

Commercial Contract

AGREEMENT FOR HIRING FINANCIAL ADVISORY SERVICES



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Agreement for Hiring Financial Advisory Services

Pro-Gole (Right to do Business)

Legal Services, B&SDS

LEGAL SERVICES, SMEDA

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.

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C5. AGREEMENT FOR HIRING FINANCIAL ADVISORY SERVICES

THIS AGREEMENT FOR HIRING FINANCIAL ADVISORY SERVICES (hereinafter referred to as the "Agreement") is entered into at [insert place] on this ____ (insert date) day of _____ (insert month), 20__,

BY AND BETWEEN:

M/s [insert Name], a public/private company 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 company 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 "Financial Advisor", which expression shall, wherever the context so provides, include its heirs, assigns, nominees, agents and successors-in-interest).

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

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WHEREAS the Business is engaged in the business of [insert description of business].

AND WHEREAS the Financial Advisor provides to its clients the financial advisory services (hereinafter referred to as the "Services", and as more properly described in Clause 2 of this Agreement).

AND WHEREAS the Financial Advisor has offered its Services to the Business, and the Business has accepted the Services of the Financial Advisor.

AND WHEREAS the Parties now intend to put in writing, through this Agreement, the terms and conditions for the engagement of the Financial Advisor with the Business for the provision of the Services.

NOW THEREFORE, the Parties have entered into this Agreement on the following Terms and Conditions:

1. APPOINTMENT

The Business hereby appoints the Financial Advisor for the provision of the Financial Advisory Services to the Business, and such other services which are incidental to this appointment and performance of the Services under this Agreement.

2. TERM OF AGREEMENT

The appointment of the Financial Advisor under this Agreement shall commence on [insert date] and shall continue for a period of [insert number] months, till [insert date], unless terminated by either Party in accordance with Clause 9 of this Agreement.

Upon expiry, the Agreement may be renewed for another such term and upon such terms and conditions as agreed upon between the Parties.

3. SCOPE AND LOCATION OF SERVICES

(1) The Services shall be provided at the location of the Business and such other places as may be reasonably required by the Business.

(2) "Services" under this Agreement shall mean and include the following:

- i. Assistance in articulating the goals, objectives and values of the Business.
- ii. Preparation of annual Net Worth Statement.
- iii. Preparation of a Statement of Cash Flow.
- iv. Development of an Investment Policy Statement in line with the goals of the Business.
- v. Implementation of investment recommendations as outlined in the Investment Policy Statement.
- vi. Providing portfolio management services.

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- vii. Reviewing the Business' tax returns and providing tax planning advice.
 - viii. Providing insurance advice, as needed, and assistance in implementing recommendations.
- (3) The Financial Advisor shall also provide such services to the Business as may be reasonably required by the Business, and which are incidental to the performance of the Services under this Agreement.

4. REMUNERATION

- (1) The Financial Advisor shall be entitled to receive an amount of Rs. _____/- (Rupees _____) (insert amount) per month from the Business as remuneration (hereinafter referred to as the "Remuneration Amount") for the provision of Services under this Agreement.
- (2) This Remuneration Amount shall cover all fees and expenses incurred by the Financial Advisor, and the Business shall not be liable to pay any other expenses incurred by the Financial Advisor during the provision of Services under this Agreement.
- (3) The Remuneration shall be payable by the Business to the Financial Advisor on the last day of every month, in arrears.

5. RESPONSIBILITIES OF THE BUSINESS

- (1) The Business agrees to provide information regarding income, investments, and income tax and other pertinent matters as requested by the Financial Advisor from time to time. The Business also agrees to discuss the current and projected future needs and goals candidly with the Financial Advisor and to keep the Financial Advisor informed of any changes in the Business' situation, needs and goals.
- (2) Although permitted to do so, the Financial Advisor shall not be required to verify any information obtained from the Business, the Business' attorney, accountant or other advisors, and is expressly authorized to assume the accuracy of information received from the Business.

