

Commercial Contract

CONSULTANT AGREEMENT (LONG)



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

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January 2013

Consultant Agreement (Long)

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 employment matters. 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.

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

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

2. CONSULTANT AGREEMENT (LONG)

THIS CONSULTANT AGREEMENT (hereinafter referred to as the "Agreement") is made at [insert place] on the ____ (insert date) day of _____ (insert month), 20__ (insert year)

BY AND BETWEEN:

M/s [insert insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert insert Address] through its [insert insert Designation], Mr/Mrs/Ms [insert insert Name];

OR

M/s [insert insert Name], a partnership concern of Mr/Mrs/Ms [insert insert Name] and Mr/Mrs/Ms [insert insert Name], having its place of business at [insert insert Address] through its Partner, Mr/Mrs/Ms [insert insert Name];

OR

M/s [insert insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert insert Name], having its place of business at [insert insert Address] through Mr/Mrs/Ms [insert insert Name];

(hereinafter referred to as the "Business", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

AND

M/s [insert insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert insert Address] through its [insert insert Designation], Mr/Mrs/Ms [insert insert Name];

OR

M/s [insert insert Name], a partnership concern of Mr/Mrs/Ms [insert insert Name] and Mr/Mrs/Ms [insert insert Name], having its place of business at [insert insert Address] through its Partner, Mr/Mrs/Ms [insert insert Name];

OR

M/s [insert insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert insert Name], having its place of business at [insert insert Address] through Mr/Mrs/Ms [insert insert Name];

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

(hereinafter referred to as the "Consultant", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

WHEREAS the Business is engaged in [insert insert description of business] and seeks certain professional services, as defined in Schedule A to this Agreement (hereinafter referred to as the "Services").

AND WHEREAS the Consultant has represented to the Business that it possesses the necessary expertise, skills, capabilities, equipment, finance, organization and personnel to carry out and provide the Services to the Business.

AND WHEREAS in reliance on the aforementioned representation of the Consultant, the Business has agreed to accept the Services from the Consultant as an independent contractor, and not as an employee, on certain terms and conditions, which the Parties are desirous of reducing into writing.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties have entered into this Agreement:

1. SERVICES

The Consultant agrees to perform for the Business the Services listed in the Scope of Services section in Exhibit A to this Agreement and executed by both the Business and the Consultant. The Business agrees that the Consultant shall have ready access to Business' staff and resources as necessary to perform the Consultant's Services provided for by this Agreement.

2. CONSULTING PERIOD

- (1) This Agreement will begin on [insert date], and shall expire on [insert date] (hereinafter referred to as the "Date of Expiry").
- (2) Either Party may terminate this Agreement before the date of expiry of this Agreement by serving a [insert number] days prior written notice to the other Party.

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

- (3) Subject to Clause 7 of this Agreement, the Consulting Period shall, on the Date of Expiry, be automatically renewed for an additional period of [insert number] months, without any action by either Party, unless one Party gives to the other [insert number] months prior written notice in advance of the Date of Expiry that this Agreement is to be terminated.
- (4) In no event shall the Agreement extend beyond [insert date].
- (5) Either Party's right to terminate this Agreement, instead of renewal, shall be with or without any cause.

3. DUTIES AND RESPONSIBILITIES

- (1) The Consultant hereby agrees to provide and perform for the Business those Services as set forth in Exhibit A of this Agreement. The Consultant shall devote its best efforts to the performance of the Services, and to such other Services as may be reasonably requested by the Business, and hereby agrees to devote, unless otherwise requested in writing by the Business, a minimum of at least [insert number] hours of service per week/or assign [insert number] individuals to provide Services to the Business.
- (2) The Consultant shall use its best efforts to furnish competent individuals (hereinafter referred to as the "Agents"), possessing sufficient working knowledge of the Business' research, development and products to fulfill the Consultant's obligations under this Agreement. Any Agent of the Consultant who, in the sole opinion of the Business, is unable to adequately perform any Services shall be replaced by the Consultant within [insert number] days after receipt of notice from the Business of its desire to have such Agent replaced.
- (3) The Consultant shall use its best efforts to comply with, and to ensure that each of its Agents comply with, all policies and practices regarding the use of facilities at which Services are to be performed. The Consultant agrees and shall cause each of its Agents to agree to the Acknowledgement and Inventions Assignment attached hereto as Exhibit B, and the Consultant shall deliver a signed original of such Acknowledgement and Inventions Assignment to the Business prior to such Agent's commencement of the provision of Services for the Business.
- (4) The personnel supplied by the Consultant to provide Services to the Business under this Agreement shall be deemed to be the Consultant's

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

employees or agents, and shall not, for any purpose, be considered the employees or agents of the Business. The Consultant assumes full responsibility for the actions of such personnel while performing the Services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, provision of employment benefits (if any) and remuneration.

4. COMPENSATION, BENEFITS AND EXPENSES

- (1) The Business shall remunerate the Consultant at a rate of Rs. _____/- (Rupees _____) (insert amount) per hour of work for the Services performed in this Agreement. In addition to the hourly wages, the Business shall pay to the Consultant a base amount of Rs. _____/- (Rupees _____) (insert amount) per month regardless of the amount of time spent in accordance with this Agreement.
- (2) The Consultant shall submit an itemized statement, setting forth the time spent and services rendered, and the Business shall pay the Consultant the amounts due as indicated by statements submitted by the Consultant within [insert number] days of receipt of such statements.
- (3) Other than the compensation specified in Clause 4 (1), neither the Consultant nor its Agents shall be entitled to any direct or indirect compensation for any Services performed under this Agreement.
- (4) The Business shall reimburse the Consultant, in accordance with the Business' general policies, for reasonable travel and other business expenses incurred by its Agents in the performance of the duties under this Agreement.

