

# Commercial Contract

## WEBSITE DESIGN NON-DISCLOSURE AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

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**January 2013**

## **Website Design Non Disclosure 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 internet and technology. 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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All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

### **2. WEBSITE DESIGN NONDISCLOSURE AGREEMENT**

**THIS WEBSITE DESIGN NONDISCLOSURE 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 Business 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**

M/s [insert Name], a public/private Business 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];

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

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

**WHEREAS**, the Parties have entered in into a Website Designing Agreement (hereinafter referred to as the "Master Agreement") for the creation of the Business' internet Website.

**AND WHEREAS** the Business possesses certain information and materials which it considers to be highly confidential and proprietary and which constitute trade secrets of the Business.

**AND WHEREAS** the Parties acknowledge and agree that during the creation of the Website, disclosure of certain of this confidential and proprietary information of the Business to the Developer may be inevitable.

**AND WHEREAS** the Business wishes to assure that the confidential and proprietary information is protected from disclosure and only used by the Developer for the purpose of creation of the Business' Website.

**AND WHEREAS** the Business wishes to assure that upon the earlier of the expiry or termination of the Master Agreement, the confidential and proprietary information is returned to the Business.

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

### 1. CONFIDENTIAL INFORMATION

- (1) For purposes of this Agreement, the term "Confidential Information" shall mean and include information relating to the Business, its products or services, including, but not limited to:
  - i. Information which relates to the any products or services offered by or through the Business and their manufacture, sale or use, including financial statements, costs and expense data, marketing and consumer data, production data, know-how, trade secrets, secret processes and formulae, technical data and reports, or any other information relating thereto which is not generally ascertainable from public or published information, regardless of whether such information was provided pursuant to the terms of this Agreement, by request of the Developer, or in any other manner;
  - ii. All information disclosed in oral, written, graphic, photographic, recorded, diagramed, digital, electronic or any other from by the Business to the Developer, as well as the content of this Agreement and the content of any

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and all discussions between the Parties related to this Agreement or otherwise;

- iii. The trademarks, services marks, and other proprietary information of the Disclosing Party, including any information developed in the course of the relationship between the Parties, all which shall be the Business' property and shall be considered "works for hire";
- iv. Computer software programs, corporate operations procedures, marketing plans and methods, customer lists, prospective clients lists, regardless of whether such lists have been distilled or tailored for the specific use of the Business, all information relative to carriers and any of the consultants and contractors of the Business;
- v. Strategic and development plans, financial condition, business plans, co-developer identities, data, business records, projections, business structure and concepts, customer lists, project records, market reports, employee lists and business manuals, policies and procedures, information relating to processes, technologies or theory and all other information which may be disclosed by the Business to the Developer for the performance of the services under the Master Agreement, or which is generated as a result of the relationship between the Parties.

- (2) Information is not confidential if it is generally available or known within the Internet industry, if it is in the public domain, if it was known to the Developer before the Master Agreement was entered into, if it was independently received by the Developer from a third party, or it was developed independently by Developer.

## 2. CONFIDENTIALITY

- (1) The Developer hereby covenants and agrees that it shall have the affirmative obligation to hold the Confidential Information as defined in Clause 1 (1) of this Agreement in the strictest of confidence and to protect the Confidential Information from disclosure to any third party. The Developer shall take all steps necessary to protect the Confidential Information from disclosure and shall implement internal procedures to guard against such disclosure. The Developer shall only use the Confidential Information for the creation of the Business' Website, and shall not use such Confidential Information, or any part of it, for its own purposes or the purposes of any other party. The Developer shall only permit disclosure to individuals within its organization that have a bona fide need to know such information in connection with the creation of the Website. The Developer shall advise each person to which disclosure is permitted herein that such information is the confidential and proprietary property of the Business and may not be disclosed to others or used for the purposes of the Developer.

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(2) The Developer shall cause each person to whom Confidential Information must be disclosed to execute an agreement containing the restrictions and protections set forth in this Agreement.

### **3. RETURN OF CONFIDENTIAL INFORMATION**

Upon request from the Business or upon earlier of the termination or expiration of the Master Agreement, the Developer shall return all Confidential Information to the Business. The Developer shall not be permitted to make, retain, or distribute copies of any Confidential Information and shall not create any other documents, memorandum, correspondence, outline, presentation, in any form whatsoever, that includes the Confidential Information or any part thereof.

### **4. NO RIGHT**

Except for the purpose of creation of the Business' Website, the Developer is not granted any right, license, assignment, or any other right in and to any of the Confidential Information.

### **5. TIME PERIODS/TERMINATION**

The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Master Agreement, and the Developer's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until the Business sends to the Developer a written notice thereby releasing the Developer from this Agreement, whichever occurs first.

### **6. SEVERABILITY**

If a court of law finds any provision of this Agreement invalid or unenforceable at law for any reason, the remainder of this Agreement shall be interpreted so as best to effect the intent of the Parties.

### **7. REMEDIES**

The Developer recognizes and expressly agrees that the extent of damages to in the event of a breach by Developer of any covenant set forth herein would be impossible to ascertain, that the irreparable harm arising out of any breach shall be irrefutably presumed, and that the remedy at law for any breach will be inadequate to compensate the Business. Consequently, the Developer agrees that in the event of a breach of any such covenant, in addition to any other relief to which the Business may be entitled, the Business shall be entitled to enforce the covenant by injunctive or other equitable relief ordered by a court of competent jurisdiction.

### **8. INTEGRATION**

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(i) This Agreement expresses the complete understanding of the Parties with respect to the subject matter, and supersedes all prior proposals, agreements, representations and understandings.

(ii) This Agreement may not be amended except in a writing signed by both Parties.

## 9. WAIVER

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.

**IN WITNESS WHEREOF**, the Parties have set their 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 Developer**

### Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_