

# Commercial Contract

## HIRING AGENCY CONTRACT



*Empowered lives.  
Resilient nations.*



## Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

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**January 2013**

## **Hiring Agency Contract**

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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The Legal Services (LS) department is a part of Business & Sector Development Services Division of the Small Medium Enterprises Development Authority and plays a key role in providing an overall facilitation and support to the small businesses. The LS believes that information dissemination among the small businesses on the existing legal & regulatory environment and business to business and business to client contracting is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate small businesses, the LS, under the Pro-GOLE (Right to do business) project, a joint SMEDA-UNDP initiative for supporting the small businesses, has developed user-friendly contract templates.

### **Pro-GOLE, (Right to do Business)**

The UNDP has partnered with the Small and Medium Enterprises Development Authority to initiate and execute the Pillar 4 (Right to do business) component of the UNDP PRO-GOLE project which seeks to enhance the legal awareness and mobility of marginalized/ informal businesses. Under the project legal services outreach shall be extended to small businesses including home based enterprises, small shopkeepers, growers, women entrepreneurs, hawking vendors etc. In addition, small business shall be mobilized to access legal services.

### **The Need for Commercial Contracts Templates**

In an increasingly complex and competitive industry, it is vital that suppliers and purchasers are fully protected against legal and commercial risks. To counter such risks, a viable solution; available as- of the shelf commercial contract templates- will provide the users with first class ready to use support. With obligations properly set out and liabilities accurately defined, the users will be in a far better position to look after their rights and interests and move forward from their marginalized positions to being active players of the economy. The Legal Service Providers can equally take benefit of these templates for their professional and business development.

### **Disclaimer**

The information contained in this template is meant to facilitate the businesses in documenting transactions with reference to service matters. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressly disclaim any and all liabilities for any and all losses/shortfalls caused by or motivated by recommendations from the information contained within this document. Although SMEDA's ambition is to provide accurate and reliable information; yet, the document is not an alternative to expert legal advice and should ideally be used in conjunction with the same. Any person using this document and or benefiting from the information contained herein shall do so at his/her own risk and costs and be deemed to have accepted this disclaimer.

All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

## **C1. HIRING AGENCY CONTRACT**

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**THIS HIRING AGENCY CONTRACT** (hereinafter referred to as the "Agreement") is made at [insert place] on this \_\_\_\_ (insert date) day of \_\_\_\_\_ (insert month), 20\_\_ (insert year)

### BY AND BETWEEN:

M/s [insert Name], a public/private Business incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

**OR**

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

**OR**

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

(hereinafter referred to as the "Business", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

**AND**

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number];

**OR**

M/s [insert Name], a public/private Business incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

**OR**

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

**OR**

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

(hereinafter referred to as the "Provider", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

(The Business and the Provider are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

**WHEREAS** the Provider is in the business of identifying and assisting in the recruiting of candidates with certain skill sets and abilities.

**AND WHEREAS** the Business desires to engage the Provider on a non-exclusive basis to conduct searches from time-to-time in accordance with the terms of this Agreement.

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**NOW THEREFORE** in consideration of the mutual promises contained herein, the Parties agree as follows:

## 1. SERVICES

- (1) From time to time, the Business may provide a written direction to the Provider requesting non-exclusive assistance in the recruitment for a specified position. In its request, the Business shall provide information regarding the specified position, including job title or designation and the relevant selection criteria.
- (2) Upon receipt of a written request from the Business as referenced in Clause 1 (1), the Provider shall inform the Business of any additional information required by the Provider in order to commence its services. The Provider shall thereafter promptly commence and conduct a recruitment search for a qualified candidate(s) for the designated job opening(s).
- (3) The Provider shall undertake a screening and selection of candidates based on the Business' selection criteria, and unless otherwise expressly agreed, the Business' designated Human Resources representative will:
  - i) confirm that selected candidates have a basic understanding of the position,
  - ii) confirm selected candidate's qualifications for the position,
  - iii) undertake a preliminary interview of each candidate to be presented to the Business,
  - iv) obtain relevant documentation for each candidate to be presented to the Business, and
  - v) present selected candidates to the Business's designated Human Resources representative.
- (4) A candidate shall be considered referred to the Business under this Agreement upon presentation of the candidate's resume to a member of the Business' Human Resources staff by the Provider. The Business shall provide written confirmation to Provider if the candidate is already in the Business' database.
- (5) The Business may, in its sole discretion, but without any obligation to do so, offer employment to any candidate presented by the Provider. For greater certainty, the Business has not undertaken to make any minimum number of hires of candidates presented by the Provider.
- (6) The Provider will (i) render its services with the degree of skill, care and diligence normally provided for in work of a similar nature, and (ii) will comply with and observe all applicable laws and regulations in the performance of the Services.
- (7) The Provider shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, except as explicitly stated herein. The Provider shall not commit, execute, bind, or contractually obligate anything to any person on behalf of the Business without the prior written consent of the Business.
- (8) The Provider agrees that all documentation and other data conceived, originated, prepared or developed by the Provider in the course of performing its Services

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hereunder shall become or remain the sole property of the Business.

