

Commercial Contract

ADVERTISEMENT AGENCY AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

| REGIONAL OFFICE PUNJAB | REGIONAL OFFICE SINDH | REGIONAL OFFICE KPK | REGIONAL OFFICE BALOCHISTAN |
|---|--|--|---|
| 3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk | 5 th Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk | Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk | Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk |

January 2013

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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 marketing. 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.

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

ADVERTISING AGENCY AGREEMENT

THIS ADVERTISING AGENCY 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 "Advertiser", 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];

(hereinafter referred to as the "Agency", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

(The Advertiser and the Agency are hereinafter collectively referred to as the "Parties", and individually as the "Party").

WHEREAS the Advertiser is in the Business of production and sale of [insert description of products/services] (hereinafter referred to as the "Products" and more particularly described in Clause 3 of this Agreement).

AND WHEREAS the Advertiser requires the services of an advertising agency to render advertisement services for its Products.

AND WHEREAS the Agency is in the business of providing advertising agency services to its clients.

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

AND WHEREAS the Advertiser desires to engage the Agency to render, and the Agency desires to render to the Advertiser, certain advertising agency services as set forth in Clause 1 of this Agreement.

NOW THEREFORE in consideration of the mutual agreements and covenants herein contained, the Parties hereto agree as follows:

1. ENGAGEMENT AND SCOPE OF AGREEMENT

(1) The Advertiser hereby engages the Agency to render, and the Agency agrees to render to the Advertiser, certain services (hereinafter referred to as the "Services") enumerated below, in connection with the Advertiser's planning, preparing and placing of advertisement for certain of Advertiser's Products:

- i. Analysis of Advertiser's current and proposed Products, and present and potential markets.
- ii. Creation, preparation and submission to the Advertiser for its prior approval of advertising ideas and programs.
- iii. Preparation and submission to the Advertiser for its prior approval of estimates of costs and expenses associated with proposed advertising ideas and programs.
- iv. Designing and preparation, or arrangement for the design and preparation of the advertisements.
- v. Performing such other services as the Advertiser may request from time to time such as, but not limited to, direct mail advertising preparation, speech writing, publicity and public relations work, market research and analysis.
- vi. Ordering advertising space, time or other means to be used for publication of the Advertiser's advertisements, at all times endeavoring to secure the most efficient and advantageous rates available.
- vii. Proof for accuracy and completeness of insertions, displays, broadcasts, or other forms of advertisements.
- viii. Audit invoices for space, time, material preparation and charges.

2. TERM

- (1) The term of this Agreement shall commence on [insert date] and shall continue in full force and effect until terminated by either party upon at least [insert number] days prior written notice, provided that in no event (except a breach of any term under this Agreement) may this Agreement be terminated prior to [insert earliest date].
- (2) The rights, duties and obligations of the Parties shall continue in full force during or following the period of the termination notice until termination, including the ordering and billing of advertising in media whose closing dates follow such period.

3. PRODUCTS

- (1) The Agency's engagement and provision of Services shall relate to the following Products of the Advertiser:
 - i. [insert description of Product]
 - ii. [insert description of Product]

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

iii. [insert description of Product]

4. EXCLUSIVITY

The Agency shall be the [insert Exclusive or Non-Exclusive] advertising agency in [insert country] for Advertiser with respect to the Products described in Clause 3 of this Agreement.

5. COMPENSATION

- (1) The Agency shall receive an amount equal to [insert commission rate]% of the gross charges levied by media for advertisement placed therewith by the Agency pursuant to this Agreement, [insert commission rate]% after volume discount of the charges of suppliers of services or properties, such as finished art, comprehensive layouts, type composition, engravings, printing, radio and television programs, literary, dramatic and musical works, records and exhibits etc. purchased by the Agency on the Advertiser's authorization during the term of this Agreement.
- (2) For those items where the Agency is not compensated on a commission basis, the Advertiser shall pay the Agency on an hourly basis for services provided hereunder. The hourly rate shall be determined by the type of services provided and the person or persons providing such services, but in no event shall the rate exceed [insert maximum hourly rate] per hour.
- (3) In the event that the Agency undertakes, at the Advertiser's request, special projects such as those described in Clause 1, the Agency shall prepare an estimate of total charges for any such special project, including therein any charges for materials or services purchased from outside sources. In the event that the Advertiser elects to proceed with the special project based upon the Agency's estimated cost, the Agency shall perform the services with respect to such special project at its estimated cost, subject to modification as mutually agreed by the Parties.
- (4) For any special project or other services provided by Agency pursuant to this Agreement upon which the Parties have not agreed as to charges, the Advertiser shall pay the Agency at its regular hourly rates, not to exceed [insert maximum hourly rate] per hour.
- (5) The Advertiser shall not be obligated to reimburse the Agency for any travel or other out-of-pocket expenses incurred in the performance of services pursuant to this Agreement unless expressly agreed by the Advertiser in advance.

