

Commercial Contract

RESTAURANT MANAGEMENT AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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Restaurant Management 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 for restaurant management with reference to business process outsourcing. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressively 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

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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.

20. RESTAURANT MANAGEMENT AGREEMENT

THIS RESTAURANT MANAGEMENT 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 "Owner", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

AND

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number] (hereinafter referred to as the "Manager", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

WHEREAS the Owner is the owner of a restaurant called [insert name of the Restaurant], located at [insert address of the Restaurant] (hereinafter referred to as the "Restaurant");

AND WHEREAS the Owner desires to retain the Manager, and the Manager desires to be so retained, for the management of the Restaurant.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises which are set forth herein, the Parties have entered into this Agreement on the following terms and conditions:

1. RETENTION OF MANAGER

Owner hereby engages Manager and Manager agrees to operate and manage the

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Restaurant under the Name and style of “[insert name of the Restaurant]” on behalf of the Owner on an exclusive basis, in accordance with the terms of this Agreement.

2. TERM

This Agreement shall come into effect on [insert date], and shall continue for a period of [insert number] years unless terminated by either of the Parties in accordance with the terms of this Agreement (hereinafter referred to as the “Term”).

3. DUTIES OF MANAGER

(1) Subject to the provisions of this Agreement, the Manager shall have decision-making authority in the day-to-day operation, direction, management and supervision of the Restaurant. Manager’s authority and obligations shall include:

- i. hiring, training, compensation, supervision and termination of Restaurant personnel, and determining the number of staff required;
- ii. the creation of food and beverage menus their pricing, following approval by the Owner, and which approval shall not be unreasonably held;
- iii. maintaining and operating the Restaurant in accordance with the operating standards (“Operating Standards”) set by Owner;
- iv. establishing and supervising all advertising, public relations and promotional policies with respect to the Restaurant with the costs thereof not exceeding the budget set by the Manager in consultation with the Owner;
- v. purchasing and maintaining the Restaurant’s inventory of food, beverages and operating supplies;
- vi. obtaining, and keeping in full force and effect, in the name of Owner or Manager, all necessary licenses and permits for the Restaurant operations;
- vii. applying sound administrative, accounting, cash management, budgeting, operational, sales, advertising, legal, personnel and purchasing policies and practices in accordance with the terms of this Agreement;
- viii. regular maintenance of the Restaurant, and such repairs and interior decorations as the Manager may deem fit.

4. LIMITATION ON MANAGER’S AUTHORITY

(1) In addition to any other limitations on Manager’s authority set forth in this Agreement, the Manager shall not, without Owner’s written approval, take any of the following actions with respect to the Restaurant:

- i. Enter into any contract or other agreement which could require payment of more than Rs. _____/- (Rupees _____) (insert amount) per year, or having a term longer than [insert number] years; or
- ii. enter into any lease, license, concession or other occupancy agreement; or
- iii. enter into any arrangement for the employment of any professional firm (other than attorneys and accountants) except as set forth in the annual operating budget; or
- iv. enter into, renew, modify, amend or terminate any union contract or collective bargaining agreement affecting the Restaurant; or

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- v. borrow money, issue any guarantees or incur any interest or contingent obligation, except ordinary trade debt;
- vi. sell, transfer or otherwise dispose of all or any portion of the Restaurant, except for the sale of inventory as approved in writing by Owner; or
- vii. acquire any capital assets or interest therein; or
- viii. finance, refinance or otherwise encumber the Restaurant or any portion thereof; or
- ix. take any other action that is prohibited under the terms of this Agreement or requires the approval of Owner.

5. OPERATION OF RESTAURANT

Manager agrees to open the Restaurant for business seven (7) days a week for breakfast service from ____ AM to ____ AM, seven (7) days a week for lunch service from ____ AM to ____ PM and seven (7) days a week for dinner service from ____ PM to ____ PM, unless the Owner and the Manager otherwise mutually agree.

6. MANAGEMENT FEE

- (1) So long as this Agreement is in full force and effect, the Manager shall be entitled to a management fee in the aggregate amount of [insert percentage]% of gross revenues as compensation for the services provided hereunder (hereinafter referred to as the "Management Fee"). The Management Fee shall be payable monthly, in arrears, subject to year-end audit and adjustment.
- (2) Manager agrees that the Management Fee is intended to cover all of Manager's general and administrative overhead, and all salary and other compensation of Manager, Manager's Affiliates and Manager's employees.

