TechSac Sacco Software Licence and Maintenance Agreement

Definition

To make this Agreement more understandable, we need to define certain terms:

"Distributed Equipments"   means the computer hardware listed in a Schedule 1 attached to this Agreement on which the Software is to be installed.

"Distributed Software"   means the computer hardware designated in a Schedule 1 attached to this Agreement and such other computer programs so designated by us and offered to you.

"Location"   means the address of the sit where the Designated Equipments is situated as set out in a Schedule 1 attached to this Agreement.

"Serialisation Code"   mean any number, sequence of number, computer program or code provided by us to you to be entered into the Software during its execution so as to enable you full and continuing use of Software.

"Software"   means such of the TechSac Software, Distributed Software and appropriate User Manual for which you place an order (at the time of execution of this Agreement or there after). It does not in clued source code of such computer programs. It does not include new releases, update and revisions to such computer programs but only as a part of maintenance and support options set out in Section 7 and 8

"TechSac Software" means the computer programs listed in Schedule 1 attached to this Agreement "TechSac Sacco Software products" or "Companion Products" and such other computer programs so designated by us and offered to you.

"User"   means an individual (being your employee or under contract to you) authorized by you to access the Software at a Location.

User Manual"   means any manual in printed or electronic form designed and intended to assist end-users of the Software in use and operation of the Software.

The License

We grant to you a non-exclusive, non- transferable license to use the Software subject to the conditions set out in this Agreement. Your licence to use the Software is perpetual, unless the whole of this Agreement is terminated pursuant to the provisions of Section 9.

You agree to complete a Schedule 1 for each site at which the Software is to be installed. If necessary, we will assist you in completing one or more Schedule 1, but ensuring that each Schedule 1 is fully and correctly completed (apart from the completion of the boxes specifying the licence fee and maintenance and support charge) is your sole responsibility.

You may use the Software and the Serialization Code to load and run the Software only on the Designated Equipments at the Location (specified in a Schedule 1). You may not install the software on any computer hardware other than such Designated Equipment or at any site other than such Location. However, if the Designated Equipments becomes temporarily inoperable, then you may use the Software (and the Serialization Code) on back-up equipment until the Designated Equipment is repaired.

Only you and user have the right to use the software. You may not the software available for use by any third party, may not use the Software to process data of a carry out functions for any third party other than (as may be applicable) your parent or any of your subsidiary companies and only the number of Users for each Location set out in the applicable Schedule 1 may have access to the Software at any one time. Additionally, you may not rent, lease or timeshare the Software.

You may not copy the Software in any circumstances except to make a reasonable number of backup and archive copies and you may only use a backup or archive copy by substituting it for the copy you are using. You must keep the backup and archive copies in a secure place under your control and must mark them with the same copyright notice as that which appears on the media containing the Software.

Any variations to the above license and/or other conditions affecting your use of Distributed Software are set out in Section 8 and/or Schedule 2.

Orders and Payment

Your execution of this Agreement and completion of one or more Schedules 1 constitute an order for the selected Software. You may place subsequent orders for the computer programs listed in Schedule 1 (or other computer programs we may offer from time to time) by sending to us a signed order form or other request acceptable to us. All such orders are subject to written acceptance by us and shall be governed by the terms and conditions of this Agreement.

You agree to pay us the licence fee for the Software and the maintenance and support charges set out in a Schedule 1 on the terms set out therein. Should you fail to pay us the licence fee for Software licensed for use at any Location in accordance with the terms set out in the applicable Schedule 1, we have the right to revoke your licence to use the Software at all Locations and you will lose your right to use the Software.

