



## SOFTWARE LICENCE AND TECHNICAL SUPPORT AGREEMENT

**THIS AGREEMENT** (the “**Agreement**”) is made on the            day of  
Two Thousand and

### **BETWEEN:**

**LIMITED** a limited liability company incorporated in the Republic of Kenya  
of Post Office Box Number            , Nairobi in the Republic of Kenya (hereinafter  
referred to as "the **Company**") and;

**LIMITED** a limited liability company incorporated in the  
Republic of Kenya of Post Office Box Number            , Nairobi aforesaid (hereinafter  
referred to as "the **LICENSEE**").

### **WHEREAS:**

The Company has agreed to grant the Licensee a non-exclusive licence to use the  
computer software programs and associated documentation listed in the Schedule  
hereto and to provide certain services to the Licensee in respect of delivery technical  
support and training upon the terms and conditions of this Agreement.

### **OPERATIVE PROVISIONS:**

#### **Definitions**

In this Agreement unless the context otherwise requires:

“**Acceptance Date**” means the date the Licensee is deemed to have  
accepted the Licenses Program Materials in  
accordance with clause 5.3 below;

“**Actual Delivery Date**” means the actual date that in the Licensed  
Program Materials are delivered by the Company in  
accordance with clause 4 below;



- “Additional Charges”** means the Company’s rates from time to time for work undertaken on a time and materials basis;
- “Delivery Date”** means the estimated date for the delivery of the Licensed Program Materials set out in the Schedule;
- “Designated Equipment”** means the machine identified by type and serial number in the Schedule;
- “Licence Fee”** means the monthly fee for the licence and Services set out in the Schedule as the same may be varied in accordance with clause 3.3 below;
- “Licensed Programs”** means the software programs in object code form identified by title and reference number in the Schedule including any New Release of the same made or issued pursuant to clause 6 below;
- “Licensed Program Materials”** means the Licensed Programs and the Program Documentation;
- “New Release”** means any improved modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by the Company pursuant to clause 6 below;
- “Place of Use”** means that part of the Licensee’s premises at the Site where the Designated Equipment is installed and operated;
- “Program Documentation”** means the instruction manuals user guides and other information (identified by the title and reference



number in the Schedule) to be made available by the Company at its discretion in either printed or machine readable form to the Licensee;

**“Program**

**Specifications”**

means the technical specifications from time to time published by the Company in respect of Licensed Programs;

**“Response Time”**

means either of the response times for category C Technical Support set out in clause 6.4 below;

**“Services”**

means the provision of delivery Technical Support and training services in accordance with respectively clause 4, 6 and 16 below;

**“Site”**

means the address for delivery of the Licensed Program Materials specified by the Licensee and set out in the Schedule;

**“Technical Support”**

means the provision of such categories of technical support in accordance with clause 6 below as shall be specified in respect of each Licensed Programs in the Schedule;

**“Trial Period”**

means the period set out in clause 5.1 below during which the Licensee can Use the Licensed Programs free of charge;

**“Use”**

means the copying or transmission of the Licensed Programs (or where in machine readable form) the Program Documentation into the Designated Equipment for the processing of instructions contained in the Licensed Programs (or as the case may be) the Program Documentation;



## **Grant of licence and provision of services**

The Company in consideration of the payment by the Licensee from time to time of the Licence Fee in accordance with clause 3 below hereby:

grants to the Licensee a non-exclusive licence to the Use the Licensed Programs (and where appropriate the Program Documentation) upon the Designated Equipment and to possess refer to the Program Documentation; and

undertakes to the Licensee to provide the Services upon the terms and conditions of this Agreement.

## **Licence fee**

The Licence Fee shall include the cost of:

the delivery of the Licensed Program Materials and any New Release thereof to the Site; and

the provision of the Services.

The Licence Fee (together with value added tax thereon) shall be levied by the Company monthly in advance with effect from the Acceptance Date and shall be payable by the Licensee within 30 days of receipt of the Company's invoice therefor.

The Company shall be entitled to vary the Licence Fee not more than once in every successive period of 12 months during the currency of this Agreement upon giving not less than \_\_\_\_\_ days' notice thereof to the Licensee.

The Company reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Agreement (as well after as before judgement) at the rate of \_\_\_\_\_ per cent per annum above the rate from time to time of \_\_\_\_\_ Bank Ltd from the date therefor until payment.

## **Delivery**

The Company shall use all reasonable endeavours to deliver one copy each of the Licensed Programs and the Program Documentation to the Site on the Delivery Date or as soon thereafter as is possible.

