

Commercial Contract

INTERNATIONAL FRANCHISE AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 IP 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.

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7. INTERNATIONAL FRANCHISE AGREEMENT

THIS INTERNATIONAL FRANCHISE 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 "Franchisor", 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]

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

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

WHEREAS the Franchisor is engaged in the business of [insert description of the business] (hereinafter referred to as the "Business") comprising certain proprietary marks, confidential information, standards, specifications, identifying schemes and materials, insignia, management methods and standard operation procedures (hereinafter collectively referred to as the "Proprietary Marks", and more particularly described in Schedule 1 of this Agreement) within [insert country].

AND WHEREAS the Franchisor, wishing to expand its Business internationally, but due to lack of resources, desires to franchise its business in [insert country].

AND WHEREAS the Franchisee desires to obtain the benefit of knowledge, skill and experience of the Franchisor, and the right and franchise to operate the Business system of the Franchisor in [insert country].

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

APPOINTMENT AND GRANT

- (1) The Franchisor hereby grants to the Franchisee, during the continuance of this Agreement and any renewals thereof, the sole and exclusive right and license to operate the Business within the Territory (as more particularly described in Clause 3), and making use of the Proprietary Marks in this connection.
- (2) The Franchisee shall display the following words or such similar words as may from time to time be specified by the Franchisor at the franchise premises: "A [insert name of Franchisor business] Franchise owned and operated under License by [insert name of Franchisor]. Same wordings shall be displayed upon all letter headings, bills, invoices and other documents and literature used by the Franchisee in connection with the Franchisor's Business.

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COMMENCEMENT AND TERM

- (1) This Agreement shall commence on the date of execution of this Agreement, and shall continue for a period of [insert number] years, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- (2) The Agreement is renewable with the mutual consent of the Parties, on such terms and conditions that the Parties may agree upon.

TERRITORY

- (1) The right and license granted to the Franchisee to operate the Business shall extend only to [insert city], [insert country] (hereinafter referred to as the "Territory").
- (2) The Franchisee shall be free to open as many branches in the Territory, subject to the Franchisee paying the Fees to the Franchisor in accordance with Clause 4 hereof. However, it is agreed by the Parties that the Franchisee shall open a minimum of [insert number] outlets within [insert number] months of the date of execution of this Agreement.
- (3) The Franchisor will not itself operate or make use of nor license any person other than the Franchisee to operate the Business under the Proprietary Marks in the Territory.

FEES AND PAYMENT

- (1) In consideration of the grant of the right and license to operate the Business to the Franchisee, the Franchisee shall pay to the Franchisor or such other person as the Franchisor may direct, a performance guarantee of [insert amount in the agreed upon currency] for the right to operate the Business, paid by the Franchisee to the Franchisor at the time of execution of this Agreement, which sum shall be refunded to the Franchisee free from any deduction whatsoever upon termination or expiration of this Agreement, and upon the fulfillment of the Franchisee's obligations herein.
- (2) The Franchisee shall also pay to the Franchisor in arrears, on or before the [insert number] day of the month (hereinafter referred to as the "Payment Date"), [insert percentage amount]% of the gross monthly income against each outlet opened in accordance with Clause 4 (1) of this Agreement.

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- (3) [Insert the commercial terms and conditions for placing orders, payment and shipment to be provided by the Franchisor].

OBLIGATIONS OF THE FRANCHISOR

- (1) The Franchisor shall provide to the key employees and personnel of the Franchisee initial training in the standards, procedures, techniques and methods employed in the Business during a period of not less than [insert number] man hours at such times and at such place as shall be specified by the Franchisor, the costs of travel and subsistence (inclusive of accommodation) in connection therewith being borne by the Franchisee.
- (2) The Franchisor shall provide such assistance as the Franchisor shall deem appropriate in connection with the opening of the Franchises including on-site supervision thereof and advice concerning pre-opening and launch activities.
- (3) The Franchisor agrees to provide the Franchisee with advice, know how and guidance relating to the management, finance, promotion and methods of operation to be employed in connection with the running of the Business.
- (4) The Franchisor further agrees to make available to the Franchisee, with reasonable promptness, members of the Franchisee's staff to provide any requisite on site assistance and advice in connection with the Business.

