



**TRANSPORT AND MASS TRANSIT DEPARTMENT
GOVERNMENT OF SINDH**

**CONSULTANCY SERVICES CONTRACT
VEHICLES INSPECTION & CERTIFICATION SYSTEM**

TRANSACTION ADVISORY SERVICES

[•]2016

THIS CONTRACT (hereinafter referred to as the Contract / Agreement) is made at Karachi on this [•] 2016 (the “**Signing Date**”).

BY AND BETWEEN

The Governor of Sindh, acting through Secretary, Transport and Mass Transit Department, GoS, having its principal office at Tughlaq House **Sindh Secretariat**, Karachi,(hereinafter referred to as the “**Client**”);

AND

_____, a company incorporated under the laws of the Islamic Republic of Pakistan and having its principal place of business at _____ Pakistan (hereinafter referred to as “**Lead Advisor**”) (GoS and the Lead Advisor are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”).

WHEREAS:

- A. The TMTD, Government of Sindh aims to upgrade the vehicle inspection and certification system (hereinafter referred to as the “**Project**”) in Sindh. In this regard a project has been conceptualized to encourage private sector interest in establishment of VICS exclusively in the Sindh Province. To carry out this project a model of Public Private Partnership has been proposed. The Motor Vehicle Inspection (MVI) Wing has been transferred to the TMTD, on 11th December 2014 in pursuance of ‘Provincial Vehicle (Amendment) Act 2014’. The Client wishes to hire consultants to provide Transaction Advisory Services to implement the Project.
- B. The Client aims to engage a qualified advisory consortium for transaction advisory services to implement the Project (hereinafter referred to as the “**Services**”) in accordance with the Scope of Work listed in Schedule A of this Agreement (“**Assignment**”);
- C. The Advisory Consortium led by the Lead Advisor is hereby appointed to provide the Services on the terms and conditions as set out herein. The Advisory Consortium agrees to provide the Services and undertake the Assignment as per the terms and conditions set out herein this Agreement;

NOW THEREFORE, the Parties hereto agree as follows:

1. Definitions

- 1.1 In this Agreement, unless the context indicates otherwise, the following words and expressions shall have the following meanings unless inconsistent with the context:

“**Applicable Laws**” means all applicable laws, ordinances, regulations, judgments and

orders of any competent court, central bank or governmental agency, authority in any relevant jurisdiction within the Islamic Republic of Pakistan, and such other laws as may be applicable;

“**Advisory Consortium**” shall have the meaning as described in Recitals above;

“**Agreement**” means this contract executed between the Client and the Lead Advisor and includes all the schedules, if any, attached thereto;

“**Assignment**” shall have the meaning ascribed thereto in the Recitals;

“**Assignment Team**” means the persons described under Clause 13 of the Agreement, subject to changes arising from the negotiations;

“**Associate**” means, (a) officers, directors, employees, representatives, advisors, attorneys, accountants and agents from time to time; (b) subsidiaries, holding companies (if any) and each of the subsidiaries of such holding company and each of their representative officers, directors, employees, representatives and agents from time to time; and (c) in the case of the Advisory Consortium, to the extent that they are not included in the definition, are the persons who, by virtue of any applicable law or regulation or sub-contractual arrangements, regarded as associated with the Advisory Consortium;

“**Business Day**” means any day other than Sunday or public holiday in the Islamic Republic of Pakistan or the province of Sindh, on which banks in Pakistan are generally open for business;

“**Client**” means Government of Sindh, acting through Transport & Mass Transit Department, Government of Sindh, for the purposes of this Agreement;

“**Client Default**” means an act or omission by the Client, which results in a breach of any of its material obligations under the Agreement;

“**Commencement Date**” means the date of signing of this Agreement;

“**Completion Date**” shall have the meaning ascribed thereto in clause 16.8

“**Confidential Information**” means any information:

- (a) determined by the Client to be privileged or confidential;
- (b) discussed in closed session by the bid evaluation panel;
- (c) which if disclosed would violate a person’s right to privacy;
- (d) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in the relevant Freedom of Information Ordinance, 2002 of the Islamic Republic of Pakistan; Provided that Confidential

Information shall not include such information which has been excluded in terms of Section 16.3

“**Deliverables**” means those deliverables as set out in the Terms of Reference (TOR);

“**Effective Date**” shall have the meaning ascribed thereto in Clause 3.2;

“**Fee**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lead Advisor**” means a lead member of the Advisory Consortium, which shall be [•]; empowered by the other members of the Advisory Consortium to (i) coordinate and liaise with the Client on their behalf and to undertake the project management aspect of the engagement (ii) undertake responsibility to the Client for execution of the entire Scope of Work mentioned in Schedule A,

“**Parties**” means the Client and the Lead Advisor;

“**Performance Security**” means an amount of PKR [•] equivalent to five percent (5%) of Fee, payable by the Advisory Consortium to the Client in the form of pay order or bank guarantee.

“**Proposal**” means the Advisory Consortium’s response i.e. Technical Proposal and Financial Proposal to the Client’s Request for Proposal in respect of the carrying out of the Services;

“**Services**” shall have the meaning ascribed thereto in Recitals above;

“**Scope of Work**” has been defined in Clause 4.1 of this Agreement details whereof are contained in **Schedule A**;

“**Signing Date**” shall mean the date of signing of this Agreement;

“**Termination Date**” means any date of termination of the Agreement in accordance with the Clause 16.8 of the Agreement;

“**Variation**” means any variation to the Scope of Work in terms of the Agreement.

2. Interpretation of this Agreement

The Agreement shall be interpreted according to the following provisions, unless the context requires otherwise. In the event of any conflict, inconsistency or ambiguity, the provisions will prevail as follows:

- 2.1 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under the Agreement;

- 2.2 References to clauses, sub-clauses, schedules and attachments are references to the clauses, sub-clauses, schedules and attachments of the Agreement;
- 2.3 The headings of clauses, sub-clauses, schedules and attachments are included for convenience only and shall not affect the interpretation of the Agreement;
- 2.4 Reference to “Agreement”, shall include the Agreement and its schedules, attachments as amended, varied, notated or substituted in writing from time to time;
- 2.5 Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter, and ‘person’ shall include both corporeal and incorporeal entities.

