

Commercial Contract

NON-DISCLOSURE 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 disclosure 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 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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2. NON-DISCLOSURE AGREEMENT

THIS 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 "Disclosing 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];

OR

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

(Hereinafter referred to as the "Receiving Party", which expression shall, wherever the context so permits, mean and include its heirs, assigns, nominees, agents)

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

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WHEREAS the Parties have entered into a [insert name of agreement] dated [insert date] wherein the Receiving Party shall provide [insert brief description of services] to the Disclosing Party.

AND WHEREAS during the course of the aforementioned agreement, it is inevitable that the Receiving Party shall come across confidential information and data of the Disclosing Party which needs to be protected and be kept confidential in order to secure the interest of the Disclosing Party.

NOW THEREFORE, for the purpose of preventing the unauthorized disclosure of confidential information as defined below, the Disclosing Party and the Receiving Party have agreed to enter into this Non-Disclosure Agreement with respect to the disclosure of certain proprietary and confidential information (hereinafter referred to as the "Confidential Information") on the following terms and conditions:

1. DEFINITION OF CONFIDENTIAL INFORMATION

- (i) For the purposes of this Agreement, "**Confidential Information**" means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to:
- (a) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Disclosing Party, its affiliates, subsidiaries and affiliated companies;
 - (b) plans for products or services, and customer or supplier lists;
 - (c) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
 - (d) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and
 - (e) any other information that should reasonably be recognized as confidential information of the Disclosing Party.
- (ii) Confidential Information need not be novel, unique, patentable, or copyrightable or constitute a trade secret in order to be designated as Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that the Disclosing Party regards all of its Confidential Information as trade secrets.

2. EXCLUSIONS FROM CONFIDENTIAL INFORMATION

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Receiving Party's obligations under this Agreement do not extend to information which is:

- (i) publicly known at the time of disclosure, or subsequently becomes publicly known through no fault of the Receiving Party;
- (ii) discovered or created by the Receiving Party before disclosure by Disclosing Party;
- (iii) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or
- (iv) disclosed by the Receiving Party with Disclosing Party's prior written approval.

3. OBLIGATIONS OF THE RECEIVING PARTY

- (i) The Receiving Party shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the Disclosing Party.
- (ii) The Receiving Party shall carefully restrict to its employees, contractors and third parties, as is reasonably required, access to Confidential Information, and shall require any person having access to the Confidential Information in the normal course of business to sign nondisclosure restrictions at least as protective as those in this Agreement.
- (iii) The Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information.
- (iv) Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately upon the Disclosing Party's request to this effect in writing.
- (v) Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information.

4. TIME PERIODS

The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies

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as a trade secret or until the Disclosing Party sends to the Receiving Party a written notice thereby releasing the Receiving Party from this Agreement, whichever occurs first.

5. RELATIONSHIP

Nothing contained in this Agreement shall be deemed to constitute either Party a partner, joint venturer or employee of the other Party, for any purpose.

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

Both Parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and expenses from the other Party.

8. INTEGRATION

- (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 of 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 Disclosing Party

For and on behalf of
The Receiving Party

Witnesses:

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1. _____

2. _____

Name: _____

Name: _____

Address: _____

Address: _____