OBLIGATIONS OF THE FRANCHISEE

- (1) The Franchisee agrees as follows:
- i. to ensure that adequate financial resources are available to the Franchisee by way of working capital and otherwise to ensure that the Franchisee is able to fulfill all its obligations herein contained.
 - ii. to operate the Business strictly in accordance with the Franchisor's standards.
 - iii. to ensure that the Business conforms with the other businesses operated with regard to quality, service and cleanliness, the Franchisee acknowledging that such conformity is of the most importance to the successful operation of the business and the protection of the goodwill attaching to the Proprietary Marks.

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- iv. to comply with all advice and instructions given by the Franchisor with regard to the operation of the Business.
- v. to use only such letter headings, invoices, signs, display materials, promotional literature, equipment and other items in connection with the Business as shall be approved in writing by the Franchisor and immediately to desist from the use or display of any signs, material or objects as the Franchisor directs.
- vi. at all times to maintain the interior and exterior of the Premises and all parts thereof to the highest standard of decoration, repair and cleanliness and promptly to ensure that the requirements of the Franchisor in this regard are fulfilled.
- vii. diligently to carry on the Business and to use best endeavours to promote and increase the Business and to cooperate with the Franchisor and the other Franchisees of the Franchisor in this regard.
- viii. continuously to operate the Business upon such days and between such hours as the Franchisor shall specify in accordance with the law of the Territory.
- ix. to maintain sufficient stocks and employ sufficient staff to meet demand from the customers of the Business and to permit the efficient operation of the Business.
- x. unless otherwise agreed, to promptly pay all suppliers of goods and services sold or provided to the Franchisee for the purpose of the Business.
- xi. to promote and preserve the goodwill and reputation associated with the Proprietary Marks.
- xii. to consult with the Franchisor as to the scale and level of prices and charges to be levied in the course of Business.
- xiii. to permit the Franchisor and its representatives without any further authority save that hereby irrevocably given at reasonable times and upon reasonable notice to enter upon the Premises/Franchises for the purposes of ascertaining whether the provisions of this Agreement are being complied with.

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RESTRICTIONS ON FRANCHISEE

- (1) The Franchisee agrees, during the term of this Agreement:
 - i. not to commence operating the Business until the persons responsible for its operation have undergone a proper course of training to the satisfaction of the Franchisor.
 - ii. not to commence operating the business until the Franchisor has approved the Premises and the construction and conversion thereof.
 - iii. not to sell, assign, transfer, charge or sub license the Business or Proprietary Marks nor any part thereof without the prior consent of the Franchisor in accordance with the other terms of this Agreement.
 - iv. not to sell any product or render any service which does not conform to or conflicts with the standards associates with the Proprietary Marks or of which the Franchisor does not approve.
 - v. not to use any of the Proprietary Marks as part of its corporate name.

- (2) The Franchisee covenants that during the terms of this Agreement and for a period of [insert number] months after the expiration or termination of this Agreement, the Franchisee shall:
 - i. not to engaged, or interested, or concerned in the sale of the products or provision of the services or any like products or services or in any business which is in the sole opinion of the Franchisor similar to or competitive or in conflict with the Business;
 - ii. not employ or seek to employ any person who is at that time or has at any time in the previous [insert number] years been employed by the Franchisor;
 - iii. not solicit customers or former customers of the Business nor divert or seek any custom from the Franchisor or any other franchisee of the Franchisor.

- (3) The Franchisee hereby acknowledges that the information and knowledge relating to the Business is of a strictly confidential nature and accordingly, and covenants that it shall not, at any time after termination of this Agreement, divulge or use, whether directly or

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indirectly, for its own benefit any of such information or knowledge relating to the Franchisor's business.

ADVERTISING

The Franchisee will expend in aggregate not less than [insert percentage]% of the annual gross sale on local advertising in the form and style prescribed by the Franchisor after consultation with the Franchisee. The Franchisee will not publish any other advertising material unless samples thereof have been submitted to the Franchisor relating to use of such advertising materials. The Franchisee will immediately cease the use of such advertising materials deemed inappropriate by the Franchisor upon receipt of a request from the Franchisor to do so.

TRADEMARKS

- (1) The Franchisor warrants that it is entitled to license the Proprietary Marks to be utilized in the Business throughout the terms of the Agreement and that subject to registration under the relevant trade mark statute and license thereof granted, the use of the Proprietary Marks by the Franchisee in the Territory shall not constitute an infringement of the rights of any third party and will fully and effectively indemnify the Franchisee for and against all loss, damage, costs, claims and expenses arising out of any such infringement.
- (2) The Franchisee acknowledges that the goodwill and all other rights in and associated with the Proprietary Marks vest absolutely in the Franchisor and that it is in the intention of the Parties that all such rights will at all times hereafter and for all purposes remain vested in the Franchisor and in the event that any such rights at any time accrue to the Franchisee by operation of law or however otherwise, the Franchisee will at its own expense forthwith on demand do all such acts and things and execute all such documents as the Franchisor shall deem necessary to vest such rights absolutely in the Franchisor.