If the Company shall fail to deliver the Licensed Program Materials within \_\_\_\_ days of



the Delivery Date the Licensee shall be entitled to either:

without prejudice to any other rights or remedies it may have hereunder or at law terminate this Agreement upon \_\_\_\_\_ days' notice to the Company; or

after consultation with the Company specify by notice to the Company such revised delivery date as it shall in its reasonable opinion think fit making time of the essence.

### **Installation testing and acceptance**

The Licensee shall install the Licensed Programs on the Designated Equipment and shall be entitled free of charge for a period of \_ days from the Actual Delivery Date to Use the Licensed Programs (in association with the Program Documentation) not for the purpose of its trade or business but solely for the purpose of assessing whether the same meet its requirements.

If during the Trial Period the Licensee shall decide that the Licensed Program Materials do not meet its requirements then the Licensee shall be entitled by \_\_\_\_\_ days' notice upon the Company to terminate this Agreement. Upon any such termination the provisions of clause 19.3 below (but not 19.4) shall apply.

If the Licensee does not terminate under this Agreement by notice pursuant to clause 5.2 above or if during the Trial Period it shall Use the Licensed Programs for the purposes of its trade or business then (in either case) with effect from the day next following the expiration of the Trial Period the Licensee shall be deemed to have accepted the Licensed Program Materials.

### **Technical support**

With effect from the Acceptance Date and for the duration of this Agreement the Company shall provide in respect of each of the Licensed Programs such category of Technical Support within such Response Time as shall be indicated in the Schedule.

Technical support shall comprise all or any of the following categories:

advice by telephone or post on the Use of the Licensed Programs (category 'A');

information and advice by telephone or post on forthcoming New Releases of the Licensed Programs (category 'B');

upon request by the Licensee the diagnosis of faults in the Licensed Programs and the rectification of such faults (remotely or by attendance on Site) by the issue of fixes in



respect of the Licensed Programs and the making of all necessary consequential amendments (if any) to the Program Documentation (category 'C');

the creation and despatch to the Licensee from time to time at the Company's sole discretion of fixes in respect of the Licensed Programs (category 'D');

the creation and despatch to the Licensee from time to time at the Company's sole discretion of a New Release of the Licensed Programs or Program Documentation (category 'E');

no Technical Support entitlement (category 'F').

The Licensee shall supply in writing to the Company a detailed description of any fault requiring Technical Support within category C above and the circumstances in which it arose forthwith upon becoming aware of the same.

The Response Time for category C Technical Support shall be either:

**Basic Service:** between the hours of 9 am and 5.30 pm Monday through Friday (excluding bank and other public holidays). The Company shall use its reasonable endeavours to respond within 24 hours of receipt of a request; or

**Quick Service:** between the hours of 9 am and 5.30 pm Monday through Saturday (excluding bank and other public holidays). The Company shall use its reasonable endeavours to respond within 4 hours of receipt of a request.

Technical Support shall not include the diagnosis and rectification of any fault resulting therefrom:

the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment;

save as is provided in clause 9 below the modification of the Licensed Programs or their merger (in whole or in part) with any other software;

the use of the Licensed Programs on equipment other than the Designated Equipment;

the failure by the Licensee to implement recommendations in respect of or solutions to faults previously advised by the Company;

any repair adjustment alteration or modification of the licensed programs by any person other than the Company without the Company's prior consent;

any breach by the Licensee of any of its obligations under any maintenance agreement in respect of the Designated Equipment;



the Licensee's failure to install and Use upon the Designated Equipment in substitution for the previous release any New Release of the Licensed programs within \_\_\_\_\_ days of receipt of the same; or

the use of the Licensed Programs for a purpose for which they were not designated.

The Company shall upon request by the Licensee provide Technical Support notwithstanding that the fault results from any of the circumstances described in clause 6.5 above. The Company shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 6.8 below.

Without prejudice to clause 6.6 above the Company shall be entitled to levy reasonable Additional charges in the manner set out in clause 6.8 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been unnecessary.

Additional Charges shall be levied by the Company monthly in arrears and shall be payable by the Licensee (together with value added tax thereon) within 30 days of receipt of an invoice therefor.

### **Property and confidentiality in the licensed program materials**

The Licensed Program Materials contain confidential information of the Company and all copyright trade marks and other intellectual property rights in the Licensed Program Materials are the exclusive property of the Company.

The Licensee shall not:

save as provided in clause 8 below copy the whole or any part of the Licensed Program Materials;

save as provided in clause 9 below modify merge or combine the whole or any part of the Licensed Program Materials with any other software or documentation;

assign transfer sell lease rent charge or otherwise deal in or encumber the Licensed Program Materials nor use on behalf of or make available the same to any third party; or

reverse compile the whole or any part of the Licensed Program Materials from object code into source code.

