

# Commercial Contract

## MANAGERIAL SERVICES AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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January 2013

## **Managerial Services Agreement**

Pro-Gole (Right to do business)

Legal services, B&SDS

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### **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 managerial services with respect 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.

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

### 16. MANAGERIAL SERVICES AGREEMENT

**THIS MANAGERIAL 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 "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] (hereinafter referred to as the "Manager", which expression shall, wherever the context so provides, include its agents and assigns).

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

**WHEREAS** the Business is engaged in [insert description of the Business' activities] (hereinafter referred to as the "Activities").

**AND WHEREAS** the Business needs extra / additional support for the management of the Business for the smooth accomplishment of its Activities.

**AND WHEREAS** the Business wishes to appoint the Manager as its service provider for providing to the Business the managerial services in accordance with the terms of this Agreement (hereinafter referred to as the "Managerial Services" and detailed more fully in Clause 3 of this Agreement).

**AND WHEREAS** the Manager represents that it has the necessary expertise, skills and experience for the performance of its duties and obligations under the Agreement, and hereby accepts its appointment to provide such Managerial Services to the Business for its operations and Activities.

**AND WHEREAS** the Parties have agreed on the terms and conditions which they are desirous of reducing into writing.

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**NOW THEREFORE** the Parties have agreed to this Agreement on the following terms and conditions:

## **1. APPOINTMENT**

The Business hereby appoints and the Manager hereby accepts its appointment as the service provider for the Managerial Services, detailed more fully in Clause 3, pursuant to the terms of this Agreement.

## **2. TERM AND TERMINATION**

(1) This Agreement shall take effect from the date of execution hereof and shall continue to be in force for a period of [insert number] years, which may be extended for further terms by mutual written consent of the Parties.

(2) Either Party has the right to terminate this Agreement, with or without cause, by giving [insert number] months' prior notice in writing to the other Party.

## **3. SERVICES**

(1) The Manager shall provide the following Managerial Services to the Business:

- i. Analyze, on a periodic basis, workload and personnel needs of an organizational unit.
- ii. Recommend changes in the staff level of the work unit.
- iii. Review documentation for new positions and positions that have been revised.
- iv. Obtain approvals to modify positions.
- v. Interview candidates for employment and make hiring recommendations or decisions in consultation with the Business.
- vi. Orient new subordinates concerning policy and procedures, work rules, and performance expectation levels.
- vii. Review position responsibilities.
- viii. Plan, delegate, communicate and control work assignments and special projects concerning the subordinates.
- ix. Establish and maintain specific work goals and objectives or quantitative and qualitative work standards to be achieved by the subordinates
- x. Train, develop, and motivate the subordinates to improve current performance and to prepare the subordinates for higher level jobs.
- xi. Determine significant changes in responsibilities and major duties of the subordinates by reviewing their job responsibilities on a regular basis.
- xii. Evaluate the performance of the subordinates, document and discuss present and past performance with each direct report, and keep the supervisor informed of the results of such evaluations.
- xiii. Review salaries of the subordinates and recommend changes according to policy and procedures.
- xiv. Recommend personnel actions such as promotions, performance awards,

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- demotions, etc., according to the budget guidance and policy.
- xv. Advise superiors and subordinates of developments which may impact job duties.
  - xvi. Ensure proper communications between personnel of the Business.
  - xvii. Maintain discipline, recommend and administer corrective action according to policy and procedures of the Business.
  - xviii. Communicate and administer personnel programs in accordance with the design and objectives of the Business.
  - xix. Maintain proper documentation with respect to all subordinates.
- (2) The Manager, apart from the Managerial Services enumerated in Clause 3 (1) above, shall perform such other services that the Business may, from time to time, reasonably request, and which are incidental to the Manager's providing the Managerial Services to the Business under the terms and conditions of this Agreement.