ACCOUNTS AND RECORDS

- (1) The Franchisee shall:
 - i. maintain an accurate account and record of all gross sales and purchases made by the Business in each month up to the close of business on the last working day of each month and shall prepare in a form approved by the Franchisor a monthly financial statement

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thereof and shall remit the same to the Franchisor on or before each Payment Date.

- ii. maintain at the Premises in a form approved by the Franchisor full and accurate books of account and shall keep detailed management and accounting records.
- iii. prepare and promptly furnish to the Franchisor all such accounting and management information as the Franchisor may from time to time require.
- iv. at the Franchisor's expense in each accounting year during the continuance of this Agreement have all such accounts and records audited by a qualified public accountant and supply a full set of each audited accounts to the Franchisor within [insert number] months after the close of each accounting year.
- v. preserve all such accounts and records for not less than [insert number] years notwithstanding the expiry or termination of this Agreement.
- vi. permit auditors nominated by the Franchisor at the expense of the Franchisee to undertake such audits as the Franchisor may consider on reasonable notice during normal business hours.

TERMINATION

- (1) The Franchisor may terminate the Agreement by giving [insert number] days prior written notice in writing to the Franchisee in any of the following events:
 1. [insert description of event of default];
 2. [insert description of event of default];
 3. [insert description of event of default].
- (2) The right to terminate as provided above shall arise if the Franchisee commits any breach of its obligations hereunder which breach if remediable is not remedied to the satisfaction of the Franchisor within [insert number] days of a notice in writing to the Franchisee.

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CONSEQUENCES OF TERMINATION

- (1) Upon termination or expiration of this Agreement for any reason, the Franchisee shall:
 - i. immediately pay to the Franchisor the full amount of all monies then or thereafter due;
 - ii. immediately cease to operate the Business and shall not thereafter hold itself out in any way as a Franchisee of the Franchisor and refrain from any action that would or may indicate any relationship between it and the Franchisor;
 - iii. immediately cease to use in any way whatsoever any and all of the Proprietary Marks and any other trade names, logos, devices, insignia, procedures or methods which are or may be associated with the Proprietary Marks;
 - iv. return to the Franchisor or otherwise dispose of or destroy as the Franchisor shall direct all signs, advertising materials, stationery, invoices, forms, specifications, designs, records, data, samples, models and drawings pertaining to or concerning the Business or bearing any of the Proprietary Marks;
 - v. return all items of unsold goods to the Franchisor upon the Franchisor paying their cost to the Franchisee.
- (2) The expiration or termination of this Agreement shall be without prejudice to the accrued rights of the Parties and any provision hereof which relates to or governs the acts of the Parties under this Agreement. Such rights of the Parties shall remain in full force and effect and shall remain enforceable notwithstanding such expiry or termination.

NO PARTNERSHIP OR AGENCY

- (1) The Franchisor and the Franchisee are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

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INDEMNITY BY FRANCHISEE

The Franchisee hereby agrees and undertakes fully and effectively to indemnify and keep indemnified the Franchisor as well after as before the expiry or termination hereof against all damages, loss, claims, demands, expenses (including legal and professional expenses), costs and liabilities which the Franchisor may at any time incur as a result of any and all breaches by the Franchisee of the obligations specified in the provisions of this Agreement.

ASSIGNMENT

- (1) This Agreement and all the rights of the Franchisor hereunder may be assigned, transferred or otherwise dealt with the Franchisor and shall inure to the benefit of the successors and assigns of the Franchisor.
- (2) All the rights and license granted to the Franchisee hereunder are personal to the Franchisee who shall not have the right to assign and sell the Business without prior written consent of the Franchisor on such terms as the Franchisor shall deem fit.

RESERVATION OF RIGHT

All rights and licenses not specifically and expressly granted to and conferred upon the Franchisee by this Agreement are for all purposes reserved to the Franchisor.

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.

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- (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.

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.

SETTLEMENT OF DISPUTE

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].

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.
- (4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in Pakistan 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.

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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 Franchisor

For and on behalf of
The Franchisee

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

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SCHEDULE 1

PROPRIETARY MARKS