

# Commercial Contract

## JOINT VENTURE 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 Venture 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 manufacturing. 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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### **B2. JOINT VENTURE AGREEMENT**

**THIS JOINT VENTURE 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 "First Venturer", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

#### **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];

(hereinafter referred to as the "Second Venturer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

(The First Venturer and the Second Venturer are hereinafter collectively referred to as the "Venturers" and individually as the "Venturer".)

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**WHEREAS** the First Venturer is engaged in the business of [insert description of the First Venturer's business].

**AND WHEREAS** the Second Venturer is engaged in the business of [insert description of the Second Venturer's business].

**AND WHEREAS** pursuant to a contract (hereinafter referred to as the "Contract") of [insert description of the project] (hereinafter referred to as the "Project"), the Venturers are desirous of forming a Joint Venture (hereinafter referred to as the "Venture"), under the laws of the [insert country] by the execution of this Agreement for the purpose of completion of the Project and are desirous of fixing and defining between themselves their respective responsibilities, interests, and liabilities in connection with the performance of the Project.

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

### **1. JOINT VENTURE**

- (1) The Venturers do hereby form a joint venture pursuant to the laws of [insert country] in order for the Venture to carry on the purposes for which provision is made herein.
- (2) The Venturers shall execute such certificates as may be required by the laws of [insert country] in order for the Venture to operate as a business, and shall do all other acts and things requisite for the continuation of the Venture as a Joint Venture pursuant to the applicable law.
- (3) The Venture shall be conducted under the name and style of "[insert name of the Venture]".
- (4) The principal place of business for the Venture shall be [insert complete address], which may be relocated with the mutual consent of the Venturers and in accordance with the requirements of the Venture.

### **2. PURPOSE OF THE JOINT VENTURE**

The business of the Venture shall be to perform the Contract and the completion of the Project, and all such other business incidental to the general purposes herein set forth.

### **3. TERM**

The term of the Venture shall commence on the date of the execution of this Agreement, and shall be terminated and dissolved upon the earliest to occur of: (i) completion of the Project and receipt and payment of all sums due to the Venture by its clients/customers, and to all laborers and material men employed by the Venture in connection with the Project; or (ii) on [insert date]; or (iii) the unanimous agreement of the Venturers; or (iv) the order of a court of competent

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jurisdiction.

### **4. PERCENTAGE OF PARTICIPATION**

(1) The interest of the Venturers in any gross profits and their respective shares in any losses and/or liabilities that may result from the activities of the Venture, and their interests in all property and equipment acquired and all money received in connection with the Venture shall be as follows:

1. First Venturer [insert percentage]
2. Second Venturer [insert percentage]

(2) The Venturers agree to indemnify each other and to hold the other harmless from, any and all losses of the Joint Venture that are in excess of such other Venturer's Percentage of Participation, provided that the provisions of this subsection shall be limited to losses that are directly connected with or arise out of the activities carried out within the purview of the Venture or the execution of any bonds or indemnity agreements in connection therewith and shall not be relate to or include any incidental, indirect or consequential losses that may be sustained or suffered by a Venturer.

(3) The Venturers shall contribute the following amounts to the Venture's amount on account of the initial capital of the Venture:

1. First Venturer [insert amount]
2. Second Venturer [insert amount]

(4) Except as otherwise required by law or this Agreement, the Venturers shall not be required to make any further capital contributions to the Venture.

(5) Upon execution of this Agreement, the Venturers shall each own the interests in the Venture in the following percentages:

1. First Venturer [insert percentage]
2. Second Venturer [insert percentage]

(6) No Venturer shall have the right to withdraw his capital contributions or demand or receive the return of his capital contributions or any part thereof, except as otherwise provided in this Agreement.

(7) The Venturers shall not be personally liable for the return of capital contributions or any part thereof, except as otherwise provided in this Agreement.

(8) Subject to the provisions of this Article, the Net Profits and losses of the Venture shall be allocated to the Venturers pro rata, based upon their respective Venture interests as set forth herein.

### **5. POLICY COMMITTEE**

(1) The management of the Joint Venture shall be conducted pursuant to the

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policy established by the Venturers acting through a "Policy Committee" which is hereby established.

