

# Commercial Contract

## AGREEMENT TO APPOINT SOLE ADVERTISING AGENT



**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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## 1. INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

## **2. ROLE OF SMEDA LEGAL SERVICES CELL**

The Legal Services Cell (LSC) is a part of Business Development Services Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to requisite format and content of a business to business commercial contract. Entrepreneurs interested in enhancing their understanding about the nature and form of an Agreement to appoint a Sole Advertising Agent can also use the document.

## **3. DISCLAIMER**

Form of this document and the contents therein are provided only for general information purpose and on "as is" basis without any warranties of any kind. Use of this document is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this document, its form and any of the information provided therein and shall not be liable for any damages arising from its use. The information contained in this document is not an alternate to the legal advice. The users are advised to always consult a legal service provider before using or relying upon this document or any of the content or information contained therein.

**Agreement to Appoint Sole Advertising Agent**

This agreement is made at \_\_\_\_\_ (**insert place**) this \_\_\_\_\_ (**give date**) day of \_\_\_\_\_ (**give month**), 200\_\_\_\_\_

**Between**

A B C (**Give Name of the firm / company etc.**), having registered office at \_\_\_\_\_ (**place of office**) through its authorized partner / representative namely \_\_\_\_\_ (herein after called the “Advertiser” which expression shall mean and include its successors and assigns) of the one part.

**And**

X Y Z, etc. (**Give Name of the firm / company etc.**), having registered office at \_\_\_\_\_ (**place of office**) through its authorized partner / representative namely \_\_\_\_\_ (herein after called the “Publisher” which expression shall mean and include its successors and assigns) of the second part.

**WHEREAS** the Advertiser is engaged in the business of advertising and marketing of goods and services for and on behalf of its clients.

**AND WHEREAS** the Publisher is engaged in publishing a daily/weekly/monthly/quarterly newspaper/magazine/periodical (**insert the relevant publication**) with the name and style of \_\_\_\_\_ (**insert name of the newspaper or magazine etc.**) at \_\_\_\_\_ (**insert place of publication e.g. whole of Pakistan or a province or district**).

**AND WHEREAS** the Publisher desires to appoint the Advertiser as its sole agent to secure advertisements for its newspaper/magazine etc. clients subject to the terms and conditions set forth herein.

**AND WHEREAS** the Advertiser has shown its willingness to become agent of the Publisher to secure advertisements for its newspaper/magazine etc. subject to the terms and conditions set forth herein.

**Now therefore this agreement witnesseth as follows:**

**1. Appointment as Advertising Agent**

Subject to the terms and conditions provided in this agreement the Publisher hereby appoint the Advertiser as its sole agent to secure advertisements for the newspaper/magazine namely \_\_\_\_\_ etc. being published by the Publisher.

**2. Rates for Advertisements Secured**

While securing advertisements for the Publisher, the Advertiser shall not quote the rates less than the minimum rates prescribed for the time being by Advertising Association of Pakistan, a copy whereof is appended to this agreement. Provided that any change in the prescribed rate, duly notified by the Advertising Association of Pakistan, shall be read as an integral part of this agreement. All such rates shall be subject to applicable taxes and duties.

**3. Extent of Advertisements to be Secured**

The Advertiser shall be bound to secure advertisements covering space equal to not less than \_\_\_\_\_ (**insert number of pages**) pages of the single edition of the newspaper/magazine as a whole. In case of failure of the Advertiser to secure the advertisements covering such space the Publisher shall be entitled to deduct the amount of commission payable in respect of such deficiency out of the commission payable to the Advertiser under this agreement.

**4. Commission for Advertisements**

The Advertiser shall be entitled to a commission @ 15% on the gross rates for which an advertisement is secured by the Advertiser. Payments made to the Advertiser under this agreement shall be subject to deduction of all the applicable taxes and duties under the law.

**5. Payment for the Advertisements**

For all the advertisements secured and published in the newspaper/magazine the Advertiser shall make payments to the Publisher as per the schedule of payments

prescribed by All Pakistan Newspapers Society. In case of failure of the Advertiser to make payments in accordance with the prescribed schedule of charges the Advertiser may be subjected to late payment surcharge as deemed appropriate by the Publisher. While making payments to the publisher the advertiser may deduct all the applicable taxes and duties, if required by law.

