

Commercial Contract

PROGRAMMING SERVICES PROVIDER AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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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7. PROGRAMMING SERVICES PROVIDER AGREEMENT

THIS PROGRAMMING SERVICES 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 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 "Developer", 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

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

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

WHEREAS the Developer requires, from time to time, the services of a programmer to create certain functional components to be integrated into the overall website design (hereinafter referred to as the "Services").

AND WHEREAS the Programmer is in the business of authoring websites and performing related services for its clients.

AND WHEREAS the Programmer has represented to the Developer that it possesses the necessary expertise, skills, capabilities, equipment, finances, organization and personnel to carry out and provide the Services to the Developer.

AND WHEREAS in reliance on the aforementioned representation of the Programmer, the Developer has agreed to accept the Services from the Programmer as an independent contractor, and not as an employee, on certain terms and conditions, which the Parties are desirous of reducing into writing.

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

1. APPOINTMENT

- (1) During the term of this Agreement, the Programmer is hereby retained by the Developer, as an independent contractor, to perform Programming Services for the Developer, including but not limited to creating functional components, as and when required by the Developer, to be integrated into the overall functional design.
- (2) In addition to the Services mentioned in Clause 1 (1), the Programmer shall provide such programming services as reasonably requested by the Developer during the term of this

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Agreement. The scope of Services is more particularly described in Clause 3 of this Agreement.

2. TERM OF AGREEMENT

- (1) This Agreement shall come into effect on [insert date], and shall expire on [insert date].
- (2) Either Party may terminate this Agreement before the date of expiry of this Agreement by serving a [insert number] days prior written notice to the other Party.

3. PROGRAMMING SERVICES

(1) Scope of Work

- i. The Parties agree that this Agreement shall act as a Master Agreement, and that the terms hereof shall govern all services that are performed by the Programmer for the Developer, unless the parties specifically agree, in a separate written agreement to this effect, that this Agreement shall not apply to certain services performed by the Programmer by the Developer.
- ii. The precise activities to be performed in each respective task assigned by the Developer to the Programmer shall be included in separate "Work Orders" that shall be signed by both Parties, successively numbered.
- iii. Each Work Order shall set forth a description and specifications of the work to be performed and the compensation to be paid to the Programmer for such services.
- iv. Unless the Work Orders specify otherwise, the Work Orders shall be subject to the terms and conditions of this Agreement.

(2) Deliverables

- i. The Programmer shall use its best efforts to meet any delivery dates for deliverables set forth in the Work Order(s) (hereinafter referred to as the "Deliverables"), and to deliver the deliverables, conforming to the project specifications, to the Developer.
- ii. The Deliverables shall include all computer programming codes (in both object and source code form), scripts, all documentation and other written material relative thereto, and all other materials, items

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and media called for by the specifications or any respective Work Order.

- iii. The Programmer warrants that he shall perform the Services promptly, diligently and in accordance with all reasonable professional standards for similar services.
- iv. The Programmer shall promptly fix any and all bugs or other defects in the Deliverables upon notice thereof from the Developer. This obligation shall survive the termination of this Agreement, and the delivery and acceptance of any Deliverables.

(3) Reasonable Diligence

- i. The Programmer shall use reasonable diligence to promptly perform the Services described herein this Agreement, and to meet any delivery dates or project deadlines agreed to by the Parties, and to provide Services in compliance with agreed specifications and project parameters.
- ii. All Services shall be provided in a professional and workmanlike manner, and in compliance with standard industry standards, and by qualified and experienced personnel secured by the Programmer.
- iii. The Programmer represents and warrants that it has no current commitments or obligations that will conflict with, or otherwise interfere with, or impede the performance of the Services under this Agreement.

(4) Work Progress

The Programmer shall continually communicate with the Developer regarding the progress made by the Programmer in performing the Services. Upon request from the Developer, the Programmer shall prepare and deliver to the Developer written reports, summarizing progress in providing the Services under this Agreement.

(5) Exclusivity

The Programmer agrees that the Programmer shall be prohibited from direct contact with any Developer without prior written consent of the Developer, it being the intent and desire of the Parties that the Programmer shall act as the sole liaison of the Developer.

