

Commercial Contract

ARCHITECTURAL SERVICES AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 for architectural services with reference to business process outsourcing. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressively 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

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information contained herein shall do so at his/her own risk and costs and be deemed to have accepted this disclaimer.

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

19. ARCHITECTURAL SERVICES AGREEMENT

THIS ARCHITECTURAL SERVICES AGREEMENT (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 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 "Client", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

AND

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];

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

(The Client and the Consultant shall hereinafter collectively be referred to as the "Parties" and individually as the "Party")

WHEREAS the Client seeks certain professional services, as defined in Schedule A (hereinafter referred to as the "Services") with respect to the planning, architectural and engineering designing and supervision of all the buildings, infrastructure works and detail construction for its [insert description of the building] located at [insert address] (hereinafter referred to as the "Project").

AND WHEREAS the Consultant has represented to the Client that it possesses the necessary expertise, skills, capabilities, equipment, finance, organization and personnel to carry out and provide the Services with respect to the Project.

AND WHEREAS in reliance on the aforementioned representation of the Consultant, the Client has agreed to accept the Services from the Consultant, on certain terms and conditions, which the Parties are desirous of reducing into writing.

NOW THEREFORE in consideration of the mutual covenants and conditions contained herein, the Parties do hereby mutually agree as follows:

1. ENGAGEMENT OF CONSULTANT

- (1) The Client, subject to the terms and conditions of this Agreement, hereby appoints the Consultant to provide the Services for the Project and the same is duly accepted by the Consultant.
- (2) The Parties hereby agree that the satisfactory completion of the Project as a whole is of the essence of this Agreement.

2. RESPONSIBILITIES OF THE CONSULTANT

- (1) The Consultant shall prepare: (1) preliminary drawings, (2) a general description of materials and types of construction, and (3) an overall estimate of the cost of construction (all of the foregoing hereinafter collectively called the "Preliminary Documents"), and not later than [insert number] days after the date of execution of this Agreement, shall submit them to the Client for approval. Any changes in the Preliminary Documents required as a condition of approval shall be promptly incorporated by the Client.
- (2) After receipt of notice of approval of the Preliminary Documents from the Client, the Consultant shall proceed with the preparation of:

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- i. Detailed plans showing the complete design of the Project including, but not limited to, architectural, structural, electrical, mechanical, and site development features.
 - ii. Complete and detailed specifications describing the design requirements of the Project, including all matters referred to in Clause 2 (1) above, and any materials to be incorporated therein.
- (3) Following the acceptance of the detailed plan, the Consultant shall begin construction work at the Site in accordance with the Scope of Services as detailed in Schedule A of this Agreement.

3. ALTERATIONS OR MODIFICATIONS TO DESIGNS

- (1) If any alterations or modifications have to be carried out by the Consultant, after approval of the Client at any phase of the work, and these are not due to any earlier omission or negligence by the Consultant, then additional payment for any such subsequent re-planning, redesigning and reproduction of documents shall be computed on cost basis and shall be paid to the Consultant.
- (2) Any supplementary / revised drawings issued by the Consultant to rectify error / mistake in the original drawing will not be paid for by the Client.
- (3) Any drawing issued in the light of changes required / instructed by the Client to add or to delete certain features / details / works shall be chargeable by the Consultant on mutually agreed rates.

4. CONSULTANT'S FEE, MODE OF PAYMENT

- (1) In consideration of the provision of the Services to the satisfaction of the Client, the Consultant shall be paid a total fee of Rs. _____/- (Rupees _____ only) (insert amount) according to the time schedule, and against the deliverables, given below:
- i. [description of deliverable/phase of work]
[insert amount]
 - ii. [description of deliverable/phase of work]
[insert amount]
 - iii. [description of deliverable/phase of work]
[insert amount]
- (2) All payments due to the Consultant shall be paid by the Client within a period of [insert number] days after the submission of invoice by the Consultant. The Consultant shall be entitled to stop work for the next stage of Project in case the Consultant's remunerations are not paid for the previous stage within a period of [insert number] days after submission of invoice. The time period of performance of Services by the Consultant on subsequent stage(s) shall be considered as extended equivalent to the number of days that the Consultant has ceased to work upon the Client's default in making payments.

