

Commercial Contract

DATA PUNCHING 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

Data Punching 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 import and export. 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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DATA PUNCHING AGREEMENT

THIS DATA PUNCHING 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];

OR

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

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

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

WHEREAS the Business is engaged in [description of activities] in [insert country].

AND WHEREAS the Business requires the services of tabulation of its data/information electronic formats (hereinafter referred to as the "Services").

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AND WHEREAS the Service Provider is based in Pakistan and is engaged in the business of providing data punching services to its clients.

AND WHEREAS the Service Provider has represented to the Business that it possesses adequate resources, skills and qualifications to provide the Business with the Services, and based on the representations of the Service Provider, the Business has accepted the Services of the Service Provider.

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

1. TERM

This Agreement shall come into effect on the date of execution of this Agreement, and shall continue to remain in force for a period of [insert number] months, unless terminated earlier by the Parties in accordance with the terms of this Agreement.

2. SERVICES

The Service Provider shall provide data punching services to the Business, which shall include copying the data from hard copies, in whatever format provided, in to electronic and editable formats.

The Business shall be responsible for providing the hard formats of the data to the Service Provider, whether by email, fax, or hard copies.

3. REMUNERATION

(1) The Business shall pay to the Service Provider Rs. _____/- (Rupees _____) (insert amount) per [insert number] words of the data entered by the Service Provider in the performance of the Services under the Agreement (hereinafter referred to as the "Remuneration"). However, the Remuneration may be negotiable upon the receipt of the data by the Service Provider provided extraordinary effort is required in entering the data into soft format.

(2) Upon the completion and acceptance by the Business of the data entered by the Service Provider, the Service Provider shall provide an invoice to the Business in accordance with Clause 3 (1).

(3) The Business shall be liable to pay the Remuneration to the Service Provider within [insert number] days of the Service Provider providing the invoice to the Business.

(4) The Remuneration shall be paid by the Business to the Service Provider in the [insert currency] equivalent of the amounts provided by Service Provider to the Business under Clause 3 (2).

4. TIMING AND ACCEPTANCE

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- (1) The Service Provider shall prioritize performance of the Services as may be necessary or as agreed upon by the Parties, and will undertake commercially reasonable efforts to perform the Services within such timelines as agreed between the Parties. The Business agrees to review the soft copies of the data (hereinafter referred to as the "Soft Data") within [insert number] days of the Service Provider's submission of the Soft Data to the Business, and to promptly either, (i) approve and accept the content so provided, in writing (which will then become the "Final Deliverables") or (ii) provide corrections sufficient to identify the Business's concerns, objections or corrections to the Service Provider.
- (2) In the absence of any such notice from the Business within the stated time period, the Soft Data shall be deemed accepted.
- (3) Once the Soft Data is accepted by the Business, the Service Provider shall not be liable for any mistakes in the data.

5. CONFIDENTIAL INFORMATION

- (1) Each Party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other Party, including, but not limited to, Preliminary Works (hereinafter referred to as the "Confidential Information"). Each Party, its agents and employees shall hold and maintain in strictest confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations pursuant to this Agreement, or as may be required under the law. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.
- (2) Upon the completion of the Services under the Agreement, the Service Provider shall return to the Business all the materials provided by the Business to the Service Provider for the performance of the Services.

6. RELATIONSHIP OF THE PARTIES

- (1) Independent Contractor. The Service Provider is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Service Provider shall provide the Services under the general direction of the Business, but the Service Provider shall determine the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture, and neither Party is authorized to act as agent or bind the other Party, except as expressly stated in this Agreement.
- (2) No Exclusivity. The Parties expressly acknowledge that this Agreement does not create an exclusive relationship between the Parties. The Business is free to engage others to perform services of the same or similar nature to those

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provided by the Service Provider, and the Service Provider shall be entitled to offer and provide services to others, solicit other Businesses and otherwise advertise the services offered by the Service Provider.

7. TAXES

The Parties shall be liable to pay their own taxes applicable due to the performance of Services under this Agreement.

8. TERMINATION

(1) This Agreement may be terminated, with or without cause, at any time by either Party by giving the other Party a [insert number] days prior written notice.

(2) Upon expiration or termination of this Agreement:

- i. Each Party shall return or, at the disclosing Party's request, destroy the Confidential Information of the other Party; and,
- ii. Other than as provided herein, all rights and obligations of each Party under this Agreement, exclusive of the Services, shall survive.

9. 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 [insert country] and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

10. 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 UNCITRAL Arbitration Rules, subject to the exclusive jurisdiction of the Courts of [insert place].

11. 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.

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- (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.

12.AMENDMENTS

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

13.NONWAIVER

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.

14.NON-ASSIGNMENT

In no circumstances whatsoever can a Party assign the benefit of this Agreement to any third person or delegate to a third person its duties to be performed under this Agreement, unless with the written consent of the Parties.

15.PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

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 Business

For and on behalf of
The Service Provider

WITNESS NO. 1

WITNESS NO. 2

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Legal Services, B&SDS

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation:

Designation:

Date: _____

Date: _____