

CO-OWNERSHIP AGREEMENT
OF
TECHSAC SACCO SOFTWARE
&
MAINTENANCE SERVICES
BETWEEN
KENYA UNION OF SAVINGS & CREDIT COOPERATIVES
LIMITED
AND
LANBASE SYSTEM TECHNOLOGIES

24 December 2003

Version S1.1.2

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This Agreement is made on the _____ day of _____, **2003**

BETWEEN

Lanbase System Technologies of P.O. Box 13645, 00100 GPO, Nairobi and located at Apartment C2, Simpson Properties, Lower Kabete / Peponi Road Junction, (hereinafter referred to as "Lanbase" which expression shall, where the context so admits, include its successors and assigns) of the one part

And

Kenya Union of Savings & Credit Cooperatives Limited of Post Office Box 28403, 00200 City Square Nairobi and located at KUSCCO Centre, Kilimanjaro Avenue, Off Mara Road, Upper Hill, Nairobi in the Republic of Kenya (hereinafter referred to as the "KUSCCO" which expression shall, where the context so admits, include its successors and assigns) of the other part.

WHEREAS:

KUSCCO is desirous of partially acquiring TechSac Sacco Software and it's related Services as hereafter mentioned; and

Lanbase has agreed to provide the aforesaid software and related services upon the terms and conditions hereinafter mentioned;

NOW THEREFORE in consideration of their mutual promises it is hereby further agreed by and between the parties hereto as follows: -

1. DEFINITION OF TERMS

1.1 "Sacco" in this case means the Savings And Credit Cooperative Societies (Sacco's) including KUSCCO.

1.2 "This Agreement Price" means the consideration payable to Lanbase by KUSCCO under this Agreement..

1.3 "This Agreement Date" means the date on which both KUSCCO and Lanbase execute this Agreement.

1.4 "Technical Support" means the Lanbase's personnel authorised to perform services under this Agreement.

1.5 "The Products and Services" means the Techsac Software product in part or whole and related services including and not limited to Implementation, Training, Support, Maintenance and Research and Development activities.

2. DESCRIPTION OF SERVICES

Lanbase shall provide the Products and Services as required an upon the terms and conditions in Appendix 1.

3. PAYMENT TERMS AND CONDITIONS

The payment for maintenance under this Agreement shall be made as stipulated in Appendix 1.

4. NOTIFICATION OF NAMES OF TECHNICAL SUPPORT STAFF

(i) Not less than two (2) weeks before the commencement of the provision of the Products and Services, Lanbase shall inform the Managing Director of KUSCCO the name, personal details and curriculum vitae of Lanbase's technical staff for scrutiny and approval.

(ii) The staffs shall have an adequate command of the English Language and the Managing Director shall have the right to require and specify tests in that language.

(iii) Within fourteen (14) days upon receipt of this information, the Managing Director shall notify Lanbase of the approval of the Technical Support.

5. THIS AGREEMENT PERIOD

This Agreement period shall be for a period of ten (10) years from the date of this Agreement

6. EXPIRATION OF AGREEMENT

6.1 Lanbase shall in writing not later than ninety (90) days before expiry of this Agreement, forward to KUSCCO its proposals for renewal.

6.2 KUSCCO shall not later than thirty (30) days of receipt of Lanbase's notice, notify Lanbase of its intention to renew or terminate this Agreement at the end of this Agreement period.

7. PERFORMANCE AND STATUS OF LANBASE'S TECHNICAL SUPPORT STAFF

7.1 Lanbase shall be responsible for the due and proper performance of the work by its Technical Support staff.

7.2 For the purposes of and during the continuance of this Agreement Lanbase's Technical Support staff shall be deemed to be agents of KUSCCO.

7.3 The Managing Director may at any time by notice in writing or by telex require Lanbase to remove his Technical Support staff if he, in the reasonable opinion of the Managing Director, is objectionable and Lanbase shall forthwith comply and shall substitute for the staff so removed with another satisfactory person at Lanbase's expense.

7.4 The Managing Director shall not take action as in Sub-Clause 7.3 until he has informed Lanbase or his representative of the circumstances, and has considered any representations Lanbase or his representative may wish to make, and sufficient time shall be allowed for Lanbase to provide a replacement prior to the objectionable staff's departure.

7.5 Subject to the provision of sub-clause 7.6 of this clause KUSCCO shall not be liable for any claims in respect of sickness, accident or deaths of Lanbase's Technical Support staff from whatsoever cause arising. For this purpose, Lanbase shall indemnify KUSCCO in respect of his Technical Support staff from the date of departure from Lanbase's Work until the date of his return thereto against all actions, suits, claims, demands, costs, charges and expenses which might arise from such sickness, accident or death.

7.6 If Lanbase's Technical Support staff shall fall sick in the period during which he is engaged on this Agreement, Lanbase shall pay medical fees for treatment and attention. KUSCCO shall provide the maximum possible prompt arrangements to be made for the provision of medical assistance (at Lanbase's expense), as long as the patient remains within Kenya.

