

# Commercial Contract

## MUTUAL NON DISCLOSURE 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)

##### 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](mailto:helpdesk@smeda.org.pk)

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

January 2013

## **Mutual 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 business protection. 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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### **5. MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS MUTUAL NON DISCLOSURE AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_,

#### **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 "First Party", which expression shall, wherever the context so permits, mean and include its assigns, nominees, agents and successors-in-interest)

#### **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 "Second Party", which expression shall, wherever the context so permits, mean and include its heirs, assigns, nominees, agents)

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

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**WHEREAS** the First Party and the Second Party (hereinafter referred to as the "Parties") have an interest in participating in discussions wherein either Party might share information with the other Party which the disclosing Party may consider to be proprietary to itself and confidential in nature (hereinafter referred to as the "Confidential Information").

**AND WHEREAS** the Parties agree that the Confidential Information of a Party might include, but not be limited to information regarding that Party's:

- i. business plans, methods, and practices;
- ii. personnel, customers, and suppliers;
- iii. inventions, processes, methods, products, patent applications, and other proprietary rights; and/or
- iv. specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information.

**NOW, THEREFORE**, the Parties have entered into this Agreement on the terms and conditions mentioned below:

1. Either Party may disclose Confidential Information to the other Party in confidence, provided that the disclosing Party identifies such information as proprietary and confidential, either by marking it in case of written materials, or in case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be made orally, by e-mail or written correspondence, or via other means of communication as might be appropriate.
2. When informed of the proprietary and confidential nature of the Information that has been disclosed by a Party (hereinafter referred to as the "Disclosing Party"), the receiving Party (hereinafter referred to as the "Recipient") shall, for a period of [insert number] years from the date of disclosure, refrain from disclosing such Confidential Information to any third party without prior written approval from the Disclosing Party and shall protect such Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, and in no case less than reasonable care.
3. The Recipient shall ensure that each of its employees, officers, directors, or agents who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature, and is required to abide by the terms of this Agreement.
4. The Recipient of Confidential Information disclosed under this Agreement shall promptly notify the Disclosing Party of any disclosure of such

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Confidential Information in violation of this Agreement, or of any legal process requiring production or disclosure of said Confidential Information.

5. All Confidential Information disclosed under this Agreement shall be and remain the property of the Disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any rights on the other Party to such Confidential Information.
6. The Recipient shall honor any request from the Disclosing Party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information.
7. The Parties agree that the disclosing Party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing Party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.
8. The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The Disclosing Party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from third parties, which is similar to the Confidential Information. Nothing in this Agreement will prohibit the Recipient from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.
9. Notwithstanding the above, the Parties agree that information shall not be deemed Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:
  - (a) Is already known to the Recipient, having been disclosed to the Recipient by a third party without such third party having an obligation of confidentiality to the Disclosing Party; or
  - (b) Is or becomes publicly known through no wrongful act of the Recipient, its employees, officers, directors, or agents; or
  - (c) Is independently developed by the Recipient without reference to any Confidential Information disclosed hereunder; or
  - (d) Is approved for release (and only to the extent so approved) by the Disclosing Party; or
  - (e) Is disclosed pursuant to the lawful requirement of a court or governmental agency or where required by operation of law.

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10. Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture, or other similar relationship between the Parties.
11. Neither Party shall, without prior approval of the other Party, make any public announcement of, or otherwise disclose the existence or the terms of this Agreement.
12. This Agreement contains the entire agreement between the Parties, and in no way creates an obligation for either Party to disclose information to the other Party or to enter into any other agreement.
13. This Agreement shall remain in effect for a period of [insert number] years from the date of signing of this Agreement by the Parties, unless otherwise terminated by either Party by giving notice to the other Party of its desire to terminate this Agreement.
14. The requirement to protect Confidential Information disclosed under this Agreement shall survive the termination of this Agreement.

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

\_\_\_\_\_  
For and on behalf of  
The First Party

\_\_\_\_\_  
For and on behalf of  
The Second Party

Witnesses:

1. \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_