

Commercial Contract

TRADEMARK LICENSE AGREEMENT



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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

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

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1. INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

2. ROLE OF SMEDA LEGAL SERVICES CELL

The Legal Services Cell (LSC) is a part of Business Development Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to requisite format and content of a business to business commercial contracts. Entrepreneurs interested in enhancing their understanding about the nature and form of a Trade Mark License Agreement can also use the document.

3. DISCLAIMER

Form of this document and the contents therein are provided only for general information purpose and on an "as is" basis without any warranties of any kind. Use of this document is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this document, its form and any of the information provided therein and shall not be liable for any damages arising from its uses.

TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is made on this DAY _____ of _____, 200

BETWEEN

_____ (Give name of the company / firm) , a Private Limited Company / firm having its Head Office at _____, through its Chief Executive Officer (hereinafter referred to as “(“Licensor”), ”, which expression shall mean and include its successors in interests and assigns of the First Part).

AND

M/ S ABC (hereinafter referred to for convenience as "ABC" , having office at _____, through its Representative (hereinafter referred to as “ Licensee ”, which expression shall mean and include its successors in interests and assigns of the Second Part)

WHEREAS, Licensor is the exclusive lawful owner of a Trade Mark namely _____ (give name of the Mark) duly registered with the relevant authorities of the Government of Pakistan, and is using the said trademark ("Trademark") throughout Pakistan and in foreign countries in connection with computer graphics hardware, software, and related services.

AND WHEREAS, Licensee desires to obtain the Trademark under a license from the Licensor, to use the same, in connection with Licensee's " _____ (give name of the product) (hereinafter “the product”)

AND WHEREAS, Licensor, subject to the terms and conditions set forth in this Agreement, is willing to grant Licensee in favor of Licensee to use the Trademark in connection with the product for the mutual benefit of Licensor and Licensee.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section- 1

GRANT OF LICENSE

1.1 Scope of License. Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable, royalty-free license to use

the Trademark in connection with the product throughout Pakistan. Licensee shall make no other use of the Trademark otherwise than permitted in this agreement.

1.2 Fee / Consideration. The Licensee hereby undertakes to pay unto the Licensor an amount of Rs. _____ as annual license fee for the use of the Trade Mark. This amount shall be paid by Licensee in advance through a crossed cheque in favor of Licensor.

1.3 Non-Assignment. Licensee acknowledges and agrees that the rights granted to Licensee by and obtained by Licensee as a result of or in connection with this Agreement are license rights only, and nothing contained in this Agreement constitutes or shall be construed to be an assignment of any or all of Licensor's rights in the Trademark.

Section 2

LICENSOR'S CONTROL

In order to protect and preserve Licensor's rights in the Trademark, Licensee understands, acknowledges, and agrees that

- (i) prior to the first date of Licensee's use of the Trademark in connection with the product, Licensee shall obtain Licensor's approval of all aspects of such use; and
- (ii) once Licensee's use of the Trademark in connection with the product is initially approved by Licensor, any subsequent alteration, modification, or change in such use must be reviewed and approved by Licensor prior to implementation of such alteration, modification, or change.

Section 3

USE OF THE TRADEMARK

3.1 Trademark Format. Licensor retains the right to specify, from time to time, the format in which Licensee shall use and display the Trademark, and Licensee shall only use or display the Trademark in a format approved by Licensor.

3.2 Proper Notice and Acknowledgment. At every use of the Trademark Licensee shall properly and conspicuously display and incorporate the words "R" enclosed by a circle and "under license".

3.3 Bar of activities affecting Licensor's Rights. Licensee shall not, whether during or after the term of this Agreement, engage, do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of Licensor's rights in the Trademark or any registrations derived from such rights.

3.4 Licensor's Rights and Remedies. Licensee acknowledges and agrees that Licensor has, shall retain, and may exercise, both during the term of this Agreement and thereafter,

all rights and remedies available to Licensor, whether derived from this Agreement, from statute, or otherwise, as a result of or in connection with Licensee's breach of this Agreement, misuse of the Trademark, or any other use of the Trademark by Licensee which is not expressly permitted by this Agreement.

Section 4

TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be for two (2) years from the Effective Date, provided, however, that either party may terminate this Agreement, with or without cause, by delivering written notice of termination to the other party, and, unless a later date is specified in such notice, termination shall be effective sixty (60) days after the date such notice is given.

4.2 Termination for Cause. Notwithstanding the provisions of Section 4.1 of this Agreement, this Agreement and all rights granted hereby, including but not limited to Licensee's right to use the Trademark, shall automatically terminate without notice from Licensor if (i) Licensee attempts to assign, sub-license, transfer or otherwise convey, without first obtaining Licensor's written consent, any of the rights granted to Licensee by or in connection with this Agreement; (ii) Licensee fails to obtain Licensor's approval of Licensee's use of the Trademark in accordance with Section 2 of this Agreement; (iii) Licensee uses the Trademark in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Section 3 of this Agreement; or (iv) Licensee uses the Trademark in a manner not expressly permitted by this Agreement.