### **4. AUTHORITY, POWERS AND OBLIGATIONS OF THE MANAGER**

- (1) The Manager shall have full power and authority to manage the Activities on behalf of the Business in accordance with the terms of this Agreement.
- (2) For greater certainty, the Manager's authority and powers pursuant to this Agreement shall include:
- i. the recruitment, employment, and dismissal of employees of the Business following consultation and approval of the Business;
  - ii. entering into the usual contracts necessary for carrying on the Activities of the Business in the ordinary course, including without limitation the authority to order goods, materials, supplies, and products required for the Activities;
  - iii. entering into any contract on behalf of the Business for the repair, maintenance or improvement of the Business premises; and
- (3) It is understood and acknowledged by the Business that the Manager has made no waiver, warranty or guarantee whatsoever upon which the Business may rely, including any warranty or guarantee as to the profitability of the operation of the Business during the term of this Agreement.
- (4) The Manager agrees to take all necessary and reasonable steps, at their own expertise, to:
- i. Designate key individuals to perform the Manager's obligations pursuant to this Agreement;
  - ii. Arrange meetings with the key individuals and other staff of the Business, as and when requires;
  - iii. Fully cooperate with all the reasonable requests of the Business for assistance.

### **5. SERVICE FEES**

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- (1) The Business shall pay to the Manager a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) per month (hereinafter referred to as the "Service Fees") in consideration of the Manager providing the Managerial Services to the Business, on the [insert number] day of each month, in arrears.
- (2) In addition to the Service Fees, the expenses borne by the Manager in arranging for the personnel required for providing the Managerial Services shall be remitted by the Business to the Manager, at actual, within [insert number] days of the receipt of the invoice by the Manager of the expense so incurred.

## **6. CONFIDENTIAL INFORMATION**

Except with the prior written approval of the other Party, the Parties shall treat as confidential all information, which comes to its knowledge pertaining to the other Party (hereinafter referred to as the "Confidential Information") and it shall not disclose such Confidential Information to any third party.

## **7. ASSIGNMENT**

The Parties cannot transfer or assign its rights or obligations under this Agreement to any third party, without the prior written consent of the other Party. Any assignment in violation of this Agreement shall be void and without legal effect.

## **8. INDEMNIFICATION**

- (1) The Business agrees that it shall protect, indemnify and hold harmless the Manager and its employees, agents, representatives and assigns (hereinafter collectively referred to as the "Indemnified Parties") from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings (including reasonable fees and disbursements of counsel) arising out of the Business' breach of this Agreement or otherwise negligence or willful misconduct by the Business' partners, agents or employees while engaged in activities relating to this Agreement. Provided however, that the Business shall not be required to reimburse or indemnify any Indemnified Party for any loss or claim to the extent that such a loss or claim is due to the negligence or willful misconduct of any Indemnified Party.
- (2) The Business further undertakes to hold the Manager harmless from any liability under any contract entered into with any third party within the scope of the Manager's authority and powers hereunder, and to reimburse the Manager the amount of any expense which the Manager may make or incur in connection with such contracts.

## **9. 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.

## **10. GOVERNING LAW AND SOLE JURISDICTION**

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- (1) This Agreement shall be governed by the laws of Pakistan.
- (2) This Agreement is made at [insert place] and the courts at [insert place] shall have exclusive jurisdiction in respect of all matters arising under or pertaining to this Agreement.

## **11.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].

## **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 [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.RELATIONSHIP OF THE PARTIES**

In the conduct and performance of this Agreement, the Manager shall be regarded as an independent entity and not as a partner, agent or employee of the Business. The Parties agree that their relationship under this Agreement shall not create an employment, agent or partnership relationship between the Manager and the Business. It is expressly agreed and understood between the Parties that unless expressly authorized in writing neither Party has the authority to bind the other Party to any third party.

## **14. AMENDMENT**

No modification or amendment of any provision of this Agreement shall be binding unless the same is in writing and signed by the Parties.

## **15.SEVERABILITY**

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In the event that any provision in this Agreement should under applicable law be held illegal or void, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

## **16. ENTIRE AGREEMENT**

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 Managerial 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 Business**

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

### **WITNESS NO. 1**

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

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

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

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

### **WITNESS NO. 2**

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

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

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

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