

Commercial Contract

INDEPENDENT CONTRACTOR AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Independent Contractor 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 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.

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3. INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (hereinafter referred to as the "Agreement") made and entered into 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 successors, assigns, nominees and agents)

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];

OR

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

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

WHEREAS the Business is engaged in [insert description of business] and seeks certain professional services, as defined in Clause 3 of this Agreement (hereinafter referred to as the "Work").

AND WHEREAS the Independent Contractor 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 Independent Contractor, the Business has agreed to accept the Services from the

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Independent Contractor 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. TERM

- (1) This Agreement shall come into effect on [insert date], and shall continue until the date of completion of the Work by the Independent Contractor (hereinafter referred to as the "Date of Completion").
- (2) The Agreement shall not, in any case, be extended beyond [insert date], unless otherwise agreed between the Parties in writing.

2. STATUS OF INDEPENDENT CONTRACTOR

- (1) This Agreement does not constitute an employment relationship between the Parties. Neither the Independent Contractor, 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 Independent Contractor is obliged to inform its agents and employees of this fact and to ensure that any recourse by them is against the Independent Contractor and not the Business for any employment-related claim(s) arising while performing the Work under this Agreement.
- (2) The Business shall not be liable to pay anything to any agent or employee of the Independent Contractor for the work done under this Agreement nor shall the Business be responsible for any other work-related claim(s) of the agents and employees of the Independent Contractor.
- (3) The Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement.
- (4) The Business shall not be liable for any obligations incurred by the Independent Contractor unless specifically authorized in writing.
- (5) The Independent Contractor shall not act as an agent of the Business, ostensibly or otherwise, nor bind the Business in any manner, unless specifically authorized to do so in writing.

3. TASKS, DUTIES, AND SCOPE OF WORK

- (1) The Independent Contractor agrees to devote as much time, attention, and energy as necessary to complete or achieve the following Works:
 1. [insert description of work]
 - 2.
 - 3.
- (2) The Independent Contractor shall additionally perform any and all tasks and duties associated with the Work set forth above, including but not limited to work being performed already or related change orders. The Independent Contractor shall not be entitled to engage in any activities which are not expressly set forth in this Agreement.
- (3) The books and records related to the Work set forth in this Agreement shall be maintained by the Independent Contractor at the Independent Contractor's principal

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place of business, and open to inspection by the Business during regular working hours.

- (4) The Independent Contractor will not be required to follow or establish a regular or daily work schedule.
- (5) The Business retains the right to inspect, stop, or alter the work of the Independent Contractor to assure its conformity with this Agreement.

4. ASSURANCE OF SERVICES

- (1) The Independent Contractor shall ensure that at least [insert number] employees to be available to the Business to perform the services under this Agreement until the time the Agreement is completed.
- (2) All the employees employed by the Independent Contractor to perform the services under the Agreement shall be approved by the Business, in writing, prior to such employment. Furthermore, any changes to the list approved by the Business shall also be made after consultation with, and after obtaining the approval of the Business.
- (3) The Business approves that the approval referred to in 4 (2) shall not be unreasonably withheld.

5. COMPENSATION

- (1) The Independent Contractor shall be entitled to compensation for performing those tasks and duties related to the Work as follows:
 1. [insert description of work] [insert payment amount]
 2. [insert description of work] [insert payment amount]

- (2) Such compensation shall become due and payable to Independent Contractor in the following time, place, and manner:

[insert Description of payment time and method]

6. AGREEMENT TO WAIVE RIGHTS TO BENEFITS

The Independent Contractor hereby waives and foregoes the right to receive any benefits given by the Business to its regular employees, including but not limited to health benefits, vacation and sick leave benefits, profit sharing plans, etc. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of their services to the Business, and is effective for the entire duration of the Independent Contractor's Agreement with Business.

7. ASSIGNMENT

Neither this Agreement, nor any duties or obligations under this Agreement, may be assigned by either Party to any third party without the consent of the other.

8. TERMINATION

This Agreement may be terminated prior to the completion of the Work by either Party giving [insert number] days prior written notice to the other Party. Such termination shall not prejudice any other remedy to which the terminating Party may be entitled to, either by law, in equity, or under this Agreement.

9. SERVICES FOR OTHERS

During the term of this Agreement, the Independent Contractor shall not, without the prior written consent of the Business, perform any services of similar nature for any other person or firm which may be in direct or indirect competition with the Business.

10. CONFIDENTIALITY

- (1) The Independent Contractor agrees not to disclose or communicate, in any manner, either during or after the Independent Contractor's Agreement with the Business, information about the Business, its operations, clientele, or any other information, that relate to the affairs of the Business, including, but not limited to, the names of its customers, its marketing strategies, operations, or any other information of any kind which would be deemed confidential, a trade secret, a customer list, or other form of proprietary information of the Business. The Independent Contractor acknowledges that the above information is material, along with all other information which is disclosed by the Business to the Independent Contractor under this Agreement, is confidential and that it affects the profitability of the Business.

- (2) The Independent Contractor 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, except as may be required for the performance of the Services under this Agreement.
- (3) The Independent Contractor agrees that the confidential information shall be treated as the sole and exclusive property of the Business, and that the Independent Contractor shall take all reasonable precautions to prevent any other person with whom the Independent Contractor is, or may become associated, from acquiring the Business' confidential information at any time.

11. 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.

12. 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].

13. 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.

14. INDEMNIFICATION

The Independent Contractor agrees that it shall indemnify, hold harmless and defend the Business and the Indemnified 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.

15. AMENDMENTS

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

16. 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.

17. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement shall not be terminated by the merger or consolidation of the Business into or with any other entity.

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 Independent Contractor

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____