

# Commercial Contract

## JOINT MARKETING AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

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**January 2013**

## **Joint Marketing 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 marketing. 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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### JOINT MARKETING AGREEMENT

**THIS JOINT MARKETING AGREEMENT** (hereinafter referred to as the "Agreement") made and entered into 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 "First Party", 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]

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

(The First Party and the Second Party are hereinafter collectively referred to as the "Parties", and individually as the "Party").

**WHEREAS** the First Party is in the business of production and marketing of [insert description of products] (hereinafter referred to as the "First Party's Products", and more particularly described in Clause 2 (2) of the Agreement).

**AND WHEREAS** the Second Party is in the business of production and marketing of [insert description products] (hereinafter referred to as the "Second Party's

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Products" and more particularly described in Clause 2 (3) of the Agreement). (First Party's Products and Second Party's Products are hereinafter collectively referred to as the "Products".)

**AND WHEREAS** the First Party's Products and Second Party's Products are often used by the consumers/customers together, for purposes which complement each other.

**AND WHEREAS** the Parties desire to cooperate in co-marketing their products for their mutual benefit (hereinafter referred to as "Joint Marketing").

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

## 1. TERM

(1) This Agreement shall commence on the date of execution of this Agreement, and shall continue for a period of [insert number] months, unless terminated earlier in accordance with the terms and conditions of this Agreement.

(2) The Agreement is renewable with the mutual consent of the Parties, on such terms and conditions that the Parties may agree upon.

## 2. PRODUCTS

(1) The First Party and the Second Party agree to market jointly their Products provided for in Clauses 2(2) and 2(3) of the Agreement, respectively.

(2) The First Party's Products are as follows:

- i.
- ii.
- iii.

(3) The Second Party's Products are as follows:

- i.
- ii.
- iii.

## 3. GENERAL DUTIES OF THE PARTIES

(1) In connection with the Joint Marketing of the Products, the Parties agree to fulfill the following mutual duties and obligations:

- i. To share information, with respect to the respective Products distribution channels, methods of distribution, competitive information and any other information which may be disclosed without violating any law or breaching any obligations of confidentiality of any third party.
- ii. To include, where appropriate, literature concerning the other Party's Products in individual direct mail, or other direct marketing, and with Product(s) shipments.
- iii. To provide advanced information about development of Products, any new products or modifications to existing Products jointly marketed pursuant to this Agreement.
- iv. To share information with respect to sales and/or prospective sales of the Products.

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- v. To provide a reasonable number of samples, demonstration units or other models of Products to the other Party on a timely basis.
- vi. To mention or include the other Party's products in advertisements, brochures, and related communications.
- vii. To share information with respect to trade shows, seminars and meetings which may be beneficial to the other Party.
- viii. To advise the other Party about ideas or recommendations for new products or enhancements to existing Products which may be appropriate for the other Party's Products.

### 4. SPECIFIC DUTIES OF THE PARTIES

(1) In addition to the general duties set forth in Clause 3 of the Agreement, the Parties agree to engage in the following specific marketing activities during the Term of this Agreement:

- i. **Press Releases:** Within [insert number] days of the date of this Agreement, the Parties shall jointly prepare and issue a press release announcing this Joint Marketing program, and generally promoting the Products as defined in Clause 2 of this Agreement. Any later press releases, referring to the other Party or its Products, must be approved by the other Party prior to its release.
- ii. **Trade Shows:** The Parties agree to jointly participate in the trade show announced from time to time, which in the mutual understanding of the Parties would be beneficial to the promotion of the Products, jointly and/or severally. The Parties shall register for each such trade show in their joint names, if permitted by the trade show. In case joint registration is not permitted, the First Party shall register on behalf of both the Parties, and the Parties shall jointly share the cost of registration and participation in such trade show, including but not limited to transportation, preparation, construction and removal of a booth at the trade show, and reasonable related expenses such as cost of refreshments and other items not specific to the Products. Each Party shall separately pay its own cost for transportation of its samples, demo units or Products to the trade show, and travel, lodging and meals for representatives at the trade show and special or extra customer meetings or entertainment. The Parties agree to jointly staff the trade show booth at all times, unless agreed otherwise in writing.
- iii. **Training:** Each Party agrees to provide [insert number] individuals to attend a sales meeting of the other Party for the purpose of demonstrating and training sales personnel with respect to the Party's Products. Each Party shall bear its own expenses for transportation and other out-of-pocket expenses for sending its representative to the other Party's sales meeting.
- iv. **Advertising:** The Parties shall select an advertising agency, with mutual consultation and consent, and shall jointly pay the expenses related to preparation for any advertisements and other promotional materials resulting from that relationship. The Parties shall share evenly the expenses related to these activities. Each Party may elect to use any resulting and approved material in the media of its choice without limitation, provided that such Party pays all the costs associated with media placement and specific production thereto itself. Additional joint advertisements may be prepared following

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separate agreement of the Parties.

