

# Commercial Contract

## TRIAL 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)

##### 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<br>PUNJAB                                                                                                                                                                                                     | REGIONAL OFFICE<br>SINDH                                                                                                                                                                             | REGIONAL OFFICE<br>KPK                                                                                                                                                               | REGIONAL OFFICE<br>BALOCHISTAN                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 <sup>rd</sup> Floor, Building No. 3,<br>Aiwan-e-Iqbal Complex,<br>Egerton Road Lahore,<br>Tel: (042) 111-111-456<br>Fax: (042) 36304926-7<br><a href="mailto:helpdesk.punjab@smeda.org.pk">helpdesk.punjab@smeda.org.pk</a> | 5 <sup>TH</sup> Floor, Bahria<br>Complex II, M.T. Khan Road,<br>Karachi.<br>Tel: (021) 111-111-456<br>Fax: (021) 5610572<br><a href="mailto:helpdesk-khi@smeda.org.pk">helpdesk-khi@smeda.org.pk</a> | Ground Floor<br>State Life Building<br>The Mall, Peshawar.<br>Tel: (091) 9213046-47<br>Fax: (091) 286908<br><a href="mailto:helpdesk-pew@smeda.org.pk">helpdesk-pew@smeda.org.pk</a> | Bungalow No. 15-A<br>Chaman Housing Scheme<br>Airport Road, Quetta.<br>Tel: (081) 831623, 831702<br>Fax: (081) 831922<br><a href="mailto:helpdesk-qta@smeda.org.pk">helpdesk-qta@smeda.org.pk</a> |

**January 2013**

# **Trial 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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### **8. TRIAL SOFTWARE LICENSE AGREEMENT**

**THIS TRIAL 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 is the creator of a software called "[insert name of the software]" (hereinafter referred to as the Software.

**AND WHEREAS** the Licensor has granted a trial license to the licensee for the trial of the Software under the terms and conditions of this Agreement.

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

## **1. PURPOSE/LICENSE/TERM**

This Trial License Agreement is entered into for the sole purpose of allowing the Licensee to evaluate the Licensor's Software and accompanying Documentation (hereinafter collectively referred to as the "Trial System"). The Licensor hereby grants to Licensee a non-exclusive, non-transferable, revocable license to use the Trial System, including any modified or enhanced versions thereof provided to the Licensee by the Licensor, at no cost, for a [insert number]-day trial period beginning on [insert date] and ending on [insert date] (hereinafter referred to as the "Trial Period").

## **2. RETURN OF TRIAL SYSTEM**

Within [insert number] business days of the end of the Trial Period, the Licensee shall return to the Licensor all Licensor Software and Documentation included in the Trial System.

## **3. LIMITED WARRANTY**

- (1) The Licensor warrants that it has the right to grant temporary use of the Trial System to the Licensee. The Licensor makes no other warranties, express or implied, including but not limited to implied warranties of merchantability and fitness of the Trial System for a particular purpose.
- (2) The Licensor's aggregate liability for damages arising out of or in connection with this Trial License Agreement, the performance of the Trial System, or the Licensor's performance of the Services, shall not exceed [insert amount]. Without regard to whether a claim is based on contract or tort, including negligence, in no event shall the Licensor be liable for any indirect, special, incidental or consequential damages, including without limitation, damages resulting from loss of profits, data or business arising out of or in connection with this Trial License Agreement, even if the Licensor has been advised of the possibility of such damages.

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### **4. PROPRIETARY RIGHTS**

The Licensee acknowledges that the Licensor retains all right, title, and interest in the Trial System and in any copies thereof, and no title to the Trial System, or any intellectual property or other rights therein, are transferred to the Licensee by virtue of this Agreement, except the right to use the Trial System under the terms and conditions of this Agreement. The Licensee shall not, without the express prior written consent of the Licensor, duplicate, copy or reproduce the Trial System except for use on a single computer. The Licensee agrees not to cause or permit the reverse engineering, reverse assembly or reverse compilation of the Software, or otherwise attempt to derive source code from the Software or any related documentation.