(2) Each Venturer shall have a voice in the Policy Committee equal to its Percentage of Participation. For such purpose, each Venturer is assigned the following number of votes and hereby designates the following representatives to exercise such votes:

1. First Venturer [insert number of votes] [insert name of representative]
2. First Venturer [insert number of votes] [insert name of representative]

(3) Each Venturer may, at any time, substitute an alternative in place of any of its above named representatives by serving written notice to the other Venturer. Each Venturer's representative or alternative representative on the Policy Committee shall possess authority to act for such Venturer on all matters of interest to it with respect to its participation in the Venture.

(4) The Policy Committee shall determine the policy for the management of the Venture by majority vote and, as used in this Agreement, a "majority vote" is defined to be any figure greater than one-half of the authorized votes.

(5) The Policy Committee shall have the following powers:

- i. To determine the time and place of holding its meetings and the procedures for conducting its affairs;
- ii. To determine and act upon the various matters, expressly or impliedly contained in this Agreement, which require decision by the Policy Committee;
- iii. To determine and act upon any other matters of joint interest to, or requiring prompt action by the Venture;
- iv. To consider all claims and disputes of any kind between the Venture and the Venturers, subcontractors and/or third parties, and to authorize negotiation, arbitration, litigation, and/or any other process for their resolution and to authorize the settlement thereof.

(6) The Policy Committee shall generally perform its duties at a meeting at which all designated representatives of the Venturers are present, but where circumstances warrant, telephone communication between the representatives or their alternatives is authorized.

(7) The salaries and expenses of each of the representatives on the Policy Committee shall be borne by the Venturer whom the representative has been designated to represent, and shall not be an expense to the Venture.

## **6. DELEGATION OF AUTHORITY**

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(1) The Venturers agree to a split of authority between themselves as follows:

- i. [Insert name of the Venturer] shall be the Administrative Managing Partner, responsible for all bookkeeping and payroll of the Joint Venture;
- ii. [insert name of the Venturer] shall be the Project Managing Partner in charge of the activities of the Venture.

(2) The Project Managing Partner shall appoint the General Manager through whom it shall direct charge and supervision of all matters necessary and connected with the performance of the Contract, with the exception of the tasks performed by the Administrative Managing Partner.

### **7. JOINT VENTURE BANK ACCOUNTS**

(1) All Working Capital or other funds received by the Venture in connection with the performance of the Project shall be deposited in a bank account, set up especially for the Venture, and requiring the signatures of both Venturers for any withdrawals.

(2) Withdrawal of funds from the Venture's Account may be made in such amount and by such persons as authorized by the Policy Committee.

### **8. ACCOUNTING AND AUDITING**

(1) Separate books of accounts shall be kept by the Administrative Managing Partner of the transactions of the Venture. Any Venturer may inspect such books upon reasonable notice and at any reasonable time.

(2) Periodic audits may be made upon said books at such time as authorized by the Policy Committee by persons designated by the same and copies of said audit shall be furnished to all Venturers.

(3) Upon completion of the Project, a final audit shall be made and copies of such audit shall be furnished to each of the Venturers.

### **9. AUTHORITY**

Nothing in this Agreement shall be construed to give any Venturer, and no Venturer shall hold itself out to have, the authority or power to enter into any obligation on behalf of the other Venturer except as specifically authorized by the other Venturer in writing.

### **10. 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 [insert country] and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

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### **11. 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].

### **12. FORCE MAJEURE**

- (1) Force Majeure shall mean any event that is beyond the reasonable control of a Venturer, or the effects of which adversely affect the performance by such Venturer 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 Venturer affected.
- (2) Notwithstanding anything contained hereinabove, neither Venturer 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 Venturer 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 Venturer shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Venturer for the purpose of finding a mutually acceptable solution to the Force Majeure event.

### **13. AMENDMENTS**

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

### **14. NONWAIVER**

The failure of either Venturer 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.

### **15. 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



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invalidated in any way.

**IN WITNESS WHEREOF**, the Venturers hereto have set their hands and seals the day, month and year mentioned hereinabove.

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**For and on behalf of  
The First Venturer**

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**For and on behalf of  
Second Venturer**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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