clause, if the Party to which a notice is given does not acknowledge the same by the end of the third Working Day next following the day of delivery by sending, the Party giving the notice shall communicate with the Party which has not so acknowledged and, if necessary, re-deliver or re-send the notice.

b) Address for notices

For the purposes of this Clause, a Party may take the address and facsimile number of the other Party to be:

- (i) the address and number set out below; or
- (ii) where another address or number is notified by either of the Party to other Party, the last address of number so notified to it.

If to Commission:

Attn: Mr. _____

Designation: Head of Department (HRD)

Securities & Exchange Commission of Pakistan

NIC Building, 63-Jinnah Avenue Islamabad

Tel: +92-51-9207091-4

If to Firm:

Attn: Mr./Ms. _____

Designation: _____

Tel: _____, _____ Fax: _____

12. 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.

13. Amendment

- a) No term and condition of this Agreement may be amended without the prior consultation and understanding between the Parties.
- b) This Agreement shall supersede any existing arrangements and or understandings between the Parties in relation to the terms agreed upon under this Agreement.

14. Applicable Law and Jurisdiction

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

15. Stamp Duty

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

16. Annexure

The Annexure to this Agreement shall form an integral part of this Agreement and shall be interpreted accordingly.

In witness hereof the Parties have executed this Agreement on the day and year written above.

AGREED AND ACCEPTED

**Securities and Exchange
Commission of Pakistan**

Name of Service Provider

Signature

Date

Name

Title

WITNESS

Signature: _____

Name: _____

Title: _____

Signature

Date

Name

Title

WITNESS

Signature: _____

Name: _____

Title: _____

Note: Attached agreement is a sample agreement and terms and conditions may change at the time of signing off by both parties with mutual agreement.

Scope of Work/Terms of Reference (TOR's)

The laws administered by SECP confers extensive powers on it to inspect records of the various persons it regulates and to investigate the affairs of such persons as and when considered necessary by the Commission.

The brief description of services, that are required for inspections/ investigations of companies and/or other regulated persons under the purview of the SECP, include but are not limited to the following:

1. Identify, describe, substantiate and fix responsibility with regard to non-compliances/violations of the laws administered by SECP including but not limited to the SECP Act, 1997, the Companies Act, 2017, the Securities Act, 2015, all predecessors/ successors of the aforesaid Acts and all subsequent amendments to the aforesaid Acts and all subordinate legislations promulgated there under in the manner and to the extent they are applicable to the entity under inspection/ inquiry/ investigation.
2. To check compliance of the applicable accounting and financial reporting standards for the entity under inspection/ inquiry/ investigation, and any laws that are not administered by SECP but have a bearing on the truth and fairness of financial reporting such as tax laws, property laws, industry specific laws/ regulations and any other relevant laws/ regulations in this regard to the extent they are applicable to the entity under inspection/ inquiry/ investigation.
3. Report the findings of inspection/ inquiry/ investigation along with necessary background and relevant information in a clear and concise manner along with legally admissible evidence in relation to any non-compliances of relevant provisions of applicable laws.
4. The Firm shall submit interim/final report (as per format prescribed by the SECP). The report submitted in this regard shall be self-explanatory and complete in respect of all the non-compliances/ violations recorded therein and the same shall be sufficient for initiating any legal proceedings.

Note: The specific TORs of each investigation/inspection assignment will be shared with prequalified Firms at the time of calling for bids