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4. TIME DEVOTED BY CONSULTANT

The Programmer shall spend approximately [insert number] hours in fulfilling its obligations under this Agreement. The particular amount of time may vary from day to day or week to week. However, the Programmer shall devote a minimum of [insert number] hours per month to fulfill its duties in accordance with this Agreement.

5. PLACE WHERE SERVICES SHALL BE RENDERED

The Programmer shall perform most services in accordance with this Agreement at a location of Programmer's discretion. In addition, the Programmer shall perform Services at such other places as necessary to perform these Services in accordance with this Agreement.

6. REPRESENTATIONS AND WARRANTIES OF THE BUSINESS

The Developer hereby represents and warrants that any and all information supplied hereunder to the Programmer in connection with any and all Services to be performed hereunder by the Programmer for and on behalf of the Developer shall be true, complete and correct as of the date of such dissemination and shall not fail to state a material fact necessary to make any of such information not misleading.

7. REPRESENTATIONS OF THE PROGRAMMER

- (1) The Programmer represents and warrants that it shall be the sole and exclusive author of all Deliverables and that no other party shall have any rights or claims thereto.
- (2) The Programmer shall not undertake that it shall not subcontract any work provided hereunder to any independent contractor, and that all the Services performed under this Agreement shall be performed by the Programmer and its bona fide employees.

8. REMUNERATION

- (1) The Developer shall remunerate the Programmer at a rate of Rs. _____/- (Rupees _____) (insert amount) per month in lieu of the Services performed under this agreement. In addition to the monthly payment, the Developer

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shall further pay remuneration to the Programmer against each Service performed under this Agreement as set forth in the relevant Work Order.

- (2) The Programmer shall submit an itemized invoice, setting forth the monthly payment due, as well as payments due against specific Work Orders, to the Developer on or before the ____ (insert date) day of each month.
- (3) The Developer shall pay the due amounts to the Programmer against such invoice submitted under Clause (2) on the ____ (insert date) day of the month, in arrears.
- (4) The Developer shall not be responsible for any expenses in addition to the compensation set forth in any Work Order, unless specifically agreed in such Work Order.

9. INDEPENDENT CONTRACTOR

Both the Developer and the Programmer agree that the Programmer shall act as an independent contractor in the performance of its duties under this Agreement. Accordingly, the Programmer shall be responsible for payment of all taxes arising out of the Programmer's activities in accordance with this Agreement.

10. CONFIDENTIAL INFORMATION

- (1) Each Party hereto shall hold in trust for the other Party, and shall not disclose to any third party, any confidential information of the other Party. Confidential information is the information which relates to the other Party's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of the ordinary skill.
- (2) The Programmer hereby acknowledges that during the performance of Services under this Agreement, the Programmer may learn or receive confidential Developer information and, therefore, the Programmer hereby confirms that all such information relating to the Developer shall be kept confidential by the Programmer, except to the extent that such information is required to be divulged to the

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Programmer's clerical or support staff or Agents in order to enable the Programmer to perform its obligations under the Agreement.

- (3) Programmer agrees not to disclose or use, except as required in Programmer's duties, at any time, any information disclosed to or acquired by Programmer during the term of this Agreement. The Programmer shall disclose, promptly, to the Developer all inventions, discoveries, formulas, processes, designs, trade secrets, and other useful technical information and know-how made, discovered, or developed by the Programmer (either alone or in conjunction with any other person) during the term of this Agreement.
- (4) The Programmer agrees that he shall not, without the written consent of Developer, disclose to third parties or use for his own financial benefit or for the financial or other benefit of any competitor of Developer, 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.
- (5) The Programmer shall take all reasonable precautions to prevent any other person with whom the Programmer is, or may become associated, from acquiring the Developer' confidential information at any time.
- (6) The Programmer agrees that all the Developer' confidential information shall be deemed to be and shall be treated as the sole and exclusive property of the Developer.
- (7) The Programmer shall execute Confidentiality/Non-Disclosure and other secrecy agreements provided by the Developer.

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.

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12. 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].

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. AMENDMENTS

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

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15. 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.

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 Developer

For and on behalf of
The Programmer

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____