

# Commercial Contract

## PRODUCT DESIGNING AGREEMENT



*Empowered lives.  
Resilient nations.*



### 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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January 2013

## **Product Designing 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.

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

### 7. PRODUCT DESIGNING AGREEMENT

**THIS PRODUCT DESIGNING 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 "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 the production of [insert description of products].

**AND WHEREAS** the Business requires the services of a designer to create new designs for its upcoming products [insert description of the products] (hereinafter referred to as the "Products", and more particularly described in Schedule A of this Agreement).

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

**AND WHEREAS** the Designer has represented to the Business that it possesses adequate resources, skills and qualifications to provide the Business with the

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Services, and based on the representations of the Designer, the Business has accepted the Services of the Designer.

**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. DESIGN SERVICES

The Designer shall independently explore, research and develop potential new Product designs and any improvements or modifications of existing products for the Business' consideration, in accordance with the specifications and guidelines, and schedules provided by the Business for the designing of the Products.

## 3. SERVICE FEES

- (1) In lieu of the Designer providing the Design 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 B of this Agreement.
- (2) Upon the completion and acceptance by the Business of the design of the Products, the Designer shall provide an invoice to the Business in accordance with the rates given in Schedule B. 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.
- (3) Apart from the Service Fees, the Business shall reimburse the Designer for all expenses incurred in the production of the design of the Products, at actual, within [insert number] days of the Designer providing the Business with the invoice along with proofs of the expenses so incurred.
- (4) The Parties agree and acknowledge that the Business shall not be liable to pay any amounts to the Designer other than the amounts described in Clauses 3 (1) to (3).

## 4. INTELLECTUAL PROPERTY PROVISIONS

- (1) All pre-existing Trademarks and copyright material, and other materials, information, photography, writings, product designs and other creative content provided by the Business (hereinafter referred to as the "Business' Content") for

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use in the preparation of the Product designs 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 Design Services under this Agreement.

- (2) All proprietary third party materials which are incorporated into the Product designs, (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 into the Product 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, the Designer shall assign to Business all ownership rights, including any copyrights, in and to any Product designs or artwork comprising the works created by the Designer as part of the Design Services under this Agreement. The 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 Product designs. 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. TERMINATION**

- (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 [insert number] 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 Design Services, shall survive.

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

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

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- 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.

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

- (1) The Designer hereby represents, warrants and covenants to the Business that the Designer will provide the Design Services and produce the Product designs in a professional and workmanlike manner and in accordance with all reasonable professional standards for such Design Services.
- (2) The Designer further represents, warrants and covenants to the Business that the Product designs shall be the original works of the Designer, and shall not violate the rights of any third parties.

### **8. INDEPENDENT CONTRACTOR**

The Designer shall at all times be an independent contractor, and not an affiliate, agent or representative of the Business with regard to performance of the Design Services. The Designer shall not represent that it is, or hold itself out as, an affiliate, agent or representative of the Business. The Designer shall not be authorized to enter into any contract or commitment on behalf of the Business or to incur any obligation or liability on behalf of the Business. This Agreement shall not be interpreted or construed as creating or evidencing any association, joint venture, or partnership among the Parties or as imposing any partnership obligation or liability on any Party.

### **9. PROPRIETARY RIGHTS IN PRODUCT DESIGNS**

- (1) The Designer acknowledges that the Product designs may in the future include valuable patent, trademark, copyright and other proprietary rights of the Business, and the Business reserves all exclusive patent, trademark, copyright and other proprietary rights related to the Product designs. Title to and ownership of the Product designs, and to any proprietary rights related to any Product designs, shall be vested in Business immediately upon creation, and the Designer shall not infringe or violate, and shall take appropriate steps and precautions for the protection of, such rights.
- (2) Without limiting the generality of the foregoing, the Designer shall, immediately upon the Business' request, do all things necessary or appropriate (including but not limited to the execution and delivery of documents) to assist the Business in obtaining or perfecting its patent, trademark, copyright or other proprietary rights in the Product designs or to transfer to the Business or its assignee any and all proprietary right in the Product designs which the Designer may have

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obtained by any means; provided that the Business shall pay all costs associated with securing proprietary rights for the Product designs.

### **10. RELEASE AND INDEMNITY**

- (1) The Designer releases and shall defend, indemnify and hold harmless the Business, its affiliates, successors and assigns, officers, employees, agents and representatives (hereinafter collectively referred to as the "Indemnified Parties") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in connection with the Design Services or any act, omission, fault, negligence, strict liability or breach of Agreement of the Designer; provided that the Designer shall not be obligated to indemnify the Business to the extent, and in the percentage, that the cost, liability, damage or expense in question is caused by the act, omission, negligence or strict liability of any of the Indemnified Parties, or by a material design change implemented or directed by the Business which is documented as Business directed change.
- (2) The Business releases and shall defend, indemnify and hold harmless the Designer, its affiliates, successors and assigns, officers, employees, agents and representatives of the Designer from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to reasonable attorney's fees) arising out of or in connection with any act, omission, fault, negligence, strict liability or breach of Agreement of the Business or anyone acting on the Business' behalf.

### **11. CONFIDENTIALITY**

- (1) The Designer shall not disclose to anyone or use any trade secret or confidential information of the Business except as required for performance of the Design Services. Trade secrets or confidential information of the Business is hereby defined as
  - i. the nature of Design Services provided by the Designer to the Business, and
  - ii. any document, concept idea or other item treated or otherwise identified by the Business as a trade secret or confidential business information, including but not limited to any and all unique methods and techniques that have been developed by or on behalf of the Business for use in connection with its business, promotional and advertising manuals and materials that are used or have been developed in connection with the Business, customer and supplier price lists, pricing strategies and other pricing information of the Business, financial information and business plans of the Business, and any other confidential information or data relating to the Business. Notwithstanding the foregoing, confidential information of the Business shall not include methods, techniques or programs developed by the Designer outside of performance of the Design Services and used in connection with performance of the Design Services.

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## **12. 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.

## **13. 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].

## **14. 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.

## **15. AMENDMENTS**

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

## **16. 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.

## **17. NON-ASSIGNMENT**



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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.

## 18. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any oral or written representations, negotiations, or other communications of every kind heretofore made between the parties relating to the Managerial Services envisaged in this Agreement.

## 19. 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.

**IN WITNESS WHEREOF**, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

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

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

### WITNESS NO. 1

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

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

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

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

### WITNESS NO. 2

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

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

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

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

## SCHEDULE A DESCRIPTION OF PRODUCTS

1. [insert description of Product]

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- 2. [insert description of Product]**
- 3. [insert description of Product]**

## **SCHEDULE B PAYMENTS FOR PRODUCT DESIGNS**

- |                            |                                     |
|----------------------------|-------------------------------------|
| <b>1. [insert Product]</b> | <b>[insert agreed upon payment]</b> |
| <b>2. [insert Product]</b> | <b>[insert agreed upon payment]</b> |
| <b>3. [insert Product]</b> | <b>[insert agreed upon payment]</b> |