

Commercial Contract

HIRING AGENCY 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 with reference to business process outsourcing. 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.

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

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HIRING AGENCY AGREEMENT

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 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 "Agency", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

WHEREAS the Business desires to engage the Agency on a non-exclusive basis to provide professional or skilled labor in the general fields of [insert general fields wherein the labor is required] (hereinafter referred to as the "Services/Products"), and more particularly described in Clause 2 of this Agreement.

AND WHEREAS the Agency is ready, willing, and able to provide such Services as may

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be required by the Business.

NOW THEREFORE the Parties have entered into this Agreement of the following terms and conditions:

1. APPOINTMENT

The Business hereby appoints the Agency for providing the Services under this Agreement, as enumerated in Clause 2 below, for a period of [insert number] years, from [insert date] to [insert date], unless the Agreement is terminated earlier by either of the Parties in accordance with the terms and conditions of this Agreement.

2. SERVICES

- (1) The Agency understands and agrees that Services to be provided to the Business pursuant to this Agreement shall be so provided on a day-to-day, as-needed, basis and that the Business in its sole discretion shall determine its need, if any, for Services, or the continuation of Services pursuant to this Agreement.
- (2) The Agency agrees to provide Services upon the written request of the Business, and further agrees that the cost of such Services shall not exceed the limitation of cost set forth by the Business' at the time of its request for such Services to the Agency.
- (3) When requesting the Services, the Business shall specify the required:
 - i. applicable hourly or daily price for each specified labor classification;
 - ii. the maximum allowed cost for each labor classification;
 - iii. the duration of services applicable to the request, including beginning date(s) and, when applicable, ending date(s).
- (4) Labor classifications applicable to the Services shall be limited to those classifications set forth by Exhibit A, which Exhibit may be revised from time to time by mutual written agreement between the Parties.
- (5) The Business shall have sole discretion to establish the minimum qualifications necessary for the performance of any Service to be rendered under and pursuant to this Agreement. Further, if at any time and in its sole discretion, the Business determines that the Services performed under and pursuant to this Agreement by any of the persons provided by the Agency are not satisfactory, the Business shall so notify the Agency in writing and the Agency shall immediately withdraw such individual and, at the Business' option, furnish an individual who meets the qualifications required by the Business.

3. COMPENSATION

- (1) For Services provided under this Agreement, the Agency shall be compensated as provided below:
 - i. For labor expended by the Agency in providing the Services, the Agency shall be paid an amount equal to the applicable hourly or daily rate multiplied by the total number of

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hours or days actually worked by the persons provided by the Agency. The hourly or daily rate shall not exceed rates set forth by the Business, at the time of written requests, applicable to the labor classification(s) set forth in Exhibit A.

- ii. Actual expenses of persons provided by the Agency incurred in the providing the Services to the Business shall be reimbursed by the Business to the Agency at actual cost when supported by appropriate receipts.
- (2) Payment for Services provided by the Agency to the Business under this Agreement shall be made within [insert number] days from the date of receipt by the Business of the Agency's invoice.

4. AGENCY-PROVIDED WORKERS

Agency-provided workers who perform Services for the Business under and pursuant to this Agreement shall be bound by the provisions of this Agreement and the Agency shall, at the request of the Business, furnish to the Business satisfactory evidence to that effect.

5. CONFIDENTIALITY

- (1) The Agency agrees that all knowledge and information that the Agency may receive from the Business or employees or consultants of the Business or by virtue of the performance of Services under this Agreement or which may be acquired by the Agency through the Agency-provided workers, relating to inventions, products, processes, machinery, apparatus, prices, discounts, costs, business affairs, future plans, or other technical data (hereinafter referred to as the "Confidential Information") belongs to the Business or to those with whom the Business has contracted regarding such Confidential Information and such Confidential Information shall for all time and for all purposes be held by the Agency in confidence, and solely for the Business's benefit and use, and shall not be used by the Agency, or directly or indirectly disclosed by the Agency to any person whatsoever, excepting to the Business or with the Business's written permission.
- (2) Upon the request of the Business, the Agency shall require that the Agency-supplied workers assigned to provide Services under this Agreement execute a supplementary agreement of confidentiality.

6. INVENTIONS AND COPYRIGHTABLE WORKS

The Agency further agrees that on behalf of the Agency's employees and representatives, and the Agency-supplied workers, the Agency shall promptly communicate and disclose to the Business or to its nominee, all computer programs, documentation, software, and other copyrightable works (hereinafter referred to as the "Copyrightable Works"), discoveries, improvements, and inventions (hereinafter referred to as the "Inventions") conceived, reduced to practice, or made by the Agency or by the Agency-supplied workers, whether solely or jointly with others, during the providing of Services under the term of this Agreement, along the Business' line of work, resulting from or related to any work the Agency or the Agency-supplied workers may do on behalf of the Business or at its request. All such Inventions and Copyrightable Works that the Agency is obligated to disclose, whether patented or not, shall be and remain entirely the property of the Business or its nominees, successors or assigns. Further, the Agency agrees to assign, and hereby assigns to the Business any rights that it may have in such Copyrightable Works and Assignments.

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7. AGENCY REPRESENTATION

- (1) The Agency represents and warrants that the Agency and the Agency-supplied workers have the right to perform the services required under this Agreement without violation of obligations to others, and that the Agency and its supplied workers have the right to disclose to the Business all information transmitted to the Business in the performance of Services under this Agreement.
- (2) The Agency further agrees that any information submitted to the Business, whether patentable or not, may be used fully and freely by the Business.

8. INDEMNIFICATION

The Agency agrees to indemnify and hold the Business, its officers, agents, and employees harmless from and against any and all liabilities, damages, losses, actions, or causes of action, costs, and expenses (including attorney's fees), whether relating to property of the Business or of any third party, or to personal injury or death, arising out of or in any way contributed to by the acts, or failure to act, of the Agency, its agents, employees, officers, or Agency-supplied workers in relation to the Services performed or to be performed under this Agreement.

9. TERMINATION

- (1) This Agreement may be terminated at any time for any reason by either Party by providing [insert number] days prior written notice of termination.
- (2) The terms contained in Clauses 5, 6 and 8 of this Agreement shall survive the termination of this Agreement. In addition, any obligations with respect to payment of fees to the Agency, which were in effect prior to termination, shall survive termination.
- (3) Upon termination or expiry of this Agreement, and at the Business's discretion, the Agency 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 Agency or any Agency-provided worker.

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

11. 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].

12. FORCE MAJEURE

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- (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.AMENDMENTS

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

14.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.

15.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.

16.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.

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

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For and on behalf of
The Business

For and on behalf of
The Agency

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

EXHIBIT A (See Clause 2 (4))

LABOR CLASSIFICATIONS

1. [insert general labor classification]
2. [insert general labor classification]
3. [insert general labor classification]