

Commercial Contract

CONTENT PROVIDER AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Content Provider 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 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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A9. CONTENT PROVIDER AGREEMENT

THIS CONTENT PROVIDER 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

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number] (hereinafter referred to as the "Content Provider", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

WHEREAS the Business is engaged in [description of activities].

AND WHEREAS the Business requires the services of a content writer to provide material for the promotional booklets/brochures/pamphlets of its products namely [insert names of the products] (hereinafter referred to as the "Products").

AND WHEREAS the Content Provider is engaged in the business of providing written content to its clients (hereinafter referred to as the "Services").

AND WHEREAS the Content Provider has represented to the Business that it possesses adequate resources, skills and qualifications to provide the Business with the Services, and based on the representations of the Content Provider, the Business has accepted the Services of the Content Provider.

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

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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. SERVICES

- (1) The Content Provider shall provide written material for the promotional booklets, annual reports, quarterly reports, brochures and pamphlets (hereinafter referred to as the Content"). In addition, the Content Provider shall provide such services to the Business as the Business may reasonably require, and which are incidental to the provision of the Services under this Agreement.
- (2) The Business shall be solely responsible to provide adequate background and guidelines in order for the Content Provider to be able to perform the Services under this Agreement.

3. REMUNERATION

- (1) The Business shall pay to the Content Provider Rs. _____/- (Rupees _____) (insert amount) per [insert number] words of the Content so provided by the Content Provider in the performance of the Services under the Agreement (hereinafter referred to as the "Remuneration").
- (2) Upon the completion and acceptance by the Business of the Content so provided, the Content Provider shall provide an invoice to the Business in accordance with Clause 3 (1).
- (3) The Business shall be liable to pay the Remuneration to the Content Provider within [insert number] days of the Content Provider providing the invoice to the Business.

4. INTELLECTUAL PROPERTY PROVISIONS

- (1) All pre-existing Trademarks and copyright material, and other materials, information, photography, writings and other creative content provided by the Business (hereinafter referred to as the "Business' Content") for use in the preparation of and/or incorporation in the promotional Content to be written by the Content Provider shall remain the sole property of the Business, and the Business shall be the sole owner of all rights in connection therewith. The Business hereby grants to the Content Provider a nonexclusive, nontransferable license to use, reproduce, and modify the Business' Content solely in connection with the Content Provider's performance of the Services under this Agreement.

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- (2) All proprietary third party materials which are incorporated into the promotional Content (hereinafter referred to as the "Third Party Materials") are the exclusive property of their respective owners. The Content Provider shall inform Business of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Content written by the Content Provider. Under such circumstances, the Content Provider shall inform Business of any need to license such Third Party Material.
- (3) Upon completion of the Services and conditioned upon full payment of all fees, costs and out-of-pocket expenses due, the Content Provider shall assign to the Business all ownership rights, including any copyrights, in and to any Content written by the Content Provider as part of the Services under this Agreement. The Content Provider shall cooperate with Business and shall execute any additional documents reasonably requested by Business to evidence all such assignments of intellectual property.

5. TIMING AND ACCEPTANCE

- (1) The Content Provider shall prioritize performance of the Services as may be necessary or as agreed upon by the Parties, and will undertake commercially reasonable efforts to perform the Services with in such timelines as agreed between the Parties. The Business agrees to review the final Content within [insert number] days of the Content Provider's submission of the final Content to the Business, and to promptly either, (i) approve and accept the Content in writing (which will then become the "Final Deliverables") or (ii) provide written comments and/or corrections sufficient to identify the Business's concerns, objections or corrections to the Content Provider.
- (2) The Business, within [insert number] business days of receipt of each Final Deliverable, shall notify the Content Provider, in writing, of any failure of such Final Deliverable to comply with the specifications as agreed upon by the Parties, or of any other objections, corrections, changes or amendments the Business wishes made to such Final Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and the Content Provider shall undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from the Business within the stated time period, the Content shall be deemed accepted.
- (3) The Business acknowledges that it shall be responsible for the final proof reading/editing of the Content

6. CONFIDENTIAL INFORMATION

Each Party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other Party, including, but not limited to, Preliminary Works (hereinafter referred to as the "Confidential Information"). Each Party, its agents and employees

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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, or as may be required 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.

7. RELATIONSHIP OF THE PARTIES

- (1) *Independent Contractor*. The Content Provider is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Content Provider shall provide the Services under the general direction of the Business, but the Content Provider 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.
- (2) *No Exclusivity*. The Parties expressly acknowledge that this Agreement does not create an exclusive relationship between the Parties. The Business is free to engage others to perform services of the same or similar nature to those provided by the Content Provider, and the Content Provider shall be entitled to offer and provide services to others, solicit other Businesses and otherwise advertise the services offered by the Content Provider.

8. BUSINESS' WARRANTIES AND REPRESENTATIONS

- (1) The Business represents, warrants and covenants to the Content Provider that:
 - i. the Business owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Business Content; and
 - ii. To the best of the Business' knowledge, the Business Content does not infringe the rights of any third party, and use of the Business Content as well as any Trademarks in connection with the Products do not and will not violate the rights of any third parties.

9. CONTENT PROVIDER'S WARRANTIES AND REPRESENTATIONS

- (1) The Content Provider hereby represents, warrants and covenants to the Business that the Content Provider will provide the Services and produce the Deliverables as identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.
- (2) The Content Provider further represents, warrants and covenants to the Business that the Final Deliverables shall be the original work of the Content Provider; and will not violate the rights of any third parties.

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10. INDEMNIFICATION

- (1) The Business agrees to indemnify, save and hold harmless the Content Provider from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of the Business' responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances, the Business shall promptly notify the Content Provider in writing of any claim or suit. The Business has sole control of the defense and all related settlement negotiations. The Content Provider shall provide the Business with commercially reasonable assistance, information and authority necessary to perform the Business' obligations under this Clause.
- (2) Subject to the terms, conditions, express representations and warranties provided in this Agreement, the Content Provider agrees to indemnify, save and hold harmless the Business from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with the Content Provider's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of the Business.

11. TERMINATION

- (1) This Agreement may be terminated, with or without cause, at any time by either Party by giving the other Party a [insert number] days prior written notice.
- (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.

12. 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.

13. 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].

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14.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.

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.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.

18.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.

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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 Content Provider

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____