

Commercial Contract

ADVERTISEMENT AGREEMENT (INTERNET)



*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

Advertisement Agreement (Internet)

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 service 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.

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

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A6. ADVERTISEMENT AGREEMENT (INTERNET)

THIS ADVERTISEMENT 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 "Advertiser", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

(The Business and the Advertiser are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

WHEREAS the Business requires to advertise its products i.e. [insert name/description of products].

AND WHEREAS the Advertiser owns the internet websites namely [insert names of websites] and has advertisement space available for the advertisement of products/businesses.

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AND WHEREAS the Advertiser has agreed to provide advertisement space to the Business on its [insert name(s) of the websites] (hereinafter referred to as the "Websites").

NOW THEREFORE the Parties have agreed to enter into this Agreement on the following terms and conditions wherein the Business would solicit advertisements for insertion on the Advertiser's Websites:

1. TERM

- (1) This Agreement shall come into effect on the date of execution of this Agreement, and shall continue to remain in force for a period of [insert number] months, unless terminated earlier by the Parties in accordance with the terms of this Agreement.
- (2) The Agreement is renewable for such terms as may be agreed between the Parties, on such terms and condition that the Parties may mutually decide amongst themselves.

2. ADVERTISEMENT SPACE AND CONTENT

- (1) The Advertiser shall publish specified audio and banner advertisements on the Websites (hereinafter referred to as the "Advertisement Space").
- (2) The Business shall be solely responsible for providing the Advertiser with the content for the Advertisement Space.
- (3) The Business assumes the entire responsibility of the content being in accordance with the censorship and quality standards of the Advertiser, and agrees that in case the content does not match with such standards, the Advertiser reserves the right to refuse any advertisement sponsorship banner that does not completely conform to every detail, instruction, method, and guideline set in the Technical Specifications provided to the Business by the Advertiser separately.
- (4) The Business shall ensure that the Content is delivered to the Advertiser at least [insert number] days prior to the date of the Content's first appearance in the Advertisement Space agreed upon between the Parties.
- (5) The Content shall be delivered to the Advertiser in the following formats:
 - i. [insert format]
 - ii. [insert format]

3. ADVERTISEMENT FEE

- (1) In lieu of the Advertiser providing Advertisement Space to the Business, the Business shall pay the advertisement fees (hereinafter referred to as the "Advertisement Fees") to the Advertiser in accordance with the Rate List given in Schedule A of this Agreement.

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- (2) The Advertisement Fees may be revised with the mutual consent of the Parties at the beginning of each quarter.
- (3) The Advertisement Fees shall be payable by the Business to the Advertiser on the first day of each calendar month, in advance, calculated as per Schedule A to this Agreement.

4. TERMINATION

Either Party may terminate this Agreement by giving to the other Party a [insert number] days prior written notice, with or without cause. Upon termination, the any advance Advertisement Fees paid by the Business to the Advertiser, against which the advertisement has not been played yet, shall be returned to the Business by the Advertiser.

5. INDEMNIFICATION/LIMITATION OF LIABILITY

- (1) The Business is solely responsible for any legal liability arising out of or relating to:
 - i. the Advertisement, including but not limited to the text and/or illustrations, and/or
 - ii. any material to which users can link through the Advertisement.
- (2) The Business represents and warrants that the Advertisement comply with the Advertiser's advertising standards; and that it holds the necessary rights to permit the use of the Advertisement for the purpose of this Agreement; and that the use, reproduction, distribution, or transmission of the Advertisement will not violate any applicable laws or any rights of any third parties, including, but not limited to, such violations as infringement or misappropriation of any copyright, patent, trademark, trade secret, music, image, or other proprietary or property right, false advertising, unfair competition, defamation, invasion of privacy or rights of celebrity, violation of any antidiscrimination law or regulation, or any other right of any person or entity. The Business agrees to indemnify the Advertiser and to hold the Advertiser harmless against any and all liability, loss, damages, claims, or causes of action, including reasonable legal fees and expenses that may be incurred by the Advertiser, arising out of or related to the Business' breach of any of the foregoing representations and warranties.
- (3) In no event will the Advertiser be liable to sponsor for any special, incidental, or consequential damages, whether based on breach of contract, tort (including negligence), or otherwise, and whether or not the Advertiser has been advised of the possibility of such damage.
- (4) The Advertiser makes no guarantee of any level of traffic at any given time. The Advertiser shall not be held liable for any claims as they relate to published or unpublished usage statistics. The Advertiser is not required to provide the Business with any such usage statistics regarding the Websites.

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6. 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.

7. 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].

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 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. AMENDMENTS

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

10. 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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11. 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.

12. 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.

13. ENTIRE AGREEMENT

This Agreement and any and all exhibits and attachments are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) between and amongst the Parties regarding such subject matter

IN WITNESS WHEREOF, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

For and on behalf of
The Business

For and on behalf of
The Advertiser

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

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SCHEDULE A RATE LIST

- | | | |
|---|---------------------------|---------|
| 1. [insert size of advertisement]
rate] | [insert position on page] | [insert |
| 2. [insert size of advertisement]
rate] | [insert position on page] | [insert |
| 3. [insert size of advertisement]
rate] | [insert position on page] | [insert |