

# Commercial Contract

## AGREEMENT FOR PURCHASE OF ACCOUNTING SOFTWARE



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

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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 service matters. 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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## **C3. AGREEMENT FOR PURCHASE OF AN ACCOUNTING SOFTWARE**

**THIS SOFTWARE PURCHASE AGREEMENT** (hereinafter referred to as the "Agreement") is entered into at [insert place] on this \_\_\_\_ (insert date) day of \_\_\_\_\_ (insert month), 20\_\_\_\_,

### **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 "Purchaser", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

**AND**

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

**OR**

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 "Seller", which expression shall, wherever the context so provides, include its heirs, assigns, nominees, agents and successors-in-interest).

(The Purchaser and the Seller are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

**WHEREAS** the Purchaser is involved in the business of [insert description of the Business].

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**AND WHEREAS** for the smooth working of the Purchaser's Business, the Purchaser requires an accounting software to perform [insert list of functions].

**AND WHEREAS** the Seller has developed and owns the copyright and all other proprietary rights pertaining to and subsisting in [insert name of the accounting software] (hereinafter referred to as the "Accounting Software").

**AND WHEREAS** the Seller desires to sell, transfer, convey, and deliver the Accounting Software, including all rights subsisting in them, to the Purchaser.

**AND WHEREAS**, the Purchaser desires to purchase the Accounting Software, and all documentation related thereto from the Seller.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties have entered into this Agreement on the following terms and conditions:

## 1. SCOPE OF THE AGREEMENT

- (1) The Purchaser hereby purchases the license to the Seller's [insert name of accounting software] Software.
- (2) A standard list of components and a general description of the Software is attached hereto as "Exhibit A".
- (3) The term "Accounting Software" shall mean any and all versions or derivations of:
  - i. the source code of computer programs; and
  - ii. related development and user documentation which together comprise the [inset name of the accounting software].
- (4) The Seller hereby sells, grants, transfers, and conveys to the Purchaser sole and exclusive right, title, and interest in and to the Accounting Software, including all rights in copyright and trade secret interests subsisting in them as well as such proprietary know-how as may relate to them, and including but not limited to the full and complete right to print, publish, copy, distribute, transfer, display, and prepare derivative works based upon the Accounting Software and any derivative works of them anywhere throughout the world.

## 2. DELIVERY OF ACCOUNTING SOFTWARE BY THE SELLER

- (1) The Seller shall, within [insert number] days of execution of this Agreement, deliver to the Purchaser:
  - i. the complete current version of the Accounting Software in both human-readable and machine-readable format, free of copyright protection and formatted to list source code instructions; and
  - ii. available manuscripts prepared by the Seller documenting the use and operation of the Accounting Software.

## 3. RIGHT TO RESELL THE ACCOUNTING SOFTWARE

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- (1) The Purchaser, in its own discretion, shall have the right to resell the Accounting Software at any time to any number of buyers, or to market and distribute the Accounting Software, and to decide whether to license or sell copies of the Accounting Software, on such terms and conditions that it deems fit.
- (2) The Seller shall, after the execution of this Agreement, have no right to interfere in the Purchaser's rights enumerated in Clause 3 (1).
- (3) The Purchaser shall place appropriate copyright and other proprietary notices in the form prescribed by applicable law on packaging materials, and embedded in program code of the program packages in case of marketing and distribution of the Accounting Software. The Seller shall, upon the Purchaser's request, execute a suitable Certificate of Assignment of the rights and interests of the Seller in the Accounting Software for registration of the Accounting Software in the relevant departments/authorities.

## 4. CONSIDERATION

- (1) The Seller acknowledges receipt of a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert consideration amount) (hereinafter referred to as the "Consideration") furnished by the Purchaser as the mutually agreed upon purchase price, and acknowledges the sufficiency of the Consideration of the Seller entering into this Agreement and delivering the Accounting Software along with all rights thereto, to the Purchaser.
- (2) Along with the Consideration, the Purchaser shall will pay to the Seller a royalty of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) for each new sale/sublicense and installation of the Accounting Software.