4.3 Effect of Termination. All rights granted by this Agreement, including, without limitation, Licensee's right to use the Trademark, shall expire upon termination of this Agreement, and upon termination Licensee shall immediately cease and desist from all further use of the Trademark.

Section 5

MISCELLANEOUS

5.1 Assignment. Licensee shall not assign, sublicense, transfer, or otherwise convey Licensee's rights or obligations under this Agreement without Licensor's prior written consent. Licensee shall indemnify and hold harmless Licensor against all liability, costs, and expenses, including but not limited to a reasonable attorneys' fee, arising out of or in connection with claims relating to an attempted assignment, sublicense, transfer, or other conveyance of Licensee's rights and obligations.

5.2 NOTICES

Written notice shall be construed to mean notification in writing to the addresses outlined below and shall be deemed to be given: (i) when delivered to a party, (ii) seven (7) days after mailing by Registered, or (iii) upon confirmation of receipt of facsimile transmission:

5.3 CONFIDENTIAL INFORMATION

Each party agrees to maintain in confidence trade secret, proprietary, or other confidential information (jointly and severally hereinafter called "Confidential Information") which it receives from the other and which is identified as such at the time of such receipt. Each party shall use Confidential Information only for the purpose(s) originally contemplated herein. Each party agrees to inform the other party of its usual security measures for Confidential Information and agrees to comply with reasonable requests by the other to modify such security measures. The rights and obligations under this paragraph shall survive termination of this Agreement and shall continue for the longest period allowable by law.

The obligations of this Section shall not apply to information which is or becomes in the public domain through no violation of this Agreement.

5.4 COMPLIANCE WITH LAWS

Each of the parties hereto covenant and agree that they shall stay in compliance with all applicable laws and regulations in Pakistan in connection with the performance of this Agreement.

5.5 HEADINGS AND CAPTIONS

Heading and Captions of each clause set forth herein shall not be taken in to consideration while interpreting the agreement or in no way be considered or interpreted to alter the meaning or content of this Agreement.

5.6 DISPUTES / ARBITRATION.

Except as provided below, any and all disputes arising under or related to this Agreement which cannot be resolved through negotiations between the parties shall be submitted to binding arbitration. If the parties fail to reach a settlement of their dispute within fifteen (15) days after the earliest date upon which one of the parties notified the other(s) of its desire to attempt to resolve the dispute, then the dispute shall be promptly submitted to arbitration by a single arbitrator . The arbitrator shall be selected mutually. The decision of the arbitrator shall be final, non-appealable and binding upon the parties, and it may be entered in any court of competent jurisdiction. The arbitrator shall be bound by the Arbitration Act 1940. The obligation of the parties to submit any dispute arising under or

related to this Agreement to arbitration as provided in this Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, either party may seek and obtain an injunction or other appropriate relief from a court to preserve or protect trademarks, trade-names, copyrights, patents, trade secrets or other intellectual property or proprietary information or to preserve the status quo with respect to any matter pending conclusion of the arbitration proceeding, but no such application to a court shall in any way be permitted to stay or otherwise impede the progress of the arbitration proceeding.

In the event of any arbitration or litigation being filed or instituted between the parties concerning this Agreement, the prevailing party will be entitled to receive from the other party or parties its attorneys' fees, witness fees, costs and expenses, court costs and other reasonable expenses, whether or not such controversy, claim or action is prosecuted to judgment or other form of relief. The "prevailing party" is that party which is awarded judgment or other legal or equitable relief as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by such party. If both parties receive a judgment, settlement payment or other award or relief, the court or the arbitrator shall determine which party is the prevailing party, taking into consideration the merits of the claims asserted by each party, the relative values of the judgments, settlements or other forms of relief received by each party, and the relative equities between the parties.

5.7 CONSENT TO JURISDICTION

Each party irrevocably submits to the non-exclusive jurisdiction of the **Civil Courts of _____ (give name of city) District**, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in Pakistan, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

5.8 SEVERABILITY

The provisions of this Agreement are severable and in the event that one or more of such provisions shall be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

5.9 ENTIRE AGREEMENT; AMENDMENTS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals,

understandings and all other agreements, oral and written between the parties relating to this Agreement.

This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

5.10 BINDER

This Agreement is binding on and inures to the benefit of the respective parties, their permitted assigns, and successors in interest by merger, sale of stock, or sale of assets.

5.11 NO WAIVER

The failure of Licensor to insist upon strict performance of any of the terms and conditions of this Agreement, or to exercise any of the rights or remedies afforded Licensee under this Agreement or applicable law, shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms or conditions or laws at any time thereafter.

IN WITNESS WHEREOF both the parties have set their hand on the present agreement on the day and year first above mentioned.

Licensor

Licensee

Witness 1

Witness 2

Name: _____

Name _____

Address: _____

Address: _____

