

Commercial Contract

NON COMPETITION AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

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January 2013

Non Competition 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 employment 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.

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

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8. EMPLOYEE NON-COMPETITION AGREEMENT

THIS EMPLOYEE NON-COMPETITION 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 successors, assigns, nominees and agents)

AND

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number] (Hereinafter referred to as the "Employee".)

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

In consideration of employment by the Business and disclosure by the Business of confidential and trade secret information, the Employee hereby covenants and agrees as follows:

1. COVENANT NOT TO COMPETE

- 1) For good consideration and as an inducement for the Business to employ the Employee, if such employment is terminated for any cause, the Employee shall not, for a period of [insert number] years after leaving the employment, engage directly or indirectly, either personally or as an employee, associate partner, partner, manager, agent, or in any other capacity, or by means of any corporate or other device, in the [insert sector type] business within [insert geographical area], nor shall the Employee for such period and in such localities solicit orders, directly or

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indirectly, from any customers of the Business, or from any customers of the successor(s) of the Business, for such products as are sold by the Business or any of its successors, either for (himself or herself) or as an employee of any other person, firm, or corporation.

- 2) The Employee particularly undertakes and agrees not to:
 - a) solicit or attempt to solicit any business or trade from the Business's actual or prospective customers or clients;
 - b) employ or attempt to employ any employee of the Business;
 - c) divert or attempt to divert business away from the Business; or
 - d) encourage any independent contractor or consultant to end a relationship with the Business.

2. DEFINITION OF THE TERMS

- 1) The term "not compete" as used herein shall mean that the Employee shall not own, manage, operate, consult or be employed in a business substantially similar to, or competitive with, the present business of the Business or such other business activity in which the Business may substantially engage during the Employee's term of employment.
- 2) Competition shall mean owning or working for a business of the following types:

[SPECIFY TYPES OF BUSINESS EMPLOYEE MAY NOT ENGAGE IN].

3. TRADE SECRETS

- 1) The Employee acknowledges that the Business shall or may in reliance of this Agreement provide the Employee access to its trade secrets, customers and other confidential data and good will. The Employee agrees to retain the said information as confidential, and undertakes not to use the said information on his or her own behalf, or disclose the same to any third party.
- 2) The Employee will take necessary actions to keep the Business' trade secrets, including but not limited to the customers, suppliers, logistical, financial, research and development information, confidential, and not to disclose the Business' trade secrets to any third party during and after the term of the Employee's employment.

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4. SPECIFIC ACCOUNT NON-COMPETITION CLAUSE

Upon the termination of the Employee's employment with the Business for any reason, the Employee undertakes and agrees not to solicit any customer of the Business who was a customer of the Business during the course of the Employee's employment with the Business, whether or not still a customer of the Business, and whether or not knowledge of the customer is considered confidential information, or in any way aid and assist any other person to solicit any such customer for a period of [insert number] years from the date of termination of the Employee's employment.

5. RIGHT TO AN INJUNCTION

The Employee hereby acknowledges and agrees that if the Employee breaches or threatens to breach any of the terms of this Agreement, the Business will sustain irreparable harm, and the Business shall be entitled to obtain an injunction to stop any breach or threatened breach of this Agreement from the Court of Law.

6. INDEMNIFICATION

The Employee agrees to pay liquidated damages in the amount of Rs. _____/- (Rupees _____) (insert amount) for any violation of the covenant not to compete contained in this Agreement

7. BINDING AGREEMENT

- 1) If any part of these promises is void for any reason, the undersigned accepts that it may be severed without affecting the validity or enforceability of the remaining terms and conditions contained in this Agreement.
- 2) This Non-Compete Agreement shall extend only to [insert geographical area] and shall be in full force and effect for [insert number] years, commencing with the date of termination of the Employee's employment with the Business.
- 3) This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns, and personal representatives.

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IN WITNESS WHEREOF, the Parties have signed this Agreement, having fully understood the conditions set therein, of their own free will, in the presence of witnesses.

For and on behalf of
The Business

For and on behalf of
The Employee

Witnesses:

1. _____

2. _____

Name: _____

Name: _____

Address: _____

Address: _____
