

# Commercial Contract

## AGREEMENT FOR DESIGNING OF PROMOTIONAL MATERIAL



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

# **Agreement for Designing of Promotional Material**

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.

# Agreement for Designing of Promotional Material

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## **A1. AGREEMENT FOR DESIGNING OF PROMOTIONAL MATERIAL**

**THIS AGREEMENT FOR DESIGNING OF PROMOTIONAL MATERIAL** (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 Business 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 "Designer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

**WHEREAS** the Business is engaged in [description of activities].

**AND WHEREAS** the Business requires the services of a designer to design the promotional material for its products namely [insert names of the products] (hereinafter referred to as the "Products").

**AND WHEREAS** the Designer is engaged in the business of providing designing services to its clients (as more particularly described in Clause 2 of this Agreement, and hereinafter referred to as the "Services").

**AND WHEREAS** the Designer has represented to the Business that it possesses adequate resources, skills and qualifications to provide the Business with the Services, and based on the representations of the Designer, the Business has accepted the Services of the Designer.

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

## 1. TERM

- (1) This Agreement shall come into effect on the date of execution of this Agreement, and shall continue to remain in force for a period of [insert number] months, unless terminated earlier by the Parties in accordance with the terms of this Agreement.
- (2) The Agreement is renewable for such terms as may be agreed between the Parties, on such terms and condition that the Parties may mutually decide amongst themselves.

## 2. SERVICES

- (1) The Designer shall provide the following Services to the Business:
  - i. Designing of promotional material for the Products;
  - ii. Making of Ads;
  - iii. [insert description of Services]

## 3. SERVICE FEES

- i. In lieu of the Designer providing the Services to the Business, the Business shall pay the designing fees to the Designer (hereinafter referred to as the "Service Fees") in accordance with the rates given in Schedule A of this Agreement.
- ii. Upon the completion and acceptance by the Business of the design of the promotional material for any of the Products, the Designer shall provide an invoice to the Business in accordance with the rates given in Schedule A. The Business shall be liable to pay the Service Fees to the Designer within [insert number] days of the Designer providing the invoice to the Business.

## 4. INTELLECTUAL PROPERTY PROVISIONS

- (1) All pre-existing Trademarks and copyright material, and other materials, information, photography, writings and other creative content provided by the Business (hereinafter referred to as the "Business' Content") for use in the preparation of and/or incorporation in the promotional materials of the Business' Products shall remain the sole property of the Business, and the Business shall be the sole owner of all rights in connection therewith. The Business hereby grants to the Designer a nonexclusive, nontransferable license to use, reproduce, and modify the Business' Content solely in connection with the Designer's performance of the Services under this Agreement.
- (2) All proprietary third party materials which are incorporated into the promotional material, including, but not limited to, stock photography or stock illustrations (hereinafter referred to as the "Third Party Materials") are the exclusive property of their respective owners. The Designer shall inform Business of all Third Party Materials that may be required to perform the Services or otherwise integrated

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into the designs created by the Designer. Under such circumstances, the Designer shall inform Business of any need to license such Third Party Material.

- (3) Upon completion of the Services and conditioned upon full payment of all fees, costs and out-of-pocket expenses due, Designer shall assign to Business all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by Designer as part of the Services under this Agreement. Designer shall cooperate with Business and shall execute any additional documents reasonably requested by Business to evidence all such assignments of intellectual property.
- (4) Upon completion of the Design Services, and subject to full payment of all fees, costs and expenses due, the Designer hereby assigns to the Business all right, title and interest, including without limitation, copyright and other intellectual property rights, in and to the Final Promotional Materials. The Designer agrees to reasonably cooperate with the Business and shall execute any additional documents reasonably necessary to evidence such assignment by the Designer in favor of the Business.