5. TIME SCHEDULE

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- (1) The time schedule for the provision of the Services by the Consultant for each phase indicated in Clause 2 in relation to the Project shall be as per Schedule B (hereinafter referred to as the "Time Schedule"), to which the Consultant hereby strictly agrees to comply with.
- (2) If the scope of Consultant's Services is increased by the Client, then additional time would be allowed to the Consultant as mutually agreed upon between the Parties. The time taken by the Client in arriving at and communicating its decision, approvals including approvals from other agencies shall, where not already specified and agreed, be in addition to the Time Schedule.
- (3) The time period shall be counted from the date of release of first payment to the Consultant or signing of this Agreement, whichever is later (hereinafter referred to as the "Effective Date").

6. DISPUTE RESOLUTION

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 [place].

7. 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 [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.

8. TERMINATION

- (1) The Client may, after paying in full all costs and fees due to the Consultant for Services rendered and deliverables delivered to that point in time when notice is served, terminate this Agreement in whole by giving [insert number] days written

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notice of such intent to the Consultant. Following the receipt of notice of termination, the Consultant, except if the notice may otherwise provide, shall:

- i. Terminate performance of work in process under the Agreement on the date and to extent specified in the notice of termination.
 - ii. Place no further orders and incur no further costs of goods or services, except as necessary to complete performance of any portion of the work under the Agreement not terminated by said notice.
 - iii. Terminate all outstanding orders, contracts and sub-contracts, to the extent that they relate to the performance of work terminated by the notice of termination.
 - iv. Transfer title and deliver to the Client all complete or partially completed plans, studies, reports information or other property which, if the contract had been completed, the Consultant would have been required to deliver to the Client.
- (2) This Agreement may be terminated, without cause, by the Client subject to [insert number] days written notice.
- (3) In case of non-compliance with any of the terms of the Agreement by the Client, the Consultant shall serve a notice to the Client of its intention to terminate the Agreement if compliance of the said terms is not made within [insert number] days. Upon the failure of the Client to make good the breach of the subject term, the Consultant may terminate the Agreement with immediate effect.
- (4) Should the Consultant abandon its obligations under this Agreement without any just cause, the Client shall be refunded any portion of the fees already paid to the Consultant as does not fairly represent remunerations for services performed prior to such abandonment and any unused portion of the funds placed at the disposal of the Consultant by the Client.

9. INDEMNIFICATION

The Consultant agrees that it shall indemnify, hold harmless and defend the Client 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, infringement of intellectual property rights, or injury to employees and damage to property of the Client or the Consultant, unless a loss or claim is due to the negligence or willful misconduct of the Client.

10. 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 [insert place] and the

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courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

11. SETTLEMENT OF DISPUTE

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 [place].

12. TERM OF AGREEMENT

This Agreement is valid for a period of [insert number] years from the Effective Date, and may be renewed or amended by mutual consent of the Parties.

13. AMENDMENTS

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

15. WAIVER

(1) Failure of either Party to insist upon the strict and punctual compliance with any provision herein shall not constitute a waiver of the right to require such performance, nor shall a waiver in one case constitute a waiver with respect to a later breach whether of similar nature or otherwise.

(2) Nothing in this Agreement shall prevent a Party from enforcing its rights by such remedies as may be available in addition to termination. N

16. SEVERABILITY

In the event that any provision in this Agreement should under applicable law be held illegal or void, the Parties shall make every effort to replace the ineffective provision with a new provision which has the same effect – or as approximate effect as possible – as the said provision. If the Parties cannot agree upon such a new provision, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

17. ASSIGNMENT

Except with prior written approval of the other party, neither of the Parties may assign their rights and obligations under this Agreement. Any assignment in violation of this Agreement shall be void and without legal effect.

18. ENTIRE AGREEMENT

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This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any oral or written representations, negotiations, or other communications of every kind heretofore made between the parties relating to the Services envisaged in 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 Client**

**For and on behalf of
The Consultant**

WITNESS NO. 1

Signature:

Name:

Designation:

Date:

WITNESS NO. 2

Signature:

Name:

Designation:

Date:

Schedule A **Scope of Services**

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Schedule B **Time Schedule**