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3. Entry into Force, Effectiveness and Termination of the Agreement

- 3.1 The Agreement shall come into force upon the satisfaction of following conditions precedent:
- 3.1.1 submission of the Performance Security by the Advisory Consortium, which shall be valid for at least ninety (90) days beyond the:
 - (a) completion of the Services as per the Scope of Work under Schedule A, or
 - (b) expiration of a period of thirty (30) months from the Signing Date, whichever comes earlier.
- 3.2 The Advisory Consortium shall satisfy or procure the satisfaction of the above conditions precedent as soon as reasonably possible and in any event within seven (7) Business Days of the Signing Date (the “**Effective Date**”).
- 3.3 The Advisory Consortium shall begin carrying out the Services on the Effective Date.
- 3.4 Unless terminated earlier, this Agreement shall terminate on the Termination Date or at the end of such time as agreed upon by the Parties hereto.

4. Agreement to Provide Services

- 4.1 With effect from the Signing Date, the Client hereby appoints the Advisory Consortium for the purpose of carrying out of the Assignment and the provision of the Services stated in the scope of work as detailed in **Schedule A** attached hereto (“**Scope of Work**”) and the Advisory Consortium agrees to such appointment for such consideration as set out in Clause 6 below. The Client agrees that specified portions of the Scope of Work have been distributed between the members of the Advisory Consortium. It is further agreed between the Parties that unless the Scope of Work is amended in writing with the mutual agreement of the Parties, the work to be undertaken and the services to be provided by the Advisory Consortium will be restricted to the Scope of Work as set out in this Agreement.
- 4.2 Excluding the rights assigned in 4.1, neither the Client nor the Advisory Consortium may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party. However any member of the Advisory Consortium may not assign its rights and obligations hereunder to any affiliate that is a successor in interest to all or substantially all of the assets or business, without the consent of Client.
- 4.3 This Assignment shall not create or give rise to, nor shall it be intended to create or give rise to any third party rights. No third party shall have any right to enforce or rely on any provision of this Agreement, which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation giving to or conferring on third parties contractual or other rights in connection with this Agreement shall be excluded. No Consortium member shall be deemed to be a third party for the purposes of this clause.

4.4 This Agreement and the attachments thereto constitute the entire agreement between the Parties, and no other undertaking, representation, warranty, promise or the like not recorded herein, whether express or implied, shall bind the Parties hereto.

5. Scope of Work

5.1 The scope of the work and services to be provided by the Advisory Consortium under this Agreement is based on the Scope of Work as laid out in **Terms Of Reference** to this Agreement.

5.2 The approach and methodology outlined in the Technical Proposal submitted by the Advisory Consortium and scope of work outlined in RFP shall be used for the purposes of any interpretation of the Scope of Work.

5.3 Unless the Client or the Advisory Consortium's instructions are later amended and agreed between the Parties in writing, the work to be undertaken by the Advisory Consortium will be restricted to that set out in **Schedule A**.

5.4 Amendment(s) to the Scope of Work as set out in **Schedule A** shall be done in accordance with the Clause 6.2.

5.5 The Client acknowledges, understands and accepts the abovementioned Scope of Work as detailed in **Schedule A** between the Advisory Consortium and further that although the Lead Advisor shall have overall responsibility, each Consortium member is jointly and severally responsible and liable with respect to the specific work / Deliverables assigned to them in terms of **Schedule A**.

6. Fee

6.1 The Parties have agreed that the fee inclusive of all applicable taxes for this Assignment shall be **PKR [•]** (Pakistan Rupees [•] only) payable on completion of different milestone achievements as laid out in **Schedule E**. Other related terms with respect to payment of fee and expenses are also set out in Clause 12 and **Schedule E**.

6.2 If the Client seeks to vary the Scope of Work, the Parties shall discuss such matters mutually and any changes to the Scope of Work will be agreed between the Parties in writing, subject to mutual agreement on change in fee and the respective timelines for completion, which will be subsequently recorded by way of an amendment to this Agreement.

- 6.3 Any amendment to the Scope of Work shall only become effective once the Parties have agreed to amendments/changes (if any) to the revised fee as a result of such amendment in the Scope of Work and the revised time period that will be required to provide the said services and recorded the same by way of an amendment to the terms of this Agreement. For the avoidance of doubt it is clarified that the amendment to the agreement between the Parties in relation to the adjustment in the fee and timelines as a result of any amendment in the Scope of Work is a condition precedent to the effectiveness of such amended Scope of Work.
- 6.4 The fee due and payable by the Client to the Advisory Consortium shall be a fixed advisory fee, subject to any amendments and/or adjustments in the same as a result of a change in the Scope of Work in accordance with Clause 6.3.
- 6.5 All payments under this Agreement shall be made to the invoicing party namely, the Advisory Consortium, approved under Section 1, provided that the invoices will be raised by the individual members of the Advisory Consortium, which shall be clubbed together by the Lead Advisor into a single Invoice indicating the share of each individual member of the Advisory Consortium. The Client shall make the payment to the individual member of the Advisory Consortium separately under intimation to the Lead Advisor as per the single invoice submitted by the Lead Advisor. The account details for payment for individual members of the Advisory Consortium will be provided by the Lead Advisor to the Client.

7. Project Administration

- 7.1 The Advisory Consortium shall comply with all the terms, regulations, rules, and requirements of the Client during the term of the Agreement.
- 7.2 All Deliverables submitted to the Client by the Advisory Consortium in line with the Services and Scope of Work shall be reviewed by the Client within fifteen (15) Business Days from the submission date of the same. If the Client does not raise any objection(s) within the set period of fifteen (15) Business Days, the same shall be deemed to have been accepted by the Client. However, if the Client raises any objection(s) to a Deliverable and the same has been raised and communicated to the Advisory Consortium within the set time limit of fifteen (15) Business Days, the Advisory Consortium shall respond to such objections and/or incorporate them in such Deliverable and re-submit the Deliverable to the Client within ten (10) Business Days.
- 7.3 Any notice, request, or consent made by either Party pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the Agreement.
- 7.4 The Client shall provide prompt written notice to the Advisory Consortium whenever the Client observes or otherwise becomes aware of any matter, which may substantially affect the Advisory Consortium's performance of Services under this Agreement.

7.5 The Client shall have unrestricted access to all plans, drawings, specifications, designs, reports, presentations and other documents produced by the Advisory Consortium during the term of this Agreement and submitted to the Client for the purposes of the Assignment. The Advisory Consortium, shall not later than 15 days, deliver five copies of all such documents to the Client upon request from the Client.