7.7 If it shall be evident that Lanbase's Technical Support staff will be incapacitated by sickness for an indefinite period, it shall be in the absolute discretion of the Managing Director to decide if and when Lanbase's staff shall be sent back, Lanbase shall comply forthwith, the cost of the return passage of the replacement staff shall be borne by Lanbase, and the charge for his service shall commence on the date on which he arrives at the site.

7.8 Lanbase shall arrange passage for his Technical Support staff from Lanbase's premises to the point of duty in Kenya under this Agreement and the costs of such passage are included in this Agreement Price.

7.9 For Clients out of the City of Nairobi, Transport, Accommodation & Per Diem Costs as is required by Technical Support staff are excluded from this Agreement Price.

8. TAXES

Lanbase's shall be liable to pay such Tax(es) that may be chargeable therein under the Laws of Kenya and that may for the time being be in force in Kenya.

9. FORCE MAJEURE

9.1 Definition

a) For purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of either parties, and which makes performance of obligations hereunder impossible or so impractical as to reasonably be impossible in the circumstances and includes but not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, lockouts, or other industrial action (except where such strikes, lockout or other industrial action are within the power of the party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

b) Force Majeure shall not include (i) any event which is caused by negligence or intentional action of a Party or such Party's agent or staff, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

c) Force Majeure shall not include insufficiency of funds or failure to make any payments hereunder.

14.2 No Breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

14.3 Measures to be Taken

a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with minimum delay.

b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

14.4 Extension of Time

Any period within which a Party shall pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

14.5 Impossibility of Performance

If this Agreement or part thereof shall become impossible to perform due to circumstances beyond the control of either party this Agreement or part thereof may be terminated by mutual consent.

14.6 Determination of Performance

Should the services be determined in whole or in part in accordance with the provisions of the respective service, then Lanbase shall be paid for all sums on this Agreement due and shall be paid for any work performed by this Agreement if payment for such work is not then due. Any sum paid or payable under Clause 3 and 4 of this Agreement shall not be retained by Lanbase except as payment for work performed and/or equipment supplied.

14.7 Limited Right of Determination

The right to determine this Agreement shall apply only to that part or parts, phase or phases rendered impossible to perform or affected by Force Majeure or otherwise in accordance with the provisions of this Agreement.

15. SUSPENSION OF PAYMENTS

KUSCCO may by a written notice of suspension to Lanbase suspend all payments to Lanbase hereunder if Lanbase fails to perform any of his obligations under this Agreement, including the carrying out of the services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request Lanbase to remedy such failure within a period not exceeding 30 days after receipt by this Agreement of such notice of suspension and KUSCCO shall not certify invoices for payment.

18. ARBITRATION AND DISPUTE RESOLUTION

The Parties agree that, they will make every effort and in good faith to resolve the disputes between them in an amicable and informal manner within thirty (30) days.

18.1 If after 30 days from the commencement of such negotiations the parties have been unable to resolve amicably a Agreement dispute, either party may require that the dispute be referred to Arbitration.

18.2 All disputes, differences or questions between KUSCCO and Lanbase, other than a matter or thing as to which the decision of KUSCCO is to be final and conclusive, and except and in so far as may be otherwise provided in this Agreement shall be referred to the arbitration of two persons, one to be appointed by KUSCCO and one by Lanbase. The two arbitrators shall thereafter appoint an Umpire.

18.3 In the event that the said two arbitrators cannot reach agreement on the appointment of the Umpire within 30 days, the same shall be nominated by the chairman for the name being of the Chartered Institute of Arbitrators, Kenya Branch.

18.4 The Arbitration proceedings shall take place in accordance with the provisions of the Arbitration Act (1995), Laws of Kenya. Arbitration shall be conducted in English and shall take place in Nairobi, Kenya.

18.5 The Arbitral award shall be final and binding.

19. INDEMNITY

Each Party shall indemnify the other against direct damage or injury to the equipment or to the other's property or person or that of others to the extent that such damage or injury is caused by the negligence of the indemnifying Party or his staffs whilst present on the site or while acting in the course of their employment.

Lanbase shall become bankrupt or insolvent, or have a receiving order made against him or compound with his creditors, or being a Client commence to be wound up, not being a members' voluntary winding up for the purpose of amalgamation or reconstruction or carry on its business under a receiver for the benefit of its creditors or any of them, KUSCCO shall be at liberty either;

19.1 To terminate this Agreement forthwith by notice in writing to Lanbase or to the receiver or liquidator or to any person in whom this Agreement may be vested;

19.2 to give such receiver, liquidator, or other person the option of carrying out this

Agreement subject to his providing a guarantee of a third party acceptable to KUSCCO for due and faithful performance of this Agreement up to an amount to be agreed.

Provided always that such action shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to KUSCCO.

