

# Commercial Contract

## WEBSITE DESIGN AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

[www.smeda.org.pk](http://www.smeda.org.pk)

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**January 2013**

## **Website Design Agreement**

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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### **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 internet and technology. 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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All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

## 1. WEBSITE DESIGN AGREEMENT

**THIS WEBSITE DESIGN 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 Business 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 Business 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 "Developer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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(The Business and the Developer 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], and wishes to promote itself and its activities through its website.

**AND WHEREAS** the Business requires the services of a website designer to design and create the Business' website (hereinafter referred to as the "Website").

**AND WHEREAS** the Developer is in the business of providing website designing services to its clients.

**AND WHEREAS** the Business is the current registered owner of the [insert domain name], which shall be the URL at which the Website shall be located.

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

## 1. TERM

(1) This Agreement shall come into effect on the date of execution of the Agreement, and shall expire upon the creation of the Website, and its approval from the Business.

(2) The Parties agree that in no case shall the expiry date of the Agreement be extended beyond [insert date].

## 2. ENGAGEMENT

The Business hereby engages the Developer for the purpose of designing, creating, testing and delivering a fully functional website which meets the specifications set out in Schedule I, to be delivered to the Business in [insert form in which the Website shall be delivered to the Business].

## 3. DELIVERY RESPONSIBILITIES OF THE BUSINESS

(1) Within [insert number] days from the date of execution of this Agreement, the Business shall deliver the content to be included in the Website, including but not limited to textual materials, logos, photographs, sound files, databases, video files and other Website content (hereinafter referred to as the "Website Content"), but excluding those items that shall be the responsibility of the Developer to create under the terms and conditions of this Agreement.

(2) The website content shall be delivered by the Business to the Developer in

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the following formats:

[insert type of content]

[insert format]

[insert type of content]

[insert format]

[insert type of content]

[insert format]

## 4. DEVELOPER CREATED CONTENT

The Developer shall, under the terms of this Agreement, be obligated to create the content specified in Schedule II.

## 5. PLACEMENT OF SITE DURING DEVELOPMENT

(1) The Developer shall create a password protected access site to make the Website available for review by the Business periodically through the development stage. Developer will notify the Business of the location of the Website and the method for gaining access to the Website. The password assigned to the Business shall be unique to the Business and shall not be provided by either Party to any other Party.

(2) The Business shall ensure prompt review of the completed work provided to the Business from time to time, and avoid delays in providing feedback to the Developer which could result in the delay of the completion of the Website.

## 6. ACCEPTANCE PERIOD

(1) The Business shall have a period of [insert number] days following delivery of the final Website during which Business may engage in testing of the Website. The Business shall notify the Developer no later than [insert number] days following delivery of any items contained in the Website that do not conform to the specifications.

(2) In the event that the Business does not so notify the Developer within the [insert number] days, the Business shall be deemed to have accepted the Website in all respects.

(3) The Developer shall have a period of [insert number] days following receipt of written notification from Business under Clause 6 (1) to remove the issues raised by the Business and to deliver such corrected items to the Business. This procedure shall continue until such time as Business makes final acceptance of the Website.

## 7. COMPENSATION FOR DEVELOPER SERVICES

(1) The Business shall pay to the Developer Rs. \_\_\_\_\_/- (Rupees

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\_\_\_\_\_ ) (insert amount) on account of the designing and creation of the Website under the terms and conditions of this Agreement (hereinafter referred to as the "Service Fee"), which shall be inclusive of all charges, whatsoever pertaining to the designing and creation of the Website.

(2) The Service Fee shall be payable by the Business to the Developer in accordance with the following schedule:

- i. [Insert description of deliverable] [insert percentage of payment to be made]
- ii. [Insert description of deliverable] [insert percentage of payment to be made]
- iii. [Insert description of deliverable] [insert percentage of payment to be made]

(3) Upon completion of each deliverable, the Developer shall provide the Business with an invoice for the release of payment against such deliverable.

(4) The Business shall release the payment against such deliverable within [insert number] days of the receipt of the invoice from the Developer.

