

# Commercial Contract

## CONTRACTOR/CONSULTANT CONFIDENTIALITY 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

## **Contractor/Consultant Confidentiality 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 employment matters. 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.

Information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

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### 5. CONTRACTOR/CONSULTANT CONFIDENTIALITY AGREEMENT

THIS CONTRACTOR/CONSULTANT CONFIDENTIALITY AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into 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 "Business", 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 "Contractor", which expression shall, wherever the context so permits, mean and include its heirs, assigns, nominees, agents)

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

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WHEREAS the Contractor has entered into a [insert name of agreement] Agreement with the Business on [insert date] (hereinafter referred to as the "Master Agreement") for the provision of services of [insert description of services] (hereinafter referred to as the "Services") by the Contractor to the Business.

AND WHEREAS during the course of the aforementioned Master Agreement, it is inevitable that the Contractor shall come across confidential information and data of the Business which needs to be protected and be kept confidential in order to secure the interest of the Business.

NOW THEREFORE, for the purpose of preventing the unauthorized disclosure of confidential information of the Business as defined below, the Business and the Contractor have agreed to enter into this Agreement with respect to the confidentiality of certain proprietary and secret information (hereinafter referred to as the "Confidential Information") on the following terms and conditions:

### **1. LENGTH OF AGREEMENT**

- (1) This Agreement shall come into force at the advent of the Contractor's relationship with the Business, and shall remain in effect at all times during any consulting, partnering, or other business relationship between the Parties, and for the periods of time specified in this Agreement.
- (2) This Agreement does not create any form of continued business relationship other than as set forth in the Master Agreement, or any other separate agreements as executed between the Parties.

### **2. REPRESENTATION AND WARRANTIES**

- (1) The Contractor represents and warrants that its relationship with the Business will not cause or require it to breach any obligation to, agreement, or confidence related to confidential, trade secret and proprietary information with any other person, business or entity.
- (2) Furthermore, the Contractor undertakes that it shall not bring or use, in the performance of its duties under the Master Agreement, any proprietary or confidential information, whether or not in writing, of a former employer without such employer's written authorization. The Contractor agrees that a breach of this condition results in the automatic termination of the relationship between the Parties at the time of such breach.

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### 3. CONFIDENTIALITY

- (1) The Contractor hereby acknowledges that the Business has made, or may make available to the Contractor certain Confidential Material, including but not limited to customer lists, pricing data, supply sources, techniques, computerized data, maps, methods, product design information, market information, technical information, benchmarks, performance standards and other confidential and/or any other proprietary information of, or licensed to, the Business or its clients/customers (hereinafter referred to as the "Customers").
- (2) The Contractor acknowledges that the Confidential Information has independent economic value, actual or potential, that is not generally known to the public or to others who could obtain economic value from their disclosure or use. Except as essential to the Contractor's obligation under this Agreement, the Contractor shall not make any disclosure of this Agreement, the terms of this Agreement, or any of the Confidential Material.
- (3) Except as essential to the Contractor's obligations pursuant to their relationship with the Business, the Contractor shall not make any duplication or other copy of the Confidential Material.
- (4) The Contractor shall not remove the Confidential Material or proprietary property or documents from the premises of the Business without prior written authorization in this behalf. Immediately upon request from the Business, the Contractor shall return to the Business all Confidential Material or proprietary property or documents.
- (5) The Contractor shall notify each person to whom any disclosure is made that such disclosure is made in confidence, that the Confidential Material shall be kept in confidence by such persons, and that such persons shall be bound by the provisions of this Agreement.
- (6) The Contractor further promises and agrees not solicit the Customers or potential customers of the Business after the termination of this Agreement, while making use of Business' Confidential Material.
- (7) For the purpose of this Agreement, Proprietary Information shall include but shall not be limited to any information, observation, data, written material, record, document, drawing, photograph, layout, computer program, software, multimedia, firmware, invention, discovery, improvement, development, tool, machine, apparatus, appliance, design, work of authorship, logo, system, promotional idea, customer list, customer need, practice, pricing information, process, test, concept, formula, method, market information, technique, trade secret, product

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and/or research related to the actual or anticipated research development, products, organization, marketing, advertising, business or finances of the Business, its affiliates or related entities.