20. TRANSFER AND ASSIGNMENT OF RIGHTS

Neither party shall give, bargain, sell, assign, or otherwise dispose of the whole of this Agreement or any part thereof, or the benefit or advantage of this Agreement or part thereof without the previous consent in writing of the other Party which consent shall not be unreasonably withheld; except that Lanbase is permitted to secure the services of a Sub-contractor to perform certain of the Works as required and in compliance with this provision Notwithstanding consent having been given by KUSCCO to Lanbase under this Clause, the primary and sole responsibility for compliance with the Terms and Conditions of this Agreement shall be that of Lanbase.

21. APPLICABLE LAW

This Agreement shall in all respects be construed to operate as a Kenyan contract and in conformity with the Laws of Kenya; and that Lanbase agrees to submit to the jurisdiction of the Courts and Tribunals of the Republic of Kenya for the limited purposes of this Agreement.

22. PERSONAL LIABILITY

Nothing in this Agreement shall impose any liability on any member of KUSCCO's staff and any member of Lanbase's staff in their personal capacity.

23. CONFIDENTIALITY

23.1 Except with the consent in writing of either Party, the other Party shall not disclose this Agreement, or any provision thereof, or any Specification, Plan, Drawing, or information issued or furnished in connection therewith to any person, other than a person employed or engaged by that Party in the carrying out of this Agreement, or sub-contract, supplier or other person concerned with the same, or a responsible official or an agency financing this Agreement.

23.2 Any disclosure to any person permitted under Sub-clause 23.1 shall be made in confidence and shall extend so far only as may be necessary for the purpose of this Agreement.

23.3 Except with the consent in writing of KUSCCO Lanbase shall not make use of any information supplied by KUSCCO for the purpose of this Agreement or any specification or other thing mentioned in Sub-clause 30.1 other than for the purpose of manufacturing the

Articles and Lanbase shall not use any information to make any similar Article or part thereof for any other purpose.

23.4 Any Specification, Plan, Drawing or information mentioned in Sub-Clause 23.1 remains the property of KUSCCO and must be returned to it upon completion of this Agreement.

23.5 All software rights shall be understood to have been passed to KUSCCO after purchasing the equipment. Apart from resale, KUSCCO will hold rights on all software for the system.

25. FAIRNESS AND GOOD FAITH

25.1 Good faith

The parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

25.2 Operation of this Agreement

The parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of this Agreement, and the parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interests of either of them, and that, if during the time of this Agreement, either party believes that this Agreement is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 18 hereof.

26. VARIATION AND WAIVER

No variation and/or waiver in the terms of this Agreement shall apply thereto unless such variation shall have first been expressly accepted in writing both by KUSCCO and by Lanbase.

Further, the Parties agree that no act, omission, acquiescence, or waiver by either Party shall be construed as a release of the other from their obligations under this Agreement unless done in accordance with this Clause.

27. LIMITATION OF LIABILITY

Lanbase shall not under any circumstances be liable for (i) delays in delivery of the equipment to the site attributable to KUSCCO; (ii) damage to or loss of Lanbase's supplied Products and Services caused by KUSCCO; (iii) delays caused by Force Majeure events.

Lanbase shall not under any circumstances be liable for special, indirect, incidental or consequential damages, including but not limited to lost profits or revenues, which may arise out of or under this Agreement.

28. INTERPRETATION

28.1 The headings to the clauses are for guidance only and shall not affect the interpretation thereof.

28.2 Words denoting the singular may be taken as denoting the plural, and vice versa, where the context so requires.

29. APPENDICES

The following appendices attached hereto form part of this Agreement: -

Appendix 1: The cost of the Services and Terms of Payment

IN WITNESS whereof the parties have caused this Agreement to be executed on the day and year herein above written.

FOR: KENYA UNION OF SAVINGS & CREDIT COOPERATIVES LIMITED

MANAGING DIRECTOR

Name: _____

Signature: _____

WITNESS:

Name: _____

Signature: _____

LANBASE SYSTEM TECHNOLOGIES LIMITED

MANAGING DIRECTOR

Name: _____

Signature: _____

WITNESS:

Name: _____

Signature: _____

DATE: _____

APPENDIX 1

THE COST OF THE SERVICES & TERMS OF PAYMENT

APPENDIX 1

THE COST OF THE SERVICES AND TERMS OF PAYMENT

1. Detailed Price Schedule

This Appendix provides the pricing schedules and also the payment terms, schedules and maintenance records.

2. Pricing & Payment Schedules

2.1 The Overall Agreement Price for the co-ownership model is Kshs 80,000,000.00 + 16% VAT

2.2 A sum of forty (40%) percent (Kshs. 32,000,000.00+16%VAT) of the cost of the co-ownership model covered by this Agreement will be payable upon signing of this Agreement.

3.2 The balance of this Agreement price (Kshs. 48,000,000.00) shall be payable in four equal bi-monthly installments commencing one calendar month after the date for the advance payment.

Lanbase will present a commercial invoice for each installment.