

# Commercial Contract

## PERFORMANCE CONTRACT



*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)

#### HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,  
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7  
[helpdesk@smeda.org.pk](mailto:helpdesk@smeda.org.pk)

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 <sup>rd</sup> Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 <a href="mailto:helpdesk.punjab@smeda.org.pk">helpdesk.punjab@smeda.org.pk</a>	5 <sup>th</sup> Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 <a href="mailto:helpdesk-khi@smeda.org.pk">helpdesk-khi@smeda.org.pk</a>	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 <a href="mailto:helpdesk-pew@smeda.org.pk">helpdesk-pew@smeda.org.pk</a>	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 <a href="mailto:helpdesk-qta@smeda.org.pk">helpdesk-qta@smeda.org.pk</a>

**January 2013**

## **Performance Contract**

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 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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### D4. PERFORMANCE CONTRACT

**THIS PERFORMANCE 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

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number] (hereinafter referred to as the "Performer").

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

**WHEREAS** the Business is conducting an event regarding [insert description of event] (hereinafter referred to as the "Event") for the purpose of [insert description of purpose of event].

**AND WHEREAS** the Business requires the services of a performer to perform at the Event.

**AND WHEREAS** the Performer has offered the Business to perform at the Event and the Business has accepted the services of the Performer.

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

#### 1. TIME AND VENUE

The Event shall take place on [insert date] from [insert time] to [insert time] at [insert address].

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### 2. SERVICES

The Performer shall be required to perform entertainment services, in accordance at the Event for [insert number] minutes from [insert time] to [insert time] at [insert complete address] (hereinafter referred to as the "Services").

### 3. SERVICE FEE

- (1) The Business shall pay an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) (hereinafter referred to as the "Service Fee") to the Performer in consideration of the Performer performing at the Event under this Agreement.
- (2) [Insert percentage] of the Service Fee shall be payable by the Business to the Performer in advance within [insert number] days of the execution of this Agreement. The remaining Service Fee shall be payable by the Business to the Performer on the day of Performance, [insert number] hours prior to the performance.
- (3) In the event the Business fails to make the payment to the Performance in accordance with this Agreement, the Performer shall have the right, but is not obligated, to terminate the Agreement.

### 4. TRANSPORTATION/HOTEL

- (1) The Business shall be responsible for the Performer's transportation and hotel accommodations. This includes, but is not limited to:
  - i. **Airfare:** (2) two roundtrip airline tickets (1) One ticket for the Performer; departing [insert departure city] to destination city. (1) One ticket for the Performer's attendant; departing [insert departure city] to destination city.
  - ii. **Ground Transportation:** Transportation to and from airport, hotel and venue. The Performer's driver, arranged by the Business, shall know the routes from airport to hotel, hotel to venue and return to airport or have a properly functioning GPS Navigation unit at his/her disposal for use.
  - iii. **Hospitality:** The Business shall provide (2) two separate overnight accommodations in nonsmoking rooms in a lobby entrance only in [insert description of accommodation] for [insert number] nights. The hotel must have internet access and [insert description of other facilities required by the Performer].
  - iv. The Business shall also fax or email travel itineraries to the Performer at least [insert number] weeks prior to departure.

### 5. TICKETS/ GUEST LIST

The Business shall make available to the Performer at least [insert number]

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complimentary tickets for the Performer's use.

### **6. EQUIPMENT/ STAGE**

(1) The Business shall make the following equipments available on stage for the Performer's performance:

- i. [insert description of equipment]
- ii. [insert description of equipment]
- iii. [insert description of equipment]

(2) The Performer shall provide their tracks (on CD or MP3) for performance.

(3) The Business shall supply sufficient stage lighting and sound system for the Performer's performance.

### **7. DRESSING ROOM/ DRESSING ROOM CATERING**

(1) Purchaser will provide a clean, private dressing room for the Performer to be available [insert number] hours before and after performance. Dressing room shall have the following amenities:

- i. [insert description];
- ii. [insert description];
- iii. [insert description].

### **8. INCIDENTAL SALES**

(1) The Performer shall have the sole right to sell or cause to be sold T-Shirts, Photographs, CDs, etc. at a prominent location at the Event venue.

(2) The Purchaser agrees to provide a table for such merchandise display and sale.

### **9. INTERVIEWS**

All interviews for the news media shall have prior approval of the Performer.

### **10. SECURITY**

The Business agrees to guarantee proper security at all times to ensure the personal safety of the Performer, auxiliary personnel, equipment and personal property, while at the accommodation, and before, during and after the Performer's performance at the Event.

### **11. PROMOTION**

The Business is responsible for basic promotion of the Event, including listing the Event in local newspapers.

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### **12. SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable under the law, the validity of this Agreement as a whole shall not be affected, and the other provisions of the Agreement shall remain in full force and effect.

### **13. AMENDMENTS**

This Agreement has been freely negotiated and shall be recognized as the entirety of the agreement. Only those changes or modifications specifically placed in writing by the Parties shall be accepted.

### **14. ENTIRE UNDERSTANDING**

This Agreement constitutes the sole agreement between the Performer and the Business regarding the Services.

### **15. REPRESENTATIONS**

Each Party hereby represents and warrants that it has the full power to enter into and perform according to the terms of this Agreement.

### **16. TERMINATION**

- (1) Either Party may terminate the Agreement by giving the other Party a [insert number] days prior notice.
- (2) In the event that the Performer terminates this Agreement for any reason other than the Business' default, the Performer shall refund any Service Fees received from the Business.
- (3) If the Performer terminates this Agreement for the Business' breach, the Performer shall retain any Service Fees received from the Business.

### **17. RELATIONSHIP**

The Parties to this Agreement acknowledge and agree that this Agreement does not constitute and shall not be construed as constituting a partnership, or joint venture relationship between or among the Parties.

### **18. 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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### 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. 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].

### 21. ASSIGNMENT

Neither Party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other Party.

**IN WITNESS WHEREOF**, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

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For and on behalf of  
**The Business**

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For and on behalf of  
**The Performer**

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## WITNESS NO. 1

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

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

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

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

## WITNESS NO. 2

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

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

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

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