All fees and charges quoted in this Agreement exclude any applicable taxes which will be chargeable at the then prevailing rate. You will be responsible for the payment of any taxes imposed by any governmental taxing authority on the amounts you are liable to pay us under this Agreement, including, but not limited to, withholding taxes of whatever nature ("Withholding Taxes") and you may reduce the amount payable to us for licence fees and charges by the amount of such Withholding Taxes. You agree to promptly pay any Withholding Taxes and obtain and deliver to us proof of your payment of such Withholding Taxes together with official evidence thereof issued by the governmental authority concerned, sufficient to enable us to support a claim for a tax credit in respect of any sum so withheld. If we are unable to obtain such tax credit due to your failure to comply with the above provision, then you agree to pay us a sum equal to the amount of the tax credit not able to be claimed by us.

Warranties and Limitation of Liability

For a period of ninety (90) days from the date of our delivery of the software to you ("Warranty Period"), we warrant that: (a) the Software will function substantially as described in the applicable User Manual when operated on the Designated Equipment running under the operating system(s) specified in Schedule 1; and (b) before our delivering the Software to you on magnetic media, a commercially available virus protection program will be run against such magnetic media and such magnetic media will be free from defects in materials and workmanship.

If during the Warranty Period you provide us with evidence that the Software does not function substantially as described in the applicable User Manual ("Software Error") we will, on a mutually acceptable basis, either refund your money or correct the Software Error free of charge no later than thirty (30) days after the expiration of the Warranty Period. You must return the Software and any copies of it you may have made to us before you will be entitled to a refund. If the magnetic media on which the Software is distributed is defective we will replace it as soon as practicable but in no event later than thirty (30) days of our receipt of notice of such defect from you.

Except as specifically provided in the Sub-Section 4.1 and 4.2 above, we give no warranties and make no representations, whether express or implied, in respect of the Software, any User Manual or any service we provide under this Agreement and any such warranties and representations are excluded. Without limiting the generality of the foregoing, we do not give or make warranty or representation as to the quality, fitness for a particular purpose or performance of the Software, that the Software is error free or will work in combination with computer programs other than the computer programs forming the whole or part of the Software or that any services we provide under this agreement will result in the Software functioning as if any such warranty or representation had been given or made; and no implied warranty arising by usage or trade, course of dealing or course of performance is made by us nor will any such implied warranty arise by this Agreement and /or your or our conduct under or relating to this Agreement.

Because the Software is complex and may not be completely free from errors, you are advised to verify your work and make backup-copies. In no event will we be liable for any incidental, indirect, special or consequential damages including, but not limited to, loss of profits, loss of business, loss of goodwill, loss of data or interruptions of business arising out of or related to this Agreement or the license or use of the Software or for any claim by any third party.

Except for damage arising from personal injury or death caused by us, our liability for any loss or damage whatsoever arising from the supply of the Software and/or performance of services under this Agreement in contract, tort (including, but not limited to, negligence or breach of duty imposed by statute) or any other cause of action will not exceed the purchase price for the license of the Software or part thereof causing such loss or damage.

License Compliance Security Feature

The Software contains a license compliance safety feature, which denies access to the Software on a pre-set date. Thirty (30) days before the pre-set date, the Software notifies you of the need to obtain a new Serialisation Code so that you can access the Software after the pre-set date. To obtain the new Serialisation Code only contact us and so long as you are in compliance with all of the provisions of Section2, Sub-Section 3.2 (but only in as far as Sub-Section 3.2 requires you to pay license fees for the Software within the period specified in a Schedule 1, not in as far as it requires payment of maintenance and support charges) 6.1 and 10.1, we will immediately supply it to you and, if necessary, instruct you how to use it. You hereby authorize our incorporating the license compliance security feature into the Software and effects of its operation as set above and accept that it is your responsibility to contact us to obtain the new Serialisation Code.

Intellectual Property

We own and shall retain ownership of the intellectual property rights in and title to the Software. You acknowledge that the Software contains confidential material and agree not to show it or allow it to be shown to any third party in any form whatsoever without our prior written permission. You may not (a) modify, translate or adapt the Software; (b) reverse engineer, dissemble or decompile the Software except where you have received from us , within a reasonable time after a written request, such information as is available to us as is necessary to create computer programs which are interoperable with the Software but which do not infringe our intellectual property rights; (c) bypass, delete or misuse any protection method for preventing unauthorized use of the Software, including , but not limited to the Serialisation Code; or (d) use or copy the Software other than as expressly permitted in this Agreement.

