

Commercial Contract

DISTRIBUTION AGREEMENT – SOFTWARE & MULTIMEDIA



*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

Distribution Agreement – Software & Multimedia

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 internet and technology. 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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6. DISTRIBUTION AGREEMENT- SOFTWARE AND MULTIMEDIA

THIS DISTRIBUTION 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];

OR

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

(hereinafter referred to as the "Business", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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]

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(hereinafter referred to as the "Distributor", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents).

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

WHEREAS the Business has developed certain computer softwares and multimedia programs and related documentation (more particularly described in Schedule A of the Agreement, and hereinafter referred to as the "Products");

AND WHEREAS the Distributor is in the business of marketing and distributing computer-related products and desires to have Developer grant to it the right to market and distribute the Products;

AND WHEREAS the Business desires to grant to the Distributor the right to market and distribute the Products.

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

1. TERM

The Agreement shall come into effect on [insert date], and shall continue to remain in effect unless terminated earlier by either of the Parties in accordance with Clause 7 of this Agreement.

2. APPOINTMENT OF DISTRIBUTOR

The Business hereby appoints the Distributor as the Business's nonexclusive distributor of the Products in the Territory, and the Distributor hereby accepts that position. It is understood that the Business cannot lawfully prevent its distributors located elsewhere from supplying Products for sale or use within the Territory and that it has no obligation to do so.

3. LICENSE

- (1) The Distributor shall only distribute the Products to end-users (hereinafter referred to as the "End-Users") who enter into an End-User License Agreement.
- (2) The Distributor shall not modify, translate, decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Products supplied hereunder, or adapt the Products in any way or for use to create a derivative work.
- (3) The Distributor may not, and may not permit End-Users to, use, reproduce, sub-license, distribute or dispose of the Products, in whole or in part, except as expressly permitted under this Agreement.

4. TERRITORY

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The Distributor may market and distribute the Products solely in [insert territorial boundaries] (hereinafter referred to as the "Territory").

5. PRODUCT CHANGES

The Business retains the right, in its sole discretion, to upgrade or modify the Products from time to time. Upon receipt of any such notice of an upgrade or modification, the Distributor shall cease to market and distribute earlier versions of the Products.

6. LICENSE TO USE TRADEMARK AND TRADE NAME

Any and all trademarks and trade names which the Business uses in connection with the license granted hereunder are and remain the exclusive property of the Business. Nothing contained in this Agreement shall be deemed to give the Distributor any right, title or interest in any trademark or trade name of the Business relating to the Products. Subject to notice from the Business in writing which modifies or cancels such authorization, during the term of this Agreement, the Distributor may use the trademarks and trade names specified by the Business in writing for normal advertising and promotion of the Products.

7. ORDERS

- (1) The Distributor shall place orders for the Products with the Business from time to time. All orders are subject to acceptance by the Business, which shall not be unreasonably withheld by the Business.
- (2) Title to the ordered Products shall be deemed to have passed to the Distributor upon completion of payment for the full amount of the Products covered by each Purchase Order.

8. DELIVERY, PRICES AND PAYMENT

- (1) The prices for Products, and any discounts applicable thereto, and the minimum quantities per order are set forth in Exhibit A.
- (2) If the price for any Product is not set forth in Exhibit A, and the Distributor nevertheless orders such a Product from the Business, the Parties hereby evidence their intention to conclude a contract for the sale of that Product at a reasonable price to be determined by the Parties mutually negotiating in good faith.
- (3) The prices of the product are subject to change by the Business giving to the Distributor a prior written notice to this effect of [insert number] days.
- (4) Title and Risk of loss for the Products shall pass from the Business to the Distributor when the Products are left by the Business at the Delivery Point in accordance with the agreed mode and method, decided at the time of the Distributor's placing an order with the Business.
- (5) Payment shall be made by the Distributor via Irrevocable and Confirmed

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Letters of Credit upon receipt of the Bill of Lading in a form and manner acceptable to the Business for the full amount of each purchase order or any other mode settled between the parties from time to time.

