

# Commercial Contract

## SOFTWARE LICENSE 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)

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**January 2013**

## **Software License 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 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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### 7. SOFTWARE LICENSE AGREEMENT

**THIS SOFTWARE LICENSE AGREEMENT** (hereinafter referred to as the "Agreement") 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];

**OR**

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

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

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

**WHEREAS** the Licensor has developed certain computer programs and related documentation.

**AND WHEREAS** the Licensee wishes to license the computer programs and related documentation for the purpose of [insert description of purposes].

**AND WHEREAS** the Licensor has agreed to grant the license of the computer programs and documentation to the Licensee.

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

## 1. TERM

This Agreement shall commence on the date of execution of this Agreement, and shall continue in full force and effect for a period of [insert number] years, unless terminated earlier in accordance with this Agreement.

## 2. GRANT OF LICENSE

- (1) Subject to the terms and conditions of the Agreement, the Licensor grants to the Licensee a non-exclusive, non-transferable license to use the computer programs and related documentation identified in Schedule A (hereinafter referred to as the "Licensed Programs") for the purpose of [insert description of the purposes].
- (2) The Licensee may use the Licensed Programs in executable format for its own use, and may translate or modify the Licensed Programs or incorporate them into other software.
- (3) The Licensee may not, however, transfer or sublicense the Licensed Programs to any third party, in whole or in part, in any form, whether modified or unmodified.

## 3. CONSIDERATION TO THE LICENSOR

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- (1)The Licensee shall pay, upon delivery of the Licensed Programs, Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) to the Licensor as the license fees (hereinafter referred to as the "License Fees").
- (2)The License Fees do not include any shipping, duties, bank fees, sales, use, excise or similar taxes due, which shall be borne by the Licensee, entirely.
- (3)If, in any event, the Licensor is required to pay any such amounts as enumerated in Clause 3 (2), the Licensee shall reimburse the Licensor in full against all such payments made by the Licensor.

### **4. COPIES**

- (1)The Licensee may make copies of the Licensed Program in executable code form as necessary for use by Licensee and for backup or archive purposes.
- (2)The Licensee agrees to maintain records of the location and use of each copy, in whole or in part, of the Licensed Programs.
- (3)Each Licensed Program is copyrighted but unpublished by the Licensor. The Licensee agrees to reproduce and apply the copyright notice and proprietary notice of the Licensor to all copies made hereunder, in whole or in part and in any form, of the Licensed Programs.

### **5. OWNERSHIP**

The original and any copies of the Licensed Programs, made by the Licensee, including translations, compilations, partial copies, modifications, and updates, shall always remain the property of the Licensor, and the Licensee shall not have any claim, whatsoever, to their ownership.

### **6. PROPRIETARY RIGHTS**

The Licensee recognizes that the Licensor regards the Licensed Programs as its proprietary information and as confidential trade secrets of great value. The Licensee agrees not to provide or to otherwise make available in any form the Licensed Programs, or any portion thereof, to any person other than

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the employees of the Licensee without the prior written consent of the Licensor. The Licensee further agrees to treat the Licensed Programs with at least the same degree of care with which the Licensee treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the Licensed Programs.

### **7. TERMINATION**

The Licensor may terminate this Agreement if the Licensee is in default of any of the terms and conditions of this Agreement and fails to correct such default within [insert number] days after written notice of such default from the Licensor.

### **8. TERMINATION CERTIFICATE**

In the event of termination, the Licensee will immediately discontinue use of the Licensed Programs. Within [insert number] months after termination of this Agreement, the Licensee will furnish to the Licensor a certificate which certifies with respect to each of the Licensed Programs that, through its best effort and to the best of its knowledge, the original and all copies, in whole or in part and in any form, of each of the Licensed Programs have been destroyed.

### **9. MAINTENANCE SUPPORT**

(1)The Licensor will provide to Licensee the following support with respect to the Licensed Programs during the term of the Agreement:

- i. If during the 1st year of this Agreement, the Licensee notifies the Licensor of a substantial program error respecting the Licensed Programs, or the Licensor has reason to believe that error exists in the Licensed Programs and so notifies the Licensee, the Licensor shall at its expense verify and attempt to correct such error within [insert number] days after the date of notification. If Licensee is not satisfied with the correction, then the Licensee may terminate this Agreement, but without refund of any amount paid to the Licensor or release of any amounts due to the Licensor at the time of termination.
- ii. In the case that the Licensee has technical questions in the use of the Licensed Programs during the 1st year of this Agreement, the Licensee may submit those questions to the Licensor. The Licensor shall provide consulting to answer such questions without charge to the Licensee up to a maximum of [insert number] hours for each licensed program.

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(2) If Licensee desires to continue the Licensed Programs support specified in this Clause, Licensee shall pay to the Licensor the maintenance fee(s) as agreed upon between the Parties.

### **10. WARRANTY DISCLAIMER**

The Licensor licenses, and the Licensee accepts, the licensed programs "AS IS." The LICENSOR PROVIDES NO WARRANTIES AS TO THE FUNCTION OR USE OF THE LICENSED PROGRAMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED PROGRAM IS WITH THE LICENSEE. THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED PROGRAMS WILL BE UNINTERRUPTED OR ERROR FREE.

### **11. PATENT AND COPYRIGHT INDEMNITY**

(1) The Licensor will defend at its own expense any action brought against the Licensee to the extent it is based on a claim that the Licensed Programs used within the scope of the license granted hereunder infringe a patent, copyright or other proprietary right of a third party. The Licensor will pay any costs, damages or attorney fees finally awarded against Licensee in such action which are attributable to such claim, provided the Licensor is promptly notified in writing of such claim, may control the defense and/or settlement of such claim, and is provided with all requested assistance, information and authority.

(2) The Licensor shall have no liability for any claim of patent, copyright or trade secret infringement based on the use of a Licensed Program in any form other than the original, unmodified form provided to the Licensee or the use of a combination of the Licensed Programs with hardware, software or data not supplied by the Licensor where the used Licensed Programs alone in their original, unmodified form would not constitute an infringement. The foregoing states Licensee's entire liability for infringement or claims of infringement of patents, copyrights or other intellectual property rights.

### **13. LIMITATION OF LIABILITY**

THE LICENSOR'S LIABILITY TO THE LICENSEE UNDER ANY PROVISIONS OF

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THIS AGREEMENT FOR DAMAGES FINALLY AWARDED SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID HEREUNDER BY THE LICENSEE TO THE LICENSOR. IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, LOSS OF PROFITS OR INTERRUPTION OF BUSINESS, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.

### **14. ASSIGNMENT**

Neither Party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other Party.

### **15. 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.

### **16. GOVERNING LAW AND EXCLUSIVE JURISDICTION**



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This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of Pakistan, and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

### **17. SETTLEMENT OF DISPUTE**

(1) 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 [insert place] Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

### **18. 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.

(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.

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For and on behalf of  
**The Licensor**

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For and on behalf of  
**The Licensee**

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**WITNESS NO. 1**

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

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

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

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

**WITNESS NO. 2**

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

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

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

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

**EXHIBIT A  
LICENSED PROGRAMS**