END-USER SOFTWARE LICENCE AGREEMENT

This End-User Software Licence Agreement (the “Agreement”) is made and effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Licensor"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [LICENSEE NAME]** (the "Licensee"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

**RECITALS**

WHEREAS, the Licensor has developed certain computer programmes and related documentation more particularly described in Schedule A attached hereto (the "Products") and desires to grant the Licensee a licence to use the Software.

WHEREAS, Licensee wishes to use the Software under the conditions outlined in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Licensee and Licensor hereby agree as follows:

1. **DEFINITIONS**

The following definitions shall apply to this Agreement:

**"Software"** means the computer programmes and documentation listed in Schedule A attached to this Agreement.

**"Install"** means placing the Software on a computer's hard disk, CD-ROM or other secondary storage device.

**"Derivative Works"** means a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgement, condensation, expansion or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorisation by the owner of the pre-existing work, would constitute copyright infringement.

**"Use"** means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.

**"Territory"** means [SPECIFY TERRITORY]

1. **SOFTWARE LICENCE**

**[PERPETUAL LICENCE]**

The Licensor hereby grants to the Licensee a perpetual, non-exclusive licence to use the Software and Documentation (collectively, the "Software System"), subject to the terms and conditions hereinafter set forth. This Licence is effective when executed by both parties and the licence granted to the Software remains in force until the Licensee stops using the Software or until the Licensor terminates this Licence because of the Licensee's failure to comply with any of its terms and conditions.

OR

**[TERM OF YEARS]**

This Licence is effective when executed by both parties and will last for a term of [NUMBER] years. [OPTIONAL:] Thereafter, this Licence shall automatically be renewed for successive [NUMBER] year terms unless the Licensee gives the Licensor written notice at least [NUMBER] days before the day on which the licence or renewal would expire of its intention not to renew this Licence.

(AND)

**[SINGLE USER/CPU LICENCE]**

The Licensor hereby grants to the Licensee a non-exclusive licence to instal and use the Software on one single user computer in its possession, provided the Software is in use on only one computer at any time. The Software is "in use" on a computer when it is loaded into temporary memory (RAM) or installed into the permanent memory of a computer, for example, a hard disk, CD-ROM or other storage device. If the Software is permanently installed on the hard disc or other storage device of a computer (other than a network server) and one person uses that computer more than [%] of the time, then that person may also use the Software on a portable or home computer.

OR

**[MULTIPLE STANDALONE COMPUTERS]**

The Licensor hereby grants to the Licensee a non-exclusive licence to instal and use the Software on up to [NUMBER] of single-user computers in its possession.

OR

**[SITE LICENCE]**

The Licensor hereby grants to the Licensee a non-exclusive licence to instal and use the Software on any computer located at [FULL ADDRESS], provided such computers cannot be accessed from outside the site by a telecommunications network or otherwise.

OR

**[NETWORK LICENCE]**

The Licensor hereby grants to the Licensee a non-exclusive licence to instal and use the Software on the Local Area Network currently operating at the following site: [ADDRESS], provided the total number of users who have access to the Software at any time does not exceed [NUMBER].

1. **LICENCE FEE**

As consideration for the perpetual licence to use the Software System granted to the Licensee herein, the Licensee shall pay the Licensor the total sum of [AMOUNT], under the Payment Schedule outlined in Schedule C.

1. **LICENSEE’S RIGHTS AND OBLIGATIONS**
	1. The Licensee may either:
		1. Make one copy of the Software solely for backup or archival purposes, or

4.1.2 Transfer the Software to a single hard disk, provided the Licensee to keep the original solely for backup or archival purposes.

4.2 The Software and Documentation are protected by [COUNTRY] copyright laws and international treaties. The licensee must treat the Software and Documentation like any other copyrighted material – for example, a book. The licensee may not:

* + 1. Copy the Documentation
		2. Copy the Software except to make archival or backup copies as provided above
		3. Modify or adapt the Software or merge it into another program
		4. Reverse engineer, disassemble, decompile or make any attempt to discover the source code of the Software
		5. Place the Software onto a server so that it is accessible via a public network such as the Internet
		6. Sub-licence, rent, lease or lend any portion of the Software or Documentation.
1. **LIMITED WARRANTY**

5.1 The Licensor warrants that for a period of [NUMBER] of days after delivery of the Software to the Licensee:

* + 1. The physical media on which this copy of the Software is distributed will be free from defects in materials and workmanship under normal use, and
		2. The Software will perform in substantial accordance with the Documentation.

To the extent permitted by law, THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND THE LICENSOR DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, regardless of whether the Licensor knows or had reason to know of the Licensee particular needs. No employee, agent, or distributor of the Licensor is authorised to modify this warranty, nor to make any additional warranties.