### **5. TIMING AND ACCEPTANCE**

- (1) *Timing.* The Designer shall prioritize performance of the Services as may be necessary or as agreed upon by the Parties, and will undertake commercially reasonable efforts to perform the Services. The Business agrees to review the final promotional materials within [insert number] days of the Designer's submission of the final materials to the Business, and to promptly either, (i) approve and accept the designed materials in writing (which will then become the "Final Deliverables") or (ii) provide written comments and/or corrections sufficient to identify the Business's concerns, objections or corrections to Designer.
- (2) *Acceptance.* The Business, within [insert number] business days of receipt of each Final Deliverable, shall notify the Designer, in writing, of any failure of such Final Deliverable to comply with the specifications as agreed upon by the Parties, or of any other objections, corrections, changes or amendments the Business wishes made to such Final Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and the Designer shall undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from the Business within the said stated time period, the Deliverable shall be deemed accepted.

### **6. BUSINESS RESPONSIBILITIES**

- (1) Business acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

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- i. Coordination of any decision-making with parties other than the Designer;
- ii. Provision of Business Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation; and,
- iii. Final proofreading/review.

### **7. RECOGNITION**

The Designer retains the right to reproduce, publish and display the Final Deliverables in the Designer's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the sole purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Final Deliverables in connection with such uses. Either Party, subject to the other's written approval, may include a link to the other Party's website.

### **8. CONFIDENTIAL INFORMATION**

Each Party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other Party, including, but not limited to, Preliminary Works (hereinafter referred to as the "Confidential Information"). Each Party, its agents and employees shall hold and maintain in strictest confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations pursuant to this Agreement, except as may be required under the law. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

### **9. RELATIONSHIP OF THE PARTIES**

- (1) *Independent Contractor.* The Designer is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Designer shall provide the Services under the general direction of the Business, but the Designer 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.
- (2) *No Exclusivity.* The Parties expressly acknowledge that this Agreement does not create an exclusive relationship between the Parties. The Business is free to engage others to perform services of the same or similar nature to those provided by the Designer, and the Designer shall be entitled to offer and provide design services to others, solicit other Businesses and otherwise advertise the services offered by the Designer.

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## **10. BUSINESS' WARRANTIES AND REPRESENTATIONS**

(1) The Business represents, warrants and covenants to the Designer that:

- i. The Business owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Business Content; and,
- ii. To the best of the Business' knowledge, the Business Content does not infringe the rights of any third party, and use of the Business Content as well as any Trademarks in connection with the Products do not and will not violate the rights of any third parties.

## **11. DESIGNER'S WARRANTIES AND REPRESENTATIONS**

(1) The Designer hereby represents, warrants and covenants to the Business that the Designer will provide the Services and produce the Deliverables as identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.

(2) The Designer further represents, warrants and covenants to the Business that the Final Deliverables shall be the original work of the Designer; and will not violate the rights of any third parties.

## **12. INDEMNIFICATION**

(1) The Business agrees to indemnify, save and hold harmless the Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of the Business' responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances, the Business shall promptly notify the Designer in writing of any claim or suit. The Business has sole control of the defense and all related settlement negotiations. The Designer shall provide the Business with commercially reasonable assistance, information and authority necessary to perform the Business' obligations under this Clause.

(2) Subject to the terms, conditions, express representations and warranties provided in this Agreement, the Designer agrees to indemnify, save and hold harmless the Business from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with the Designer's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of the Business.

## **13. TERMINATION**

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(1) This Agreement may be terminated at any time by either Party by giving the other Party a [insert number] days prior written notice, or if any Party breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within 20 days from receipt of written notice of such breach.

(2) Upon expiration or termination of this Agreement:

- i. Each Party shall return or, at the disclosing Party's request, destroy the Confidential Information of the other Party; and,
- ii. Other than as provided herein, all rights and obligations of each Party under this Agreement, exclusive of the Services, shall survive.

### **14. 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.

### **15. 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].

### **16. 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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## 17. AMENDMENTS

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

## 18. NONWAIVER

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.

## 19. 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.

## 20. 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.

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*For and on behalf of*  
**The Business**

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*For and on behalf of*  
**The Designer**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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

## SCHEDULE A

### PAYMENT SCHEDULE

1. [insert deliverable] payment
2. [insert deliverable] payment
3. [insert deliverable] payment

[insert agreed upon

[insert agreed upon

[insert agreed upon