#### **6. Provision of Subject Matter**

For insertion in the allocated space in the said newspaper/magazine/journal the Advertiser shall provide the relevant advertisement subject matter to the Publisher not less than \_\_\_\_\_ days before the publication. Provided that the Publisher shall have the right to reject the subject-matter if it should contravene any of the rules or regulations concerning the publications of advertisements issued by the Publisher or prescribed by All Pakistan Newspapers Society from time to time, as the case may be.

#### **7. Omission/Failure to Publish**

The Publisher shall have the right to omit any advertisement should the allotted space has been filled due to some emergent circumstances. Provided that such omission or any inadvertent or unintentional failure to publish the advertisement shall invalidates the insertion order for that date only and shall not be considered as breach of the terms and conditions of this agreement nor the Publisher shall be liable for damages thereof.

#### **8. Failure to Publish due to Force Majour**

It is specifically agreed by the Advertiser not to hold liable the Publisher for any damages for failure to publish an advertisement for any reason beyond its control including but not limited to labor disputes, strike, war, riot, insurrection, civil commotion, accident, flood, storm, fire or act of God. In such circumstances the Advertiser's sole remedies shall be as provided in clause 7 above.

#### **9. Cancellation of Orders**

The Advertiser may request cancellation of orders not later than \_\_\_\_\_ days after the space reservation due date. Cancellation orders received after due dates shall not be accepted and billed for space order to the Advertiser.

**10. Advertiser to provide Documents etc.**

Along with all the advertisement publication requests the Advertiser shall provide to the Publisher copies of all the agreements/arrangements he enters in with the customers regarding publication of such advertisement.

**11. Inspection of Record**

The Advertiser hereby unconditionally allows the Publisher to inspect its record, books of account and other correspondence relating to the advertisements sent by the Advertiser and the Advertiser shall be bound to maintain such record, books of account and correspondence in respect of the business under this agreement.

**12. Indemnity**

The Advertiser hereby indemnifies and holds harmless the Publisher from any and all actions, claims, damages, loss and expenses arising or that may become payable on account of any and all proceedings, suits or causes that may be instituted or filed against the Publisher on the ground that any or all the advertisements submitted by the Advertiser and published by the Publisher violates any copyright or any proprietary or other right of any natural or juridical person or is otherwise scandalous or libelous.

**13. Reimbursement of Claims, legal fees etc.**

The Advertiser shall reimburse any amount including fees of lawyers incurred by the Publisher on defending or settlement of any claim or satisfaction of judgments passed by a court of competent jurisdiction arising under clause 12 above or on initiating proceedings to collect any money due from the Advertiser under this agreement or to enforce compliance of the terms and conditions of this agreement.

**14. Duration**

Unless terminated earlier, this agreement shall remain in force for a period of \_\_\_\_\_ (give time period e.g. one year) from the date of signing of the agreement. On or before the expiry of the term of \_\_\_\_\_ years the parties may extend

the duration of the agreement for another period of \_\_\_\_\_ or more through mutual consent in writing.

**15. Termination**

This agreement may be terminated in the following manner:

- i. Subject to the prior written notice of \_\_\_\_\_ months both the parties may without assigning any reason terminate the contract.
- ii. Notwithstanding and without prejudice to the above, in case of violation to any of the provisions of this agreement by a party the other party may terminate this agreement subject to a prior written notice of \_\_\_\_\_ days. Provided however, a party intending to terminate the agreement under this sub-clause shall serve a notice in writing to the other party to rectify such violation within the time given in such notice.
- iii. In case either of the parties ceases to do the business.

Provided that the termination of agreement on any of the grounds/circumstances shall not absolve the parties from any liability accrued at the time of termination including payment of any monies due in respect of the advertisements published.

**16. Dispute Resolution**

If any dispute arises between the parties regarding the interpretation or applicability of any of the provisions of this agreement the same shall in the first instance be decided amicably through mutual consultation. In case of failure of the parties to resolve the dispute amicably the same shall be resolved either through third party mediation or arbitration in accordance with the Arbitration Act, 1940

**In witness whereof** the parties to the agreement hereby sign and execute the same in token of acceptance of the terms therein contained;

**Witness:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**Signatures of the parties.**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_