1. **LIMITED REMEDY**

The licensor entire liability and the Licensee exclusive remedy shall be:

* 1. The replacement of any CD-ROM(s) or other media not meeting the Limited Warranty which is returned to the Licensor or an authorised Dealer or Distributor with a copy of the Licensee’s receipt, or
	2. If the Licensor or an authorised Dealer or Distributor are unable to deliver a replacement CD-ROM(s) or other media that is free of defects in materials or workmanship, the Licensee may terminate this Agreement by returning the Software and Documentation, and the Licensee’s money will be refunded.

IN NO EVENT WILL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OR THE INABILITY TO USE THE SOFTWARE (EVEN IF THE LICENSOR OR AN AUTHORISED DEALER OR DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

1. **REPRESENTATIONS AND WARRANTIES**

The Licensor hereby represents and warrants to the Licensee that:

* 1. The Licensor is the owner of all right, title and interest, including copyright, in all the Licenced Materials, or has the authority to enter into this Agreement on behalf of the owner.
	2. The Licensor has not granted any rights or licences to the Licenced Materials that would conflict with the Licensor's obligations under this Agreement.
	3. The Licensor is fully aware of the Licensee's business requirements and intended use for the Software, and the Software shall satisfy such requirements and is fit for such intended uses.
	4. The Licensor will not enter into any agreement with any third party which would affect the Licensee's rights under this Agreement, or bind the Licensee to any third party, without the Licensee's prior written consent.
	5. The Licensee's use of the Licenced Materials as authorised by this Agreement will not infringe any existing copyright, trade secret, patent or trademark rights of any third party.
1. **TERMINATION**

The Licensor shall have the right to immediately terminate this Licence if the Licensee fails to perform any obligation required of the Licensee under this Agreement or if the Licensee becomes bankrupt or insolvent. This Licence Agreement takes effect upon the Licensee’s use of the software and remains effective until terminated. The Licensee may terminate it at any time by destroying all copies of the Software and Documentation in its possession. It will also automatically terminate if the Licensee fails to comply with any term or condition of this Licence Agreement.

1. **RETURN OR DESTRUCTION OF SOFTWARE UPON TERMINATION**

Upon termination of this Licence, the Licensee shall return to the Licensor or destroy the original and all copies of the Software including partial copies and modifications. The Licensor shall have a reasonable opportunity to inspect the Licensee's place of business to assure compliance with this provision.

1. **TITLE TO SOFTWARE**

The Licensor retains title to and ownership of the Software and all enhancements, modifications, and updates of the Software.

1. **MODIFICATION AND ENHANCEMENTS**

The Licensee will make no efforts to reverse engineer the Software or make any modifications or enhancements without the Licensor's express written consent.

1. **THE SOFTWARE**

The Software shall consist of the modules or components, shall perform the functions and shall comply with the proposals and specifications, identified or set forth on Schedule A, annexed hereto. Each Software module or component, specification, and proposal included or referred to in Schedule A is expressly incorporated by reference herein.

1. **DOCUMENTATION**

The Documentation shall consist of all operator and user manuals, training materials, guides, listings, specifications, and other materials for use in conjunction with the Software, as outlined in Schedule B, annexed hereto. The Licensor shall deliver to the Licensee, as specified below, [NUMBER] complete copies of the Documentation outlined in Schedule B. The Licensee shall have the right, as part of the licence granted herein, to make as many additional copies of the Documentation for its use as it may determine.

1. **SOURCE CODE**

The Software shall include its Source Code form (the "Source Code"), and all relevant explanations and documentation of the Source Code (collectively, "Commentary"). The Licensor is required to deliver to the Licensee, [NUMBER] copies of the complete Source Code contained on machine-readable media and a complete listing of the Source Code and Commentary.

1. **OPERATING ENVIRONMENT**

The Software and each module or component and function thereof shall be capable of operating fully and correctly on the combination of computer equipment ("Hardware") the programming language and the Operating System specified in Schedule D, annexed hereto.

1. **DELIVERY**

Within [NUMBER] days of the execution of this Agreement by the Licensor, and upon no less than [NUMBER] days' prior notice to the Licensee, the Licensor shall deliver to the Licensee's premises, located at [ADDRESS] (the "Site"), the required number of copies of the Software together with the required number of copies of the Documentation. Upon at least [NUMBER] days' notice to the Licensor, the Licensee may postpone the delivery of the Software System to a mutually agreed-upon date no more than [NUMBER] days thereafter. The Licensor shall bear all freight, shipping and handling costs for such delivery of the Software System and all risk of loss, including any insurance costs.

