

Commercial Contract

SOFTWARE SUPPORT AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Software Support Agreement

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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20. SOFTWARE SUPPORT AGREEMENT

THIS SOFTWARE SUPPORT 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];

(hereinafter referred to as the "Provider", which expression shall, wherever the context so provides, 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];

(hereinafter referred to as the "Customer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

(The Provider and the Customer are hereinafter collectively referred to as the "Parties" and individually as the "Party")

WHEREAS the Customer and the Provider have entered into an agreement

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(hereinafter referred to as the "Master Agreement") wherein the Customer has purchased the license to [insert name of the software] software (hereinafter referred to as the "Software") from the Provider.

AND WHEREAS the Customer wishes to purchase from the Provider the maintenance and support services for the Software.

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

1. TERM

This Agreement shall come into effect on the date of signing of the Agreement, and shall continue to remain in force for a period of [insert number] years, subject to the earlier termination of the Agreement in accordance with the terms of this Agreement.

2. SCOPE OF AGREEMENT

(1) During the term of this Agreement, the Provider agrees to furnish to the Customer the following maintenance and support services for the Software (hereinafter collectively referred to as the "Services"):

i. Software Update Correction Service

- a. As part of the Software Update and Correction Service, the Provider shall promptly provide to the Customer:
- b. resolutions to any known problems relating to the Software as and when such resolutions become known to the Provider;
- c. corrections for problems that the Provider diagnoses as defects in a currently supported version of the Software;
- d. all modifications, refinements, and enhancements which the Provider incorporates into and makes a part of the Software;
- e. Upgrade new releases of the Software which the Provider elects to make available to its general client base.

ii. Telephone Support Service

Telephone Support Service includes the Customer having direct telephone access to employees of the Provider who have the necessary technical expertise and experience to understand and solve the Customer's inquiries concerning the Software defects. Such direct telephone access shall be available Monday through Friday, exclusive of statutory holidays, from [insert time] to [insert time] according to the Provider's time zone. The Provider shall be obligated to provide a

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response to such telephone inquiries as soon as is practically possible, and in no event shall such response be provided later than [insert number] business hours. In the event that such response is not satisfactory to the Customer, acting reasonably, the Provider shall promptly provide Software Repair Service to the Customer.

iii. Software Repair Service

Should the Software not operate as expected, the Provider shall promptly repair the Software at no additional charge to the Customer.

3. SERVICE CHARGES

- (1) The Customer shall pay to the Provider Rs. _____/- (Rupees _____) (insert amount) per month in lieu of the Services (hereinafter referred to as the "Service Fees").
- (2) Any costs incurred by the Provider in providing the Services to the Customer shall be paid by the Customer to the Provider at actual.
- (3) Any amount payable by the Customer to the Provider shall be so paid within [insert number] days of the Customer's receipt of the invoice from the Provider.

4. WARRANTY

The Provider warrants that for a period of [insert number] days from the date of their being rendered, the Services will remedy the problem to which they are related, or else the Provider shall provide the Services related to the problem free of charge.

5. CHANGES IN THE SERVICES

The Customer may, at any time, without invalidating this Agreement, order services in addition to the Services or request to make changes to the Services. The compensation and time limits of the Agreement shall be adjusted accordingly. The aforementioned changes shall be undertaken by the Provider only upon written authorization of the Customer.

6. TERMINATION

- (1) The Agreement shall terminate upon the termination of the Master Agreement.
- (2) Notwithstanding the non-termination of the Master Agreement, should the Provider be in default under any provision of this Agreement or fail to perform or execute the Services in the manner contemplated herein, the Customer, may, in its discretion,

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terminate this Agreement by giving the Provider [insert number] days' prior written notice of termination, or obtain the services of third party personnel in which case the Provider shall indemnify the Customer for all additional costs incurred by the Customer.

7. ASSIGNMENT

- (1) This Agreement may not be assigned nor subcontracted in whole or in part by the Provider without the prior written consent of the Customer.
- (2) An assignment or a subcontract shall not release the Provider from its obligations hereunder, unless otherwise agreed upon between the Parties.
- (3) The Customer may assign this Agreement, in whole or in part, without notifying the Provider.

8. RELATIONSHIP OF THE PARTIES

The Developer is an independent contractor, not an employee of the Business or any company affiliated with the Business. The Developer shall provide the services under the general direction of the Business, but the Developer shall determine the manner and means by which the services are accomplished. This Agreement does not create a partnership or joint venture, and neither Party is authorized to act as agent or bind the other Party, except as expressly stated in this Agreement.

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 Pakistan and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

10. RESOLUTION OF DISPUTES

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. 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,

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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.

12. AMENDMENTS

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

13. NONWAIVER

The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of this Agreement.

14. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement shall not be terminated by the merger or consolidation of the Business into or with any other entity.

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 Customer

For and on behalf of
The Provider

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation:

Designation:

Date: _____

Date: _____