SOURCE CODE DEPOSIT AGREEMENT – SINGLE LICENSEE

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 **LICENSOR**").

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 Licensor has licensed the Licensee to use in object code form only certain computer software programs and has agreed to provide technical support in respect of the same upon the terms and conditions of a license and a technical support agreement of even date herewith.

The Licensor has agreed to deposit the source code version of the computer software programs referred to in A above with the Company and has authorised the Company to release the same to the Licensee in the circumstances and subject to the terms and conditions in this Agreement.

OPERATIVE PROVISIONS:

Definitions

In this Agreement unless the context otherwise requires:

"**Container**"	means the metal fire-proof box in which the Source Code is to be placed by the Company in accordance with clause 3.1.1. below;
"**Licence Agreement**"	means the licence agreement between the Licensor and Licensee of even date herewith in the form set out in the First Schedule hereto;

"**Licensed Programs**"	means the software programs identified in the License and Technical Support Agreement;
"**Source Code**"	means the source code version of the Licensed Programs including any modification enhancement revision or update thereto that may be made from time to time by the Company;
"**Technical Support Agreement**"	means the technical support agreement between the Licensor and Licensee of even date herewith in the form set out in the Second Schedule hereto.

Deposit of Source Code

Within _____ days of the date of execution of this Agreement the licensor will deposit with the Company at its registered office or such other address as it shall from time to time in writing indicate to the Licensor one copy of the Source Code.

Within _____ days of the date of any modification enhancement revision or update to the Licensed Programs the Licensor will deposit with the Company a revised copy of the whole or relevant part of the Source Code incorporating such modification enhancement revision or update as the case may be.

Within _____ days of each anniversary of the date of execution of this Agreement the Licensor will deposit with the Company a replacement copy of the Source Code then deposited. Upon receipt of the said replacement copy the Company will return to the Licensor the previously deposited copy of the Source Code.

Custody of source code

Forthwith upon receipt of the Source Code (whether pursuant to clauses 2.1, 2.2 or above or clause 10.2 below) the Company shall:

place the same in the Container and submit the same for storage in accordance with its standard procedures; and

send written confirmation of receipt and storage to the Licensor and the Licensee respectively.

Release of Source Code

A "Relevant Event" shall have occurred for the purpose of this clause if:

the Licensor shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Licensor 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 office is appointed in respect of all or any part of the business or assets of the Licensor 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 Licensor for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

the Licensor shall be in material breach of its obligation to deposit revised copies of the Source Code pursuant to either clause 2.2 above or clause 10.2 below or a replacement copy pursuant to clause 2.3 above;

the Licensor shall be in material breach of its obligation to provide technical support pursuant to the terms of the Technical Support Agreement.

In order to obtain the release of the Source Code the Licensee shall forthwith upon becoming aware of a Relevant event prepare and submit to the Company a statutory declaration which shall:

be sworn by a duly authorised officer of the Licensee;

set out the facts and circumstances of the Relevant Event; and

have attached thereto all relevant supporting documentation in the Licensee's possession.

In the case of a Relevant Event falling under of clauses 4.1.1 or 4.1.2 above the Company is hereby authorised to release the Source Code to the Licensee upon receipt of a statutory declaration in the form specified in clause 4.2 above.

In the case of a Relevant Event falling under clause 4.1.3 above the Company shall submit a copy of the Licensee's statutory declaration to the Licensor forthwith upon receiving the same. If the Licensor does not either:

remedy the breach giving rise to the Relevant Event; or

by written notice (setting out all relevant facts and circumstances and having attached thereto all relevant documentation in the Licensor's possession) deny its occurrence.
within Thirty (30) days of receipt of the Licensees copy statutory declaration then the Company is hereby authorised upon the expiry of the said Thirty (30) days (and subject to the said statutory declaration complying with the provisions of clause 4.2 above) to release the Source Code to the Licensee.

If the Licensor denies the occurrence of a Relevant Event by written notice pursuant to clause 4.4.2 above:

the Company shall not release the Source Code;

the Company shall forthwith submit a written copy of the Licensor's notice to the Licensee;

each of the Licensor and the Licensee hereby agrees to use its best endeavours to reach agreement upon whether or not a Relevant Event within the terms of clause 4.1.3 above has taken place within Fourteen (14) days of the date of receipt by the Licensee of the Licensor's notice referred to in clause 4.5.2 above in default of which the matter shall be settled in accordance with the disputes procedure set out in clause 17 below; and

if it is agreed by the parties pursuant to clause 4.5.3 above or decided pursuant to the disputes procedure in clause 17 below that a Relevant Event has occurred within the terms of clause 4.1.3 above then the Licensor shall have Thirty (30) days from the date of the said agreement or decision (as the case may be) to remedy the breach giving rise to the Relevant Event failing which the Company is hereby authorised to release the Source Code to the Licensee upon receipt of a statutory declaration (in the form specified in clause 4.2 above) from the Licensee that the said breach remains unremedied.

Property and confidential information in the Source Code

Notwithstanding the deposit and release of the Source Code in accordance with the terms of this Agreement all confidential information and intellectual property rights therein shall remain vested in the Licensor.