1. **SOFTWARE INSTALLATION AND ACCEPTANCE**

Promptly after delivery of the Software System to the Site, the Licensor shall instal the Software on the Hardware. The Licensor shall successfully conduct all of its testing procedures on the Software. Thereafter, upon reasonable notice to and in the presence of representatives of the Licensee, the Licensor shall conduct the acceptance testing procedure specified in Schedule E, annexed hereto, using a sample of data supplied by the Licensee and converted and entered on the Hardware by the Licensor at its sole cost. Upon successful completion of every element of the acceptance testing procedure outlined in Schedule E, the Licensee shall execute a written notice of acceptance of the Software. In the event that the Software fails to pass any of the Licensor's testing procedures or the acceptance test set forth in Schedule E, then Licensor shall have [NUMBER] days in which to correct such defect and cause the Software to successfully pass all such tests, failing which the Licensee may elect to cancel this Agreement, and the Licensor shall immediately refund all sums previously paid to it by the Licensee hereunder.

1. **NEW LOCATION**

The Licensee may, at any time, without prior notice to or consent of the Licensor, transfer the Software to any location other than the site of initial installation for use on any other central processing unit ("CPU") which is owned or controlled by the Licensee or by subsidiaries or other entities owned or controlled by the Licensee. The Licensee shall thereafter promptly give the Licensor notice of such new location.

1. **MULTIPLE USE OPTION**

The Licensee shall have the option to extend the licence granted hereunder to include use of the Software on more than a single CPU which it may exercise in its sole discretion at any time by tendering to the Licensor a payment equal to [%] of the Licence Fee specified above for the first additional site and a payment equal to [%] of the Licence Fee specified above for each additional CPU on which the Software shall be so used, together with a notice identifying such CPU and its location.

1. **TRAINING**

The Licence Fee includes all costs for the training of the Licensee's employees on the use and operation of the Software on the Hardware, including instruction in any necessary conversion of the Licensee's data for such use. Under a mutually agreed upon schedule, the Licensor shall provide sufficient experienced and qualified personnel to conduct up to [NUMBER] full eight-hour days of such training of groups of up to [NUMBER] employees or other personnel of the Licensee at a location or locations designated by the Licensee.

1. **SOFTWARE MAINTENANCE**
	1. During the warranty period, the Licensor shall promptly notify the Licensee of any defects or malfunctions in the Software or Documentation of which it learns from any source. The Licensor shall promptly correct any defects or malfunctions in the Software or Documentation discovered during such warranty period and provide the Licensee with corrected copies of same, without additional charge. The Licensor's obligation hereunder shall not affect any other liability which it may have to the Licensee.
	2. The Licensor shall provide to the Licensee, without additional charge, copies of the Software System and Documentation revised to reflect any enhancements to the Software Systems made by the Licensor during the warranty period. Such enhancements shall include all modifications to the Software System which increase the speed, efficiency or ease of operation of the Software System, or add additional capabilities to or otherwise improve the functions of the Software System.
2. **ADDITIONAL SUPPORT**

During the warranty period, the Licensor shall provide to the Licensee, without additional charge, all reasonably necessary telephone or written consultation requested by the Licensee in connection with its use and operation of the Software System or any problems therewith. Telephone consultation shall be requested and provided only during the Licensor's normal business hours, and the Licensee shall pay all long distance telephone charges in connection therewith.

1. **SOFTWARE MAINTENANCE CONTRACT AND RENEWAL OPTION**

After the expiration of the warranty period referred to above, the Licensor shall provide maintenance, additional support, and enhancements in connection with the Software System, under the [NUMBER] year(s) Software Maintenance Contract executed concurrently herewith, a copy of which is annexed hereto. The Licensor hereby grants to the Licensee up to [NUMBER] options to renew the said contract, each for one year, for a fee to be negotiated annually by the Licensee and the Licensor, but in no event exceeding the fee charged for the preceding year's contract by more than [%].

1. **LICENSEE'S MODIFICATIONS**

The Licensee shall have the right, in its own discretion, to independently modify the Software System for its own purposes and use, through the services of its own employees or of independent contractors, provided that same agree not to disclose or distribute any part of the Software Systems to any other person or entity or otherwise violate the Licensor's proprietary rights therein. The Licensee shall be the owner of any such modifications. The Licensor shall not incorporate any such modifications into its software for distribution to third parties unless it first agrees to pay the Licensee a reasonable royalty, under mutually agreed upon terms.

1. **CONFIDENTIALITY**

Each party agrees that it shall not disclose to any third party any information concerning the customers, trade secrets, methods, processes or procedures or any other confidential, financial or business information of the other party which it learns during the course of its performance of this Agreement, without the prior written consent of such other party. This obligation shall survive the cancellation or other termination of this Agreement.