## 5. MAINTENANCE SERVICES

- (1) The Seller shall make available the maintenance services for the Accounting Software to the Purchaser for a period of [number] days from the effective date of this Agreement to assist in the transition of the data processing service efforts. These services will be provided on a part-time basis for expense reimbursement only (travel, lodging and meals) up to a maximum of [insert number] hours. These services shall continue at a rate of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) per hour after the [insert number] hour limit has been reached.
- (2) The payment against the maintenance services shall be payable to the Seller by the Purchaser within [insert number] days of receipt of the invoice by the Purchaser from the Seller.

## 6. WARRANTIES, LIABILITIES AND LIMITATIONS

- (1) The Seller warrants to the Purchaser that the Seller is the original creator and user of the Accounting Software and has the authority to assign and transfer all the rights, title, and interest to the Accounting Software to the Purchaser in accordance with the provisions of this Agreement.
- (2) The Seller warrants that the Accounting Software in the form to be delivered to the Purchaser shall not infringe any patent, copyright, or trade secret right of any third party.

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- (3) The Seller makes no warranty that all errors have been or can be eliminated from the Accounting Software and, except as set forth in Clause 6 (1), the Seller shall not be responsible for losses, damages, costs or expenses of any kind resulting from the use or distribution of the Accounting Software by the Purchaser, including, without limitation, any liability for business expense, machine downtime, or damages caused to the Purchaser or any third persons by any deficiency, defect, error or malfunction.

## **7. INDEMNITY UNDERTAKINGS OF THE PARTIES**

- (1) The Seller shall indemnify and hold harmless the Purchaser from and against any and all claims, actions, demands, costs, losses, and liabilities upon the proprietary rights of any third parties arising out of or relating to infringement by the Accounting Software in the form delivered by the Seller to the Purchaser under this Agreement.
- (2) The Purchaser shall indemnify and hold harmless the Seller from and against any and all claims, actions, demands, costs, losses, and liabilities arising out of or relating to actions taken by the Purchaser pursuant to this Agreement.
- (3) These rights of indemnification shall be predicated upon the Party seeking indemnification
- i. giving the indemnifying Party prompt written notice of any claim for which indemnity is sought;
  - ii. allowing the indemnifying Party complete control with respect to the defense or settlement of any such claim; and
  - iii. cooperating fully with the indemnifying Party in the defense or settlement at the expense of the indemnifying Party.

## **8. CONFIDENTIAL INFORMATION**

The Seller shall keep confidential and not disclose or disseminate to any third parties any confidential or proprietary information subsisting or embodied in the Accounting Software. The Seller shall take all steps reasonably necessary for the protection of any such information that remains in the possession or control of the Seller.

## **9. DISPUTE RESOLUTION**

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].

## **10. MISCELLANEOUS**

- (1) The Seller shall have no authority to enter into agreements on behalf of the Purchaser or otherwise to bind or obligate the Purchaser in any manner.
- (2) All questions concerning the validity, operation interpretation, and construction of this Agreement will be governed by and determined in accordance with the laws of Pakistan.

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- (3) If any part, term, or provision of this Agreement shall be held unenforceable or in conflict with any law of any governmental authority having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected.
- (4) Each Party represents that it has the full power and authority to undertake the obligations set forth in this Agreement and that it has not entered into any other agreements that would render it incapable of satisfactorily performing its obligations under this Agreement or which would place it in a position in conflict with respect to its obligations under this Agreement.
- (5) The Parties agree that this Agreement is complete and exclusive agreement and supersedes all previous proposals and agreements, oral or written, relating to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement at the place and on the date mentioned hereinabove.

\_\_\_\_\_  
for and on behalf of  
the Seller

\_\_\_\_\_  
for and on behalf of  
the Purchaser

Witnesses:

1. \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

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## **EXHIBIT A**

### **DESCRIPTION OF ACCOUNTING SOFTWARE AND LIST OF COMPONENTS**