The Licensee shall:



keep confidential the Licensed Program Materials and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Programs (including where appropriate the Program Documentation);

reproduce on any copy of the Licensed Program Materials the Company's copyright and trade mark notice;

maintain an up-to-date written record of the number of copies of the Licensed Program Materials and their location and upon request forthwith produce such record to the Company; and

without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Company in the Licensed Program Materials.

The Licensee shall inform all relevant employees agents and sub-contractors that the Licensed Program Materials constitute confidential information of the Company and that all intellectual property rights therein are the property of the Company and the Licensee shall take all such steps as shall be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 7.

### **Copying of the licensed program materials**

The Licensee shall be entitled to make one back-up copy of each of the Licensed Programs. Any such copy shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Licensed Programs.

The Licensee shall not be entitled to copy in whole or in part the Program Documentation.

### **Modification and merger**

The Licensee shall be entitled to modify the Licensed Programs in object code or merger the Licensed Programs in object code with any software program provided that upon the termination of this agreement howsoever and whensoever occasioned the Licensee shall remove the Licensed Programs from any software with which they have been merged.

The Licensed Programs as modified or merged pursuant to clause 9.1 above shall remain subject to the terms and conditions of this Agreement.

### **Use on non-designated equipment and relocation of the designated equipment**





If the Designated Equipment is for any reason inoperable the Licensee shall be entitled without extra charge to use the Licensed Programs upon such alternative machine as the Company shall approve (such approval not to be unreasonably withheld) until such time as the Designated Equipment once more becomes operable.

The Licensee shall not be entitled to replace the Designated Equipment without the prior consent of the Company (such that consent not to be unreasonably withheld).

If the Licensee shall move the Designated Equipment from the Site to a new location then without prejudice to the provisions of clause 3.3 above the Company shall be entitled to make such reasonable increase to the Licence Fee as shall be necessary to take account of any increased costs that it shall incur in providing Technical Support at the new location.

## **Warranty**

Subject to the exceptions set out in clause 11.4 below and the limitations upon its liability in clause 12 below the Company warrants that:

its title to and property in the Licensed Program Materials is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this agreement;

the media upon which the Licensed Program Materials are stored will for a period of \_\_\_\_ days from the Acceptance Date be free from defects in materials design and workmanship;

the Licensed Programs will be for a period of \_\_\_\_\_ days from the Acceptance Date conform to the Program Specifications; and

it will perform the Services with reasonable care and skill.

The Licensee shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of warranty.

Subject to clause 11.4 below the Company shall remedy any breach of the warranties set out in clauses 11.1.2 and 11.1.3 above by the provision of Technical Support (category C Quick Service) free of charge.

The Company shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clause 6.5 above.



Without prejudice to the foregoing the Company does not warrant the Use of the Licensed Programs will meet the Licensee's data processing requirements or that the operation of the Licensed Programs (including where in machine-readable form the Program Documentation) will be uninterrupted or error-free.

Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Licensed Program Materials and the provision of the Services are hereby excluded.

### **Limitation of liability**

The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Licensee in respect of:

any breach of its contractual obligations arising under this Agreement; and

any representation statement or tortuous act or omission including negligence arising under or in connection with this Agreement

and the Licensee's attention is in particular drawn to the provisions of this clause 12.

Any act or omission on the part of the Company or its employees agents or sub-contractors falling within clause 12.1 above shall for the purposes of this clause 12 be known as an "Event of Default".

The Company's liability to the Licensee for death or injury resulting from its own or that of its employees' agents or subcontractors' negligence shall not be limited.

Subject to the limits set out in clause 12.5.1 below the Company shall accept liability to the Licensee in respect of damage to the tangible property of the Licensee resulting from the negligence of the Company or its employees agents or sub-contractors.

Subject to the provisions of clause 12.3 above the Company's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:

\_\_\_\_\_ in the case of an Event of Default falling within clause 12.4 above; and

in the case of any other Event of Default the aggregate of the Licence Fee paid in the immediately preceding period of 12 months.

Subject to clause 12.3 above the Company shall not be liable to the Licensee in respect



of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Licensee as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Licensee incurring the same.

If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

The Licensee hereby agrees to afford the Company not less than \_\_ days (following notification thereof by the Licensee) in which to remedy any Event of Default hereunder.

Except in the case of an Event of Default arising under clause 12/3 above the Company shall have no liability to the Licensee in respect of any Event of Default unless the Licensee shall have served notice of the same upon the Company within 2 years of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become to aware.