The Software contains trade secrets and proprietary know-how that belong to us, and it is being made available to the Licensee in strict confidence.

ANY USE OR DISCLOSURE OF THE SOFTWARE, OR OF ITS ALGORITHMS, PROTOCOLS OR INTERFACES, OTHER THAN IN STRICT ACCORDANCE WITH THIS LICENCE AGREEMENT, IT MAY BE ACTIONABLE AS A VIOLATION OF OUR TRADE SECRET RIGHTS.

1. **PUBLICITY**

The Licensor shall not refer to the existence of this Agreement in any press release, advertising or materials distributed to prospective customers, without the prior written consent of Licensee.

1. **LICENSOR'S PROPRIETARY NOTICES**

The Licensee agrees that any copies of the Software or Documentation which it makes under this Agreement shall bear all copyright, trademark and other proprietary notices included therein by the Licensor and, except as expressly authorised herein, the Licensee shall not distribute same to any third party without the Licensor's prior written consent. Notwithstanding the preceding sentence, the Licensee may add its copyright or other proprietary notice to any copy of the Software or Documentation which contains modifications to which the Licensee has ownership rights under this Agreement.

1. **MOST FAVOURED CUSTOMER**

The Licensor agrees to treat the Licensee as its most favoured customer. The Licensor represents that all of the prices, warranties, benefits and other terms being provided hereunder are equivalent to or better than the terms being offered by the Licensor to its current customers. If during the warranty period, the Licensor agrees with any other customer providing such customer with more favourable terms, then this Agreement shall be deemed appropriately amended to provide such terms to the Licensee. The Licensor shall promptly provide the Licensee with any refund or credits thereby created.

1. **ASSIGNMENT**

The Licensee may assign this agreement to any subsidiary or affiliate under its control, or as part of the sale of that part of its business which includes the Hardware or any substantial portion of its data processing facilities, or pursuant to any merger, consolidation or other reorganisation, without the Licensor's consent, upon notice to the Licensor. The Licensor shall not assign this Agreement without the Licensee's prior written consent, which shall not be unreasonably withheld. An assignee of either party, if authorised hereunder, shall have all of the rights and obligations of the assigning party outlined in this Agreement.

1. **INDEMNITY**

The Licensor agrees to indemnify and hold harmless the Licensee and its subsidiaries or affiliates under its control, and their directors, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including legal fees and expenses) arising out of or related to any claim that the Licensee's use or possession of the Software or Documentation, or the licence granted hereunder, infringes or violates the copyright, trade secret or another proprietary right of any third party. The Licensor shall defend and settle at its sole expense all suits or proceedings arising out of the preceding, provided that Licensee gives the Licensor prompt notice of any such claim of which it learns. No settlement which prevents the Licensee from continuing to use the Software System as provided herein shall be made without the Licensee's prior written consent. In all events, the Licensee shall have the right to participate in defence of any such suit or proceeding through counsel of its choosing.

1. **ARBITRATION**

The parties agree to submit any dispute under this Licence to binding arbitration in the following location [LIST CITY OR COUNTY WHERE ARBITRATION WILL OCCUR] under the rules of the [ASSOCIATION]. judgement  upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

1. **ATTORNEY FEES**

If any legal action is necessary to enforce this Licence, the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which it may be entitled.

1. **LIMITED LIABILITY**

Unless otherwise expressly stated herein, the Licensor shall not be liable to the Licensee for any consequential damages arising out of the Licensor's breach of this Agreement.

1. **NOTICE**

All notices required or permitted to be given by one party to the other under this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties at the respective addresses set forth above or to such other address as the party to receive the notice has designated by notice to the other party.

1. **GOVERNING LAW**

This Agreement shall be governed by and construed under the laws of [COUNTRY].

1. **CONSENT TO JURISDICTION, VENUE AND SERVICE**

The Licensor consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting within [COUNTRY], and the Licensor consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. Service of process in any such proceeding may be made by certified mail, return receipt requested, directed to the respective party at the address at which it is to receive notice as provided herein.

1. **SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

1. **NO WAIVER**

The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

1. **COMPLETE AGREEMENT**

This Agreement sets forth the entire understanding of the parties as to its subject matter and may not be modified except in writing executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

LICENSOR LICENSEE

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Authorised Signature Authorised Signature

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Print Name and Title Print Name and Title

**SCHEDULE A**

**COMPUTER PROGRAMMES AND DOCUMENTATION**

**SCHEDULE B**

**DOCUMENTATION**

**SCHEDULE C**

**PAYMENT SCHEDULE**

**SCHEDULE D**

**HARDWARE, PROGRAMMING LANGUAGE AND OPERATING SYSTEM**

**SCHEDULE E**

**ACCEPTANCE TESTING PROCEDURE**