8. Warranties

8.1 The Client represents and warrants to the Advisory Consortium that it has the necessary authorization, mandate and capacity to award the Scope of Work to the Advisory Consortium pursuant to this Agreement and that it has further followed all necessary statutes and procedures in awarding the same to the Advisory Consortium.

8.2 The Advisory Consortium represents and warrants that:

- (a) It is duly organized and validly existing under the Applicable Laws, and that it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate and other actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement; and validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (d) it has the financial standing and capability to undertake the Assignment accordance with the applicable standards and neither the Advisory Consortium nor the consortium members individually have committed a breach in respect of their payment obligations in relation to a financial indebtedness;
- (e) it is subject to the Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement and/or or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) the execution, delivery and performance of this Agreement does not and shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any of its constitutive and corporate charters, filings with government authorities, documents, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it under the Applicable Laws before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (g) no representation or warranty made by the Advisory Consortium contained herein or in any other document furnished by it to the GoS contains any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading;
- (h) each member of the Advisory Consortium shall be severally liable for the performance of Services under this Agreement;
- (i) that they have the necessary professional, intellectual and material resources to undertake their respective parts of the Scope of Work in connection with the Assignment; and
- (j) It shall abide by the terms of the Agreement and that they shall perform their respective parts of work professionally and according to the international best practices.

9. Communication

- 9.1 All significant communication between the Parties shall be in writing delivered through some established credible medium including email but all Deliverables shall be sent to the Client in hard copy form with 5 number of copies.
- 9.2 All communication of a substantive nature between the Parties shall be sent to the respective key contact persons in addition to any other person(s) or official(s) the Parties to the Agreement may wish to notify or to whom it is necessary and obligatory to send that communication.

9.3 The respective key contact persons for communication shall be:

<p><i>For Client</i></p> <p>Name: Abdul Aziz Designation: Director (Technical), PPP Node, Transport and Mass Transit Department, Government of Sindh Address: 2nd floor, Tughlaq House, Sindh Secretariat, Karachi. Telephone: 021-99230665, Fax: 021-99231153 Email: director.technical.tmttd@gmail.com</p>	<p><i>For Advisory Consortium</i></p> <p>Name: [•]</p>
<p><i>For PPP Unit</i></p> <p>Name: Muhammad Danish Designation: Director, PPP Unit, Government of Sindh Address: 7th Floor, Building No. 6, Sindh Secretariat, Shahrah-e-Kamal Atta Turk, Karachi Telephone: 021 99222 193 Email: danish.pppgos@gmail.com</p>	

9.4 Either party may change its address to any physical address, email address and Fax number for this purpose, by notice in writing to the other party.

10. Reporting

The Advisory Consortium’s reporting will be based on Deliverables as described below and mentioned in **Schedule D** to this Agreement. The Deliverables will be prepared solely in connection with, and for use in accordance with, the terms of this Agreement. The Lead Advisor will report exclusively and directly to the Client.

These Deliverables shall be delivered on the understanding that the Client shall not reproduce any Deliverables of the Advisory Consortium in any form without the written consent of the Lead Advisor.

The Client may not rely on any draft Report. The Advisory Consortium shall not be required to update any final Report for circumstances of which the Advisory Consortium become aware, or events occurring, after its delivery and acceptance by the Client.

In case the Client releases the information/report provided by the Advisory Consortium to any third party, the Advisory Consortium will have no responsibility or liability to such third party in connection with the provision of the report, and confirming that the third party will not release the report to any other parties and will indemnify the Advisory Consortium from any claims arising directly or indirectly from the release of the report to the third party.

- 10.2 If, in carrying out the agreed Scope of Work, the Advisory Consortium becomes aware of any matters outside the agreed scope that the Advisory Consortium considers to be of importance to the Assignment, the Advisory Consortium will bring these to the attention of the Client. The Parties may, after mutual consultation, change the Scope of Work, if so needed, in the manner set out in Clauses 5.3 and 6.2 of this Agreement.
- 10.3 The Advisory Consortium shall provide the Client with the Deliverables described in **Schedule D** during the course of the Assignment:
- 10.4 Whilst each submission of the work products shall address different aspects of the Assignment that the Advisory Consortium shall perform, the final form of Deliverables shall take into consideration all the outputs from earlier work products submitted by the Advisory Consortium.
- 10.5 Any additional tasks required by the Client from the Advisory Consortium including tasks/events where the Advisory Consortium is requested pursuant to subpoena or other legal process to produce documents relating to provision of the Services to the Client in judicial or administrative proceedings to which the members of the Advisory Consortium are not a party shall be considered as additional services and the fees for such services shall be governed under Clause 6.2 to this Agreement.
- 10.7 In order to confirm that the Advisory Consortium's reports address all the matters within the agreed Scope of Work, the Advisory Consortium will submit a draft of its reports/ plans/ models to the Client for its comments prior to issuing it in final form. If the Client does not revert with any comments for a period of fifteen (15) Business Days from the date of submission by the Advisory Consortium of its draft reports/ plans/ models (as the case may be), the same will be deemed to be accepted by the Client for the purposes of achievement of the Deliverables as set down in **Schedule D** and the Advisory Consortium will be entitled to (i) issue the final versions of the relevant deliverables; and (ii) raise an invoice for and receive payment for completion of such Deliverable in accordance with **Schedule E**.
- 10.8 The Advisory Consortium shall be under no obligation to update any advice, reports or any Deliverables provided to the Client, oral or written, for events occurring after the advice,

report(s) or Deliverable(s) have been provided to the Client in its final form or after any advice, report or Deliverable is deemed as accepted by the Client in accordance with the terms of this Agreement.

- 10.9 On completion of the Assignment the Client would encourage that the Advisory Consortium to carry out a debriefing where the Client shall provide feedback on the work carried out by the Assignment Team (defined below).

11. Access

- 11.1 For undertaking the Assignment, the Advisory Consortium shall have access to the Project site(s) and wherever applicable, the relevant and important surveys/studies which would facilitate the Advisory Consortium in connection with this Agreement. These would primarily include, but not be limited to the relevant surveys/studies mentioned in the Request for Proposal issue for this Assignment.
- 11.2 The Client agrees that it shall notify the Lead Advisor as soon as practicable of any change in any material information previously made available to the Lead Advisor or the Advisory Consortium which comes to the attention of the Client.
- 11.3 Based on its past experience and knowledge, the Advisory Consortium shall endeavor to identify studies, report or data, which have been conducted previously either at the Federal and/ or Provincial level and shall assist, wherever possible, to enable the Client in gaining access to such studies, reports or data.
- 11.4 The Client shall arrange access to and discussions with its relevant officers and officials, on, as well as off Project sites, in addition to coordinating visits to the Project sites.