6. IMPLEMENTATION

- (1) The Business is free to obtain legal, accounting, and insurance services from any professional source to supplement and to implement the recommendations of the Financial Advisor.
- (2) The Financial Advisor shall cooperate with any attorney, insurance agent and accountant chosen by the Business with regard to implementation of any recommendation.
- (3) The Business shall retain absolute discretion over all investment and implementation decisions.
- (4) The Business shall execute a written Limited Power of Attorney with the

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fiduciary having custody of the Business' assets. Under the Limited Power of Attorney, the Advisor has no access to Client assets and is not able to withdraw funds from the Business' account. The Limited Power of Attorney is primarily executed for the convenience of the Business so that the Business does not have to execute each investment trade itself.

7. BASIS OF ADVICE

- (1)The Financial Advisor obtains information from a wide variety of publicly available sources and has no sources of inside or private information.
- (2)The recommendations developed by Financial Advisor are based upon the professional judgment of the Financial Advisor.
- (3)The Financial Advisor cannot and does not guarantee the results of its recommendations.
- (4)The Business is solely responsible for electing to follow or not follow any information or recommendation given by the Financial Advisor.

8. LEGAL AND ACCOUNTING SERVICES

- (1)It is understood and agreed that the Financial Advisor is not qualified to and will not render any legal advice nor prepare any legal documents for the implementation of Business' financial plan.
- (2)The Client agrees that its attorney/legal advisor shall be solely responsible for the rendering and/or preparation of the following:
 - i. all legal advice;
 - ii. all legal opinions and determinations; and
 - iii. all legal documents.

9. INDEPENDENT CONTRACTOR

The Financial Advisor is an independent contractor and nothing herein contained shall constitute or designate the Financial Advisor or any of its employees or agents as employees or agents of the Business.

10. TERMINATION

- (1)The Business shall have the right, at any time, to terminate the Financial Advisor's Services under this Agreement upon [insert number] days prior written notice to the Financial Advisor. Such termination shall not, however, relieve the Business of the obligation to pay for all Services rendered to the Business prior to the date of such termination.

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(2) The Financial Advisor may terminate this Agreement upon written notice to the Business if, among other things, the Business fails to honor the terms of the Agreement, fails to cooperate or follow the Financial Advisor's advice on material matters, or any fact or circumstance that would, in the Financial Advisor's view, render the Financial Advisor's continuing service to the Business under the Agreement unlawful or unethical. Upon termination, the Financial Advisor shall be entitled to be paid for all services rendered to the Business up till the date of termination.

11. CONFIDENTIALITY

- (1) The Financial Advisor shall take all steps necessary to ensure the secret and confidential nature of all information he/she may acquire under the provisions of this Agreement.
- (2) The Financial Advisor shall make available his/her findings and report only and exclusively to the Business.

12. 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.

13. 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.

14. SETTLEMENT OF DISPUTE

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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].

15. ASSIGNMENT

Neither party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other party.

16. MISCELLANEOUS

(1) This Agreement shall be applicable only to financial advice contained in the financial analysis, investment recommendation or plan individually prepared by the Financial Advisor for the Business and shall not relate to any advice given by any person or persons not specifically designated by the Financial Advisor, in writing, to perform such Services.

(2) The advice and recommendations given by the Financial Advisor to the Business under this Agreement shall be strictly for the Business' benefit, and no other persons shall be entitled to rely on any such information or advice.

(3) The Financial Advisor is not responsible for the actions, omissions or insolvency of any agent, broker or independent contractor that is recommended to perform any action for the Business for the implementation of any advice rendered by the Financial Advisor.

(4) Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective Parties.

(5) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior understanding or agreements, oral or written.

(6) This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.

(7) No provision hereof or breach of any provision may be waived except

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by a written waiver, signed by the waiving Party. No waiver of any right under or breach of this Agreement shall be construed to be a waiver of any other right or breach under the Agreement.

(8) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in Pakistan for the time being shall be ineffective only to the extent of such prohibition or lack of enforceability, and shall not invalidate the remaining provisions hereof.

(9) The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to the Agreement, shall be governed by the laws of Pakistan.

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 Financial Advisor**

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____