(6)The Distributor, in addition to the prices, shall bear all taxes or duties imposed by the government or taxing authority of the Territory, as well as all costs and expenses of the bank or otherwise related to the payments under this Agreement.

(7)The Distributor shall, apart from the payment, pay to the Business an amount equal to [insert percentage] of the Product's price as Royalty upon the sale of each Product (hereinafter referred to as the Royalty"). The Royalty shall be payable by the Distributor to the Business quarterly, in arrears.

9. NO MODIFICATIONS OR BUNDLING

(1)The Distributor will not without the prior written consent of the Business modify, alter, adapt disassemble, reverse engineer, decompile or amend the Products in any way.

(2)The Distributor may, with the prior written approval of the Business, affix the Distributor's name and logo on the Product in the manner approved by the Business.

(3)The Distributor will not bundle, package or otherwise distribute the Product with, or as part of, any other product or collection of products without the prior written approval of the Business.

10. CONFIDENTIALITY

(1)The Distributor shall maintain in strict confidence and duly safeguard to the best of its ability any and all confidential business and technical information pertaining to the Products or the Business (the "Confidential Information"), and shall not at any time disclose such Confidential Information to any third party or parties or use such confidential information for any purpose other than those contemplated in this Agreement.

(2)This obligation of the Distributor shall survive for [insert number] years after the date of expiration or termination hereof.

(3)It is understood that the Confidential Information does not apply to any information which:

- i. at the time of its receipt was already known to the Distributor;
- ii. is or becomes part of the public domain without breach of this Agreement;
- iii. is independently developed by the receiving Party;

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- iv. is received from a third party without similar restriction and without breach of this Agreement;
- v. is approved for release by written authorization of the Business; or
- vi. is required to be disclosed by court order or governmental agency, provided that the Business is provided with prior written notice of any such disclosure.

(4)The Distributor acknowledges that the disclosure of Confidential Information may cause irreparable injury to the Business, and may result in damages which may be difficult to ascertain. The Business shall, therefore, be entitled to injunctive relief upon a disclosure or threatened disclosure of any Confidential Information, without a requirement that the Business prove irreparable harm, in addition to such other remedies as may be available at law or in equity. Without limitation of the foregoing, the Distributor shall advise the Business immediately in the event that it learns or has reason to believe that any person or entity which has had access to the Confidential Information has violated or intends to violate the terms of this Agreement

11. LIMITED WARRANTY

For [insert number] days after delivery of a Product to the Distributor, the Business warrants that the media upon which the Products are delivered shall be of good quality and workmanship. Upon written notice from Distributor of defective media for a Product, the Business shall use reasonable efforts to promptly provide replacement media.

12. OWNERSHIP OF INTELLECTUAL PROPERTY

(1)The Distributor acknowledges that the Business is the sole and exclusive owner of the intellectual property rights, including without limitation patents, design patents, utility models, registered or unregistered design, trademarks, service marks, design and design rights, database rights, copyright works, trade or business names and any other industrial and proprietary rights (whether registered or unregistered) (hereinafter collectively referred to as the "Intellectual Property"), and agrees that the Distributor shall not claim ownership rights to the Intellectual Property by virtue of being appointed the Business' Distributor under this Agreement.

(2)The Distributor agrees that nothing in this Agreement shall give the Distributor any right, title, or interest in the Intellectual Property other than the right to use the same in accordance with this Agreement.

13. INDEMNIFICATION

(1)The Distributor shall fully indemnify, defend, and hold harmless the Business from and against any and all claims, losses, damages, expenses, and liability, other than those for infringement of Intellectual Property

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rights, including without limitation, suits arising from offering, promoting, advertising, sale, or use by the Distributor of the Products, whether or not such use conforms to standards set by Business, provided that such claim, loss, damage, expense, or liability does not arise from the negligence of the Business.

- (2) The Business shall fully indemnify, defend, and hold harmless the Distributor from and against any and all claims, losses, damages, expenses and liability, including claims of infringement of Intellectual Property rights arising out of the Distributor's authorized use of the Products.