6. BILLING

- (1) The Agency shall invoice the Advertiser for all costs incurred in performance of the Services under this agreement, where possible, in advance of the Agency's payment date to allow for prepayment by the Advertiser so that the Advertiser may receive the benefit of any available prepayment or similar discount. For any media purchase or Service for which the Agency is not entitled to a commission, the Agency shall ensure that the charges to the Advertiser are net of all Agency commissions and discounts.
- (2) Charges for production materials and services shall be billed by Agency upon completion of the production job or, if cash discounts are available, upon receipt of the suppliers' invoice.

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

(3) Rate or billing adjustments shall be credited or charged to the Advertiser on the next regular invoice date or as soon as otherwise practical.

(4) The Invoices shall be submitted by the Agency to the Advertiser in an itemized format and shall be paid by the Advertiser within [insert number] days of the invoice date.

7. COMPETITORS

During the term of this Agreement, the Agency shall not accept employment from, render services to, represent or otherwise be affiliated with any person, firm, corporation or entity in connection with any product or service directly or indirectly competitive with or similar to any Product of the Advertiser with respect to which the Agency is providing any Service pursuant to this Agreement.

8. COST ESTIMATES

The Agency shall not commence work on any project pursuant to this Agreement without first estimating costs for preparation, including copy, service, layout, art, engraving, typography, processing, paste up and production. After determining the estimated cost, completion of the work shall be subject to the Advertiser's prior approval.

9. AUDIT RIGHTS

Agency agrees that following reasonable prior notice any and all contracts, agreements, correspondence, books, accounts and other information relating to Advertiser's business or this Agreement shall be available for inspection by Advertiser and Advertiser's outside accountants, at Advertisers expense.

10. OWNERSHIP AND USE

(1) The Agency shall ensure, to the fullest extent possible under law, that the Advertiser shall own any and all right, title and interest in and to, including copyrights, trade secrets, patents and other intellectual property rights with respect to any copy, photograph, advertisement, music, lyrics, or any other work or thing created by the Agency or at the Agency's direction for the Advertiser pursuant to this Agreement and utilized by the Advertiser.

(2) Upon termination or expiry of this Agreement, the Advertiser agrees that any advertising, merchandising, package, plan or idea prepared by the Agency and submitted to the Advertiser (whether submitted separately or in conjunction with or as a part of other material) which the Advertiser has elected not to utilize, shall remain the property of the Agency, unless the Advertiser has paid to the Agency for its Services in preparing such item. The Advertiser agrees to return to the Agency any copy, artwork, or other physical embodiment of such creative work relating to any such idea or plan which may be in the Advertiser's possession at termination or expiration of this Agreement.

(3) The materials and advertisements created by the Agency pursuant to this Agreement may be used by Advertiser outside [insert country] without additional compensation, provided that the Advertiser shall be responsible for any additional expense associated with such use, such as charges for translation, etc.

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

11. INDEMNIFICATION

- (1) Agency shall indemnify and hold Advertiser harmless with respect to any claims, loss, suit, liability or judgment suffered by Advertiser, including reasonable attorney's fees and costs, based upon or related to any item prepared by the Agency or at the Agency's direction, including, but not limited to, any claim of libel, slander, piracy, plagiarism, invasion of privacy, or infringement of copyright or other intellectual property interest, except where any such claim arises out of material supplied by the Advertiser and incorporated into any materials or advertisement prepared by the Agency.
- (2) The Advertiser agrees to indemnify and hold the Agency harmless with respect to any claims, loss, liability, damage or judgment suffered by the Agency, including reasonable attorney's fees and court costs, which results from the use by the Agency of any material furnished by the Advertiser or where material created by the Agency or at the direction of the Agency is materially changed by the Advertiser. Information or data obtained by the Agency from the Advertiser to substantiate claims made in advertising shall be deemed to be materials furnished by the Advertiser to the Agency.

12. RIGHTS UPON TERMINATION

- (1) Upon termination of the Agreement, the Agency shall transfer, assign and make available to the Advertiser all property and materials in the Agency's possession or subject to the Agency's control, subject to payment in full of amounts due pursuant to this Agreement.
- (2) Upon termination of this Agreement, the Agency agrees to provide reasonable cooperation in arranging for the transfer or approval of third party's interest in all contracts, agreements and other arrangements with advertising media, suppliers, talent and others not then utilized, and all rights and claims thereto and therein, following appropriate release from the obligations therein.

13. 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.

14. 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].

15. 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,

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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.

16. 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.

**For and on behalf of
The Advertiser**

**For and on behalf of
The Agency**

Advertising Agency Agreement

Pro-Gole (Right to do Business)

Legal Services, B&SDS

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____