**AGREEMENT BETWEEN TWO COMPANIES TO AMALGAMATE BY SALE OF ONE TO THE OTHER**



**Small and Medium Enterprises Development Authority Ministry of Industries & Production**

**Government of Pakistan**

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 **JUNE, 2018**

**INTRODUCTION OF SMEDA**

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA’s areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA’s activities can now be classified into the three following broad areas:

1. Creating a Conducive Environment; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas.
2. Cluster/Sector Development; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers.
3. Enhancing Access to Business Development Services; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewelry, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA’s areas of operation.

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**Agreement between two companies to amalgamate by sale of one to the other**

This agreement is made this\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ between

M/S. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the Companies Act, 2017 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the ‘Transferor’ which expression shall unless repugnant to the context or contrary to the meaning thereof include its successor or assigns) of the one part.

**AND**

M/S. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the Companies Act, 2017 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the ‘Transferee’ which expression shall unless repugnant to the context or contrary to the meaning thereof include its successor or assigns) of the other part.

Both the parties shall for the purpose of this agreement be referred hereinafter collectively as parties and individually as party.

**WHEREAS** the Transferor is a company incorporated with the Securities & Exchange Commission of Pakistan (the Commission) in the year\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with a capital of Rs.\_\_\_\_\_\_\_\_\_\_\_ divided into \_\_\_\_\_\_\_\_\_\_\_\_\_ thousand ordinary shares of Rs. 10 each and in accordance with its memorandum of association is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_.

**AND WHEREAS** the Transferee is an entity incorporated with the Commission in the year\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with a capital of Rs.\_\_\_\_\_\_\_\_\_\_\_ divided into \_\_\_\_\_\_\_\_\_\_\_\_\_ thousand ordinary shares of Rs. 10 each and in accordance with its memorandum of association is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_.

**AND WHEREAS** memorandum of association of the Transferor do authorize it to sell, transfer and or dispose off the whole or any part of the business and undertaking of the Transferor and to accept in consideration cash, shares, debentures, debenture stocks or other securities of any other company and to distribute among the members in specie or otherwise any surplus assets remaining in the winding up of the Transferor.

**AND WHEREAS** the memorandum of association of the Transferee do provide that the company may acquire by purchase or otherwise the business undertaking etc. in part or whole of other company or companies having any of the purposes or objects similar or same to those of the Transferee company.

**AND WHEREAS** the articles of association of the Transferee provide that the company is empowered to increase its capital.

**IN WITNESS WHEREOF** the parties hereby agree as follows:

1. **Sale of Undertaking**

The Transferor hereby sells and the Transferee hereby purchases the whole of the business undertaking, assets and property of the vendors, benefits of all securities including cheques and bill of exchange given to the company from time to time in consideration or payment thereof, benefits of subsisting contracts, and debts due to the Transferor relating to the business of the Transferor as a running concern from the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The said purchase shall not include uncalled capital of the Transferor. Up to the aforesaid purchase the Transferor shall continue to carry on the business for the benefit of the Transferee.

1. **Transfer of Debts and Liabilities**

From the aforesaid purchase the Transferee shall be liable for all the debts and liabilities of the Transferor and shall be liable to perform all the engagements. From such transfer of debts and liabilities the Transferee shall defend all actions and proceedings against the Transferor and shall also be indemnified in respect of such proceedings and actions.

1. **Consideration**

In consideration for the aforesaid purchase the Transferee shall pay unto the Transferor an amount of Rs.\_\_\_\_\_\_\_\_\_\_\_\_\_ and out of the aforesaid consideration Rs.\_\_\_\_\_\_\_\_\_\_\_ shall be paid in cash in the form of a pay order and the balance of Rs.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be paid to the vendor by allotment of \_\_\_\_\_\_\_\_\_\_\_ shares of Rs.\_\_\_\_ each in the capital of the company credited as fully paid up shares. For the allotment of the aforesaid shares the Transferor has conveyed its acceptance vide its letter dated\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Issuance of Shares**

The Transferee shall create and issue \_\_\_\_\_\_\_\_\_ shares of Rs. \_\_\_\_\_\_\_\_ each to increase capital as aforesaid and for the same purpose, the Transferee shall pass a resolution in accordance with the articles of association of the company and in accordance with the provisions of the Companies Act, 2017.

1. **Taxes**

That the Transferee shall make payment of all the duties and taxes that may be applicable on completion of the above transaction.

1. **Handing over of documents**

That the Transferor shall handover all the title deeds, lease deeds, abstracts and other relevant documents pertaining to movable and immovable properties of the Transferor unto the Transferee within 30 days from the date of the execution of this agreement and the Transferee shall accept the same in all respects.

1. **Covenant by the Transferor**

That the Transferor hereby unequivocally undertakes and presents that it has all the powers vested in it by its Board of Directors to enter into this agreement with the Transferee.

1. **Approval of the Commission**

The Transferor and Transferee shall in compliance to the provisions contained in the Companies Act, 2017 get the scheme of amalgamation inter-se them approved from the Securities and Exchange Commission of Pakistan and shall do all and every act required by the Commission and submit any document that may be required by the Commission in respect of approval of scheme of amalgamation between the parties.

1. **Effectiveness of the Agreement**

That this agreement shall take into effect only if the scheme of amalgamation between the Transferor and the Transferee has been approved by the Commission.

1. **Governing Law And Exclusive Jurisdiction**

This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of Pakistan and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

1. **Resolution Of Disputes**

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

1. **Force Majeure**

Force Majeure shall mean any event that is beyond the reasonable control of a Party, or the effects of which adversely affect the performance by such Party of its obligations under this Agreement, including, but not limited to, acts of God, sabotage, insurrection, terrorism, riots, hostilities or war (whether declared or not), acts of the public enemy, civil disturbances, any kind of fire, explosion, flood or accidental damage, epidemics, landslides, washouts, lightening, storms, earthquakes, lockouts, blockades, shortage of labor or material, major equipment failure, or other causes beyond the control of the Party affected.

Notwithstanding anything contained hereinabove, neither Party shall be liable to the other if it is unable to perform any of its obligations under this Agreement due to the occurrence of Force Majeure.

The Party affected by the Force Majeure event shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded or made impossible by the events of Force Majeure.

Each Party shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Party for the purpose of finding a mutually acceptable solution to the Force Majeure event.

1. **Indemnification**

If either party is found to be in breach of this Agreement, the offending Party will indemnify the offended Party for any losses accrued as a result of the breach. Lost profits incurred as a result of any such breach shall be repaid by the offending Party to the offended Party.

1. **Amendments**

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

1. **Severability**

If a court of law finds any provision of this Agreement invalid or unenforceable at law for any reason, the remainder of this Agreement shall not be affected, and shall be interpreted so as best to effect the intent of the Parties.

1. **Entire Agreement**

This Agreement contains the entire understanding and agreement between the Parties hereto with respect to its subject matter, and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

1. **Non-waiver**

The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals the day, month and year mentioned hereinabove.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of the Transferor For and on behalf of the Transferee

**WITNESS NO. 1 WITNESS NO. 2**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_ Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_