- (8) All rights, title, and interest of every kind and nature whatsoever in and to the Proprietary Information made, written, discussed, developed, secured, obtained or learned by the Contractor during the term of the relationship with the Business and/or [insert number] years immediately following the termination of that relationship, shall be the sole and exclusive property of the Business for any purpose or use whatsoever, and shall be disclosed promptly by Contractor to Business. The covenants set forth in the preceding sentence shall apply regardless of whether any Proprietary Information is made, written, discussed, developed, secured, obtained or learned (a) solely or jointly with others, (b) during the usual hours of work or otherwise, (c) at the request and upon the suggestion of Business or otherwise, (d) with Business's materials, tools, instruments, or (e) on Business's premises or otherwise.
- (9) Contractor shall comply with any reasonable rules established from time to time by Business for the protection of the confidentiality of any Proprietary Information.
- (10) The Contractor shall promptly and fully disclose to the Business, in confidence (a) all Proprietary Information that the Contractor creates, conceives or reduces to practice, either alone or with others, during the term of this Agreement, and (b) all patent applications and copyright registrations filed by the Contractor within [insert number] years after the termination of this Agreement, including but not limited to materials and methodologies involved.
- (11) Any application for a patent, copyright registration or a similar right filed by the Contractor within [insert number] years after termination of the Master Agreement shall be presumed to relate to Proprietary Information created by the Contractor during the term of the Master Agreement, unless the Contractor can prove otherwise with reasonable certainty.
- (12) The Contractor shall have no authority to exercise any rights or privileges with respect to the Proprietary Information owned by or assigned to the Business under this Agreement.

#### 4. EXCLUDED INFORMATION

- (1) The terms Confidential Information, Confidential Material and Proprietary Information shall not include any information which:
  - i. is at the date hereof lawfully in the possession of the Contractor and not subject to a duty of non-disclosure or confidentiality; or

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- ii. subsequently and lawfully comes into the Contractor's possession without restriction on disclosure; or
- iii. is at the date hereof or later becomes in the public domain other than by the breach of this Agreement by the Contractor; or
- iv. was developed or prepared by the Contractor independently prior to disclosure provided that the Contractor can evidence this in writing; or
- v. is required by the Contractor to be disclosed to the extent required by law, the rules of the relevant stock exchange, any Government agency or regulatory authority lawfully requiring the same or to any court of competent jurisdiction acting in pursuance of its powers, provided that if Contractor become obliged to disclose the same, the Contractor shall give the Business prompt notice of such obligation, so that the Business may seek an appropriate protective/restraining order or other appropriate remedy. Notwithstanding the above, if the Contractor, or their respective directors, officers or advisors are nevertheless compelled to disclose the Confidential Information under compulsion of law, the Contractor, or other respective directors, officers or advisors, as applicable, shall disclose only such part of the Confidential Information as they are legally required to disclose.

### **5. WORKS FOR HIRE**

- (1) The Contractor acknowledges that all works of authorship performed for the Business are subject to the Business's direction and control, and that such works constitute a work for hire pursuant to the applicable laws of Pakistan.
- (2) All Propriety Information developed, created, invented, devised, conceived or discovered by the Contractor that is subject to copyright is explicitly considered by the Contractor and the Business to be works made for hire and the property of the Business.

### **6. ASSIGNMENT**

- (1) The Business shall own, as its sole and exclusive property, and the Contractor agrees to assign, transfer, and convey all of his or her right, title and interest in and to any and all said ideas that relate generally to the Business' scope of work, including but not limited to any inventions, processes, improvements, ideas, copyrightable works of art, trademarks, copyrights, formulas,

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manufacturing technology, developments, writings, discoveries, and trade secrets that Contractor may make, conceive, or reduce to practice, whether solely or jointly with others, copyrightable, patentable or unpatentable, from the date of this Agreement or the date of the Master Agreement, whichever is earlier, until the termination of the Contractor's employment.

- (2) The Contractor is not required to assign any invention where no Business equipment, supplies, facilities or trade secret information was used and where the invention was developed entirely in the Contractor's own time, and: that does not relate to the Business' actual demonstrably anticipated research or development, or that does not result from any work performed for the Business.

### **7. REMEDIES FOR BREACH**

It is understood and agreed by the Contractor that money damages may not be a sufficient remedy for any breach of this Agreement by the Contractor and that the Business shall be entitled to specific performance and/or other equitable relief as a remedy for any threatened or actual breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available to the Business at law or equity.

### **8. WAIVER**

Failure of either Party to insist upon the strict and punctual performance of 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. Nothing in this Agreement shall prevent a party from enforcing its rights by such remedies as may be available in addition to termination.

### **9. 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. In such case, the Parties shall make every effort to replace the ineffective provision with a new provision which has the same effect, or as approximate an effect as possible, as the ineffective provision. If the Parties cannot agree upon such a new provision, either Party shall be entitled to terminate this Agreement with immediate effect.



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## 10. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and undertaking between the Parties in relation to the subject matter hereof. Any amendment, variation or modification to this Agreement shall be made in writing and be signed by duly authorized representatives of both Parties.

## 11. APPLICABLE LAW

This Agreement shall in all respects be construed and interpreted in accordance with the Law of Pakistan.

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

## 13. ASSIGNMENT OF RIGHTS AND DUTIES

Neither the rights nor duties under this Agreement, nor the Agreement itself in whole or in part, may be assigned or transferred by either Party without the prior written approval of the other Party.

IN WITNESS WHEREOF the Parties have entered into this Agreement at the place, and on the date mentioned hereinabove.

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For and on behalf of  
The Business

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For and on behalf of  
The Contractor

WITNESS NO. 1

WITNESS NO. 2

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Designation: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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