5. TERMINATION

At any time, either the Business or the Consultant may terminate, without liability, this Agreement, with or without cause, by giving [insert number] days prior written notice to the other Party, at the end of which period, this Agreement shall cease to exist.

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

6. TERMINATION OBLIGATIONS

The Consultant hereby acknowledges and agrees that all property, including, but without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents or materials, or copies thereof, proprietary information, and equipment, furnished to or prepared by the Consultant or its Agents in the course of or incidental to its rendering of Services to the Business, including, without limitation records and any other materials pertaining to invention ideas, belong to the Business and shall be promptly returned to the Business upon termination of this Agreement. Following termination, neither Consultant nor any of its Agents will retain any written or other tangible material containing any information of the Business.

7. ASSIGNMENT, SUCCESSORS AND ASSIGNS

- (1) The Consultant agrees and undertakes that it shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall the Consultant's rights be subject to the encumbrance or the claims of the creditors. Any purported assignment, transfer, or delegation shall be null and void.
- (2) Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors, and permitted assigns.

8. PLACE OF WORK

The Consultant shall perform most services in accordance with this Agreement at a location of Consultant's discretion. In addition, the Consultant shall perform Services at such other places as necessary to perform these Services in accordance with this Agreement.

9. TIME DEVOTED TO WORK

- (1) In the performance of the services, the aforesaid Services and the hours that the Consultant is to work on any given day will be entirety within the Consultant's control, and the Business shall rely upon the Consultant to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this Agreement.
- (2) Clause 9 (1) shall be subject to the fulfillment of the minimum requirements enumerated in Clause 3 (1) of the Agreement.

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

10. CONFIDENTIAL INFORMATION

- (1) Each Party hereto shall hold in trust for the other Party, and shall not disclose to any third party, any confidential information of the other Party. Confidential information is the information which relates to the other Party's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of the ordinary skill.
- (2) The Consultant hereby acknowledges that during the performance of Services under this Agreement, the Consultant may learn or receive confidential Business information and, therefore, the Consultant hereby confirms that all such information relating to the Business shall be kept confidential by the Consultant, except to the extent that such information is required to be divulged to the Consultant's clerical or support staff or Agents in order to enable the Consultant to perform its obligations under the Agreement.
- (3) Consultant agrees not to disclose or use, except as required in Consultant's duties, at any time, any information disclosed to or acquired by Consultant during the term of this Agreement. The Consultant shall disclose, promptly, to the Business all inventions, discoveries, formulas, processes, designs, trade secrets, and other useful technical information and know-how made, discovered, or developed by the Consultant (either alone or in conjunction with any other person) during the term of this Agreement.
- (4) The Consultant agrees that he shall not, without the written consent of Business, disclose to third parties or use for his own financial benefit or for the financial or other benefit of any competitor of Business, any information, data, and know-how, manuals, disks, or otherwise, including all programs, decks, listings, tapes, summaries of any papers, documents, plans, specifications, or drawings.
- (5) The Consultant shall take all reasonable precautions to prevent any other person with whom the Consultant is, or may become associated, from acquiring the Business' confidential information at any time.
- (6) The Consultant agrees that all the Business' confidential information shall be deemed to be and shall be treated as the sole and exclusive property of the Business.
- (7) The Consultant shall execute Confidentiality/Non-Disclosure and other secrecy agreements provided by the Business.

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

11. SERVICES FOR OTHERS

Inasmuch as the Consultant will acquire or have access to information which is of a highly confidential and secret nature, the Consultant shall not perform any services for any other person or firm without prior written approval from the Business during the term of this Agreement.

12. STATUS OF CONSULTANT

- (1) It is understood, acknowledged and agreed by the Parties that the relationship of the Consultant to the Business arising out of this Agreement shall be that of an independent contractor. Neither the Consultant, nor any of its agents or employees, is a partner, joint venturer, employee and/or agent of the Business, and therefore is not entitled to any benefits provided to employees of the Business. The Consultant is obliged to inform its Agents and employees of this fact and to ensure that any recourse by them is against the Consultant and not the Business for any employment-related claim(s) arising while performing the Services under this Agreement.
- (2) The Business shall not be liable to pay anything to any Agent or employee of the Consultant for the work done under this Agreement nor shall the Business be responsible for any other work-related claim(s) of the Agents.

13. GOVERNING LAW AND EXCLUSIVE JURISDICTION

This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of Pakistan and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

14. RESOLUTION OF DISPUTES

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].

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

15. 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.

16. INDEMNIFICATION

The Consultant agrees that it shall indemnify, hold harmless and defend the Business and other related parties from and against any claims, demands, damages, costs, causes of action, losses, expenses, or liabilities, judgments, suits, actions or proceedings (including but not limited to the cost of litigation) arising out of the breach of this 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 laws, intellectual property infringement, and injury to employees and damage to property of the Business.

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

17. AMENDMENTS

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

18. NONWAIVER

The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of 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 Consultant

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation:

Designation:

Date:

Date:

Consultant Agreement (Long)

Pro-Gole (Right to do Business)

Legal Services, B&SDS

EXHIBIT A

SCOPE OF SERVICES