- 11.5 The Lead Advisor will provide to the Client, information in relation to the Project that it obtains during the term of this Agreement, but shall not be under any obligation, to provide such information, the disclosure of which would breach any law, any regulation of any governmental supervisory or regulatory authority, the terms of any agreement to which the Advisory Consortium or any member thereof are/is a party, or any duty of confidentiality that the Advisory Consortium or any member thereof owes to a third party.
- 11.6 Any information provided by the Client shall be validated by the Advisory Consortium who shall inform the Client of any discrepancies or deficiencies in the same before relying on such information. The Advisory Consortium shall retain responsibility for information created as part of the engagement. The Advisory Consortium may not be held responsible or liable if any information material to their task which was provided by the Client is withheld or concealed or fraudulently represented to them.
- 11.7 The Client shall provide guidance and assistance, in the establishment of the liaison and obtaining relevant information/ studies from the concerned governmental agencies, consultants and other stakeholders. In case of absence or non-availability of such information, however, the Advisory Consortium shall rely mainly on its own sources of information. In no event however, shall the Advisory Consortium be responsible for the completeness and accuracy of information collected from Client. It is however, agreed by the Advisory Consortium that only authenticated information shall be relied upon, that is, if the information is either signed by the agency concerned or if it is issued/made public with the approval of the same. The Advisory Consortium may rely on any instructions or requests made or notices given or information supplied in writing (including email), by any person that it knows to be authorized by the Client for such purposes (Sources like Wikipedia.com shall not be considered authentic even if the reference to information therein is made to a Government Agency).
- 11.8 The Client acknowledges and irrevocably confirms that any information provided by the Client in relation to the works being performed under the Scope of Work by the Advisory Consortium that has been accepted by the Client as being the relevant information to be applied in respect of the Assignment and accordingly the Advisory Consortium will not be liable for any defects, errors and/ or omissions in the provision of the services by the application of the information and the utilization of the information specifically provided by the Client.

12. Payment to Advisory Consortium

- 12.1 The Advisory Consortium shall be responsible for financing its activities until such time as payment is effected by the Client as mentioned in Clause 12.3. The Advisory Consortium shall submit its invoices to the Client in a format agreed between the Parties.
- 12.2 The Client shall compensate the Advisory Consortium for services rendered under the Agreement in accordance with the Clause 7.2, Advisory Consortium's Time Plan and Reporting Schedule, attached under **Schedule C** to this Agreement.
- 12.3 Subject to the other terms and conditions of this Agreement, all payments due by the Client to the Advisory Consortium shall be paid within 15 Business Days from the date of approval, or deemed approval, of the relevant reports by the Client, save for payment in respect of the final report which shall be made within 10 working days from approval, or deemed approval, of such report. The Client shall be obliged to approve or reject reports submitted vide Clause 7.2 above, within 15 Business Days from the date of submission by the Advisory Consortium.
- 12.4 Where a report or any Deliverable of the Advisory Consortium is rejected or objections in respect thereof are raised by the Client, or the Client is otherwise delayed in the performance of any of its obligations under this Agreement, the timelines for delivery / completion of the Services by the Advisory Consortium will be increased to account for such delays.
- 12.5 In relation to payments to be made to the Advisory Consortium, the same shall be made through a demand drafts or crossed cheques in favor of individual members of the Advisory Consortium, issued by a scheduled bank in PKR in accordance with **Schedule E** to this Agreement.
- 12.6 In relation to payments to be made to international firms (if any) that are part of the consortia, the same shall be made to the Lead Advisor or the Local Representative of the international firm also in PKR amount indicated on their invoice raised in accordance with **Schedule E**; mode of such payments will be as per clause 12.5 above.
- 12.7 Where fees remain unpaid beyond the due date, the Advisory Consortium reserve the right to suspend provision of the Services until such time that the fees is paid and also claim an extension in time for the completion of the Deliverables to the extent of the suspended time. Suspension of the Services will not affect the Client's obligation to pay for Services rendered up till the date of suspension. with mutual consent of the Parties

12.8 The Client agrees that any additional expense incurred at the special / specific request of the Client that is not covered under the Scope of Work in this Agreement shall be charged at actual and recovered in addition to the fee mentioned in **Schedule E**.

13. Assignment Team

13.1 The Parties shall, immediately after the Commencement Date, form an assignment team ("**Assignment Team**"), which will be responsible for the management of the Agreement so as to ensure the smooth and satisfactory delivery of the Services by the Advisory Consortium to the Client.

13.2 The Assignment Team shall be composed of the following:

- (a) Officers appointed by the Client;
- (b) An authorized representative of the Lead Advisor representing the Advisory Consortium, who shall have authority to bind the Advisory Consortium
- (c) Individuals mentioned in the Proposal i.e. the CVs of those who were evaluated for the award of the contract; and
- (d) Such other members of the Advisory Consortium as appointed by the Advisory Consortium.

13.3 The functions of the Assignment Team shall be as follows:

- (a) To facilitate communication between the Parties;
- (b) To review the progress on the implementation of the Agreement;
- (c) To manage and resolve potential disputes; to monitor and maintain alignment with institutional policy and strategy;
- (d) To achieve agreement objectives within agreed scope, time, cost and quality;
- (e) To provide advice and consent on scope variation;
- (f) To facilitate all necessary institutional and treasury approvals; and
- (g) To provide feedback to relevant stakeholders.

The Assignment Team shall determine an appropriate set of meetings to be held and the frequency thereof.

13.4 Except as the Client may otherwise agree, no changes shall be made in the Assignment Team or the sub-consultants. If, for any reason beyond the reasonable control of the

Assignment Team, it becomes necessary to replace any of the team members, the Assignment Team shall provide as a replacement a person of equivalent or better qualifications, subject to the approval of the Client. The Client may require the Advisory Consortium to remove and replace any staff member, stating reasons for such action. List of the Assignment Team is attached in **Schedule B** to this Agreement.