If you are using the current, unaltered release of the Software and have not combined it with a computer program other than the one forming part of the Software or a third party's equipment other than the Designated Equipment, we will defend any action brought against you and pay all your reasonable expenses and damages (as the case may be) for any claim that your use of the Software infringes any patent or copyright owned by any third party or constitutes a misappropriation of trade secret ("Claim"), so long as you notify us promptly of any Claim and you give us sole control of the defence and negotiation of the settlement or compromise of any Claim.

You agree not to remove or alter any trade mark, copyright, confidentiality or other proprietary right notice in the Software or the User Manual or affixed to the media or packaging on or in which they are supplied.

TechSac Software Maintenance and Support

Under this Agreement, you may, at your option, take out maintenance and support for the TechSac Software and Distributed Software. However, unless you have notified us in writing to the contrary before execution of this Agreement, we will assume that you wish to take out maintenance and support for the TechSac Software in accordance with the provisions set out in this Section 7 and Distributed Software in accordance with the provisions set out in Section 8 and will invoice you accordingly.

Telephone support for the TechSac Software will be provided between 8.30am to 5.30pm Monday to Friday and 9.00am to 1.00pm on Saturday, excluding public holidays.

We will use our reasonable efforts to rectify any TechSac Software Error of which you give us written notice and which can be recreated using any unaltered release of the TechSac Software first released at any time during the twelve (12) month period preceding the date on which you give us such notice. We will have met our obligation under this Sub-Section if we supply you with any new release, update or revision to the applicable TechSac Software, which corrects the TechSac Software Error.

When notifying us of an TechSac Software Error you must send to us the full details of the problem, together with the example of input and output where appropriate and a written explanation of where the TechSac Software Error lies.

If we think it necessary, you must allow our representatives or us full access to the TechSac Software and the Designated Equipment during working hours (and any extra-agreed cover) so that we carry out our obligations under this Agreement.

We will at you request, supply to you any release, update or revision of or to the TechSac Software. We grant you a non-exclusive, non-transferable license to use any such new releases, update or revision to the software subject to the same conditions that are set out elsewhere in this Agreement.

(a)   Maintenance and support is ongoing on a yearly basis and continues unless cancelled by either you or us on thirty (30) days' written notice served before each anniversary of this Agreement, as long as the current maintenance is fully paid, or terminated in accordance with the provisions of section 9. Charges for maintenance and support under section 7 are based on a percentage applied to the price of the Software and are payable yearly in advance under the agreed terms of credit. Such percentage and the charge for our supplying maintenance and support for the first year of this Agreement are set out in each Schedule 1. Maintenance and support for subsequent years will be calculated on each anniversary of the date of this Agreement and will be based on the percentage set out in each Schedule 1 and the prevailing list price of the Software.

All maintenance and support charges (both initial and subsequent)   payable by you to us must be paid in full in accordance with the terms set out in Schedule 1.

In the event that any maintenance and support charge remains unpaid beyond the due date of payment, we become entitled to withdraw the maintenance and support service provided in this Section 7.

We reserve the right to change the amount of maintenance and support charges on written notice to you delivered prior to any anniversary of this Agreement

(a)   You must terminate your right to maintenance and support under this Section 7 in accordance with the provisions of Section 9.

(b) Once you have terminated your right to maintenance and support or if you did not take our maintenance and support as an option and subsequently you wish either take out or retake our maintenance and support services under this Section 7 then you may do so; but we may require you to use the then latest release of the TechSac Software and pay the maintenance and support charges for the time during which you elected not to take out maintenance and support.

Employment of our personnel – You agree to pay us an introduction fee equivalent to fifty (50) times the maintenance values as set out in the Agreement. If you directly or indirectly employ for any purpose any of the persons provided by us to perform the Services during the period in which the services are being performed or during the twenty four calendar months following the completion of the services.