14. DISTRIBUTOR OBLIGATIONS

Distributor agrees to use its best efforts to promote the sale of the Products in the Territory. The Distributor agrees to permit the Business to review all of the Distributor's promotion and advertising material for the Products prior to use. The Distributor shall not use and shall withdraw and retract any promotion or advertising that the Business finds unsuitable, or is in breach of the terms of this Agreement.

15. ACCOUNTS. AUDITS AND INSPECTION

- (1) The Distributor will keep all proper books, records and accounts (hereinafter referred to as the "Records") relating to the distribution of the Products, and will retain such Records for a period of [insert number] years after the date of termination of this Agreement.
- (2) The Business is entitled, on [insert number] business days prior notice in writing to the Distributor, to attend (or appoint an independent accountant to attend) the Distributor's premises and inspect such of the Distributor's Records as may be reasonably necessary to verify the information contained in any Report delivered by the Distributor under this Agreement. The Distributor must permit any such inspection at any time up to [insert number] years after termination of this Agreement.
- (3) If an inspection under Clause 15 (2) reveals that the total amount payable to the Business in respect of any Calendar Quarter is a sum greater than the amount specified in the relevant Report or Reports, then the Distributor will pay to the Business the difference within [insert number] days of demand in writing by the Business which demand will be accompanied by a copy of any accountant's report.

16. MARKETING AND PROMOTION

The Distributor will submit all advertising, sales promotion and public relations material used from time to time by the Distributor and relating to the Products for the Business' prior written approval. However, the marketing

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and promotion of the Products in the territory shall be the sole responsibility of the Business.

17. TERMINATION

- (1) Either Party may terminate this Agreement at any time, with or without cause, by serving to the other Party a [insert number] days' prior written notice.
- (2) This Agreement may be terminated immediately by the Business under any of the following conditions:
 - i. If the Distributor does not pay the Business within [insert number] days from the date that any payments are due hereunder;
 - ii. If the Distributor materially breaches the terms of this Agreement, and such breach is not cured within [insert number] days after written notice of such breach is given by the Business.
- (1) Provided termination is not a result of a material breach of the Agreement, the Distributor may continue running the Maintenance Version solely for purposes of providing maintenance to End-Users granted licenses prior to termination.
- (2) Upon termination, the Distributor shall have no right to order or receive any additional copies of the Products and all of the Distributor's rights and licenses granted hereunder shall immediately cease.
- (3) Within [insert number] days of termination, the Distributor shall return all copies of any promotional materials, marketing literature, written information and reports pertaining to the Products that have been supplied by the Business.

18. TRAINING OF DISTRIBUTOR

As promptly as practicable after execution of the Agreement, the Business shall transmit to the Distributor information, materials, manuals and other technical documents necessary to enable the Distributor to perform its obligations under this Agreement. Throughout the term of this Agreement, the Business shall continue to give Distributor such technical assistance as the Distributor may reasonably request. The Distributor shall reimburse the Business for all reasonable out-of-pocket expenses incurred by the Business in providing technical assistance.

19. INDEPENDENT BUSINESS RELATIONSHIP

- (1) The Business and the Distributor are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as

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set forth in this Agreement.

20. 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 [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.

21. 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.

22. SETTLEMENT OF DISPUTE

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].

23. MISCELLANEOUS

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior understanding or agreements, oral or written.
- (2) This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.

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(3) No provision hereof or breach of any provision may be waived except by a written waiver, signed by the waiving Party. No waiver of any right under or breach of this Agreement shall be construed to be a waiver of any other right or breach under the Agreement.

(4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in Pakistan for the time being shall be ineffective only to the extent of such prohibition or lack of enforceability, and shall not invalidate the remaining provisions hereof.

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 Distributor

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

—
Designation: _____

Designation: _____

Date: _____

Date: _____

EXHIBIT A

Product Description	Price/unit Quantity (units)	Minimum Order
1.		

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2.

3.