

Commercial Contract

AGREEMENT FOR PROFESSIONAL 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 Professional 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 for professional 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

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

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.

18. AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (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

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

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

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

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

AND WHEREAS the Service Provider is engaged in [insert description of the services].

AND WHEREAS the Business is desirous of obtaining certain services (hereinafter referred to as the "Services") from the Service Provider, as set out in detail in Clause 1 of this Agreement.

AND WHEREAS the Service Provider has represented to the Business that he/she has the necessary expertise, relevant work experiences, training and skills to perform, satisfactorily, the Services.

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

1. SERVICES

(1) The Service Provider shall perform the following Services for the Business:

- i. [insert description of the services];
- ii. [insert description of the services];
- iii. [insert description of the services].

(2) The Service Provider shall perform such other Services for the Business as the Business may request, from time to time, and which are incidental to the Service Provider's performing the Services under the Agreement.

2. COMPENSATION

(1) In consideration of the Services being provided by the Service Provider, the Business shall pay an amount of Rs. _____/- (Rupees_____ only) (insert amount) (hereinafter referred to as the "Total Price") to the Service Provider under this Agreement.

(2) The Business shall make the payment to the Service Provider within [insert number] days of the receipt of the invoice.

(3) The Business shall make payments to the Service Provider for the Services rendered, in accordance with the schedule mentioned in Annexure A to this Agreement.

(4) The Business shall pay [insert percentage]% of the Total Price to the Service Provider within [insert number] days of executing this Agreement.

(5) It is expressly agreed between the Parties that termination of this Agreement by the Service Provider shall under no circumstances entitle the Service Provider to receive any portion of the Total Price for which, in the opinion of the Business, the Service Provider has not satisfactorily completed within the agreed time period.

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

3. TERM

The term of this Agreement shall commence on the date of execution of this Agreement, and expire on the [insert date] unless terminated earlier by either Party under the terms of this Agreement.

4. TERMINATION

Either Party may terminate this Agreement, with or without reason, by giving [insert number] months' notice in writing to the other Party.

5. WORKING MATERIAL

(1) All working material (hereinafter referred to as the "Material"), as listed in Annexure B of this Agreement, shall, at all times, remain the sole property of the Business and be returned to the Business within [insert number] days prior to the completion of the provision of the Services, or the termination of this Agreement.

(2) The Business may, if it so requires, request the return of the Material from the Service Provider at any point during the term of this Agreement, to which the Service Provider shall adhere to within [insert number] days of the Business' request.

6. INTELLECTUAL PROPERTY

All materials developed by the Service Provider for the Business shall belong exclusively to the Business, and shall be deemed to have been developed and created by the Service Provider for the Business as "work for hire". The Business shall execute any and all documents necessary to assign and transfer to the Business all intellectual property and other rights in the materials and information created by the Service Provider for the Business pursuant to this Agreement.

7. CONFLICT OF INTEREST AND COMMITMENT

During the term of this Agreement, the Service Provider agrees that he/she shall avoid any conflict of interest, including but not limited to any situations in which financial or other personal considerations directly or significantly affect, or have the appearance of directly or significantly affecting his/her professional duties in carrying out her responsibilities under this Agreement.

8. CONFIDENTIALITY

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

9. INDEMNIFICATION

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

- (1) The Service Provider agrees to comply with all applicable laws in connection with the performance of Services under this Agreement.
- (2) Each Party agrees to defend, indemnify and hold harmless the other Party against any claim, costs, liability, expense, or loss sustained by the other Party due to any reason arising out of the indemnifying Party's negligent performance of this Agreement.

10. AMENDMENTS

Any modification or amendment in the Agreement shall be made with the written consent of the Parties.

11. 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.

12. WAIVER

- (1) Failure of either Party to insist upon the strict and punctual performance of 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.

13. SEVERABILITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14. ASSIGNMENT

Neither Party may transfer or assign any right or obligation under this Agreement to a third party without the prior written consent of the other Party.

15. ENTIRE AGREEMENT

This written Agreement constitutes the entire agreement between the Parties and no modifications shall be valid or enforceable except by the written amendment to this Agreement.

16. 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 [insert place].

17. GOVERNING LAW AND EXCLUSIVE JURISDICTION

(1) This Agreement shall be governed by and construed in accordance with the laws of Pakistan.

(2) This Agreement has been executed at [insert place] and the Parties agree that the Courts of [insert place] shall have exclusive jurisdiction in all matters in respect of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in duplicate at the place and on the date aforementioned.

for and on behalf of
the Business

for and on behalf of
the Service Provider

Witnesses:

1. _____

2. _____

Name: _____

Name: _____

Address: _____

Address: _____

Agreement for Professional Services

Pro-Gole (Right to do business)

Legal services, B&SDS

ANNEXURE A **PAYMENT SCHEDULE**

- | | |
|--|-----------------|
| 1. [insert description of deliverable] | [insert amount] |
| 2. [insert description of deliverable] | [insert amount] |
| 3. [insert description of deliverable] | [insert amount] |

ANNEXURE B **WORKING MATERIAL**

1. [Insert description of working material required by the Service Provider, and provided by the Business, for the performance of the Services];
2. [Insert description of working material required by the Service Provider, and provided by the Business, for the performance of the Services];
3. [Insert description of working material required by the Service Provider, and provided by the Business, for the performance of the Services].