Licensee's covenants

Upon receipt of the Source Code the Licensee shall:

use the Source Code solely for the purposes of maintaining and/or enhancing the Licensed Programs;

limit access to the Source Code to those of its employees agents contractors or sub-contractors who either have a need to know or who are directly engaged in the maintenance and/or enhancement of the Licensed Programs;

not assign transfer sell lease rent charge or otherwise deal in or encumber the Source Code nor use the same on behalf of or for the benefit of any other party; and

without prejudice to the generality of the foregoing shall take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Licensor in the Source Code and to ensure the compliance with the provisions of this clause 6 by its employees agents contractors and sub-contractors.

Upon the proper termination of the License Agreement the Licensee shall at the option of the Licensor (or any person to whom the title to the software programs the subject of the Licence Agreement has assigned or transferred) either return all copies of the Source Code in its care or under its control or certify in writing that the same have been destroyed.

Company's covenants

The Company hereby covenants and undertakes to the Licensor:

not to assign transfer sell lease rent charge or otherwise deal in or encumber the Source Code;

not to use the Source Code for its own purposes or on behalf of any other party not to disclose test or release the same except in accordance with the provisions of this Agreement; and

without prejudice to the generality of the foregoing to take all such reasonable steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Licensor in the Source Code and to ensure the compliance with the provisions of this clause 7 by its employees

agents and sub-contractors.

Charges

The Licensor and the Licensee shall respectively pat the Company's charges in the proportions and at the time set out in the Third Schedule hereto.

The Company shall be entitled to increase its charges not more than once in every successive period of Twelve (12) months during the currency of this Agreement upon giving not less than _____ days notice to each of the Licensor and the Licensee.

The Company reserves the right to charge the Licensor and 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.

Licensor's warranty

The Licensor represents and warrants to the Licensee that:

subject to the time limit for depositing revisions to the Source Code set out in clause 2.2 above the Source Code deposited with the Company shall at all times be a complete accurate and up-to-date copy of the source code version of the current release of the Licensed Programs; and

the Source Code shall contain all information in human readable form necessary to enable a reasonably skilled programmer or analyst maintain and/or enhance the Licensed Programs without the help of any other person or reference to any other material and that without prejudice to the generality of the foregoing the Source Code shall contain all listings of code programmers comments logic manuals and flow charts.

Testing of Source Code

The Company shall upon receipt of a written request from the Licensee convert the Source Code into object code in order to assess whether the Licensor is in compliance with the warranty set out at clause 9.1.1 above ("the **Warranty**")

If in the Company's reasonable judgement the Licensor is in breach of the Warranty then upon receipt of notice thereof from the Company the Licensor shall be obliged to deposit with the Company within Thirty (30) days of receipt of said notice such revisions to the Source Code as shall be necessary to ensure its compliance with the Warranty.

If in the Company's reasonable judgement the Licensor is in breach of the Warranty then the Company's charges in respect of the conversion undertaken pursuant to clause 10.1 above (to be levied in accordance with clause 10.4 below) shall be paid by the Licensor. If in the Company's reasonable judgement the Licensor is not in breach of the Warranty then the Company's said charges shall be paid in accordance with clause 10.4 below by the Licensee.

The company shall be entitled to levy its charges in arrears on a time and materials basis at its then prevailing rates. Such charges shall be payable (together with value added tax thereon) by the Licensor or Licensee (as the case may be) within Thirty (30) days of receipt of an invoice therefor.

Liability of the Company

Save in the specific circumstances of clause 10 above the Company shall not be under any obligation to examine enquire into or inspect the accuracy completeness or currency of the Source Code from time to time deposited with it by the Licensor.

Subject to ensuring compliance with the provisions of clauses 4.2.1, 4.2.2 and 4.2.3 above the Company shall not be under any obligation to examine enquire into or check the accuracy completeness or authenticity of any statutory declaration submitted by the Licensee pursuant to either clauses 4.2 or 4.5 above.

Termination

This Agreement may be terminated:

by the Company upon giving not less than _____ days notice to each of the Licensor and the Licensee; or

jointly (but not otherwise) by the Licensor and Licensee upon giving not less than _____ days notice to the Company.

Forthwith upon receipt of notice of termination pursuant to clause 12.1.1 above the Licensor and Licensee agree to use their respective best endeavours to appoint a mutually acceptable replacement depositee of the Source Code on terms and conditions as near as possible identical to those set out in this Agreement.

In the event of the termination of this Agreement pursuant to this clause 12 the Company shall return the Source Code to the Licensor at its registered office or such other address as it shall in writing notify to the Company.

Without prejudice to the provisions of clause 12.1 above this Agreement shall terminate upon the release of the Source Code by the Company to the Licensee pursuant to clause 4 above.

Waiver

Notices

Entire Agreement

This Agreement supersedes all prior arrangements undertakings and agreements (whether oral or written) between the parties hereto in respect of the subject matter hereof.

Headings

Disputes

VAT

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:	)
	)
	)
Director	)
	)
	)
Director/Secretary	)

SEALED with the **COMMON SEAL** of	)
………. in the presence of:	)
	)
	)
Director	)
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	)
Director/Secretary	)