### **5. CONFIDENTIALITY**

- (1) During the term of this Agreement, each Party may disclose to the other information that is confidential and proprietary to the disclosing Party (hereinafter referred to as the "Confidential Information") including, but is not limited to, business plans, marketing plans, financial statements, competitive analysis, market research, Product development plans, computer programs, designs and models, and customer lists, communicated orally, in writing, or by electronic media.
- (2) Confidential Information disclosed orally or electronically shall be identified as such at the time of disclosure. Confidential Information disclosed in writing shall be marked "Confidential".
- (3) Each Party agrees that it will maintain the Confidential Information of the other Party in confidence, and shall use such information only for the purposes of this Agreement. The Confidential Information may be disclosed by a receiving Party within its organization only to specific employees who have a need to know such information for the purposes of this Agreement, and who have agreed in writing not to disclose it to any third Party.
- (4) It is understood that the obligations with respect to Confidential Information does not apply to any information which:
  - i. at the time of its receipt was already known to the other Party;
  - ii. is or becomes part of the public domain without breach of this Agreement;
  - iii. is independently developed by the receiving Party;
  - iv. is received from a third party without similar restriction and without breach of this Agreement;
  - v. is approved for release by written authorization of the disclosing Party; or
  - vi. is required to be disclosed by court order or governmental agency, provided that the other Party is provided with prior written notice of any such disclosure requirement.
- (5) The obligation of the Parties under this Clause 5 shall survive the for [insert number] years after the date of expiration or termination of this Agreement.
- (6) Upon expiration or termination of this Agreement, or sooner if demanded by a Party, the receiving Party shall return to a disclosing Party, or destroy, as the disclosing Party may direct, any of the disclosing Party's Confidential Information, in all forms, including all copies thereof.

### **6. CONFLICT OF INTEREST**

During the term of this Agreement, and for a period of [insert number] years thereafter, each Party agrees that it shall not engage in any marketing, promotion, advertising or sales effort, individually or jointly, with respect to any product that is competitive with the other Party's Products or with respect to any entity that markets, promotes or sells a product in competition with the other Party.

Nothing stated herein this Agreement shall prevent either Party from engaging in any activity that promotes any other product or entity which does not compete with the other Party or its Products.

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## **7. TERMINATION**

- (1) The Agreement may be terminated by either of the Parties upon the occurrence of any of the following events, by giving a [insert number] days prior written notice to the other Party:
- i. if either of the Parties defaults against any material obligation under this Agreement, and such default is not cured within [insert number] days following the receipt of a written notice from the other Party notifying such default.
  - ii. [insert any other event of default as may be agreed upon between the Parties]
  - iii. [insert any other event of default as may be agreed upon between the Parties]

## **8. 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.

## **9. RESOLUTION OF DISPUTES**

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].

## **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 [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.

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## **11. INDEMNIFICATION**

The Parties agree that they shall indemnify, hold harmless and defend the other Party and all other related parties from and against any claims, demands, damages, costs, causes of action, losses, expenses, or liabilities, judgments, suits, actions or proceedings (including but not limited to the cost of litigation) arising out of the breach of this Agreement or otherwise negligence or willful misconduct by its partners, agents or employees while engaged in activities relating to this Agreement or by reason of non-compliance with laws, intellectual property infringement, and injury to employees and damage to the property of the other Party.

## **12. MISCELLANEOUS**

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior understanding or agreements, oral or written.
- (2) This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.
- (3) No provision hereof or breach of any provision may be waived except by a written waiver, signed by the waiving Party. No waiver of any right under or breach of this Agreement shall be construed to be a waiver of any other right or breach under the Agreement. 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.
- (4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in [insert place] for the time being shall be ineffective only to the extent of such prohibition or lack of enforceability, and shall not invalidate the remaining provisions hereof.

**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 First Party**

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**For and on behalf of  
The Second Party**



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### WITNESS NO. 1

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

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

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

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

### WITNESS NO. 2

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

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

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

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