14. Obligation of the Parties

14.1 The Client undertakes:

- (a) to remunerate the Advisory Consortium for the Services in a timely manner as set out in the payments clause herein;
- (b) to use its reasonable endeavors to ensure that the Advisory Consortium has timely and adequate access to all information, personnel and documentation available to the institution that will be required by the Advisory Consortium to render the services;
- (c) to inform the Advisory Consortium of any information or developments which may come to their attention during the duration of the Agreement, which might have a bearing on or be relevant to the services to be provided by the Advisory Consortium;
- (d) to co-operate with the Advisory Consortium at all times for the purposes of facilitating a timely and efficient delivery of the services;
- (e) to retain responsibility and accountability for the management, conduct and operation of its business and affairs;
- (f) to independently decide on the use of and to what extent it wishes to rely on, or implement advice or recommendations made by the Advisory Consortium;
- (g) that all decisions made in respect of the Services or anything ancillary thereto shall be made independently by the Client after careful consideration of the same. It is clarified that the Client shall be solely liable/responsible for the consequences/repercussions of its decisions;
- (h) to retain responsibility and accountability for the delivery, achievement or realization of any benefits directly or indirectly related to the Services, which require implementation by the Client;
- (i) to accept the provision of the Services on its own behalf and as agent for any other beneficiaries. The Client shall procure in such circumstances that any other beneficiaries shall act on the basis that they are a party to this Agreement, as if they had each signed a copy of this Agreement and agreed to be bound by it. However, the Client alone shall be responsible for payment of fees. For the avoidance of any doubt, it is clarified that the Advisory Consortium will only be required to accept instructions in connection with the provision of the Services from the Client.

14.2 The Advisory Consortium undertakes:

- (a) to perform the Services using reasonable skill and care in accordance with applicable professional standards;
- (b) to devote the necessary time and attention to providing the Deliverables, as set out in the Deliverables schedule, and not engage in any business or activity that will prevent the Advisory Consortium from providing the Services;
- (c) to maintain, at all times, the highest degree of good faith towards the Client and to ensure that no conflict of interest materializes, and in the event of a conflict of interest arising, to immediately advise the Client of the same. The Parties shall seek to resolve the situation as quickly as possible, however, in the event that the situation cannot be resolved within thirty (30) days the Client or the Lead Advisor may refer the matter for dispute resolution in terms of Clause 16.18 of this Agreement. A deliberate failure by the Advisory Consortium to inform the Client of any conflict of interest shall amount to a material breach of the Agreement and may entitle the Client to terminate the Agreement forthwith;
- (d) to render the services in accordance with the deliverables, timeframes and specifications, as set out in the Deliverables schedule, annexed hereto, as amended by written agreement of the Parties;
- (e) that all actions and commitments agreed upon or pursuant to the Assignment Team meetings or Agreement, will be strictly adhered to;
- (f) to provide the Client with any information and reports reasonably requested by the Client in connection with the Services to the extent that the same are covered in the Scope of Work, and which information the Advisory Consortium warrants to be accurate and complete;
- (g) to maintain the professional personnel as promised and committed to by the Advisory Consortium in its proposal throughout the life of this Agreement, and as recorded in the Deliverables schedule, and that in the event of any dedicated member of the Advisory Consortium's personnel becoming incapacitated and unable to carry out his or her duties or whose performance the Client reasonably considers to be unsatisfactory in its discretion, to replace, at the Advisory Consortium's cost, such member, subject to the written approval of the Client;
- (h) to observe neutrality and objectivity in its views and opinions; and
- (i) to respect and observe all Applicable Laws.

15. Terms of Business

- 15.1 The terms of business that are enclosed in **Schedule A** provides further details of the respective responsibilities of the Parties and, together with this Agreement and its related Schedules, constitutes the entire agreement between the Parties with respect to this Agreement. In the event of any conflict, inconsistency or ambiguity, the provisions will

prevail as follows:

- (a) This Agreement;
- (b) Schedules to this Agreement;
- (c) Technical and Financial Proposals submitted by the Advisory Consortium.
- (d) Request for Proposal

16. Miscellaneous

16.1 Assignment and Charges:

- (a) Notwithstanding anything contained in Clause 4.2 above and except with regard to Services to be executed and reports to be submitted members of the Advisory Consortium, the Advisory Consortium shall not assign this Agreement or any part hereof except with prior consent in writing of the Client, which consent the Client shall be entitled to decline without assigning any reason whatsoever. Notwithstanding the generality of this clause, nothing herein shall restrict the ability of the Lead Advisor to delegate any part of the Scope of Work to members of the Advisory Consortium.

16.2 Liability and Indemnity:

- i) The Advisory Consortium shall indemnify, defend and hold the Client harmless against any and all proceedings, actions and third party claims arising out of a breach by the Advisory Consortium of any of its obligation under this Agreement except to the extent that any such claim has arisen due to the event of Client default. However, any claims for liability shall be subject to limitations set forth in this Agreement;
- ii) The Client will indemnify, defend and hold harmless the Advisory Consortium and its members against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of a breach by the Client, its officers, servants and agents of any obligations of the Client under this Agreement except to the extent that any such claim has arisen due to the event of Advisory Consortium's default or negligence. However, any claims for liability shall be subject to limitations set forth in this Agreement;
- iii) Without limiting the generality of clause 16.2(i) above and subject to the limitations contained in this Agreement, the Advisory Consortium shall fully indemnify, save harmless and defend the Client including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (i) a failure of the Advisory Consortium to comply with applicable laws (including intellectual property laws and rights) and applicable permits or (ii) a failure on the part of the Advisory Consortium to make any payments of amounts due as a result of materials or services furnished to the Advisory Consortium by any of its sub-contractors which are payable by the Advisory Consortium to any of its sub-consultants except where such failure to pay occurs due to a non-payment by the Client to the Advisory Consortium.
- iv) The Client agrees that the Advisory Consortium, its partners, principals, and employees shall not be liable to the Client for any actions, damages, claims, liabilities, costs

expenses, or losses in any way arising out of or relating to the Services performed hereunder for an aggregate amount in excess of the fees paid by the Client to the Advisory Consortium under this Agreement up to the date of the claim. In no event shall the Advisory Consortium, its partners, principals, or employees be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs) in connection with the Services provided in this Agreement. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise.