### **5. CONFIDENTIALITY**

- (1) The Licensee acknowledges that the Trial System is unpublished and contains proprietary and confidential information of the Licensor, which the Licensor considers to constitute valuable trade secrets. In addition, the Licensee may also be provided with or be exposed to confidential information of third parties with which the Licensor conducts business. The confidential information of Licensor and third parties is collectively referred to as the "Confidential Information." In recognition of the foregoing, the Licensee covenants and agrees:
- i. That the Licensee shall keep and maintain all Confidential Information in strict confidence. using such degree of care as is appropriate to avoid unauthorized use or disclosure;
  - ii. That the Licensee shall not, directly or indirectly, disclose any Confidential Information to any third party, except with the Licensor's prior written consent;
  - iii. That the Licensee shall not make use of any Confidential Information for its own purposes, such as creation of a competitive product or for the benefit of anyone or any other entity other than the Licensor;
  - iv. That on termination of discussions with the Licensor, or if the Licensor is engaged to perform services for the Licensee, upon completion of the engagement, or at any time the Licensor may so request, the Licensee shall deliver promptly to the Licensor or, at the Licensor's option, will destroy all memoranda, notes, records, reports, media and other documents and materials (and all copies thereof) regarding or including any Confidential Information which the Licensee may then possess or have under its control; and
  - v. That the Licensee will take no action with respect to the Confidential Information that is inconsistent with its confidential and proprietary nature.
- (2) The Licensee shall be permitted to disclose the Confidential Information only as follows:
- i. To its employees and agents (hereinafter collectively referred to as the

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"Employees") having a need to know such information in connection with this Trial License Agreement (and in any event the Licensee shall be responsible for all Employees' compliance with the terms of this Trial License Agreement); and

- ii. If disclosure is required by law, but in such event the Licensee shall notify the Licensor in writing in advance of such disclosure, and provide the Licensor with copies of any related information so that the Licensor may take appropriate action to protect the Confidential Information.

(3) For purposes of this Trial License Agreement, Confidential Information shall include, but not be limited to, all business information of Licensor, including the following:

- i. All information and data related to the Trial System;
- ii. All information relating to the Licensor's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods;
- iii. All information regarding the Licensor's product strategies, customer lists, sales, profits, organizational restructuring, new business initiatives and financial information; and
- iv. Confidential information of third parties with whom the Licensor conducts business.

(4) Notwithstanding the foregoing, Confidential Information shall not include information:

- i. that is or becomes generally known to the public not as a result of a disclosure by the Licensee,
- ii. is rightfully in the possession of the Licensee prior to disclosure by the Licensor, or
- iii. is received by the Licensee in good faith and without restriction from a third party not under a confidentiality obligation to the Licensor and having the right to make such disclosure.

(5) The Licensee acknowledges that the disclosure of Confidential Information may cause irreparable injury to the Licensor, and may result in damages which may be difficult to ascertain. The Licensor shall, therefore, be entitled to injunctive relief upon a disclosure or threatened disclosure of any Confidential Information, without a requirement that the Licensor prove irreparable harm, in addition to such other remedies as may be available at law or in equity. Without limitation of the foregoing, the Licensee shall advise the Licensor 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

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intends to violate the terms of this Trial License Agreement.

(6) In addition, the Licensee shall not release the results of any evaluation or benchmark of the Trial System to any third party without the express prior written consent of Licensor.

### **6. INDEMNIFICATION**

(1) The Licensor agrees to defend the Licensee from and against any claim or action based on any alleged infringement of any patent, copyright, trade secret or other proprietary right as a result of the use of the Trial System according to the terms and conditions of this Trial License Agreement, and the Licensor agrees to indemnify the Licensee from any costs and/or damages awarded against the Licensee in any such infringement claim or action or settlement thereof, provided that

- i. the Licensor is promptly notified in writing of such claim,
- ii. the Licensee grants the Licensor the sole control of the defense and any related settlement negotiations, and
- iii. the Licensee cooperates with the Licensor in defense of such claim.

(2) Notwithstanding the foregoing, the Licensor shall have no liability to the Licensee if the infringement results from:

- i. Use of the Trial System in combination with software not provided by the Licensor;
- ii. Modifications to the Trial System not made by the Licensor; or
- iii. Use of other than a current release of the Trial System, if such infringement would have been avoided by use of a current release.
- iv. This Clause \_\_\_\_ states the entire liability of the Licensor with respect to infringement of any patents, copyrights, trade secrets or other proprietary rights by the Trial System or any part thereof.

### **7. 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.

### **8. 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,

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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.

### **9. 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.

### **10. 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].

### **11. 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



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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**

## **WITNESS NO. 1**

## **WITNESS NO. 2**

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

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

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

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

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

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

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

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