

Commercial Contract

AGREEMENT FOR SHARED WEB HOSTING



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

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May 2010

Agreement for Shared Web Hosting

This agreement is made at Lahore this ____ day of May, 2010

Between

ABC (hereinafter “the customer”) through its _____ (insert designation / name of the authorized person) having office at _____ (which expression shall mean and include its successors and assigns) of the first Part.

AND

M/s. _____ (hereinafter “the service provider”) through _____ (insert name / designation of the authorized person) having registered office at _____ (which expression shall mean and include its successors and assigns) of the 2nd Part.

WHEREAS the customer is a company / partnership firm / sole proprietorship concern engaged in the business of manufacturing / selling of _____ (insert name of the product) products / rendering of _____ (insert name of the services) services in Pakistan.

AND WHEREAS the service provider, a company / partnership firm / sole proprietorship concern (insert relevant form of your business), is engaged in the business of providing web hosting solutions and services in Pakistan.

AND WHEREAS the customer is desirous of hosting its website on the shared web server of the service provider subject to the terms and conditions contained in this agreement.

NOW THEREFORE this agreement witnesses as follows:

1. Scope of Services and Facilities

The service provider shall provide web hosting services (hereinafter “the services”) to the customer as prescribed in schedule “A” to this agreement.

2. Duration of the Contract

This agreement shall remain valid for a period of one year starting from _____ (insert date for example 1st May, 2010) and ending on _____ (insert date for example 30th April, 2011). Before 15 days of each expiry date of this contract the service provider shall send renewal invoice to the customer for one more year and if the customer opts to pay the said renewal invoice this agreement shall be deemed to be extended for one more year with the same terms & conditions stated in this agreement.

3. Cost & Payment for Services

The customer shall pay an amount of _____ Pak Rupees _____ per year through cross cheque/cash to the service provider for the services. Payment shall be made in advance and on yearly basis. The due date for the payment shall be _____ (**insert date**) of each due month.

4. Money Back Guaranty

The service provider gives 30 days un-conditional money back guaranty to the customer that if for any reason customer is dissatisfied with the services provided by the service provider and he decides to cancel the services within 30 days of service activation the service provider shall give 100% refund of the amount paid by the customer.

Provided if customer registers any domain name as part of a "Free Domain Name" promotion in connection with the services, refund will be reduced by service provider's price for registration per domain name. Customer will retain full ownership and control of any such domain names.

5. Services Guaranty

The service provider gives 99.9% uptime guaranty that the services will be available to the internet 99.9% of any month. Any period of inaccessibility due to power failure, internet network failure, or other failure lasting longer than 30 minutes will be credited to the customer as follows:

- 0-30 minutes: No Credit
- 30-60 minutes: 5% of monthly base fee, excluding any add-on services
- Each additional 30 minutes; 10% of monthly base fee

Credits shall not be provided to the customer in the event that customer has no service availability resulting from (i) scheduled maintenance, (ii) customer's behavior or the performance or failure of customer's equipment, facilities, software, scripts, code, or applications, or (iii) circumstances beyond the service provider's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services (including DNS propagation), failure of third party software or hardware or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the services.

6. Taxes & Duties

Payment to the service provider shall be made by the customer after deduction of the taxes or duties applicable as per the law for the time being in force.

7. Support Services

In relation to matters relating to its server, internet connection, softwares or other issues pertaining to this agreement, the service provider shall provide technical and

support services (“hereinafter Support Services”) to the customer on a 24 hour basis via email/telephone hotline support.

Provided that the support services shall not be provided by the service provider in relation to any third party software/script(s) of any kind, downloaded from the Internet or otherwise acquired and or incorporated by the customer into the Website and regarding scripts and script configuration, which work is for customer’s website programmer / developer to do. If customer has a problem with script because the server requires a module for a script to run etc, service providers shall help with that only.

Provided further that the above mentioned Support Services are included in the cost for the services as provided in clause 3 above.

8. Terms & Policies

The customer shall follow terms and policies stated in the schedule “B” to this agreement. Notwithstanding of clause 11 of this agreement the service provider, with or without any notice, may terminate/suspend the services if customer commits breach of these terms & policies. In the case of such termination/suspension the customer shall not be entitled for any kind of refund for the remaining period of the services under this agreement.

9. Data Backup

Although the service provider performs regular back-ups, the service provider shall not be held responsible for any loss of data of the customer. It is up to the customer to ensure maintaining a local copy of web data for own back-up purposes.

10. Indemnity

The service provider hereby undertakes that for the services being provided under this agreement, it shall provide and or use registered / licensed copies of Operating Systems, Database Management software, Anti viruses etc. service provider further undertakes to indemnify the customer for any loss or damage, pecuniary or otherwise, suffered by the customer due to illegal / unregistered usage of Operating Systems, Database Management software, Anti viruses etc.

11. Limitation of Liability

The service provider shall not be liable, directly or indirectly for any information, content or document placed and or made available by the customer on the Servers being hereby provided by the service provider.