- v) The Client hereby indemnifies and agrees to hold the Advisory Consortium harmless from and against any and all liabilities suffered or incurred by, or brought or threatened to be brought or entered or enforced against the Advisory Consortium which arise out of matters or transactions contemplated by, or consequent upon the Advisory Consortium's engagement under the terms of, this Agreement. The liabilities to which this paragraph applies shall include costs of investigating, defending, preparing a defence and disputing any liabilities and costs incurred in establishing any claim against any other person or in mitigating any loss and shall be additional to any rights which the Advisory Consortium may have at law.
- vi) The Client shall indemnify the Advisory Consortium, including their affiliates and persons against all claims by third parties (including your affiliates and lawyers) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) arising out of the third party's use of or reliance on any Report (including Tax Advice) disclosed to it by or through you or at your request.
- vii) The Client shall make any claim relating to the Services or otherwise under this Agreement no later than within 12 months of the act or omission alleged to have caused the claim. The Client may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other affiliated firm of Lead Advisor or its subcontractors, members, shareholders, directors, officers, partners, principals, or employees ("Lead Advisor Persons") to the extent that no direct contractual relationship exists between the Client and any affiliated firm of Lead Advisor or any Lead Advisor Persons. The Client should make any claim or bring proceedings only against the Advisory Consortium on the basis that it is the Party with whom the Client have contracted.
- viii) Notwithstanding anything to the contrary contained in this Agreement, the maximum aggregate liability of the Advisory Consortium, under this Agreement shall be restricted to the total fee paid by the Client to them for the Scope of Work assigned as described in **Schedule A**. Similarly, the total liability of each Party Advisory Consortium member in relation to performance or non-performance of the Services attributable to such shall not exceed the fees paid to it or received by it from the Client.

16.3 Confidentiality:

- (a) Neither Party shall during the term of this Agreement ("**Receiving Party**"), without the

prior written consent of the other Party (“**Disclosing Party**”), disclose any proprietary or Confidential Information relating to the Assignment, this Agreement or the business or operations of the Disclosing Party to anyone other than those persons who are connected to the Receiving Party and who are required or authorized to have access to such information. Except to the extent otherwise required by Applicable Law or Law or professional standards, the Parties’ obligations under this section do not apply to information that: (a) is or becomes generally available to the public other than as a result of disclosure by the Client; (b) was known to either the Client or the Advisory Consortium or had been previously possessed by the Client or the Advisory Consortium without restriction against disclosure at the time of receipt thereof by the Client or the Advisory Consortium; (c) was independently developed by the Client or the Advisory Consortium without violation of this Agreement; or (d) the Client and the Advisory Consortium agrees from time to time to disclose. Each Party shall be deemed to have met its nondisclosure obligations under this paragraph as long as it exercises the same level of care to protect the other’s information as it exercises to protect its own Confidential Information, except to the extent that Applicable Law or professional standards impose a higher requirement. Notwithstanding anything contained in this Agreement, the Lead Advisor shall be at liberty to disclose all information as may be required to the members of the Advisory Consortium.

- (b) The Advisory Consortium may retain, subject to the terms of this paragraph, copies of the Client’s Confidential Information required for compliance with applicable professional standards or internal policies. If either Party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other Party’s Confidential Information, such party shall provide prompt written notice to the other Party of such demand in order to permit such Party to seek a protective order. So long as the notifying Party gives notice as provided herein, the notifying Party shall thereafter be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.
- (c) This clause shall not apply to any of the information that the Advisory Consortium are required by law or by the requirements of any regulators or by specific professional standards to disclose.
- (d) The Client acknowledges that:
 - a. Lead Advisor may share Confidential Information with its affiliated firms in the course of and for the purpose of delivering the agreed Services.
 - b. Lead Advisor processes client information using its electronic communications systems, knowledge management, and information technology facilities and applications in its audit and other client service engagements. In connection with that use, the Client’s data (including Confidential Information) may be transferred across national borders and processed or stored in remote locations. Lead Advisor and its affiliated firms take reasonable steps to preserve the confidentiality of such data.
 - c. For the purposes of delivering services to the Client or other clients,

Lead Advisor and its affiliated firms shall be entitled to use, develop and share with each other knowledge, experience and skills of general application gained through performing the services.

- d. Lead Advisor may share Confidential Information with its affiliated firms in order to improve Lead Advisor's understanding of clients and their business processes and metrics, and to develop Lead Advisor's intellectual capital.
 - e. Lead Advisor may share Confidential Information within its affiliated firms in order to allow Lead Advisor to identify and offer to the Client additional services or products that may be of interest to the Client.
- (e) The obligation to maintain the confidentiality of information shall survive the termination of this Agreement for a period of two (2) years, but will not apply to Confidential Information which was in the public domain prior to being disclosed by the Advisory Consortium and has come into the public domain other than as a result of being divulged by the Receiving Party.

16.4 Adversarial Conflicts:

The Advisory Consortium including its member firms may be approached to advise another party or parties who are in dispute with the Client, or to advise or represent the interests of a party or parties whose interests are opposed to the Client's through their material concern in matters to which the Services are specifically and directly related ("**Adversarial Conflicts**"). The Advisory Consortium seeks and shall continue to seek to identify Adversarial Conflicts. If the Client knows of or becomes aware of any such Adversarial Conflicts which may arise, the Client shall inform the Advisory Consortium promptly. The Advisory Consortium shall not accept an engagement which may give rise to an Adversarial Conflict for the Assignment Team.

The Advisory Consortium including its member firms may be approached to advise another party or parties where there is no adversarial conflict between the Client and that other party but where the other party's interests compete with the Client's specifically and directly in relation to the subject-matter of the services ("**Competing Party**" or "**Competing Parties**"). The Advisory Consortium seeks and shall seek to identify Competing Parties. If the Client knows of or becomes aware that The Advisory Consortium is advising or proposing to advise a Competing Party, the Client shall inform The Advisory Consortium promptly. Where a party being advised has been identified by the Advisory Consortium or notified by the Client as a Competing Party, appropriate barriers shall be put in place to protect the Client and the other parties confidentiality and when such barriers are operating the Advisory Consortium shall be entitled to advise the Competing Party concerned at any time and in any capacity (save in relation to a situation where the Client's interests and those of the other party are directly and specifically opposed).