(5) In the event that this Agreement is terminated prior to completion of the Website, the Developer shall be compensated only for such work that has been completed prior to the date of termination, and upon termination, the Developer shall deliver any partially completed work to the Business in the format prescribed in Clause \_\_\_\_.

### **8. DEVELOPER'S PUBLICITY**

(1) Following completion of the Website and final acceptance by the Business, the Developer shall be permitted to list the Business and the Business' Website on Developer's website and in any of its marketing and advertising as having been developed by the Developer.

(2) The Business shall include a credit to the Developer on the home page of the Website in such form and substance that is reasonably acceptable to the Business. The credit shall also include a hypertext link to the Developer's website.

### **9. INTELLECTUAL PROPERTY PROVISIONS**

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- (1) Upon completion of the Website, and conditioned upon full payment of the Service Fees, the Developer shall assign to Business all ownership rights, including any copyrights, in and to any content or designs created by the Developer in the creation of the Website. The Developer shall cooperate with Business and shall execute any additional documents reasonably requested by Business to evidence all such assignments of intellectual property.
- (2) Upon completion of the Website, and subject to full payment of the Service Fees, the Developer hereby assigns to the Business all right, title and interest, including without limitation, copyright and other intellectual property rights, in and to the Website. The Designer agrees to reasonably cooperate with the Business and shall execute any additional documents reasonably necessary to evidence such assignment by the Developer in favor of the Business.
- (3) The Developer agrees that all content in the Website shall be the original creation of the Developer which is created for the sole purpose of this project, except as specifically consented to and agreed by the Business.

### **10. INDEMNITY**

The Developer hereby indemnifies and holds the Business harmless from and against all claims, suits, threats, demands, liabilities, settlements, negotiation costs and expenses, other costs, and attorney fees relative to any third party's claim that content created by the Developer in the creation of the Website infringes upon or interferes with any proprietary right of such third party, including but not limited to copyrights, trademarks, trade secrets, privacy rights, moral rights, patents, publicity rights, or any other right that may now or at any time in the future exist under any applicable law.

### **11. CONFIDENTIAL INFORMATION**

Each Party acknowledges that in connection with this Agreement it may receive confidential or proprietary technical and business information and materials of the other Party, including, but not limited to business plans, marketing plans and strategies, formula, processes, data, software source codes, financial information, customer data and lists, and all other information deemed confidential by the parties (hereinafter referred to as the "Confidential Information"). Each Party, its agents and employees shall hold and maintain in strictest confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations pursuant to this Agreement, and except as may be required

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under the law. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

### **12. TERMINATION**

(1) This Agreement may be terminated at any time by either Party by giving the other Party a [insert number] days prior written notice, or if any Party breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within [insert number] days from receipt of written notice of such breach.

(2) Upon expiration or termination of this Agreement:

- i. Each Party shall return or, at the disclosing Party's request, destroy the Confidential Information of the other Party; and,
- ii. Other than as provided herein, all rights and obligations of each Party under this Agreement, exclusive of the Services, shall survive.

### **13. RELATIONSHIP OF THE PARTIES**

The Developer is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Developer shall provide the services under the general direction of the Business, but the Developer shall determine the manner and means by which the services are accomplished. This Agreement does not create a partnership or joint venture, and neither Party is authorized to act as agent or bind the other Party, except as expressly stated in this Agreement.

### **14. 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.

### **15. RESOLUTION OF DISPUTES**

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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].

### **16.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.

### **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**

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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.

### 19. NON-ASSIGNMENT

In no circumstances whatsoever can a Party assign the benefit of this Agreement to any third person or delegate to a third person its duties to be performed under this Agreement.

### 20. 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 have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

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*For and on behalf of*  
**The Business**

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*For and on behalf of*  
**The Developer**

#### WITNESS NO. 1

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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Designation: \_\_\_\_\_

Date: \_\_\_\_\_

#### WITNESS NO. 2

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

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### **SCHEDULE I SPECIFICATIONS OF THE WEBSITE**

### **SCHEDULE II DEVELOPER CREATED CONTENT**