

# Commercial Contract

## SOFTWARE DEVELOPING & CONSULTING AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

[www.smeda.org.pk](http://www.smeda.org.pk)

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**January 2013**

# Software Development & Consulting Services 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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## **5. SOFTWARE DEVELOPMENT & CONSULTING SERVICES AGREEMENT**

**THIS SOFTWARE DEVELOPMENT AND CONSULTING SERVICES 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 "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 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 agents and successors-in-interest).

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

**WHEREAS** the Business wishes to [insert description of the needs to be

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addressed].

**AND WHEREAS** the Business wishes to hire the Developer to develop these custom software packages.

**AND WHEREAS** the Developer desires to develop these custom software packages for the Business.

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

## 1. TERM

This Agreement shall come into effect on the date of execution of the Agreement, and shall remain in force until the time that the development of the software is complete and delivered to the Business. However, the Parties agree that in no case shall the duration of the Agreement be extended beyond [insert date].

## 2. SCOPE AND SERVICES

Developer shall provide and deliver to the Business custom software and consulting services including but not limited to system analysis, program development, personnel training, documentation writing and general business consulting. The software development under this Agreement shall result in software products which may be used for implementing:

[insert description of the results to be achieved]

## 3. DEVELOPER RESPONSIBILITIES

(1) Developer shall develop custom software which shall modify, customize, amend, enhance or otherwise change the following pre-existing software packages of the Developer to fulfill the requirements of the Business:

[insert description of the pre-existing software packages of the Developer]

(2) The pre-existing software packages of the Developer shall be modified, customized, enhanced or otherwise changed to serve the needs of the Business defined in Clause 2 of this Agreement.

(3) The Developer shall undertake the development of the software for the Business in constant consultation with the Business.

(4) The software development shall take place in accordance with the following schedule:

[insert various phases of the development process]

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## 4. SOFTWARE DOCUMENTATION DELIVERABLES

Developer shall deliver to the Business the following software documentation along with the final software in order for the software development services under this Agreement to be deemed complete:

[insert description of the deliverables]

## 5. PRICE AND PAYMENTS:

(1) The Business shall pay to the Developer Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) (hereinafter referred to as the "Price") in lieu of the development of the Software under this Agreement.

(2) The Price shall be paid to the Developer in accordance with the following schedule:

[insert description of the deliverable] paid]	[insert percentage of Price to be paid]
[insert description of the deliverable] paid]	[insert percentage of Price to be paid]
[insert description of the deliverable] paid]	[insert percentage of Price to be paid]

## 6. RESPONSIBILITIES OF THE BUSINESS

(1) The Business shall furnish information requested by the Developer that is necessary for the Developer to fulfill its responsibilities under this Agreement.

(2) The Business shall provide adequate work space and facilities for Developer personnel when such persons are performing on-site services for the Business.

(3) Unnecessary or unreasonable delays attributable directly to the Business which result in additional costs to Developer are subject to negotiation for additional compensation to Developer.

## 7. WARRANTIES

(1) The Developer warrants that the software systems developed hereunder will be capable of being integrated with existing hardware and software of the Business.

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- (2) For [insert number] months after the completion of the Agreement, the Developer shall, at no charge to the Business, correct any defects which impair the software's ability to meet the specifications.
- (3) After the expiration of the warranty period of [insert number] months, the Developer agrees to maintain the software systems developed hereunder in conformance with the applicable specifications for a period of [insert number] additional years with all reasonable costs to be paid for by the Business at rates for time and material to be mutually agreed upon between the Parties.

## **8. GUARANTEE OF ORIGINAL DEVELOPMENT**

- (1) Except for those components listed in Clause 8 (2) below, the Developer warrants that all materials produced hereunder shall be the original works of the Developer and shall not infringe upon or violate any patent, copyright, trade secret or other proprietary right of a third party. The Developer shall indemnify and hold the Business harmless from and against any loss, cost, liability or expense (including reasonable counsel fees) arising out of any breach or claimed breach of this warranty.
- (2) Developer is authorized to incorporate the following third party materials and/or components into the software to be developed hereunder:
  - [insert descriptions of the third party component/material]
  - [insert descriptions of the third party component/material]
  - [insert descriptions of the third party component/material]
- (1) Should the Developer wish to add additional non-original components, the Developer shall obtain the prior written approval of the Business.
- (2) The Developer shall assist the Business in the expeditious transfer of licenses and/or the perpetual licenses to the Business for such non-original components unless the Business already has title or license to any non-original components used hereunder. Any costs associated with such transfers shall be paid by the Business, provided that such software is used exclusively for the development of the Business' software.

