

# Commercial Contract

## 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

## **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 respect to business process outsourcing. 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.

Information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

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### 4. MARKETING AGREEMENT

**THIS 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 "Business", 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 "Service Provider", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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

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**WHEREAS** the Business is engaged in the business of providing [insert description of products/services] (hereinafter referred to as the "Products").

**AND WHEREAS** the Service Provider has represented to the Business that it has the requisite resources, experience and expertise to provide marketing and promotion services with respect to the Business.

**AND WHEREAS** in reliance on the aforementioned representation of the Service Provider, the Business has agreed to appoint the Service Provider for the provision of the marketing and promotion services in respect of the Business the Parties are desirous of reducing into writing the salient features of the understanding reached between them.

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

### **1. APPOINTMENT**

The Business hereby appoints the Service Provider for the provision of the marketing and promotion services set out in Clause 2 below in respect of the Business, in accordance with the terms and conditions of this Agreement.

### **2. MARKETING AND PROMOTION SERVICES**

- (1) The Service Provider shall provide services for the marketing and promotion of the Business (hereinafter referred to as the "Marketing Services") on the terms and conditions set out herein.
- (2) As part of the Marketing Services to be provided by the Service Provider to the Business pursuant to Clause 2 (1) above, the Service Provider shall:
  - i. [Introduce the Business in the [insert territorial boundaries] (hereinafter referred to as the "Territory");
  - ii. Locate and develop markets for the Business in the Territory;
  - iii. Undertake market research for the Business;
  - iv. Procure customers/orders for the Business;
  - v. Generally provide all assistance reasonably required in relation to the Marketing Services, as and when called upon to do so by the Business, in order to assist in the creation and establishment of an efficient, profitable, reputable and international marketing and sales network for the Business.
- (3) The Service Provider shall provide the Marketing Services on an exclusive basis to the Business with due care and diligence and shall cultivate and maintain good relations with the customers and potential customers of the Business in the Territory in accordance with sound commercial principles.
- (4) If, at any time, the Business reasonably believes that any customer recommended by the Service Provider is not creditworthy it may, by written notice, require the Service Provider not to solicit any business from such customer.

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### **3. OBLIGATIONS OF THE PARTIES**

- (1) The Service Provider shall attend such meetings with representatives of the Business and/or its customers as he may deem necessary for the provision of the Marketing Services; make such calls upon the customers or potential customers in the Territory for the purposes of promoting the Business as are agreed; attend such trade exhibitions and other sales outlets in the Territory as the Parties agree may be commercially suitable for the purpose of promoting the Business.
- (2) The Service Provider shall from time to time keep the Business fully informed of its promotional and marketing activities in respect of the Business.
- (3) The Business shall supply the Service Provider with such literature and other information as is available to it and as is reasonably requested by the Service Provider from time to time for the purposes of complying with its obligations under this Agreement.

### **4. COMMISSION, FEE AND COSTS**

- (1) Subject to Clause 4(2) below, as consideration for the provision of the Marketing Services by the Service Provider, the Business shall pay to the Service Provider, as commission, [insert percentage]% of the amount of all the sales in the Territory in respect of which payment is received by the Business.
- (2) The Parties agree that no amounts other than such amounts as are specifically mentioned in this Agreement shall be payable to the Service Provider hereunder for the provision of the Marketing Services or otherwise.

### **5. MUTUAL COVENANTS**

- (1) The Parties mutually agree as hereunder:
  - i. Each Party shall cooperate with the other Party and comply with all reasonable requests of the other Party in order to permit the discharge of each Party's obligations to the other Party under this Agreement or to any regulatory body or to any third party in connection with this Agreement.
  - ii. Nothing in this Agreement shall give the Service Provider any rights in respect of any trade name or trade marks owned by the Business in relation to the Business or otherwise or the goodwill associated therewith, and the Service Provider hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights and goodwill are and shall remain vested in the Business.
  - iii. The Service Provider shall not use in the Territory any trade marks or trade names that are likely to cause confusion with the trade marks or trade names of the Business.

### **6. TERMINATION**

- (1) Either Party may terminate this Agreement by giving [insert number] months' notice in writing to the other Party.
- (2) In case the Business is of the opinion that the Service Provider is not satisfactorily performing its obligations under this Agreement, it may terminate

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this Agreement by giving [insert number] month notice in writing to the Service Provider.

### **7. CONFIDENTIALITY**

Except with the prior written approval of the Business, the Service Provider shall treat as confidential all information, which comes to its knowledge pertaining to the Business during the provision of Marketing Services under this Agreement (hereinafter referred to as the "Confidential Information") and it shall not during the term of this Agreement and for a period of [insert number] years after the termination thereof, disclose such Confidential Information to any third party.

### **8. 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].

### **9. 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.

### **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.

### **11.INDEMNIFICATION**

The Service Provider agrees that it shall protect, indemnify and hold harmless the Business and its employees, agents, representatives and assigns (hereinafter collectively referred to as the "Indemnified Parties") from and against all liabilities,

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damages, claims, demands, judgements, losses, costs, expenses, suits, actions or proceedings (including reasonable fees and disbursements of counsel) arising out of its breach of this Agreement or otherwise negligence or wilful misconduct by partners, agents or employees while engaged in activities relating to this Agreement. Provided however, that the Service Provider shall not be required to reimburse or indemnify any Indemnified Party for any loss or claim to the extent that such a loss or claim is due to the negligence or wilful misconduct of that Indemnified Party.

## 12. ASSIGNMENT

- (1) Except with the prior written approval of the other party, neither of the Parties may assign their rights and obligations under this Agreement.
- (2) Any assignment in violation of this Agreement shall be void and without legal effect.

## 13. 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 Business**

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**For and on behalf of  
The Service Provider**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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