7. OPERATING ACCOUNT

Gross revenues or funds supplied by Owner or Manager, exclusive of working capital, shall be deposited in an account (hereinafter referred to as the "Operating Account") at a bank selected by Manager and approved by the Owner. Title to the Operating Account shall be in Owner's name. Owner shall be a co-signatory on the Operating Account.

8. DISBURSEMENT OF FUNDS

After the Manager deducts all authorized expenses relating to the operation and management of the Restaurant (including the Management Fee) from the revenues generated by Restaurant operations, as well as all reserves set by the Owner for working capital and capital expenditures, the Manager shall disburse any remaining funds as agreed between the Manager and the Owner.

9. REPORTING

- (1) On or prior to the twentieth (20th) day of each calendar month during the Term, Manager shall deliver to Owner detailed statements (collectively, the "Monthly Statements") of profit and loss, gross revenues, operating expenses, cash flow, payments of the Management Fee, payments on account of working capital contributions and distributions to Owner, statements of the amounts deposited in or withdrawn from the Operating Account, and such operating statements and other information as the Owner shall reasonably request in respect of the immediately preceding calendar month. Such statements shall

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also provide for re-forecasts, showing any anticipated deviations from the annual operating budget.

- (2) Owner shall have the right, at any time during the Term, through its employees, accountants or other representatives, to audit Manager's books and records relating to the Restaurant, at the Owner's own expense. The Manager shall cooperate with Owner in connection with any such audits in all reasonable respects, including, without limitation, making available for review and copying by Owner, Owner's employees, accountants or other representatives, all of Manager's books and records relating to the Restaurant. If any such audit shall indicate that additional amounts are due to Owner under the Agreement, Manager shall pay such amounts within [insert number] days after notice, and shall also pay for the cost of the audit.

10. TERMINATION

This Agreement may be terminated by either Party, with or without cause, at any time during the term of the Agreement, by giving the other Party a written notice of [insert number] days to this effect.

11. CONFIDENTIAL INFORMATION

Except with the prior written approval of the other Party, the Parties shall treat as confidential all information, which comes to its knowledge pertaining to the other Party (hereinafter referred to as the "Confidential Information") and it shall not disclose such Confidential Information to any third party. This Clause shall survive for a period of [insert number] years following the termination of the Agreement.

12. WAIVER

- (1) Failure of either Party to insist upon the strict and punctual compliance with any provision herein shall not constitute a waiver of the right to require such performance, nor shall a waiver in one case constitute a waiver with respect to a later breach whether of similar nature or otherwise.
- (2) Nothing in this Agreement shall prevent a Party from enforcing its rights by such remedies as may be available in addition to termination.

13. ASSIGNMENT

Except with prior written approval of the other party, neither of the Parties may assign their rights and obligations under this Agreement. Any assignment in violation of this Agreement shall be void and without legal effect.

14. GOVERNING LAW AND SOLE JURISDICTION

- (1) This Agreement shall be governed by the laws of Pakistan.
- (2) This Agreement is made at [insert place] and the courts at [insert place] shall have exclusive jurisdiction in respect of all matters arising under or pertaining to this Agreement.

15. DISPUTE RESOLUTION

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

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with the Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [place].

16. 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.
- (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 [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.

17. RELATIONSHIP OF THE PARTIES

In the conduct and performance of this Agreement, the Manager shall be regarded as an independent entity and not as a partner, agent or employee of the Owner. The Parties agree that their relationship under this Agreement shall not create an employment, agent or partnership relationship between the Manager and the Owner.

18. AMENDMENT

No modification or amendment of any provision of this Agreement shall be binding unless the same is in writing and signed by the Parties.

19. SEVERABILITY

In the event that any provision in this Agreement should under applicable law be held illegal or void, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any oral or written representations, negotiations, or other communications of every kind heretofore made between the parties relating to the Management Services envisaged in this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day, month and year mentioned hereinabove.

For and on behalf of
The Owner

For and on behalf of
The Manager

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____