## **9. CONFIDENTIALITY AND SECURITY OF THE SYSTEMS**

Each Party acknowledges that all material and information which has or will come into the possession and knowledge of either Party in connection with this Agreement or the performance hereof consists of confidential and proprietary data, whose disclosure to or use by the third parties will be damaging to the disclosing Party. Both Parties, therefore, agree to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to employees requiring such

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information for the performance of the services under this Agreement, and not to release or disclose it to any third party.

## **10. NON-COMPETITION**

Unless otherwise consented to by the Business, 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 Developer agrees not to provide software development or consulting services for any business which is in direct or indirect competition with the Business.

## **11. RIGHTS TO NEW IDEAS**

The Parties acknowledge that performance of this Agreement may result in the development of new proprietary and secret concepts, methods, techniques, processes, adaptations and ideas, and agree that the same shall belong solely to the Business without regard to the origin thereof and that the Developer shall not, other than in the performance of the Agreement, without the express written consent of the Business, which consent shall not be unreasonably withheld, sell, make use of or disclose the same to any person, group, or other business entity which is in direct or indirect competition with the Business.

## **12. TERMINATION**

- (1) The Agreement may be terminated by either Party at any time, with or without cause, by giving to the other Party a [insert number] days' prior written notice.
- (2) In the event that the Business, at its option, elects to terminate this Agreement, it shall pay to the Developer the amount equal to the actual time and material charges incurred by the Developer in performance of the services under this Agreement up till that time of receipt of the notice of termination.

## **13. TITLE RIGHTS, OWNERSHIP, RIGHT TO USE**

- (1) The custom software applications system and associated documentation developed under this Agreement which are the modifications, amendments, enhancements or customizations of pre-existing Developer software packages shall be the sole and exclusive property of the Business, free from any claim or retention of rights thereto on the part of the Developer.
- (2) The Developer shall retain a non-exclusive non-perpetual license in the software systems while they are under development and during the warranty and maintenance periods. Upon completion or termination of this Agreement, the Developer shall deliver to the Business all copies of any and all materials which pertain to the softwares developed under this Agreement, provided that the Business shall have paid in full all allowable Developer invoices associated with

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performance under this Agreement

- (3) Clause 13 (2) shall not be construed to give the Business any property right in the pre-existing Developer software which the Developer shall modify to meet the requirements of this Agreement.

## **14. PATENT COPYRIGHT OR TRADE SECRET INDEMNITY**

- (1) The Developer shall defend, at its own expense, any action brought against the Business or the Developer which is based on a claim that the systems developed and furnished hereunder infringe any proprietary right of a third party and shall pay the loss, damages, and reasonable attorney fees finally awarded against the Business in any such actions which are attributable to any such claim.
- (2) The Developer shall have no obligation to defend the Business or to pay costs, damages, or attorney fees for any claim based upon the combination, operation, or use of any software developed under this Agreement with non-Developer programs or data even if such infringement could have been avoided by the combination, operation, or use of the Systems with other programs or data.

## **15. TRAINING**

The Developer shall provide the training to the Business personnel with respect to the software developed under this Agreement at a time that mutually suits the Parties.

## **16. RELATIONSHIP OF THE PARTIES**

The Developer is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Developer shall provide the services under the general direction of the Business, but the Developer 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.

## **17. 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.

## **18. RESOLUTION OF DISPUTES**



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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 [insert place].

## 19. 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.

## 20. AMENDMENTS

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

## 21. NONWAIVER

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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.

## 22. 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 without the prior written consent of the other Party.

## 23. 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.

**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 Developer**

### WITNESS NO. 1

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

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

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

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

### WITNESS NO. 2

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

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

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

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

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