16.5 Ownership of Material and Intellectual Property:

- (a) Any information provided by the Client to the Advisory Consortium and any studies, reports and documentation and reports produced by the Advisory Consortium in performance of the Services and Deliverables set out in this Agreement (hereinafter referred to as the “**Materials**”) shall belong to and remain the property of the Client, when delivered. However, the Advisory Consortium may retain a copy of such documents and software.
- (b) Upon termination of the Agreement for any reason whatsoever, the Advisory Consortium must return to the Client all Materials in its possession which belong to the Client. The Lead Advisor may retain single copies as may be required pursuant to Clause 16.3(b).

16.6 Governing Law and Jurisdiction:

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Islamic Republic of Pakistan and the Courts of Karachi shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

16.7 Waiver:

- (a) No waiver by a Party of any right under the Agreement shall be effective unless reduced to writing and signed by or on behalf of all the Parties.
- (b) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement shall not (i) operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement; (ii) be effective unless it is in writing and executed by a duly authorized representative of such Party; and (iii) affect the validity or enforceability of this Agreement in any manner.
- (c) Neither the failure by either Party to insist on the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

16.8 Term, Termination and Survival:

- (a) The appointment of the Advisory Consortium in terms of this Agreement shall automatically terminate upon completion of the Services as per the Scope of Work under **Schedule A** or upon expiration of a period of twenty four (30) months from the date of signing of this Agreement, whichever comes earlier. During the stated period the Advisory Consortium shall endeavor to facilitate the Client in the timely completion of all services relating to the Assignment.

In case the Assignment is not completed within the agreed time due to a delay on the part of the Client, the timelines specified in **Schedule C** hereto shall stand automatically extended by the period of delay. In the event the Project is not completed within the

agreed time due to delay on the part of the Advisory Consortium, the Lead Advisor shall request the Client for reasonable extensions with necessary justifications from the Advisory Consortium. Upon expiry of the term specified herein, this Agreement may be renewed for further services / projects, upon the mutual consent of the Parties.

Upon termination of this Agreement, other than for a termination of this Agreement by the Client following a breach by the Advisory Consortium of the terms of this Agreement, the Performance Security shall immediately expire and be returned separately to each member of the Advisory Consortium. .

- (b) Other than termination per clause 16.8 (a), either Party may terminate this Agreement by giving forty five (45) days written notice to the other Party if the other Party is in breach of its obligations as contained in this Agreement and such breach is not cured within forty five (45) days following receipt of written notice thereof by the non-breaching Party.
- (c) Termination of this Agreement (a) shall not relieve the Advisory Consortium or the Client of any obligations hereunder which expressly or by implication survives Termination hereof;(b) shall not relieve Client for making payment of the advisory fee and any other amounts due and payable in terms of this Agreement; and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations that have already arisen or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

16.9 Amendments:

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

16.10 Notices:

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth in Clause 9.3 above or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time.

16.11 Severability:

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability

of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

16.12 No Partnership:

- (a) Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.
- (b) It is understood and agreed that each of the Parties hereto is an independent party and that neither Party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither Party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

16.13 Exclusion of Implied Warranties, etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

16.14 No Representations:

No Party may rely on any express, tacit or implied term, representation, promise, warranty or the like which allegedly induced that Party to enter into the Agreement, unless the term, representation, promise, warranty is recorded in the Agreement.

16.15 Costs:

- (a) Each Party shall bear its own legal costs of, and incidental to, the negotiation, drafting and preparation of the Agreement.
- (b) Notwithstanding provisions of liabilities and damages contained in Clause 16.2 any costs, including attorney and own client costs, incurred by a Party, arising out of the breach by either Party of any of the provisions of the Agreement, shall be borne by the Party in breach.

16.16 Counterparts:

This Agreement may be executed in four (4) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

16.17 Force Majeure:

- (a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party e.g. floods, fire, explosion, accidents, either lack of or failure of power, or by reason of war, revolution, civil commotion, act of public enemies, blockades or embargo or any law and order proclamation, regulation, ordinance, demand or requirement of the Government, or any or other cause, similar to those above enumerated, and which makes a Party’s performance of its obligations under the Agreement impossible or so impractical as to be considered impossible under the circumstances.
- (b) The failure of a Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:
 - (i) is not negligent, has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Agreement; and
 - (ii) has informed the other Party as soon as reasonably practicable about the occurrence of such an event.
- (c) Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

16.18 Dispute Resolution:

If at any time the Client wishes to discuss how the Services can be improved or in case of a complaint with respect to the quality of service, the Client is invited to telephone the Key Contact Person of the Lead Advisor (as per Clause 9.3) to call a meeting with the Advisory Consortium.

In the event of any controversy or claim arising out of or relating to this Agreement or the Scope of Work, or a breach thereof, the Parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to the Parties. If the Parties fail to settle the controversy or claim at the expiration of thirty (30) days, the matter will be referred to sole arbitrator to be appointed by the Parties with mutual consent within fifteen (15) days from the date of receipt of a notice of arbitration served by any Party hereto. In case the Parties fail to agree on sole arbitrator within the prescribed period, the matter shall be referred to two (2) arbitrators, one to be appointed by each of the Parties to dispute and to an umpire to be appointed by the arbitrators before entering upon the reference. The sole arbitrator or the two(2) arbitrators and umpire shall proceed to arbitrate in accordance with and subject to the provisions of the Arbitration Act 1940 or any statutory modification or re-enactment thereof for the time being in force.

The Parties agree that:

- (a) all arbitration proceedings will take place in the jurisdiction of the Sindh province;
- (b) except as may be required by law, neither a party nor its representatives may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all Parties.
- (c) the language of the arbitration shall be English;
- (d) it is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within one hundred and twenty (120) days from the date the arbitrator is appointed. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award;
- (e) the decision of such arbitration to award or awards made by such arbitrator(s) and umpire shall be final and binding upon the Parties hereto;
- (f) pending the decision or award, the Parties shall continue to perform their obligations pursuant to the Agreement and Scope of Work; and

this clause shall continue in force notwithstanding the termination of this Agreement or any Statement of Work.

17. General Provisions

17.1 The terms of this Agreement and any attachments or addenda hereto form an integral part of this Agreement. Said attachments are:

Schedule A – Assignment (Scope of Work Schedule)

Schedule B – Assignment Team

Schedule C – Time Plan and Reporting Schedule

Schedule D – Deliverable Schedule

Schedule E – Fee Schedule

17.2 The Parties agree that the Client is the beneficiary, and that all supplemental agreements, disputes and other financial, legal and technical documents pertaining to the performance of this Agreement shall be processed through the Client.

