

Commercial Contract

ENGINEERING SERVICES AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

January 2013

Engineering Services Agreement

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 engineering services in 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.

8. ENGINEERING SERVICES AGREEMENT

THIS ENGINEERING 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

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 seeks the performance of certain engineering services, as described in detail in Schedule A hereto, (hereinafter referred to as the "Services") with respect to [insert description of the project] (hereinafter referred to as the "Project") to be constructed at [insert site address] (hereinafter referred to as the "Site").

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AND WHEREAS the Service Provider has represented to the Business that it possesses the necessary competence, skills, capabilities, equipment, provisions, finance organization and personnel required to perform the Services.

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

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

1. APPOINTMENT

The Business hereby appoints the Service Provider for the non-exclusive provision of the Services, which appointment the Service Provider hereby accepts subject to the terms and conditions contained herein.

2. TERM OF AGREEMENT

This Agreement shall be effective from [insert date] (hereinafter referred to as the "Effective Date") and shall continue for a period of [insert number] years unless terminated earlier, pursuant to Clause 8 of this Agreement.

3. SERVICE PROVIDER'S RESPONSIBILITIES

- (1) The Service Provider shall in relation to the Services at all times carry out the planning and scheduling necessary to facilitate the timely and efficient provision of the Services.
- (2) The Service Provider shall be solely responsible for the performance of the Services and for the adequacy, inspection and maintenance of the resources utilized.
- (3) The Service Provider shall bear all expenses associated with the personnel employed under the Agreement, including all wages, salaries, taxes, benefits, and allowances.
- (4) The Service Provider shall provide the Services and carry out all work related thereto in a safe, workmanlike and professional manner in accordance with all applicable laws, rules and regulations as well as the best industry practice.
- (5) The Service Provider agrees to provide the Services in accordance with the time schedules specified in Schedule B of this Agreement.
- (6) The Service Provider shall not permit any of its employees, representatives, agents, or subcontractors to engage in any activities, which might reasonably be considered to be contrary or detrimental to the interests of the Business.

4. ASSIGNMENT AND SUBCONTRACT BY THE SERVICE PROVIDER

- (1) The Service Provider shall not assign or transfer any part of this Agreement without the prior written approval of The Business. Reasonable utilization by the Service Provider of human resource under its supervision, control and monitoring and hiring of consultancy services shall not be considered as subcontracts, which require approval.

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(2) Approval by The Business of a subcontractor shall not relieve the Service Provider from its responsibility for performance of the part of the Services which is subcontracted, and the Service Provider shall be responsible for the acts or omissions of any such subcontractor or its personnel, as fully as if they were the acts and omissions of the Service Provider or its personnel.

5. INDEMNITY

The Service Provider agrees that it shall indemnify, hold harmless and defend the Business and its officers, employees, assigns, agents and representatives (hereinafter collectively referred to as the "Indemnified Parties") from and against all claims, demands, damages, costs, cause of action, losses, expenses, liabilities, judgments, suits, actions or proceedings (including but not limited to the cost of litigation) arising out of the breach of its 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 applicable laws, infringement of intellectual property rights (including Patents and Copyrights), injury to employees and damage to property of the Service Provider or the Business, unless a loss or claim is due to the negligence or willful misconduct of the Indemnified Parties.

6. LIMITATION OF LIABILITY

(1) Notwithstanding Clause 5 above, the Parties agree that the Service Provider's total aggregate liability, indemnification and hold harmless obligations, whether arising out of contract, tort (including without limitation, negligence and strict liability) or any other legal theory, shall be limited to [insert percentage]% of the total fees payable to the Service Provider under the terms of this Agreement.

(2) The liability of the Service Provider to the Business under this Agreement shall terminate not later than [insert number] years after the successful provision of the Services under this Agreement. The Business shall present all claims immediately upon detection and before the expiry of the aforementioned time period.

7. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS

The Parties agree to enter into a separate Confidentiality Agreement, in order to ensure that the Service Provider treats as confidential any and all information provided by the Business under this Agreement with respect to the provision of the Services.

8. TERMINATION

The Parties may terminate this Agreement without cause, effective at any time after the execution of this Agreement, provided that the other Party shall be given at least [insert number] days prior written notice of such termination.

The termination of this Agreement shall not absolve the Parties of its liabilities to pay any or all sums due to each other at the time of the termination. The Parties shall be liable to clear outstanding dues, if any, within [insert number] days from the date of the termination of this Agreement.

9. GOVERNING LAW

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The validity, construction and performance of this Agreement shall be governed by the laws of [insert place].

10. 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].

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 [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 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.

13. PAYMENT

- (1) For the provision of the Services, the Service Provider shall be paid in accordance with the rates stipulated in Schedule C.

(2) *Payment procedures.*

- i. The Service Provider shall submit all its invoices along with all the supporting documents at the end of every [insert number] months to the Business for the Services rendered.

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- ii. The Business shall, after scrutiny of the invoice and supporting documents make the payment to the Service Provider within [insert number] days of its receipt of the invoice.

(3) The Service Provider shall be responsible for and indemnify the Business for payment of all taxes, levies, social security and other charges and duties imposed in connection with this Agreement.

14. RECORDS AND REPORTS

The Service Provider shall make available for inspection by, the Business's representative(s), at the Service Provider's premises, such data, and information, which shall include but is not limited to time sheets, drawings, sketches, calculations, manuals, as may be required by the Business regarding the Service Provider's compliance with the provisions of this Agreement.

15. INSPECTION

(1) The Service Provider agrees that it shall permit and arrange for the Business to have unescorted access and inspection at all normal working times to the Site where the Services are being performed.

(2) Any inspection shall not relieve the Service Provider from its responsibility for the quality and fitness for purpose of the Services, nor from its responsibility for compliance with all its obligations under the Agreement.

16. CHANGES IN SCOPE OF SERVICES

The Business shall have the right at any time during the term hereof to ask the Service Provider to make changes that the Business considers advisable in the scope of Services and the Service Provider shall carry out such changes.

17. OWNERSHIP OF DOCUMENTS

All drawings, specifications and other items that the Business requires the Service Provider to supply pursuant to this Agreement shall be the property of the Business. The Business shall have all intellectual property rights to all drawings, specifications and other items produced pursuant to this Agreement. The Service Provider agrees not to use or disclose such information to others without the prior written consent of The Business. The Service Provider shall indemnify and hold the Business harmless from and against all losses, expenses, claims and damages, which result from any unauthorized disclosure, use or reuse of any such item.

18. 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.

19. 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.

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20.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.

21.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 Services envisaged in this Agreement.

22.EXCLUSIVE JURISDICTION

This Agreement is made at [insert place] and the courts at [insert place] shall have exclusive jurisdiction to hear and decide any dispute arising between the Parties in respect of all matters under 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 Service Provider

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 Schedules**

Schedule C **Agreed Rates for the payment of Services**