

Commercial Contract

SUB-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

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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 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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9. SUB-CONTRACTOR AGREEMENT

THIS SUB-CONTRACTOR 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 "Contractor", 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];

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

WHEREAS Contractor has entered into a contract of [insert description of contract] (hereinafter referred to as the "Prime Contract") with [insert

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general contractor] (hereinafter referred to as the "General Contractor"), to perform, in accordance with various contract documents and specifications, [insert description of work] (hereinafter referred to as the "Project").

AND WHEREAS the Contractor desires to retain the Sub-Contractor to perform certain contract work in accordance with various contract documents and specifications and/or to furnish labor, materials, supplies, labor and/or goods for the Project.

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

1. SUBCONTRACT WORK

The Sub-Contractor shall be employed as an independent contractor, and shall provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision, and administration necessary for the proper and complete performance and acceptance of the following portions of the work (hereinafter referred to as the "Sub-Contract Work") for the Project:

[insert Scope and Conditions of the Sub-Contract Work.]

2. SUB-CONTRACTOR PRICE

- (1) In consideration of the Sub-Contractor's performance of the Sub-Contract at the times and subject to the terms and conditions hereinafter set forth, the Contractor shall pay to the Sub-Contractor the total sum of [insert amount] (hereinafter referred to as the "Sub-Contract Price").
- (2) The said Sub-Contract price is dependent upon the conditions set forth in Clause 1 being met. In case the Sub-Contractor remains unable to meet the conditions, the Sub-Contract amount shall be modified accordingly.

3. SPECIAL CONDITIONS

The Special Conditions to the Sub-Contract are incorporated in this Sub-Contract as though fully set forth herein. The Sub-Contractor hereby acknowledges the receipt of the Special Conditions.

4. COMMUNICATION AND NOTICE

- (1) All communications between the Sub-Contractor and the General Contractor shall be via the Contractor.
- (2) The Sub-Contractor shall furnish the Contractor with periodic progress reports as required by the Contractor, including status of material, equipment, manpower and submission.

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- (3) The Sub-Contractor shall be deemed to have received notice of a fact, request, order, or demand when its superintendent is notified, either orally or in writing, or [insert number] days after a written notice is sent by registered or certified mail, addressed to the Sub-Contractor's last known place of business, whichever is sooner.
- (4) The Contractor shall be deemed to have received a notice of a fact, request or demand [insert number] days after a written notice is sent by registered or certified mail addressed to the following address:
[insert complete address]

5. GOVERNING LAW AND RULES OF CONSTRUCTION

- (1) The validity, interpretation, and the performance of this Sub-Contract shall be governed by the laws of [insert place].
- (2) If any term or provision of this Sub-Contract is determined to be invalid, it shall not affect the validity and enforcement of the remaining terms and provisions of this Sub-Contract.
- (3) This contract shall be binding upon, and inure to the benefit of, the respective successors, assigns, representatives, and heirs of the Parties herein.

6. AMENDMENT

- (1) This Sub-Contract shall only be amended or modified by a written document, executed by the authorized representatives of the Contractor and the Sub-Contractor.
- (2) This Sub-Contract supersedes all prior representations made by the Contractor to the Sub-Contractor.

7. SETTLEMENT OF DISPUTE

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].

8. 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

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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.

9. INDEMNIFICATION

The Sub-Contractor agrees that it shall indemnify, hold harmless and defend the Contractor and the General Contractor 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, and intellectual property infringement.

10. AMENDMENTS

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

11. 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.

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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 Contractor

For and on behalf of
The General Contractor

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____