

Commercial Contract

TECHNICAL SERVICES 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 for technical 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.

13. TECHNICAL SERVICES AGREEMENT

THIS TECHNICAL 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 the production of [insert description of the products] (hereinafter referred to as the "Products").

AND WHEREAS the Service Provider has agreed to provide to the Business certain technology, know-how, formulae, processes, techniques, technical information and

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assistance, more fully described in Annexure A, (hereinafter referred to as the "Technical Services") relating to the [insert description of the processes regarding which technical assistance is being given].

AND WHEREAS the Business has agreed to accept the Technical Services from the Service Provider for the purpose of [insert the purpose of the Business];

AND WHEREAS the Parties have agreed on certain terms and conditions with respect to the provision of the Technical Services by the Service Provider to the Business and are desirous of reducing the same into writing.

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

1. APPOINTMENT AND TERM

- (1) Subject to the terms and conditions contained herein, the Service Provider hereby agrees to provide the Business the Technical Services with effect from date of signing of this Agreement (hereinafter referred to as the "Effective Date").
- (2) The Agreement shall continue to be in force for a term of [insert number] years, unless terminated earlier by the Parties in accordance with the terms of this Agreement.

2. USE OF TECHNICAL INFORMATION

The Service Provider hereby agrees that the Business will have exclusive right to use any information, know-how or technology provided by the Service Provider to the Business during the supply of the Technical Services specified in Annexure A, which shall only be used for its own personal use, and shall not be disclosed to any third party.

3. PROVISION OF TECHNICAL TRAINING

In addition to the provision of the Technical Services, the Service Provider hereby agrees to impart technical and operational training (hereinafter referred to as the "Training") to personnel working for the Business with a view to perfect their knowledge of practical manufacturing, assembly and testing methods for the manufacture of the Products and to enable them to operate the machinery and equipment to be installed at the Business' plant situated at [insert address] (hereafter referred to "Business Plant") and to exploit any and all technical know-how in this connection to their best advantage.

4. PROVISION OF STAFF

- (1) The Service Provider agrees to make available, within two (2) weeks of a written request of the Business in this regard, the services of its employees having expertise with respect to the provision of the Technical Services (hereinafter referred to as the "Consultants") in order to assist and train the Business' personnel at the Business Plant.
- (2) With respect to Clause 4 (1) above, the Business hereby agrees:
 - i. to arrange and pay for appropriate accommodation for any Consultants of the Service Provider; and

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- ii. (b) to pay for the air fare (economy class) for any Consultants of the Service Provider that it may require.

5. FEES

- (1) As consideration for the Technical Services to be provided by the Service Provider to the Business under this Agreement, the Business agrees to pay to the Service Provider a total fee of Rs. _____/- (Rupees _____) (insert amount) as follows :
 - i. down payment of Rs. _____/- (Rupees _____) (insert amount) on the Effective Date; and
 - ii. balance amount of Rs. _____/- (Rupees _____) (insert amount) to be paid in [insert number] equal yearly installment of Rs. _____/- (Rupees _____) (insert amount) on each anniversary of the Effective Date.
- (2) As consideration for the Training to be provided by the Service Provider under Clause 3, the Business agrees to pay the Service Provider an amount of Rs. _____/- (Rupees _____) (insert amount) per day per trainee.
- (3) As consideration for the Consultants to be provided by the Service Provider under Clause 4, the Business agrees to pay the Service Provider a fee of Rs. _____/- (Rupees _____) (insert amount) per person per day.
- (4) The payment of the Training fees under Clause 5 (2), and the fees for the services of the Consultants, under Clause 5 (3) above, shall be made by the Business within [insert number] days of receipt of the Service Provider's invoices.

6. CONFIDENTIALITY

- (1) Except as expressly permitted in this Agreement, during the Term of this Agreement, the Business shall not disclose any technical information, know-how or technology provided by the Service Provider under this Agreement to any third party except to the extent that such information:
 - i. is or becomes generally available to the public through no fault of the Business; or
 - ii. was known to the Business prior to disclosure of such information to the Business by the Service Provider; or
 - iii. is subsequently disclosed to the Business on a non-confidential basis by a third party not having a confidential relationship to the Service Provider; or
 - iv. is required to be disclosed by the Business under any law.

7. 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

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- (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.

8. ASSIGNMENT

Neither this Agreement nor any of the rights or obligations created herein shall be assignable by either of the Parties without the prior written consent of the other Party.

9. APPROVALS

The Parties agree to take any and all necessary steps that may be required in order to secure all necessary approvals required under this Agreement.

10.TERMINATION

- (1) If either Party at any time commits a breach of any terms herein contained and fails to remedy such breach within [insert number] days after written notice thereof by the other Party, such other Party may terminate this Agreement by written notice to such effect.
- (2) Either Party may, without cause, terminate the Agreement by giving to the other Party a [insert number] days written notice to that effect.
- (3) In case the Business decides to terminate this Agreement, due to no fault of the Service Provider, before the expiry of the Term, the Business agrees to pay the balance amount of the agreed fee for Technical Services at the time of such termination.

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.GOVERNING LAW

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

13. 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.

14. AMENDMENTS

This Agreement may be varied, amended or modified only by the mutual consent of the Parties in writing.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties hereto and supercedes any prior understanding, agreements, or representations by or between the Parties, written or oral, to the extent that they are related in any way to the subject matter hereof.

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

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

ANNEXURE A

Technical Services Agreement

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(Whereas Clause (1))

SCOPE OF TECHNICAL SERVICES