

# Commercial Contract

## SUPPORT AND MAINTENANCE AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

## **Support and Maintenance 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.

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

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### **13. IT SUPPORT AND MAINTENANCE AGREEMENT**

**THIS IT SUPPORT AND MAINTENANCE 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];

**OR**

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

(hereinafter referred to as the "Client", 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**

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

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

(The Client and the Service Provider are hereinafter collectively referred to as the "Parties", and individually as the "Party".)

**WHEREAS** the Service Provider is in the business of providing IT support and maintenance services to its clients.

**AND WHEREAS** the Client wishes to retain the services of the Service Provider to maintain its IT network and the Client's website insert name of the website].

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

### 1. APPOINTMENT

The Client hereby appoints the Service Provider, and the Service Provider accept the appointment, to provide IT Support and Maintenance Services to the Client (hereinafter referred to as the "Services" and more particularly described in Clause 1 of this Agreement).

### 2. SERVICES

- (1) The Service Provider shall provide general information technology services and infrastructure including assistance with installation and maintenance of telephonic and computer equipment.
- (2) The Service Provider shall also provide the Client with the use of Service Providers automatic call distribution networks and systems and email systems.
- (3) The Service Provider shall provide such technical support and maintenance to the Client as is reasonably requested by the Client, and which is incidental to the performance of the Services under this Agreement.
- (4) The Service Provider shall also provide maintenance services for the Client's Website.
- (5) The Service Provider shall provide and perform such services related to technical assistance to the Client's End-Users customers and distributors, customer training and any other tasks relating to servicing the Client's customers and distributors

### 3. SERVICE FEES

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- (1) For services described in Clause 2 of the Agreement, the Client shall pay to the Service Provider an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) per month as Service Fee.
- (2) Apart from the Service Fee, the Client shall reimburse the Service Provider for any out of pocket expenses incurred by the Service Provider in performing the Services under this Agreement.
- (3) The Service Fees and other expenses in Clause \_\_\_\_ shall be payable by the Client to the Service Provider on a monthly basis, and shall be payable within [insert number] days of the receipt by the Client of the Service Provider's monthly invoice.

### **4. TERM**

The Agreement shall come into effect on the date of execution, and shall continue for a term of [insert number] years, unless terminated earlier in accordance with the terms and conditions of this Agreement.

### **5. INDEPENDENT BUSINESS RELATIONSHIP**

- (1) The Client and the Service Provider are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

### **6. USE OF TECHNICAL INFORMATION**

The Service Provider hereby agrees that the Client will have exclusive right to use any information, know-how or technology provided by the Service Provider to the Client during the supply of the Services under this Agreement, which shall only be used for its own personal use, and shall not be disclosed to any third party.

### **7. CONFIDENTIALITY**

- (1) Except as expressly permitted in this Agreement, during the Term of this Agreement, the Client shall not disclose any technical information, know-how or technology provided by the Service Provider under this Agreement to any third party except to the extent that such information:

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- i. is or becomes generally available to the public through no fault of the Client; or
  - ii. was known to the Client prior to disclosure of such information to the Client by the Service Provider; or
  - iii. is subsequently disclosed to the Client on a non-confidential basis by a third party not having a confidential relationship to the Service Provider; or
  - iv. is required to be disclosed by the Client under any law.
- (2) The Service Provider shall maintain in strict confidence and duly safeguard to the best of its ability any and all confidential business and technical information pertaining to the Client and shall not at any time disclose such confidential information to any third party or parties or use such confidential information for any purpose other than those contemplated in this Agreement except to the extent that such information:
- i. is or becomes generally available to the public through no fault of the Service Provider; or
  - ii. was known to the Service Provider prior to disclosure of such information to the Service Provider by the Client; or
  - iii. is subsequently disclosed to the Service Provider on a non-confidential basis by a third party not having a confidential relationship to the Client; or
  - iv. is required to be disclosed by the Service Provider under any law.

### 8. TERMINATION

- (1) If either Party at any time commits a breach of any terms herein contained and fails to remedy such breach within [insert number] days after written notice thereof by the other Party, such other Party may terminate this Agreement by written notice to such effect.
- (2) Either Party may, without cause, terminate the Agreement by giving to the other Party a [insert number] days written notice to that effect.
- (3) In case the Client decides to terminate this Agreement, due to no fault of the Service Provider, before the expiry of the Term, the Client agrees to

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pay the balance amount of the agreed fee for Technical Services at the time of such termination.

### **9. NON-COMPETITION**

Unless otherwise consented to by the Client, and such consent shall not be unreasonably withheld, during the performance of this Agreement and for [insert number] months after its completion or termination, the Service Provider agrees not to provide Services for any business which is in direct or indirect competition with the Client.

### **10. 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 [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.

### **11. ASSIGNMENT**

Neither this Agreement nor any of the rights or obligations created herein shall be assignable by either of the Parties without the prior written consent of the other Party.

### **12. DISPUTE RESOLUTION**

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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 [place].

### **13. GOVERNING LAW**

The validity, construction and performance of this Agreement shall be governed by the laws of [insert place].

### **14. SEVERABILITY**

In the event that any provision in this Agreement should under applicable law be held illegal or void, the Parties shall make every effort to replace the ineffective provision with a new provision which has the same effect – or as approximate effect as possible – as the said provision. If the Parties cannot agree upon such a new provision, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

### **15. AMENDMENTS**

This Agreement may be varied, amended or modified only by the mutual consent of the Parties in writing.

### **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understanding, agreements, or representations by or between the Parties, written or oral, to the extent that they are related in any way to the subject matter hereof.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals the day, month and year mentioned hereinabove.

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**For and on behalf of  
The Client**

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**For and on behalf of  
The Service Provider**



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## WITNESS NO. 1

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

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

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

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

## WITNESS NO. 2

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

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

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

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