Nothing in this clause shall confer any right or remedy upon the Licensee to which it would not otherwise be legally entitled.

### **Intellectual property rights indemnity**

The Company will indemnify and hold harmless the Licensee against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Licensed Program that the normal operation possession or use of the Licensed Program Materials by the Licensee infringes the patent copyright registered design or trade mark rights of said third party (an 'Intellectual Property Infringement') provided that the Licensee:

gives notice to the Company of any Intellectual Property Infringement forthwith upon becoming aware of the same;

gives the Company the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of the Company; and

acts in accordance with the reasonable instructions of the Company and gives to the Company such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

The Company shall reimburse the Licensee its reasonable costs incurred in complying



with the provisions of clause 13.1 above.

The Company shall have no liability to the Licensee in respect of an Intellectual Property Infringement if the same results from any breach of the Licensee's obligations under this Agreement.

In the event of an Intellectual Property Infringement the Company shall be entitled at its own expense and option either to:

procure the right for the Licensee to continue using the Licensed Program Materials; or

make such alterations modifications or adjustments to the Licensed Program Materials that they become non-infringing without incurring a material diminution in performance or function; or

replace the Licensed Program Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

If the Company in its reasonable judgement is not able to exercise any of the options set out in clauses 13.4.1, 13.4.2 or 13.4.3 above within \_\_\_\_\_ days of the date it received notice of the Intellectual Property Infringement then the Licensee without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by \_\_\_\_\_ days' notice upon the Company. Upon any such termination the provisions of clause 19.3 below (but not 19.4) shall apply.

The provisions of clause 12 above shall not apply to this clause 13.

### **Risk in the licensed program materials**

Risk in the Licensed Program Materials will pass to the Licensee upon the Actual Delivery Date. If subsequently the Licensed Program Materials are (in whole or in part) destroyed damaged or lost the Company will upon request replace the same subject to the Licensee paying its then prevailing charges.

### **Confidentiality**

### **Training**

The Company shall provide to the Licensee commencing upon the Acceptance Date the



training services to be included in the Licence Fee set out in the Schedule.

Any additional training services requested by the Licensee shall be provided by the Company for Additional Charges levied on the basis set out in clause 6.8 above.

### **Duration of agreement**

This Agreement shall continue until terminated in accordance with the provisions of clause 19 below.

### **Licensee's representatives**

The Licensee shall communicate to the Company upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by the Company of the Services during the currency of this Agreement. The Licensee shall forthwith inform the Company of any change in the identity of any such person(s) or department.

### **Termination**

This Agreement may be terminated:

by the Licensee upon giving not less than \_\_\_\_ days' notice to the Company;

forthwith by the Company if the Licensee fails to pay any sum due hereunder within \_\_\_\_ days of the date therefor;

forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within 19.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within \_\_\_ days of a written request to remedy the same;

forthwith by either party if the other party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary agreement within Part I of the Insolvency Act 1986 or a proposal of any other composition or scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of a all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose



of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies of a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party not he coming into continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

Subject to clause 19.4 below within \_\_\_\_\_ days of the termination of this Agreement (howsoever and by whomsoever occasioned) the Licensee shall destroy all copies of the Licensed Program Materials in its possession and a duly authorised officer of the Licensee shall certify in writing to the Company that the Licensee has complied with such obligation.

Notwithstanding the provisions of clause 19.3 above the Licensee shall be entitled for a period of \_\_\_ years from the date of termination to keep one copy of the Licensed Program Materials free of charge in a fire-proof room for archival purposes. If the Licensee uses any of the Licensed Program Materials other than for archival purposes it shall forthwith become liable to pay to the Company its current charges for the use of the licensed programs or any equivalent software then licensed in substitution for the Licensed Programs.

### **Force majeure**

### **Waiver**

### **Notices**

### **Invalidity and severability**

### **Entire Agreement**

The Company shall not be liable to the Licensee for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this Agreement.

The Licensee accepts that the Licensed Program Materials were not designed and



produced to its individual requirements and that it was responsible for their selection.

## **Successors**

## **Assignment and sub-leasing**

The Licensee shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Licensed Program Materials without the prior consent of the Company.

## **VAT**

## **Headings**

## **Law**



**IN WITNESS** whereof the parties have duly executed this Agreement the day and year first hereinabove written.

**SEALED** with the **COMMON SEAL** of )

..... in the presence of: )

)

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Director )

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)

Director/Secretary )

**SEALED** with the **COMMON SEAL** of )

..... in the presence of: )

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Director )

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Director/Secretary )





**Drawn By:**

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