12. Compliance with Laws

The Parties shall at all times comply with laws, rules and regulation of Pakistan, other government authorities and other international cyber laws/rules/regulations/limitations governing, restricting or otherwise pertaining to the provision, use, distribution, exporting or importing of data, products and services under this agreement.

13. Termination

In case of breach of the terms and conditions or otherwise, this agreement may be terminated by either party by serving one month notice to the other specifically stating its intention to terminate the contract. Termination of the contract however, shall not absolve the parties from any liability, pecuniary or otherwise, which may have accrued during the subsistence of this agreement or arise as a consequence of such termination.

14. Relationship

Nothing in this agreement or any thing done pursuant to this agreement shall constitute, assume or develop a relationship of master and servant, employee or employer and or principal or agent between the parties hereto. The parties shall remain responsible for all of their employees and or agents for all or any of their acts and omissions.

15. Amendments

This agreement shall constitute the entire agreement between the parties hereto. No part of this agreement can be modified and or amended except by a written instrument duly signed by both the parties and or any of their authorized representatives.

16. Service of Notices etc.

Any communication, document or notice to be served by any party to the other shall be addressed and served at the address mentioned above or at any other address communicated by the parties to each other.

17. Dispute Resolution

In case of any dispute arises between the parties to this agreement as to the interpretation and or any matter provided in this agreement the same shall, in the first instance, be resolved amicably by the parties through mutual negotiations. In case of failure to resolve the dispute amicably the matter may be resolved through mutually appointed arbitrator or mediator, whose decision shall be final.

IN WITNESS WHEREOF the parties have signed this agreement on the date mentioned above.

For and on behalf of Customer

For and on behalf of Service Provider

Witnesses

1. _____

2. _____

Schedule-A

SERVICES

1. Hosting of Website on Service Provider's shared server
2. _____ GB of data transfer
3. _____ MB hard disk space
4. FTP/Control Panel Access
5. _____ POP Emails forwarders, groups etc.
6. _____ Number of domain names
7. _____MySQL, Ms Sql Data Base Support 8. server side software programming
8. Net framework 3.5
9. Webmail Support
10. Web based account management

FEE SCHEDULE

- Set up fee PKR_____
- Per year fee PKR_____
- PKR_____ for every additional 1 GB for data transfer, if required.

Schedule-B

Terms & Policies

Acceptable Use Policy:

The Internet is a powerful information and entertainment tool. We expect and also request our customers to use the Internet with respect, courtesy, and responsibility, giving due regard to the rights of other Internet users.

Our acceptable use policy as described below is actively and strictly enforced. Users violating the content are removed from our network immediately upon discovery. However, we will always inform you when and why any action has been taken.

Common sense is the best guide as to what is considered acceptable use; however the following are unacceptable uses.

Illegality:

Uses, including but not limited to the unauthorized distribution or copying of copyrighted software or other data, harassment, fraud, or trafficking in obscene material in any form whatsoever.

Undesirable Content:

Certain types of content such, as pornographic, are absolutely not allowed on our network. We reserve the right to determine what constitutes pornographic content and what does not (see adult sites below). Similarly, content relating to Hacking, Cracking, Warez and IRC is not allowed. Software downloads may only be hosted if you are the writer and copyright owner of the software, all other software including freeware, shareware and trial software is forbidden. The sale of resalable eBooks is ok.

Bulk Email:

The use of our network to send bulk email whether opt-in or otherwise, and the use of bulk email to promote a site on our network is strictly forbidden. As a guideline, we consider sending over 150 emails at once as bulk email.

Spamming:

Spamming (sending unsolicited email or posting messages to irrelevant newsgroups, forums, blogs etc that do not explicitly allow advertising, with references to a site hosted on our servers) is strictly prohibited. You cannot use our servers to send Spam Emails and also you cannot use any other means of spam to promote site hosted at our servers.

Misuse of Resources:

Including but not limited to employing applications which consume excessive CPU time, memory or storage space. Chat/IRC, web proxy and mailing list scripts are not allowed on our network under any circumstances. Streaming media, audio, video, auto surf sites, auto refresh sites, top sites script and shout cast can be a drain on web server resources and as such is not allowed. CGI based message forums which use flat file databases are often found to use excessive system resources, to avoid disappointment please use a PHP message forum. The use of web cam applications which maintain a constant FTP connection uploading an image at regular intervals is forbidden.

Customers are not permitted to provide a free web site hosting service such as image hosting, file hosting, mp3 hosting and any similar hosting service.

Password Protected Directories:

Using password protected directories to conduct illegal activities is strictly prohibited. Sites that use password protected directories where their use is not clear are subject to suspension while we investigate the legality of the hidden content.

If you are unsure about content you intend to place on our network, please check with us before you do. We reserve the right to determine what constitutes acceptable use.

Adult Sites:

Adult commercial sites are permitted including: lingerie sales, adult toy e-commerce sites, Viagra sales, adult health and sexuality, and similar if all models are over 18. Pornographic media is not permitted.