Distributed Software Maintenance and Support

Maintenance and support for Distributed Software is normally available   and, if so provided by us in co-operation with the Distributed Software supplier, subject to the conditions set out in Section 7.

In the event we have made arrangements for any Distributed Software to be maintained and supported solely by or through the Distributed Software supplier, we shall so advise you and in such event the provisions of section 7 of this Agreement shall not apply to such Distributed Software.

Any variation to Section 7, which applies to maintain and support for specified Distributed Software, is set out in Schedule 2.

Termination

You may terminate the whole of this Agreement or just your right to maintenance and support under section 7 at any time on thirty (30) days' written notice. However, unless you are exercising your rights under Sub-Sections 4.1 or 4.2, you will not be entitled to a refund of the license fee for the Software or charges for maintenance and support.

We terminate the whole of this Agreement: (a) immediately by giving thirty (30) days written notice to you in the event you breach any of the provisions of Section 2, Sub-Section 3.2 (for failure to pay a licence fee only), 6.1 or 10.1; (b) you have failed to remedy a material breach of this Agreement within thirty (30) days after we have delivered written notice of termination to you specifying the nature of any such material breach (but such notice is not required in case of termination under Sub-Section 9.2 (a) above; or (c) immediately in the event of your ceasing to conduct business in the normal course, a receiver, administrator or other similar official is appointed to take control of you or your assets or your becoming insolvent or bankrupt. Additionally, we may terminate your right to maintenance and support under Section 7 forthwith on written notice to you in the event you fail to timely pay the maintenance and support charge specified in Schedule 1.

If the whole of this Agreement is terminated by you or us pursuant to this Section 9, you lose your right to use the Software. In such event you agree to return ALL COPIES (including archival copies) of the Software to us or you may with our written permission, destroy ALL COPIES (including archival copies) of the Software and certify to us in writing that you have done so.

General

Assignment
You may not assign this agreement, in whole or in part , or transfer the Software without our prior consent.

Export Restriction
You agree to comply fully with all relevant export laws of the Republic of Kenya to ensure that neither the Software nor any direct product thereof is exported, directly or indirectly, in violation of the Kenyan law.

Law and Jurisdiction
This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya and you and we submit to the exclusive jurisdiction of the Kenyan Courts

SCHEDULE 1

ID	PRODUCT DESCRIPTION	QTY	UNIT COST (KSHS)	TOTAL COST (KSHS)
1	To supply, install and implement a 5-user license of Techsac Sacco Software using MS-SQL database on a Windows 2000 Network environment running on an Intel platform and including:			
	User License			
	Single User (Standalone)			
	5 – User	1		
	10 – User			
	25- User			
	Additional Users			
	5 User			
	10 User			
	Core Modules			
	Members Register			
	Shares Management			
	Loans Management			
	Dividends Management			

	Optional Modules			
	Accounting:			
	General Ledger			
	Sales Ledger			
	Purchase Ledger			
	Fixed Assets			
	Banking			
	Front Office Savings Accounts			

Sub-Total Software License Cost	

2	**Services**

	Implementation			
	Training			

Sub-Total Services Cost	

3	**Annual Maintenance Fees**

	The Annual Maintenance covers			

	product updates, upgrades, subsidized support charges and call prioritization. These fees are payable in advance within thirty (30) days of the system acceptance and automatically renewable at the expiry of the term.			
	Annual Maintenance Fees amounting to 20% of the Software License Cost	1		

Sub-Total Project Cost	

Add 16 % VAT	

Grand Total Cost	

IN WITNESS

This agreement has been duly executed agreed and accepted:

For Client.

Signature:

Name:

Title: _____ Date: _____

Witness:

Signature:

Name:

Title: _____ Date: _____

For Lanbase System Technologies

Signature:

Name:

Title _____ Date: _____

Witness:

Signature:

Name:

Title: _____ Date: _____