## 2. FEES AND EXPENSES

- (1) Where a candidate is referred to the Business by the Provider in accordance with the terms of this Agreement, and the Business hires that candidate within one (1) year following the date of the initial referral, then the Business will pay the Provider a [insert percentage] percentage of the candidate's base annual salary as a referral fee (hereinafter referred to as the "Referral Fee").
- (2) The Payment of any fees due hereunder shall be made to the Provider within [insert number] days following the receipt by the Business of an appropriately detailed invoice from the Provider, or [insert number] days after the commencement of the relevant candidate's employment with the Business, whichever is later.
- (3) In the event that a candidate hired by the Business pursuant to this Agreement resigns or is terminated within [insert number] days following commencement of employment, then the Provider shall refund the Referral Fee associated with such candidate on the following basis:
  - (4) If the date of resignation or termination ("End Date") is between one (1) and thirty (30) days following the candidate's first day of employment ("Start Date"), then the Provider shall refund one hundred per cent (100%) of the relevant fee (or if the fee has not yet been paid, the Provider will not be entitled to receive a fee);
  - (5) If the End Date is between thirty-one (31) and sixty (60) days following the candidate's Start Date, then the Provider shall refund two-thirds (2/3) of the relevant fee; and
  - (6) If the End Date is between sixty-one (61) and ninety (90) days following the candidate's Start Date, then the Provider shall refund one-third (1/3) of the relevant fee.
- (7) The Business is authorized to offset any amount due from the Provider pursuant to this Clause 2, against any amounts otherwise payable by the Business to the Provider. In addition, at the Business' option exercised in writing, the Provider may retain the relevant fee to be applied against a search for a replacement candidate.
- (8) For greater certainty, where the Business advises the Provider pursuant to Section 1.4 above that it is already aware of a candidate referred to it by the Provider, then no fee will be due with respect to such candidate.

## 3. CONFIDENTIALITY

The Provider acknowledges and agrees that all tangible and intangible information, including but not limited to information regarding personnel, compensation, benefit structure, management and organizational structure, corporate strategies, clients, projects, products, markets, pricing and processes, revealed, obtained, or developed in the course of or in connection with the performance of its obligations

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under this Agreement shall be considered as confidential and proprietary information to the Business and shall not be disclosed to any third party, without prior written consent of the Business, and shall not be used for any purpose other than to fulfill the requirements of this Agreement. The foregoing restriction shall not apply to information which is in the public domain through no fault of the Provider or to information which is required to be disclosed under the law. The Provider also acknowledges that the name of the Business is trademarked and the Provider shall not use such tradename in any sales or marketing publication or advertisement without the prior written consent of the Business.

### **4. NON-SOLICITATION**

During the term of this Agreement and for a period of [insert number] year after termination, the Provider shall not, directly or indirectly, on its own behalf or on behalf of others, solicit, employ, recruit for employment or offer contracting opportunities to any employee of the Business or any individual employed by the Business within the preceding [insert number] months.

### **5. NON-EXCLUSIVITY**

The Provider acknowledges that this Agreement is non-exclusive and that the Business retains the right to use other employment agencies and/or to solicit candidates directly on the Business's behalf.

### **6. TERM AND TERMINATION**

- (1) This Agreement shall remain in effect for [insert number] years following the date of this Agreement, subject to renewal thereafter with the mutual agreement of the Parties.
- (2) This Agreement may be terminated at any time for any reason by either Party by providing [insert number] days prior written notice of termination.
- (3) The terms contained in Clauses 3, 4 and 10 of this Agreement shall survive the termination of this Agreement. In addition, any obligations with respect to payment of fees to the Provider which were in effect prior to termination shall survive termination.
- (4) Upon termination or expiry of this Agreement, and at the Business's discretion, the Provider shall return or destroy all proprietary material of the Business and material owned by the Business that is in the care, custody or control of the Provider.

### **7. 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.

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### **8. 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].

### **9. FORCE MAJEURE**

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

### **10. INDEMNIFICATION**

The Provider agrees that it shall indemnify, hold harmless and defend the Business from and against any claims, demands, damages, costs, causes of action, losses, expenses, or liabilities, judgments, suits, actions or proceedings (including but not limited to the cost of litigation) arising out of the breach of this Agreement or otherwise negligence or willful misconduct by its partners, agents or employees while engaged in activities relating to this Agreement or by reason of non-compliance with laws, intellectual property infringement, and injury to employees and damage to property of the Business.

### **11. AMENDMENTS**

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

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## 12. NONWAIVER

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.

## 13. NON-ASSIGNMENT

In no circumstances whatsoever can the Provider assign the benefit of this Agreement to any third person or to delegate to a third person the duties to be performed under this Agreement.

## 14. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement shall not be terminated by the merger or consolidation of the Business into or with any other entity.

**IN WITNESS WHEREOF**, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

\_\_\_\_\_  
For and on behalf of  
**The Business**

\_\_\_\_\_  
For and on behalf of  
**The Provider**

### WITNESS NO. 1

### WITNESS NO. 2

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

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

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

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

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

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

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

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



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