17.3 The Parties agree that credit on all reports, progress reports, interim reports, and other documents produced under this Agreement shall indicate that the work was conducted under funding provided by the Client.

17.4 The Parties shall cooperate and collaborate in the performance of their respective

services in accordance with the RFP document, and in accordance with the Scope of Work outlined under Clause 5. The Advisory Consortium shall perform its undertakings in full conformity with the provisions of this Agreement, and shall, at all time, to the extent possible for each Party, prevent any breach in respect thereof.

- 17.5 The Advisory Consortium agrees that it shall carefully, strictly, and specifically comply with each and every provision of this Agreement that relates to the confidential or proprietary information. Further, the work products, including but not limited to, findings, observations, recommendations, system designs, source and object code(s) and procedures shall be deemed important, confidential and material and in the manner as described in this Agreement.
- 17.6 The Advisory Consortium or any of its employees shall not, at any time, either directly or indirectly, communicate to any other person, firm, corporation, or public entity in any manner whatsoever, any such confidential or proprietary information, data, or documents gathered, prepared, seen, or generated during the Assignment, except with the explicit permission of the Client.
- 17.6 For the purposes of marketing and publicizing or selling services, and/or for the purposes of presentation to other clients or our internal use, the Lead Advisors and their international affiliates and individual members of the Advisory Consortium may disclose that they have performed services for the Client, in which event it may identify Client by name and/or its logo and will indicate only the general nature or category of such services and any details that have properly entered the public domain.
- 17.7 The Client agrees that during the provision of the Services, and for a period of six month thereafter, it will not make any offer of employment to any partner / employee involved in the provision of the Services, without the prior written consent of the respective individual member of the Advisory Consortium, through the Lead Advisor.
- 17.8 No action, regardless of form, arising under or relating to this Assignment, may be brought by either Party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought by a Party even after one (1) year following the date of the last payment due to such Party hereunder.

18. Entire Agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement, and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

19. Exclusivity

This Assignment shall not constitute any exclusivity agreement and as such the individual members of the Advisory Consortium shall have no limitation or bar to engage in any other work relating to third parties during the course of this Assignment.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first above written.

For and on behalf of Client Consortium

For and on behalf of Advisory

Signature

**Transport and Mass Transit Department,
Government of Sindh**

Signature

(As Lead/ Financial Advisor)

Signature

(As Legal Advisor)

In the Presence of:

Witness:

1. Name:
CNIC:

2. Name:
CNIC:

TERMS OF REFERENCE

At any stage during the Transaction Advisory services to be provided given below, the Legal Counsel and Financial member of the consortium of the consultants shall furnish legal and financial opinion, respectively as and when required by the Procuring Agency on any matter / document / agreement with regards to the Project.

The internal co-ordination of the advisory consortium of Transaction Advisors is sole responsibility of the Lead Consortium member.

a) **Phase 1: Assessment Reports** shall include but not limited to the following components:

Financial Assessment

- i. With the support of technical data, develop a comprehensive and detailed financial model of the Project covering the projected revenues, construction/development and Operations & Maintenance cost estimates over the life of the Project and other important parameters;
- ii. Development of forecasted inspection revenue stream. Incorporation of other sources of revenue share of the government including license fee, penalties on late inspection and breach of Key Performance Indicators (KPIs), etc.
- iii. Develop different transaction structures over the term of the project to optimize obligation of the government and recommend most optimal structure. Preparation of contingent liability risk assessment to make annual budgetary provisions.
- iv. Prepare cost estimates for allied facilities and ancillary works based on the stations and equipment designs
- v. Value for Money (VfM) analysis based on public sector comparator model;
- vi. Identify the project risks and develop risk matrix.

Legal Assessment

- i. Thorough study of current regulatory and legal framework relevant to motor vehicle inspection in Sindh inter alia Motor Vehicles Ordinance 1965 and Motor Vehicles Rules 1969.
- ii. Any required amendments in the regulatory and legal framework that may be needed shall be identified for effective enforcement of the Project
- iii. In lieu of (a) and (b) above, the draft of required amendments in the regulatory and legal framework shall be provided

Note: The Transaction Advisor would be responsible to undertake all related surveys needed for preparation of financial and legal assessment reports.

- b) **Phase 2: Bid Evaluation Report:** shall include but not limited to the following components:
 - i. Assist the Client in preparing and issuing the addendum to the Request for Proposal document issued the prequalified bidders of the Project document, if required;
 - ii. Assist the Client to evaluate the bids including technical and financial proposals.
 - iii. Assist the Client in preparation of Bid Evaluation Report.
- c) **Signing of Concession Agreement:** shall include but not limited to the following components:
 - i Assist in final negotiation with preferred party;
 - ii Assist in execution of all the PPP agreement between GOS, Special Purpose Vehicle
 - iii Company (SPV), the successful bidder;
- d) **Date of Commencement:** shall include but not limited to the following components:
 - i Drafting and execution of Land License Agreements;
 - ii Drafting and execution of Direct Agreement
 - iii Drafting and execution of any other agreements needed for achieving the commercial operations date of the Project

**SCHEDULE A
Assignment**

To be filled by the Advisory Consortium.

Selected Advisory Consortium is to develop a table showing phase-wise different tasks of the Assignment and role of Financial Consultant and Legal Consultant in every task. Role of each consultant should be categorized as “Lead”, “Coordination” or “Support”

DRAFT

SCHEDULE B
Assignment Team

To be filled by Advisory Consortium

Disclaimer: The above listed professionals may enlist/ engage other professionals and staff from within the Consortium or outside. The name and credentials of such persons shall be made available to the Client as soon as reasonably practicable so that appropriate access authorization of such personnel is arranged.

The engagement will be carried out under the overall supervision of the Lead Advisor, who will be the Engagement Partner for the project.

The principal Client contact for this engagement will be the Lead Advisor, who has been given overall responsibility for the performance of the obligations under this Agreement and coordinating with individual members of the Advisory Consortium in the performance of their services.

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SCHEDULE C
Time Plan and Reporting Schedule

To be filled by Advisory Consortium

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SCHEDULE D
Deliverable Schedule

To be filled by Advisory Consortium

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SCHEDULE E
Fee Schedule

To be filled by the Advisory Consortium according to Fee and milestones based payments provided in the RFP.

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