

Commercial Contract

LOGISTICS 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

Logistics 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 transaction for logistics 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.

14. LOGISTICS SERVICES AGREEMENT

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

AND WHEREAS the Business needs extra / additional support in the area of procurement and logistics for the smooth accomplishment of its activities.

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AND WHEREAS the Business wishes to appoint the Service Provider as its service provider for providing to the Business the logistics services in accordance with the terms of this Agreement (hereinafter referred to as the "Logistics Services") detailed more fully in Clause 3 of this Agreement.

AND WHEREAS the Service Provider represents that it has the necessary set-up, resources, expertise and skills and hereby accepts its appointment to provide such Logistics 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.

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

1. APPOINTMENT

The Business hereby appoints and the Service Provider hereby accepts its appointment as the service provider for the Logistics 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 Service Provider shall provide the following Logistics Services to the Business:
 - i. Collaboration between departments as necessary to meet customer requirements, taking advantage of sales opportunities or, in the case of shortages, to minimize negative impacts of such shortages on the Business;
 - ii. Development of understanding of the needs of the Business' customers, and take actions to ensure that such needs are met;
 - iii. Development and implementation of technical project management tools such as plans, schedules, and responsibility and compliance matrices;
 - iv. Directing and supporting the compilation and analysis of technical source data necessary for carrying out the activities of the Business;
 - v. Directing availability and allocation of materials, supplies, and final products;
 - vi. Directing team activities, establishing task priorities, scheduling and tracking work assignments, providing guidance, and ensuring the availability of resources at all times;
 - vii. Protection and control of proprietary materials;
 - viii. Reporting of project plans, progress, and results thereof;

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ix. Review of logistics performance with customers against targets, benchmarks and service agreements.

(2) The Service Provider, apart from the Logistics 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 Service Provider's providing the Logistics Services to the Business under the terms and conditions of this Agreement.

4. FUNDING

(1) The Business shall pay to the Service Provider a sum of Rs. _____/- (Rupees _____) (insert amount) per month (hereinafter referred to as the "Service Fees") in consideration of the Service Provider providing the Logistics 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 Service Provider in providing the Logistics Services shall be remitted by the Business to the Service Provider, at actual.

(3) The Service Provider shall incur expenses in providing the Logistics Services in accordance with the budget approved by the Business.

(4) A quarterly statement of account shall be prepared against the budget by the Service Provider and shall be sent to the Business for reimbursement.

(5) The Service Provider shall be reimbursed by the Business within [insert number] days of receiving the quarterly statement of account for reimbursement.

5. TAXES

All applicable taxes, including, but not limited to, sales, value added, etc., arising from the supply of the Logistics Services by the Service Provider to the Business shall be paid by the Business. In the event that the Service Provider pays such taxes, the Service Provider shall be reimbursed by the Business for such payment of taxes.

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

8. INDEMNIFICATION

The Business agrees that it shall protect, indemnify and hold harmless the Service Provider 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

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its breach of this Agreement or otherwise negligence or willful misconduct by 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.

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

- (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

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In the conduct and performance of this Agreement, the Service Provider 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 Service Provider 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

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.

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 Logistics 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 Service Provider

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____

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